How International Courts Promote Compliance: Strategies Beyond Adjudication

Nicole De Silva

Oriel College

Thesis submitted in partial fulfilment of the requirements for the degree of DPhil in International Relations in the Department of Politics and International Relations at the University of Oxford

Hilary Term 2016

91,343 words

Abstract

In recent decades, international courts have proliferated the international system—a trend often referred to as the "judicialization" of international law and politics. States create international courts to promote greater compliance with international law, and have increasingly embedded these actors within various international regimes. Scholars have primarily analyzed the consequences of the judicialization trend based on international judges' authority for interpreting and applying international law, adjudicating international disputes, and rendering binding rulings. However, international courts, especially when conceptualized as international organizations, also perform a variety of activities beyond adjudication. This study theorizes international courts' agency, in both its judicial and non-judicial dimensions, to explain how international courts aim to influence actors' behaviour and promote greater compliance within their international legal regimes.

As a foundation, it conceptualizes the various approaches through which international courts can promote compliance with international law, showing how international courts can appeal to actors' logics of consequences and appropriateness, either through their own agency or through using intermediary actors. An original dataset on the prevalence of these approaches across all twenty-three permanent international courts reveals significant variation in whether and how international courts have expanded their approaches for promoting compliance. International courts' level of autonomy influences their capacity for entrepreneurship and developing their approaches. Furthermore, their levels of acceptance and accessibility affect their adoption of particular approaches. Drawing on archival and interview research, ten case studies of a range of global and regional international courts, operating in a variety of issue areas and contexts, elucidate international courts' variable expansion of approaches based on these core variables. The study shows that international courts are dynamic and strategic actors, which address challenges and exploit opportunities to increase their influence and promote compliance within their international regimes.

Acknowledgements

This research would not have been possible without fellowships from Canada's Social Sciences and Humanities Research Council and Oxford's Department of Politics and International Relations, as well as grants from Oriel College and the Cyril Foster Fund. I also thank the IKEA Foundation and Lady Margaret Hall for the research fellowship that supported my final stages of writing.

I am grateful to the many individuals, in Oxford and beyond, who provided guidance and feedback on this research. I am especially grateful to my supervisor, Professor Duncan Snidal, whose scholarship on international organizations and international law has inspired me, and whose insights and encouragement in this project were invaluable. I also thank my MPhil supervisor, Professor Edward Keene, for pushing me to move beyond my initial interest in the International Criminal Court and think more broadly about the judicialization of international politics. I am grateful to my colleagues in the Department of Politics and International Relations for creating such a stimulating environment for studying IR, and for providing feedback at all stages of the project. Beyond Oxford, the feedback I received at the many conferences, workshops, and seminars in which I presented my research significantly influenced my theoretical arguments and empirical approach.

I take great pride in the breadth of the empirical research I have conducted, and this would not have been possible without the numerous officials within international courts and their associated organizations who participated in this project by both granting interviews and facilitating my archival research. I am particularly indebted to Dr Leigh Swigart at Brandeis University for sharing her contacts at various international courts, and to the Pan African Lawyers Union for hosting me for a visiting research fellowship and supporting my fieldwork in Arusha.

I owe the greatest debt to the "hard scientists" in my life – my mother, father, sister, and partner. I thank them for encouraging my intellectual curiosity (even in the "soft sciences") and providing so many forms of support as I pursued this project.

Abbreviations

AALCO	Asian-African Legal Consultative Organization
AB	Appellate Body
ACC	African Court Coalition
ACHPR	African Commission on Human and Peoples' Rights
AfCHPR	African Court on Human and Peoples' Rights
ACWL	Advisory Centre on WTO Law
ASP	Assembly of States Parties
ATJ	Andean Tribunal of Justice
AU	African Union
BCJ	Benelux Court of Justice
BENELUX	Belgium, the Netherlands, and Luxembourg
CACJ	Central American Court of Justice
CALCA	Caribbean Academy for Law and Court Administration
CARICOM	Caribbean Community
CCJ	Caribbean Court of Justice
CEMAC	Central African Monetary Community
CEMACCJ	Central African Monetary Community Court of Justice
CICC	Coalition for the International Criminal Court
CIS	Commonwealth of Independent States
CJEU	Court of Justice of the European Union
COMESA	Common Market of Eastern and Southern Africa
COMESACJ	Common Market of Eastern and Southern Africa Court of Justice
DSU	Dispute Settlement Understanding
EAC	East African Community
EACJ	East African Court of Justice
EurAsEC	Eurasian Economic Community
EC	European Community
ECCIS	Economic Court of the Commonwealth of Independent States
ECCJ	Economic Community of West African States Court of Justice
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECJ	European Court of Justice
ECOWAS	Economic Community of West African States
EEA	European Economic Area
EEUC	Court of the Eurasian Economic Union
EFTA	European Free Trade Association
EFTAC	Court of Justice of the European Free Trade Association States
ENET	European Nuclear Energy Tribunal
ESA	EFTA Surveillance Authority
EU	European Union
GATT	General Agreement on Tariffs and Trade

GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
IACHR	Inter-American Commission of Human Rights
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
ICT	Information and Communications Technology
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IGO	Inter-governmental Organization
IL	International Law
IO	International Organization
IR	International Relations
IFLOS	International Foundation for the Law of the Sea
ITLOS	International Tribunal for the Law of the Sea
JCCD	Jurisdiction, Complementarity, and Cooperation Division
KAF	Konrad Adenauer Foundation
LDCs	Least Developed Countries
MPRC	Southern Common Market (Mercosur) Permanent Review Court
NAFTA	North American Free Trade Agreement
NGO	Non-Governmental Organization
NHRI	National Human Rights Institution
OAS	Organization of American States
OHADA	Organization for the Harmonization of Business Law in Africa
OHADA-CCJA	OHADA Common Court of Justice and Arbitration
OPCD	Office for the Public Counsel for the Defence
OTP	Office of the Prosecutor
PALU	Pan African Lawyers Union
PCA	Permanent Court of Arbitration
SADC	Southern African Development Community
SCA	Surveillance and Court Agreement
UN	United Nations
UNCLOS	United Nations Convention on Law of the Sea
UNGA	United National General Assembly
UNSC	United Nations Security Council
WAEMU	West African Economic Monetary Union
WAEMUCJ	Court of Justice of the West African Economic Monetary Union
WTO	World Trade Organization

Table of Contents

Introduction

Judicialization and the Ascendance of International Courts

One of the most remarkable phenomena in contemporary international politics is the proliferation of international courts—permanent institutions composed of independent judges who adjudicate international disputes based on predetermined procedures and render binding decisions.[1] Particularly in the post-Cold War era, as part of the so-called "judicialization" of international politics,[2] states have increasingly created and used international courts to interpret and apply international law in a variety of issue-areas, including trade, regional integration, human rights, and international crimes.[3] Judicialization is relatively a recent phenomenon: at the end of the Cold War there were merely six international courts, but just over two decades later, there are twenty-three permanent, operational international courts in the international system. By one estimate, international courts have collectively issued over thirty-seven thousand legally binding rulings, ninety percent of which were made after the fall of the Berlin Wall.[4] International courts have thus dramatically expanded in number, scope, and activity in recent decades, and they are increasingly intervening in and making binding rulings affecting core political, economic, and social issues. International courts' rulings have determined, for example, international borders, control over valuable natural resources, states' domestic policies, and political leaders' responsibility for mass atrocities. International courts, as relatively new international actors, are influencing international politics in unprecedented ways.

[1] This is the paraphrased definition of international courts formulated by the Project on International Courts and Tribunals and frequently used by scholars who study international courts. See Mackenzie, Romano, et al. 2010; Romano 2011; Romano et al. 2014. This definition essentially limits the focus to the permanent international courts with judges appointed for fixed terms, thus eliminating ad hoc courts, such as the international criminal tribunals for the former Yugoslavia and Rwanda, arbitral tribunals, and quasi-judicial institutions such as the UN Human Rights Committee.

[2] E.g. Shapiro and Sweet 2002; Kingsbury 2011; Stone Sweet and Brunell 2013.

[3] Charney 1999; Buergenthal 2001; Baudenbacher 2003; Kingsburg 2011; von Bogdandy and Venzke 2012; Alter 2014; Romano et al. 2014.

[4] Alter 2014, 4.

Introduction

The move towards judicialization, and the creation and use of international courts, represents states' attempt to promote compliance with international law within various international regimes. International law functions in an anarchic international system, which lacks an overarching means of enforcement, so noncompliance is a prevalent issue. Adjudication in international courts, however, serves to hold actors accountable and resolve disputes over compliance. International courts adjudicate whether legal rules apply, interpret these rules if necessary, compare the facts against them, and ultimately determine whether actors' behaviour complies with international law. International courts' interpretation of laws helps clarify the meaning of compliance and noncompliance, and their application of laws ensures there is recourse for noncompliance. This adjudicative function is international courts' primary mandate, as least as specified in courts' founding treaties, and is the principal focus of the existing scholarship on international courts.

This perspective, however, underestimates how international courts promote compliance. The empirical record indicates that international courts are doing far more to transform international politics, influence actors' behaviour, and thus promote compliance with international law. Increasingly, international courts are demonstrating that they are multifaceted international organizations (IOs), which promote compliance in a variety of ways. For example, some international courts rely on the enforcement of their judgments, while others try to influence domestic legal systems in order to promote compliance. International courts are also assuming the role of norm entrepreneurs, persuading actors to comply with international law. Furthermore, some international courts are cooperating with various domestic, international, and transnational actors to support their operations and enhance their ability to promote compliance. Clearly, international courts' potential for promoting compliance far exceeds their traditional, adjudicative function, and there is tremendous variation in how international courts seek to influence behaviour and promote compliance with international law.

The trend toward judicialization, the ascendance of international courts, and the apparent variation in their behaviour raises several questions. How can international courts influence actors' behaviour and promote compliance with international law? What explains the variation in how states design international courts to promote compliance? How and why do international courts develop their agency for promoting compliance?

This study addresses these fundamental questions by reframing international courts' agency, potential for influence, and thus the consequences of the judicialization of international law and politics. It focuses on how international courts navigate the opportunities and challenges of their legal regimes, with the aim of influencing actors and promoting compliance with international law. It shows that international courts are, ultimately, strategic actors that use various approaches—both based on their design and through their autonomous development of policies and practices—to promote compliance, increase their influence, and develop a more rule-governed international order.

The Proliferation of International Courts

Particularly in the post-Cold War era, international courts have proliferated the international system and become increasingly influential in a range of issue areas, including international peace and security, international trade, human rights, and international crimes. This "enormous expansion of the international judiciary" could easily be considered "the single most important development of the post-Cold War age" in the field of international law.[5] It is an equally significant development in the conduct of international relations (IR). States have created new and strengthened existing international judicial bodies such that international courts and court-like institutions are increasingly replacing more traditional, predominantly diplomatic dispute resolution mechanisms[6] and serving as a means of addressing core moral predicaments, public policy questions, and political controversies.[7] In adjudication, the assumption is that judicial decisions are distinctive and that law provides a way to engage complex political issues in a more neutral, less overtly power-laden, and perhaps more predictable manner than other means of

[5] Romano 1999, 709.
[6] Baudenbacher 2003, 397.
[7] Hirschl 2006.

dispute resolution, such as negotiation, enquiry, mediation, and conciliation.[8] The nature of these judicial bodies has also changed in more recent years, with the creation of permanent international courts, as opposed to ad hoc tribunals, increasing dramatically.[9] This recent trend towards the creation and use of international courts has been characterized as one dimension of the increased legalization of international politics.[10] More specifically, it has been referred to as its judicialization.[11]

Judicialization has a long history, but its scope and pace has rapidly increased in recent decades (Figure 1). Around the mid-twentieth century, the "main concern of international law was to convince states of the attractiveness and usefulness of third-party dispute settlement."[12] International courts served as one such third-party, but at that time there were only a handful of them, including the International Court of Justice, European Court of Justice, and European Court of Human Rights. Judicialization gained strong momentum in the mid-1990s to the mid-2000s, with, for example, states creating nineteen international courts between 1993 and 2005. States created several international courts with global scope—namely, the Appellate Body of the World Trade Organization Dispute Settlement Understanding, International Tribunal for the Law of the Sea, and International Criminal Court. During this period, states also created a large range of regional courts, covering regional integration and human rights agreements, in Africa, the Middle East, Latin America, and the Caribbean.

During this period, states not only created international courts at a rapid pace, but also substantially expanded existing courts' activity and scope. The International Court of Justice and the European Court of Justice, for instance, both received far more cases, and states increased the reach and impact of the European and Inter-American regional human rights courts.[13] The courts created during this period also tended to have new features, progressing away from the traditional state- and consent-based nature of international law. Most international courts created

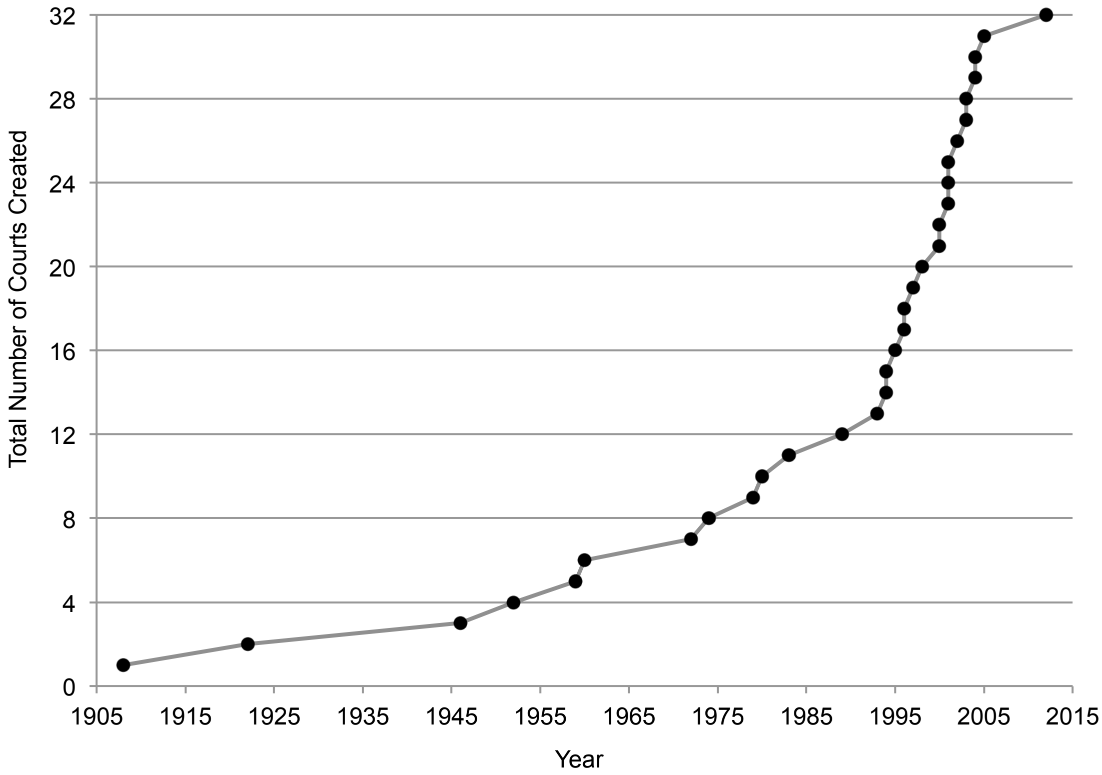
[8] Raustiala and Slaughter 2002, 541.
[9] Charney 1999, 698.
[10] Goldstein et al. (2000) highlight that international legal rules have become more precise and obligatory and the delegation of dispute resolution to third parties, including international courts, more frequent.
[11] See, e.g., Shapiro and Stone Sweet 2002; Kingsbury 2011; Stone Sweet and Brunell 2013.
[12] Oellers-Frahm 2001.
[13] Helfer and Slaughter 1997.

in recent decades feature compulsory jurisdiction, where courts do not require additional consent from the parties to adjudicate a dispute, and allow non-state actors to initiate cases.[14] These various trends reflected states' faith in dispute settlement through international adjudication and international courts' ability to promote compliance with international law.

In recent years, however, the impetus for creating new international courts has apparently declined (Figure 1) but is clearly not gone. States created the Eurasian Economic Community Court of Justice in 2012,[15] and there are discussions of creating and expanding other international courts. For example, there are proposals to create a World Court of Human Rights[16] and, more recently, an appellate body for investor-state disputes.[17] States have also considered expanding the jurisdictions of existing international courts. For instance, the protocols for replacing the African Court on Human and Peoples' Rights with the African Court of Justice and Human Rights and for extending the new court's jurisdiction to cover international crimes are currently awaiting the necessary ratifications to come into force.[18] The pace of judicialization may have slowed, but states are still willing to invest authority and resources in international courts for dispute settlement and promoting compliance with international law in various legal regimes.

[14] Alter (2014) classifies these as "new-style" international courts.
[15] In 2014, this became the Court of the Eurasian Economic Union (EEUC).
[16] See Nowak (2007) for an argument in favour of and Alston (2014) for an argument against a World Court of Human Rights.
[17] E.g. Gantz 2006.
[18] E.g. Murungu 2011; Tladi 2015.

Figure 1. The Creation of International Courts over Time[19]



1908: Central American Court of Justice (Corte de Justicia Centroamericana)
1922: Permanent Court of International Justice
1946: International Court of Justice
1952: European Court of Justice / Court of Justice of the European Union
1959: European Court of Human Rights
1960: European Nuclear Energy Tribunal
1972: European Tribunal on State Immunity
1974: Benelux Economic Union Court of Justice
1979: Inter-American Court of Human Rights
1980: Judicial Tribunal of the Organization of Arab Petroleum Exporting Countries
1983: Andean Tribunal of Justice
1989: Court of Justice of the Arab Maghreb Union
1993: Economic Court of the Commonwealth of Independent States
1994: Central American Court of Justice (Corte Centroamericana de Justicia)
1994: European Free Trade Association Court
1995: World Trade Organization Appellate Body
1996: Court of Justice of the Common Market for Eastern and Southern Africa
1996: Court of Justice of the West African Economic and Monetary Union
1996: International Tribunal for the Law of the Sea
1997: Common Court of Justice and Arbitration of the Organization for the Harmonization of Corporate Law in Africa
2000: Court of Justice of the Central African Monetary Community
2000: Southern Africa Development Community Tribunal
2001: Caribbean Court of Justice
2001: Court of Justice of the Economic Community of West African States
2001: East African Court of Justice
2002: International Criminal Court
2003: African Court of Justice
2003: Arab Investment Court
2004: African Court on Human and Peoples' Rights
2004: Mercosur Permanent Review Tribunal
2005: ASEAN Appellate Body
2012: Court of the Eurasian Economic Community/Union

[19] This graph shows states adoption of treaties creating international courts over time. The total number of thirty-two, therefore, includes courts that have been disbanded, such as the Permanent Court of International Justice (the League of Nations' court), as well as courts that were legally created, but failed to become operational, such as the African Court of Justice and the European Tribunal on State Immunity.

The overall trend towards increased litigation across various international courts has also continued. The world's oldest extant international court, the International Court of Justice, has been busier than ever before. Europe's key regional courts—the Court of Justice of the European Union and the European Court of Human Rights—have been "victims of their own success" and have recently experienced considerable backlogs due to the volume of cases they receive.[20] These are merely a few older, prominent international courts; the experiences of other, more obscure international courts may be less dramatic, but they still are part of the general upward trend in litigation. This trend, moreover, shows no signs of declining: "The factors which contribute to international litigation—more rules, more actors, more bodies, the sense that international litigation is increasingly the norm rather than the exception, changing perceptions about the function of international adjudication, etc—all appear to be now well established."[21]

Despite these sweeping developments, judicialization has not been a linear process. Once created, many international courts face contestation over their authority, their rulings, and even their overall mandates. In addition, the creation of "permanent" international courts apparently does not guarantee their permanence. As will be discussed in Chapter 2, the states of the Southern African Development Community (SADC) decided to suspend the SADC Tribunal in 2010 and have not yet reconstituted it. In terms of the use of international courts, and the extent to which international disputes come before them, judicialization has also been variable. The European Nuclear Energy Tribunal is a peculiar case of an international court that has never received a case but, since its creation in 1960, has had appointed judges, ready to receive cases should they arise. Some international courts experience steadily increasing caseloads over time, but others experience periods of stagnation or decline, where states or other litigants apparently lose interest in judicializing their international disputes. A notable example is the International Court of Justice, which had a period with a substantially lower caseload during the 1970s and

[20] E.g. Bowcott,"Backlog at European Court of Human Rights Falls below 100,000 Cases." *The Guardian*, January 30, 2014.
[21] Mackenzie et al. 2010, xv.

1980s.[22] While international courts have unprecedented scope and impact in international politics, their continued existence and relevance is far from guaranteed.

Thus, international courts have thus proliferated the international system, but there is significant variation in their origins and design, as well as their reception and impact within their legal regimes. International courts may be united as part of the broad judicialization phenomenon, but they are distinct in how they develop as organizations and influence actors over time. States contributed to judicialization by increasingly creating and using international courts, but this study examines how international courts, as actors in their own right, aim to influence actors in their legal regimes, fulfil their mandate of promoting compliance, and extend the judicialization of international law and politics in diverse ways.

Defining the Scope of Study

The sheer dimension of the judicialization phenomenon has defied many attempts to analyze judicial bodies as a whole. Every scholar who has ventured, or will venture, in the field of international courts and tribunals at some point has to grapple with the preliminary question of demarcating exactly which institutions and bodies are to be considered.[23] There is a wide variety of judicial and quasi-judicial institutions, including compliance-monitoring bodies which issue non-binding assessments, such as the United Nations Human Rights Committee, and institutions that coordinate arbitration, such as the Permanent Court of Arbitration and the International Centre for the Settlement of Investment Disputes.[24] There are also ad hoc tribunals, including the International Criminal Tribunals for Rwanda and the former Yugoslavia. A comparative study of all twenty-three permanent, operational international courts could hardly be considered narrow, but it is purposively targeted to focus on international courts as IOs, which have distinct forms of agency, to facilitate comparison across like units of analysis.

[22] Mackenzie et al. 2010, 2.
[23] Romano 2011, 242.
[24] For a taxonomy of these international judicial bodies, see Romano 1999; Romano 2011; Romano, Alter, and Shany 2014.

This focus on permanent international courts excludes arbitral bodies and thus departs from several accounts of the judicialization of international law and politics. The *Manual on International Courts and Tribunals* and the *Oxford Handbook of International Adjudication*—the two key handbooks systematically covering the judicialization phenomenon—include arbitral tribunals alongside adjudicatory bodies.[25] In addition, in *The New Terrain of International law: Courts, Politics, Rights*, Karen Alter explicitly focuses on "operational permanent international courts" as a "category of like institutions,"[26] and draws a sharp distinction between arbitration and adjudication.[27] She, nevertheless, still includes case studies of dispute settlement through arbitration[28] because "at the end of the day nothing significant hangs on the decision to focus on permanent [international courts]."[29]

As a means of dispute resolution, however, arbitration is clearly distinct from adjudication.[30] Arbitral tribunals are distinguished by their impermanence: they are constituted after a particular dispute arises, with arbitrators selected by the parties to the dispute themselves, and the tribunal dissolves following its decision. In contrast, international courts are standing bodies with a group of sitting judges who are not selected ad hoc by the parties of any given case.[31] International adjudication, moreover, always occurs within the context of an IO, where judges are embedded in a bureaucracy, whereas international arbitration can occur pursuant to international agreements, outside of any IO.[32] Therefore, there are considerably different dynamics involved in international arbitration versus adjudication through international courts, particularly when looking beyond rulings in individual disputes, as this study does.

This study also focuses on international courts that are permanent in the sense that they are created to exist indefinitely. In contrast, Cesare Romano's influential definition of

[25] Mackenzie et al. 2010; Romano, Alter, and Shany 2014.
[26] Alter 2014, 76.
[27] Ibid., 70-77.
[28] Ibid., 228-234.
[29] Ibid., 76-77.
[30] Merrills (2011), for example, lists negotiation, mediation, inquiry, conciliation, arbitration, and adjudication as distinct means of dispute settlement.
[31] This, for example, leads to the inclusion of the World Trade Organization and Mercosur dispute settlement systems because they have appellate bodies, but the exclusion of the North American Free Trade Agreement's dispute settlement system, which lacks an appellate body.
[32] There are, however, IOs that facilitate arbitration, including the Permanent Court of Arbitration and the International Centre for the Settlement of Investment Disputes.

international courts and tribunals considers their "permanence" criterion in terms of appointed, sitting judges (in contrast with ad hoc arbitrators),[33] and therefore includes both international courts created to operate indefinitely, as well as international courts and tribunals created for a fixed term for a defined issue or situation.[34] However, from an organizational perspective, a distinction between temporary and permanent international courts seems necessary. For example, when the ad hoc criminal tribunals for Rwanda or the former Yugoslavia—created by the United Nations Security Council to try individuals for crimes from those specific conflicts—would near the end of their mandates, their strategic incentives would be fundamentally different compared to the permanent ICC. At least for the purposes of this study and in the interest of consistency across cases, permanent international courts are more usefully conceptualized as those with "indefinite existence,"[35] according to their constitutive treaties.

Narrowing the scope of study to permanent international courts creates a category of like institutions within the broader judicialization phenomenon. Having like units of analysis is a necessary foundation for then assessing and explaining variation in their behaviour and outcomes. Crucially, permanent international courts are all IOs with distinct bureaucratic structures, which can be considered actors in their own right. Thus, it is possible to abstract beyond individual judges and cases, and consider the behaviour of international courts as strategic actors. Still, given the similarities across different international judicial and quasi-judicial bodies, this study's findings could be relevant beyond permanent international courts.

Even among the twenty-three permanent, operational international courts, there is considerable diversity, which is generally distinguished in the existing scholarship using the four sub-categories of inter-state courts, courts of regional integration, regional human rights courts, and international criminal courts (Table 1).[36] Interstate courts only hear disputes

[33] Romano 2011, 262.
[34] Romano (2011, 262) acknowledges these courts' temporary nature but argues "they are permanent because, once their judges have been appointed, they decide a long series of cases relating to the same situation."
[35] Caron (2014, 285) critiques Romano's conception of permanence and argues "what Romano really means is an institution with an 'indefinite existence.'"
[36] This follows Romano's (1999; 2011) and Romano et al.'s (2014) taxonomy of international judicial institutions, though some cases are excluded due to the differing conception of "permanence." Technically, international administrative tribunals—which adjudicate employment disputes between international organizations and their staff—constitute a fifth type of international court. These courts, however, are excluded

between states, and because there are less than two hundred states in the world, they serve a relatively small community of litigants. Due to their state versus state nature, in interstate courts, diplomacy and sovereignty play important roles, and judicializing a dispute is often a last resort. Regional integration courts constitute, by far, the largest group of international courts, reflecting the growing trend towards regional economic and/or political cooperation and integration, and the attendant need for dispute settlement. These courts can involve a range of actors, including organs of regional organizations, national courts, and private actors, alongside states. Most of these regional integration courts emulate the European Court of Justice.[37] Human rights courts interpret and apply specific regional human rights treaties, and hear cases brought against states by either individuals, IOs, or states for human rights violations. There is only one permanent international criminal court, which prosecutes individuals for international crimes and is global in its scope. While Table 1 groups existing international courts into their predominant sub-categories, in practice they can overlap: regional integration courts can have human rights or even criminal jurisdiction, and the International Court of Justice, an interstate court, can hear cases regarding any matter of international law.

While the distribution of international courts by their sub-category is skewed, the spread of international courts across regions is similarly uneven, as Figure 2 illustrates. Four international courts have global scope, but most international courts are confined to specific regions and sub-regions, variously defined. The regional and sub-regional courts are concentrated in Africa, Europe, and Latin America and the Caribbean. There is one court in both the Middle East and Asia, and none in North America and Oceania. Thus, judicialization is global phenomenon, but international courts have penetrated more deeply in some regions and issue areas than others.

---

from this study, considering their narrow focus on internal employment issues and the internal law of international organizations (sometimes referred to as international administrative law), rather than public international law. Indeed, they are usually not listed among international courts in legal scholarship.

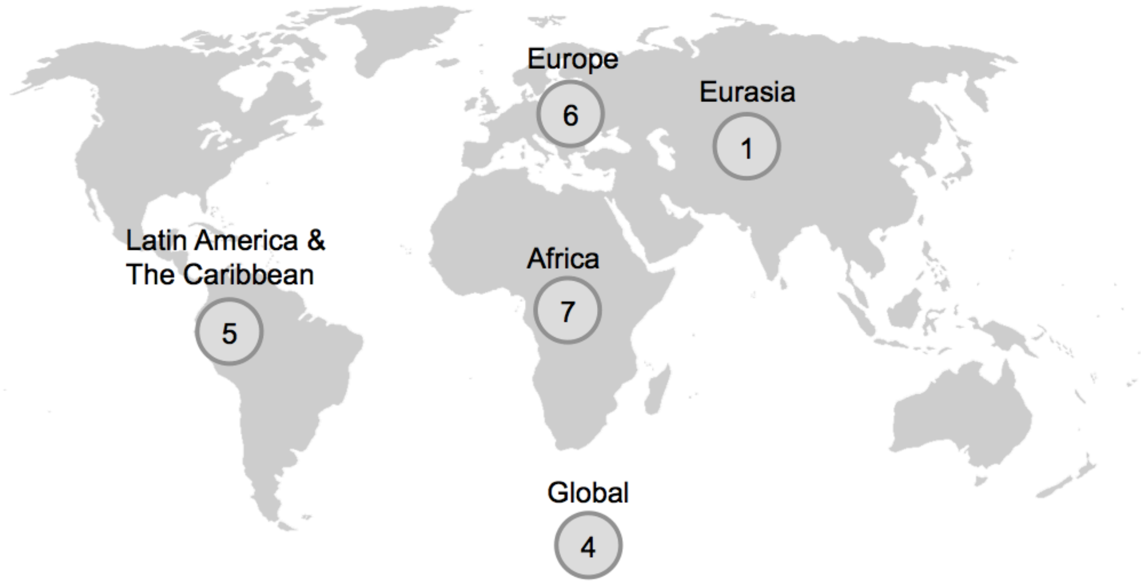
[37] Alter 2012.

Table 1. Permanent Operational International Courts, Categorized[38]

Type	International Courts	
Interstate Disputes	1. ICJ	International Court of Justice
	2. ITLOS	International Tribunal for the Law of the Sea
	3. WTO AB	World Trade Organization Appellate Body
Regional Integration	4. ATJ	Court of Justice of the Andean Community
	5. BCJ	Benelux Court of Justice
	6. CACJ	Central American Court of Justice
	7. CEMACCJ	Court of Justice of the Central African Economic & Monetary Community
	8. CCJ	Caribbean Court of Justice
	9. COMESACJ	Court of Justice of the Common Market for Eastern & Southern Africa
	10. EACJ	East African Court of Justice
	11. ECCIS[39]	Economic Court of the Commonwealth of Independent States
	12. ECCJ	Court of Justice of the Economic Community of West African States
	13. ECJ[40]	European Court of Justice / Court of Justice of the European Union
	14. EEUC	Court of the Eurasian Economic Union
	15. EFTAC	Court of Justice of the European Free Trade Association States
	16. ENET	European Nuclear Energy Tribunal
	17. OHADA CCJA	Common Court of Justice and Arbitration of the Organization for the Harmonization of Business Law in Africa
	18. MPRC	Mercosur Dispute Settlement System Permanent Review Court
	19. WAEMUCJ	Court of Justice of the West African Economic Monetary Union
Human Rights	20. AfCHPR	African Court on Human and Peoples' Rights
	21. ECtHR	European Court of Human Rights
	22. IACtHR	Inter-American Court of Human Rights
International Crimes	23. ICC	International Criminal Court

[38] The SADC Tribunal, though analyzed in Chapter 2, is excluded from this table of permanent international courts that are *operational*.
[39] It is unclear whether the ECCIS's rulings in contentious cases are binding (Danilenko 1998, 906–907) and recent practice seems to indicate that the rulings are not binding (Alter 2014, 398; Kembayev 2009, 67–68). Despite this ambiguity, it is included in many studies of international courts (e.g. Alter 2014; Romano, Alter, and Shany 2014), so in keeping with the existing literature, it is included here.
[40] For most of its existence, this court has been abbreviated as the ECJ, though based on its most recent treaty it also is labeled the CJEU.

Figure 2. The Geographical Distribution of Permanent International Courts



The focus of this study, therefore, is permanent international courts that can be considered a sub-category of IOs that cover diverse issue areas within regional and global governance. Judges and other court officials, as part of a permanent organization with a wide-ranging mandate, can look beyond particular cases at hand and consider their broader organizational development and role within their legal regimes. Given their different designs and organizational contexts, these twenty-three permanent international courts face distinct opportunities and constraints for fulfilling their delegated mandates for promoting compliance and amplifying their influence within their legal regimes.

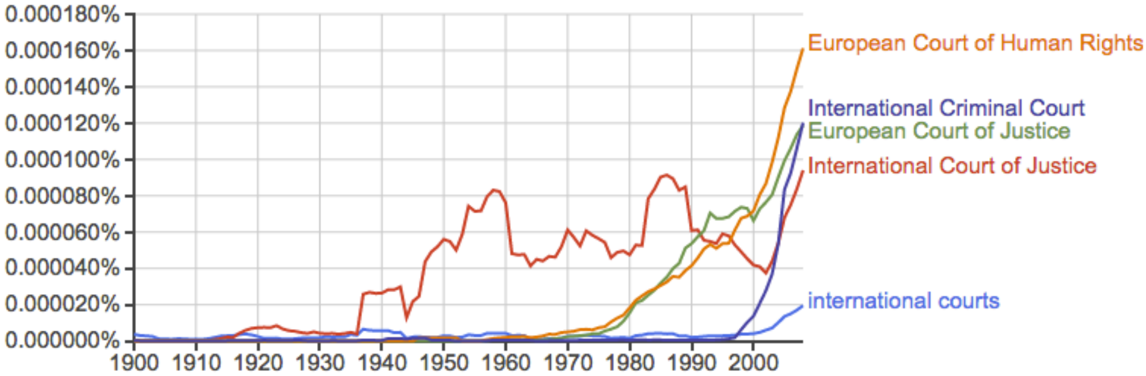
Assessing the Consequences of Proliferation and International Courts' Influence

Much of the early scholarship on international courts focused on the relevant law, procedures, and decisions of particular judicial bodies, with little comparison across institutions. These studies were also predominantly within the discipline of international law. Within the past two decades, however, scholarship on international courts has become more comparative and interdisciplinary. The Project on International Courts and Tribunals (PICT), established in 1997, broke the mould and started studying international judicial bodies as a whole.[41] Assessing the totality of the proliferation phenomenon, towards the end of the millennium, legal scholars tended to debate the consequences and desirability of judicialization.[42] For example, some legal scholars celebrated this development as a movement towards greater legal accountability and an international rule of law, while others were more cautious and concerned that the relatively uncoordinated proliferation of international courts could contribute to the fragmentation of international law. More recently, studies of judicialization have not only multiplied, but also spread to different disciplines. Scholars from international law, political science, and sociology are giving international courts increased attention, often through interdisciplinary collaboration.

Figure 3 roughly elucidates the upward trends in scholarship on international courts using Google Ngram, which charts the frequency of references to particular phrases in published books over time. From 1900 to 2008, it shows the trends in references to "international courts" as a phrase, which would refer to international courts categorically, as well as references to several prominent and generally long-standing international courts—the International Court of Justice, European Court of Justice, European Court of Human Rights, and International Criminal Court. All terms show increased frequencies over time, indicating their greater presence in books, as a proxy for scholarship more broadly. The upward trend in "international courts" is particularly striking, as this suggests scholars are increasingly analysing international courts as a whole, particularly in the new millennium.

[41] For example, its "Manual on International Courts and Tribunals" (1999) marked the first major attempt to systematically compare across international judicial bodies, and a revised edition was published in 2010 to account for the creation of further bodies.
[42] E.g. Charney 1999; Buergenthal 2001; Oellers-Frahm 2001; Romano 1999.

Figure 3. Frequencies of References to "International Courts," and Several Specific International Courts, in Books Published 1900-2008[43]



Despite this expansion in the research on international courts, the existing scholarship has its limitations. First, the scholarship is still only beginning to theorize international courts categorically and conduct comparative research that can potentially yield generalizable results across international courts. As indicated in Figure 3, the lower frequency of references to "international courts" indicates that there is much less scholarship addressing the whole category of international courts, and potentially comparing across them, as opposed to studies of specific international courts.

In assessing "international courts," scholars have often relied on single or small-N case studies, or large-N quantitative work on particular courts. A few courts—the European Court of Justice, European Court of Human Rights, World Trade Organization's Appellate Body, and International Court of Justice—are repeatedly studied. Thus, older, European-based courts receive a disproportionate amount of scholarly attention, though they are hardly "representative" of the expanded population of international courts, with its broader geographical scope (Figure 2). These courts are perhaps most interesting because of their larger body of case law, but basing our understanding of international courts on these "success" stories is problematic.[44] As international courts have proliferated the international system, increasing from six to twenty-

[43] Produced through Google Ngram Viewer, from the British English (2009) corpus.
[44] Helfer and Slaughter (1997) explicitly develop their theory of effective supranational adjudication based on European success stories, which, they contend, may be emulated elsewhere.

three in the post-Cold War era, the larger body of international courts warrants broader empirical analysis. Thus, scholars have only begun to grapple with the theoretical implications of the judicialization of international politics, and comparative, systematic analysis across international courts is lacking.

