

Annamaria La Chimia's publication provides a fruitful approach to law and development research by putting the issue of tied aid in the context of the current aid effectiveness discourse. In addition, her findings on the legal aspects of tied aid offer important contributions, especially with regard to food aid as well as to the deliberations on the Post-2015 Development Agenda. Considering the changing stakeholder landscape in development cooperation, her research also calls into question old power structures and donors' ethical behavior. By tying aid, donors do not practice what they preach; tied aid contradicts their call for procurement reforms in the partner countries and, besides causing economic and political damages, severely undermines their credibility.

Annika Engelbert, Bochum

Laurence Burgorgue-Larsen / Amaya Úbeda de Torres

The Inter-American Court of Human Rights: Case-Law and Commentary

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A. Introductory Remarks

For a region that has contributed so much to the architecture of the international legal order, the praises owed to the Americas have mainly remained unsung. With the first ever general *oeuvre* of the jurisprudence of the Inter-American Court of Human Rights (IACtHR) in the English language, Laurence Burgorgue-Larsen and Amaya Úbeda de Torres have clearly beat the trend in making this regional court's progressive case law known to the wider international law community.

The authors do not hail from the Americas. As a matter of fact, they are both European jurists: Laurence Burgorgue-Larsen is French and currently a professor at Paris I (Sorbonne) and Amaya Úbeda de Torres is Spanish and a researcher at the Center for Political and Constitutional Studies in Madrid. The authors' origins notwithstanding, this book is the culmination of many years of scholarly passion, both for the region and for its human rights court and a most needed and welcome addition to the existing literature.

After having published earlier versions of this work in French in 2008¹ and Spanish in 2009,² a re-worked and updated version was taken up by Oxford University Press, translated by Rosalind Greenstein and published in 2011. Although the authors claim to have modelled

1 *Laurence Burgorgue-Larsen / Amaya Úbeda de Torres, Les grandes décisions de la Cour interaméricaine des Droits de l'Homme, Bruxelles, 2008.*

2 *Laurence Burgorgue-Larsen / Amaya Úbeda de Torres, Las decisiones básicas de la Corte Interamericana de Derechos Humanos, Civitas, Navarra, 2009.*

it on “Les grand arrêts de la Cour Européenne des Droits de l’Homme”,³ they have noticeably departed from this style in the English and French version by offering more extensive commentary, making numerous comparative references and adroitly embedding the issues dealt with in the larger human rights context. They stayed true to this well-tested model, however, by providing comprehensive access to the Court’s case law without exhaustively analyzing every single decision but rather by focusing on leading cases or as they are called within the Inter-American system “paradigmatic cases”.

B. Structure and Composition

The commentary’s foreword was written by a former President of the IACtHR, Sergio García Ramírez. Not taking into account the foreword and the introduction by the authors, the book is composed of 27 chapters which are divided into two main parts: eleven are dedicated to procedural guarantees and sixteen to selected substantive rights. In addition, the book includes primary sources (*inter alia* basic texts of the IACtHR, tables of jurisprudence and judges of the Court). Finally, there is a bibliography and an index.

The book does not follow an article by article commentary structure but rather systematizes the jurisprudence according to specific themes. For instance, in the procedural part, four chapters deal with jurisdictional matters and five with powers and rights of the Court. The substantive part has some chapters that deal with individual rights, others with rights owed to a certain category of persons and yet others with groups of rights. There is even one chapter dedicated to the right to truth, a right of praetorian invention with no express textual grounding in the Inter-American treaties. Although this arrangement might seem strange at first sight since there is no single ordering criterion permeating the structure, the result is to be commended as it follows a certain pragmatic logic; issues are grouped as they are normally dealt with by the Court.

Every chapter begins with a 2-20 page literal extract of a leading case. Afterwards a table of contents lays down the discrete issues which are to be expounded upon. The commentary section always includes an introduction that situates the specific subject in its proper historical and socio-political context. The sections succeeding the introduction do not follow a fixed structure; they vary according to the salient aspects of the chapter in question. When needed the authors clarify definitions of terms and notions (i.e. “workers” or “nationality”); explain the scope of the human rights guarantees; and analyze the standard of protection established by the Court. Moreover, they pinpoint the many legal developments, within the system and outside of it, which have led to the current state of the law; elucidate doctrinal matters; make comparisons, primarily with regard to the European Court of Human Rights; and highlight problematic aspects.

3 *Frédéric Sudre et al*, *Les grands arrêts de la Cour européenne des Droits de l’Homme*, 2nd ed., Paris 2004, see the introduction to the commentary here reviewed, p. xxxiii.

At the end of each chapter, the reader finds a bibliography with references to further sources (e.g. reports and decisions of international institutions, courts and tribunals) and academic literature with a specific emphasis on the Inter-American human rights protection system but also of other regional and universal sources.

