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Procedural rules and judicial practices: a good or bad match for transparency?

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ABSTRACT

This article investigates how judicial practices affect the functioning of international courts and the transparency of procedural rules governing litigation before them. International courts have indeed embraced informal practices and soft law instruments more frequently, in addition to using traditional procedural sources (eg Treaties, Statutes, and Rules of Procedure). These informal practices encompass recommendations and procedural soft rules, presenting practical advantages while giving rise to transparency-related concerns. When practices remain unwritten, they become challenging to access and interpret. Conversely, through improving access to judicial practices, soft regulations raise concerns over their legal value and the complexity they add to the system. This article uses a comparative empirical approach to analyse the procedural systems of three selected international pilot courts to address these issues. Ultimately, the article discusses how formal rules and practices shape transparency and legal certainty within international courts' procedural normative systems.

KEYWORDS: Judicial practices; soft law; practice theory; transparency

INTRODUCTION

This article analyses the impact of judicial practices on the functioning of international courts, focusing on the transparency of procedural rules that govern litigation before them. International courts are increasingly governed not only by the traditional authoritative sources of procedure (eg Treaties, Statutes, Rules of Procedure, etc) but also by informal and flexible provisions, such as unwritten practices or soft law instruments that give additional guidance to practitioners or provide swift responses to specific practical situations.[1] Discovering that formally adopted rules may be ignored or even updated by judicial practice is not unusual.

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[1] Fabien Terpan, 'Soft Law in the European Union. The Changing Nature of EU Law' (2015) European Law Journal 68; Paolo Palchetti, 'Making and Enforcing Procedural Law at the International Court of Justice' (2019) 61 Questions of International Law 5, 13; Jeffrey L Dunoff and Mark A Pollak, 'International Judicial Practices: Opening the "Black Box" of International Courts' (2018) 40 Michigan Journal of International Law 47; Thore Neumann and Bruno Simma, 'Transparency in International Adjudication' in Andrea Bianchi and Anne Peters (eds), *Transparency in International Law* (CUP 2013) 436.

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No objections were raised among scholars regarding the practical advantages this system may present in some cases. However, its effects on regulations' transparency raised several issues that this article intends to address.[2] When practices remain unwritten, they are, in fact, hardly accessible and sometimes difficult to interpret or understand, as they often conceal social behaviours or collective background knowledge.[3]

Equally, when soft regulations are involved, even though they facilitate practitioners' access to judicial practices, the procedure followed by courts for the adoption of such regulations, as well as their legal value, is not fully clear. Also, they are not intended to be binding rules, but still consolidate and clarify the courts' position on procedural matters. Thus, their actual legal nature and their effect on the overall functioning of the procedural normative system may be up for discussion.

Further, the duplication of texts governing courts' procedure and the use of recommendatory language may confuse practitioners at the expense of legal certainty. This core principle in relation to procedural law will be discussed here. In this context, therefore, one should question whether the practice of enacting soft regulations should be welcomed.

In this article, we will try to answer these questions and make a constructive contribution to the ongoing discussion on the procedural normative system of international courts and its effects on transparency.

Outline of arguments

This article unfolds in several sections. First, it will provide a brief overview of the 'practice theory' studies to establish a theoretical foundation for the analysis conducted throughout the research. The article will then focus on the distinctive roles that practices and soft law measures play in the functioning of a small group of international courts, selected due to the limited scope of the present analysis: the Court of Justice of the European Union (CJEU), the International Court of Justice (ICJ), and the European Court of Human Rights (ECtHR). These courts will be briefly examined using a loosely comparative and empirical approach that will lead to several theoretical insights concerning the actual impact of both written and unwritten practices on the transparency of the court's functioning. This will include discussions on the legal basis of these practices, their utility in the management of proceedings, and the procedure for their adoption and dissemination. Lastly, we will offer concluding remarks based on the findings and discussions.

ENHANCING ACCESSIBILITY TO COURT PRACTICES: THE CHALLENGE POSED BY PRACTICE THEORY

As emphasized by some international law scholars,[4] there has been a significant lack of interest in the literature for many years in exploring how international courts actually function. For a long time, research studies have rarely investigated the actual operational mechanisms of the courts, such as the practices used during the decision-making phase or the practices that involve the relationship between the judges and court officials or between judges and the litigants.[5] As we will analyse later, one potential explanation for this 'blind spot' in the

[2] Sergey M Punzhin, 'Procedural Normative System of the International Court of Justice' (2017) 30 Leiden Journal of International Law 661.

[3] See Pierre Bourdieu, *The Logic of Practice* (SUP 1990) 52, who elaborates the concept of *habitus* as the product of the social world.

[4] Dunoff and Pollack (n 1) 47, 48.

[5] Furthermore, internal practices and guidelines (which are consistently hard to access) are shared among judges. These may pertain to aspects such as how cases are cited within judgments, or the methods employed to allocate cases among judges.

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investigation could stem from an inherent challenge. Specifically, when a practice remains unwritten, it is not directly accessible (at least not through desk research) and is therefore not transparent.[6]

However, recently, there has been a renewed interest in the study of practice, which has led scholars to apply the principles of the 'practice theory'—a concept originating from social studies—in their analyses of international courts.[7] Despite theoretical diversity among different research traditions,[8] practice theory puts 'social practice—as an actual, contingent, evolving and productive set of activities—at the centre'.[9] Specifically, scholars of practice theory emphasize that practices exist between a certain organizational structure (eg courts and tribunals) and agency. They represent dynamic activities and processes that ensure the stability of the structure and its evolution over time, driven by the very agents who shape it.

But what exactly is practice? It should be noted that even pinpointing a definition appears to be a challenging task. Generally speaking, practices are defined as a repeated mode of behaviour—habit, custom, way of doing things—that is significant from an organizational perspective because it deviates to a lesser or greater extent from what is prescribed by a formal rule (eg norm, procedure, directive, etc) of the organization or, at the very least, reinterprets it in a significant manner.[10] Practice, then, directly pertains to the behavioural sphere, as it serves to interpret and apply the meaning of formal rules in situations characterized by uncertainty and ambiguity.