What has changed with the proliferation of international courts? The existing scholarship has largely assessed the question of impact by looking at litigation, judgments, and compliance. International legal scholars have understandably been interested in international courts' clarification and development of international law through their judgments, and analyzed them as ends in themselves. Both legal and political science scholars have also sought to gauge the behavioural effects of international courts, in terms of actors' mobilization around international courts in negotiation and litigation, as well as compliance with and enforcement of judgments.

In keeping with the broader trends in scholarship on international law, many studies have tended to equate compliance with judgments as an indicator of international courts' effectiveness.[45] For example, Helfer and Slaughter define "effective adjudication" based on an international courts' "basic ability to compel or cajole compliance with its judgments."[46] Various qualitative and quantitative studies have studied the factors that may influence compliance with international courts' judgments, such as jurisdiction, remedies, domestic regime-type, presence of compliance constituencies, and so on.[47] More recent scholarship has emphasized examining processes of behavioural influence, rather than compliance outcomes specifically, to deal with the many issues involved with associating compliance with effectiveness.[48] For instance, Alter's aptly named "altered politics" framework deliberately and productively moves away from measuring international courts' influence in terms of compliance, and instead focuses on explaining "[international court]-induced change in state behaviour in the direction of greater respect for international law."[49]

---

[45] For a recent approach defying this trend, see Yuval Shany's (2014) "goal-based approach."
[46] Ibid., 273.
[47] For overviews, see Alter 2003 and Huneeus 2014.
[48] On compliance as a problematic measure for the effectiveness of international law, see Downs, Rocke, and Barsoom 1996; Raustiala 2000; Raustiala and Slaughter 2002; Hillebrecht 2009; Huneeus 2011; Martin 2013.
[49] Alter 2014, 52–53.

Despite the movement "beyond compliance,"[50] most analyses of international courts' influence broadly focus on regime dynamics, rather than isolating international courts' agency within their respective regimes. Studies interested in how institutional design influences regime dynamics have distinguished between "interstate" and "transnational"[51] or "supranational"[52] dispute resolution, and international courts with "strong" and "weak" designs.[53] Some scholars have moved away from merely considering dispute settlement. For example, the "altered politics" framework focuses on how international courts' "presence and/or actions,"[54] based on their different functions of dispute settlement, enforcement, constitutional review, and administrative review, influences regime dynamics.[55] Generally, these accounts focus on the reception of international courts in their legal regimes, and on theorizing actors' mobilization around international courts for litigation and enforcement.

Insofar as scholars have focused international courts' agency specifically, they have mostly sought to analyze how different political and socio-legal factors may influence judicial decision-making. Debates have centred on the variability of international judges' independence from states, and whether international judges are highly independent "trustees,"[56] or "agents"[57] with "constrained independence"[58] and "bounded discretion."[59] With increasing methodological sophistication, often based on quantitative analyses of rulings, scholars have tested and refined theories of international judicial behaviour and the influence of international court rulings. We have theories of "judicial economy" at the World Trade Organization's Appellate Body,[60] "judicial diplomacy" in the European Court of Justice,[61] "legal diplomacy"[62] and precedent at the

[50] Howse and Teitel 2010.
[51] Keohane, Moravcsik, and Slaughter 2000.
[52] Tallberg and McCall Smith 2014.
[53] Johns 2015.
[54] Alter 2014, 53.
[55] Alter 2014. On these four roles, see also Alter 2013.
[56] Alter 2008a has advanced the "trustee" ideal type.
[57] For a direct critique of Alter's trustee argument, based on research on judicial appointments in the WTO, see Elsig and Pollack 2014.
[58] Helfer and Slaughter 2005.
[59] Ginsburg 2005.
[60] Busch and Pelc 2010.
[61] Alter 2001.
[62] Madsen 2011.

European Court of Human Rights,[63] and so on—with theories of international judicial (and court) behaviour "likely to become increasingly prolific."[64] From a more normative perspective, scholars have also theorized international judges as "multifunctional actors," where rulings can stabilize normative expectations, make law, and control and legitimate others' authority.[65]

Based on the trends in the scholarship, these accounts rest on theorizing judges that render decisions, rather than international courts as IOs with potentially varied "outputs." This may be due to a misplaced domestic analogy between national and international courts. For example, as Andrew Guzman notes, "Much of the existing debate on international courts…implicitly assumes that the role of these tribunals is essentially the same as that of domestic courts."[66] However, considering international courts are IOs, rather than courts within a supportive state structure, this analogy is misplaced, and international courts' more diverse activities must be considered alongside their judicial decision-making.

Some studies do hint at international courts' diverse forms of agency in their legal regimes. Scholars, for example, have linked states' acceptance of the European Court of Justice's legal doctrines based on the support of jurist advocacy movements in Europe, which the Court itself fostered.[67] A study of the East African Court of Justice briefly asserts that judges "cultivated an extensive network of users and supporters," which "provided a crucial insurance mechanism as the court began to exercise its jurisdiction over human rights cases…against the wishes of EAC member states."[68] Another study of the ECOWAS Court of Justice notes that judges pushed for access for litigants through meetings with lawyers, civil society groups, and government officials, and statements in the media, and how civil society groups joined the campaign.[69] Scholars of international criminal tribunals and courts have argued for the importance of courts' outreach in affected communities.[70] These studies have recognized the

[63] Lupu and Voeten 2012.
[64] Voeten 2014, 560.
[65] von Bogdandy and Venzke 2013.
[66] Guzman 2008b, 178.
[67] Alter 2009; Bernier 2012.
[68] Gathii 2013, 271.
[69] Alter, Helfer, and McAllister 2013, 750–752.
[70] On the outreach programmes of the International Criminal Tribunal for Yugoslavia, Special Court for Sierra Leone, and ICC, see Clark 2009.

significant role that activities beyond adjudication can play, but they have focused on single cases and have been interested more in the impacts rather than reasoning behind these activities.

Thus, non-judicial activities have been brought into the story of international courts' agency selectively, rather than systematically, and are generally under-theorized. In contrast to the increasing sophistication of theories of judicial decision-making at the international level, scholars have failed to theorize international courts' decision-making about their organizational policies and practices. However, understanding and explaining international court agency and influence requires conceptualizing and theorizing their full range of activities.

How International Courts Promote Compliance: The Argument

Given these issues with existing accounts of international courts, this study aims to explain key questions regarding international courts' agency and potential impacts in their legal regimes. First, how do international courts aim to influence actors in their legal regimes and fulfil their core mandate of promoting compliance with international law? What accounts for the variation among international courts in how they seek to fulfil their mandates?

To answer these questions, this study theorizes international courts as agents, with their own strategies and ways of acting in the world that can extend beyond adjudication.[71] To understand how international courts promote compliance with international law, their agency cannot merely be conceptualized based on their ability to interpret and apply international law, and render binding rulings. Instead, international courts are IOs, including both international judges and other court officials, which can conduct various activities aimed at fulfilling courts' mandates and promoting compliance. With this shift to conceptualizing international courts as IOs, international courts' agency for promoting compliance with international law must be theorized based on both their judicial *and* non-judicial activities. Accounting for both these dimensions of international courts' agency more fully elucidates the implications of the

[71] This aligns with Barnett and Finnemore's (1999; 2004) conception of IO bureaucracies.

proliferation of international courts and how international courts can contribute to greater respect for international law within regional and global governance.

Indeed, given the relatively restricted nature of international courts' judicial realm of activity, international courts' ability to develop their non-judicial activities leads to unique opportunities to influence behaviour and promote compliance. In adjudication, international judges' ability to promote compliance is limited by legal rules in courts' founding treaties and norms from the international legal community that govern judicial behaviour and adjudicatory processes. In contrast, international courts' non-judicial realm of activity is relatively unrestricted: courts' founding treaties tend to lack provisions directing their non-judicial activities, and this realm of activity is much less norm-governed. International courts' non-judicial activities, therefore, provide greater scope for courts' strategic behaviour in fulfilling their delegated mandates and promoting compliance with international law.

Based on this broader conception of international courts' agency, and through adopting an interdisciplinary, theoretically pluralistic perspective, international courts can promote compliance with international law through a range of activities that constitute four overarching approaches. These approaches not only combine rationalist and constructivist theories of international relations and international law, but also include both enforcement and managerial theories of compliance. They are distinguished based on their *logic* (consequentialism or appropriateness) and *means* (direct or indirect) of influence. International courts can directly influence their targets' consequences for noncompliance, through authorizing sanctions against a noncompliant state, or ordering compensation or reparations to injured parties, for example. This approach relies on adjudication and courts' rulings. International courts can also indirectly generate consequences for noncompliance through intermediaries that can prosecute noncompliance or enforce their rulings and law more generally. International courts can, for instance, persuade national courts to refer cases and enforce their decisions; train litigants to bring disputes; and mobilize substate, international, and transnational actors to impose various costs for targets' noncompliance. To influence targets' logic of appropriateness, and align it with international courts' norms, rules, and procedures, courts can directly engage their targets, through various forms of communication and interaction that socialize their targets for compliance. International courts can also work through intermediaries, such as NGOs, IOs, or academia, which can uphold and advocate for the legitimacy and appropriateness of courts' norms, rules, and procedures.

States design international courts to practice some approaches, but international court officials, through their own entrepreneurship, can also formulate their own approaches for promoting compliance. The empirical record of the twenty-three permanent, operational international courts shows considerable variation in their approaches for promoting compliance. There is a remarkable distinction between the approaches states have prescribed in international courts' founding treaties and the approaches courts, through their own agency, have strategically adopted over time. States have overwhelmingly designed international courts to influence their targets by directly and indirectly creating consequences for noncompliance through their judicial activities. International courts, however, have developed diverse approaches through their judicial and especially their non-judicial agency. In these adopted approaches, international courts aim to influence not only to their targets' logic of consequences but also their logic of appropriateness. International courts have rarely developed new approaches for promoting compliance through their jurisprudence and judicial doctrines; instead, their expansion of approaches has largely relied on their development of non-judicial activities aimed at influencing their targets both directly and indirectly through intermediaries. International court officials have moved beyond the strict boundaries of adjudication processes and more directly engaged with actors in their legal regimes. They have, for instance, held meetings with state officials and national judges, training for potential litigants, and workshops for NGOs advocating for the legitimacy of courts' mandates. Thus, international courts have particularly relied on their non-judicial realm of activity, given its relatively unrestricted nature, to enhance their agency for promoting compliance.

There is, however, substantial variation in whether and how international courts have developed their agency for promoting compliance. Three key variables, based on international courts' design and organizational environment, explain the variation in their expansion of approaches. While international courts' level of autonomy influences their entrepreneurship and ability to develop approaches for promoting compliance, their levels of acceptance within their legal regimes and accessibility to non-state actors shape the types of approaches they adopt.

International courts generally have high levels of autonomy, as it is crucial for their adjudicatory mandate, but various external actors, including member states, the international legal community, donors, and even intermediaries, can constrain international courts' decision-making and entrepreneurship. These external actors, through a range of mechanisms, can shape courts' incentives and norms for developing their judicial and non-judicial activities, and their approaches for promoting compliance. For example, states have, in the extreme case of the SADC Tribunal, completely eliminated its agency for promoting compliance through refraining from appointing officials and effectively suspending the Tribunal. The ICC case shows how limits on autonomy can be subtler, where constraints on international court officials' decision-making (e.g. through restrictive treaty provisions, resource controls, and normative influence) may not prevent courts' adoption of approaches, but limits their extent or ambition.

Though international courts' levels of autonomy influence whether they formulate new approaches for promoting compliance, their levels of acceptance and accessibility shape the types of approaches they adopt. International court officials turn to approaches aimed at influencing targets' standards of legitimacy and appropriateness when they perceive that courts lack acceptance within their legal regimes. This lack of acceptance, which can promote noncompliance, can stem from actors' lack of awareness or contestation of international courts' norms, rules, and procedures. International courts can thus develop approaches for directly or indirectly socializing their targets, where socialization increases targets' sense of obligation to comply based on the legitimacy and appropriateness of international courts' norms, rules, and procedures. As the variation in approaches developed by the ICJ, ITLOS, EACJ, and ICC will show, court officials that perceive a high level of acceptance refrain from adopting socialization strategies, but court officials that recognize actors' lack of awareness or contestation are mobilized to respond with socialization strategies and approaches for influencing targets' logic of appropriateness.

International courts' levels of accessibility—based on the extent to which their formal access rules depart from a state-only model and include non-state actors—influences their engagement with intermediaries and development of indirect approaches for promoting compliance. While states have designed some international courts to have state-only access, states can allow various non-state actors, including IOs, national courts, and private actors, access to adjudication in international courts. These access rules, however, have broader implications, as they shape international courts' incentives and norms for interacting with actors in their legal regimes, many of which could function as intermediaries for promoting compliance through litigation, enforcement, norm advocacy, and so on. The more actors included in a court's access rules, the more opportunities it has to engage with potential intermediaries. In addition, permissive access rules also reflect states' commitment to norms of inclusion, which legitimizes international courts' involvement of non-state actors in their activities and supports their development of indirect approaches for promoting compliance. As will be shown, the variation in levels of accessibility among the WTO Appellate Body, EFTA Court, Inter-American Court of Human Rights, and African Court on Human and Peoples' Rights closely map onto their variable engagement with intermediaries and adoption of indirect approaches for promoting compliance.

Thus, this study shows that international courts are dynamic and strategic actors, which address challenges and exploit opportunities to promote compliance, increase their influence within their regimes, and contribute to the judicialization of international law and politics. At a theoretical level, this study's framework for explaining international courts' agency for promoting compliance answers the call to integrate theories of international relations and international law, and promote truly interdisciplinary scholarship.[72] It uses a theoretically pluralistic approach, including rationalist and constructivist theories of international relations, as well as enforcement and managerial theories of compliance, to conceptualize international courts' agency for promoting compliance. The variables explaining international courts' diverse approaches are also developed through combining theories of IOs and international courts. At an

[72] Slaughter-Burley 1993; Slaughter 2013.

empirical level, as discussed below, the study also meets the increasing demand for more systematic, comparative research on international courts.[73]

Research Design

This study moves back and forth between theoretical and empirical analysis to develop and test its claims about how international courts promote compliance. This is a common approach to midrange theorizing in international relations, but it also follows the so-called "empirical turn" in international legal scholarship, which involves building midrange theory from empirical study with analytics that oscillate between empirical findings, abstract theorizing, real-world testing, and back again.[74] The empirical approach involves drawing on a broad analysis across all permanent, operational international courts, and following further theorizing, moving on to more in-depth comparative case studies to elucidate theoretical claims.

Methods

First, to answer the question of how international courts may aim to promote compliance, this study analyses the empirical prevalence of the various theorized approaches across all twenty-three permanent, operational international courts based on an original dataset (Appendix 1). An analysis of international courts' treaties, jurisprudence, reports, and websites—the first of its kind—reveals the variation in international courts' approaches by design and in practice. The distribution of approaches, particularly between those designed and developed, and between those reliant on international courts' judicial and non-judicial agency, uncovers an empirical puzzle warranting further explanation. Specifically, it establishes the tendency for international courts to expand their approaches for promoting compliance, particularly through their non-

[73] E.g. Romano, Alter, and Shany 2014.
[74] Shaffer and Ginsburg 2012.

judicial agency, but there is considerable variation in whether and how international courts adopt approaches.

Based on further theorizing regarding the variables that explain this variation, case studies are used to test these theoretical claims about whether and how international courts develop their agency for promoting compliance.[75] Given the complexity of international courts' autonomy, a typology of constraints is developed, and then process-tracing is used in two case studies to elucidate the constraints' influence on international courts' decision-making and adoption of approaches.[76] Examining processes in two cases—the SADC Tribunal and ICC—reveals how international courts' variable external constraints influences their capacity for entrepreneurship and developing new approaches for promoting compliance. These two cases, taken together, feature all theorized constraints.

International courts' acceptance and accessibility are less complex variables, which are argued to influence the *type* of approaches international courts adopt. This allows for different case study methods to allow for more robust theory-testing. For each variable, four cases are analyzed based on both diverse cases and controlled comparisons of most-similar cases.[77] The diverse cases analyze the influence of the full range of levels of acceptance and accessibility, which are conceptualized as continuous variables,[78] while most-similar cases allow for isolating the influence of the particular variable on international courts' development of approaches.[79] Four cases were selected to capture the full range of each variable (the ICC, EACJ, ITLOS, and ICJ for acceptance; the WTO AB, EFTAC, IACtHR, and AfCHPR for accessibility), with two

[75] The study relies on case studies of particular international courts, rather than their legal decisions. In contrast, Alter's (2014) comparative study of international courts uses international courts' legal cases, rather than the courts themselves, as case studies.

[76] To deal with the problem of complexity, George and Bennett (2005, 13) argue for typological theorizing for modeling complexity and process-tracing as a means of examining it. They also reject KKV's assertion that process-tracing is merely as a means of increasing the observable implications of a theory.

[77] On the diverse case method, see Gerring 2007, 51; Gerring 2008, 650–653; Seawright and Gerring 2008. On the benefits of the method of "controlled case comparison," or "paired comparison," see George and Bennett 2005; Tarrow 2010.

[78] Though diverse cases are likely to be representative of the full variation of acceptance among the full population of international courts, they may not mirror the distribution of that variation among that population (Gerring 2008, 651).

[79] For example, they address the potential issue of covariance in autonomy, acceptance, and accessibility.

cases for controlled comparison having similar levels of autonomy and acceptance or accessibility.

Data Sources

For the dataset covering the designed and developed approaches for promoting compliance across all twenty-three international courts (discussed further in Appendix 1), the data sources included courts' founding treaties (for their designed approaches), case law (for approaches developed through their judicial agency), and reports and websites (for approaches developed through their judicial and, especially, non-judicial agency). These four sources were combined to maximize the dataset's use of all publicly available information on courts' activities.

For the case studies analysing international courts' decision-making and development of approaches for promoting compliance, data were derived from three main sources: archival documents, interviews, and secondary sources. The data on international courts' approaches for promoting compliance were primarily drawn from archival sources, whereas data on international court officials' decision-making came from a combination of archives and interviews. As most scholarship on international courts relies on data from international courts' judgments to analyze their judicial behaviour,[80] this study's data on international courts' judicial and, particularly, non-judicial decision-making and activities makes a unique contribution. The data also help correct the existing literature's bias towards drawing empirical material primarily from older, high-litigation international courts.

Archives. International courts document their activities in various forms. Many of international courts' archival records are published (e.g. annual reports, websites, press releases, officials' speeches, etc), but some documents are unpublished and housed at the courts' headquarters.

[80] As they cannot access judges' confidential deliberations, studies of international judicial behaviour typically rely on analysing judgments to substantiate their theoretical claims. The general availability of judgments favours studies of international courts' behaviour in terms of their judicial decisions, and could help explain why the scholarship on international courts generally has been skewed in this direction.

Annual reports are the most commonly available record of international courts' non-judicial activities across the twenty-three permanent international courts.[81] Of these twenty-three, fourteen regularly report on their activities to their member states and stakeholders.[82] Prepared by courts' registries, these annual reports are, essentially, the definitive record of courts' activities over the course of a year, and are directed at their associated political bodies and potentially other stakeholders. The Inter-American Court of Human Rights, for instance, notes that its annual report "covers the jurisdictional work of the Court and also the different activities carried out by the Inter-American Court to reach out to the people and institutions under its jurisdiction."[83] These reports present the activities that international courts deem significant enough to report and often contain the reasoning and objectives underpinning these activities.

These reports, however, may not capture the full scope of international courts' activities, as international court officials exercise discretion over their level of transparency regarding their activities and information they release. These documents are also likely biased towards reporting formal, rather than informal, activities, and can be rather superficial. Thus, annual reports can only be one of multiple sources of archival data. Other relevant documents include press releases, and summaries of meetings and events. International courts may also keep records of their meetings, including deliberations over institutional matters or speeches by court officials.

Advancements in technology have also opened up unprecedented forms of archival material on international courts' activities. Most international courts have a website,[84] with information on their mandate, judges, law, programmes, and activities. Some international courts cultivate a much stronger online presence, including digital video and social media. Many international courts have online archives with video of their public hearings and other court events (press conferences, seminars, etc). In addition, international courts are increasingly active

[81] See Appendix 1.
[82] The BCJ, CACJ, CEMACCJ, ECCIS, EEUC, ENET, MPRC, OHADA CCJA, and WAEMUCJ do not release formal reports.
[83] IACtHR, "Annual Report 2014," 2015, 1.
[84] See Appendix. 1. Only three courts—the CEMACCJ, ENET, and WAEMUCJ—lacked websites describing their activities.

on social media—primarily through Twitter, but also through Facebook—which provides a more informal archive of their activities.

Despite these possibilities for archival records of international courts' activities, the breadth and depth of this documentation varies across international courts. Except for some areas, such as judicial deliberations, most aspects of international courts' judicial activities are extensively documented out of legal necessity. Parties' submissions, *amicus curiae* briefs, transcripts of hearings, and courts' final judgments are just some of the rich documentation covering international courts' judicial activities. In contrast, the extent to which international courts document their non-judicial activities can vary, as international courts are generally under no obligation to document these aspects of their work. For example, international courts can have detailed notes of their meetings; simply note a meeting took place, with its subject and participants; or not record their meetings at all. While the archival data are generally sufficient for discerning courts' overall approaches for promoting compliance (Appendix 1), case study analysis requires more detailed data, with elite interviews representing a valuable source.

Elite Interviews. Interview data was collected and used to both supplement and triangulate the archival data for six of the nine courts featured in the case studies. This follows the approach of Terris, Romano, and Swigart's seminal study, *The International Judge,* which interviewed judges across several international courts to understand their professional identities and institutional processes.[85] Whereas Terris, Romano, and Swigart's interviews focused on "the international judge" as a profession, for this study, interviews have been conducted to understand the behaviour of international courts, as IOs. Thus, judges and registry officials,[86] as well as officials in organizations involved in international courts' activities (e.g. civil society and donor organizations), were interviewed. Interviews were used to both elucidate international courts' policies and practices, but also gain insight into officials' decision-making.[87]

[85] Terris, Romano, and Swigart (2007) interviewed thirty-two serving international judges for their study.
[86] And other organs for the ICC case, given the unique institutional structure of international criminal courts.
[87] There are issues associated with inquiring about motivations through interviews, where officials can easily conceal their true intentions and may lack memory of events, but the style of questioning (including prompts

International courts are organizations where many activities often take place behind closed doors, making interviews of those officials present the only viable means of obtaining data. In stark contrast to courtroom proceedings, which in many ways are generally extensively documented, international courts' day-to-day activities, including meetings discussing organizational policies and practices, are often unrecorded or only basically noted in records. In addition, when archival records only superficially document policies and practices, for example, interviewing officials that formulated or implemented them can provide valuable supplementary data that triangulates the archival data for increased validity.

Interviews were targeted to six cases, featured in the case studies, with minimal archival data and/or secondary literature, which typically corresponded with the relatively newer courts. Interviewees, who were all currently-serving officials,[88] were selected based on their privileged knowledge on international courts' approaches for promoting compliance or international courts' decision-making processes.[89] The interviews followed a semi-structured approach, where a general set of questions, often slightly catered to the participant's position within the court (e.g. judge versus administrator) or the organization's relation to the court (e.g. norm advocacy, legal training), was formulated beforehand. The more conversational nature of a semi-structured interview was particularly effective in eliciting candid responses from potentially highly legalistic officials. Another advantage of the semi-structured format and open-ended questions was the opportunities it provided the participants to introduce alternative variables and causal pathways.

Between January 2014 and July 2015, thirty international court judges and non-judicial officials at six international courts (the AfCHPR, EACJ, EFTAC, ICC, ICJ, and ITLOS), as well

based on archival sources, for example) aimed to mitigate these issues as much as possible. See, e.g., Aberbach and Rockman 2002; Berry 2002.

[88] Interviewing serving officials has its advantages and disadvantages. Currently serving officials could provide a more up to date account, which would, all things equal, have increased validity, since they would be reflecting on their recent or present experiences. At the same time, validity could be compromised, since sitting judges and administrative officials could be reluctant to speak openly about their work while still serving in their respective positions (see, e.g., Terris, Romano, and Swigart 2007, xvii).

[89] Elite interviewing often involves issues of accessing interviewees, but access was only a limiting factor in the ICJ case study.

as eight officials from associated organizations were interviewed.[90] Several factors contributed to the variation in the number of interviews conducted at each court, which ranged from one to ten. The size of the court, the scale of its non-judicial activities, and the extent of its archival data all significantly influenced the number of interviews required to gather supplementary data on courts' non-judicial activities. The ICC, for example, constitutes a huge bureaucracy of over seven hundred staff members,[91] with several autonomous organs (the Presidency, Office of the Prosecutor, and Registry) having their own policies and practices for non-judicial activities. This necessitated more interviews than at considerably smaller international courts, such as the EFTA Court, with its small staff of seventeen[92] and limited non-judicial activities.

Secondary Sources. The availability of secondary sources varied significantly across different international courts, and given the general focus of the existing literature on courtsg judicial agency, the secondary literature was primarily useful as a data source for courts' development of approaches through their jurisprudence. The older, global and/or European courts had received the most scholarly attention, whereas the newer courts in developing regions (Africa, Eurasia, Latin America, and the Caribbean) had only minimal secondary literature. One important source of secondary data, which covered courts' judicial and non-judicial activities, was the reports of the Brandeis Institute for International Judges, which, since 2002, has convened judges from a wide range of international courts and tribunals every eighteen months to discuss a variety of judicial, legal, ethical, and institutional issues vis-à-vis international courts. It reports judges' discussions on these thematic topics, including direct quotes (without attribution) from international judges.[93] This secondary source provides much "rawer" data than the academic literature on international courts.

[90] See Appendix 2. Interviews of officials in international courts' associated organizations, principally civil society and donor organizations, covered their relations with international courts and their involvement in courts' activities.
[91] Davenport, "International Criminal Court: 12 Years, $1 Billion, 2 Convictions," *Forbes*, March 12, 2014.
[92] Interview with Philipp Speitler, Legal Secretary and Head of President's Chambers, EFTA Court, 10 June 2015.
[93] Unlike the interviews conducted for this study, the Brandeis Institute for International Judges involves group discussions among judges, with an academic serving as a facilitator.

Chapter Outline

Chapter 1 develops the theoretical framework for explaining how international courts promote compliance with international law. It presents the matrix of four approaches for promoting compliance, distinguished based on their *logic* (rationalist logic of consequences or constructivist logic of appropriateness) and *means* (direct or indirect) of influencing their targets for compliance. These four theoretical approaches elucidate the empirical variation in how international courts exercise their agency to promote greater compliance with international law. An analysis of the four approaches across all twenty-three permanent, operational international courts in the international system maps this variation, revealing the distribution of the four approaches that states have designed and that international courts have developed through their judicial and non-judicial agency. This, in turn, specifies further questions regarding the variation in whether and how international courts adopt approaches beyond those embedded in their design. Essentially, it raises questions about how international courts choose to develop their own agency for promoting compliance with international law.

The chapter also introduces the three key variables—*autonomy*, *acceptance*, and *accessibility*—for explaining whether and how international courts develop their approaches for promoting compliance. It shows how these variables relating to international courts' design and organizational environment are superior explanations to diffusion mechanisms, which may be relevant for explaining the specific features of policies and practices under limited circumstances. The three independent variables are complex in and of themselves, and thus are explained in separate chapters, with in-depth theoretical and empirical analysis.

Chapter 2 makes the case for international courts' autonomy determining their capacity for entrepreneurship and developing approaches for promoting compliance. It builds on existing theories of IOs and international judicial independence to develop a typology of constraints on international courts' judicial and—departing from exiting approaches—non-judicial autonomy. These constraints can come from a range of actors, and influence international courts' incentives and norms for how they promote compliance. Case studies of the SADC Tribunal and the ICC reveal how these different constraints can limit international courts' decision-making regarding their approaches for promoting compliance.

Whereas Chapter 2 shows that international courts' level of autonomy influences *whether* courts adopt approaches for promoting compliance, Chapters 3 and 4 reveal how international courts' levels of acceptance and accessibility strongly influence *which* approaches they adopt. Chapter 3 shows how international courts can respond to their environments—specifically their lack of acceptance from actors within their legal regimes—and adopt approaches aimed at socialization and promoting compliance according to the logic of appropriateness. The chapter first conceptualizes the variability in courts' levels of acceptance, based on actors' lack of awareness or contestation of international courts' norms, rules, and procedures. Then, it examines the implications of this variability through four case studies of the ICC, EACJ, ITLOS, and ICJ, which show how officials' perception of courts' lack of acceptance motivates them to develop socialization strategies. Chapter 4 elucidates how international courts' levels of accessibility, based on the range actors included in their formal access rules, influences their development of indirect approaches for promoting compliance. It conceptualizes international courts' variable levels of accessibility as a spectrum, ranging from state-only courts to courts accessible to a full range of non-state actors (IOs, national courts, and private actors). Case studies of the WTO AB, EFTA Court, AfCHPR, and IACtHR elucidate how higher levels of accessibility provide international courts the strategic opportunities and norms of inclusion to engage with potential intermediaries for promoting compliance. Together, these chapters reveal how international courts choose to develop their agency for promoting compliance and help explain the overall variation in their approaches for promoting compliance.

Chapter 1

International Courts’ Agency for Promoting Compliance

Introduction

This chapter builds a framework for analysing how international courts can promote compliance with international law, and explaining the variation in how courts exercise their agency for promoting compliance. It first makes a case for reconceptualising international courts’ agency to account for both its judicial and non-judicial dimensions, based on a deeper understanding of international courts as IOs, rather than merely international judges. It also makes the case that international courts’ core mandate is to promote compliance with international law, and that the distinction between courts’ judicial and non-judicial agency is highly salient for fulfilling this core mandate.

Integrating theories of international relations and international law, the chapter conceptualizes four approaches through which international courts can promote compliance, based on their judicial and non-judicial agency. Then, drawing on an original dataset on international courts’ treaties, jurisprudence, policies, and practices, it analyses the prevalence of the different approaches across all twenty-three permanent, operational international courts in the international system. The trends in international courts’ adoption of approaches for promoting compliance clarify an empirical puzzle regarding international courts’ agency. Inspired by theories of IOs and international courts, three key variables—autonomy, acceptance, and accessibility—are used to explain the trends in international courts’ expansion of approaches for promoting compliance. The chapter thus presents the overarching framework that guides this study of international courts’ agency for promoting compliance.

The Origins of International Courts' Agency

International courts are embedded within some of the most legalized international regimes in the international system.[1] In these regimes, states have committed to strong legal obligations, which they have codified in binding legal agreements. International courts, as a form of third party dispute settlement, are unique contributions to these legal regimes. They are a particular design choice, which states select from among forms of diplomatic dispute settlement or ad hoc third party dispute settlement, including arbitral tribunals.[2] International adjudication through permanent international courts, however, can be seen as states' most extreme design choice for third party dispute settlement in international legal regimes. By creating these permanent IOs, states delegate a high level of authority and autonomy to international judges to adjudicate disputes among the members of the regime. Effectively, states create new actors within their international legal regimes, which can use their expertise and international legal authority to hold actors (most commonly states) accountable to their international legal obligations.

States formally delegate this authority and create international courts through treaties, which define international courts' roles within their respective legal regimes. These may be distinct, self-contained treaties, which effectively create a new legal regime. The Rome Statute for the International Criminal Court is quite unique in that it creates the court as a wholly independent IO, and codifies all the rules in the legal regime. But more commonly, international courts' constitutive treaties are protocols or statutes connected to a broader legal regime. The classic example is the Statute of International Court of Justice, which is annexed to the UN Charter, and creates the Court as the UN's judicial organ, which serves the UN's wider mandate of the peaceful settlement of disputes. States may envision an international court as an integral part of a legal regime from the outset, or they may choose to create an international court later on, perhaps when cooperation problems (e.g. noncompliance) arise and international courts are thought to provide institutional solutions. For example, despite a proposal for creating an African

[1] On legalization, and its dimensions of obligation, precision, and delegation, see Abbott et al. 2000.
[2] Arbitral tribunals bear many similarities with international courts. The distinction is that arbitral tribunals are constituted ad hoc, and the parties to the dispute choose the tribunal members. Thus, parties to the dispute theoretically maintain greater control over this third party, and the tribunals are not permanent as they only exist for a particular dispute.

human rights court, states within the AU chose not to create one when they negotiated the African Charter on Human and Peoples' Rights because they deemed it "too premature" at that stage,[3] but they acknowledged the potential to create a court in the future through an additional protocol to the African Charter.[4] States eventually created the African Court on Human and Peoples' Rights when they appreciated the deficiencies of the existing regime, based on the African Commission on Human and Peoples' Rights, whose resolutions lacked binding authority and were frequently ineffectual.[5]

Despite these variations, the process is essentially the same: states, through a legal instrument, delegate authority to an international court to adjudicate international disputes in a particular international legal regime. Depending on their design, international courts may oversee a particular treaty or particular body of law. The International Tribunal for the Law of the Sea is one of the dispute settlement options for parties to the UN Convention on the Law of the Sea, and the International Criminal Court is charged with overseeing the international crimes defined in its founding treaty, the Rome Statute. But other international courts have more expansive jurisdictions and promote compliance with a range of legal obligations. The International Court of Justice can hear disputes concerning any matter under international law, and regional integration courts, such as the European Court of Justice, oversee the agreements their respective regional organizations conclude.

International courts are thus states' agents, which states create for their expertise in interpreting and applying international law, and rendering authoritative, legally binding rulings. Adjudication is their core task, as their constitutive treaties articulate. These treaties can vary in their level of precision regarding international courts' institutional design; after all, states negotiating the treaty may lack the legal expertise to specify the finer points of international courts' operational rules and procedures. These treaties therefore tend to focus on essential

[3] As early as 1981, prior to the AU's adoption of the African Charter on Human and Peoples' Rights, Guinea had proposed the AU create a court to judge both crimes against humanity and human rights. Quoted in (Ouguergouz 1993, 72). This proposal was directed at the situation in South Africa after the 1976 uprising in Soweto. See (Viljoen 2012, 412).
[4] Organization of African Unity, "Draft African Charter on Human and Peoples' Rights," 1979.
[5] E,g, Viljoen 2012; Murray, Long, and Evans 2015.

design features and leave the rest to be determined by international judges once the court is constituted. These delegation contracts, therefore, are "incomplete contracts,"[6] leaving substantial aspects of an international courts' design to be determined by court officials themselves.

States do, however, tend to specify particular aspects of international courts' agency in their delegation contracts. These treaties always carefully define the scope of international courts' jurisdiction and relevant law, as well as how courts may receive cases (and from which types of actors). In these treaties, states also specify the procedures for appointing international judges and are unequivocal about the necessity of judicial independence. States also clarify their authority to modify their agents; for example, they may include provisions for amendments and conditions under which they can remove judges from office. They also often require that international courts report on their activities to their associated political bodies. Though "incomplete," these treaties create the basic foundation of an international court.

To create viable agents that can perform their delegated tasks, however, further developments must occur. After all, international courts, like all IOs, "do not simply pursue the mandates handed to them"; instead, they "must transform these broad mandates into workable doctrines, procedures, and ways of acting in the world."[7] There can thus be a lag between international courts' *de jure* creation as agents and their *de facto* agency for performing their delegated mandates. First, when these treaties enter into force and legally create international courts, states must appoint judges. For example, the AfCHPR's protocol entered into force in January 2004, but due to delays in states' judicial nominations and elections, the Court only had officials and any substantive form of agency two years later, once AU states elected its first set of judges.[8] The AfCHPR's experience with delayed judicial appointments was rare,[9] but even in international courts with quickly-appointed judges, judges must "complete" their incomplete

[6] States write incomplete delegation contracts because they cannot possibly specify "the full array of responsibilities and obligations of the contracting parties, as well as anticipate every possible future contingency" (Cooley and Spruyt 2009, 8). This is especially true for international courts, where legal expertise is required to complete the incomplete contracts.
[7] Barnett and Finnemore 2004, 5.
[8] African Union, "Decision on the Election of Judges of the African Court on Human and Peoples' Rights," 2006.
[9] As will be discussed in Chapter 2, SADC states also withheld appointments of judges.

delegation contracts by developing the court's rules and procedures, overseeing the registry's development, formulating operational budgets, and so on. Only once they develop into fully-fledged organizations can international courts become viable agents that can implement their delegated mandates.