C. Evaluation

Firstly, it must be noted that Burgorgue-Larsen and Úbeda de Torres are not the editors of this extensive *oeuvre* but its authors, an admirable feat.

Their commentary represents an important contribution to the human rights discourse in Latin America, Europe and beyond. Its most readily recognized merit lies in providing a comprehensive and accessible analysis of the rich and innovative body of jurisprudence of the IACtHR to the English speaking world. The commentary may indeed be in some cases eye opening and inspiring for those working in the European human rights system, which faces great challenges. Ultimately, it might serve as a tool to foster judicial dialogue between the IACtHR and other tribunals.

Until now, there has been no general treatise on Inter-American case law which offers a comparable breadth of knowledge in Spanish or otherwise. Standard works either focus on procedural aspects with few basic rights,⁴ serve as compilations of extracts of jurisprudence which are then organized according to themes and sub-themes, but which lack the grounding in doctrine, intra-systemic developments and in wider human rights law,⁵ or are seriously outdated.⁶ This is not to say that there is a dearth of quality books and articles, they are indeed abundant.⁷ Nevertheless, they all deal with specific issues and not with the whole body of jurisprudence of the Court. This expansive nature, in addition to the fact that it is written in English, is what sets Burgorgue-Larsen and Úbeda de Torres' commentary apart from existing scholarship on this topic.

4 See e.g. *Rubén Hernández Valle*, Las sentencias básicas de la Corte Interamericana de Derechos Humanos, Madrid, 2011; *Héctor Faúndez Ledesma*, El sistema interamericano de protección de los derechos humanos, 3rd ed., San José, 2009.

5 *Sergio García Ramírez*, La jurisprudencia de la Corte Interamericana de Derechos Humanos, México D.F., 2008; *Corte Interamericana de Derechos Humanos*, La Corte Interamericana de Derechos Humanos: Un Cuarto de Siglo: 1974-2004, San José, 2005; *Fernando Silva García*, Jurisprudencia interamericana sobre derechos humanos, Criterios esenciales, México D.F., 2011.

6 *Thomas Buergenthal / Robert Norris / Dinah Shelton*, La protección de los derechos humanos en las Américas, Madrid, 1990; *Juan Antonio Travieso*, La Corte interamericana de derechos humanos: opiniones consultativas y fallos. La jurisprudencia de la Corte interamericana de derechos humanos, Buenos Aires, 1996; *Juan Carlos Wlasic*, Convención americana sobre derechos humanos anotada y concordada con la jurisprudencia de la Corte Interamericana de Derechos Humanos, Rosario, 1998.

7 A quick overview of the wealth of sources that the authors themselves refer to in the bibliography proves this point.

Law students, legal scholars and practitioners alike will find in the comment a concise summary of the subjects analyzed, in their proper context and with excellent recommendations of further reading material.

From a more critical perspective, five aspects may be raised. First, a historical and institutional chapter explaining the origins and evolution of the Inter-American System would be a matter to consider in a future edition. The foreword does refer to some historical aspects⁸ but it is clearly not meant to serve as the historical part of the book.

Second, with regard to the index, which is a key tool for quick access to specific themes, there is some room for improvement. It would be desirable to include further important key words and to cross-reference others. For instance, in order to find references to the Protocol of San Salvador, the Inter-American treaty on economic, social and cultural rights, the reader will not find it under “P” and not even under “Protocol” – although that category exists –, but rather under “Conventions”. Some missing key words are “conventionality control”, “environment”, “enforcement” or “effects” – all of these examples are topics of great interest for scholars and practitioners.

Third, references to domestic courts are made, but sparsely. Only 24 judgments stemming from seven countries are cited, as illustrated by the index of national courts’ jurisprudence.⁹

Fourth, although, as the authors well pointed out, it is difficult to find a list of major decisions that everyone can agree on, we argue that one in particular is sorely missed and definitely should have been included as a major decision and commented upon: *Barrios Altos vs. Perú*.¹⁰ In this case, the IACtHR acted for the first time like a supranational court, only comparable to the Court of Justice of the European Union, by directly annulling an amnesty law. The ongoing debate on the significance of this decision, although hinted at by the authors, was perfunctorily dismissed.¹¹

Finally, since Spanish is the most important language in Latin America and, as the authors put it themselves, it functions as the “backbone” of Latin America as its “unifying factor”,¹² it would be well-worth to publish a revised and updated version in the most important working language of the Court.

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8 See pp. xviii-xx.

9 See the index on p. liv.

10 See p. xxxvii; *Caso Barrios Altos vs. Perú*, Sentencia de 14 de marzo de 2001. Fondo. Serie C N° 75.

11 See marginal note 11.33.

12 See p. xxix.