In the context of international courts' procedure, the aim is to enhance predictability, stability, and legal certainty by translating legal provisions into concrete applications.[11]

Furthermore, scholars tend to recognize five significant elements of practice that can be useful in identifying their proper function in the judicial context:

i) *performance*, which refers to the process of carrying out actions, encompassing the actual conduct and activities undertaken within a specific judicial context;
ii) *pattern*, which signifies the regularity observed over time and space within well-organized contexts, highlighting the consistent nature of practices;

[6] Dunoff and Pollack (n 1), highlight that the importance of studying judicial practice lies in its ability to encompass a wide range of 'hidden' activities or interpretative choices that can offer a more precise understanding of how courts operate and that are accessible only through methods other than desk research.

[7] Dunoff and Pollack (n 1).

[8] See Dunoff and Pollack (n 1) 52 where the authors distinguish three main research traditions in this regard: rationalism, norm-based theorizing, and cultural theory (which includes practice theory), and should be seen as a third way of understanding actions. See also Andreas Reckwitz, 'Toward a Theory of Social Practices: A Development in Culturalist Theorizing' (2002) 5 European Journal of Social Theory 243, 245, who explains that 'cultural theories highlight the implicit, tacit or unconscious layer of knowledge which enables a symbolic organization of reality'. Davide Nicolini, *Practice Theory, Work and Organizations: An Introduction* (1st edn, OUP 2012) 1, who explains that 'a unified theory of practice does not exist'. He also explains that from the 1990s, scholars started to examine organizations not only as entities but also as social processes.

[9] Nicolas M Rajkovic, Tanja E Aalberts and Thomas Gammeltoft-Hansen (eds), 'Introduction' in *The Power of Legality* (CUP 2016) 1. See also Etienne Wegner, *Communities of Practices: Learning, Meaning and Identity* (first published 1998, CUP 2004) 47, who explains that: 'Practice, in fact, connotates doing, but not just doing in and of itself. It is doing in a historical and social context that gives structure and meaning to what we do […]. Such concept of practice includes both the explicit and the tacit.'

[10] Andrea Morrone, *Le Fonti Normative* (1st edn., Il Mulino 2018) 247; Gustavo Zagrebelsky, 'Il sistema delle fonti' in Gustavo Zagrebelsky (ed), *Manuale di diritto costituzionale* (UTET 1990) 70.

[11] *Živić v Serbia* App no 37204/08 (ECHR, 13 September 2011) where it is affirmed that when faced with two possible alternative interpretations of procedural norms, economic and functional reasons of the justice system should lead the interpreter to opt for the interpretation that has become established over time, unless there is a clear emergence or change in the procedural context itself. See also, Letizia Lo Giacco, *Judicial Decisions in International Law Argumentation: Between Entrapment and Creativity* (Hart 2022) 6, who investigates how the growing number of judicial decisions on international law has changed the argumentative practices used by courts in legal justification. In this context, 'international courts have expressed reasons for action which have influenced how future cases are adjudicated'; in this regard, see also Sotirios-Ioannis Lekkas, Panos Merkouris and Daniel Peat, 'The Interpretative Practice of the International Court of Justice' (2023) Max Planck Yearbook of United Nations Law 316.

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iii) *competence*, which relates to practices evaluated by individuals who possess a shared set of standards, ensuring proficiency and effectiveness;
iv) *background knowledge* that involves the sharing of the same set of expertise (ie treaties, rules of courts, and other relevant legal frameworks that may provide a foundation for practices); and
v) *discursive and material* features that emphasize the linguistic dimension of practices, where a particular language is used to attribute meaning to them and yield material consequences for litigants.[12]

PRACTICE, COMMUNITY, AND PREDICTABILITY

Building upon this theoretical framework[13] and in contrast to traditional approaches that solely emphasize the study of the formal aspects of the procedure, we aim to highlight that the effectiveness and influence of the law extend beyond the identification of social norms that meet the traditional criteria of legality (eg generality, promulgation, non-retroactivity, clarity, non-contradiction, feasibility, and consistency between rules and official action).[14] Instead, (procedural) norms are constructed, maintained, and evolve through the active engagement of so-called communities of practices, such as courts.[15] These communities consist of individuals who, through their engagement within a shared structure, develop repeated behaviours, cases, stories, language, vocabulary, etc, to address recurring problems, ultimately shaping the procedure itself.[16]

According to this perspective, practice and practical knowledge are understood as a form of tradition supported by a community. Therefore, the link between the notions of practice, tradition, and community is central to scholarly discussions on practice theory. Particularly, some scholars, in exploring the connection between practice as a form of tradition and a specific community, divide this relationship into two aspects: firstly, the concept of habit and individual learning, and secondly, the collective dimension that explains the long-term persistence of certain behaviours within communities.[17] This collective aspect is closely related to the concept of apprenticeship, which involves phenomena such as learning through imitation and practical experience. This interplay gives rise to the idea of individuals 'absorbing and being absorbed in the culture of practice', a concept referenced in various scholarly discussions.[18]

Other scholars explore the relationship between practice and groups (such as courts) even more deeply by drawing on the concept of 'community of practice'.[19] According to Lave and Wenger, who first introduced the concept, 'a community of practice is an intrinsic condition for the existence of knowledge, not least because it provides the interpretative support necessary for making sense of its heritage. Thus, participation in the cultural practice in

[12] Emanuel Adler and Vincent Pouliot, 'International Practices' [2011] International Theory 14; see also Dunoff and Pollack (n 1) 62, who apply these five dimensions to international judicial practices.

[13] Jutta Brunnée and Stephen J Toope, *Legitimacy and Legality in International Law: An Interactional Account* (CUP 2010).

[14] See Lon J Fuller, *The Morality of Law* (YUP 1964).

[15] See Stefano Zan, 'Il sistema organizzativo della giustizia civile in Italia: caratteristiche e prospettive' 1 (2006) Quaderni di giustizia e organizzazione 17, 26, where courts are considered practice communities, framed within 'loosely coupled' systems, according to Orton J Douglas and Karl E Weick, 'Loosely Coupled System: A Reconceptualization' (1990) Academy of Management Review 203, which are characterized by multiple autonomous and independent organizational components. In our case, the judge represents the fundamental organizational unit that interacts with the administrative apparatus.

[16] In the early 1950's, Piero Calamandrei, *Processo e democrazia* (CEDAM, 1954) already highlighted that throughout the history of the legal process, there has been a progressive transformation of practice into procedural law. However, in contemporary times, there is a disillusionment with the positivist notion of the 'rationalization of power'. It was recognized even back then that no procedure, in a broader sense, can be regulated by such detailed and stringent rules as to leave no room for the initiative of the individuals tasked with implementing it.