International Courts' Judicial and Non-Judicial Agency

International courts are complex bureaucratic organizations: like all IOs, their agency relies on multiple actors within different sections of an organization performing their duties and contributing to the organization's overarching goals. International courts have at least two core components—chambers with international judges, one of which is the court's president, and a registry or secretariat with their administrative officials.[10] Adjudicating cases is international judges' exclusive domain, and the registry, an understudied organ within international courts,[11] carries out various activities that support adjudication. As the International Court of Justice notes in its annual reports, "Since the Court is both a judicial body and an international institution, the role of the Registry is both to provide judicial support and to act as an international secretariat."[12] As an official within the ICC's Registry described, unlike national courts, international courts lack "a state apparatus that supports the functioning of judges," and "the majority of that platform is provided by the Registry."[13] The registry deals with mundane administrative issues, such as case filings, translation, budgeting, and reporting, but it also is the key organ that has relations with parties to cases, the court's member states, and potentially other constituencies.[14] Several international courts have part-time judges, who hold judicial proceedings only in a few short sessions per year, so those international courts' registries are at the core of these courts' continuous presence and, indeed, agency.

[10] International criminal courts can also have a prosecutorial office, defence unit, victims department, and so on.
[11] Cartier and Hoss 2014.
[12] ICJ, "Report of the International Court of Justice, 1 August 2008-31 July 2009," 2009.
[13] Interview with Osvaldo Zavala Giler, Special Assistant to the Registrar and Legal Officer, Registry, ICC, 11 June 2014.
[14] For an overview of the functions of registries and legal secretariats in international courts, see Cartier and Hoss 2014.

Despite these internal dynamics, international courts' agency can be usefully analyzed at the aggregate, organizational level because of strong intra-organizational hierarchy. International judges decide not only international courts' judgments, but also their administration and related activities.[15] In the ITLOS, for example, judges serve on different committees dedicated to particular operational issues, including "Rules and Judicial Practice," "Budget and Finance," and "Public Relations," which determine the overall operations of the Tribunal, carried out by judges or administrative officials.[16] Many international courts dedicate considerable effort towards strategic planning, in which judges and administrative officials decide upon the court's overarching policies and practices. The ICC, for instance, developed its "Integrated Strategy for External Relations, Public Information and Outreach," which "coordinates the external relations, public information and outreach work of the Presidency, Office of the Prosecutor (OTP) and the Registry; ensuring that these diverse activities fall within a common strategy, with mutually reinforcing messages, activities and goals."[17] Thus, international courts' activities, both within and beyond the realm of adjudication, are generally coordinated and coherent across the organization. Individual officials (e.g., judges and administrators) and courts' organs (e.g., chambers, the registry) may be the particular actors carrying out certain tasks, but they are acting with reference to their organization's overarching policies and practices. Thus, we can theorize international courts as "agents" without much risk of oversimplification.

However, given this diversity of actors within international courts and tasks underpinning their core mandate of adjudication, international courts' agency has both judicial and non-judicial dimensions. Judicial agency pertains to international judges interpreting and applying international law, adjudicating disputes, and rendering judgments. More specifically, judges may decide on the courts' jurisdiction over matters, identify the relevant law, and resolve conflicts between competing norms and laws in different contexts. International judges, quite

[15] Again, international criminal courts would be the exception, where different organs would be essentially pursue their own, potentially conflicting mandates autonomously.
[16] ITLOS, "Committees," <*www*.itlos.org/en/the-tribunal/committees/>. See also ITLOS annual reports.
[17] ICC, "Integrated Strategy for External Relations, Public Information and Outreach."

obviously, are the key actors behind international courts' judicial agency.[18] International courts' non-judicial agency, however, refers to courts' ability to perform various tasks associated with adjudication. At the very least, international courts' non-judicial activities provide a supportive framework for adjudication (e.g. legal research, translation, budgeting, training, administering legal aid), but they may also pursue largely distinct objectives. At least by design, international courts' non-judicial agency involves both administrative officials and judges. Accounting for both dimensions of international courts' agency is thus essential for understanding how international courts operate and fulfil their mandates.

Scholars have extensively studied how international courts exercise their judicial agency. At least within the discipline of political science and its decades of scholarship on international courts, scholars have generally recognized that international courts' judicial agency is constrained both states and legal norms, as will be discussed further in Chapter 2. The result is that international courts have relatively strict boundaries for how they exercise their judicial agency. Even leaving aside states' potential influence and exclusively focusing on law, international judges must adhere to the prescriptions regarding their jurisdictions, legally legitimate interpretative strategies, and so on. As some scholars have noted, international judges can engage in law-making[19] but under restrictive conditions. In addition, through their judicial agency, international courts can merely have influence through the main "outputs" of adjudication: judgments. They can attempt to influence the persuasiveness and authority of their judgments based on sources of law, procedural fairness,[20] and so on, but there is limited scope for amplifying international courts' ability to promote compliance through their judicial agency alone.

Scholars, conversely, have not significantly theorized how international courts' exercise their non-judicial agency.[21] This is perhaps because international courts' constitutive treaties rarely specify their non-judicial activities, and they may be dismissed as ancillary to international

[18] Legal officers from the registry can play a significant role in legal research and drafting judgments.
[19] E.g. Steinberg 2004; Alter and Helfer 2010; von Bogdandy and Venzke 2012a.
[20] Franck 1995.
[21] Terris, Romano, and Swigart (2007) provide a rare account of international courts' activities beyond adjudication, but they do not theorize how international courts' agency per se.

courts' core work of adjudication. International courts' non-judicial agency, however, is not only distinct from their judicial agency in the kinds of tasks it is directed towards, but also in its potential for development. Crucially, compared to their judicial activities, international courts' non-judicial realm of activity is relatively unconstrained and thus allows for greater strategic entrepreneurship. Not only are non-judicial activities rarely specified in international courts' constitutive treaties,[22] but there is also a relative absence of norms governing international courts' non-judicial agency. International court officials have considerable discretion over how they develop their non-judicial agency, which thus provides distinct opportunities for international courts to carry out their mandates.

The Challenge of Promoting Compliance

States create international courts to, through adjudication, increase actors' accountability for their international legal obligations and, ultimately, promote compliance with international law. International courts' legal regimes generate rights and obligations for states and, in some cases, non-state actors. When an actor suspects another actor (usually a state) has violated their legal obligations, they can submit their dispute to a relevant international court. International judges then make an authoritative legal determination of the actors' compliance or noncompliance in the form of a binding judgment, and potentially order remedial measures for violations. Promoting compliance, therefore, is overarching purpose of international adjudication through international courts.

In this sense, international courts generally aim to promote actors' conformity with the prescriptions or proscriptions of international law.[23] As noncompliance and compliance are not dichotomous, but are two ends of a spectrum of behaviour,[24] international courts can promote compliance by inducing behavioural changes along this spectrum. Many of international law's prescriptions and proscriptions are complex, where state action can comply with some but not all

[22] On the lack of specifications of registries' duties, see Cartier and Hoss 2014.
[23] See, e.g., Young 1979, 104.
[24] von Stein 2013.

aspects of an international legal rule or judicial decision.[25] Essentially, there can be partial compliance with international law. For example, many Inter-American Court of Human Rights judgments require substantive changes in states' policies, which may take years to implement in domestic legislation. Some changes may survive the legislative process, while others do not, and in this sense, states can only partially comply with IACtHR judgments. There are some forms of compliance that are also considered "acceptable,"[26] rather than ideal. The European Court of Human Rights, through its "margin of appreciation" doctrine, allows a degree of deference to national legislative, executive, administrative and judicial bodies in implementing their international legal obligations,[27] which blurs the boundaries between compliance and noncompliance. Thus, even without obtaining "full" compliance, international courts can promote compliance with international law.

International courts "targets" for compliance are increasingly diverse, as their legal regimes generate obligations for states and, in some cases, non-state actors. Traditionally, international courts, like international law and international relations more generally, has been the exclusive realm of states. States, as the creators of international law and courts, consent to particular international legal obligations and delegate authority to international courts to interpret these obligations and check noncompliance. International law and courts overwhelmingly focus on promoting states' legal accountability. Still, as discussed in the introduction, international courts' design features have evolved over time, where several international courts oversee legal obligations for non-state actors, including IOs (bodies of regional integration organizations) and individuals (for individual criminal responsibility).

International courts, however, face considerable challenges in implementing their core mandate of promoting compliance. The state structure that is so fundamental to domestic courts' capacity to enforce their judgments is absent at the international level.[28] Crucially, the anarchical

[25] Partial compliance can occur, for example, when treaties require domestic implementation (incorporation in to domestic laws). States may not pass implementing legislation, may implement some but not all of the treaty, may fail to enforce legislation, etc. See, e.g., Hawkins and Jacoby 2010.
[26] For a discussion of acceptable levels of compliance in different legal regimes, see Chayes and Chayes 1995, 17-22.
[27] See, e.g., Gruszczynski and Werner 2014, 1.
[28] For how this distinction is not all that absolute, see Staton and Moore 2011.

international system lacks an overarching enforcement authority, which makes compliance a persistent problem. While some assert that states generally follow the legal rules to which they commit,[29] compliance problems are endemic to an international legal system that lacks a centralized enforcement authority. Actors' interests and norms do not always align with their international legal commitments,[30] so without centralized enforcement, noncompliance is inevitable. The prevalence of noncompliance can depend on the "depth" of cooperation and legal obligations in a regime; this "depth" refers to the extent to which the legal obligation requires actors to depart from what they would have done in its absence.[31] Noncompliance, therefore, may be more pronounced in regimes that aim to highly regulate and adjust actors' behaviour, such as human rights law and environmental law.

International Courts' Agency for Promoting Compliance: Four Approaches

The distinction between international courts' judicial and non-judicial agency is highly salient when considering how international courts can fulfil their core mandate of promoting compliance with international law. Crucially, it affects the scope of their potential approaches for promoting compliance, where courts' non-judicial agency, which is relatively unconstrained, provides distinct opportunities for influencing actors.

International courts' judicial agency is fundamental to their ability to promote compliance. However, as promoting compliance is about altering behaviour, their judicial agency for promoting compliance is not achieved through selecting "politically tolerable" rulings within their judicial "strategic space,"[32] which are more likely to elicit compliance, though international judges may do this. As Alec Stone Sweet and Thomas Brunell note, "Any informed observer of

[29] Henkin (1979), for example, famously asserts that "almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time." Chayes and Chayes (1993; 1995) also argue that states' compliance with international law is generally high.
[30] From a rationalist, utility-maximizing perspective, it is puzzling why governments, which seek to promote their own interests, would ever comply with rules that are not in their immediate self-interest (e.g. Keohane 1984, 99). Equally, from a constructivist perspective, compliance would be challenging concerns about compliance generally relate to the potential divergence between states' international legal commitments and their internalized norms of legitimate, appropriate behaviour.
[31] Downs, Rocke, and Barsoom 1996, 383.
[32] Helfer and Slaughter 2005, 45.

even the most powerful court can point to specific rulings in which compliance considerations weighed heavily on the outcome."[33] Karen Alter similarly argues that, in adjudicating disputes, international courts "specify what the law requires, issuing a ruling that more often than not is a legal compromise designed to facilitate voluntary compliance."[34] Some analysts of the European Court of Justice have argued that the Court intentionally mirrors states preferences to gain support.[35] But these are strategies of accommodation, where judges shape rulings based on how they anticipate actors will behave. Promoting compliance, conversely, involves changing actors' behaviour through particular mechanisms that judges may employ in adjudication.

However, international courts' judicial agency for promoting compliance is largely contingent on their delegation contracts containing these mechanisms and delegating judges the authority to use them. This relates to the strong constraints on judicial agency. International judges have considerable discretion in interpreting and apply international law, but the provisions in their constitutive treaties, as well as the legal and judicial norms of adjudication, carefully define this judicial discretion. Within the permissible limits of international legal interpretation, international judges can attempt to increase the persuasiveness of their legal argumentation in their rulings,[36] and perhaps develop legal doctrines that strengthen their mechanisms for promoting compliance through their judicial agency, but they do this under their strategic and normative constraints.

International courts' non-judicial agency for promoting compliance operates very differently and provides international courts distinct opportunities for influence. Generally, based on their founding treaties, international courts' non-judicial activities are intended to provide support for adjudication, with no direct relation to compliance issues. But as their non-judicial agency is much more open-ended, it provides them greater freedom to formulate policies and practices targeted towards their mandate of promoting compliance. Thus, international courts

[33] Stone Sweet and Brunell 2013, 67. They, however, dispute that noncompliance considerations systematically influence international courts' decision-making. After all, judgments aimed at securing compliance but condemned as legally illegitimate would be likely to paradoxically promote noncompliance.
[34] Alter 2014, 13.
[35] E.g. Garrett 1995. This, more generally, represents the realist perspective on international judicial behaviour.
[36] For example, judges may refrain from issuing dissenting opinions so that the court speaks with one authoritative voice. They may also adjust their citations for particularly "legitimate" sources.

may use their substantial discretion over their non-judicial agency to develop it in ways that are less focused on supporting adjudication and more oriented towards inducing behavioural changes among actors in their legal regimes and promoting compliance.

The distinction between international courts' judicial and non-judicial agency is therefore salient for understanding how they are designed to promote compliance and how they may develop their own approaches for promoting compliance. To understand how international courts can promote compliance, we must therefore understand the potential range of mechanisms for influencing actors' behaviour, which their judicial activities and especially their non-judicial activities might reflect. After all, compliance is a "conceptual variable," which is contingent on a given theoretical orientation.[37] Within both the disciplines of international law and international relations, there are various theories of why actors comply with international law. Different theories highlight distinct mechanisms through which compliance can be induced; therefore, theoretical pluralism is required to assess the full spectrum of approaches for promoting compliance with international law, which international courts can potentially use through their judicial and/or non-judicial agency.

There are two key dividing lines that distinguish international courts' approaches for promoting compliance (see Table 1.1). One divide relates to the different *logics* guiding targets' behaviour; the other captures the different *means* through which international courts can influence their targets. International courts can aim to influence two distinct logics that underlie actors' behaviour: the rationalist logic of consequences and constructivist logic of appropriateness.[38] Through the rationalist logic, international courts can alter the consequences of actors' noncompliant behaviour in order to change their interest-based calculations about compliance with international law. The constructivist logic operates differently: international courts can promote compliance by influencing what actors consider legitimate, appropriate behaviour, and aligning it with international courts' norms, rules, and procedures. International courts can attempt to influence behaviour and promote compliance by directly influencing their

[37] Kingsbury 1998, 345–346; Raustiala and Slaughter 2002.
[38] See March and Olsen (1989) for a full exposition of the different logics.

targets (whether they are states, IOs, or individuals). They can also seek to indirectly alter behaviour through facilitating and coordinating other domestic and international actors (such as IOs, NGOs, and substate actors), which function as intermediaries between the international courts and their targets for compliance.

Logics

To promote compliance with their laws and judgments, international courts can appeal to two distinct behavioural logics in their targets: consequentialism and appropriateness. March and Olsen first developed this distinction between these two logics, arguing that action can be driven on the one hand by a "logic of anticipated consequences and prior preferences," and on the other hand by a "logic of appropriateness and senses of identity."[39] The rationalist logic of consequences is based on self-seeking individualism and the pursuit of self-interest. It assumes that actors' behaviour and compliance is guided by expected consequences. Conversely, the constructivist logic of appropriateness recognizes the substantial role of identities, rules, and institutions in shaping behaviour. It operates when actors are socialized, to varying degrees, into international norms and law, and their preferences and behaviour are determined by what is legitimate and appropriate. Instead of following norms for instrumental reasons, as the rationalist logic of consequences would assume, actors are driven by principled beliefs, values, and desire for normative consistency.[40] While some have critiqued the two-logic distinction as a means of explaining behaviour,[41] here it is used to frame how international courts may attempt to influence their targets' behaviour, rather than establish which logics are actually guiding targets' behaviour (and compliance). Essentially, international courts can orient their policies and practices toward

[39] March and Olsen 1998, 949–954.
[40] Abbott and Snidal (2013) use the term "value actors."
[41] Some critique March and Olsen's distinction. For example, Müller (2004) argues that the logics of consequences and arguing are actually both part of the logic of appropriateness. Pouliot (2008) argues that the "logic of practicality," where practices are the result of inarticulate know-how that makes what is to be done self-evident or commonsensical, is ontologically superior to the logics of consequences, arguing, and appropriateness.

shaping targets' incentives and norms, based on consequentialism and appropriateness, respectively, in attempting to influence behaviour and promote compliance.

International courts' approaches can appeal to these behavioural logics to either prevent or remedy noncompliance. This relates to the distinction between "first order" compliance with treaty obligations and "second order" compliance with judgments of a treaty regime's dispute settlement body.[42] International courts could appeal to these logics to influence actors' behaviour e*x ante*, where international courts' interventions shape actors' decision-making and behaviour in favour of compliance with international law. Thus, international courts can use incentives or norms to try to "deter" or "prevent" noncompliant behaviour. But international courts can also influence actors' consequences *ex post*, in instances where actors have failed to comply. International courts can authorize costs for noncompliance under the consequentialist logic, or perhaps shame noncompliance under the appropriateness logic, to correct noncompliant behaviour. Thus, international courts' approaches can promote compliance with international law in general and with their judgments specifically.

Means

The matrix's divide between direct and indirect means of promoting compliance relates to the potential for international courts to govern actors' behaviour through their use of intermediaries. Direct approaches rely on relations between international courts and their targets for compliance, while indirect approaches are more complex, involving relations between international courts, intermediaries, and targets for compliance.

In most international courts, in keeping with the traditional, state-based nature of international law, states are targets for compliance. States consent to create international courts and acquire particular legal obligations. Within states, various actors from all branches of government (the executive, legislature, and judiciary) can "independently" choose to fulfil those

[42] Fisher (1981) develops this distinction, which von Stein (2013) also uses. Ginsburg and McAdams (2003, 1235) similarly distinguish between primary compliance with international norms, embodied in treaty obligations, and secondary compliance with decisions of international courts.

obligations and comply with international law,[43] though this depends on states' political systems and the legal obligations in question. For example, especially among states where there is limited separation of powers, the executive can largely control choices for compliance with international law. However, in some international courts, IOs and individuals also can be targets for compliance. Regional integration courts can target the "supranational" policy organs within their regional organizations, as these organs are prohibited from developing policies that violate the organizations' constitutive treaties. International criminal courts target individuals, based on individual criminal accountability for mass atrocities. International courts may, therefore, directly aim to influence these diverse targets to promote compliance.

The direct-indirect distinction relates to general trends in global governance, where non-state, private actors are increasingly prominent, influential, and incorporated into traditionally state-based institutional arrangements. Scholars have observed that recent decades have witnessed a shift to more complex forms of governance, where IOs are increasingly engaging transnational actors (NGOs, multinational corporations, etc) as policy experts, service providers, and compliance watchdogs.[44] Similarly, scholars have noted that IOs frequently practice "orchestration," where they enlist and support intermediary actors to address target actors in pursuit of governance goals.[45]

International courts, therefore, can also potentially use intermediaries for their overarching aim of promoting compliance with international law. Based on their expertise, resources, or relationships with targets, for example, these actors can potentially exert greater influence over the behavioural logics of international courts' targets for compliance. International courts can use their judicial or non-judicial agency to seize these intermediary actors, such as IOs, national courts, lawyers, civil society groups, and the media. They may use intermediaries to influence targets through both consequentialism and appropriateness, through

[43] E.g. Alter (2014, 53) refers to these actors as "compliance partners" – "judges, government officials, members of administrative agencies, or militaries) that already have the power to choose compliance."
[44] Jönsson and Tallberg 2010; Tallberg et al. 2013.
[45] Abbott et al. (2015, 4) develop the concept of "orchestration" to capture how IGOs can enlist and support intermediary actors to address target actors in pursuit of IGO governance goals.

legal or more political avenues. Intermediaries can support a range of mechanisms of influence, including enforcement, monitoring, litigation, and norm dissemination.

Table 1.1. Approaches for Promoting Compliance with International Law

	Direct	**Indirect**
Targets' Logic of Consequences (Incentives)	▪ Costs (e.g. compensation) ▪ Enforcement (e.g. authorizing sanctions)	▪ Implementation through domestic actors (e.g. national courts) ▪ Mobilizing intermediaries to create costs for noncompliance (e.g. electoral accountability)
Targets' Logic of Appropriateness (Norms)	▪ Interaction (persuasion, social influence)	▪ Norm development through intermediaries (IOs, NGOs, academia, etc)

International courts can therefore influence their targets for compliance by appealing to two distinct behavioural logics either directly or indirectly, which forms a matrix of approaches for promoting compliance (Table 1.1). This matrix is grounded in international courts' judicial and non-judicial agency, and an international system populated with diverse international actors, which can potentially collaborate with international courts in fulfilling their overarching purpose of promoting compliance. The following sections explore the distinct possibilities of each of these approaches for promoting compliance.

Directly Influencing Consequences

This approach is aligned with the "enforcement" perspective of international law, which posits that actors are likely not to substantively alter their behaviour to comply in the absence of enforcement mechanisms.[46] It is also consistent with the realist perspective on international law, which posits that noncompliance is common and results from self-interested behaviour. According to these perspectives, compliance can only be induced through costly penalties, and international courts' ability to promote compliance rests on rests on material coercion and enforcement. Though international courts have no independent coercive capacity, which limits their ability to develop non-judicial means of coercion, states may delegate to international courts the ability to directly impose costs for noncompliance and authorize sanctions. In addition, international courts may be able to develop their jurisprudence in order to impose costs for noncompliance; for example, both the European Court of Justice and European Free Trade Association Court have developed doctrines of state liability for violations, which supports ordering damages for injured parties.[47] These judicial enforcement measures, however, vary in their coerciveness.

International courts, in adjudicating a dispute, can order the respondent (a state or IO) to pay reparations or compensation for their violation of international law. For international crimes, judges can sentence individuals to serve time in prison. In this sense, international judges directly create costs for noncompliance based on law. Still, as with any international court judgment, politics may intervene, and the party to the dispute may not implement the reparations, compensation, or prison sentence. International courts cannot, on their own, apprehend individuals to serve their prison sentences. In states where there is domestic legislation that executes the international court's judgments, adherence to the court's order could be more likely, but generally it is by no means guaranteed by the court's judgments alone. Therefore, it is a rather weak coercive measure.

An international court's strongest judicial mechanism for enforcement is authorizing sanctions. This is very rare, however; usually the political organs of IOs, rather than their courts, are empowered to sanction noncompliance. The reciprocity of trade agreements, nevertheless, facilitates a robust enforcement mechanism, where if a party does not comply with an

[46] Downs, Rocke, and Barsoom 1996.
[47] The key cases were *Francovich* v. *Italy* (1991) in the ECJ and *Erla María Sveinbjörnsdóttir* v. *Iceland* (1998) in the EFTA Court.

international court's ruling, the court can authorize the injured party to impose retaliatory sanctions. In a world where international law's enforcement is decentralized, this is a rare exception where an international court can directly authorize robust enforcement measures, as is the case in the WTO's legal regime.[48] The complainant state has strong incentives to implement the sanctions (e.g. a raise in tariffs), given that it has borne the costs of the respondent's noncompliance, and the sanctions would presumably impose material costs for the respondent state and gains for the complainant state. Theoretically, it becomes too costly not to comply, so the offending state changes its behaviour and ultimately complies with international law.

Thus, to some extent, international courts' agency for ordering costs for noncompliance and authorizing enforcement measures counters some of the concerns of "managerial" compliance theorists, who argue that the coercive approach is doomed to fail because, among other factors, sanctioning authority "is rarely granted by treaty, rarely used when granted, and likely to be ineffective when used."[49] The enforcement versus management debate need not be settled here;[50] what is important is that the enforcement perspective can highlight one way—through directly creating consequences for noncompliance—that international courts can promote compliance.

Indirectly Influencing Consequences

Under this approach, international courts can still aim to influence consequences for noncompliance but through intermediary actors. This approach is grounded in broadly liberal and neoliberal institutionalist theories of compliance, which elucidate how international courts can use intermediaries operating domestically and internationally to create consequences for

[48] Article 22, DSU.
[49] Chayes and Chayes 1995, 32-33.
[50] Indeed, the enforcement-management divide has been bridged, for example, in Jonas Tallberg's study of the European Union's compliance system. Tallberg (2002, 610) posits that "the international record lends support to the proposition that compliance systems are most effective when combining enforcement and management strategies."

noncompliance. These intermediaries have distinct abilities to impost costs for noncompliance, according to this set of theories.

As liberal compliance theories would suggest, international courts can find intermediaries for influencing states' behaviour at the substate level. According to this perspective, individuals' preferences are aggregated and mobilized through political processes, with various influences on state institutions.[51] Substate actors, therefore, can influence states' compliance with international law. For international courts, using domestic actors to influence state behaviour can bypass the problem of enforcement at the international level by relying on domestic legal and political mechanisms instead. International courts, which rely on delegated authority and state consent, have limited capacity to coerce, so instead they can mobilize domestic actors with shared objectives and the ability to make noncompliance costly.

Many legal regimes require that international law is implemented domestically, where national courts become intermediaries for domestic enforcement. National courts, which are embedded within state structures, have the enforcement capabilities that international courts lack.[52] International courts can thus use national courts as conduits for international law into the domestic sphere, where it can be effectively enforced.[53] Through their rulings, international courts can encourage judicial dialogue with national courts.[54] Some regional integration regimes embed this through preliminary ruling procedures, where national courts refer relevant cases to international courts and then implement their rulings domestically, but international courts can also use their jurisprudence to clarify national courts' obligations to implement international law. The European Court of Justice is the classic case where an international court developed a powerful set of legal doctrines, which facilitated national courts' enforcement of European law.[55] Still, national courts may not choose to refer cases to international courts or implement their rulings; for example, national courts in the Andean Community refer cases much less than in the

[51] Slaughter 1995.
[52] Still, as Staton and Moore (2011) note, it is important not to overstate the differences between international and national courts.
[53] E.g. Slaughter and Burke-White 2006.
[54] Helfer and Slaughter 1997.
[55] Burley and Mattli 1993; Mattli and Slaughter 1995.

European Union.[56] Thus, more generally through their non-judicial agency, international court officials can communicate and interact with national judges (e.g. through workshops and training) to elucidate how they can implement international law domestically and their obligations to do so.

Liberal theories also suggest that international courts can indirectly promote compliance by mobilizing substate actors to pressure governments to comply with their legal commitments. While regime-type influences the relevance of this mechanism, international courts can use civil society actors (e.g. NGOs, law societies), which share their objectives, to hold governments accountable and generate domestic political costs for noncompliance. International courts, for example, can disseminate their norms, as well as information on state noncompliance, to mobilize these actors to generate bottom-up pressure on governments. This mechanism is obviously weaker than the treaty implementation approach. For example, civil society groups can lobby governments and create electoral costs for noncompliance, but these consequences might not outweigh the benefits of noncompliance. It is also highly dependent on regime-type, and civil society also may not mobilize in favour of creating costs for noncompliance. For example, in 2013, Kenyans democratically elected Uhuru Kenyatta and William Ruto (the so-called “Alliance of the Accused”), who had been indicted by the ICC in 2011, but had persuaded many Kenyans that the indictments were a performance of injustice, neo-colonialism, and threat to the country’s sovereignty, peace, and stability.[57]

Neoliberal institutionalist theories, which stress the significance of reputational costs, reveal another way in which international courts can indirectly create consequences for noncompliance. Reputational concerns are thought to be particularly important because they can help sustain international cooperation even in the absence of centralized enforcement.[58] Reputational costs arise when states are seen to defect from cooperative arrangements, which harms their prospects for other forms of cooperation. Delivering a judgment itself can generate

[56] Helfer and Alter (2009, 875) note that, unlike in Europe, “In the Andean context, national judges do not pose far reaching or provocative questions that would provide the ATJ with opportunities to expand the scope and reach of Andean law.”
[57] Lynch 2014.
[58] See, e.g., Brewster 2013b.

reputational costs by publicizing noncompliance,[59] but international courts can take a much more active approach to ensuring, and potentially increasing, states' reputational costs for noncompliance. Even if states manage to avoid judicial proceedings, for example, international courts can monitor and disseminate information about suspected noncompliance to the offending states' cooperation partners, ensuring reputational costs. The cooperation partners function as intermediaries, which can mobilize and generate costs for the offending state. For example, based on the ICC warrant for his arrest, the United States blocked indicted Sudanese President Omar al Bashir from receiving the necessary visa to attend the UN General Assembly meeting in 2013.[60]

At the international level, international courts can also develop and mobilize intermediaries to increase the prosecution of noncompliance and the enforcement of international court decisions. To increase the prosecution of noncompliance, and thus the consequences for noncompliance, international courts can mobilize litigants (e.g. lawyers, NGOs, individuals)[61] or their associated supranational commissions to bring forward cases of noncompliance. These intermediaries can function as police patrols or fire alarms for noncompliance.[62] Through their rulings and non-judicial communication (e.g. training), international courts can clarify these intermediaries' opportunities for prosecuting noncompliance, encourage litigation, and thus make noncompliance more costly. Similarly, as most international courts do not control the enforcement of their decisions, but their associated political bodies do, they can exert pressure on these actors to enforce their decisions. For example, as will be discussed in Chapter 4, the African Court has proposed a more robust mechanism for mobilizing the AU Assembly to enforce its decisions.

[59] Helfer and Slaughter 1997; Guzman 2002. Judgments involving remedies might negate the effects of reputational costs, as states essentially demonstrate some level of cooperative behaviour (Brewster 2013a).
[60] "Sudan Protests to US over Blocked Visa for President Bashir," *The Independent*, September 28, 2013.
[61] Tallberg (2015), for example, discusses how the ECJ enlists and trains lawyers to increase litigation.
[62] E.g. McCubbins and Schwartz 1984; Raustiala 2004.

Directly Influencing Appropriateness

Based on constructivist theories of international relations and international law,[63] international courts can aim to socialize their targets for compliance and thus influence their standards of legitimate, appropriate behaviour. Socialization processes can induce endogenous changes in targets' identities, interests, and behaviour. Socialization is the process through which principled ideas become norms in the sense of collective understandings of appropriate behaviour, which lead to changes in identities, interests, and behaviour. Socialization processes can culminate in internalization, where norms are so deeply embedded that actors take them for granted.[64] But even "weak" socialization can affect behaviour and compliance: actors can conform to community norms without internalizing them.[65] International courts can aim to promote compliance through socializing their targets and directly influencing their logic of appropriateness.

Alastair Iain Johnston's seminal account of socialization through the microprocesses of persuasion and social influence elucidates how international courts can attempt to socialize their targets for compliance.[66] Agents of socialization can persuade actors by exposing them to counter-attitudinal information, which can change actors' beliefs and behaviour.[67] Agents of socialization can also affect actors through social influence, which promotes actors' conformity with norms of their community based on the distribution of social punishments and rewards. They can, for example, shame actors for not behaving in accordance with their role and identity through shunning, excluding, and demeaning these actors, but they can also praise and reward behaviour for conforming to role expectations.[68]

---

[63] This IR literature generally does not study socialization specifically vis-à-vis legal norms. Though relatively few IL scholars have drawn on the insights offered by constructivist IR theory (Brunnée and Toope 2013, 138), IL scholars are increasingly making connection between socialization and IL, including Koh's (1996; 1997) transnational legal process theory, Brunnée and Toope's (2010) interactional account of IL, and Goodman and Jinks's (2004; 2013) work on states' socialization in the area of human rights.
[64] Bearce and Bondanella 2007; Checkel 2005; Finnemore and Sikkink 1998; Risse and Sikkink 1999.
[65] E.g. Johnston 2001; Checkel 2005; Goodman and Jinks 2004; Goodman and Jinks 2013.
[66] Johnston 2001.
[67] Ibid., 496–499.
[68] Ibid., 499.

International institutions, including international courts, can function as "social environments" in which socialization can occur.[69] According to the interactional theory of international law, for instance, having spaces for ongoing interaction is critical for cultivating and maintaining law's obligatory power—its self-binding effect.[70] International courts and adjudication processes can provide such spaces for interaction, promoting compliance with international law through instilling a sense of obligation in actors.

But in issuing judgments, international courts act as agents of socialization, clarifying actors' standards of legitimate, appropriate behaviour. International courts' rulings need to be persuasive legal interpretations, and they effectively praise compliance and shame noncompliance with international law, which can exert social pressure for actors to conform to legal rules. However, through their non-judicial agency, international courts have the potential to further develop themselves as agents of socialization, norm entrepreneurs,[71] and "teachers of norms"[72] to promote compliance with international law. International courts' non-judicial agency opens up new avenues through which international courts can attempt to socialize their targets for compliance. International courts can use tools of communication and interaction (e.g. diplomacy, training, outreach) with their targets for compliance. These forms of communication and interaction can be fundamentally different than the adjudication process and rulings, and allow international courts greater scope and flexibility in their tactics of persuasion and social influence aimed at changing state interests and behaviour.

International courts' targets are mostly states, though they can aim to socialize actors within supranational IOs for their compliance with regional law, as well as individuals to prevent their perpetration of international crimes. Generally, however, international courts targets for compliance are states, and they can aim to alter the logic of appropriateness of various state

[69] Ibid.
[70] Brunnée and Toope 2010, 98.
[71] There is a broad literature on how states and elites (Ikenberry and Kupchan 1990; Wang 2003; Wiener 2008), and non-state actors, such as NGOs and transnational advocacy networks (Finnemore and Sikkink 1998; Checkel 1999; Risse, Ropp, and Sikkink 1999) promote socialization processes.
[72] Finnemore 1993.

officials (e.g. members of the executive, legislature, and judiciary) that control compliance,[73] and thus influence behavioural outcomes. Thus, through socialization, international courts may be able to increase their state-based "compliance partners," which are "usually predisposed to embrace legal solutions because they see themselves as rule of law actors."[74]

Indirectly Influencing Appropriateness

Through this approach, international courts use intermediaries as agents of socialization, which advocate for compliance among courts' targets. The approach is indirect because the international courts are merely collaborators; it is the intermediaries that aim to alter targets' logic of appropriateness and promote compliance with international law. Intermediaries can target specific actors, such as international courts' member states, trying to persuade them to comply with their international legal obligations. They can, moreover, socialize non-member states and other external actors to, for example, support the court's activities and/or acquire legal obligations; they can thus promote compliance by bringing new actors into the regime. Intermediaries' effect can be more diffuse, where their activities—without reference to any specific target—generally shape the international normative environment, enable international courts to fulfil their mandates, and makes actors more likely to comply through the logic of appropriateness.

Intermediaries can be virtually any type of actor: states, IOs, NGOs, corporations, jurists, etc. They may, furthermore, operate domestically, transnationally, or internationally. These actors may be willing collaborators because they share international courts' objective of promoting compliance with international law, or international courts may need to clarify their incentives and norms to act as intermediaries. Nevertheless, international courts use these actors

[73] Alter develops the concept of "compliance partners" including judges, government officials, members of administrative agencies, or militaries, which "already have the power to choose compliance" (2014, 53). This connects with Goodman and Jinks' (2013, 13) macro-micro-macro explanation of how socialization influences states' compliance, though they are broader in their inclusion of micro-level actors (e.g. national and local media, issue-specific activists, and even ordinary citizens).
[74] Alter 2014, 53.

for their advocacy capabilities, resources (whether material or ideational), and access to courts' targets for compliance. The classic example is the European Court of Justice's use of jurist advocacy movements in Europe to legitimize and promote states' compliance with its rulings.[75] A more contemporary and political example is that the International Criminal Court's close collaboration with the Coalition for the International Criminal Court, a group of NGOs that all support the Court, and coordinate their advocacy efforts for states' cooperation and compliance with its norms, rules, and procedures. International courts can thus use intermediaries to confer legitimacy upon their norms, interpretations, and mandates, and through intermediaries' use of persuasion and social influence, indirectly promote compliance through the logic of appropriateness.

The Four Approaches, Taken Together

All approaches for promoting compliance are potentially relevant to all international courts. For instance, one might intuitively assume that courts in the area of international human rights law (which manifests states' values and normative commitments) would be predisposed to adopt constructivist approaches, whereas courts interpreting and applying trade law (which pertains to the distribution of material benefits) would rely on consequentialist approaches. If this were the case, then the types of legal regimes in which international courts are embedded would have significant implications for theorizing the variation in international courts' approaches for promoting compliance.

However, theoretically there is no correspondence between types of international law or courts, and the approaches for promoting compliance. Each type of international court can potentially adopt any approach; there is no bias toward a particular logic or means based on a court's type. Using the previous examples, international human rights courts, which interpret and apply agreements that clearly reflect normative values, can employ the indirect consequentialist approach—working with national courts and civil society groups to alter government officials'

[75] Alter 2009; Bernier 2012; Vauchez 2014.

interests from the bottom-up. International courts interpreting and applying economic agreements can conceivably, according to approaches based on appropriateness, promote norms of reciprocity and fairness (potentially using intermediaries such as states and business groups), as well as appeal to self-interest.[76]

In addition, the relationship between international courts' four core approaches for promoting compliance can also be considered. At least theoretically, international courts' use of some approaches does not preclude their use of others. Approaches using the two behavioural logics can be complementary. Just as enforcement and managerial compliance strategies have been found to be complementary in the context of the European Union,[77] international courts' approaches based on consequentialism and appropriateness can be seen as complementary rather than competing. Courts' direct and indirect approaches can also be mutually reinforcing. For example, international courts can act as agents of socialization alongside intermediaries' advocacy strategies.

