Laurence Burgorgue-Larsen, *Les 3 cours régionales des droits de l'homme* in context*: La justice qui n'allait pas de soi* (Éditions A. Pedone, 2020), 588 pp; ISBN 978–2–233-00955–5.

Les 3 cours by Laurence Burgorgue-Larsen is the first comparative study on the history, law, achievements, challenges, and future of the three regional human rights courts: the European Court of Human Rights ("ECtHR"), the Inter-American Court of Human Rights ("IACtHR"), and the African Court of Human and Peoples' Rights ("ACtHPR"). It is no accident that no author has sought to undertake such a study before given differing contexts in which the three courts were established and the ways in which they operate. Any comparison between them is an ambitious and demanding scholarly endeavour. In other words, the book immediately triggers the reader's intellectual curiousity: *how to compare the incomparable*?

As the author recognises in the introduction, despite the political, technical, and sociological differences, the three regional human rights courts share a number of remarkable similarities. These similarities include the references in each of the relevant human rights instruments to the Universal Declaration of Human Rights as a shared model for many of their provisions, specific common challenges that all three courts have had to face, and the judicial dialogue that has taken place between them. The book's comparative approach is admittedly multidisciplinary: while the main focus is that of an international lawyer, the three courts are examined through the lens of comparative law, history and legal sociology, and placed in their respective socio-political context (pp. 20-21). It is particularly appealing how far Burgorgue-Larsen is able to connect major developments in international human rights law, constitutional law, the institutional reforms and practices of the three courts to specific actors, such as political figures, lawyers, regional organisations, NGOs or academic institutions.

Introduction is followed by the preliminary chapter which is a fascinating comparative history of each of the three regional human rights treaties, namely the European Convention on Human Rights ("ECHR", adopted in Rome in 1950), the American Convention on Human Rights ("ACHR", adopted in San José in 1969), and the African Charter on Human and Peoples' Rights ("ACHPR", adopted in Nairobi in 1981). These human rights treaties were each adopted as a reaction to different geopolitical considerations. These include, respectively, the shock of World War II and the federal project in Europe, the romantic idea of Pan-Americanism with an initial US-led proposal of the Inter-American human rights system, and the emergence of the newly independent States in Africa with a slow progress towards a regional human rights system. Beyond the different geopolitical considerations, the preliminary chapter carefully connects those legal developments to certain influential personalities who were involved in the negotiation and adoption of the respective human rights treaty (e.g. Pierre-Henri Teitgen, a French lawyer and one of the negotiators of the ECHR; or Kéba MBaye, judge of the Senegalese Supreme Court and drafter of the resolution on the creation of the African Commission on Human and Peoples' Rights ("ACommHPR")), as well as iconic institutions such as the Inter-American Juridical Committee and the International Commission of Jurists, an international NGO that promoted the adoption of the Protocol on the Establishment of an African Court on Human and Peoples' Rights ("Protocol on the ACtHPR").

The rest of the book is structured in three parts: I. The evolution of the three regional courts; II. The interpretation of the treaties that established the courts; and III. The application of their respective regional human rights treaties.

Part I comprises two chapters. Chapter 1 addresses the challenges to the efficacy of the three courts and compares the dynamics of signatures, ratifications and withdrawals from the regional human rights treaties and their protocols by States. In Europe, the continent's democratisation went hand in

hand with the accession to and the universalisation of the ECHR, with the mandatory jurisdiction of the ECtHR being accepted under the ECHR's Protocol no. 11. The Inter-American and African systems are characterised by a more variable geometry, where certain States accepted the jurisdiction of the regional court, others only the jurisdiction of a quasi-judicial body (the Inter-American Commission on Human Rights ("IACommHR") and the ACommHPR, respectively). Moreover, out of the 52 member States of the African Union ("AU"), there are currently 33 States parties to the Protocol on the ACtHPR, whereas only 10 of them have deposited a declaration accepting the competence of the Court to directly receive cases from individuals and NGOs, out of which four have subsequently withdrawn their declaration. Likewise, out of 23 member States of the Organization of American States ("OAS") having ratified the ACHR, only 20 have accepted the jurisdiction of the IACtHR. Finally, each of the three regional courts had to face, at certain point in their history, withdrawals from their jurisdiction (ECtHR: Greece; IACtHR: Trinidad and Tobago, Peru, Venezuela; ACtHPR: Rwanda, Tanzania, Benin, Cote d'Ivoire). Chapter 1 compares the specific contexts in which those withdrawals took place. Finally, Burgorgue-Larsen meticulously analyses the different interactions between a quasi-judicial body (European Commission on Human Rights ("ECommHR"), IACommHR, and ACommHPR) and the respective regional court (the ECtHR, IACtHR, ACtHPR) that have also shaped the efficacy of the three regional human rights mechanisms, while stressing the decisive role of the States parties' political will.