[17] Nicolini (n 8) 85.

[18] Lave, J. and Wenger, E., *Situated learning: legitimate peripheral participation* (CUP 1991) 95.

[19] Nicolini (n 8) 87.

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which any knowledge exists is an epistemological principle of learning'.[20] This implies recognizing one's membership in an organized group of individuals connected through engagement in activities that they collectively understand and hold significance in their lives and for their communities.[21] In this sense, as mentioned before, the concept of 'community of practice' usually entails the following elements[22]:

i) *mutual participation*, since the community's activities are based on a group of people actively involved in shared participation and relationships. These connections enable them to carry out their activities and tasks collectively;
ii) *community-driven collaborative participation*, which implies that the activities of the community are not just an individual effort but a collaborative endeavour;
iii) *shared resources*, which in literature is explained as a common *repertoire*, shared by the group, that entails further engagement in practice[23]; and
iv) *collective learning background*, which encompasses evolving patterns of mutual understandings, since 'learning is the engine of practice, and practice is the history of that learning'.[24]

Through (judicial) practices, communities (eg courts) articulate the *rationale* behind their actions in specific matters, implying that precedents and established habits influence future actions. This principle unavoidably impacts the court's internal cohesion, particularly concerning its organizational structure and stability, as well as its external dealings with third parties. This fosters predictability for the group members and third parties in the interpretation of rules, which significantly influences the administration of justice as well as certainty. This concept encompasses the very essence of substantive justice.[25] Ultimately, the concept of 'community of practice' provides a valuable theoretical lens through which to understand the role of practices in shaping procedural frameworks, not only insofar as they operate informally or remain unwritten but also when they are formalized within soft law measures, a subject to which the following sections will be devoted.

In the context of international courts, it should be noted that traditional sources of procedure (eg Statutes or Rules of Courts) generally establish broad parameters for the functioning of these courts. Thus, they provide judges with considerable discretion, granting them substantial leeway to develop and implement their own practices.[26] For example, we should highlight that both the Statute of the ICJ and the Statute of the CJEU stipulate that the court proceedings consist of two parts: one written and one oral. However, despite the substantial similarity of these provisions, they are interpreted differently by the two Courts. The ICJ interprets the provision as requiring an oral hearing in all cases, even when the parties mutually agree it is unnecessary.[27] Conversely, the CJEU uses a case-by-case approach to

[20] Jean Lave and Etienne Wenger (n 18) 98.

[21] See Nicolini (n 8) 89, who suggests that historically, the idea of community involved the 'right to be part of it'. The concept of community highlights stability, common traits, mutual cooperation, as well as boundaries and rules for who is included or excluded. Some scholars argue that identifying with a community is about recognizing shared origins or common traits with others, or aligning with an ideal, which naturally leads to unity and loyalty. On the other hand, for others, group identity is seen as a temporary and non-structural result of community interactions.

[22] Etienne Wenger, *Communities of Practice: Learning, Meaning and Identity* (CUO 1998) 47.

[23] ibid 83.

[24] ibid 95.

[25] On the other hand, as noted by some authors, judicial practice, and *habitus*, while providing predictability and certainty in interpreting legal norms, also run the risk of constraining the interpretative discretion of the judge, which is a fundamental aspect of 'judging' itself. In this sense, an excessive reliance on interpretive practices could slow down or postpone the process of interpreting a norm in an evolving context, and, more broadly, it could impede the evolution of the law. Furthermore, the judges' reliance on practices could also lead to changes in the techniques and mechanisms used in legal decision-making arguments. See Lo Giacco (n 11) 2.

[26] Dunoff and Pollak (n 1) 47, 63.

[27] Shabtai Rosenne, *The Law and the Practice of International Court 1920-2005* (4th edn, Brill 2006) 1290.

determine when an oral hearing is required.[28] These considerations raise questions, particularly regarding the significance of the practice highlighted earlier and its impact on the certainty of the procedure.

Accessing unwritten internal practices[29] poses several challenges. Valuable data and insights can be obtained from interviews and surveys conducted with judges, court officials, and practising lawyers with experience before international courts and tribunals. However, despite these efforts, scholars emphasize that many practices remain inaccessible.[30] To foster accessibility and legal certainty, international courts often employ soft rules, such as guidelines, recommendations, and practice directions, to disseminate and provide accessibility to operational and interpretive practices, especially when they regard the relationship between judges and litigants.[31] As we will demonstrate further, although these instruments do not hold the status of binding texts that regulate procedural aspects, they play a crucial role in mitigating the transparency gap that inevitably affects the court's functioning.[32] At the same time, however, these instruments raise concerns regarding the proliferation of texts that must be consulted to fully understand the procedure before a given court, thereby generating the opposite problem: namely, that soft law instruments—while intended to enhance transparency concerning the court's practice and functioning—may in fact complicate the parties' task by requiring them to navigate an increasingly complex and fragmented body of procedural sources.

THE COURT OF JUSTICE OF THE EUROPEAN UNION: TREATIES, STATUTE, PROCEDURAL RULES, AND PRACTICE

Before the CJEU, procedural rules derive from a wide range of sources, each possessing a different hierarchical status and varying obligatory strength. Primary law sources, including the founding Treaties,[33] establish fundamental rules concerning the jurisdictional bodies' operation, composition, and competences.[34] Furthermore, the Statute of the Court (Protocol no 3) forms an integral part of the founding Treaties (Article 51 of the Treaty of the European Union, TEU). It outlines the essential rules of the process before the judicial bodies of the European Union (EU). The Rules of Procedure, on the other hand, are designed to detail the norms expressed in the Statute[35] and are issued by the Court of Justice and the General Court (Articles 253, 254, 257 of the Treaty on the functioning of the European Union, TFEU). These rules, which are subordinate to the Statute, serve to fill in the gaps that the Statute leaves behind and are essential for its practical application. Ultimately, at the base of

[28] Allan Rosas, 'Horal hearings Before the European Court of Justice, (2014) 21 Maastricht Journal 596, 598.