The Prevalence of Approaches Across International Courts

Thus far, this chapter has analyzed the approaches through which international courts can influence behaviour and promote compliance, but this theoretical potential for international court behaviour raises empirical questions. If international courts have multiple potential approaches for promoting compliance, how are they practiced across the various international courts in the international system? Are some approaches more common, and therefore relevant, than others? How do international courts combine different approaches? To further theorize how international courts promote compliance, international courts' theoretical potential must be reconciled with empirical reality.

A first cut empirical analysis of the prevalence of international courts' approaches for promoting compliance, therefore, supports further theorizing and empirical study in subsequent

[76] For a sociological perspective on trade law, see Cho 2014.
[77] Tallberg 2002b.

chapters. It also, in and of itself, makes a significant empirical contribution. There is a notable dearth of broad, systematic empirical research on international courts in the international legal and international relations scholarship on international courts. Cesare Romano, for example, notes that there have been few attempts at the difficult task of surveying the international judicial landscape as a whole,[78] and as judicialization proceeds, this empirical challenge is only growing. So far, the only medium-N comparative studies of international courts focus on coding their institutional designs, rather than studying how they actually behave.[79] Even Karen Alter's seminal comparative study of all permanent, operational international courts merely does medium-N comparisons based on design features and aggregated litigation data; she, conversely, relies on small-N case studies to empirically support her claims about how international courts' various roles alter politics.[80] This survey of all operational international courts' policies and practices, therefore, represents a uniquely broad empirical study of how international courts actually behave—both considering their design rules, as well as their policies and practices developed through their own agency.

The original dataset on all twenty-three permanent, operational international courts reveals the prevalence of international courts' approaches for promoting compliance (Appendix 1).[81] It details the approaches embedded in international courts' founding treaties, as well as the approaches international courts have developed through their own agency, as reflected in their recent activities. International courts' constitutive treaties are accessible and clear about the approaches states have delegated to international courts. International courts' development of judicial doctrines supporting particular approaches for promoting compliance is evident from their jurisprudence and associated analysis in secondary sources. Obtaining data on international courts' recent non-judicial activities, however, is more challenging, so a combination of international courts' reports and websites (containing press releases, news items, etc) has been

[78] Romano 2011, 242.
[79] For example, both Posner and Yoo (2005), and Helfer and Slaughter (2005) code under ten international courts and tribunals for their studies.
[80] Alter 2014.
[81] International courts are considered "operational" if they have appointed judges and the capacity to adjudicate cases. This includes international courts that do not receive cases but have appointed judges that can hear cases, such as the ENET, but it excludes international courts like the Association of Southeast Asian Nations' (ASEAN) Appellate Body and the SADC Tribunal, which ostensibly lack appointed judges and are inoperative.

used. These two sources offer the best publicly available data on international courts' non-judicial activities.[82] They were analyzed for a two-year period to capture activities that were potentially less frequently practiced,[83] and thus represent a "snapshot" of the prevalence of international courts' approaches. As such, the dataset distinguishes between international courts' approaches at their time of creation (as included in their constitutive treaties) and their approaches in recent years. With these two "time points," it is possible to miss approaches that were developed and then abandoned,[84] but all the approaches that have been institutionalized are captured. Though this dataset includes the full scope of information courts have released on their various activities, there is the potential for underreporting,[85] and the absence of data indicating a particular approach should not be interpreted as the absence of that approach in practice.

International courts' design features, case law, policies, and practices were categorized into the four approaches, with particular policies or practices having the potential to reflect more than one approach. Among the twenty-three permanent, operational international courts under analysis, there is tremendous variation in their approaches for promoting compliance with international law (Table 1.2). There are multiple levels of variation worth considering. There is the variation in the approaches states have embedded in international courts' formal design, compared to those developed though international courts' agency. Furthermore, there is also the distinction between approaches based on international courts' judicial and non-judicial agency.

---

[82] For further discussion on these sources and their availability across international courts, see Appendix 1. For example, internet searches for all courts and interviews at six courts revealed no additional data that would alter the approaches based on treaties, case law, reports, and websites.

[83] For most international courts, reports from 2013-2014 were coded, but occasionally the two most recent reports available would stretch into 2011-2012. This, however, would not substantively impact the analysis. Of course, one could analyse all of international courts' reports to capture potential temporal variation in international courts' approaches. I leave that to future researchers.

[84] Though the abandonment of approaches is rare, the CEMAC Court, for example, conducted "popularization seminars" to "explain the rules, procedures, competences and relations that exist between national institutions and the Court" in 2008 (Kendemeh 2008), but not afterwards. This would primarily apply to international courts' non-judicial activities, as approaches developed based on international courts' judicial agency and legal doctrines will be relatively "sticky."

[85] For example, international courts may release information on formal, rather than informal, activities.

Table 1.2. International Court's Approaches for Promoting Compliance: Designed (■) and Developed (◆) through Judicial (Black) and Non-Judicial (Grey) Agency

	Consequences		Appropriateness	
	Direct	**Indirect**	**Direct**	**Indirect**
AfCHPR	■	■ ◇	◇	◇
ATJ	■	■		◇
BCJ		■		
CACJ		■ ◇	◇	
CCJ	■	◇	◇	◇
CEMACCJ	■	■		
COMESACJ	■	■ ◇	◇	◇
EACJ	■	◇	◇	◇
ECtHR	■	◇		◇
ECCIS		◇	◇	
ECCJ	■	◇		◇
ECJ	■ ◆	◆		◇
EEUC				
EFTAC	◆	■ ◆ ◇	◇	◇
ENET				
IACtHR	■	◆ ◇		□ ◇
ICC	■	■ ◇	◇	◇
ICJ				
ITLOS			◇	◇
MPRC	■			◇
OHADA CCJA		■		
WAEMUCJ		■		
WTO AB	■			

Approaches

International courts' designed approaches are predominantly consequentialist, focused on altering actors' costs for noncompliance and incentives for compliance. International courts' ability to directly impose costs for noncompliance has almost always been delegated by states. States allow regional integration courts and human rights courts to order that the noncompliant party pay compensation and reparations to injured parties. Trade courts, such as the WTO Appellate Body and Mercosur Permanent Review Court, can authorize retaliatory sanctions for parties' noncompliance with rulings. However, the European Court of Justice and EFTA Court, the two courts of the European Economic Area (EEA), both developed jurisprudence that enabled them to directly impose costs for states' noncompliance. The ECJ initially developed its capacity to impose costs for noncompliance through the landmark *Francovich* case, where the Court ruled that states could be liable to pay damages for failure to obey EU law, and states then embedded this judicial enforcement mechanism in the Court's design with the Maastricht Treaty.[86] The EFTA Court similarly enshrined the principle of state liability in the *Sveinbjörnsdóttir* case, where it established it would order states pay compensation for violations causing damage to individuals or economic operators. These two European regional courts are the exceptions to the overall trend that states determine whether international courts can impose costs for noncompliance.

With the indirect approaches, states have similarly embedded approaches focused on altering incentives for compliance and costs for noncompliance. States have delegated monitoring functions to human rights courts; through their hearings for monitoring compliance with their orders, these courts can mobilize domestic compliance constituencies and create costs for states at the domestic level, or generate reputational costs at the international level. States have delegated preliminary ruling mechanisms to most regional integration courts. Through these rulings, international courts can indirectly implement their legal decisions through national courts. For some regional courts, such as the EFTA Court and CEMAC Court of Justice, national courts can choose whether or not they refer relevant cases, but in others, such as the Benelux

[86] See, e.g., Biondi and Farley 2009.

Court of Justice, East African Court of Justice, and European Court of Justice, states have made it compulsory for national courts to refer cases pertaining to regional law and implement the regional courts' rulings.

International courts have, through their judicial agency and developing their jurisprudence, sought to strengthen national courts as their indirect enforcers of international law. The EFTA Court, for instance, has held that national courts are obliged to give EEA rules precedence over conflicting rules of national law and to consider any relevant EEA law when interpreting international law.[87] Typically, however, international courts' expansion of indirect approaches based on consequentialism has relied on their non-judicial agency and using intermediaries for domestic enforcement of international law, increasing the threat of prosecution for noncompliance, and generating domestic political incentives for governments to comply.

Some non-judicial activities aim to increase the domestic enforcement of international law through national courts. All three human rights courts, which operate based on the exhaustion of local remedies, have held dialogues and training sessions with national courts in their member states. Many regional integration courts have similarly aimed to mobilize national courts to domestically enforce international law. The African Court is unique in its efforts to strengthen international enforcement through the African Union Assembly, lobbying the organ to establish a mechanism for the Court to more directly mobilize the Assembly to use its enforcement power against noncompliance with its judgments.[88]

Several courts have adopted capacity-building initiatives with lawyers and civil society actors in their legal regimes, aiming to strengthen the threat of "prosecution" for noncompliance. For example, the ECOWAS Court of Justice held a training session for the bar association of Benin "to cultivate [lawyers'] interest towards the Community norms of ECOWAS, so as to encourage them to come and plead cases before the Community Court of Justice, before which they are expected to play an important role."[89] Occasionally, courts make dedicated efforts to

[87] E.g. Baudenbacher 2005a, 4.
[88] AfCHPR, "Activity Report of the African Court for the Year 2014," 2015.
[89] ECCJ, "ECOWAS Court Completes Training Session for Bar Association of Benin Republic," (Press Release, November 29, 2012),

mobilize their associated commissions, which can refer cases (e.g. the African Court with its Commission, the EFTA Court with EFTA Surveillance Authority, and the ECCIS with the Commonwealth of Independent States Committee). Courts also engaged with civil society actors to generally raise their awareness and understanding of the courts, their rulings, and the importance of compliance for fulfilling various aims. For example, the East African Court of Justice's workshop with civil society organizations aimed "to ensure the East Africans enjoy the benefits of the regional integration through adherence to justice, rule of law and fundamental rights and freedoms through the interpretation and application of and compliance with the East African law."[90] Essentially, these efforts aimed to develop domestic compliance constituencies, which would mobilize in support of courts' rulings and law.

To directly influence their targets' logic of appropriateness, courts' activities generally involved workshops, seminars, and meetings with governmental officials, but occasionally involved targeted capacity-building in the court's area of law. For example, at its publicity seminars in member states, the COMESA Court of Justice promotes "serious and in-depth dialogue with Member States" regarding their legal obligations vis-à-vis the Court.[91] The International Tribunal for the Law of the Sea was unique in its dedicated "capacity-building and training programme," which particularly targets developing countries, and trains "junior to mid level government officials from an administration or government agency, dealing with ocean affairs or sea-related matters as well as legal issues relating thereto."[92]

Within international courts' indirect approaches based on appropriateness, there seemed to be a distinction between international courts that merely assumed an educational role within their respective legal communities, compared to international courts that also engaged politically active intermediaries, such as IOs or NGOs. Some international courts convened academic seminars and conferences, and wrote publications to generally encourage the academic and public discourse surrounding their respective courts and law. For example, the European Court of

---

[90] EACJ, "EACJ Workshop for Judges of the National Courts & Civil Society Workshop Concludes," 2014.
[91] COMESACJ, "COMESA Annual Report 2011," 2012, 14.
[92] "ITLOS-Nippon Programme" <https://www.itlos.org/le-greffe/formation/programme-tidm-nippon-foundation/>.

Justice held a conference marking "50th anniversary of the judgment in *Van Gend en Loos*."[93] Participants could then help legitimize the court and its law in their academic writings or practical use. Courts, such as the Caribbean Court of Justice, Inter-American Court of Human Rights, and International Tribunal for the Law of the Sea collaborated with their associated training institutes for legal education. The Caribbean Court, for instance, noted that it uses the Caribbean Association for Law and Court Administration to "provide advanced tutelage in International Law so as to achieve and maintain a high level of awareness of, and advocacy and passion for, regional integration law and Caribbean jurisprudence."[94] Other international courts, however, also aimed at political mobilization. The East African Court of Justice, for instance, in its workshops for "sensitizing" its full range of stakeholders, "encouraged everyone to advocate for the Court in the Region."[95] At the African Court on Human and Peoples' Rights' sensitization seminars with NHRIs and NGOs—actors that advocate for compliance with human rights law at the domestic and international levels, participants adopt a "plan of action" for supporting the Court, including through diffusing its norms, rules, and procedures. The International Criminal Court held several dedicated meetings with NGOs, which advocate for cooperation and compliance with the Court.

Trends

Overall, the distribution of approaches, where all four are highly prevalent, supports the earlier claim that all approaches are relevant to all international courts, regardless of area of law, and global or regional scope, for example. There are, however, clear empirical trends in international courts' approaches. The approaches states embed in international courts' formal design overwhelmingly seek to impose consequences for noncompliance and alter incentives for compliance, either directly or indirectly. The exception, which will be discussed further in

[93] European Court of Justice 2013.
[94] "About CALCA, Caribbean Association for Law and Court Administration" <http://www.calca-ccj.org/about-calca>.
[95] EACJ, "EACJ Workshop for Judges of the National Courts & Civil Society Workshop Concludes," 2014.

Chapter 4, is the Inter-American Court of Human Rights, whose Statute, authored by IACtHR judges and approved by OAS states, recognizes the Court's potential to conduct legal education activities. However, overall, states have not designed international courts to conduct activities aimed at shaping actors' logic of appropriateness to promote compliance.

Another striking finding is that just a few international courts have used their judicial agency to develop "new" approaches for promoting compliance. The tendency for international courts to adopt approaches for promoting compliance through their non-judicial agency thus supports the claim that international courts have relatively freer decision-making vis-à-vis their non-judicial activities. There is another salient distinction between the embedded and adopted approaches: unlike the predominantly consequentialist approaches embedded in international courts' design, the approaches adopted through international courts' agency relate to both behavioural logics. Overall, the analysis reveals considerable variation in whether courts develop new approaches for promoting compliance and in the types of approaches they adopt.

Explaining the Variation in International Courts' Approaches

The foregoing analysis showed how many international courts have substantially expanded their approaches for promoting compliance, largely through their non-judicial agency. International court officials, therefore, have shown that can act as "policy entrepreneurs,"[96] expanding their activities beyond what is embedded in their constitutive treaties. What explains the variation in whether and how international courts develop policies and practices aimed at promoting compliance? As the analysis of international courts' adoption of approaches shows, there are in some instances striking similarities between international courts' approaches. For example, several courts have established training institutes and conducted "sensitization" workshops in states. Diffusion of policies and practices could contribute to international courts' expansion of approaches, but it is insufficient to explain the overall dynamics of international courts' adoption

[96] Abbott et al. (2015, 25–26), for example, consider IOs' potential for "policy entrepreneurship" in orchestrating intermediaries. This is distinct from "supranational entrepreneurship" in the EU context, where EU institutions influence states' negotiations (Moravcsik 1999) or policy choices (Pollack 1997).

of approaches. Rather, more general variables drawn from international courts' design and environment explain the key points of variation in international courts' development of approaches for promoting compliance.

Autonomy, Acceptance, and Accessibility

This section introduces the three core variables, based on features of international courts' design and broader legal regime, which explain international courts' variable adoption of approaches for promoting compliance with international law (Table 1.3). Subsequent chapters further elucidate the variables and test their influence on international courts' decision-making and approaches for promoting compliance. Here, they are reviewed to present the overall framework. International courts' level of autonomy influences *whether* they adopt approaches for promoting compliance, and their levels of acceptance and accessibility explain the *types* of approaches courts adopt. International courts, like the actors they target for compliance, follow both the logics of consequences and appropriateness in their decision-making regarding their policies and practices aimed at promoting compliance. International courts' levels of autonomy, acceptance, and accessibility shape their incentives and norms in distinct ways, influencing whether and how they develop their agency for promoting compliance with international law.

These variables build on different literatures on IOs and international courts. Scholars widely recognize that IOs have variable levels of autonomy, which influences their behaviour. Whether based on weak state control mechanisms, or the development of bureaucratic cultures,[97] IOs can have the autonomy to decide how to pursue their delegated mandates. An international courts' level of *autonomy* in its decision-making, therefore, influences whether it can be "entrepreneurial" in its policies and practices.[98] Thus, international courts' autonomy influences whether they can formulate and implement approaches for promoting compliance. International

[97] This essentially contrasts rational choice institutionalism and socioloigical insitutionalism.
[98] It also affects whether it can practice the approaches embedded in its design, where courts with very low autonomy may not even be able to fulfil their mandated activities, as will be discussed in the SADC Tribunal case in Chapter 2.

courts face variable constraints that influence their incentives and norms for developing approaches for promoting compliance, either through their judicial or non-judicial agency.

Table 1.3. The Influence of Autonomy, Acceptance, and Accessibility on International Courts' Incentives and Norms, with Associated Hypotheses

	Autonomy	Acceptance	Accessibility
Courts' Incentives	▪ State-driven rules, appointments, resources, contracting ▪ Donor/intermediary-driven conditionality	▪ Actors evidently lack sense of obligation to comply	▪ States provide permissive access rules
Courts' Norms	▪ Legal, bureaucratic, governance norms		▪ Norms of inclusion
Hypotheses on Expansion of Approaches	Higher autonomy → entrepreneurship, development of approaches	Lower acceptance → approaches based on appropriateness	Higher accessibility → approaches based on intermediaries

Member states delegate international courts generally high levels of autonomy, which is necessary for interpreting and apply international law. States, however, can constrain courts through restrictive rules in their delegation contracts, biased appointments of officials, restrictions on operational resources, and altering their contractual relationships with courts. Though states are the primary actors that can shape international courts' incentives in their decision-making, international courts' donors and intermediaries, through their resources and support for courts, also have the potential to influence international courts' decision-making. In addition, normative constraints influence the boundaries of what is legitimate, appropriate action for international courts, both in terms of their judicial decision-making and their non-judicial decision-making (e.g. strategic planning). Norms within the international legal community influence how international courts can develop doctrines that promote compliance (e.g. direct state liability, etc). But actors within the broader international community can also impose normative constraints (e.g. bureaucratic efficiency) on international courts' non-judicial policies and practices aimed at promoting compliance.

These various constraints from external actors can limit international courts' decision-making and entrepreneurship, and consequently their adoption of approaches for promoting compliance. Conversely, in the absence of significant constraints, international courts are free to conduct their judicial and non-judicial activities, which facilitates their development of approaches for promoting compliance. This leads to the hypothesis that *the higher international courts' level of autonomy, the more likely they are to adopt approaches for promoting compliance.*

While international courts' level of autonomy determines their capacity for expanding their approaches for promoting compliance, their levels of *acceptance* and *accessibility* influence the types of approaches they decide to adopt. With acceptance, the idea is that international court officials are responsive to pressures emanating from their organizational environment,[99] and their courts' lack of acceptance from actors in their legal regimes can be such a pressure. International courts' level of acceptance reflects the extent to which relevant actors in international courts' legal regimes recognize courts' legal norms, rules, and procedures as their standard of legitimate, appropriate behaviour. With acceptance comes the sense of obligation to comply. International courts' level of acceptance thus shapes their incentives to use approaches involving norm entrepreneurship and socialization. If actors demonstrably are unaware of international courts' norms, or reject them as their standard of legitimate, appropriate behaviour, this generates "demand" for international courts to socialize actors in their legal regimes. International court officials, which have internalized international courts' norms, can function as agents of socialization, attempting to align actors' standards of legitimacy and appropriateness with international courts' norms. To address their lack of acceptance, international courts can also use

[99] Nay (2011), for example, shows that pressures emanating from their environment prompted "bureaucratic entrepreneurship" and reforms in the UN system.

intermediaries to advocate for courts' norms and socialize their targets for compliance. International courts can thus adopt approaches based on appropriateness, whether direct or indirect, in response to their targets' lack of acceptance of courts' norms. This justifies the hypothesis that, all else equal, *the lower international courts' level of acceptance, the more likely they are to adopt approaches for promoting compliance based on appropriateness.*

The accessibility variable extends insights provided by the extensive literature on private actor access to international courts, which recognizes that access fundamentally alters international courts' legal regimes.[100] While this literature focuses on how access rules can increase in litigation and enforcement, here they are argued to have a broader, though related, significance. International courts' level of accessibility directly relates to states' design choices vis-à-vis their formal access rules, and how far they depart from the traditional, state-only model of adjudication. The more actors included, the higher international courts' level of accessibility. Permissive access rules generate opportunities for interaction with potential intermediaries, including national courts, IOs, and NGOs, and incentives for adopting indirect approaches for promoting compliance. They also embed norms of inclusion in international courts' constitutive treaties, which legitimizes international courts' broader engagement with actors in their legal regimes, in ways that can develop and mobilize intermediaries for promoting compliance. Overall, international courts' level of accessibility influences their opportunities and justifications for engaging with potential intermediaries and developing indirect approaches for promoting compliance. This leads to the hypothesis that, all else equal, *the higher international courts' level of access, the more likely they are to adopt indirect approaches for promoting compliance.*[101]

[100] E.g. Burley and Mattli 1993; Helfer and Slaughter 1997; Alter 2006b; Alter 2014.
[101] As acceptance and accessibility can interact, international courts with lower levels of acceptance and higher levels of accessibility are more likely to adopt indirect, constructivist approaches for promoting compliance.

Diffusion

It would be overly simplistic to rely on *only* these three key variables to explain international courts' development of policies and practices aimed at promoting compliance. They are the most significant, overarching factors influencing international courts' adoption of approaches for promoting compliance, but to understand the specificities of the policies and practices international courts adopt, other mechanisms could be relevant in particular cases and under certain conditions. Specifically, policy diffusion mechanisms of coercion, learning, and emulation[102] may influence the types of approaches international courts adopt under certain circumstances. Though the policy diffusion literature typically focuses on states, diffusion mechanisms could equally apply among highly autonomous IOs, such as international courts, which can be considered actors in their own right with considerable discretionary authority.[103] There are, however, significant limitations on the relevance of these mechanisms for international courts' decision-making and entrepreneurship.

Coercion would involve powerful actors (i.e. international courts' member states or donors) spreading their policy preferences across international courts, paralleling, for example, how the World Bank and International Monetary Fund influence states' domestic policies.[104] This would relate to constraints on international courts' autonomy. Coercion, nevertheless, could only be relevant for particular clusters of courts, which share member states or donors. The European Union, German development corporation (GIZ), and Konrad Adenauer Foundation supply funding across different international courts, so they could potentially coerce courts within their spheres of influence into adopting particular policies and practices aimed at promoting compliance. Donors choose to fund international courts because they fulfill donor priorities, such as the EU supporting regional integration, or development agencies supporting human rights and the rule of law development. They have the leverage to coerce international courts by making funding contingent on courts' adoption of particular desirable policies. Some courts, such as the East African Court of Justice and African Court on Human and Peoples'

[102] Gilardi 2013.
[103] Grant and Keohane 2005.
[104] E.g. Simmons, Dobbin, and Garrett 2006.

Rights, use donor funding to wholly support particular programmes, such as training for judges and “sensitization.” This might suggest that donors are dictating policy.

In general, however, these donors only contribute to a few international courts each, so diffusion through coercion has limited relevance. In addition, donors, which support international courts in principle, would be reluctant to, at least overtly, undermine international courts’ autonomy. In GIZ’s support for the African Court’s non-judicial activities, for instance, GIZ and the Court agree on the areas of cooperation, on certain goals to be achieved, and measures for implementation;[105] the relationship is, therefore, intended as one of collaboration, rather than coercion. International courts, moreover, seem willing to reject donor funding if it does not meet their objectives. For example, African Court judges noted, “the Court can manage its partners. It is just a matter of evaluating their conditionalities and if these are not acceptable to the Court, then they should be reject.”[106] Thus, due to donors’ circumscribed influence within the universe of international courts, and their support of international courts’ general autonomy, diffusion through donor coercion only has limited relevance for explaining international courts’ adoption of approaches for promoting compliance.

Diffusion through learning and emulation, based on exchange among international courts, has limited relevance to international courts’ expansion of approaches for promoting compliance. Learning, where courts would gain insights from the consequences of other courts’ policies, and emulation, where policies diffuse due to their normative appeal, would require substantial exchange among international courts, but this is not the case. In general, legal scholars have written extensively about concerns over the fragmented international judiciary[107] and how the trend towards “judicial dialogue” on law at the transnational level is largely absent at the international level.[108] There are ad hoc seminars, conferences, and visits involving officials from different international courts—but these limited interactions tend to focus on judicial and legal issues, rather than non-judicial policy developments. An exception to this overall lack of

[105] Interview with Iris Breutz, Project Director, GIZ Programme on the African Court on Human and Peoples’ Rights, 23 June 2015.
[106] AfCHPR, “Report of the Fifth Session of the African Court on Human and Peoples’ Rights,” 2007, 42.
[107] See, e.g., Buergenthal 2001; Charney 1999.
[108] Terris, Romano, and Swigart 2007, 90.

exchange on international courts' non-judicial activities is the Brandeis Institute for International Judges, which convenes roughly a dozen judges from different international courts, and occasionally facilitates discussion on international courts' non-judicial activities (e.g. publicity, outreach).[109] The lack of coordination across international courts indicates that international courts are largely autonomously developing their policies and practices, rather than learning from or emulating "best practices" from other organizations.[110]

In general, international court officials tend to emphasize the uniqueness of their legal regimes, both in terms of their organizational mandates and the environments in which they operate. Some international courts see the value of exchange with courts in similar issue areas and/or regions. For example, the European Court of Human Rights and Inter-American Court of Human Rights regularly hold meetings,[111] while the African Court views more value in exchange with the Inter-American Court, as they deal with similar issues, such as indigenous peoples' rights.[112] However, most international courts, with their unique mandates, areas of law, and operational contexts, do not see the need for exchange and are largely ignorant of developments in these seemingly unrelated institutions. For example, an Registry official of the International Court of Justice acknowledged that other international courts, such as international criminal courts, conduct outreach activities, but this was not a relevant policy for the ICJ, given its fundamentally different mandate and high profile in the international community.[113]

Given these limitations, policy diffusion mechanisms could only operate under very narrow parameters, and are neither necessary nor sufficient for international courts' adoption of approaches. International courts generally develop approaches for promoting compliance based on their autonomous decision-making, with their levels of acceptance and accessibility

[109] Meetings have occurred every one and a half years, beginning in 2002, and they occasionally have involved discussions of publicity and outreach issues.
[110] Indeed, international court officials were generally ignorant of the non-judicial activities of other courts and did not consider them when formulating policies for their own court. There were two exceptions. Officials sought to emulate the ICJ's relationship with the Hague Academy of International Law in creating the IFLOS, and the ICC's outreach programme was developed based on lessons learned from the Special Tribunal for Lebanon's outreach programme. Interview with Joachim König, Director, IFLOS, 11 September 2014; Interview with Claudia Perdomo, Head of Outreach Unit, Registry, ICC, 4 June 2014.
[111] E.g. ECtHR, "Annual Report 2013," 2014.
[112] Interview with Jester H. Charewa, Deputy Registrar, AfCHPR, 23 January 2014.
[113] Interview with Registry Official, ICJ, 12 September 2014.

influencing the types of approaches they choose to adopt. Diffusion mechanisms, under certain circumstances, could influence the specificities of particular policies and practices within courts' overarching approaches. For example, a high level of accessibility would facilitate international courts' engagement with intermediaries for promoting compliance, but they may emulate another international courts' "sensitization" model of engagement. This could help account for why the African Court on Human and Peoples' Rights, East African Court of Justice, and ECOWAS Court of Justice all have adopted programmes labelled as "sensitization."[114] Equally, recently created international courts may look to the experience of more established international courts, and develop policies (e.g. legal training schemes) through learning from their experiences. These mechanisms, however, would only come into play based on how international courts' levels of acceptance and accessibility influence their incentives and norms for adopting approaches based on appropriateness and the use of intermediaries, respectively.

Conclusion

With attentiveness to international courts as IO bureaucracies, the case was made for international courts having both judicial and non-judicial agency. This distinction proved particularly salient in how international courts promote compliance, as international courts' non-judicial agency provides unique opportunities for international courts to attempt to fulfil their core mandate. Building on this conceptualization of international courts' agency, international relations and international legal theories were combined to develop a matrix of international courts' approaches for promoting compliance with international law. International courts' practice of these approaches has varied widely, and raises questions regarding whether and how international courts expand their approaches for promoting compliance. Building on existing theories of IOs and international courts, three variables were offered as the principal determinants of international courts' development of approaches for promoting compliance. Extending this foundational framework, the chapters to come will both theoretically and

[114] See Appendix 1.

empirically evaluate these variables' influence on international courts' agency for promoting compliance.

Chapter 2

International Courts' Variable Autonomy and Agency for Promoting Compliance

Introduction

The previous chapter showed how international courts can fulfil their delegated mandates and promote compliance through their judicial and non-judicial agency. It assumed that international courts' agency is constrained, with constraints differing between courts' judicial and non-judicial agency. This chapter more fully theorizes the shifting boundaries and variable levels of international courts' judicial and non-judicial autonomy and agency for promoting compliance.

International courts, like their targets, are guided by the logics of consequences and appropriateness, and external actors (both state and non-state) shape international courts' incentives and norms. Both material and normative constraints limit international courts' autonomy and influence their decision-making in their judicial and non-judicial activities—including, crucially, how they fulfil their core mandate of promoting compliance. States exert unparalleled influence over international courts, particularly regarding their consequentialist logic. These state constraints on international courts are commonly theorized using principal-agent theory, and some scholars note discursive constraints on courts' judgments from the international legal community. However, the existing literature has paid little attention to how non-state actors, such as donors and NGOs, can also influence international courts' autonomy and agency. It has also underestimated normative constraints from the broader international community.

International courts' autonomy is variable: these constraints on international courts' freedom of action can vary within international courts over time, as well as across different international courts in the international system. This, in turn, makes international courts' level of autonomy a key variable that influences their approaches for promoting compliance. International courts' level of autonomy can affect their capacity to use the approaches embedded in their institutional design, but it can especially influence their ability to strategically adopt new approaches. As recognized by the scholarship on IOs, autonomy crucially influences IOs' entrepreneurship. With international courts, therefore, their level of autonomy should strongly determine whether they develop new approaches for promoting compliance. Essentially, in explaining international courts' variation in their expansion of approaches for promoting compliance, we must first consider their level of autonomy.

The Variable Constraints on International Courts' Autonomy and Agency

Autonomy, at its core, is about freedom of action. The concept of international court autonomy, which accounts for both judicial and non-judicial agency, is therefore broader than the existing literature's predominant, yet narrow, focus on judicial independence. Judicial independence generally refers to international judges' ability to interpret and apply international law, and reach their legal judgments independently of national governments.[1] By extension, it also relates to judges' impartiality vis-à-vis the parties' interests in a particular case.[2] The shift to theorizing both judicial and non-judicial dimensions of international courts' agency, however, necessitates a broader conception of international courts' autonomy, which includes external influences that have not yet been captured by the existing literature on judicial independence in international courts.

Scholars have devoted considerable attention to theorizing how international judges' development of legal opinions unconstrained by the preferences of other political actors can be compromised in various ways.[3] With the exception of the argument that international courts

[1] Keohane, Moravcsik, and Slaughter 2000, 459–460.
[2] Ibid., 460.
[3] E.g. Steinberg 2004; Ginsburg 2005; Helfer and Slaughter 2005; Alter 2008a, Cogan 2008; Posner and Yoo 2005.

conform to the ideal type of "trustees,"[4] scholars of international courts tend to agree that, in practice, international courts' judicial autonomy in interpreting and applying international law can be constrained by their member states, as well as standards of appropriateness within the international legal community.[5]

Several scholars have conceptualized the constraints on international courts' judicial agency. Alec Stone Sweet and Thomas Brunell refer to the strategic environment in which a court operates as its "zone of discretion," determined by the sum of competences explicitly delegated to a court and possessed as a result of its own lawmaking, minus the sum of control instruments available for use by the principals to override the court or to curb it in other ways.[6] Richard Steinberg argues that the WTO Appellate Body operates within a "strategic space"—bounded by legal discourse and rules on the one hand, and political constraints on the other—which permits restrained or expansive judicial lawmaking.[7] Laurence Helfer and Anne-Marie Slaughter have further refined the concept of strategic space in their theory of international tribunals' constrained independence.[8] They, too, focus on adjudication, arguing that international tribunals' strategic space "restricts the range of methodological, interpretative, and decisional choices available to independent judges. Many of these choices will be legally plausible; only a subset will also be politically tolerable."[9] This strategic space is defined both political constraints from states (*ex ante* and *ex post* control mechanisms) and the discursive constraints (e.g. procedural rules, interpretive methodologies, and substantive norms) of the global community of law, which are internalized by tribunal members.[10] The common thread across these various accounts is that international courts' judicial autonomy is limited by the dual pressure of both strategic incentives vis-à-vis political constraints from states and legal norms.

---

[4] Drawing on Majone's (2001) two logics of delegation, Alter (2008a) argues that international courts fit the ideal type of "trustees," so principal-agent theory's emphasis on re-contracting, as a means of constraining agents' autonomy, is misplaced vis-à-vis international courts.
[5] Elsig and Pollack (2014) and Voeten (2014), for example, argue that the trustee ideal type does not hold up in practice.
[6] Stone Sweet and Brunell 2013.
[7] Steinberg (2004, 249) argues the Appellate Body's strategic space is "potentially bounded by three nested factors: WTO legal discourse, which could be constrained by constitutional rules, both of which are constrained by politics."
[8] Helfer and Slaughter 2005.
[9] Ibid., 44–45.
[10] Ibid., 46.

International courts' freedom of action through their non-judicial agency, however, has been ignored in the existing literature, but constraints influencing international courts' incentives and norms in their non-judicial decision-making are equally relevant. We know surprisingly little about how external influences can limit international courts' freedom of action beyond adjudication. Here, theories of IOs are instructive,[11] pointing to the importance of both "structural" factors, including the availability and use of control mechanisms, and "cultural" factors for IOs' autonomous decision-making and entrepreneurship. Thus, as Chapter 1 explained, international courts generally have relatively greater freedom of decision-making and action through their non-judicial agency, but they are still subject to external influence and constraints. In both dimensions of international courts' agency, external actors can influence international courts' incentives and norms.

While the existing scholarship, perhaps due to the traditional interstate model of dispute resolution and the role of states as "principals" in the delegation contract, generally focuses on states' constraints on international courts' incentives. However, potential constraints from other actors with leverage over international courts, including donors that provide resources to several international courts, and intermediaries, which are involved in international courts' operations, must also be theorized. The existing scholarship also focuses on the norms of the international legal community, but other actors have the potential to shape international courts' norms, especially considering their non-judicial agency. The following sections delineate the constraints from various actors in international courts' legal regimes, which influence international courts' incentives and norms for their decision-making and behaviour.

A key caveat is that this chapter does not theorize when and why actors choose to exercise particular constraints. Actors' motivations for imposing constraints on international courts are diverse, complex, and beyond the scope of this chapter. It is worth noting, however, that there is undoubtedly some overlap with actors' lack of acceptance of international courts' norms, rules, and procedures—as will be discussed further in Chapter 3—and their propensity to

[11] E.g. Abbott et al.'s (2015) state oversight and orchestrator entrepreneurship hypotheses essentially rest on IO autonomy.

impose constraints. In addition, international courts and their supporters may seek to deter or dissuade actors from constraining international courts. The chapter brackets these dynamics, takes constraints as given, and focuses on how these constraints influence international courts' decision-making and adoption of approaches for promoting compliance.

Table 2.1. Constraints on International Courts from States and Other Actors

	Constraints from States	**Constraints from Other Actors**
Incentives (Consequences)	▪ Precise rules (e.g. jurisdiction, interpretation, etc) ▪ Appointments ▪ Resources ▪ Contracts	▪ Resources
Norms (Appropriateness)	▪ Bureaucratic norms (e.g. efficiency, results-based management, etc)	▪ Legal norms of interpretation/application of law; judicial behaviour (international legal community) ▪ E.g. Bureaucratic norms (donors) ▪ E.g. Norms of transparency, accountability (NGOs)

Constraints Through Incentives (Consequences)

Accounting for constraints on both the judicial and non-judicial autonomy of international courts requires a broader conception of *ex ante* and *ex post* influences on international courts' incentives. Generally, the scholars have theorized how states can influence judges' preferences and decision-making prior to or following a specific judicial decision. International courts' broader autonomy, including both its judicial and non-judicial dimensions, requires a different conceptualization. "*Ex ante*" and "*ex post*" can more generally be defined as preceding or following international courts' various kinds of actions—whether it is a judicial decision, or an organizational policy or practice, such as court officials' interviews with the media, budgets, relations with civil society organizations, and so on.

Constraints by Contracting States

States, as the principals in the delegation contract, are the key actors that can constrain international courts' decision-making and behaviour based on the logic of consequences. In these delegation contracts and how they subsequently constitute international courts, states generate particular incentives for officials' behaviour. The delegation contract sets international courts' baseline level of autonomy, which can change over time, depending on how states choose to exercise constraints *ex post*, once the court conducts its judicial and non-judicial activities.

