

DE CASAS, C. IGNACIO (2025): EL VALOR JURÍDICO
DE LOS ESTÁNDARES INTERNACIONALES DE
DERECHOS HUMANOS: ESTUDIO DESDE LA TEORÍA
DE LAS FUENTES DEL DERECHO INTERNACIONAL
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Ignacio de Casas' book on the legal weight of soft law international human rights standards, available only in Spanish, is a mandatory reading for any international human rights law academic, specialist, or activist, particularly those interested in comparative international human rights law and in the Inter-American Human Rights System. In it, de Casas rigorously explores the definition, nature, parameters, and limitations of soft law designated as "international human rights standards." Throughout the book, de Casa provides sound qualitative and quantitative evidence for his assertions in what he indicates was his doctoral thesis at Universidad Austral of Argentina.

The author is a relatively young yet seasoned law professor at Universidad Austral and a successful litigant before the Inter-American Court of Human Rights through his non-governmental organization, Latin American Center for Human Rights (CLADH). He holds a Master's degree in international human rights law from Oxford University and studied under Professor Julio Barberis during his undergraduate years at Universidad Austral.

His work with the Inter-American Human Rights System, his graduate studies in international human rights law, and Barberis's scholarship inspired his research on self-designated "international human rights standards" ("*estándares internacionales de derechos humanos*")—a new label for self-referential political advocacy instruments that currently pervade the international human rights world. That field, he admittedly suggests, could use greater intellectual rigor deriving from classical international law sources.

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The loose concept of international human rights “standards” is often used in the Inter-American Human Rights System and elsewhere in the international human rights world to promote progressive political causes that lack the necessary international consensus to be democratically adopted by the community of states; the author illustrates this point by describing how the term “international standards” was used to successfully promote legalization of abortion in his native country, Argentina. The said “standards” usually have no legally binding footing in international treaty law or other binding sources of international law, such as those identified in Article 38 of the International Court of Justice (ICJ) Statute (i.e. international treaties, custom as general practice accepted as law, and subsidiary sources, namely general principles of international law recognized as such “by civilized nations” and judicial decisions by international courts).

Instead, international human rights “standards” are often based on selected soft law instruments, that is, non-binding resolutions, declarations, reports, and other unilateral statements issued by like-minded, non-judicial international human rights bodies and organizations. As pointed out by Judge Vio Grossi, and awkwardly translated by the Inter-American Court, such “resolutions of international bodies – most of them composed of international officials and not of representatives of States – [. . .] are not binding and do not interpret valid international law, but rather reflect *aspirations* that the latter be amended in the sense they suggest.”¹

Invocations to soft law instruments and unilateral statements as “international human rights standards” may sometimes be a product of a lack of legal sophistication or basic knowledge among those who make them, and sometimes a product of political calculations to intentionally blur the legal lines between binding and non-binding international law in human rights activism, as pointed out in different parts of the work. Strategic use of the term creates confusion among those not familiar with basic principles of international law and passes political or sectarian objectives or desires as international norms of an obligatory nature.

In the first part of the book, de Casas shows how the term “standards” is not only problematic but misleading by analyzing the terms themselves and their use in the contemporary human rights arena. The first three chapters carry out a review of scholarly opinion and international human rights bodies and identify the exact scope of the current meaning, word for word, given to the term by individuals and entities who publicly use it.

1. *Manuela et al. v. El Salvador*, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 441, ¶ 13 (Nov. 2, 2021) (Vio Grossi, J., partially dissenting).

The second part of the book, the last two chapters, identify the proper meaning and the inaccurate use of the term “international human rights standards.” Chapter 4 discusses different theories of international law sources, and Chapter 5 reaffirms the role of identifying and interpreting international law norms in giving treaties and recognized customary international law precedence over soft law or its so-called “standards.”