[29] Such as those regulating interactions between judges and court staff or those employed during the deliberative process

[30] Dunoff and Pollak (n 1) 66, who highlight this methodological issue in their research. However, drawing a combination of interviews, archival research into the history of the statues of the courts, and an extensive review of judges' speeches, they were able to set a typology of selected international judicial practices that can be divided into two main categories: (i) practices not directly related to litigation and (ii) practices directly related to litigation.

[31] In this regard, we should highlight that the paper will not deal with practices not directly related to litigations and practices regarding judicial deliberations and drafting of judgments, which are still inaccessible for the most part. See Dunoff and Pollak (n 1) 89.

[32] Oana Ştefan, *Soft Law in Court* (Wolters Kluwer 2013) 8.

[33] arts 251–281 TFEU primarily address the structure, composition, and functioning of various organs, as well as other detailed procedural rules. Additionally, art 19 TEU establishes the unified configuration of the judicial organs of the European Union, each of which contributes, within their respective competences, to 'ensuring respect for the law in the interpretation and application of the Treaties'.

[34] These sources also encompass general principles recognized by national legal systems, as well as fundamental rights outlined in the ECHR, as stated in art 6(3) of the TEU. The Charter of Fundamental Rights of the European Union, proclaimed in 2000, gained significance with the implementation of the Lisbon Treaty.

[35] art 63 of Protocol no 3 states that 'the Rules of Procedure of the Court of Justice and the General Court shall contain all the provisions necessary for implementing and, where necessary, complementing this Statute'.

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this hierarchy, we find soft regulations that do not fit into the traditional categorization of sources of EU law[36]. As said in the previous paragraph, they exist 'between structure and agency'[37].

Enhancing transparency: recommendations regarding preliminary ruling proceedings and practice directions to parties

Soft rules do not have a binding force but are increasingly often cited by the Court's case law, thus sparking reflection on their real effects. Their primary function is to provide legal practitioners with practical guidance during the procedure, for example, in preliminary ruling proceedings. In this regard, we should mention that before the amendments of the Rules of Procedure in 2012,[38] the rules governing the preliminary ruling procedure did not provide a detailed and comprehensive discipline of the instrument, which was regulated mainly by Articles 23 and 23-*bis* of the Statute and Articles 103-104-*ter* of the previous Procedural Rules. Similarly, there were no specific rules on how to draft the orders for references. This circumstance initially gave rise to practices aimed at identifying the essential elements for the admissibility of preliminary ruling proceedings. These 'guidelines' were then transcribed, starting from 2005, into an informative note (later replaced by the current Recommendations) drawn up by the Court itself, aimed primarily at guiding national judges on the advisability of proceeding with a preliminary ruling and, subsequently, possibly, helping them to formulate and present the order for reference.[39] The reference to the informative note is particularly relevant since, before the codification of its content into the new Rules of Procedure, it effectively served as a basis for evaluating the admissibility of the proceedings. For example, in *Calestani and Lunardi v Agenzia delle Entrate,*[40] the Court found the proceeding inadmissible and criticized the judge for not consulting the guidelines outlined in the informative note. The Court noted that the order for reference was incomplete since it did not explain why the interpretation of EU law was necessary for resolving the main dispute, nor did it explicitly identify the specific provisions of EU law requiring interpretation by the CJEU. Particularly, the Court stated that the 'questions [were] referred without sufficient information on the factual and legislative context (Art. 234 EC; Statute of the Court of Justice, Art. 23)'.

The Recommendations assume a less prominent role nowadays due to the mentioned amendments to the Rules of Procedure. Nevertheless, they still serve as a complementary instrument, providing valuable guidance to both national and European judges. For example, in the case *Ignazio Messina & C. SpA v Ministero delle Infrastrutture e dei Trasporti et al.*, as often happens, the Court outlined that the requirements concerning the content of a request for a preliminary ruling are explicitly set out in Article 94 of the Court's Rules of Procedure

[36] Not even within the last category mentioned in art 288 TFEU, which includes recommendations and opinions that, although non-binding, are nonetheless considered as instruments not intended to regulate the internal procedures of the court.

[37] Paolo Biavati, *Diritto Processuale dell'Unione Europea* (Giuffrè 2015) 10; Carlo Rasia, *Civil Procedure in the European Union* (3rd edn, Wolters Kluwer 2022) 23.

[38] The first Regulation dates back to 4 March 1953, and was amended on 19 May 1991, see OJEC, L 176 of 4 July 1991 while the current one was adopted on 25 September 2012, published in OJEU, L 265 of 29 September 2012. It consists of 210 articles, compared to the 127 articles in the previous formulation, demonstrating a higher level of detail in the regulation of various procedural phases.

[39] art 22 of the informative note indicated the minimum requirements of the request for a preliminary ruling that are now indicated by art 94 of the 2012 Procedural Rules.

[40] Joined cases C-292/09 and C-293/09 *Calestani and Lunardi v Agenzia delle Entrate* [2010] ECR I-00001, paras 23–27; Similarly, see C-613/10 *Danilo Debiasi v Agenzia delle Entrate, Ufficio di Parma* [2011], paras 24–31, where the Court stated that 'the request for a preliminary ruling, in light of the requirements set out in particular in points 22ff of the information note referred to above in point 24, does not attain the necessary level of clarity and precision to enable the Court to give a ruling'. Prior to the 2012 amendment of the Rules of Procedure, then, the informative note served as an important (if not the sole) ground for assessing the admissibility of preliminary ruling proceedings, in the absence of binding legal norms.

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and in Article 22 of the Court's Recommendations, thereby acknowledging the 'normative weight' of the measure.[41]

Similar to the Recommendations above, the Practice Directions to Parties regarding cases brought before the Court also provide practical guidance during the main phase of the procedure.[42] Final judgements make increasing reference to violations not only of the Statute or the Rules of Procedure but also of the Practice Directions. For example, in the case *Marpefa v Office for Harmonisation in the Internal Market*,[43] the General Court declared the inadmissibility of the application due to the failure to deposit the original document, according to Article 43 of the Rules and Article 7(3) of the Practice Directions before the General Court.[44] On the other hand, we should notice a more cautious approach in other cases; here, the merely persuasive and non-binding nature of the measure is reaffirmed. In *DTS Distribuidora de Televisión Digital SA v European Commission*,[45] where the defendant complained about the inadmissibility of the claim due to its excessive length (40 pages instead of 25) in violation of Article 20 of the Practice Directions in force at the time, the European Court of Justice (ECJ) noted that: 'practice directions to parties are indicative and have no binding force. As is apparent from recitals 1 to 3 of those directions, they were adopted in order to supplement and clarify the rules applicable to the conduct of proceedings before the Court, in the interest of the proper administration of justice, and are not intended to replace the relevant provisions of the Statute of the Court of Justice of the European Union and the Rules of Procedure of the Court […]'.