Relative to other IOs, states delegate international courts a high level of autonomy, as it is necessary for international courts' mandates of interpreting and applying international law. International courts are "discretionary authorities," which require autonomy for their delegated tasks, rather than "instrumental agents," which can be closely controlled by their member states.[12] More generally, based on the institutional design literature, international courts' constitutive treaties are typically "incomplete contracts," as negotiating all aspects of the institution is costly,[13] and states' uncertainty may necessitate flexibility (and ambiguity) in particular areas of international courts' institutional design.[14] Thus, what is *not* written into the delegation contract can be as important for international courts' autonomy and agency as what *is* written. International courts' delegation contracts tend to only have vague rules and procedures delineated. Usually, states include key provisions regarding the court's jurisdiction, appointment procedures, and budgetary oversight, but much is left to be determined by international court officials once the court is created, giving them tremendous autonomy and agency in determining their judicial and non-judicial means of fulfilling their mandates.

[12] Grant and Keohane 2005.
[13] E.g. Trachtman 1999.
[14] E.g. Koremenos 2005.

Despite these tendencies to afford international courts high levels of autonomy by design, states of course do not fully relinquish control over international courts and embed some design features that facilitate *ex ante* and *ex post* limits on international courts' autonomy. Scholars, generally drawing on principal-agent theory,[15] have posited an extensive range of state-imposed constraints that can influence international judges' decision-making and limit international courts' judicial autonomy.[16] These mechanisms, however, can also influence international courts' autonomy over their non-judicial activities. Some mechanisms (i.e. rules, norms) are more salient for constraining judicial autonomy, while others (i.e. resources) more directly influence non-judicial autonomy.

States have various means of control available to them, and the design and use of these controls can vary considerably across international courts and over time. Rules-based constraints narrow the scope of international courts' decisions and deter officials from overtly expansive interpretations of their mandates. States' control over appointments and resources also shapes officials' incentives in their decision-making. Ultimately, as principals in the delegation contract, states have the ability to modify or revoke the authority delegated, which are their strongest means of influencing international court officials' incentives. There can be more or less of these constraints, which states can exercise more or less freely. These factors contribute to international courts' level of autonomy and their capacity for entrepreneurial decision-making.

Rules. Generally, to limit the autonomy of international judges in their judicial decision-making, states can place particular rules-based constraints on judges' interpretations and applications of the law in international courts' constitutive treaties. States impose rules that limit how an international court exercises its jurisdiction, and its freedom in interpreting and applying international law to adjudicate cases. Conversely, there is rarely any specificity regarding international courts' non-judicial activities. The SADC Treaty, for example, has an explicit provision to cooperate with stakeholders, including the private sector, civil society, NGOs, and

[15] E.g. Hawkins et al. 2006; Pollack 2007.
[16] Helfer and Slaughter (2005, 944), for example, list nineteen *ex ante* and *ex post* mechanisms available to states.

labour organizations;[17] in contrast, the Protocol for the SADC Tribunal makes no mention of stakeholder engagement.[18] States may place basic requirements for international courts to report on their activities to their associated political body (though these are not universal, and the content of such reports is generally vague) and supply a proposed budget. However, there are typically no specifications, beyond general efficiency requirements, which would limit international court officials' decision-making in these areas.

States can tightly circumscribe an international courts' jurisdiction. Compulsory jurisdiction promotes judicial autonomy, as courts can automatically adjudicate whenever complainants raise cases. Consent-based jurisdiction, however, requires that parties to the case consent to refer their case to the court and be bound by its judgment, which limits international courts' freedom of action. States can also impose interpretive constraints on international courts' judicial decision-making. States can precisely specify international courts' substantive law (to reduce judges' scope for interpretation), allow reservations (to limit the law that judges' can apply) and define courts' interpretive methodologies (to limit expansive interpretations). These rules all limit judicial autonomy by clarifying the boundaries of judges' freedom to interpret and apply international law, and creating disincentives for "judicial activism."

In contrast, states typically do not specify international courts' non-judicial activities or delineate rules for how international court officials should determine them. These omissions give international courts more freedom to guide their organizational development, based on international court officials' preferences and on the challenges they confront (including promoting compliance) as they operate. In many ways, international courts are less encumbered by rules-based constraints and therefore have greater autonomy in their non-judicial activities.

Appointments. States can limit international courts' autonomy by influencing their officials through appointment procedures.[19] *Ex ante* constraints involve stacking the bench with judges whose preferences match states' or avoiding appointments to constrain the courts' operations. *Ex*

[17] Article 23, SADC Treaty.
[18] SADC Tribunal Protocol.
[19] E.g. Mackenzie et al. 2010; Elsig and Pollack 2014.

post constraints revolve around dismissing or reappointing judges, and potentially distributing rewards after judges leave their positions. Though states tend to control judicial appointments, with registrars being elected and staff being hired by court officials, judges are the most influential figures in an international court—not only determining judicial decision-making, but also decision-making about non-judicial activities. Therefore, states can use appointments to undermine both judicial and non-judicial autonomy.

Universally, states have designed international courts so that they nominate and elect international judges. Rules regarding nominations and appointments of international judges can determine the extent to which states can influence judicial decision-making,[20] and in practice, appointment processes can differ radically from the rules specified,[21] further increasing states' control. Appointment and removal rules in courts' delegation contracts may merely indicate the judges' composition and terms of office, allowing states considerable leeway to politicize appointment processes. At one extreme, states may be able to opaquely nominate and appoint judges.[22] However, international courts' treaties can also specify extensive rules for electing judges—setting requirements for nomination processes, candidates' expertise, rounds of elections, and so on—which mitigate states' ability to control appointments. Beyond these rules, informal politics also influence the extent of states' constraints. For example, powerful WTO members have used their influence, which in some cases amounts to a veto power, to ensure that candidates selected for the Appellate Body "are not exceedingly activist, biased, or expansive lawmakers,"[23] and members choose and coach candidates whose preferences align with their own on salient issues.[24]

---

[20] Generally, international courts follow a two-stage appointment process. Individual member-states first determine their nominees, usually through an opaque national process that, rather than representing a pure search for expertise, is vulnerable to politicization and delays (Mackenzie et al. 2010; Terris, Romano, and Swigart 2007). If member-states then appoint a fraction of the nominees (selective representation), judges' endogenous preferences are especially vulnerable to manipulation to favour some states over others (Elsig and Pollack 2014, 397-398). Even if member-states appoint one judge per state (full representation), states can still appoint judges that, for example, are "conservative" in their interpretation and application of the law.

[21] Helfer and Slaughter 2005, 49.

[22] In practice, this is how EACJ judges are elected. The procedures regarding nominations allow states to essentially handpick their candidates, and then the political organ approves the candidate (e.g. Gathii 2013).

[23] Steinberg 2004, 264.

[24] Elsig and Pollack 2014, 410.

Generally, the literature has focused on how states can make appointments so that judges' preferences align with their own (e.g. based on nationality, legal interpretations).[25] For example, as the EFTA Court President has openly noted, EFTA Court judges' independence "may be jeopardized due to the size of the EFTA Court" and the fact that the "judge from the country concerned must also sit in politically sensitive cases."[26] Constraining judges' preferences *ex ante* can clearly affect their legal interpretations, and states' ability to sanction or reward judges *ex post*, based on their judgments deter politically undesirable or "expansionist" rulings.[27] As one judge noted, "When you want to say anything, colleagues will remind you… Maybe you don't want a job anymore?"[28] Equally, states' ability to sanction or reward judges could affect their decision-making vis-à-vis institutional policies and practices, including as non-judicial activities. For example, states could presumably appoint judges that are biased against developing courts' training and outreach programmes because they are more conservative about budget expenditures.

Beyond influencing judges' preferences, states can use their control over judicial appointments to constrain the organization as a whole, with consequences similar to resource control. States can subvert or delay the judicial appointment process to disrupt courts' operations, and can intentionally undermine courts by appointing underqualified judges.[29] For the African Court, states were originally supposed to elect the Court's judges in June 2004, but because of an inadequate number of nominations from member states, the elections could not occur until January 2006.[30] Thus, as an extreme, states wishing to render an international court inoperable can exploit their control over appointment and refrain from appointing judges, starving an international court of its personnel. States' appointment practices therefore can undermine international courts' judicial and non-judicial autonomy.

[25] E.g. Voeten 2007; Elsig and Pollack 2014.
[26] Baudenbacher, "The Role of the EFTA Court," 2010.
[27] Sanctioning or rewarding particular judges is particularly salient in international courts, such as the ECtHR, that allow judicial dissent.
[28] BIIJ, "International Courts, Local Actors," 2015.
[29] E.g. Terris et al. 2007.
[30] Viljoen 2012, 413.

Resources. Delegation contracts can provide states, and their political bodies, more or less control over the allocation of financial and personnel resources to international courts, which influences international court officials' incentives and autonomy. International court officials themselves link resources to their autonomy. For example, the African Court, in its annual report to the AU Assembly, underscored **"**the independence of the Court and the consequent need for Member States to provide the Court with sufficient resources for its full operation independently."[31] Resources influence the full scope of international courts' activities, and therefore can undermine both the judicial and non-judicial autonomy of international courts.

In mapping the variation in international courts' autonomy vis-à-vis their resource allocations, the CCJ is by far the most autonomous international court, and virtually all other international courts face the threat or use of resource restrictions. CARICOM states have essentially relinquished control over international courts' resources. The CCJ's financial resources are supplied by the Caribbean Development Bank to the Court's Trustees, and then repaid to the Bank by those countries who are parties to the CCJ Agreement. The Court itself boasts that its "arrangement is very unique to Courts, as it guarantees that there is no direct political link to the finances of the Court."[32] Most international courts, however, are forced to "live within their means," based on states' political considerations. States' overall capabilities, as well as resource distribution among institutions within international regimes, influences international courts' allocated resources.

While some have argued that resource restrictions do not influence judicial autonomy,[33] there is ample evidence to the contrary. Most commonly, there are signs that resource controls bring about delays and inefficiencies in the adjudicatory process (e.g. translation, legal support for judges in drafting judgments).[34] For example, the African Court, in its initial years of existence, did not take on any cases because it wanted to dedicate its limited resources towards

[31] African Union Executive Council, "Decision on the 2014 Activity Report of the African Court on Human and Peoples' Rights - Doc. EX.CL/888(XXVI)," 2015.
[32] CCJ, "CCJ Trust Fund."
[33] Alter 2008b.
[34] For example, African Court judges often use the African Court librarian, due to the lack of legal officers in the Court, to assist in their legal research, though he is not experienced in this area. Interview with Fidelis K. Mutisya, Head Librarian, AfCHPR, 23 January 2014.

its organizational development.[35] However, occasionally, resources overtly influence judges' decision-making. Resources can directly affect the way that international judges adjudicate cases. The European Court of Human Rights, for instance, adopted the pilot-judgment procedure based on "the Court's present heavy case-load and the many demands made on its resources by urgent cases and cases raising questions of greater legal importance."[36] The procedure allows judges to "efficiently" adjudicate repetitive cases through a single judgment.[37]

Resources limitations can also affect international court officials' non-judicial decision-making, which in turn can affect how judges adjudicate cases. States' resource constraints can affect international courts' freedom of decision-making regarding establishing training programmes, for example. International courts, through their non-judicial decision-making, often determine that their officials require training. For example, in its initial years, African Court judges, some of whom lack human rights expertise, recognized the need for training.[38] But these programmes are costly and lack priority when international courts face resource constraints. In addition to influencing non-judicial autonomy, limiting training in turn limits judicial autonomy. Insufficiently training influences judges' ability to adjudicate the diversity of cases that can come before them—if they lack training in a particular area of law—and the quality of their judicial reasoning. This issue is largely absent from international courts based in the developed world, but it is a significant issue for several courts in developing regions. For a period of time, until an external donor financed training, EACJ judges were unable to handle arbitration cases, due to their lack of experience in this area.[39]

Resources clearly influence international court officials' decision-making regarding their non-judicial activities, such as publicity, outreach, and other resource-intensive policies and practices. In this sense, the general absence of non-judicial activities from international courts' delegation contracts is a double-edged sword: though it gives international court officials greater

[35] Interview with the Jester H. Charewa, Deputy Registrar, AfCHPR, 23 January 2014.
[36] ECtHR, "The Pilot-Judgment Procedure: Information Note Issued By the Registrar," 2009.
[37] Ibid. When the ECtHR "receives a significant number of applications deriving from the same root cause, it may decide to select one or more of them for priority treatment. In dealing with the selected case or cases, it will seek to achieve a solution that extends beyond the particular case or cases so as to cover all similar cases raising the same issue. The resulting judgment will be a pilot judgment."
[38] E.g. AfCHPR, "Report of the Fifth Session of the African Court on Human and Peoples' Rights," 2007.
[39] EACJ, "EACJ Judges' Training on Emerging Trends in Arbitration Sets Off," 2015.

freedom for decision-making vis-à-vis their non-judicial activities, these activities' absence from the delegation contract leaves them particularly vulnerable to resource control from states. They are seen as supplementary or optional, and in a resource-scarce environment, they may be the first activity to be cut. Thus, states' control over resources can limit international courts' autonomy over their non-judicial activities.

Contracts. Through provisions to modify their contractual relationship with international courts, via amendments, withdrawals, dissolution, and contracting with other agents (forum-shopping), states can also influence international courts' logic of consequences. States can influence international courts *ex ante*, by including provisions that facilitate these controls in courts' treaties, and *ex post*, through invoking these provisions. Provisions for contractual changes present a threat to international courts, and the use of such contractual controls can fundamentally change international courts' norms, rules, and procedures. The threat and weakening of autonomy is greatest when the associated procedures provide minimal checks and balances on states exercising these controls. For example, amendments may only require consensus, rather than a three-quarters majority.[40] Withdrawals may take effect immediately, rather than a year after states make a declaration, which would allow cases to continue. States can also influence international courts' incentives by implicitly or explicitly permitting contracting with other agents. The ability to forum-shop may be embedded in the court's jurisdiction, rather than an unintended consequence of the fragmentation of international law.

These measures can influence judges' decision-making in cases before them. Awareness of the potential for or use of control has, to quote one judge, "a chilling effect on judges,"[41] dissuading them from deciding the law in ways that they believe would provoke political reactions. With regards to judicial autonomy, the general assumption is that the risk or use of contractual controls deters or curbs politically unfavourable or expansionist interpretations and decisions. Contractual controls, however, can generally influence international court officials'

[40] SADC versus the ICC, respectively.
[41] BIIJ, "International Courts, Local Actors," 2015, 22.

decision-making regarding their broader institutional policies and practices, thus influencing their autonomy in deciding their non-judicial activities as well. The clearest and most dramatic variant of contractual control is dissolution, where states disband an international court completely. Still, contractual controls could conceivably target officials' decision-making regarding their non-judicial activities. For example, though international courts' non-judicial activities are typically not explicitly delineated in their treaties, states can use re-contracting to insert provisions to sanction and limit those activities *ex post.*

Constraints by Other Actors

The potential for non-state actors to limit international courts' autonomy has been ignored in the existing literature; though these actors may increase international courts' autonomy from *states*, their assistance can involve its own constraints. Though international court officials ultimately choose whether to enlist donors or intermediaries to contribute to their operations, these external actors can subtly influence international courts' incentives. Particularly when the availability of donors and intermediaries is low, these actors can have leverage to constrain international courts' decision-making regarding their policies and practices and limit their non-judicial autonomy.

Given the resource constraints several international courts face, donors are increasingly important actors in the universe of international courts. Particularly as international courts have expanded into regions of the world that have limited capacities, both in terms of expertise and financial resources, donors with priorities aligned with international courts' mandates have naturally sought to support them. With this support comes a pathway for external influence on international court officials' incentives. Donors have the financial leverage to introduce conditionality on their assistance, and they can, through their expertise, create incentives for international courts to implement particular kinds of policies and practices.

Donor influence on international courts' incentives highly depends on how funding is allocated. Donors may fund the broader IO in which international courts are embedded, and some of the funding is then allocated to the international court through regular budgetary processes. This arrangement would minimally influence international courts' autonomy from *donors* (though states would still exert influence, as discussed earlier). The African Union, for example, reformed its funding practices to have donors contribute to the African Union's overall budget in particular "baskets" of funding, and the AU would have the discretion to allocate funding. This replaced the previous practices where donors would directly fund specific AU institutions.[42] The AU explicitly wanted to reduce donors' potential influences on AU institutions. The African Court, therefore, receives donor funding via the AU budget.[43]

Donors, however, often directly collaborate with international courts, offering resources to support their operations that align with donors' priorities. International court officials at the ITLOS, EACJ, and AfCHPR—international courts which all accept donor funding—expressed the same caution that donors should only fund certain kinds of activities that are not related to international courts' core work of adjudication. Court officials were clearly seeking to preserve their judicial autonomy but were willing to compromise their autonomy over their non-judicial activities. Donors, at a minimum, shape international courts' non-judicial activities by choosing to fund (and make possible) some activities but not others. GIZ's relationship with the African Court perhaps represents the greatest level of donor oversight of an international court's non-judicial activities, as it has a GIZ advisor permanently stationed at the court to oversee funded programmes. GIZ initially supplied technical assistance (e.g. ICT systems, infrastructure), but then increasingly funded other capacity-building (training for international court officials) and outreach programmes.[44]

International courts and their intermediaries—which may promote compliance or support other objectives (e.g. gathering evidence)—have a mutually dependent relationship,[45] which by definition limits international courts' autonomy. International courts are rarely in a position

[42] Mataboge, "AU Not Ready to Relinquish Donor Funding." *Mail & Guardian*, June 19, 2015.
[43] Interview, Mutisya. In general, the AU has repeatedly sought alternative funding mechanisms to reduce its reliance on funding from development partners. According to the AU, such funding is unpredictable, selective, and often tied to restrictive conditions. See Mataboge, "AU Not Ready to Relinquish Donor Funding," *Mail & Guardian,* June 19, 2015.
[44] Interview with Iris Breutz, Project Director, GIZ Programme on the African Court on Human and Peoples' Rights, 23 June 2015.
[45] Abbott et al. (2015, 18) acknowledge that IGOs and their intermediaries are "mutually dependent," but only discuss how orchestration of intermediaries can *increase* IGO autonomy from *states.* They do not theorize whether and how IGO autonomy can decrease vis-à-vis intermediaries.

where they have a wide array of intermediaries from which they can choose to serve a particular objective. As will be discussed more fully in Chapter 4, international courts often seize particular intermediaries specifically for their unique capabilities (e.g. resources, expertise, access). Intermediaries, of course, benefit from international courts' "patronage," but in situations where international courts need intermediaries more than intermediaries need them, intermediaries have the leverage to limit international courts' freedom of action in the relevant developing policies and practices. For example, if an NGO has specialized access to a particular community, they could make demands about how they act as an international courts' intermediary there, shaping the international courts' decision-making vis-à-vis its outreach activities or evidence gathering.

Constraints Through Norms (Appropriateness)

Constraints based on the logic of appropriateness operate differently. The central idea is that international courts and their officials are embedded within communities, which have standards of legitimate, appropriate behaviour. International courts cannot autonomously develop these standards; rather, they are the product of discourse and norms—both within and outside of the bounds of international law—involving a range of international actors. These actors can be strategic in their use of discourse to constrain international courts to adhere to particular standards of legitimate, appropriate behaviour. Essentially, they can act as norm entrepreneurs, developing and disseminating norms that constrain international courts' behaviour. Karen Alter, for instance, notes that international courts may be subject to "rhetorical and legitimacy politics" from states following politically unfavourable decisions,[46] but these sorts of influences are fundamentally different both in their aims and scope.

While consequentialism has dominated the existing scholarship on international courts' autonomy (i.e. the independence of international judges), scholars are increasingly acknowledging the importance of constructivist or sociological perspectives,[47] and the logic of

[46] Alter 2006a; 2008a.
[47] See Voeten (2014, 561–566) for an overview.

appropriateness, for understanding international judicial behaviour. These studies, however, generally consider how judges' "pre-bench," rather than "on-the-job,"[48] socialization influences their decision-making. For example, studies of international judges point to the importance of professional background (e.g. diplomats versus judges),[49] and studies of domestic judges reveal the importance of "judicial socialization"[50] in producing "a subculture of justice and encourages judges to adhere to prevailing norms, practices, and precedents."[51] Norms are thought to constrain judges by contributing to "a perimeter beyond which judicial decisions are unlikely to stray,"[52] and judges' standards of fairness, impartiality, and efficiency.[53] Though not acknowledged in the literature, other court officials can similarly face normative constraints, based on standards of court administration, organizational management, etc. Thus, the existing literature shows that norms can place constraints on international court officials' legitimate behaviour, but it has not fully considered the varied sources of these normative influences.

International court officials' logic of appropriateness is generally grounded in law, which both states and other actors within the international community influence. Though international courts have the authority to interpret and apply legal norms, other actors among their contracting states and the international legal community shape the development of the legal norms that form international courts' basis for appropriate, legitimate action. States, through international courts' constitutive treaties, determine the courts' core legal norms. However, international court officials are also actors within the broader international legal community, which has more general norms that international court officials can internalize. Norms are dynamic, and these external actors can seek to develop and disseminate norms to socialize international court officials and delimit the boundaries of their legitimate, appropriate behaviour.

[48] This distinction is commonly used in the literature on the judicial socialization of domestic judges (e.g. Carp and Wheeler 1972).
[49] Terris, Romano, and Swigart (2007, 64) suggest that previous experience and professional background can be "almost more important" than their nationality. Voeten (2008) found that diplomats decided ECtHR cases differently than judges of other professional backgrounds.
[50] For an overview of the seminal literature on judicial socialization at the domestic level, see Maveety 2003, 175–86. Cook (1971) was among the first to recognize socialization's importance for understanding judicial behaviour.
[51] Spohn (1990, 1212) makes this argument to support her finding that sentencing decisions reached by judges of different races are less dissimilar than some would expect.
[52] Garrison 1995, 413.
[53] Gavison 1987; Geyh 1993; Goldberg 1984.

More "political" norms, such as sovereignty and non-intervention, may also influence international court officials' behaviour—but generally less overtly, as international court officials, especially judges, are first and foremost members of the international legal community. Still, international court officials can also see themselves as political actors, which would make them more receptive to non-legal norms. A study of ECtHR judges indicates that former diplomats were more likely to accept *raison d'état* and a higher margin of appreciation for member states than judges from other professional backgrounds.[54] Nevertheless, international law is inherently political, and it would be overly formalistic to assume that international law is a self-contained, autonomous system, and that international court officials are not influenced by diplomatic and political norms.[55] Different external actors may have different normative preferences regarding the interaction between legal and political norms in international courts' operations, so these external actors may equally seek to delineate the "appropriate" interactions between law and politics in international courts' activities. With the "judicialization of international politics," there is the potential for the "politicization of international judiciary." Normative constraints may come from states or other members of the international community, such as NGO-intermediaries, IOs, etc.

As discussed in Chapter 1, international courts' normative constraints vary significantly between their judicial and non-judicial activities. The norms governing international courts' judicial decision-making are carefully defined by states and further grounded in the norms of international legal community, in which international judges are embedded. However, the norms for international courts' non-judicial activities are relatively undefined, and the standards of legitimate, appropriate behaviour for international court officials beyond adjudication are ambiguous. For example, several international judges have acknowledged the ambiguity of their standard of appropriateness vis-à-vis their freedom of expression and their "extra-judicial" activities.[56] In general, international courts face relatively lower normative constraints in their

[54] Voeten 2008.
[55] Pierre Bourdieu's (1986) account of "legal fields" argues against such formalism. Madsen's (2011) analysis of the ECtHR's early years support this perspective as well.
[56] BIIJ, "International Justice: Past, Present, and Future," 2009.

non-judicial activity, which gives them greater scope for developing their agency—including their approaches for promoting compliance.

Constraints by Contracting States

In international courts' founding treaties, states clearly delineate core norms that constrain the behaviour of international court officials and define their appropriate roles. States, as discussed earlier, primarily focus on specifying the appropriate standards of judicial decision-making, and international judges, as "rule of law" actors, take these treaty provisions as constitutive of their appropriate roles within their court and legal regime more broadly. International court officials follow their treaty provisions not merely for fear of retribution of violations, but from a sense of legal obligation that stems from their professional and personal values and identities. These norms enable international judges and other officials by, for example, making their independence and diplomatic immunity legitimate and appropriate, but they also constrain them in particular ways. International courts' constitutive treaties often also clarify what is inappropriate behaviour for international court officials. For example, states can clarify the inappropriate behaviour that justifies judges' dismissal from office.

States, in writing international courts' delegation contracts, are far less clear on the international courts' (and their officials') appropriate roles regarding their non-judicial activities. Thus, at least from contracting states, there are not significant normative constraints on international courts' decision-making regarding their non-judicial activities. States may reference the value of "efficiency" for the court's administration, but they usually go no further in international courts' constitutive treaties. Over time, however, states may seek to place normative constraints on international courts' decision-making vis-à-vis their overall organizational policies and practices. Given states' oversight over international courts' administration, they are especially likely to influence international courts' bureaucratic and administrative norms, which have implications for their entrepreneurship. This is the area where contracting states continue to interact with international courts as they operate, which provides opportunities to disseminate norms to constrain courts' behaviour. States may, for instance, inculcate norms of "efficiency" among international court officials, which would deter any resource-intensive developments in their policies and practices. States may thus socialize international court officials to not only consider legal standards of appropriateness, but also base their legitimate, appropriate behaviour on particular norms of efficiency, such as performance indicators and "value for money." International court officials may come to view activities with measurable impacts as desirable,[57] which may make outreach activities unattractive, for example. This would not affect international judges' legal reasoning as such; it would primarily constrain international court officials' non-judicial decision-making vis-à-vis budgeting, policy development, etc.

Constraints by Other Actors

The international legal community consists of international and national judges, legal academics, lawyers, and other actors with legal expertise. Collectively, these international legal actors debate the legality and legitimacy of various actors' behaviour, including international judges and courts more generally. Scholars have argued that judges are embedded within a "global community of law," and they care about their reputation within it.[58] This community may "shield" judges from overtly political influences,[59] but it also "validates certain forms of legal analysis and strategic decision making while discouraging others."[60] The norms within this international legal community govern procedural rules, methodological approaches, and interpretive strategies. They also focus on judicial independence. For example, legal scholars and practitioners have formulated two distinct codes of ethics for the international judiciary, including the Burgh House

[57] On the power of indicators in global governance, see Davis et al. 2012.
[58] Alter 2008a; Helfer and Slaughter 2005.
[59] Helfer and Slaughter 1997, 370.
[60] Helfer and Slaughter 2005, 55.

Principles on the Independence of the International Judiciary[61] and the Bangalore Draft Code of Judicial Conduct.[62]

However, as international courts are increasingly inserting themselves into the international community, dealing with evermore questions of political, social, and economic life, the range of actors that may seek to influence how international courts conduct their activities is expanding. It is inadequate to theorize international courts' normative constraints merely based on the norms of the international legal community, which shape international courts' judicial decision-making through norms of appropriateness regarding interpretative methodologies, applicable law, dissent, judgment writing, and so on. These certainly constrain international courts' judicial agency, placing limits on their development of judicial mechanisms for promoting compliance, but what of international courts' non-judicial agency?

The international legal community has particular extra-judicial norms governing international judges' behaviour beyond adjudication, though they mainly relate to preserving judicial independence and impartiality in proceedings specifically. For instance, international judges should not engage in *ex parte* communications with parties, which is relevant to their non-judicial dialogue and interaction. One judge, for instance, noted the difficulty when international judges seek to mobilize national judges as intermediaries: "It is hard when a communication is from an international judge to a national judge, to decide whether that communication should be considered *ex parte*."[63] International legal norms, therefore, can influence international courts' approaches for promoting compliance based on their non-judicial agency.

However, beyond the international legal community, there are other actors that can seek to impose normative constraints on international courts. Donors not only can influence international courts' incentives, but through their relationships with international courts, they can influence international courts' norms as well. Donors gravitate toward international courts because they fulfil donors' objectives; thus, donors can have particular normative commitments

[61] International Law Association, "The Burgh House Principles On The Independence Of The International Judiciary," 2004.
[62] United Nations, "The Bangalore Principles of Judicial Conduct," 2001.
[63] BIIJ, "Coordination and Collaboration in Global Justice," 2012, 26-27.

that they wish for international courts abide by. For instance, Western donors are likely to have a liberal, democratic approach to international law, which they would want to spread to international courts. They may also have particular ideas about how regional integration should proceed through international courts. For example, when the head of the EU's Delegation to Nigeria visited the ECCJ, he stressed the importance of "strengthen[ing] the role of the regional court in the area of economic integration so that it could play a more active role in regional integration similar to the role played by its EU counterpart."[64]

Donors often support international courts' "capacity-building" through training programmes, which can influence international courts' norms of judicial decision-making. In the EACJ, for example, the Konrad Adenauer Foundation supported EACJ judges' training in different areas of law under their jurisdiction. As they lacked experience in arbitration, though it was an area of their jurisdiction, the Foundation supported EACJ judges' attending a training course on arbitration. In the course, a "leading figure within, and pioneer of, the field of international arbitration" facilitated the sessions, which emphasized that "arbitration is popular in the business community as well as the investors" and that the EACJ can play "a big role in enforcing arbitration awards."[65] The training was thus aimed at persuading judges to perform their appropriate role and promote compliance through arbitration, as well as adjudication. Still, donors, like member states, may impose particular normative constraints on international courts' administration. Once again, the ECCJ offers an example: five ECCJ judges attended the GIZ-supported workshop on Result-Based Management and Resource-Based Monitoring and Evaluation and "for cultivating the culture of quantitative and qualitative outcomes in ECOWAS institutions."[66]

Finally, actors, such as NGOs, may extend the norms of transparency and accountability, which are increasingly the standards of appropriateness for IOs more generally, to international courts. There has been a trend toward IO transparency and accountability, which places international courts, which rely heavily on confidentiality, in a challenging

[64] ECCJ, "ECOWAS Court president defends region's preoccupation with politics," 2015.
[65] EACJ, "EACJ Judges' training on emerging trends in arbitration sets off," 2015.
[66] ECCJ, "ECOWAS Court opens workshop on monitoring and evaluation," 2012.

position of adhering to these more general IO norms. The ICC, for instance, has noted the importance of transparency, and set plans to create an archive, with non-confidential documents, open to the public.[67] As some scholars have noted, international courts exercise "public authority,"[68] so actors representing the public interest (and beyond the international legal community) may seek to influence their norms, and international courts' increased engagement with actors in their legal regimes may provide them the avenue to do so. As NGOs often have privileged access to international courts, given their common functions as intermediaries, their relationships may serve as a means of normative influence, particularly regarding international courts' non-judicial activities.

The Variation in Autonomy and Agency in the SADC Tribunal and ICC

Unlike the chapters that follow, where diverse and most-similar case studies test the theoretical propositions regarding international courts' level of acceptance and accessibility, these case studies primarily aim to trace the influence of international courts' variable constraints on their decision-making regarding their approaches for promoting compliance. The analysis is within-case, rather than comparative, and uses process-tracing to elucidate how actors threaten or use particular constraints, and how international court officials respond in their decision-making and development of approaches.

The SADC Tribunal and ICC have been selected based on their value for tracing distinct causal pathways between international courts' constraints and limitations on their entrepreneurship regarding their approaches for promoting compliance. By design, both courts had a high level of autonomy, but each court was subject to various external constraints as it operated. The SADC Tribunal was subject to the most extreme state control of any international court in history; thus, it can also be considered a "crucial case," as it would be most likely to

[67] Interview with Fadi El Abdallah, ICC Spokesperson and Head of Public Information and Documentation Unit, ICC, 5 June 2014.
[68] von Bogdandy and Venzke 2013.

limit its approaches for promoting compliance. With the ICC, a range of external actors, including states and intermediaries, have sought to constrain the Court's incentives and norms.

The SADC Tribunal

The SADC Tribunal is SADC's regional court, envisioned in the 1991 SADC Treaty and created through an additional protocol, adopted in 2000.[69] The Tribunal was designed to promote both SADC states' and institutions' compliance with the SADC Treaty. It could directly create consequences for noncompliance through ordering compensation to injured parties, and indirectly promote compliance through national courts, given its preliminary ruling mechanism.[70] The Tribunal lacked direct enforcement power, as sanctions for noncompliance could only be imposed on a case-by-case basis through a unanimous consensus in the SADC Summit.[71] The preliminary ruling mechanism was also rather weak due to an unusual provision that its decisions would be treated as "foreign judgments" at the domestic level, where enforcement could be denied if it would violate a "matter of public policy."[72]

The SADC Tribunal's decline in autonomy, both its judicial and non-judicial operations, clearly demonstrates how low autonomy restricts international courts' agency for not only developing approaches promoting compliance, but even practicing their embedded approaches. The SADC Tribunal was designed to have relatively high autonomy, but states were able to exert significant control over the Tribunal, through resource controls, appointments (or lack thereof), and re-contracting to limit its autonomy and agency. This case demonstrates states' ability to limit international courts' autonomy and agency in both its judicial and non-judicial dimensions.

[69] Articles 15 and 16, SADC Tribunal Protocol.
[70] Article 16, SADC Tribunal Protocol.
[71] Artcle 32(5), SADC Tribunal Protocol. The Summit is the supreme policy-making body of SADC, consisting of the heads of state or government of all member states, which meets on annually. The decisions of the Summit are taken on the basis of consensus and have a binding nature, but the Summit is extremely reluctant to take punitive measures against a member state.
[72] Article 32(1), SADC Tribunal Protocol. This provision is usually applied to foreign judgments from *national* jurisdictions, rather than international courts.

Rules. Due to donor and investor influence, and SADC states' associated desire to emulate the ECJ, states used minimal *ex ante* limits on the Tribunal's autonomy. The general consensus is that SADC states instrumentally agreed to a Tribunal as part of their overall adoption of the EU model of regional integration,[73] largely instrumentally as a means of encouraging investment in the region. Foreign donors, such as the European Commission, the UK Department for International Development, the World Bank, and GIZ, and to a lesser extent Norway, Belgium, Finland, and others, were key drivers in SADC's development.[74] The SADC Treaty was thus drafted under donor pressure for increased performance and donors' desire for an enhanced dispute settlement mechanism that could push member states to abide by their commitments.[75] For SADC states, the Tribunal represented a signal to donors and investors that SADC would provide an investment environment based on a regional "rule of law," which would provide checks on national judiciaries, many of which were poorly developed, in Southern African states. In the 1992 SADC Treaty, therefore, states agreed to a SADC Tribunal mandated to interpret and apply the SADC Treaty and its associated treaties "to ensure adherence to" the law.[76]

In devising the Tribunal's Protocol and design,[77] the SADC Secretariat also sought to emulate the ECJ model, with minimal *ex ante* controls on autonomy primarily based on donor and investor, rather than member state, preferences. The EU was particularly invested in the SADC Tribunal's creation, and the European Commission was a major contributor through its 2002-2007 Capacity Building Programme.[78] Seeking assistance with drafting the Tribunal's Protocol, SADC's Executive Secretary invited ECJ Advocate General Francis Jacobs to act as an advisor and draft the Tribunal's Protocol.[79] According to Jacobs, "The advice was to be based on the experience, or experiments, of such courts throughout the world, but it was clear that the

[73] E.g. Jacobs 2007, 130–135; Lenz 2012.
[74] Tjønneland, "SADC and Donors: Ideals and Practices," 2006.
[75] Tjønneland 2006; Lenz 2012.
[76] Article 16, SADC Treaty. The Tribunal's "composition, powers, functions, procedures and other related matters" were determined by the SADC Tribunal Protocol, adopted by SADC member states in 2000.
[77] SADC Tribunal Protocol.
[78] Tjønneland, "SADC and Donors: Ideals and Practices," 2006.
[79] Jacobs 2007, 134.

leading model was to be the ECJ."[80] Jacobs was not given free rein, however: SADC, for instance, rejected his suggestion that "the SADC Court should not only have jurisdiction over the 'development' matters which fell directly within the competence of the organization, but also an embryonic form of human rights jurisdiction."[81] Thus, SADC states deliberately rejected a human rights mandate for the Tribunal.

The EU standards of "what an effective and credible dispute settlement mechanism ought to entail," however, strongly influenced the Protocol.[82] The Tribunal Protocol adopted key ECJ features, for instance copying Article 177 of the Treaty of Rome vis-à-vis constitutional review, private access, and a preliminary rulings procedure.[83] The Tribunal Protocol even surpassed the ECJ model in certain respects, such as allowing individuals to initiate non-compliance suits when all other domestic remedies have been exhausted[84] and explicitly calling for the development of Community jurisprudence,[85] which essentially invited the Tribunal to relatively freely exercise its judicial agency. Thus, at least based on its design rules, the SADC Tribunal was to have a high level of autonomy, as was the accepted EU model for regional integration courts.

