

## FOREWORD

The European Convention of Human Rights is a short document, and its text is often vague and somewhat open-ended. But today, it is widely seen as a quasi-constitutional instrument for Europe, with precise prescriptions on issues ranging from voting rights to environmental protection, the treatment of refugees, and the status of transsexuals. When the Convention was drawn up in 1950, few observers could have imagined (or did, in fact, foresee) that the Convention could gain such breadth and depth, nor that it would exert the influence it has today on national courts and legislatures of the 46 states that form the Council of Europe today.

How did this transformation happen? For a long time, neither international lawyers nor international relations scholars had convincing answers to this question – legal scholars were less interested in the political dynamics behind legal change than in the interpretation of the law itself, and students of international politics found law and courts not sufficiently relevant to their pursuits. This has changed over the past twenty years, with much more engagement at the boundary of the two disciplines and a significantly deeper understanding of many of the processes around international law, especially around international courts.

Ezgi Yildiz's book takes this line of research into a new and fresh direction, and she advances a bold account of how the European Court of Human Rights – the “Strasbourg Court” – has reshaped the European Convention over time, how it has expanded its requirements to cover many of the most controversial issues in European politics. It does so especially by focusing on the way in which judges approach the cases before them – with audacity or forbearance – and on the changes in this approach over time. The book takes us through more than a half-century of development, structured through three crucial phases, punctuated by the creation of the Court, the radical shift to a permanent Court in the late 1990s, and the rise of fundamental contestation of the Court by several important member states around 2010.

Dr. Yildiz's interest is in understanding how the strategies of judges have changed through these phases and how we can account for those changes. She does so by focusing on a particular – and particularly important – set of cases, those around Article 3 of the European Convention on Human Rights, the prohibition on torture. This prohibition has given rise to a significant reinterpretation over time through which the Court has developed a range of different aspects related to torture, including positive obligations to protect persons from threats. Focusing on this set of cases allows Yildiz to not only take into view an important subset of the jurisprudence, but also to inquire into them with significant attention to detail and granularity. As a result, she manages to achieve what few scholars of either international law or relations have achieved, namely, to marry a deep understanding of the substance and arguments of the cases with a bird's eye view, underpinned by statistical analysis, of trends in these cases over time.

This allows her to trace, with substantial evidence, the major shift in jurisprudential approach that occurred with the turn to a permanent Court from the late 1990s onward. Two main factors can help us account for the more expansive, “audacious” stance of the new Court, she claims: a wide discretionary space created by the new institutional underpinning, and a (relative) absence of negative feedback from states at the time. This set judges free to establish broader obligations for states in a way the more “forbearing” court of the previous period – much more similar to other international courts – could hardly contemplate. On the other hand, Dr. Yildiz shows a more cautious attitude returns after 2010 in response to the backlash from countries such as the UK, Switzerland, but also Russia. This does not lead to “forbearance” across the board, though. Instead, the book shows how selective forbearance operates in that period, with continuity or even expansion on a number of issues, such as police brutality, but a significantly less strict reading of the implications of Article 3 for the refoulement of refugees. The Court seems thus much more responsive to challenges from Western European countries – for whom refugee issues were one of the central bones of contention – than from others.

Dr. Yildiz's account opens up many avenues for further research, with respect to the Strasbourg Court just as well as other international courts and the development of international law in general. It makes us think about the role and positioning of judges in the making of transnational adjudication and about the role of states. For many international lawyers just as well as scholars of international relations, states stand at the center of the field, dictating how it operates and changes. In Yildiz's story, states

are important, but over time they move to a background role. Having created and sustained a powerful court for long, they now find it difficult to regain control over it – even if the Court is somewhat responsive to challenges, it continues on its audacious path in many areas despite significant backlash. This points to a broader picture in which states remain in secondary roles while change is propelled on paths no longer controlled by them – an issue Dr. Yildiz and I have worked on for several years as part of our PATHS project. This picture varies, of course, across issue areas and institutional contexts, but it signals a significant reorientation and flexibilisation of the international legal order well beyond the realm of courts.

The European Court of Human Rights sits on one end of the spectrum of this order, and Dr. Yildiz's book presents us with a strong account of how it came to occupy and fill the central role it has now. With its focus on judicial strategies, it also reminds us that the story of the Court's transformation is not only one of the external conditions and formal institutional development, but that it is, to a significant extent, the result of choices made by individuals (and by judges as a collective). This is important well beyond the realm of specialists in European human rights law. It is a reminder that, and how, individual agency matters in international politics – and that there is often a choice between audacity and forbearance that can determine the course of international norms and law.

Nico Krisch  
*The Geneva Graduate Institute,*  
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