THE INTERNATIONAL COURT OF JUSTICE: TREATIES, STATUTE, RULES OF THE COURT, AND PRACTICE

Similar to the CJEU, the ICJ features a multi-tiered normative system. Procedural rules derive from a plurality of sources that operate uniformly. However, only some belong to the 'traditional' sources of international law.

Also, the ICJ procedural system is constructed on a hierarchical basis.[46] The Treaties are at the top of the pyramid: the Charter of the United Nations and the Statute of the International Court of Justice. The former, in addition to providing for the creation of the Court itself, outlines its essential operational aspects[47]; however, the rules dealing with procedure in this context are limited, as the Charter is not the instrument intended to deal

[41] Joined Cases C-10/16 and C-12/16 *Ignazio Messina & C. SpA v Ministero delle Infrastrutture e dei Trasporti et al.* [2016] para 11. According to the Court: 'The requirements concerning the content of a request for a preliminary ruling are expressly laid down in Article 94 of the Rules of Procedure, of which the referring judge (…) is presumed to be aware and which he or she is required to observe scrupulously (…) These requirements are, moreover, reiterated in paragraph 22 of the Court's Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings'. See also, C-19/14 *Talasca v Stadt Kevelaer* [2014] para 21 and C-614/14 *Ognyanov* [2014] para 19, quoted by the Court in *Ignazio Messina & C. SpA v Ministero delle Infrastrutture e dei Trasporti et al.*, where, on the other hand, the recommendations are not indicated. Nevertheless, the recommendations are often cited in the Court's judgments, see, *ex multis*, C-561/19 *Consorzio Italian Management and Catania Multiservizi SpA v Rete Ferroviaria Italiana SpA* [2021], para 68; C-176/2022 *BK and ZhP* [2023], para 20; C-102/17 *Secretaria Regional de Saúde dos Açores v Ministério Público* [2018] para 26; C-260/21 *Corporate Commercial Bank v Elit Petrol AD* [2021] para 31.

[42] Their legal foundation can be found in art 208 of the Rules of Procedure of the Court of Justice and art 150 of the Rules of Procedure of the General Court, as well as art 120 of the Rules of Procedure of the Civil Service Tribunal.

[43] T-708/14 *Marpefa v Office for Harmonisation in the Internal Market* [2015], para 13.

[44] According to this provision, in case of a discrepancy between the signed original and the previously deposited copy, only the date of the signed original should be taken into account.

[45] C-449/14 P *Distribuidora de Televisión Digital SA v European Commission et al.* [2016].

[46] As the other International Courts analysed in this article.

[47] Some rules refer to internal aspects of the organization, while others pertain more specifically to procedural aspects. art 7(1) on the structure of the United Nations, or art 36(3), which invites the Security Council to consider that legal disputes should be referred by the parties to the Court; ch XIV, which contains provisions concerning the placement of the Court within the United Nations organization; the main function of the Court and the principles that constitute its foundation (art 92); the provisions relating to the participation of States in the Statute of the Court (Article 94); the right of States to use any

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more specifically with procedural matters. The Statute, on the other hand, sets out the organization of the Court, its composition, and its functioning.[48] The Statute is considered an integral part of the Charter and shares its legal value[49]; thus, its rules are legally binding for the States parties and the Court itself.

At a lower level, the Rules of the Court are adopted directly by the Court and based on a power expressly allotted to it by Article 30(1) of the Statute. These rules are considered the expression of the power of the Court to 'self-regulate' its procedure. Even though the Court issues this body of rules, and, in this sense, it could be argued that it has a more internal than intergovernmental function,[50] scholars have no doubt about the binding force of its provisions.[51]

Furthermore, following the same trend as other international courts analysed in this article, in the 2000s, the ICJ adopted Practice Directions, which contain principles and (good) practices to be applied before the Court. These Directions aim to provide additional procedural guidance to parties in matters of procedure.

IMPLEMENTING THE PRACTICE OF PROCEDURAL SOFT LAW: ICJ PRACTICE DIRECTIONS

These guidelines were initially adopted as Recommendations (1998) and were only subsequently converted into Practice Directions in October 2001. In announcing the adoption of the document, the Court stated that the provisions did not aim to modify the Rules of the Court 'but are additional thereto'. Practice Directions, therefore, constitute less formal and more flexible tools to respond quickly to specific procedural law issues.

Regarding the legitimacy of the Court to formulate Practice Directions, it should be noted that Article 30(1) of the Statute[52] does not explicitly mention the Court's authority to adopt them. However, scholars suggest that this provision could provide the basis for such authority in combination with the doctrine of implied powers. Consequently, the legitimacy of the Court is generally not called into question, provided that the Practice Directions do not conflict with hierarchically superior rules, as the Court itself states in the first footnote of these Practice Directions.[53]

Regarding the substance, Practice Directions are heterogeneous. Some of them, for example, aim to identify the content of written pleadings specifically or to invite the parties to limit the number of documents submitted before the Court according to the Court's practices; other provisions provide a time limit for the presentation of written or oral pleadings

Tribunal in order to resolve disputes that have arisen between them (art 95); the provision for an advisory function of the Court (art 96).

[48] The Statute can be divided into four sections: one section is dedicated to the organization of the Court; another focuses on its jurisdiction; a third pertains to the regulation of contentious and advisory procedures before the Court; and the final section outlines the methods for amending the Statute.

[49] Robert Kolb, *The International Court of Justice* (Hart 2013) 82–83; Malcolm N Shaw, *Rosenne's Law and Practice of the International Court. 1920-2015* (5th edn, Brill 2016) 103, who highlighted that 'the Statute is, for litigating States, imperative law, in other words, it has a peremptory character, ie (The Statute) contains rules from which the parties cannot derogate by mutual agreement'.

[50] In the sense that they are not binding for the litigating States.