Resources. Considering its delegation contract and institutional design were essentially grafted from the ECJ based on donor and investor preferences, rather than designed *de novo* based on SADC states' preferences, it is perhaps unsurprising that member states were slow to ratify the Protocol and, once it became operational in 2005, did not prioritize investing SADC resources the Tribunal. For *ex post* control of the Tribunal, SADC allocated the Tribunal sufficient resources to basically function, but these resources were limited enough to constrain the Tribunal's decision-making over its policies and practices. These kinds of resource restrictions are standard practice for African regional integration courts that arose out of the "judicialization

[80] Ibid.
[81] Ibid., 135.
[82] Lenz 2012.
[83] Articles 15-18, SADC Treaty.
[84] Article 15(b), SADC Treaty.
[85] Article 21(b), SADC Treaty. See Ruppel and Bangamwabo 2008.

through ECJ-emulation" trend in African regional economic communities. These organizations lack resources overall, but their respective courts often have the lowest budget of all organs.[86]

Though external donors provided the overwhelming majority of SADC's overall funding,[87] the SADC Council of Ministers (a political organ) had the discretion to allocate the Tribunal's budget.[88] The Tribunal openly noted that it "face[d] a number of challenges most of them emanating from inadequate financial resources."[89] For example, before its dissolution, the Tribunal had merely nine staff members, which would substantially undermine its non-judicial activities and, potentially, its judicial activities. The SADC Tribunal clearly felt the limits on its autonomy, and resource restrictions directly affected Tribunal officials' decision-making regarding non-judicial activities and approaches for promoting compliance. The Tribunal, for instance, only managed to publish one newsletter in its five years of existence due to its lack of resources. The Tribunal explicitly noted that its capacity for outreach was "limited by a lack of financial and human resources" such that, in 2009-2010, it could not afford any outreach efforts, which would have supported indirect approaches for promoting compliance.

To mitigate this limit on its decision-making on its non-judicial activities, Tribunal officials attempted to compensate for the lack of SADC financial and personnel resources by actively seeking out external cooperation partners to directly supply resources that would not be mediated by SADC states. The Tribunal's Registrar, for example, signed a grant agreement in 2009 with the Open Society Initiative in Southern Africa for USD 30,000 to support the Tribunal's strategic planning and non-judicial activities, such as outreach for popularizing the Tribunal among stakeholders in the region,[90] which could potentially develop intermediaries for promoting compliance. Officials also attempted to collaborate with the United Nations Economic Commission for Africa on a regional conference on the relationship between national courts and

[86] The EACJ, for example, has by far the lowest budget of any core EAC organ. In 2014-15, it was allocated $3 million, while the EAC Secretariat received $14 million and the East African Legislative Assembly received $10 million. See EAC, "Report of the 30th Meeting of the Council of Ministers," 2014, 62-64.
[87] For example, in 2011, 72% of SADC's budget came from external donors.
[88] Article 33, SADC Tribunal Protocol.
[89] SADC Tribunal, "SADC Tribunal Review," 2010.
[90] Ibid.

the Tribunal,[91] where national courts could function as intermediaries in implementing SADC law at the substate level. Evidently, Tribunal officials had sought to develop indirect approaches for promoting compliance, but their entrepreneurship was stifled by resource constraints, which they hoped to mitigate with donor funding.

SADC states dissolved the Tribunal before any of the externally-supported plans for strategic planning, outreach, and so on could come to fruition, which illustrates the limits of international courts' strategies for mitigating control. Though the states ultimately exerted far more extreme control over the Tribunal, states' resource control, on its own, clearly undermined the Tribunal's autonomy and, consequently, its approaches for promoting compliance. For its short existence, the Tribunal was unable to expand its non-judicial activities, though officials wished to do so.

Appointments and de facto dissolution. The impetus for further, and far more extreme, state control arose once the Tribunal decided its first cases, which were highly controversial in Zimbabwe in particular and the region in general. These rulings illustrated the Tribunal's high sovereignty costs, essentially alerting SADC states to the real implications of the ECJ model they had instrumentally adopted. These rulings also demonstrated the Tribunal's high level of judicial autonomy and capacity to render expansive interpretations of SADC states' legal obligations. In response, and particularly through Zimbabwe's lobbying, SADC states effectively dissolved the SADC Tribunal through states' controls over appointments.

It is beyond the scope of this study to detail the protracted legal wrangling between Zimbabwe and the Tribunal. However, the core of the confrontation was over the Tribunal's judicial autonomy in interpreting and applying Zimbabwe's legal obligations under the SADC Treaty and the Tribunal's Protocol. In several cases before the Tribunal—the most notable of which was the *Campbell* case[92]—the Tribunal applied the SADC Treaty principle of nondiscrimination to the Mugabe government's land reform policies, which had generally

[91] Ibid.
[92] *Mike Campbell (Pvt) Ltd and Others* v. *Republic of Zimbabwe* (2008).

stripped white farmers of their land and redistributed to individuals favoured by the Mugabe regime. The Tribunal ruled this was a violation of Zimbabwe's legal obligations under SADC and ordered compensation.[93]

States had included legal obligations to protect and promote democracy and human rights in the SADC Treaty.[94] They also included the principle of nondiscrimination based on their opposition to apartheid,[95] but here the Tribunal was applying the principle in a very different context, which Zimbabwe contested. In general, land reform is a highly sensitive issue in Southern Africa, so other states would have also questioned this judicial interpretation of their obligations.[96] In addition, in its interpretation of nondiscrimination, the Tribunal also controversially drew on non-SADC treaties to which Zimbabwe was a party (e.g. the *International Covenant on Civil and Political Rights*) to elaborate the principle of nondiscrimination. This was based on the Tribunal's autonomy in generating its own jurisprudence, as provided by its constitutive treaty rules.[97] Zimbabwe and other states perceived this as an overly expansionist (and illegitimate) interpretation of law under SADC.

It was clear that Zimbabwe did not expect the Tribunal to be so autonomous in its interpretation and application of international law. Throughout this process, Zimbabwe sought to limit the Tribunal's judicial autonomy through legal argumentation—a discursive strategy within the boundaries of the adjudicatory process. Zimbabwe contested the Court's jurisdiction due to the lack of exhaustion of local remedies,[98] and it argued that the Tribunal lacked jurisdiction over

[93] This order was ultimately enforced through the selling of Zimbabwe-owned assets within South Africa, with the support of South Africa's Constitutional Court. Afriforum, which represented the farmers in the SADC Tribunal cases, sought compensation for their legal costs in South Africa, after Zimbabwe claimed the Tribunal had no jurisdiction in Zimbabwe. Property owned by Zimbabwe, but located in South Africa, was put up for sale, which was upheld by the South African Constitutional Court in *Government of Zimbabwe* v. *Fick* (2013). For an overview, see "Govt bid to save SA property 'futile'," *The Standard*, September 27, 2015.
[94] Articles 4 and 6, SADC Treaty.
[95] Hulse and van der Vleuten 2015, 88.
[96] Interview, Charewa.
[97] Article 21(b), SADC Tribunal Protocol: "The Tribunal shall… develop its own Community jurisprudence having regard to applicable treaties, general principles and rules of public international law and any rules and principles of the law of States."
[98] Zimbabwe argued that local remedies had not been exhausted, as required by the Tribunal's Protocol. Specifically, at the start of the proceedings, the Supreme Court of Zimbabwe had not yet delivered its judgment, which ultimately affirmed the Tribunal's jurisdiction.

human rights disputes.[99] It also argued that the Tribunal was illegally constituted because its Protocol had not been amended properly according to the procedure provided in the SADC Treaty[100]—a claim that was even rejected by Zimbabwe's High Court, which affirmed the legality of the Tribunal and that Zimbabwe was bound by its decisions under international law.[101]

With Zimbabwe making no progress through legal argumentation, Mugabe led a diplomatic campaign for SADC states to *de facto* dissolve the Tribunal. Under Article 35 of the SADC Treaty, the dissolution of SADC and its institutions was possible if supported by three-quarters of all members, and the proposal followed a particular procedure.[102] Mugabe managed to overcome the hurdle of collective action and convinced SADC states to dissolve the Tribunal. Tanzanian President Jakaya Kikwete, for instance, argued, "We have created a monster that will devour us all."[103] The SADC Summit, which is charged with taking action in cases of noncompliance with judgments, as was the case with Zimbabwe, instead decided by consensus in 2010 not to renew the Tribunal judges' appointments and not to appoint new judges. States agreed to halt ongoing cases and prevent new ones from beginning until the SADC Justice Ministers conducted a review.[104] Commending SADC states' decision, and maintaining the monster metaphor, Mugabe noted, "we thought we had created an animal which was proper, but no, we had created a monster."[105]

In November 2010, SADC commissioned an external consultant, Professor Lorand Bartels, to conduct this "Review of the Role, Responsibilities and Terms of Reference of the SADC Tribunal."[106] Essentially, in view of Zimbabwe's challenges, SADC states wanted to assess "the SADC legal system and of the role of the SADC Tribunal and the national courts of

---

[99] Zimbabwe contended that the human rights principles included in the SADC Treaty were too general to be enforceable and, as a result, a separate human rights protocol was required. Otherwise, Zimbabwe argued, the Tribunal would be using other treaties' human rights standards and effectively legislating on behalf of member states. This argument was rejected by legal scholars and the Zimbabwean High Court.
[100] In SADC practice, amendments were never pursued according to procedure in Article 36 of the SADC Treaty.
[101] de Wet 2013.
[102] Under Article 35, three-quarters of all members must agree, and the proposal must first be submitted to the SADC Council, with a twelve month waiting period before it reaches the Summit.
[103] "SADC Summit: Beheading the Monster," *The Economist*, August 22, 2012.
[104] Cowell 2013, 11.
[105] "Mugabe Commends Tribunal Suspension," *New Zimbabwe*, August 21, 2010.
[106] Bartels 2011.

the SADC Member States" and obtain "concrete recommendations directed at improving the functioning and operation of the SADC Tribunal within this legal framework."[107] The Tribunal's legal fate, however, remained undetermined,[108] despite the strong lobbying efforts from both former Tribunal officials[109] and civil society organizations.[110] Nevertheless, through their power to withhold judicial appointments, SADC states managed to completely constrain the Tribunal and prevent its from promoting compliance in any way, even through approaches embedded in its design.

Amendment. At the 2012 SADC Summit, states finally addressed the issue of the dissolved Tribunal and resolved that a new Tribunal Protocol should be negotiated, with the new Tribunal's mandate limited to interpreting and applying the SADC Treaty and protocols in disputes between SADC member states.[111] SADC states thus decided to re-contract with the Tribunal to place significantly greater *ex ante* rules-based restrictions on the Tribunal's autonomy. This move was a clear sanction for controversies that arose out of the Tribunal's judicial decisions in the Zimbabwe land reform cases. The differences between the "old" and "new" protocols closely mapped onto the areas of the Tribunal's authority and autonomy that supported its allegedly expansionist legal interpretations of Zimbabwe's obligations under SADC.

In 2014, the SADC Summit adopted the Protocol, which awaits sufficient ratifications to enter into force and create the new SADC Tribunal.[112] At the 2014 Summit, only nine states signed the Protocol.[113] Civil society organizations in Southern Africa continue to lobby SADC

---

[107] Formally, however, the report states its objectives: "to provide an analysis of the SADC legal system and of the role of the SADC Tribunal and the national courts of the SADC Member States, and to make concrete recommendations directed at improving the functioning and operation of the SADC Tribunal within this legal framework" (Bartels 2011, 6).
[108] Technically, the original SADC Tribunal will only cease to exist legally once the new SADC Tribunal Protocol enters into force. Article 48, SADC Tribunal Protocol.
[109] E.g. Pillay, "SADC Tribunal Dissolved by Unanimous Decision of SADC Leaders."
[110] Two prominent legal NGOs—the Pan African Lawyers Union (PALU) and Southern African Litigation Centre (SALC)—frequently spoke out against Zimbabwe's claims and actions vis-à-vis the Tribunal.
[111] SADC, "Final Communiqué of the 32nd Summit of SADC Heads of State and Government," 2012.
[112] SADC, "Communiqué of the 34th Summit of the SADC Heads of State and Government," 2014. The Protocol requires ten ratifications to enter into force.
[113] Erasmus 2015.

states to reinstate the Tribunal,[114] but SADC states seem largely unaffected. Between the Tribunal's *de facto* dissolution, and the long period between drafting, adopting, and ratifying the new Tribunal's Protocol, SADC states have completely controlled the Tribunal, effectively eliminated its agency, and prevented it from promoting compliance with international law.

The ICC

The ICC was created through the Rome Statute in 1998, which entered into force in 2002. As the first permanent international criminal court, and given its potentially global scope, its creation represented a significant achievement in international criminal justice. States (and NGOs, which extensively participated in negotiations[115]) designed the ICC to have several embedded approaches for promoting compliance—both among states, which must comply with certain cooperation obligations, and individuals, which can bear individual responsibility for international crimes. For individuals, the Court can directly create costs for noncompliance, through imprisonment and financial penalties,[116] and indirectly create costs through national courts, which are obligated to implement the Rome Statute domestically. With states, the Court's embedded approaches involve indirectly creating costs for non-cooperation. The ICC can monitor states, prosecute their noncompliance with cooperation obligations, and refer the state party to the Assembly of States Parties or Security Council, which can potentially take enforcement action.[117] Of the ICC's four organs—the Presidency, Chambers (the judges), Office of the Prosecutor (OTP), and Registry—the OTP monitors and prosecutes noncompliance, while ICC judges interpret and apply the Rome Statute to determine compliance and noncompliance.

While not as dramatic a case of state control as the SADC Tribunal, the ICC has faced numerous challenges to its judicial and non-judicial autonomy. Various international actors,

[114] E.g. Konrad Adenauer Stiftung's Rule of Law Program for Sub Saharan Africa held a two-day roundtable to discuss the restoration of the Southern African Development Cooperation (SADC) Tribunal in Pretoria, South Africa. Konrad Adenauer Stiftung, "A call for restoring the SADC Tribunal," 2014. See also, Human Rights Watch, "SADC: Take Concrete Steps to Improve Rights," (Press Release, August 16, 2015).
[115] Deitelhoff 2008.
[116] Article 77, Rome Statute.
[117] Article 87(7), Rome Statute.

including the US, African states, and powerful ICC states parties, have imposed different forms of constraints on the ICC's judicial and non-judicial decision-making, influencing officials' incentives and norms. These constraints have affected the Court's adoption of policies and practices aimed at promoting compliance. None of the constraints has been so significant as to prohibit the adoption of particular *approaches*, but the ICC's policies and practices within those approaches have been constrained. The ICC has thus developed direct and indirect approaches for promoting compliance based on both consequentialism and appropriateness.

Rules. Through the Rome Statute, states provided the ICC a moderate level of autonomy, primarily circumscribing the OTP's and Chambers' decision-making regarding investigations and prosecutions. States and NGOs devoted considerable time and effort in the Rome negotiations to precisely define the Court's rules, resulting in one of the most detailed delegation contracts among the various international courts in the international system.[118] Still, it was an incomplete contract, as negotiators left several theoretical and practical issues unresolved in the interest of maintaining the momentum of negotiations and concluding an agreement.[119] They, however, ensured that states would retain control over the development of the Court's substantive rules by, in effect, agreeing to form the Court, see how it operated, and have a Review Conference seven years after the Statute came into effect to revisit particular design features.[120]

The Rome Statute affords the Court considerable autonomy in exercising its jurisdiction. The Court's jurisdiction can be triggered through referrals from the UNSC for non-states parties—a far cry from the traditional consent-based nature of international law. Within ICC states parties, states themselves can refer situations, but crucially the OTP can also autonomously

[118] For example, as a rough comparison, the Rome Statute (1998) has 128 articles, totaling 82 pages, while the SADC Tribunal's Protocol (2000) had 39 articles, totaling 11 pages. This comparison is only rough, as the Rome Statute defined all rules pertaining to an entire IO, whereas the SADC Tribunal's protocol was in addition to the SADC Treaty. Still, the difference is remarkable. For example, for amendments, the Rome Statute has three article and twelve sub-articles, while the SADC Tribunal Protocol has only one article with three sub-articles.

[119] See Lee 1999.

[120] According to Article 121, seven years after the Statute's entry into force, states parties may propose amendments, which will be considered at a Review Conference.

initiate investigations, with approval from a Pre-Trial Chamber. The OTP's freedom of action, however, is tempered by the principle of complementarity, governing the Court's jurisdiction and admissibility rules for cases: a state must be unwilling or unable to prosecute crimes domestically for the Court to prosecute them internationally.[121] Still, the Court's capacity to autonomously initiate cases is remarkable. Other design features provide the OTP and judges considerable autonomy in determining, elaborating, and amending the Court's rules. For example, judges can, through an absolute majority, amend the regulations of the Court, and amendments can only be overturned by states through a majority, six months later.[122]

The Rome Statute also placed some general rules-based constraints on the ICC's non-judicial agency. Crucially, the Statute specified that the Assembly of States Parties (ASP) would "Provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court."[123] States' oversight of the ICC's administration would be aimed at "enhanc[ing] its efficiency and economy."[124] Thus, states delineated the core objectives and principles surrounding the Court's administration, embedding particular constraints on its non-judicial decision-making. With oversight, Court officials have clear incentives for adhering to states' preferences for court administration, and norms of "efficiency," embedded in its constitutive treaty, formed the standard for legitimacy and appropriateness in their administrative activities.

The Rome Statute is virtually the only constitutive treaty for an international court that specifies the conditions under which the Court may "employ the expertise of gratis personnel offered by States Parties, intergovernmental organizations or nongovernmental organizations to assist with the work of any of the organs of the Court."[125] This, however, is only permissible "in exceptional circumstances,"[126] and involves actual employment (rather than coordination, collaboration, etc), so states were not necessarily embedding indirect, intermediary-based

[121] Article 17, Rome Statute.
[122] Article 52, Rome Statute. These take immediate effect and can only be overturned six months after their adoption, if a majority of states parties object.
[123] Article 121(2b), Rome Statute.
[124] Article 121(4), Rome Statute.
[125] Article 44(4), Rome Statute.
[126] Ibid.

approaches within the ICC. Still, they acknowledged that such actors could play a role in the fulfillment of the Court's mandate.

Thus, precise rules regarding the ICC's "complementary" jurisdiction placed significant limits on the ICC's ability to directly prosecute and create consequences for individuals' perpetration of international crimes. The Rome Statute's rules regarding the ICC's administration and potential use of intermediaries also place *ex ante* constraints on the Court's development of non-judicial activities and capacity for entrepreneurship with its approaches for promoting compliance. Administrative oversight has generally constrained officials' decision-making regarding developing new investigations and non-judicial activities.[127] Precise rules have also constrained the Court's use of intermediaries, where the Court, after controversies over its use of intermediaries,[128] developed a policy on intermediaries and justified it according to the relevant Rome Statute provisions.[129]

The US and Contracting States: Rules. From the outset, the United States was a figure undermining the Court's autonomy,[130] further expanding a key constraint embedded in the Court's delegation contract through its own interpretation and bilateral agreements with ICC states parties. Specifically, even as a non-state party to the Rome Statute, in the interest of protecting its nationals from ICC prosecution, the US advanced a particularly restrictive interpretation of Article 98. The article prevents the Court from "proceed[ing] with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State."[131] Based on its interpretation of Article 98, the US has signed bilateral immunity agreements with numerous states.[132] These agreements constrain the Court by

[127] This will be elaborated in the discussion of resource constraints.
[128] E.g. Open Society Justice Initiative, "Intermediaries and the International Criminal Court: A Role for the Assembly of States Parties," 2011.
[129] ICC, "Guidelines Governing the Relations between the Court and Intermediaries," 2014.
[130] For example, at the Rome negotiations, the US delegation supported the UNSC referrals and states parties' self-referrals, but not the ability for the OTP to initiate investigations (albeit with Pre-Trial Chamber approval) itself.
[131] Article 98(1), Rome Statute.
[132] See, e.g., Ralph 2007.

allegedly rendering US nationals immune from surrender to the ICC among the states that have signed the agreements. Thus, states, at the US's instigation, have restricted the Court's ability to prosecute US nationals and create costs for noncompliance.

African States: Rules, Resources, Contracts. African states, which initially were some of the Court's strongest supporters, have since become some of its most ardent critics. African states' attitudes changed as the ICC began its operations, which increasingly seemed biased towards Africa.[133] The Court has become plagued by distributional conflict, where throughout its existence, it has only prosecuted Africans and imposed sovereignty costs on African states. These sovereignty costs have been particularly acute in the Court's alleged "targeting" of African leaders. Rwandan President Paul Kagame, for example, associated the ICC with "colonialism, slavery and imperialism," and said it "has been in place only for African countries."[134] Ethiopian Foreign Minister Tedros Adhanom Ghebreyesus similarly argued, "the court has transformed itself into a political instrument targeting Africa."[135] In a normative sense, many African states have contested the Court's interpretations and applications of its core provisions. Kenyan President Uhuru Kenyatta, for instance, argued the ICC's Kenya cases involved "a progressive breaching of the Rome Statute's critical cornerstones of complementarity, admissibility, threshold and gravity."[136] Many African states also contend that ICC prosecutions of African leaders violate broader norms of sovereignty, non-intervention, and immunity for state leaders, and prioritized justice over peace, disrupting peace processes through ICC prosecutions.[137]

African states, therefore, have pursued various means of constraining the Court's judicial autonomy in its controversial cases against Africans, particularly African heads of state and government. Some constraints could be exercised by individual states, but most contractual constraints have required collective action from the ICC's full membership of over 120 states parties with heterogeneous interests in and normative commitments to the Court. Zimbabwe

[133] Hansen 2013.
[134] Kimani, "Pursuit of justice or Western plot?," *Africa Renewal*, October, 2009.
[135] Hickey, "African union says ICC should not prosecute sitting leaders," *The Guardian*, October 12, 2013.
[136] Kenyatta, "Statement on ICC delivered at the AU summit, Addis Ababa," 2015.
[137] See, e.g., Gegout 2013.

managed to overcome the hurdle of collective action, but among the ICC's broad membership, dissatisfied African states have not. They have managed to successfully exercise particular constraints, while threatening to exercise others that require collective action, either internationally or regionally.

Rules. African states' initially sought to use the Rome Statute's existing rules and procedures to constrain the OTP and judges' autonomy in the controversial prosecutions of Sudanese, Libyan, and Kenyan nationals, including sitting heads of state and government.[138] Essentially, these states sought to limit the ICC's ability to impose costs on their leaders for noncompliance with international criminal law. Kenya and Libya invoked Article 19, which determines the admissibility of cases, to halt prosecutions. They argued that, as they intended to pursue domestic trials, the cases were inadmissible at the ICC,[139] but ICC judges only accepted the admissibility challenge in the case against Abdullah Al-Senussi.[140] ICC judges have set a high threshold for accepting admissibility challenges,[141] suggesting that their judicial autonomy in this area is unconstrained. In a related rules-based strategy aimed at constraining the Court, African states, both individually and through the AU, repeatedly attempted to have the UN Security Council, as permitted under the Rome Statute,[142] to defer cases for a year in the interests of international peace and security and effectively halt the ICC's prosecutions.[143] The deferral requests, however, were ineffective: the Security Council was slow to respond and ultimately rejected the requests. African states were not able to constrain the ICC's judicial autonomy, and limit its ability to declare costs for noncompliance, through deploying rules-based constraints.

Resources. With the ICC's Africa cases ongoing, the AU passed a series of resolutions urging African states not to cooperate with the ICC, attempting to use the ICC's high reliance on

[138] Sudanese President Omar al-Bashir, Libyan President Muammar Gaddafi, Kenyan President Uhuru Kenyatta, and Kenyan Vice-President William Ruto.
[139] Article 19, Rome Statute. On admissibility challenges before the ICC, see Stahn 2015. Sudan instead chose not to engage with the ICC at all. See Ali, "Sudan rules out plans to challenge ICC Jurisdiction over Darfur," *Sudan Tribune*, March 18, 2007.
[140] ICC, "Al-Senussi case: Appeals Chamber confirms case is inadmissible before ICC," (Press Release, July 24, 2014).
[141] See, e.g., Stahn 2015, 240. Stahn argues that ICC judges have set a high standard for domestic trials (which many weak African judiciaries are unlikely to meet) to justify admissibility challenges.
[142] Article 16, Rome Statute.
[143] See, e.g., Okoth 2014.

state cooperation (e.g. for investigations, evidence, arrests, etc) to constrain the court. Many African states pursued this non-cooperation strategy. For example, Chad, Kenya, Djibouti, and Malawi, despite their ICC membership, did not fulfil their obligation to arrest President Omar al-Bashir when he travelled to their territories,[144] and the OTP found that Kenya failed to "cooperate fully and effectively" with its investigations.[145] Starving the ICC of cooperation (and states' resources) was quite effective at limiting the ICC's ability to prosecute and convict individuals. For example, Bashir was not extradited to the ICC for trial, and the OTP struggled to gather witnesses and evidence for the Kenya cases, ultimately leading it to drop the case against Kenyatta.[146] These cases clearly demonstrated that the ICC was vulnerable to constraints from states, which could severely limit its ability to impose costs for violations of international criminal law.

Contracts. To deal with the issue of the ICC's general "bias" towards Africa in its investigations and cases, African states threatened exercising contractual control and collectively withdrawing from the Rome Statute[147] to limit the ICC's autonomy, specifically its strategic incentives in the African cases. Collective withdrawals would severely constrain the Court, as over a quarter of its states parties are African and all its cases have been focused on Africa.[148] Threatening withdrawal, therefore, could influence the ICC's incentives in its African investigations and cases. Withdrawal threats could deter expansionist or controversial interpretations of ICC rules by the OTP or judges, and exercising this contractual control would sanction the OTP and ICC judges for their judicial activities in African cases. During an Extraordinary Session of the AU Assembly in October 2013, AU states debated collectively withdrawing from the ICC,[149] but decided against it[150] and instead chose to focus on demanding

[144] Bosco 2014, 158.
[145] ICC, "Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the withdrawal of charges against Mr. Uhuru Muigai Kenyatta," (Press release, December 5, 2014).
[146] ICC, "Notice of withdrawal of the charges against Uhuru Muigai Kenyatta," ICC-01/09-02/11, December 5, 2014.
[147] According to the ICC's withdrawal clause (Article 127), withdrawals take effect at least one year from the state's declaration and do not affect proceedings already initiated at the Court.
[148] This would only limit the ICC's ability to prosecute, as the UNSC could still refer cases of non-states parties.
[149] Menya, "Africa Seeks Withdrawal from ICC," *The Star*, May 24, 2013.
[150] AU Assembly, "Decision on Africa's relationship with the International Criminal Court (ICC)," 2013.

amendments.[151] Since then, however, African states have continued to repeatedly threaten to withdraw from the ICC, both individually[152] and collectively,[153] to limit the Court's judicial autonomy vis-à-vis its African cases.

African states have, while threatening withdrawal, sought to amend the Rome Statute to sanction the OTP and ICC judges, and limit the Court's judicial autonomy in its prosecutions. Gaining the two-thirds majority of ICC states parties to pass amendments,[154] however, has proven too difficult. When African states sought to facilitate deferrals of ICC cases by giving the General Assembly authority to grant deferrals if the Security Council fails to respond within six months, the ASP did not pass the amendment.[155] More significantly, Kenya pushed to amend the Rome Statute to provide immunity for sitting heads of state and government,[156] which would halt the ICC's cases against African leaders, and alter how ICC judges interpret and apply international criminal law.[157] To further limit the Court's autonomy, Kenya also pushed for amendments that would allow Court officials to be charged with offenses against administration of justice and strengthen the Court's independent oversight.[158] The amendment that passed through the ASP only allowed ICC judges, at their discretion, to excuse officials when fulfilling "extraordinary public duties at the highest national level" from continuous presence at trial.[159] In effect, this reaffirmed the ICC's judicial autonomy.

Frustrated by the difficulty of collective action among the ICC's broad membership, African states resorted to a strategy of constraining the ICC's influence by creating alternative, African institutions—another contractual control. At one level, African states supported ad hoc

[151] Reportedly, many Anglophone states supported withdrawal, but many Francophone states favoured seeking changes to the ICC instead. Namunane, "Why Africa leaders failed to strike deal on ICC in Ethiopia," *Daily Nation*, October 13, 2013.
[152] For example, Kenya, Namibia, and South Africa have all domestically debated withdrawing (or resolved to withdraw) from the Rome Statute. The Kenyan parliament voted to withdraw from the Rome Statute. "Kenya MPs vote to withdraw from ICC," *BBC News*, September 5, 2013.
[153] E.g. Fabricius, "Follow me, I'm right behind you, says Kenyatta," *ISS Today*, February 4, 2016.
[154] Article 121, Rome Statute.
[155] South Africa proposed the amendment on behalf of the African states parties to the Rome Statute. ICC Assembly of States Parties, "Newsletter: ASP special edition #3," 2010.
[156] ICC Assembly of States Parties, "Special segment as requested by the African Union: 'Indictment of sitting Heads of State and Government and its consequences on peace and stability and reconciliation'," 2013.
[157] A central principle of international criminal law is that head of state immunity does not apply for the most serious crimes.
[158] Musau and Keter, "9 AU countries threaten bid to amend ICC regulations," *The Star*, November 18, 2013.
[159] ICC Assembly of States Parties, "Resolution ICC-ASP/12/Res.7, amendments to the Rules of Procedure and Evidence," 2013. States parties agreed to amend Rule 134 *quater*.

alternatives to the ICC, which could provide alternative forums for prosecuting international crimes.[160] The AU backed an ad hoc criminal tribunal for South Sudan, which "does not recognize" the ICC.[161] However, African states have also sought to contract with an alternative permanent international criminal court, as a means of permanently limiting the OTP and ICC judges' ability to prosecute Africans for international crimes and develop their own rules regarding the consequences for noncompliance. Essentially, African states have sought to increase their ability to forum-shop for international criminal trials. African states pursued two distinct proposals in the African Union and East African Community to extend the jurisdictions in their respective regional courts—the African Court of Justice and Human Rights[162] and the EACJ[163]—and create alternative permanent international criminal courts.

African states ultimately adopted a protocol for a criminal jurisdiction for the African Court, which, on the one hand, introduces ten additional crimes beyond the ICC's four core crimes,[164] but, on the other hand, provides immunity for senior government officials.[165] The protocol's adoption provides African states the ability to select between the ICC and the African Court as their options for permanent institutions for prosecuting international crimes. This adopted protocol, especially when combined with ongoing withdrawal threats, represents a "credible threat of exit," which would presumably increase African states' "voice" at the ICC.[166] With sufficient ratifications for its entry into force,[167] African states could withdraw from the ICC and select the African Court, which would limit the ICC's ability to create consequences for

[160] This draws on the ICC's principle of complementarity with other courts (Article 17, Rome Statute).
[161] "African Union Announces South Sudan War Crimes Court," *BBC News*, September 29, 2015.
[162] This is the future regional court for the AU—the product of a merger between the African Court of Justice and the currently operational AfCHPR.
[163] East African Legislative Assembly, "Resolution of the Assembly seeking the EAC Council of Ministers to implore the International Criminal Court to transfer the case of the accused four Kenyans facing trial in respect of the aftermath of the 2007 Kenya general elections to the East African Court of Justice and to reinforce the Treaty provisions," 2012.
[164] Unconstitutional change of government; piracy; terrorism; mercenarism; corruption; money laundering; trafficking in persons; trafficking in drugs; trafficking in hazardous wastes; illicit exploitation of natural resources.
[165] Article 46A *bis*, Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights.
[166] See Hirschman's (1978) classic argument about exit and voice. Specifically relating to creating competing international institutions, see Morse and Keohane 2014, 390-391; Urpelainen and Van de Graaf 2015.
[167] The ACJHR's protocol requires fifteen ratifications to enter into force and create the court. Then, the International Crimes Protocol requires another fifteen ratifications to enter into force to create the criminal jurisdiction.

noncompliance.[168] Furthermore, the African Court would only hold non-governmental individuals accountable for international crimes.

African states' various controls, or threats of controls, have severely constrained the ICC's ability to use its judicial agency to impose costs for violations of international criminal law. Their constraints forced the ICC to drop key cases—the clearest influence on the ICC's approaches for promoting compliance. However, it is likely African states' threats of further constraints have shaped officials' incentives in their investigations and prosecutions. For instance, one could speculate that the OTP has recently shifted its investigations and prosecutions away from Africa (to Georgia and Palestine), based on incentives to appease African states and deter accusations of bias.[169]

Contracting States: Resources. International criminal law is notoriously costly in terms of resources, and the ICC has had to try to fulfil its far-reaching, potentially global mandate with limited resources. The ICC's ASP determines the Court's budget based on member-state contributions, proportional to states' gross domestic product. Officially, the ASP functions based on equal voting, but in practice, the wealthiest member states have disproportionate influence, as they are the biggest contributors. Many of the most powerful ICC states parties—and the most significant contributors to its budget—have more subtly sought to constrain the Court's autonomy over its resources, which has influenced its judicial and non-judicial decision-making and activities.[170] States' intention has not been to constrain the Court so much as to limit its ability to perform its mandate, but they have sought to balance the imperatives of justice for international crimes with their own domestic political considerations, leading them to impose resource constraints on the ICC. As such, these constraints have not been so significant as to eliminate existing approaches for promoting compliance or prevent the Court's adoption of new approaches. However, they have shaped the Court's incentives in its decision-making regarding

[168] As with non-states parties to the Rome Statute, the UNSC could still refer situations under the African Court's criminal jurisdiction to the ICC, though this would be highly unlikely.
[169] This was the common framing in the media coverage. For a view to the contrary, see Kersten, "Why is the International Criminal Court stepping out of Africa and into Georgia?," *The Washington Post*, February 5, 2016.
[170] For an overview, see O'Donohue 2013; Stahn 2015, 105–138.

how to develop and implement these different approaches. State oversight has also been a means of altering the organizational culture of the Court, influencing the norms guiding its non-judicial decision-making.

Budget negotiations between ICC officials and states parties have become "increasingly fraught."[171] As the ICC investigations and cases have increased, the greatest financial contributions to the Court's budget, including France, Germany, Italy, Japan, and the UK, have pressured the ICC to reform and cap its budget. For many years, they imposed a "zero percent growth" target for the budget.[172] These countries have cited the recent global economic crisis and austerity measures in their national budgets.[173] Domestically, and at the ASP, NGOs supportive of the Court (e.g. within the Coalition for the ICC) have lobbied states to drop this "zero percent growth" target, observing that it would have implications for the Court's capacity to conduct investigations, prosecutions, and generally promote compliance with international criminal law.[174]

Beyond exogenous financial issues, ICC officials have also attributed states' budget limitations to a "breakdown of trust" between states parties and the ICC, where budgeting "became a micro-management exercise…at the cost of almost destroying the reputation of the organization."[175] The Court sought to remedy this by providing better justifications in its budget proposals (through adhering to states' desired administrative principles),[176] and emphasizing dialogue with states in the ASP's Committee on Budget and Finance, which largely conducts its business behind closed doors.[177] In 2014, for example, the OTP decided to propose moderate budget increases, "phased in over the next four years" as "a sensible and more affordable way to

[171] Evenson, "The ICC: Too Important to Let Fail," *The Global and Mail*, August 7, 2015.
[172] Guariglia, "Q&A: Budget woes could hamper ICC investigations," *Inter Press Service*, July 25, 2011.
[173] Evenson, "The ICC: Too Important to Let Fail," *The Global and Mail*, August 7, 2015.
[174] Ibid.
[175] Interview with Osvaldo Zavala Giler, Special Assistant to the Registrar and Legal Officer, Registry, ICC, 11 June 2014.
[176] Interview, Giler.
[177] This Committee, which meets prior to the ASP annual meeting, essentially decides on the budget, and those decisions are endorsed at the full ASP. The Committee does not make public the reports it receives from the ICC and often holds private meetings with some states parties (Stahn 2015, 115).

enhance OTP capacities."[178] Most states have since dropped their zero percent growth target,[179] but continue to substantially limit the ICC's budget and constrain its decision-making.

Generally, court officials have felt that almost every aspect of its operations is a budgetary issue, subject to state constraints. In the words of one Registry official, "When we bring policies to the states, the first question is always, 'Does this have budgetary implications?'"[180] Resource constraints have clearly impacted the decision-making of virtually all organs within the ICC. In the Court's early years, the Registry had to bargain with states for its outreach programme, which supports indirect approaches for promoting compliance. Many member-states believed that civil society organizations could perform these activities at no cost to the Court, but the Registry eventually persuaded and secured funding from states, and institutionalized the programme.[181] Outreach activities, however, are much more limited than is desirable, given the programme's resource constraints.[182] The OTP attempted to mitigate its resource constraints by using intermediaries for gathering evidence, but ICC judges and civil society organizations harshly criticized these practices, which also delayed court proceedings.[183] When a new Prosecutor entered the OTP, she declared that without a substantial funding increase, her office would need to close two or three of its investigations and not initiate any new investigations.[184] Resource constraints clearly influenced Registry and OTP officials' decision-making regarding their development of policies and practices for promoting compliance, where they have not expanded their activities as much as they would like to.