The book’s Annex is probably one of the most interesting and innovative elements of this book. It consists of a sample analysis of the use of “international human rights standards” by different actors, comparing the meaning and legal weight given to them. The chart compares the term’s definition in fifty documents or writings by the Inter-American Commission on Human Rights (IACHR), the Inter-American Court of Human Rights, the Argentine Supreme Court, one United Nations agency, NGOs, and several human rights scholars (including one former member of the IACHR). In it, these actors are shown to generally give the term “standard” a vague, unclear, and sometimes overbroad meaning that encompasses both binding international law as well as NGO and international human rights bodies’ pronouncements, giving them equal normative value.

Those who study the Inter-American Human Rights System would find sections 1.1.c. and 1.2 of particular interest, as they describe exactly how the Commission and the courts purport to create new rights via their own reports, rapporteurship documents, and judgments. Section 1.1.c documents how both bodies and their individual members attempt to elevate their own reports and judgments to the status of “Inter-American standards” that would create *erga omnes* international obligations for Latin America and the Caribbean, even though the American Convention on Human Rights article 68 only gives judgments (not reports) legally-binding value, and only *vis-a-vis* the state party to a dispute.

Section 1.2 illustrates Inter-American Human Rights bodies’ promotion of an abandoned rule on a nondelegable state duty to consult indigenous populations about any activities in their territories as an international human rights standard. In addition, section 5.3.f addresses the Commission and the court’s common argument that international human rights law is not subject to the same treaty interpretation rules as other branches of international law, which would allow them greater interpretative creativity and lesser state deference when interpreting the American Convention.

This picture complements what other scholars have written about the Inter-American Human Rights System in this sense. Former Commissioner Paolo Carozza, for instance, has referred to the existence of a general “Inter-American liberality of the use of sources[,]” which he has described as the

Commission and the court's appeal to a variety of non-consensual sources of law coupled with relative disregard for orthodox practice in any legal tradition or jurisdiction in the region.²

De Casas often lets the evidence speak for itself and cites to critical scholarly opinion, offering minimal substantive critique of his own in some topics, such as the Inter-American Human Rights System, while providing robust critique and concrete proposals in the area of international law sources theory. Throughout, the author points out several issues raised by an unprincipled use of the term "standards" such as multiple meanings, translation issues, confusion on the sources of international human rights law, rights "inflation" (apparently his own original term), and perhaps the most important, a loss of democratic legitimacy.

For international law specialists, Part II of the book on the debate on legitimate sources of international law may seem like a relatively settled issue, but the chapter's comparative analysis of legal philosophy theories on the sources of international law show that it is not, at least according to many legal philosophers. Section 4.4 analyzes the place of soft law within these theories.

De Casas theorizes soft law doctrine and presents an interesting analysis of the role of soft law actors in interpreting soft law's substantive contents and determining its own legal weight. He proposes a revision of current theory on formal subsidiary international law sources, specifically international court judgments (called *jurisprudencia* in Spanish which does not necessarily imply *erga omnes* effects as it may in English language) and works of internationally recognized publicists (translated as *doctrina* in Spanish, having a very different meaning in English language). He also proposes such revision for informal subsidiary sources of international law, such as international organization resolutions.

The book could have mentioned ICJ decisions finding that international organization resolutions only can constitute evidence of customary international law if unanimous and are otherwise non-binding.³ Chapter 5 delves into the creation of customary international law through international organizations' interpretations, however, the scholarly opinion cited fails to mention that custom can only be created by states, and international human

2. Paolo G. Carozza, *The Anglo-Latin Divide and the Future of the Inter-American System of Human Rights*, 5 NOTRE DAME J. INT'L & COMPAR. L. 153, 162 (2015).

3. See MARK WESTON JANIS ET AL., INTERNATIONAL LAW: CASES AND COMMENTARY 188 (7th ed. 2025).

rights body interpretations only become customary international law insofar as they are codified by states.⁴

Despite these minor omissions, the work itself is highly valuable and makes an important contribution to international human rights law scholarship by solidly demonstrating that international human rights law “standards” are not a source of binding international law. De Casas rigorously demonstrates that strategic, ideological efforts to convert political soft law statements into binding international law ultimately weaken the international human rights system itself by eroding its democratic legitimacy, intellectual rigor, and legal subsidiarity of international human rights law.

4. *Id.*