[51] Rosenne Shabtai, *The Law and Practice of the International Court 1920-2005* (4th edn, Martinus Nijhoff 2006) 1028; Punzhin (n 2) 661, 666 and Shaw (n 49) 1055, who highlighted that: 'where the Parties have had recourse to a body already constituted and having its own rules of organization and procedure, held to have accepted such rules'.

[52] The norm recognizes the Court's power to formulate the procedural rules necessary to carry out its function.

[53] Hugh Thirlway, *The Law and Procedure of The International Court of Justice: Fifty Years of Jurisprudence* (OUO 2013); Kolb (n 49) 103, who states that: '[…] Those legislative powers arise both from Article 30 of the Statute, and from the general principle applicable to all international bodies, namely the principle of implied powers'.

during the 'preliminary objections' phase.[54] In this regard, it appears from the analysis of the Court's case law over time that the Practice Directions have assumed increasing importance to the point of being progressively invoked by the Court itself in its judgments.[55] An example is the application of Practice Direction V, which provides a 4-month time limit for submitting written pleadings within the 'preliminary objection' phase under Article 79(5) of the Rules of the Court.[56]

Initially, the Court did not always follow this practice when setting deadlines for presenting written pleadings during 'preliminary objections'. For example, in 2002, in the case of *Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)*,[57] it set a deadline of nine months and seven and a half months in the case of *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)*.[58] From 2014, however, we can observe a jurisprudential evolution aimed at applying more rigorously the provisions of Practice Direction V: examples can be found in the case *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v Chile)*, where the court, in setting the deadlines for counterarguments, specifically referred to Practice Direction V and set a deadline of four months.[59]

In recent case law of the Court, there is only one case in which it deviates from these precedents. In *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v Colombia)*,[60] it set a term of 4 months from the date of the order (and not from that of the deposit of the preliminary objections). As observed by commentators, however, the deviation from Practice Direction V is mainly derived from the procedural situation of the specific case, demonstrating the concrete usefulness of soft law tools that allow legal operators to deviate from the dictates of these tools where they recognize the need.[61] Ultimately, although from an analysis of the case law of the Court, one can certainly deduce an increasing relevance of the Practice Directions,[62] one cannot conclude that they have *de facto* a binding force.[63]

THE EUROPEAN COURT OF HUMAN RIGHTS: ECHR, COURT RULES AND PRACTICE

The Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was signed in Rome on 4 November 1950. It was the first international instrument to give

[54] Other provisions, on the other hand, aim to clarify the scope of some higher-ranking rules: this is the case of rules IX and IX-*quarter* that clarify the ways in which to apply art 56 of the Rules of the Court, or of rules X and XIII that instead provide the implementation methods of art 31 of the same Rules.

[55] Juan José Quintaba, *Litigation at the International Court of Justice* (Brill 2015) 174, who highlighted that: 'As a matter of course, States parties simply take for granted that the Practice Directions are to be followed and take great pains to conform their procedural actions to what is provided in them'.

[56] Shabtai (n 51) 1028.

[57] *Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)* (2002) ICJ Report 607.

[58] See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)* (2002) ICJ Reports 210. See also *Certain Property (Liechtenstein v Germany)* (2002) ICJ Reports 296, where the Court set a deadline of 4.5 months; in the case of *Territorial and Maritime Dispute (Nicaragua v Colombia)* (2003) ICJ Reports 158, it set a term of 6 months. In the case *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia vs Russian Federation)* (2009) ICJ Reports 308, the Court established a deadline of 4 months from the date of submission of objections, without making any reference to the Practice Directions.

[59] *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v Chile)* (2014) ICJ Reports 475.

[60] (2014) ICJ Reports 478.

[61] Punzhin (n 2) 671.

[62] In this regard, we should consider, though, that the actual duration of the pleading submission phase tends to be longer due to the Court's propensity to grant extensions, even when (albeit rarely) it expresses doubts as to whether the requesting State has provided valid reasons.

[63] We can draw this conclusion from the same language used by the Court in formulating the rule in question: 'With the aim of accelerating proceedings on preliminary objections (…), the time limit for the presentation by the other party of a written statement of its observations and submissions under art 79-bis, para 3, shall generally not exceed four months from the date of the filing of the preliminary objections'.

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effect to the rights stated in the Universal Declaration of Human Rights, making them binding for the contracting States.

The responsibility for overseeing the proper application of the ECHR was at first entrusted to two independent bodies—the European Commission of Human Rights (established in 1954) and the European Court (established in 1959)—which were not intended to sit permanently.[64] The need for a comprehensive reform of the Strasbourg system—prompted, *inter alia*, by the significant increase in the volume of applications and the enlargement of the Council of Europe[65]—began to take shape in the late 1980s and culminated in the adoption of Protocol No 11, which entered into force in 1998. This Protocol marked a fundamental institutional transformation, abolishing the former dual structure composed of the Commission of Human Rights and the European Court, leaving a single permanent Court entrusted with the full adjudicatory functions under the Convention system.

Regarding the functioning of the Court, it should be noted that the Convention constitutes a primary source of procedure; in section 2, it provides general procedural rules concerning, for example, the jurisdiction of the Court (Article 32), the number of judges (Article 20), the powers of the Grand Chamber (Article 31) or the admissibility criteria for individual applications (Article 35 as amended by Protocol 14).[66] The procedure is then more explicitly outlined by the Rules of Court. The Rules, originally entered into force in 1998, have been amended multiple times to offer more straightforward procedural guidelines for proceedings before the Court.[67] As we will analyse in the subsequent paragraph, the Rules of Court incorporate Practice Directions in accordance with the provision of Article 32.

ECtHR PRACTICE DIRECTIONS: FILLING PROCEDURAL GAPS OF THE PROCEDURE OR ENCOURAGING THE PROLIFERATION OF GOVERNING TEXTS?