Budgetary constraints have even discernibly influenced ICC judges' decision-making. ICC judges, for example, provisionally amended[185] their Rules of Procedure and Evidence and the Regulations of the Court to allow one judge, rather than a chamber of three judges as

[178] ICC Assembly of States Parties, "Proposed Programme Budget for 2014 of the International Criminal Court," 2013.
[179] Canada is the exception: it called for "zero nominal growth" at the twelfth session of the ASP in 2013 and indicated that it would continue to in the future (Stahn 2015, 115).
[180] Interview, Giler.
[181] Interview with Claudia Perdomo, Head of Outreach Unit, Registry, ICC, 4 June 2014.
[182] Ibid.
[183] Rozenberg, "Delay in Lubanga Judgment Demonstrates ICC Weaknesses," *The Guardian*, March 14, 2012.
[184] ICC Assembly of States Parties, "Report of the Court on the Impact of Measures to Bring the Level of the International Criminal Court's Budget for 2014 in line with the Level of the 2013 Approved Budget," 2013.
[185] Article 51(3) of the Rome Statute permits a two-thirds majority of judges to draw up provisional Rules in urgent cases where the Rules do not provide for a specific situation before the Court.

previously stipulated, to adjudicate proceedings related to offences against the administration of justice.[186] ICC judges "considered that the current scarcity of judicial resources and the heavy trial workload of the Court rendered it necessary to adopt the amendments provisionally."[187] This does not directly influence the Court's judicial agency for promoting compliance, though rulings from a single judge could be seen as compromising procedural fairness and thus undermine the rulings' legitimacy. Still, it indicates that ICC judges are willing to adjust their regulations on how they decide cases to accommodate their resource constraints, and these incentives could easily influence decision-making in other areas.

NGOs: Incentives, Norms. NGOs have been crucial to the ICC's creation and subsequent operation. NGOs have pressured states to support the Court, and they have also proved essential intermediaries (e.g. gathering evidence, interviewing witnesses, etc) for the resource-constrained OTP's investigations, the Registry's outreach and public information activities, and the Court's relations with victims.[188] The ICC itself acknowledges, "several parts of the Court and Counsel rely on… intermediaries."[189] NGOs are important for both their "reach and expertise."[190] As such, NGOs, particularly the major actors within the Coalition for the ICC, have tremendous access and influence within the ICC. The ICC has provided them dedicated forums to meet with ICC officials, and have an "open-ended dialogue"[191] to discuss institutional policies and practices. More informally, when the ICC develops a policy or guideline, it circulates it to key NGOs for feedback.[192] NGOs are also present at the meetings of the ASP.

[186] Article 70, Rome Statute.
[187] ICC, "The ICC judges provisionally amend the Rules of Procedure and Evidence and adopt a new regulation in the Regulations of the Court," (Press Release, March 1, 2016).
[188] See ICC, "Guidelines Governing the Relations between the Court and Intermediaries," 2014. "The effectiveness of the Court's activities also depends to a large extent on the cooperation it receives from community, regional, national (governmental) organizations and individuals operating in the country where the Court functions… While intermediaries may assist and support, they should not be called upon to undertake core functions of the Court."
[189] ICC, "Guidelines Governing the Relations between the Court and Intermediaries," 2014, 2.
[190] Interview, Giler.
[191] Interview, Giler.
[192] E.g. Interview with Lorraine Smith van Lin, Programme Manager, International Bar Association (IBA) ICC Programme, 21 May 2014; Interview, Giler.

The NGOs that initially supported the ICC's creation have also become more critical of the Court's interpretation and implementation of its mandate, and thus have become more assertive in seeking to influence the Court's operations. None of these actors would see their activities as undermining the Court's autonomy (the International Bar Association, which advocates for fair trial norms at the ICC, for instance, considers itself the Court's "critical ally"[193]), but their influence, primarily through discursive strategies, clearly has limited the Court's freedom of action. For example, controversies arose in the Lubanga case when the OTP compromised standards of evidence collection based on its reliance on NGO intermediaries.[194] Intermediaries determined how evidence was collected and the quality of evidence available for prosecuting various individuals, rather than the OTP. Similarly, in the Court's resource-constrained outreach programme, intermediaries conduct much of the activities,[195] so ICC officials must compromise with the available civil society actors in the affected communities on how to conduct their outreach efforts. Thus, NGOs can influence the ways in which the Court uses its direct and indirect approaches for promoting compliance.

ICC officials are ambivalent about this level of access for NGOs and have thought of "re-envisioning the relationship between the ICC and civil society."[196] Specifically, a Registry official noted that NGOs have the tendency to push for states to get more and more involved in the Court's formulation of its institutional policies and practices, which makes the ICC "more vulnerable" to state constraints and represents a "political risk" for the ICC.[197] For example, NGOs lobbied the ICC to develop a policy for intermediaries and pushed for its discussion at the ASP,[198] which made it "a budgetary exercise" of evaluating intermediaries' cost relative to ICC staff. There have been similar issues with legal aid for the defence and victim participation. Essentially, ICC have officials recognized that NGOs have legitimate concerns, but they unnecessarily constrain the way in which the Court develops its policies and practices.

---

[193] Interview, Smith van Lin.
[194] Buisman 2012.
[195] Interview, Perdomo.
[196] Interview, Giler.
[197] Ibid.
[198] E.g. Open Society Justice Initiative, "Intermediaries and the International Criminal Court: A Role for the Assembly of States Parties," 2011.

While the ICC cannot afford to completely shut out civil society actors, to preserve their autonomy, officials have considered, rather than maintaining an “open dialogue,” limiting access and targeting it to predefined areas in which the Court is open to information and expertise relevant to its policies and practices.[199] Essentially, the Court is aware of NGOs’ undue influence on the Court, and officials sought ways to limit it as much as possible, given their dependence on NGOs for their core work.

Analysis

In the end, SADC states severely limited the Tribunal’s agency for promoting compliance. First, through control over its resources, states constrained the Tribunal’s decision-making about its non-judicial activities, preventing it from developing new approaches for promoting compliance, despite Tribunal officials’ desire to do so. Then, when the Tribunal issued a controversial judgment that imposed costs for noncompliance, states completely constrained the Tribunal by starving it of officials and ultimately dissolving it, completely eliminating its agency.

[199] Interview, Giler.

Table 2.2. Constraints and Influence on Approaches in SADC Tribunal and ICC Cases

Constraint	SADC Tribunal	ICC
Rules		Jurisdiction → ability to impose costs for noncompliance Oversight → constrained development of approaches Intermediaries → constrained development of indirect approaches
Appointments	Failure to appoint judges → inability to practice embedded approaches	
Resources	Lack of resources → inability to develop indirect approaches	African states' noncooperation → inability to use direct, consequentialist approach for individuals Powerful states limiting funding → limiting policies and practices within approaches
Contracts	New treaty → eliminates indirect approaches	African states' attempts at ICC amendments blocked African states' withdrawal & forum-shopping threats → potential influence on investigations/prosecutions, direct, consequentialist approach
Norms		States' bureaucratic norms (efficiency) → deterring entrepreneurship for developing approaches NGOs' norms → influencing policy development, outreach activities

At the ICC, constraints from states and NGOs has more subtly influenced its use and development of approaches for promoting compliance. States have limited the ICC's ability to directly impose costs for noncompliance through precise rules constraining its jurisdiction. They have also placed *ex ante* constraints on the ICC's non-judicial activities, and ability to develop approaches, based on rules regarding states' oversight of the Court's administration and limiting its use of intermediaries. The US and ICC states parties created parallel rules to undermine the ICC's ability to prosecute US nationals and directly create consequences for international crimes. Then, African states reacted to the Court's investigations and prosecutions in Africa by trying to constrain its judicial autonomy through noncooperation and various contractual controls. African states successfully constrained the Court's judicial agency in several of its African cases, preventing it from creating consequences for noncompliance. However, many of African states constraints on the Court's incentives in its Africa cases relied on threats of withdrawal and contracting with the African Court, with less discernible effects on the Court's judicial autonomy. The ICC's most powerful states parties have sought to constrain the Court's expenses through their budgetary control, which has limited officials' ability to develop new approaches for promoting compliance. They have developed activities that fall under particular approaches, but they are not as extensive as Court officials would prefer. Finally, NGOs, as intermediaries for the Court, have influenced the Court's judicial and non-judicial autonomy, which has, again, not preventing the Court from using approaches but has shaped the way officials have developed them.

Conclusion

Like scholars of IOs have often noted, autonomy is essential for IOs' entrepreneurship and agency. This chapter has shown that international courts are no exception, and formulated a typology of constraints. International courts are subject to particular constraints on their incentives and norms, affecting both their judicial and non-judicial decision-making. These constraints can limit their entrepreneurship with their approaches for promoting compliance. Conversely, the absence of such constraints leaves these actors, which have substantial discretion over implementing their mandates, the capacity for developing approaches for promoting compliance.

The case studies elucidated how the various types of constraints can limit international courts' judicial and non-judicial autonomy, and consequently their development of approaches for promoting compliance. This analysis, however, also revealed a paradox regarding international courts' judicial and non-judicial agency. While, as discussed in the previous chapter, international courts are much freer to develop policies and practices through their non-judicial agency, this realm of international courts' activity is highly vulnerable to external constraints. Nevertheless, the cases confirm that international courts can considerably develop their approaches for promoting compliance, especially through their non-judicial agency. The SADC Tribunal, had it not been dissolved, was set to secure donor funding and develop an outreach programme. The ICC, despite its resource constraints, has developed a range of non-judicial activities that aim to promote compliance.

International courts' level of autonomy thus influences whether they have the capacity for entrepreneurship and developing new approaches for promoting compliance. This serves to explain the general variation in international courts that have expanded their approaches for promoting compliance versus those that have adhered to their designed approaches. To further explain the variation in international courts' expanded approaches, Chapters 3 and 4 will probe the factors that influence which *types* of approaches international courts choose to develop.

Chapter 3

International Courts and the Challenge of Acceptance: Promoting Compliance through Socialization

Introduction

As discussed earlier, to promote compliance by altering their targets' logic of appropriateness, many international courts have developed themselves as agents of socialization. Through policies and practices aimed at socialization, international courts attempt to align targets' standards of legitimate, appropriate behaviour with courts' norms, rules, and procedures. Thus, international courts seek to expand their influence on actors' standards of legitimate, appropriate behaviour. These strategies involve moving beyond the confines of courts' judicial agency, and the forums and means of communication typically associated with their adjudicatory function. These policies and practices develop international courts as agents of socialization, and support alternative processes of persuasion and social influence beyond adjudication. Ultimately, through these processes, international courts seek to increase the binding effect of their norms, rules, and procedures, and actors' sense of obligation to comply.

International courts' socialization strategies may support their core mandate of promoting compliance, but they are puzzling for several reasons. In general, it is puzzling why so many international courts have diverged from their delegation contracts, and developed policies and practices aimed at socializing actors in their legal regimes. If considered "mission creep" or "agency slack" by states, international courts risk provoking controls from their member states for exceeding their delegated mandates. These kinds of activities are consistently absent from international courts' delegation contracts, either due to states' oversight or deliberate omission, where socialization is unnecessary or an objective better fulfilled by other actors. At the ICC, for example, states and court officials have long-debated who should conduct outreach activities:

many member states have advocated outsourcing outreach to civil society organizations, but court officials have pushed for having a dedicated outreach programme within the Court.[1] In addition, states and other actors may want to resist normative change that these activities seek to promote, and may perceive this as a form of undue “non-judicial activism” from international courts. Just as states resist judicial activism, they are also likely to resist non-judicial forms of activism.

International courts’ socialization strategies are also puzzling in terms of their appropriateness within the international legal community. It is highly unconventional for any type of court, whether domestic or international, to engage with actors in its legal regime in these ways. Independence and impartiality is fundamental to judges’ and courts’ mandates. International judges are reluctant to risk compromising their appearance of independence and impartiality through non-judicial communication and interactions with actors in their legal regimes. International court officials may be careful to observe fundamental judicial and legal norms during activities aimed at socialization. Judges will not comment on specific cases, as courts’ judgments are final and speak for themselves, and judges do not want to risk revealing their positions on particular issues and being accused of bias.[2] Administrative officials are subject to norms of confidentiality. Still, acting as agents of socialization defies many of the conventional norms of courts, and, the decision to undertake socialization activities can be controversial even among court officials. Even if courts decide to make socialization a strategic priority, they can express uneasiness with the appropriateness of it. For example, when the African Court judges participate in the Court’s sensitization seminars, they explicitly remind that judges “sensitizing” actors is not their core task and is highly unusual, but they are doing it because they think it is necessary.[3]

So, the question remains, why do international courts, in spite of these disincentives and normative constraints, choose to develop themselves as agents of socialization? This chapter

[1] Interview with Claudia Perdomo, Head of Outreach Unit, Registry, ICC, 4 June 2014.
[2] Interview with John Ruhangisa, Registrar, EACJ, 27 January 2014.
[3] Interview with Iris Breutz, Project Director, GIZ Programme on the African Court on Human and Peoples’ Rights, 23 June 2015. Dr. Breutz observed many of the Court’s sensitization seminars across Africa, from 2010 to 2013, which were financed by GIZ.

advances the claim that international courts adopt socializations strategies in response to the lack of acceptance of courts' norms, rules, and procedures by actors in their legal regimes. As the literature on entrepreneurship in IOs notes, officials can respond to various external pressures and reform policies accordingly.[4] Actors' lack of awareness and contestation of international courts' norms, rules, and procedures can significantly undermine international courts' activities, and drive courts to adopt policies and practices aimed at socialization. International courts see socialization as a means of promoting actors' acceptance of the court and its norms, rules, and procedures, which promotes compliance with international law.

The chapter first asserts that international courts socialization policies are primarily officials' autonomous response, rather than the result of policy diffusion. Then, it clarifies international courts' variable levels of acceptance within their legal regimes, and how socialization can address the challenges associated with courts' lack of acceptance. Finally, comparative case studies, based on interview and archival research on the ICC, EACJ, ITLOS, and ICJ, elucidate how international courts, responding to their lack of acceptance, choose to adopt socialization strategies to address this core challenge and promote compliance.

Socialization as a Response to Courts' Lack of Acceptance

International courts' adoption of socialization strategies is, first and foremost, the result of court officials' entrepreneurship and response to their courts' challenges, rather than a phenomenon based on widespread diffusion of socialization policies and practices originating from centralized sources. Overall, international court officials are highly autonomous actors, which can develop socialization strategies in response to pressures from their organizational environment and signals they receive from actors in their legal regimes. The similarities in some socialization strategies, such as "sensitization" and legal training schemes, however, suggest diffusion

[4] Though entrepreneurship is primarily theorized in organizational theory, it has been extended to IOs as well. See, e.g., Nay 2011, Abbott et al. 2015.

mechanisms may interact with the overarching pressures that stimulate court officials' entrepreneurship, under particular conditions.

Donors, for example, may approach international courts and offer to fund programmes;[5] court officials can choose whether or not they accept these offers, but donors would clearly influence their incentives and could even place conditionalities on the programmes—a subtle form of coercion. International courts' donors are typically IOs, government ministries, or private foundations that see international courts as a means of fulfilling their priorities, such as human rights and rule of law promotion, and they can have particular views on how international courts can fulfil those priorities and can bring their experiences from other donor projects to international courts. Donors, however, are only active in a handful of international courts that have adopted socialization policies and practices. The donor GIZ specifically funds several African regional courts' programmes aimed at socialization, and the ITLOS receives funding for some of its programmes from several private foundations. Still, as donors support international courts' mandates, and appreciate the crucial importance of courts' autonomy,[6] they do not overtly coerce court officials into particular policies and practices.[7] The diversity the programmes that GIZ funds, for example, supports the claim that international court officials largely shape the programmes themselves. Ultimately, international court officials need to see the relevance and usefulness of these activities in order to adopt them,[8] which points to the need for a broader explanation of international courts' adoption of socialization strategies.

Mechanisms of learning and emulation may also interact with international courts' entrepreneurship and development as agents of socialization. When international court officials are prompted by particular challenges to formulate policies and practices to address them, they may learn from or emulate other organizations. Learning and emulation may clarify the benefits and desirability of adopting particular polices and practices. International courts, however, are remarkably siloed in their activities, with the exception of some courts working in the same issue

[5] This has been the case in the ITLOS. Interview with Philippe Gautier, Registrar, ITLOS, 10 September 2014.
[6] Interview, Breutz.
[7] Interviews at the AfCHPR, EACJ, ITLOS, and GIZ.
[8] Interview, Gautier.

area. International court officials are largely unaware of other international courts' socialization policies and practices.[9] There is also the perception among most officials that their court and its context are unique, so policies and practices from other courts would be irrelevant.[10] The exception, however, may lie in courts operating in similar issue areas, such as regional integration, human rights, and international crimes, but once again, as these courts would not share the same contexts, this would limit opportunities to learn from others' experiences.

Thus, diffusion mechanisms may influence the policies and practices international courts adopt under circumstances, but they do not explain international courts entrepreneurship in the first place. Diffusion mechanisms, when relevant, are likely to be secondary to the overarching explanation of pressure-induced entrepreneurship. For example, international court officials would recognize the need for some form of norm dissemination and socialization activities, and turn to existing policies from donors, other IOs, or other international courts.

Defining Acceptance

International courts' socialization strategies of communication and interaction represent officials' common response to a common, overarching challenge: their lack of acceptance by actors in their legal regime. The judicialization of international politics is not merely about the proliferation of international courts and tribunals, and their increased use. It is also a nascent, but not remotely complete, transformation of the norms the international community and regional communities. For example, for adjudication to replace traditional diplomatic methods of dispute resolution, a normative shift among states is required. As the ECCJ observed in its West African context, for instance, filing a "direct suit" against another state at an international court "is often seen as confrontational and an inimical act," especially compared to traditional diplomatic means

[9] Evidenced by interviews with officials at the AfCHPR, EACJ, EFTAC, ICJ, ICC, and ITLOS. During interviews, examples from other courts would be used to prompt discussions of socialization strategies, but nearly all officials were unaware of other courts' activities in this respect. The exception was an ICJ official, who was aware of the ICC's outreach activities.

[10] The ICJ official dismissed the relevance of the ICC's outreach activities, based on the two courts' fundamentally different mandates.

of dispute resolution.[11] In addition, "supranational" international courts often seemingly conflict with norms of sovereignty and non-intervention.

International courts may be created, but their influence is contingent on their acceptance by actors in their legal regimes. Acceptance reflects that a court's legal norms, rules, and procedures have diffused to the relevant actors in a legal regime (e.g., government officials, legal elites, NGOs, individuals), and that these actors see these norms, rules, and procedures as the standard of legitimate, appropriate behaviour. Acceptance, therefore, is not to be confused with other concepts, such as internalization. Rather, acceptance involves actors recognizing the legitimacy and appropriateness international courts' norms, rules, and procedures. This may be due to internalization or they may just recognize the appropriateness of these norms within a community, without internalization.

International courts' norms and rules are largely contained within their founding treaties, but these can also develop over time, through the formation of legal doctrines, amendments of treaties, and so on. International courts' basic procedures (e.g. the election of judges) are often included in their founding treaties, but commonly, international judges develop their court's more elaborated rules and procedures, which can also evolve over time.[12] Given the dynamic nature of international courts' norms, rules, and procedures, acceptance can be a challenge for all international courts, though it may be particularly acute during courts' initial years of operations.

Acceptance is fundamental to international courts' performance of their mandates, as this is contingent on the behaviour of actors' international courts' legal regimes. Essentially, each international court embodies a set of norms, rules, and procedures intended to guide actors' behaviour and sustain the legal regime. By accepting and fulfilling their "appropriate" roles, these actors, including potential intermediaries and targets for compliance, contribute to international courts' overall performance of its mandate. For example, litigants' acceptance of

[11] ECCJ, "2006 Annual Report," 2006, 6. Chayes and Chayes (1995, 205) similarly note, "Adjudicative procedures intensify the confrontational and adversarial aspects of a dispute."
[12] For example, the ICJ revised its Rules of Procedures in 2007 for the first time since they were originally developed.

international courts' norms, rules, and procedures provides a steady stream of cases that sustains the courts' core work of adjudication.

Acceptance crucially underpins the fulfillment of international courts' core mandate of promoting compliance. Among international courts' targets for compliance, from a constructivist perspective, acceptance of the legitimacy of courts' norms, rules, and procedures forms the basis for these legal provisions' binding effect. If actors believe that international courts and their norms, rules, and procedures are legitimate, they will comply with the courts' law and rulings based on the logic of appropriateness. Acceptance is also fundamental to international courts' relationships with intermediaries for their indirect approaches for promoting compliance, as will be discussed in Chapter 4.

The Variability of International Courts' Acceptance

International courts' levels of acceptance can vary significantly. A high level of acceptance reflects a context in which the relevant actors of the regime are aware of an international court's legal norms, rules, and procedures, and see them as their standard for appropriate behaviour. At this level, courts' activities and rulings may not consistently be free from contestation, but one would generally expect that actors acquiesce to them. A low level of acceptance is evident when actors are unaware of the court's norms, rules, and procedures, or, if they are aware, contest them, where criticism and resistance become features of the discourse surrounding the court.

Variability in courts' level of acceptance can stem from the number and types of actors that need to be accept their norms, rules, and procedures. Generally, the greater number of actors in a legal regime, the more elusive acceptance can be. For example, a state-only regional court would theoretically only need to gain acceptance from a handful of states, where as a global court requires acceptance from a significantly larger and more diverse group of states.[13] Similarly, international courts that allow access to national courts, NGOs, and individuals have a

[13] For example, Powell and Mitchell (2007) find that states' domestic legal system characteristics affect their commitments to the ICJ.

much higher threshold for acceptance than a state-only court. Reaching substate actors can be challenging for an international institution, as states can often act as gatekeepers, and capacity issues can undermine actors' awareness of international courts' norms, rules, and procedures. For example, Africa is home to most of the international courts in the world, and in much of rural Africa, economic, geographic, linguistic, and other constraints undermine the role of courts and "legal awareness."[14]

The development and content of international courts' norms, rules, and procedures can also undermine awareness and promote contestation. There can be a disconnect between the elites who create international courts' norms, rules, and procedures (i.e. those who write and sign up to courts' founding treaties), and the broader group of actors relevant to courts' operations (e.g. national judges and individuals). Similarly, international courts' norms, rules, and procedures, can be shaped by external influences, such as donor preferences, rather than member states' own preferences. For example, as discussed in the previous chapter, the SADC Tribunal was created under donor pressure for a strong regional integration court that emulated the ECJ,[15] but it had such low acceptance from its member states that they, without much restraint, suspended the court after its controversial rulings. In general, European courts have been used as models for the development of regional courts in Africa and Latin America, with very little adaption of courts' norms, rules, and procedures to these new regional contexts,[16] so the disconnect between imported design and actors' preferences is a potentially common issue.

More generally, the content of courts' norms, rules, and procedures can be more or less technical, and actors' awareness of complex legal regimes can be a challenge. Equally, international courts that embody nascent, rather than well-established, norms can experience lack of awareness from actors in their regimes. Some types of law (e.g. human rights and criminal law) are more controversial than others because they, for example, challenge state sovereignty,

[14] Cotula, "Legal Empowerment for Local Resource Control: Securing Local Resource Rights within Foreign Investment Projects in Africa," 2007, 48. For example, laws are published in states' official gazettes, but few people outside legal circles have access to this.
[15] Lenz 2012.
[16] Alter 2012.

so courts interpreting and applying these types of international law can face particularly high levels of contestation.

Signals to International Courts

Actors' acceptance of international courts' norms, rules, and procedures is difficult to assess, but international courts' lack of acceptance can manifest in different behaviours from actors in international courts' legal regimes. At one level, actors can indicate that they lack awareness of the international court's norms, rules, and procedures. The absence of case submissions can be one indicator that actors' lack awareness and understanding of international courts' norms, rules, and procedures. International courts may also observe that they are absent from debates and discourse in relevant issue areas. For example, for post-conflict justice in Libya, the African Court on Human and Peoples' Rights' order of provisional measures against the Libyan government regarding the detention of Saif al-Islam Gaddafi did not factor at all into discussions, either at the diplomatic level or in public discourse. International courts may also observe noncompliance due to ignorance of actors' legal obligations. At another level, international courts' may be subject to contestation from states and other actors (for example, within the legal profession). While some limited noncooperation and contestation (e.g., of particular rulings or norms) is inevitable, regular and widespread noncooperation and contestation can indicate that actors do not accept an international court's norms, rules, and procedures.

International court officials respond to these "signals" in their decision-making regarding their institutional policies and practices, and their development of approaches for promoting compliance. Indications that actors lack awareness of or contest international courts' legal norms can mobilize court officials to develop policies and practices to disseminate norms and counter contestation. International courts thus respond to actors' lack of acceptance with activities aimed at altering their logic of appropriateness and aligning their standards of legitimate, appropriate behaviour with international courts' norms, rules, and procedures. Essentially, international courts develop themselves as agents of socialization.

International Courts' Non-Judicial Agency and Socialization Strategies

At a basic level, international courts, like all international institutions, can serve as "social environments" in which judges, states, and other actors interact, and can be socialized through processes of persuasion and social influence. These interactions may induce changes in beliefs and behavior, and promote compliance. Each adjudicated dispute provides an occasion for interpreting, applying, and enforcing a legal rule, which tests the values and beliefs of the parties and observers of a case. When parties present legal arguments and when judges justify their legal reasoning and judgments, they use persuasive strategies. Social influence is also at play during adjudication, as parties can be shamed for noncompliance. Thus, through the process of adjudication, actors can be socialized into the court's norms, rules, and procedures, and these effects increase as a court's jurisprudence increases. Still, adjudication's socializing effects are limited, as actors' scope for interaction is highly restricted based on legal norms, rules, and procedures.

International court judges' agency for socializing actors and promoting compliance through adjudication rests on their rulings. Judges and parties, for example, speak only regarding the case at hand, and judges' *ex parte* communication with parties is prohibited. Thus, in this judicial realm, international courts' communication and interaction is limited to the parties and observers of cases, and may not extend to all the relevant actors in international courts' legal regimes.[17] Also, judges rulings can be highly technical, suitable for socializing actors with legal expertise, but not other kinds of actors in courts' legal regimes. Judges' communication through rulings can be restricted based on the types of cases they receive; through rulings, actors may not be socialized into the full range of international courts' norms, rules, and procedures and, instead, only those that are relevant to particular cases.[18] International courts' ability to socialize actors in their legal regimes solely through their judicial agency, therefore, is limited.

[17] This can help account for why international courts often have "repeat players" and specific "communities of litigants" (Vauchez 2014).
[18] International courts can therefore be only partially used. For example, the East African Court of Justice has noted it is principally used for adjudication, while its capacity for arbitration is underused. James Karuhanga, "Rwandans to Learn about EACJ's Arbitration Process," *The New Times*, April 12, 2010.

Based on their judicial agency, international courts can only pursue minor changes to try to address their lack of acceptance and enhance the socializing effects of judicial proceedings and rulings. For example, several courts (particularly in the area of regional integration and human rights, such as the EACJ, ECCJ, and IACtHR) have included the possibility of holding sessions outside their seat (in their member states) in their rules of procedure. In the IACtHR, for instance, this requires a majority of judges consider it desirable, as well as the consent of the state concerned.[19] It began these sessions in 2005 "to disseminate the important work of the Inter-American Court in particular, and the inter-American system of human rights in general."[20] The ECCJ holds external court sessions "to bring the Court closer to the Community citizens at the grass root."[21] International courts may also stream proceedings online. Extending the scope of their audiences for their judicial proceedings slightly broadens international courts as "social environments," but it does not change the nature of international courts' ability to use persuasion and social influence to socialize actors in their legal regimes.

Instead, to further develop themselves as agents of socialization, international courts primarily rely on their non-judicial agency. Non-judicial communication and interaction affords international courts officials more freedom to use strategies of persuasion and social influence to address their lack of acceptance. Depending on the acceptance challenges they face, international courts can cater their socialization tactics. These strategies can vary on multiple dimensions, including the micro-processes that underpin them (persuasion and social influence), the breadth of actors they target, the norms they promulgate, and the type of communication (dissemination versus interaction).

International courts may vary their use of persuasion and social influence depending on their challenges related to acceptance. Persuasion, which presents actors with counter-attitudinal information, clearly increases actors' awareness, but it can also counter contestation by making

[19] E.g. Article 13, IACtHR, "Rules of Procedure of the Inter-American Court of Human Rights," 2009 "The Court may convene in any Member State when a majority of the Court considers it desirable, with the prior consent of the State concerned."
[20] E.g. IACtHR, "Annual Report 2014," 2015, 10.
[21] ECCJ, "External Court Session of the Community Court of Justice, ECOWAS, at Ibadan, Oyo State," (Press Release, December 17, 2012).

courts' norms, rules, and procedures actors' standard of legitimate, appropriate behaviour. Social influence is better suited to countering noncooperation and contestation, as it requires a basic level of awareness of the court's norms among a critical mass of actors in a particular grouping, so the actor reasonably fears shame or opprobrium from that grouping. Social influence depends on international courts' ability to link adherence to their norms, rules, and procedures with membership within a particularly community of states—international, regional, democratic, postcolonial, and so on. For most international courts, the most obvious community is the membership of the regional or international organization in which courts are embedded. For example, the ECtHR could shame states for withdrawing from the Court, as membership within the Court is strongly tied to Europe's liberal, democratic order.[22] International courts can also praise states' and other actors' support and compliance to make them look legitimate in the eyes of their peers, give them a sense of belonging within a group, enhance their esteem, and promote further "good behaviour."

International courts' can also vary the strategies' scope based on the actors targeted and the norms involved. Depending on the range of actors related to courts' lack of acceptance, international courts may communicate and interact with particular actors (e.g. state officials through diplomatic meetings), specific groupings of actors (e.g. workshops for states in particular regions), or the international community in general (e.g. through publications, press releases). Courts may also focus their strategies on legitimizing particular norms, rules, or procedures, or the court's regime overall. For example, the AfCHPR has held sensitization seminars with its stakeholders specifically focusing on women's rights,[23] while the EFTA Court's visit to the Norwegian Supreme Court aimed to clarify its obligations for referring cases to the Court.[24] This may even extend to "meta-norms" pertaining to adjudication and supranationalism, for example. "Younger" international courts, facing a broad lack of acceptance from actors in their legal regimes, may cover the Court's full range of norms, rules, and procedures.

[22] Bates 2011, 277-318.
[23] Referenced in AfCHPR, "The Court Organizes a Continental Judicial Dialogue with National Judiciaries in Arusha," (Press Release, November 18, 2013).
[24] Interview with Philipp Speitler, Legal Secretary and Head of President's Chambers, EFTA Court, 10 June 2015.

International Courts' Development of Socialization Strategies: Variation Across the ICC, EACJ, ITLOS, and ICJ

This empirical analysis combines two types of case studies: diverse cases and most-similar cases for controlled comparison. All four cases are part of a diverse case study design, with two most-similar cases nested within. Diverse cases elucidate the full range of variation of international courts' level of acceptance. The most-similar cases are matched for the theory's other key variables (autonomy and accessibility) and only significantly differ in their levels of acceptance. Considering there are only twenty-three international courts, matched cases are relatively rare and only one pair is analyzed. Both methods are amenable to developing and testing the theoretical proposition that the lower international courts' levels of acceptance, the more likely they are to use approaches for influencing actors' logic of appropriateness and develop themselves as agents of socialization.

The cases of the ICC, EACJ, ITLOS, and ICJ capture the full range of levels of acceptance, as they have low, low-moderate, moderate-high, and high levels of acceptance, respectively (Table 3.1).[25] The ICJ and ITLOS cases are matched in their levels of agency and accessibility, but vary in their levels of acceptance, and are therefore paired for controlled comparison. This matching helps isolate the influence of acceptance and provides a stronger test of the theoretical conjecture that international courts' with lower levels of acceptance are more likely to adopt socialization strategies for promoting compliance. Taken together, these four cases elucidate how international court officials' perceptions of their courts' acceptance influences their decision-making regarding their non-judicial activities and, crucially, whether and how they attempt to promote compliance through socializations strategies.

[25] Ideally, it would be useful to also include a case where there is high contestation without actors' lack of awareness, so the influence of each dimension of acceptance could be observed. Future researchers can explore these more refined theoretical propositions.

Table 3.1. Variation in Levels of Acceptance and Socialization Strategies

	ICC	EACJ	ITLOS	ICJ
Autonomy			Moderate-High	Moderate-High
Accessibility			Low	Low
Acceptance	Low	Low-Moderate	Moderate-High	High
Awareness	Low	Low	Moderate	High
Contestation[26]	High	Moderate	Low	Low
Socialization Strategies	States – public discourse, diplomacy Individuals – public discourse, interaction in communities	Sensitization seminars Sub-registries in states	Regional workshops Training	

For analytical simplicity, the four case studies focus solely on international courts' perceived levels of acceptance and their adoption of approaches for promoting compliance. International courts' autonomy is crucial for their development and implementation of socialization strategies, and their accessibility can influence whether they also use intermediaries as agents of socialization in their legal regimes. Rather than have too many moving parts in the case studies, they focus on the variation in courts' perceptions of their acceptance, with levels of autonomy and accessibility controlled in the comparison of the ITLOS and ICJ. All four courts analyzed have "sufficient" levels of autonomy for developing new approaches for promoting compliance. Questions of accessibility and international courts' indirect socialization strategies are reserved for Chapter 4. The focus here is on analyzing the influence of international courts' perceptions of their acceptance on their approaches for promoting compliance—specifically their movement towards approaches aimed at socialization.

[26] N.B. Contestation would have an inverse influence on level of acceptance, so high contestation would lower acceptance levels.

The ICC

The ICC was created, through the Rome Statute, "to put an end to impunity for the perpetrators of" war crimes, genocide, and crimes against humanity, "and thus to contribute to the prevention of such crimes."[27] Though international criminal law targets individuals in its prosecutions, the Rome Statute system creates legal obligations for both states and individuals, enshrining the principle of state responsibility alongside the principle of individual responsibility for international crimes. The ICC, therefore, has two sets of targets for compliance: states and individuals. Given this range of actors, and its regime's global scope, the ICC has struggled to gain acceptance, both in terms of actors' lack of awareness and contestation of its norms, rules, and procedures.

The ICC's Low Level of Acceptance

Since its establishment in 2002, the ICC has suffered from a low level of acceptance, and its challenges to acceptance have varied over time. Initially, actors generally lacked awareness of the Court's mandate and associated norms, rules, and procedures, with some limited contestation. However, in recent years, the rising contestation from African states has indicated the ICC's significant deficiencies in terms of its acceptance within the international community.

In general, Court officials frequently note the aspirational nature of many of the norms that underpin the Court and how they have not yet spread throughout the international community. They are aware that the ICC was created during a post-Cold War wave of optimism about the development of international law. Many ICC officials express concern that this "political will" has precipitously declined in the new millennium. In the words of one official, "human rights are not fashion anymore. In the 90s, they were, and that was a big moment for international justice."[28] Officials from across the ICC's organs (Chambers, Registry, and Office of the Prosecutor) are also conscious of the need to clarify and develop the norms of international

[27] Preamble, Rome Statute.
[28] Interview with Office of the Public Counsel for Defence Official, ICC, 13 June 2014.

criminal law not only within the legal community, but also within the international community, as this is central to the ICC's general mandate to "end impunity."[29] Court officials perceive that there is widespread misunderstanding of the ICC's mandate and activities, and feel the need to "counter misinformation" propagated by the media and the Court's detractors.[30] In many African states where the ICC has been active, there have been significant barriers to legal awareness (e.g. economic, linguistic), and the ICC's internationally developed norms, rules, and procedures have conflicted with local legal cultures and pre-existing norms of justice and criminal accountability.[31] For example, the "equality of arms" between prosecution and defence can be lacking in some legal cultures.[32]

In addition, the ICC has noted states' lack of awareness of their obligations and how to appropriately fulfil those obligations under the Rome Statute.[33] Though the Court's legal obligations primarily focus on the norm of individual criminal accountability, state actors play a crucial role in the Rome Statute system. As previously discussed, the ICC, as a court of last resort, only prosecutes if national courts are unwilling or unable to prosecute, and this jurisdictional complementarity relies on states implementing the Rome Statute in domestic legislation and pursuing domestic prosecutions. Domestic implementation (and compliance with the Rome Statute) requires action from the state's legislature and judiciary, and possibly the executive, depending on how international treaties are incorporated into domestic law. In many states, national judiciaries have not had the opportunity to interpret and apply international criminal law, as states have failed to pass implementing legislation,[34] but even if they did, many states' national courts would lack the expertise to interpret and apply international criminal

[29] Preamble, Rome Statute.
[30] Interview with Fadi El Abdallah, ICC Spokesperson and Head of Public Information and Documentation Unit, ICC, 5 June 2014.
[31] See, e.g., Gegout 2013.
[32] Interview, Perdomo.
[33] Interview with Rod Rastan, Legal Advisor, Office of the Prosecutor, ICC, 4 June 2014.
[34] See, e.g., Amnesty International, "International Criminal Court: Rome Statute Implementation Report Card," 2010.

law.[35] States parties to the Rome Statute may also lack awareness of their legal obligations to "cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court."[36].