Chapter 2 deals with the normative and sociological legitimacy of human rights courts which builds on a number of variables. According to a recent edited volume,[1] the legitimacy of a particular human rights court may be affected by "design choices", such as its "structure, personnel, case initiation, procedures, and effect, among others".[2] Out of those factors, Burgorgue-Larsen focuses on two specific design choices made by the States' parties to the three human rights treaties: (i) the protection of particular human rights, and (ii) the selection of the judges. The chapter is a perfect example of how a comparative analysis has the capacity to change European assumptions about the relative sophistication of the various courts. For example, unlike in Europe with the ECHR and its protocols, the OAS and the AU have pioneered the integration of socio-economic and women's rights in their regional human rights treaties. The comparison that Burgorgue-Larsen has performed as between the regional judges' nomination and selection procedures provides even more surprising results: for instance, unlike the ECHR and the ACHR, only the Protocol on the ACtHPR provides for the obligation to give "due consideration […] to adequate gender representation in the nomination process" (Art. 12(2)). As a result, after July 2018, 6 out of the 11 judges of the ACtHPR were female while at the ECtHR and the IACtHR, the proportion of female judges has always been low (only around 30 % and 12,5 %, respectively). In addition, Burgorgue-Larsen demonstrates that in relation to all three courts, States parties are not willing to accept many limitations on their freedom of choice insofar as the nomination of judges is concerned by, for example, requiring specific professional experience or allowing the participation of civil society in the selection procedure.

Part II of the book compares how the three courts have interpreted the relevant regional human rights convention in the light of external legal sources, both international and domestic. More specifically, Chapter 3 on normative openness (that Burgorgue-Larsen calls "*décloisonnement*") compares the interpretative methodology used by the three courts in line with the principle of systemic integration as expressed in Article 31(3)(c) of the Vienna Convention on the Law of Treaties. For example, the ECtHR mainly relies on the principle of *effet utile* rather than on the principle of non-regression as set out in Article 53 ECHR, which plays no role in the Court's interpretative method. By contrast, the

[1] Andreas Follesdal and others, "Legitimacy and International Courts – A Framework", in Andreas Follesdal and others (eds.), *Legitimacy and International Courts* (2018), 16–18.
[2] *Ibid*., 16.

IACtHR often refers to the non-regression clause as set out in Article 29 of the ACHR, to interpret the Convention's rights in line with the evolution of other rules of international law – the method that the it calls "*pro hominem*" interpretation. As a result, both the ECtHR and IACtHR follow evolutive interpretation. Their preference for an evolutive interpretation can be contrasted with the approach followed by the ACommHPR and the ACtHPR, which have in their decisions remained rather loyal to the text of the African Charter and its Protocol on the ACtHPR, and thus arguably more closely aligned with original will of the founding States. Again, Burgorgue-Larsen explains this difference by pointing to the regional context: the low number of ratifications (30) and acceptances of the direct individual complaint mechanism (6), with four States having recently withdrawn their acceptances. In short, she attributes this relative rigidity to the limited practice and vulnerability of the African Court's system. Consequently, as the chapter convincingly demonstrates, the ACtHPR does not rely on the national case law of States parties as an interpretative tool, while the ECtHR and the IACtHR often do that on the assumption that national judges are the primary enforcers and interpreters of the conventions. As a common trend, all three regional courts tend to mix up interpretation and application of external sources. The clearest case is that of the ACtHPR, which has the broadest competence *ratione materiae* as it shall apply and interpret the Charter and "any other relevant human rights instrument ratified by the States concerned" (Articles 3(1), 7 of the Protocol on the ACtHPR).