As previously mentioned, the European Court of Human Rights (ECtHR) also operates within a procedural framework that allows the Court some flexibility in interpreting procedural norms. This flexibility provides room for the Court to develop its own practices. Take, for instance, the Court's practice of holding admissibility hearings or hearings on the merits of the case, which has become the exception rather than the rule [as stated in Rule 59(3) of the Rules of Court]. While usually the Court asks parties if they wish for an oral hearing, it nevertheless often proceeds to make decisions without such a hearing.[68] On the other hand,

[64] In summary, the Commission was tasked with the initial examination of applications, primarily focusing on their admissibility. Upon finding an application admissible, it sought to achieve an amicable settlement between the parties. Failing that, the Commission conducted a fact-finding procedure and issued a preliminary report on the existence of a potential violation of the Convention. Within three months of this report, either the Commission or the respondent State could refer the case to the Court for the actual judicial phase. If no referral was made, the Committee of Ministers was responsible for determining whether a violation had occurred (previous art 48 of the Convention). See, Carlo Russo and Paolo M Quaini, *La convenzione auropea dei diritti dell'uomo e la giurisprudenza della corte di Strasburgo* (2nd edn, Giuffrè 2006) 23; Philip Leach, *Taking a Case to the European Court of Human Rights* (4th edn, OUP 2017) 7, who highlights that the system 'involved undeniably political aspects', since, particularly, the European Commission 'initially had a majority of serving or former ministers, civil servants or MPs, rather than legal professionals; and the procedure before the Commission was kept confidential'.

[65] Russo and Quaini ibid 27, provide data on the number of applications lodged with the Commission of Human Rights: from 404 in 1981, to 2037 in 1993, and 4750 in 1997. Similarly, they report the number of cases referred to the European Court: from 7 in 1981, to 52 in 1993, and 200 in 1997.

[66] In this regard, we should mention that Article 35 was amended by Protocol no 14, ratified by the Committee of Ministers of the Council of Europe in May 2004, but entered into force in 2010 due to resistance from Russia. Protocol no 14 served the primary purpose of introducing a series of reforms with a focus on process simplification and acceleration. It introduced a new and controversial 'admissibility test' for individual applications when for example: '(b) the applicant has not suffered a significant disadvantage unless respect for human rights, as defined in the Convention and the Protocols thereto, necessitates a substantive examination of the application'.

[67] See subsequent paragraph.

[68] Leach (n 58) 74.

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the Court is typically more likely to hold an oral hearing if it needs to clarify specific facts of the case or to assess unclear aspects of domestic law. Additionally, the Court may consider a case's political or legal importance when deciding whether to conduct a hearing.

In line with its commitment to transparency, the Court Rules are supplemented by eleven Practice Directions issued by the President of the Court. They find their legal ground directly in Rule 32 of the Rules, which explicitly states that: 'the President of the court may issue practice directions, notably in relation to such matters as appearance at hearings and the filing of pleadings and other documents'. Notably, Practice Directions concern: (i) requests for interim measures[69]; (ii) institution of proceedings; (iii) written pleadings; (iv) just satisfaction claims; (v) secured electronic filing by governments; (vi) requests for anonymity; (vii) electronic filing by applicants; (viii) processing of applications in the event of mass influx; (vix) requests under Article 43 of the Convention; and (x) third-party intervention, which was implemented in the context of the historic number of interventions in the case regarding the Russian invasion of Ukraine in 2022[70]; (vi) recusal of judges.[71]

As highlighted by scholars, Practice Directions play a crucial role, especially those regarding the correct presentation of the claim.[72] In fact, even if they are generally considered procedural soft tools, their formulation and the consequences of non-compliance might suggest otherwise. For instance, the Practice Direction regarding 'written pleadings'—which clarifies the form and content requirements of claims under Rule 38 of the Rules of Court—highlights that 'if a pleading exceptionally exceeds thirty pages, a short summary should also be filed with it' (point 12), and that 'where a pleading has not been filed in accordance with the requirements set out in paragraphs 8 to 15 of this practice direction, the President of the Chamber may request the party concerned to resubmit the pleading in compliance with those requirements' (point 22). Ultimately, a failure to satisfy the conditions listed in the Practice Direction 'may result in the pleading being considered not to have been properly lodged', according to Rule 38 of the Rules of Court (point 23).

Similarly, failure to comply with the Practice Direction on the 'Institution of Proceedings' requirements may lead to the dismissal of applications as inadmissible. Notably, in the case of *Sergiy Valentynovych Malysh v Ukraine and Anatoliy Ivanovych Ivanin v Ukraine*, the 6-month time limit (reduced to 4 months as of 2022) for lodging an application was considered to have been interrupted only by the submission of a complete application that

[69] Rule 39 and Practice Directions on Requests for interim measures are particularly controversial since they are 'linked to the right of individual application, and therefore, noncompliance with them could integrate a violation of Article 34 of the Convention as stated in *Mamatkulov and Askarov v Turkey (GC)* (2005) App no 46827/99 and no 46951/99. On this topic, see Ezgi Özlü, 'A few, but very necessary, minutes to devote to interim measures': further transparency as a resilience strategy?' <https://strasbourgobservers.com/2024/03/15/a-few-but-very-necessary-minutes-to-devote-to-interim-measures-further-transparency-as-a-resilience-strategy-1/> accessed 31 March 2025. It should be noted that with a press release of November 2023 <https://hudoc.echr.coe.int/eng-press#> accessed 15 January 2024, the court announced that on 26 June and 6 November 2023 the plenary court adopted some decisions in order to clarify its existing practice regarding interim measures. The court announced that changes to Rule 39 had been presented to Contracting Parties for their written feedback, following the procedures outlined in Rule 116 of the Rules Court and that, after the consultation process, a revised Practice Direction would be developed and released to accompany the modified Rule 39. On 28 March 2024, the court announced the completion of the reform of Rule 39 of its Rules of Court and Practice Directions. Many of the changes amount to a codification of existing practices and case law, particularly the emphasis on the nature of interim measures and their applicability in cases involving imminent risk of irreparable harm to Convention rights.

[70] *Ukraine v Russia (X)* (2022) App no 1155/22. According to the press release issued in September 2022 < https://hudoc.echr.coe.int/eng-press#%20> accessed 9 September 2025, 23 Governments, one non-government organization, the Geneva Academy of International Humanitarian Law and Human Rights have requested leave to intervene as third parties. Justine Batura and Isabella Risini, 'Of Parties, Third Parties, and Treaty Interpretation: Ukraine v. Russia (X) before the European Court of Human Rights' (2022) EJIL: Talk! <https://www.ejiltalk.org/of-parties-third-parties-and-treaty-interpretation-ukraine-v-russia-x-before-the-european-court-of-human-rights/> accessed 9 September 2025. It should be noted that the plenary court decided to amend the Rule of Court and clarify the time-limits for interventions: it provided two clarifications that entered into force on 20 March 2023. Also, the new Practice Direction highlights how the Court interprets norms on third-party interventions and their function.

