

**2<sup>nd</sup> COMMISSION**  
**Jurisprudence and Precedents in International Law**

Rapporteurs : **MM. Bennouna et Pellet**

**RESOLUTION**

**PRECEDENTS AND CASE LAW (*JURISPRUDENCE*)<sup>1</sup>**  
**IN INTERSTATE LITIGATION AND ADVISORY PROCEEDINGS<sup>2</sup>**

*The Institut de Droit International,*

*Noting* the existence of a great number of international courts and tribunals and the multiplication of the decisions they adopt in the exercise of their functions;

*Aware* that, where no review or appeal mechanism exists, these courts and tribunals are not bound by the decisions that have been adopted on the same subject, whether by themselves or by other judicial bodies;

*Desiring* to contribute to legal certainty by promoting the consistency and predictability of international law, in light of its evolution, in order to enhance its authority and effectiveness;

*Formulates* the following guidelines for the identification and invocation of precedents by permanent international courts and tribunals.

1. For the purposes of the present guidelines:
  - A decision, however denominated, is any solution arrived at by an international court or tribunal after the participants to the proceedings have been afforded the opportunity to express their positions and resulting in a judicial pronouncement based on international law.
  - A precedent is a decision rendered by an international court or tribunal which may serve as a reference in a case other than the one in which it was rendered.

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<sup>1</sup> The use of the terms “precedent” and “case law” in international law does not reflect the doctrine of precedent within municipal systems of common law.

<sup>2</sup> The French text is authoritative.

- The term “case law” (*jurisprudence*) refers to a body of judicial decisions on a particular point of law.

- The expression “established case law” or “*jurisprudence constante*” means a body of concurring decisions.

- The expression “international court or tribunal” refers to any permanent international judicial body of general or special jurisdiction, called upon to adjudicate on disputes between States and, if applicable, to give advisory opinions through the interpretation and application of international law.

2. Case law (*jurisprudence*) is a subsidiary means for the determination of rules of law and not an autonomous source of international law. It plays a significant role in the identification, interpretation and evolution of international law.

3. A precedent or case law (*jurisprudence*) may be used in support of a judicial pronouncement if they concern legal issues comparable to the case at hand and if the reasoning behind them remains relevant at the time of the pronouncement.

4. A precedent or established case law (*jurisprudence constante*) cannot, in and of itself, form the basis of a decision.

5. Established case law (*jurisprudence constante*) may be set aside for a legal reason duly stated, notably in light of the evolution of international law.

6. When an international court or tribunal intends to rely on the decisions of another judicial body, it should take into account the fact that each of them operates in a particular legal context. Nevertheless, the court or tribunal seized should take into account the legal qualifications adopted by another court or tribunal when they concern questions which fall within the specific purview of the latter’s jurisdiction.

The authority of the decision of that court or tribunal, when it is part of a hierarchical institution, depends on its hierarchical position within the institution.

7. The guidelines set out in this Resolution are without prejudice to their possible application in non-interstate proceedings or before non-permanent courts or tribunals.

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