Chapter 4 on the effects of the normative openness discusses the specific consequences of the treaties' interpretation in the light of external sources. First, systemic integration has more often than not resulted in increasing the level of protection of human rights. Among various examples, Burgorgue-Larsen analyses the case law on the prohibited grounds of discrimination and vulnerability of certain groups. Second, as a consequence of the judicial activism inherent conducting evolutive interpretation, there has been an increase of dissenting views on the bench. The dynamic of the ECtHR and the IACtHR has changed according to the proportion of progressive and conservative judges, whereas in the ACtHPR only technical issues have divided the judges. Furthermore, certain States parties and conservative NGOs have launched a counter-attack against judicial activism in each of the regional courts. Perhaps, the author could have said more about the limits and risks of progressive development of regional human rights law that systemic integration has led to, namely the risk of the possible change in the nature of legal interpretation.[3] Especially in the case of the ECtHR and the IACtHR that have a more limited material scope of competence than the ACtHPR, these courts should exercise caution in employing external sources to interpret the core human rights treaty within their competence (i.e. the ECHR with its Protocols, and the ACHR and the Inter-American human rights treaties ratified by the State party that recognize the competence of the IACtHR, respectively). Despite these concerns, through her discussion of a set of representative cases, Burgorgue-Larsen demonstrates in Chapter 3 how much even the ECtHR and the IACtHR have conflated the use external sources in the process of interpretation of the relevant treaty provisions, on the one hand, and their application, on the other hand.

Part III of the book addresses the effective application of the regional human rights law. Chapter 5 on 'the synergy of incentives' compares how open the States parties in each of the relevant regions are to international human rights law within their constitutional frameworks. While Burgorgue-Larsen does not purport to address the constitution framework of each State, she persuasively demonstrates using examples that various constitutional and supreme courts of the three continents have recognised the importance of interpreting fundamental rights enshrined in their constitutions in light of the relevant regional human rights convention. It is similarly fascinating to read how far sociological

[3] In this regard, see Adamantia Rachovitsa, "The Principle of Systemic Integration in Human Rights Law", 66 *International and Comparative Law Quarterly* (2017), 557.

or political incentives operate within the three regional systems, especially as reflected in the dialogues between the regional courts and domestic judges, civil society, and academics.

Chapter 6 on the synergy of control compares the enforcement of the regional courts' judgments both at the international level, within the relevant international organisation, and within the State party's domestic legal system. The most significant difference between them lies in the fact that the various bodies that make up the Council of Europe cooperate in relation to enforcement. More specifically, both the Committee of Ministers, charged with the supervision of the execution of judgments of the ECtHR in compliance with Article 46 of the ECHR, and the Parliamentary Assembly are actively involved, while the ECtHR contributes to the supervision through the pilot procedure mechanism. Within the OAS, as the General Assembly does not exercise any control, but the IACommHR and the IACtHR closely supervise the enforcement of IACommHR's recommendations and the IACtHR's judgments. Finally, as the political organs of the AU ignore the recommendations of the ACommHPR and the judgments of the ACtHPR, the enforcement of the African regional case law leaves much to be desired.

The conclusions that Burgorgue-Larsen reaches on the basis of her comparative analysis of the three courts illustrate the current challenges and future of the three regional courts. There is a climate of distrust around all three mechanisms as a consequence of populist and authoritarian governments in various States parties. A detailed comparison of the contemporary context reminds the reader that the development of the regional human rights mechanisms does not necessarily move in a positive and linear direction, but is vulnerable and reversible. Burgorgue-Larsen calls for constant vigilance and necessary resistance against the challenges to democracy and multilateralism. She concludes by indicating a ray of hope: the power of the civil society which, especially in the case of the activities of transnational liberal NGOs, could play a major role in preserving the judicial *acquis* of the three regional courts.

The book is an intellectually fascinating *tour du monde* that is sure to stimulate readers with various backgrounds (law, political or social sciences) thanks to its consistently contextual and comparative approach. The book also contains meticulously prepared footnotes and an impressive bibliography of English, French and Spanish scholarship, as well as rich references to the relevant international and national case law. Even in the case of readers who are familiar with one of the three regional human rights mechanisms, the analysis that Burgorgue-Larsen has performed will encourage them to get outside of their comfort zone and learn how the other two mechanisms have evolved. The book concludes by looking to the future, and appropriately encourages its readers to continue reflecting upon the fate of regional human rights justice.