[71] Issued by the President of the Court on 22 January 2024.

[72] Dunoff and Pollak (n 5) 66.

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complied with both the Rules of Court and the relevant Practice Directions.[73] This clearly underscores the complexity of the multi-layered procedural framework governing access to the Court. Further, the use of mandatory language (specifically, the word 'must') may lead to misunderstandings, implying more clarifications from the Court regarding the relevance of Practice Directions. In the case *Yüksel v Turkey (dec)*, the Government argued that the claimant's application did not comply with the contents prescribed by Rule 47 of the Court Rules and with paragraph 11 of the Practice Direction on the 'Institution of proceedings'.[74] They claimed that the application was inadmissible since it was 39 pages long and the events outlined in the form were not presented in a summary as requested by the Practice Directions.[75] The Court was then required to clarify that the provision in the Practice Direction invoked by the Government could not be equated to one of the admissibility grounds outlined in Article 35 of the Convention. Thus, the Government's arguments were dismissed by the Court.

FINAL REMARKS

This study has demonstrated that a practice-oriented analysis offers a transformative hermeneutic lens for understanding the procedural dynamics of international courts. By foregrounding the role of Courts as 'communities of practice', the analysis reveals how procedural systems are structured and evolve not merely through formal rules but also accretions of shared practices.

Particularly, as previously discussed, the analysis focuses on practices concerning the relationship between judges and litigants without addressing those governing the internal functioning of international courts. Such practices (eg those regulating interactions between judges and court staff or those employed during the deliberative process) remain largely unwritten and poorly understood.[76] Their exclusion, then, is not a theoretical oversight but a pragmatic acknowledgement of the barriers posed by 'secrecy'.[77] The approach changes, however, when it comes to practices that govern relationships between judges and litigants. Here, the emphasis is on encouraging dialogue with the parties involved and making practices, which often fill in gaps left by procedural rules, as accessible as possible. A notable habit in this context involves the use of soft law. Through these tools, courts effectively gather or establish judicial practices that, however, do not have a binding effect.

In this regard, we have highlighted and demonstrated the growing relevance of these instruments. Indeed, soft law is increasingly being invoked not only by legal practitioners but also by judges as a source for addressing strictly procedural matters. This development suggests, on the one hand, that such documents have become an integral part of the courts' procedural systems.[78] On the other hand, it reflects a trend toward increasing complexity and fragmentation within those systems.

[73] *Sergiy Valentynovych Malysh v Ukraine and Anatoliy Ivanovych Ivanin v Ukraine (dec.)* App nos 40139/14 and 41418/14 (ECHR, 9 September 2014).

[74] *Yüksel v Turkey (dec.)* App no 49756/09 (ECHR, 1 October 2013).

[75] It should be noted that at that time, para 11 of the Practice Direction stipulated that 'when an application was longer than ten pages (excluding attachments containing copies of documents), the applicant must also submit a brief summary'.

[76] Freya Baetens 'Transparency Across International Courts and Tribunals' (2022) 41 Nordic Journal of International Law 595, who highlights that the lack of transparency in this case 'is functionally required and there are regulatory devices other than transparency available to mitigate possible dangers'(…) Rather than clamoring for more transparency in this particular context, it is submitted that maintaining the secrecy of the deliberations is fundamental for judges and arbitrators in order to enable them to freely arrive at a decision'.

[77] In this regard, one possibility for investigation could also involve scrutinizing the rulings of international courts to ascertain whether there are subtle indications of the implementation of judicial practice, even though such discernment was not achievable through the analysis of the judgments conducted in this present research.

[78] Punzhin (n 2) 682.

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In this context, soft law presents both advantages and disadvantages. The benefits in terms of transparency have already been highlighted: soft rules allow the dissemination of practices and serve as flexible and informal guidelines for litigants. However, flexibility and informality could also pose disadvantages. Notwithstanding their non-binding nature, these instruments have acquired a *de facto* normative weight. Judges increasingly rely on them to resolve procedural ambiguities, while litigants tend to treat them as quasi-mandatory measures. This phenomenon highlights the paradox of soft law: its informality allows for greater adaptability, yet it simultaneously risks generating a perception of legal obligation, thus prompting courts to reaffirm their non-binding character.

Furthermore, the proliferation of procedural texts and rules, each with a differing legal nature, does not contribute to the overall transparency of the system, particularly in terms of clarity and court accessibility[79]. In fact, parties intending to initiate proceedings before an international court are often required to navigate a multiplicity of legal instruments. This is especially evident in relation to certain courts analysed in the present article. In this regard, a meaningful comparison between the ICJ and ECtHR can be drawn. Whereas the ICJ's Practice Directions reflect a minimalist approach to procedural harmonization, the ECtHR's several guidelines—11 distinct documents as of 2025—exemplify how institutional responses to caseload pressures[80] can inadvertently engender systemic complexity. The pursuit of equilibrium between transparency, accessibility, and legal certainty remains fraught. While granting access to procedural knowledge, soft law's proliferation risks creating a system in which procedural efficacy correlates with litigants' capacity to navigate labyrinthine rules.[81]

In this regard, several questions remain unresolved. Chief among them is whether the increasing reliance on soft law serves merely as a strategy to avoid the formal amendment of established binding rules and to what extent procedural norms should remain flexible and open to interpretation. Also, it is essential to reflect on which elements of procedural regulation ought to be firmly codified within binding legal sources and which are better suited for articulation through soft law instruments. This balance will be key to ensuring both transparency and legal certainty within the evolving procedural frameworks of international courts.[82]

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[79] Anthony Ogus, 'Rethinking Self-Regulation', (1995) 15 Oxford Journal of Legal Studies 97; Lekkas, Merkouris and Peat (n 11).

[80] See (n 66).

[81] Paolo Biavati 'L'attuazione delle riforme processuali, fra norme e prassi' (2024) 77 Rivista trimestrale di diritto e procedura civile 737.

[82] As an illustrative example, we should consider the regulation of page limits for the plaintiff's claim. Should this rule be formally integrated into the legally binding procedural norms, or would it be more prudent to maintain it within the realm of soft law, providing guidance without imposing rigid legal constraints?

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