Perhaps more than any other international court, the ICC has faced strong and rising contestation. The ICC's norms, rules, and procedures are particularly vulnerable to contestation. The ICC's supranational authority challenges norms of sovereignty and non-intervention,[37] and international criminal proceedings unavoidably have political ramifications for states and for actors within states, and will inevitably be interpreted politically.[38] International criminal law, which was developed relatively recently, is contested, providing a mix of discursive resources for states and other actors to debate and determine what constitutes criminal action in the international system.[39] In practice, in virtually every state in which the ICC has prosecuted individuals for crimes under the Rome Statute, there have been mixed or negative reactions to the Court's intervention, indicating to ICC officials that the norms of international criminal justice, and the ICC's rules and procedures specifically, are contested.

Some states, contesting the ICC norms, rules, and procedures, have actively campaigned against the Court and undermined other states' adherence to their Rome Statute legal obligations. In the ICC's early days, the world's most powerful state, the US, contested the Court's authority to prosecute US nationals, and actively opposed states joining the ICC.[40] The US ceremoniously "unsigned" the Rome Statute, and it campaigned for ICC member states to sign bilateral non-surrender agreements, based on its contestation of the ICC's authority over prosecuting its nationals, particularly within the military, which has its own justice system. However, as the

[35] Interview, Rastan; Interview with James Stewart, Deputy Prosecutor, Office of the Prosecutor, ICC, 9 June 2014. For example, the Government of Uganda required substantial capacity building and guidance in establishing the War Crimes Division of the Ugandan High Court.
[36] Article 86, Rome Statute.
[37] For example, through referrals from the UN Security Council, the Court can investigate violations in states that have not consented to the Court's jurisdiction.
[38] Schiff 2008, 9.
[39] Armstrong, Farrell, and Lambert 2007, 195.
[40] See, e.g., Ralph 2007.

Court has conducted its operations, which have overwhelmingly focused on African states,[41] it has perceived that the main locus of contestation has shifted from the US to African states and the AU. Many African states individually and collectively through the AU have increasingly argued that the ICC's implementation of international criminal justice is illegitimate, due to its bias, prioritization of justice at the expense of peace in post-conflict situations, and disrespect for immunity for heads of state and government. Several African states have openly defied the ICC and, as discussed earlier, sought to constrain the Court through non-cooperation, creating an alternative institution, and threatening withdrawal. Judicial proceedings at the ICC are not merely about prosecution and defence of individuals, but provoke contestation of the Rome Statute justice system in general. Beyond African states, the international community also debates the value of international criminal justice through the ICC, given its high costs and negligible results.[42] ICC officials have, therefore, received ample signals that the Court lacks acceptance from various actors in its broad legal regime.

The ICC's Socialization Strategies

Facing low levels of acceptance from both lack of awareness and contestation of its norms, rules, and procedures, the ICC has engaged in significant policy development and strategic planning aimed at socialization. These approaches have often preceded, complemented, and contextualized formal judicial proceedings. But much of these strategies are independent from the Court's judicial (or prosecutorial) agency. According to the Rome Statute, the Court's Registry is mandated to conduct the ICC's external communications, but the President and

[41] As of 2015, the ICC opened investigations into eight situations in Africa: the Democratic Republic of the Congo, Uganda, the Central African Republic, Sudan, Kenya, Libya, Cote d'Ivoire, and Mali.
[42] David Davenport. "International Criminal Court: 12 Years, $1 Billion, 2 Convictions." *Forbes*, March 12, 2014.

Prosecutor have expanded their roles, and the Registry itself has substantially developed its communications and publications.[43]

The ICC, therefore, has multiple, coordinated agents of socialization within its complex institutional structure. Moreover, as time has passed, the ICC has recognized the need to coordinate among these agents. For coordination and to ensure "mutually reinforcing messages" among the three organs, the Court adopted an "Integrated Strategy for External Relations, Public Information and Outreach."[44] The Strategy, for example, prescribes that ICC officials focus on "common messages" and "narratives," which aim to avoid "duplication and fragmentation."[45] Explaining the development of this policy, one ICC official asserted:

> The complexity of the Court required us to be much more thoughtful and careful about the way we communicate, in much more simple ways. The discourse about how the ICC is a complex international organization is too heavy; it doesn't work basically. That's why were are focusing so much on common messages. And also because of our audiences. This is a very technical institution at the end of the day, and we need to understand that even when we talk to states and diplomats, we need to simplify things… They say, 'I kind of understand, but how can we cooperate with each other…'[46]

In the context of a coordinated external relations strategy, each organ aims to socialize actors in distinct ways.

States. To influence states, ICC officials in the Office of the Prosecutor, Presidency, and Registry have used extensive diplomatic and public communication strategies oriented towards both persuasion and social influence. The OTP, in traditional dispute settlement terms, is one party to ICC proceedings, but it is also an integral organ within the Court and perhaps its most public face. According to the Integrated Strategy, "The OTP builds support and cooperation for OTP activities and explains OTP policies and activities."[47] Prosecutors are always strategic actors,

[43] In contrast, the Office for the Public Counsel for the Defence, due to its lack of status as an organ of the ICC, does not have the capacity for its own communications strategy, though officials see the value of such activities. Interview, Office of the Public Counsel for Defence Official, ICC.
[44] ICC, "Integrated Strategy for External Relations, Public Information and Outreach."
[45] Ibid.
[46] Interview with Osvaldo Zavala Giler, Special Assistant to the Registrar and Legal Officer, Registry, ICC, 11 June 2014.
[47] ICC, "Integrated Strategy for External Relations, Public Information and Outreach."

developing persuasive legal argumentation to secure convictions, but in the case of the ICC's OTP, it has extensively expanded its strategic action beyond the realm of adjudication. The OTP's priorities for socializing actors involve instilling a sense of legal obligation to refer crimes and cooperate with the OTP's investigations and prosecutions, in support of the broader norms of individual criminal accountability and international criminal justice. The OTP has particularly emphasized the importance of interaction, arguing that the ICC's "innovative system of international justice... is based on national states *interacting* with an independent and permanent International Criminal Court supported by international organizations and a global civil society."[48]

The OTP has increasingly emphasized public communication strategies aimed at persuading states, among other actors, of the legitimacy of its investigations, prosecutions, and general approaches to international criminal justice. The OTP has an expanding body of policy papers and strategic plans that it widely disseminates to justify the overarching norms, rules, and procedures that guide its investigations and prosecutions. Through these policy documents, the OTP seeks to further develop the legal norms (e.g. the idea of "gravity" and "interests of justice"[49]) and procedures (e.g. preliminary examinations[50]) in the Rome Statute, and persuade actors to accept these interpretations. As a clear response to contestation of the OTP's selectivity (and alleged bias against Africans), it recently drafted a policy paper on case selection and prioritization.[51]

The OTP also conducts more informal, interactive activities aimed at socialization. When conducting investigations in countries, the OTP's public statements have aimed to address perceptions of bias and persuade actors of the appropriateness of its investigations and prosecutions. For example, while in Kenya, the Prosecutor Fatou Bensouda attempted to persuade Kenyans that, contrary to Kenyan leaders accusations of the ICC's political bias, "Ours

[48] ICC, "Policy Paper on Preliminary Examinations," 2013. 3-4. Emphasis added.
[49] ICC, "Policy Paper on Interests of Justice," 2007.
[50] ICC, "Policy Paper on Preliminary Examinations," 2013.
[51] ICC, "Draft Policy Paper on Case Selection and Prioritisation," 2016.

is a judicial process… to bring justice… It is not part of the politics."[52] The OTP has also partnered with UCLA Law School in creating the ICC Forum, where the OTP discusses topics and answer questions submitted by individuals from legal and non-legal backgrounds, from various regions in the world.[53] Thus, rather than let its courtroom activities implicitly clarify actors' legal obligations under the Rome Statute, the OTP has actively developed a range of socialization strategies to try to address actors' lack of acceptance of its norms, rules, and procedures, and promote states' sense of legal obligation to cooperate with OTP and the ICC.

In addition, the OTP has sought to socialize state actors, particularly when crimes have allegedly been committed on their territory, to pursue "genuine" national proceedings or refer cases to the Court, according to the Rome Statute obligations.[54] For example, a speech by Prosecutor Luis Moreno-Ocampo at the meeting of the ICC's Assembly of States Parties in 2003 is thought to have "increased international pressure on the DRC to refer cases of mass crimes to the ICC."[55] When states do pursue national proceedings, as has been the case in Uganda, the OTP advises national authorities and persuades them to follow the norms, rules, and procedures of the Rome Statute. Though the ICC is careful not to present itself as a capacity-building organization,[56] in practice, the OTP helps develop national authorities' legal expertise in pursuing international criminal justice, according to the Rome Statute system of norms, rules, and procedures. The Rome Statute itself does not provide for such activity; rather, the OTP has developed these practices aimed at socializing states into the Rome Statute system of international criminal justice.

With rising state contestation of the OTP's activities, states have increasingly failed to comply with their Rome Statute obligations, and the OTP has used its public communication to shame states' noncompliance. A salient example is many states parties' refusal to arrest

[52] "ICC Prosecutor Visits Kenya Violence Victims," *Al Jazeera*, October 25, 2012.
[53] "ICC Forum," http://iccforum.com/.
[54] ICC, "Paper on Some Policy Issues Before the Office of the Prosecutor," 2003.
[55] Clark 2008, 39.
[56] Interview, Rastan. Rastan notes that the Office that, while it does not engage in 'capacity building,' the JCCD has advised Uganda on how to establish the War Crimes Division of the Ugandan High Court in accordance with the Rome Statute's norms, rules, and procedures.

Sudanese President Omar al-Bashir, citing his head of state immunity.[57] With AU resolution ordering African states not to cooperate with the Bashir prosecution, African states have faced potentially conflicting regional and international obligations. The OTP has responded by strongly arguing that African states parties are nevertheless obligated to arrest Bashir and cooperate with the Court. The OTP has similarly flagged the Kenyan government's non-cooperation with its investigations and prosecutions, including witness intimidation, denial of access to evidence.[58] The OTP, in attempting to shame these instances of non-cooperation, has not merely relied on filing motions with the ICC's Pre-Trial Chamber for formal findings of noncompliance.[59] Rather, as events unfolded, it has persistently shamed states for noncompliance through its public statements, discussions in the Assembly of States Parties, reports to the UNSC, visits to states (when permitted), and so on.[60]

Beyond all these public communication strategies, the OTP also emphasizes diplomatic persuasion in more private settings. Even the ICC Deputy Prosecutor, who formerly worked at an ad hoc international criminal tribunal, has been "surprised by the amount of diplomacy required by [his] position" at the ICC.[61] This occurs in through the Court's working groups with states parties, covering the Court's administration, and during the annual meeting of the ASP. The OTP has also formed a Jurisdiction, Complementarity, and Cooperation Division (JCCD), which is widely seen as the diplomatic and political arm of the Office,[62] which focuses on securing state cooperation with the OTP's investigations, promoting national proceedings, and so on. OTP

[57] Bashir's immunity is heavily debated, even among legal scholars. A key ambiguity lies in the fact that Sudan is not a state party to the Rome Statute; rather, the UNSC referred the situation of Darfur to the ICC. As such, many observers believe that, in the absence of Sudan consenting to the Rome Statute, Bashir still has head of state immunity from prosecution at the ICC.
[58] See ICC, "Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the Status of the Government of Kenya's Cooperation with the Prosecution's Investigations in the Kenyatta Case" (Press Release, December 5, 2014).
[59] Article 87(7), Rome Statute: "Where a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, thereby preventing the Court from exercising its functions and powers under this Statute, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council."
[60] See, e.g., ICC, "Twenty-first report pursuant to paragraph 8 of UN Security Council Resolution (UNSCR) 1593," 2015.
[61] Interview, Stewart.
[62] Schiff 2008.

officials thus conduct "bilateral" relations with ICC states parties, focusing on promoting states' fulfilment of their obligations to cooperate with the OTP in its investigations and prosecutions.

The President and Registry (which operates under the authority of the President) have also pursued strategies aimed at socializing actors into the ICC's norms, rules, and procedures, and thus promoting compliance with the Rome Statute system. Whereas the OTP focuses on socializing actors into the norms, rules, and procedures of international criminal prosecutions and states' related obligations, the President and Registry are more "neutral" in advocating for the value of international criminal justice and thus promoting states' and other actors' compliance with international criminal law, as embodied in the ICC.

According to the ICC's Integrated Strategy, "the Presidency acts as the 'external face' of the Court as a whole, situates the ICC in the international landscape, and through providing information about the Court's role, mandate and activities, contributes to building acceptance of international justice."[63] The President, who as a sitting judge and is "limited" in what he or she can say,[64] has primarily focused on a campaign for universal ratification of the Rome Statute within the international community. The President both publically and privately in diplomatic meetings persuades state leaderships to ratify the Rome Statute. The President has adopted the practice of regularly meeting with state delegations to persuade them to accept the Court's jurisdiction, based on the value of international criminal justice in the international community. The ICC President's advocacy of international criminal justice through the ICC aims to develop the normative ideals of an end to impunity (when all states have accepted the Rome Statute system) and of "global justice" among states. Whether it is through joining the Court, or supporting its mandate through state cooperation (e.g. supplying evidence), the ICC President's activities clearly aim to persuade the world's states to accept the legitimacy of the Court and its justice system.

The ICC's Registry, similarly, has also expanded its activities with an aim to disseminate the ICC's norms, rules, and procedures within the international community and shape public

[63] ICC, "Integrated Strategy for External Relations, Public Information and Outreach."
[64] Interview, Giler.

discourse surrounding the Court. The Registry "provides basic information on the Court" and its general activities,[65] but in so doing, it can present actors in the international community with counter-attitudinal information and thus persuade them to adopt the ICC's norms, rules, and procedures. The ICC Spokesperson, for instance, noted how the Public Information and Documentation section helps "counter misinformation"[66] that arises out of misunderstanding or deliberate strategies of actors contesting the Court. The Registry's public information activities can thus serve to promote compliance among states and individuals. In addition, within the international community, the Registry's dissemination efforts have the potential to influence states and promote their acceptance of their legal obligations under the Rome Statute. In practice, much of this "basic information" is highly normative and aimed at promoting widespread acceptance of the ICC's norms, rules, and procedures, which can in turn promote compliance among states and individuals.

Individuals. The OTP's public communication is also oriented towards socializing individuals and thus contributing to the prevention of future crimes. In situations where the OTP suspects the on-going commission of international crimes, the Prosecutor makes public statements condemning these actions as violations of international criminal law and shaming these actors within the norms of the international community. The Prosecutor also makes statements before key events that might incite the commission of crimes. By threatening investigation and prosecution, the strategy clearly aims to deter the commission of crimes, but it also exerts normative pressure on actors to conform to international community norms, as embodied by the ICC. For example, ahead of elections in Nigeria, the Prosecutor released a statement, noting that Nigeria falls under the ICC's jurisdiction and urging,

> Violence is not a solution. The conduct and outcome of elections in Nigeria, free from violence, will not only prevent further instability in the country, but will also send a clear message that electoral

[65] ICC, "Integrated Strategy for External Relations, Public Information and Outreach."
[66] Interview, El Abdallah.

> competition does not have to result in violence and crimes that shock the conscience of humanity.[67]

The Registry's Outreach Unit also targets communities where crimes have been committed, and the ICC has intervened, but are also vulnerable to the commission of future crimes. In these outreach activities, Registry officials, alongside local civil society organizations, persuade individuals within these communities to adopt the ICC's norms of individual criminal accountability for mass atrocities. This combines individual level persuasion and building community norms to support processes of social influence. Initially, the Outreach Programme focused on tackling actors' lack of awareness through disseminating basic information about the Court's norms, rules and procedures in affected communities.[68] The Programme, however, has become more sophisticated over the years, and has adapted to address both lack of awareness and rising contestation. Activities now also include, for example, town hall style meetings, where Court officials debate the ICC's activities with stakeholders, and theatre programmes, where individuals in affected communities role-play ICC courtroom proceedings as a means of socialization into the ICC's norms, rules, and procedures.[69]

The EACJ

The EACJ is the judicial arm of the East African Community (EAC),[70] a regional organization of six states in East Africa.[71] States created the EACJ to "ensure the adherence to law in the interpretation and application of and compliance with [the EAC] Treaty,"[72] with EAC partner states and organs as the targets for compliance. The EAC, and the scope of the Court's jurisdiction, has since expanded from Kenya, Tanzania, and Uganda to also include Burundi,

[67] ICC, "Statement by the Prosecutor of the International Criminal Court, Fatou Bensouda, ahead of elections in Nigeria: 'I reiterate my call to refrain from violence'," 2015.
[68] ICC, "Outreach Report 2008."
[69] Interview, Perdomo.
[70] Created through Article 9, EAC Treaty.
[71] Burundi, Kenya, Rwanda, Tanzania, Uganda, and, since 2016, South Sudan. Originally, the EAC had only three members: Kenya, Tanzania, and Uganda.
[72] Article 23, EAC Treaty.

Rwanda, and South Sudan as partner states, but the EAC remains a relatively small regional economic community. The Court's jurisdiction covers the interpretation and application of the EAC Treaty, both through binding rulings and advisory opinions, and it also has a mandate to conduct arbitration proceedings.[73] In addition, the EAC recognizes that the Court can be granted "other original, appellate, human rights and other jurisdiction as will be determined…at a suitable subsequent date."[74] Based on actors' very low level of awareness of the EACJ's norms, rules, and procedures, and its relatively isolated experiences of contestation from states, it has a low-to-moderate level of acceptance overall.

A Low-Moderate Level of Acceptance

From its inception, the EACJ has faced a striking lack of awareness of its norms, rules, and procedures from EAC partner state officials and from other actors more broadly within East Africa. The EACJ has recognized that it is "not well known by its stakeholders,"[75] and even after ten years of existence, the Court argued that "stakeholders still need to know more widely and more deeply the existence, jurisdiction, procedures and functions of this new regional mechanism of dispute resolution."[76]

Even when actors are generally aware of the EACJ's existence, they could, due to the legacy of regionalism in East Africa, misunderstand its mandate.[77] The current EAC can be seen as a reincarnation of the defunct East African Community, which existed from 1967 to 1977,[78] and the EACJ can be considered a successor to the East African Court of Appeal, a British

[73] When specially requested by the relevant parties to a contract of by special agreement between partner states. The Court recognizes its arbitral jurisdiction "is rare for ordinary courts of law, but is opportune for developing a specialized, professional, and cost-effective arbitration forum for the Region." EACJ, "The East African Court of Justice: Tenth Year Report," 2011, 11.
[74] Article 27(2), EAC Treaty.
[75] EACJ, "The East African Court of Justice: Tenth Year Report," 2011, 24. The Court's observers have also observed this: see Oppong 2014, 74.
[76] Ibid., 23.
[77] The EACJ President flagged how confusion between the EACJ and the colonial Court of Appeal for Eastern Africa could prevent states and other stakeholders from accepting the EACJ and its role in East African integration. Interview with Harold R. Nsekela, Judge President, EACJ, 4 February 2014.
[78] Established through Treaty for East African Cooperation.

colonial court created in 1902 and disbanded in 1977, alongside the previous EAC.[79] The current EACJ, therefore, suffers from an association with the region's colonial history, and court officials have perceived that state officials and other actors confuse the two courts. The EACJ President, for example, has noted that people often confuse the EACJ with the former colonial court,[80] but the EACJ "is of limited jurisdiction which is hardly comparable to the then Court of Appeal of East Africa."[81] The EACJ has a much narrower mandate of interpreting and applying the EAC Treaty, compared to the East African Court of Appeal's more expansive mandate of as a court of last instance for East African colonies and, later, states. Particularly for postcolonial states that still vehemently defend their sovereignty and independence, any ideational association with a colonial institution, which had greater "supranational" powers, could risk delegitimizing the Court and its law, and provide states the discursive resources to justify noncompliance.

Even without this mistaken colonial association, Court officials have perceived that East African state officials lack awareness of their legal obligations under the EAC Treaty and the Court's judicial system. At a basic level, it would be difficult for state officials to reconcile the EACJ, as a regional court, with their existing norms regarding the place for law and courts in East African states. In East African states, national judiciaries are typically passive, with no real examples of judicial power operating independently of governments.[82] A regional integration court, which is theoretically intended to drive integration processes through ensuring compliance with regional agreements and harmonization of policies across states, inherently conflicts with these kinds of norms of passivity and government control. Regional integration through community norms and justice requires states accept "a loss of sovereignty and the possibility of being bound against one's own will," which is demonstrably lacking among some East African states.[83]

EACJ officials have also been conscious that state officials and other stakeholders could misunderstand, and potentially contest, the Court's interpretation of its mandate and the EAC

[79] Nsekela, "Overview of the East African Court of Justice," 2011.
[80] Interview, Nsekela.
[81] Nsekela, "Overview of the East African Court of Justice," 2011.
[82] Gathii 2013, 293.
[83] Van Der Mei 2009, 405.

Treaty. Generally, the EACJ's caseload derives from human rights claims framed under the norms of regional integration, rather than "conventional" regional integration cases.[84] The EACJ has not shied away from adjudicating such human rights-related issues, though it has no formal human rights jurisdiction and states have deliberately refrained from delegating a human rights jurisdiction to the Court. The EACJ's constitutive treaty foresaw the possibility of a human rights jurisdiction through an additional protocol;[85] states initiated negotiations of such a protocol,[86] but let these negotiations stagnate for years, despite extending the EACJ's jurisdiction to other areas, including trade and commerce.[87] Instead, the EACJ has based its adjudication of human rights-related disputes based on references to "adherence to universally acceptable principles of good governance, democracy, the rule of law, observance of human rights and social justice" in the EAC Treaty,[88] and noted in its jurisprudence that it will not "abdicate" jurisdiction over human rights claims asserted under the EAC Treaty's principles.[89] This interpretation of the Court's mandate could, however, easily conflict with states' expectations for the Court, where they do not anticipate they will be held accountable for their human rights obligations, and they may not accept the Court's interpretation of its mandate and states' obligations under the EAC Treaty.

Beyond these factors contributing to states and other stakeholders' lack of awareness of the EACJ's norms, rules, and procedures, the EACJ has also faced contestation over one of its first rulings, which "was politically perceived as an unfavourable decision,"[90] as it interfered in Kenya's domestic politics and challenged the norms of state sovereignty and independence. EAC partner states, principally Kenya, contested the Court's ruling relating to Kenya's appointment (rather than election, according to EAC rules) of officials for the East African Legislative

---

[84] Gathii 2013.
[85] Article 27(2), EAC Treaty mentions the EACJ's potential jurisdiction over trade and human rights.
[86] The EAC decided to extend the EACJ's jurisdiction to include appellate and human rights jurisdiction in November 2004, but a protocol for the extension has not been concluded.
[87] The EAC recently agreed to extend the EACJ's jurisdiction to cover trade and investment, as well as matters associated with the East African Monetary Union. EAC, "Communiqué of the 16th Ordinary Summit of the EAC Heads of State," 2015.
[88] Article 3(b), EAC Treaty.
[89] *James Katabazi* v. *Secretary General of the EAC* (2007).
[90] Oppong 2014, 76.

Assembly.[91] As Kenya President Kibaki noted, "courts should not lose sight of the wider aspirations of the integration process," and "attempts by any one organ to exceed its powers or disregard national sovereignty at this point in the integration process will undermine the Treaty and the vision of the peoples of East Africa."[92] Finally, Kibaki argued, "only through such respect for national sovereignty and strict observance of the Treaty's provisions for each organ's powers that confidence building and commitment will be sustained for the good of the integration process."[93] This view was accepted by other East African states, which in 2006 chose to amend the EACJ's constitutive treaty to, among other things, create an Appellate Division and expand the grounds for removing EACJ judges from office.[94] This was, however, an isolated incident, and states have not expressed any significant resistance to subsequent EACJ rulings, even with its human rights related-rulings in the absence of an explicit human rights jurisdiction.[95] Court officials, too, have seen it as an exceptional episode in the Court's history.[96] Still, with these various signals of lack of awareness and limited contestation from actors within its regime, EACJ officials have seen their lack of acceptance as an issue that needs to be addressed.

The EACJ's Socialization Strategies

The EACJ's socialization strategies have relied on its non-judicial agency, which, while not unconstrained, has allowed the EACJ to more freely communicate and interact with its targets for compliance, including members of virtually all braches of government, given the breadth of state obligations under the EAC Treaty. The EACJ has a dedicated Planning, Training and Public Relations Committee of judges that initiates the planning process and oversees the

---

[91] In the *Anyang Nyong'o* v. *Attorney General of Kenya* (2007) case, the EACJ issued an interim ruling that EAC officials should not recognize Kenya's nominees for the East African Legislative Assembly because they were appointed, not elected according to EAC rules.
[92] EAC, "Report of the 8th Summit of the East African Community Heads of State," 2006, 10.
[93] Ibid.
[94] EAC Treaty, art 26. See Oppong 2014, fn 48.
[95] Gathii 2013.
[96] Interview with Isaac Lenaola, Deputy Principal Judge, EACJ, 3 February 2014; Interview, Nsekela; Interview, Ruhangisa.

implementation of the Court's public relations and outreach activities.[97] The Registry, in turn, manages and coordinates these activities. The EACJ's 2010-2015 Strategic Plan, which "charts the way forward for the EACJ… by articulating the vision, mission, core values, critical issues, objectives and strategies for the Court,"[98] has institutionalized policies and practices aimed at socializing the Court's stakeholders, primarily through persuasive strategies. These activities target potential litigants, but also crucially seek to persuade EAC states (and their officials) into accepting the Court, its judgments, and EAC law in general. The Court has strengthened these policies and practices over time, as it has perceived the sustained need for socialization strategies. Even after ten years of existence, the EACJ observed, "The Court is still not well known by its stakeholders, despite the various publicity activities it has been carrying out. There is, therefore, need to intensify sensitisation on the Court's role and place in the EAC integration process."[99]

In their planning, based on their perceptions regarding stakeholders' lack of awareness and acceptance of the Court's norms, rules, and procedures, EACJ officials identified the need "to raise [the EACJ's] visibility so that it is recognized and appreciated for the work it is doing."[100] This is not mere publicity: this "recognition" and "appreciation" are necessary precursors to states' compliance with EAC law in general and EACJ judgments in particular, and value of adjudication in regional integration processes. The preamble to the strategic plan notes, "No society worth its salt can ignore a dispute resolution body if its wants to prosper. The Court aims to have its integral role in the EAC integration process recognized and appreciated."[101] The plan aims to "proactively influence a positive shift in the mindset of… Stakeholders concerning the role and place of the Court," and to "make the Court visible and indispensable in matters related to the discharge of its mandate."[102]

[97] EACJ, "The East African Court of Justice: Tenth Year Report," 2011, 17.
[98] EACJ, "Strategic Plan 2010-2015," 2010, ix.
[99] EACJ, "The East African Court of Justice: Tenth Year Report," 2011, 24.
[100] EACJ, "Strategic Plan 2010-2015," 2010, ix.
[101] Ibid., viii.
[102] EACJ, "Strategic Plan 2010-2015," 2010, x.

In its strategic planning vis-à-vis its policies and practices aimed at socialization, the Court has been cautious to develop its "various projects depending on the allocated resources"[103] and mindful of "the need to avoid the perception of touting for cases or in any way compromising its professional integrity, independence and neutrality."[104] Defending the EACJ's "awareness drives in the East African Community partner states," the EACJ President noted, "While courts are not activist in nature, we realise that few people understand our mandate because we have been a little too silent."[105] The EACJ, therefore, has developed its policies and practices within both its resource constraints and norms of appropriateness.

The EACJ has thus institutionalized a sensitization programme,[106] which relies on its non-judicial agency. Interestingly, when the Court was formulating this strategy, there was a debate between the judges and the Registrar over who should conduct the seminars in states. The Registrar felt, in the interest of preserving judicial independence, the Registry should conduct the seminars, but in the end, the judges insisted on also participating.[107] Thus, through its sensitization workshops and seminars, EACJ officials seek to present various stakeholders (e.g. civil society, the business community, practising lawyers, and the media) with counter-attitudinal information regarding the EACJ's norms, rules, and procedures,[108] but they also notably target EAC state officials—those with obligations to harmonize domestic policies in line with regional agreements, comply with EAC law, and respect Court judgments. In essence, it aims to develop a "judicial culture," which, as African Court judges noted, is lacking and needs to be "strengthened" in African states.[109] Despite creating regional courts, African states are often not socialized into the norms, rules, and procedures that underpin them. For example, speaking to parliamentarians from across East Africa, the EACJ Registrar broadly advocated for the Court's role in regional integration and relations within the East African Community more generally:

---

[103] EACJ, "The East African Court of Justice: Tenth Year Report," 2011.
[104] EACJ, "Tenth Year Report," 2011, 20.
[105] Christabel Ligami, "EACJ has high-calibre judges, so we can handle human-rights cases" *The East African*, May 30, 2015.
[106] EACJ, "The East African Court of Justice: Tenth Year Report," 2011, 20.
[107] Interview, Ruhangisa.
[108] EACJ, "The East African Court of Justice: Tenth Year Report," 2011, 20.
[109] AfCHPR, "Report of the Eighth Session of the African Court on Human and Peoples' Rights," 2008, 12.

> "It is a reality that when people interact they are likely to get into differences and disagreement. That is human nature. Courts of law are purposely created to address this natural eventuality of human relationship. Similarly, the more East Africa gets integrated the more disputes of a trans-boundary nature are likely to happen. The visionary founders of the East African Community foresaw this situation and decided to create the East African Court of Justice to address such situations."[110]

Seemingly procedural policies within the Court's Strategic Plan have also provided EACJ officials opportunities to socialize state officials and stakeholders within EAC states. The EACJ has used its sub-registries as a means of symbolically tying the EACJ to state structures within each EAC state, and facilitating cooperation between state officials and the Court. Sub-registries, which were envisioned in the Court's Rules of Procedure, and in 2010, the EACJ received approval for the sub-registries' establishment from the EAC Council of Ministers.[111] They primarily serve the EACJ's objective of "bringing justice as close as possible to the peoples of East Africa,"[112] especially by increasing potential litigants' access to the Court. However, as stated by the EACJ President, these sub-registries also aimed to increase the Court's "visibility" in each EAC state[113] and ensure the "presence of the EACJ would be better felt at Partner States level."[114] The EACJ has an official, who can represent the Court and interact with substate actors, constantly present in each sub-registry. The sub-registries require cooperation from each East African state, serving to increase states officials' awareness of the Court and, more symbolically, reframe the relationship as more of a partnership between EAC states and the Court. At the launch events of these sub-registries, court officials, drawing on social influence, praised such cooperation and commitment on the part of the EAC states. Vis-à-vis Uganda, for example, the EACJ President expressed "gratitude for the smooth, candid and laudable cooperation," and praised this as "a strong indication of the Republic of Uganda's

---

[110] Ruhangisa, "Role of the East African Court of Justice in the Realization of Customs Union and Common Market," 2010.
[111] EACJ, "The East African Court of Justice: Tenth Year Report," 2011, 21.
[112] Nsekela, "Speech at the Launch of the EACJ Sub-Registry in Kampala", 2012.
[113] Republic of Kenya, "East African Court of Justice Sub-registry Launched in Nairobi," 2014.
[114] Nsekela, "Speech at the Launch of the EACJ Sub-Registry in Dar es Salaam", 2012.

commitment to the EAC integration agenda… and to the EACJ in general as has always been the case."[115]

Controlled Comparison: The ITLOS and ICJ

The ITLOS and ICJ are cases that, within the diverse population of international courts, are as similar as possible except for their key differences regarding officials' perceptions of their respective institution's acceptance within the international community. This facilitates isolating how their different levels of acceptance influence their adoption of approaches for promoting compliance.

Both courts' judicial autonomy is constrained by rules governing their jurisdiction, which is only compulsory under certain circumstances. Based on its Statute, the ICJ has a consent-based jurisdiction, where each party to a case must agree to submit it to the Court. States have, however, concluded numerous treaties that include compulsory dispute settlement procedures through the ICJ. The ITLOS's ability to exercise its jurisdiction over disputes under UNCLOS is similarly constrained through treaty rules. Under the UN Convention on the Law of the Sea (UNCLOS), states can choose between adjudication (through either the ITLOS or the ICJ) or arbitration, and if states do not select a procedure, the default is arbitration. The ITLOS only adjudicates cases when both parties have made declarations that the ITLOS is their choice of compulsory dispute settlement procedure[116] or if both states give consent for a dispute,[117] so there is a high level of state consent. Thus, both courts have constrained autonomy vis-à-vis their jurisdictions. Neither court has reported resource constraints, judicial appointment procedures are quite similar, and states have not exerted contractual controls over either court. Thus, they have quite comparable levels of autonomy. They are also similar in their level of accessibility. They are both traditional, inter-state dispute settlement bodies, with state-only access, except for IOs'

[115] Nsekela, "Speech at the Launch of the EACJ Sub-Registry in Kampala", 2012.
[116] Article 287, UNCLOS.
[117] Under Article 280 of UNCLOS, parties have the right "to agree at any time to settle a dispute between them concerning the interpretation or application of this Convention by any peaceful means of their own choice."

ability to request advisory opinions.[118] More generally, both the ICJ and ITLOS are creatures of the UN system. The ICJ is the UN's judicial organ, created through an annex to the UN Charter, while the ITLOS-UN relationship is governed by a separate treaty.[119] Both courts, for example, report on their activities to the UN General Assembly.[120]

The ITLOS and ICJ, however, substantially differ in terms of officials' perceptions of their court's acceptance within the international community. ITLOS officials publically express their concern about a general lack of awareness of the Tribunal's norms, rules, and procedures, and of the value of dispute settlement under UNCLOS. ICJ officials, in stark contrast, regularly refer to their confidence in the international community's acceptance of the Court.

Since its creation under the UNCLOS in 1996,[121] ITLOS officials have frequently noted actors' lack of awareness of the law of the sea, a quite technical area of international law, and the norms, rules, and procedures of adjudication through the Tribunal. As parties to disputes have accepted and implemented the Tribunal's decisions, Tribunal officials have identified actors' awareness, rather than contestation, as its challenge for acceptance and, by extension, promoting compliance. One Tribunal judge, for example, referred to the Tribunal as a "well-hidden secret, even within the UN."[122] In a crowded marketplace of dispute resolution procedures under UNCLOS, ITLOS officials have perceived the need to promote states' appreciation of adjudication under the ITLOS.[123] Tribunal officials have seen the need to legitimize the ITLOS as the judicial forum with the highest level of expertise in the law of the sea and the ability to

[118] One of the ITLOS chambers—the Seabed Disputes Chamber—allows corporations, which could potentially mine the seabed, to raise disputes, but in practice no such disputes have been raised, as mining on the seabed is not yet a salient issue.
[119] Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the law of the Sea. In the agreement, the UN and ITLOS agree to "Consult and cooperate, whenever appropriate, on matters of mutual concern" and "Pursue, whenever appropriate, initiatives to coordinate their activities" (Article 2).
[120] The ICJ reports to the UN General Assembly, while the ITLOS reports to the Meeting of States Parties of UNCLOS, and also more generally to UN General Assembly, which has granted it observer status.
[121] The ITLOS was proposed in the UNCLOS, which opened for signature in 1982 and only came into force in 1994, with the Tribunal becoming operational in 1996.
[122] Interview with Joachim König, Director, IFLOS, 11 September 2014, quoting a speech by an ITLOS judge from a few years earlier.
[123] For example, by 2005, only 26 out of 149 states parties to UNCLOS had made a declaration in favour of dispute settlement through the ITLOS.

make legally authoritative rulings regarding disputes under UNCLOS.[124] The ITLOS President, for example, urged that "it should be underlined that the Tribunal has an important role in the dispute settlement system established by the Convention" and the Tribunal is "adjudicating cases to contribute to the development of international law and, in particular, the international law of the sea."[125]

Tribunal officials have also flagged the lack of legal expertise on the law of the sea and the Tribunal's adjudication procedures in many states. The Tribunal's legal regime has a global scope, which encompasses both developed and developing states; officials have been particularly conscious that developing states' capacity issues can hinder awareness of the Tribunal and implementation of the UNCLOS. The content of the Tribunal's norms, rules, and procedures also poses challenges for awareness. The UNCLOS is highly technical, and even those with legal training can find it difficult to understand. Maritime law, furthermore, is a relatively underdeveloped legal field, with few lawyers possessing specialized legal training in this area.[126]

In contrast to the ITLOS judges, ICJ judges and officials have perceived a generally high level of acceptance from the international community and, consequently, have not expanded their non-judicial agency through policies and practices aimed at socialization. ICJ officials routinely express their confidence in the Court's legitimacy within the international community and states' general acceptance of the Court's judicial decisions. This confidence is based on the ICJ's status within the UN system and international law, its consent-based design, and the Court's long history of compliance with its decisions. In contrast to the ITLOS, the Court also has a sizeable body of case law in its seven decades of existence. Essentially, while it may receive contestation for some of its decisions, ICJ officials seem to perceive that the Court is deeply embedded within the international community and enjoys a high level of acceptance.

[124] At the time of the Tribunal's creation, some commentators questioned the need for, and the wisdom of, establishing a specialized tribunal addressing law of the sea disputes. Though the ICJ had previous adjudicated maritime disputes, some felt that the ICJ lacked understanding of the law of the sea, necessitating the creation of a new forum where judges would be more familiar with UNCLOS principles. See Oda 1995; Klein 2009, 54.

[125] ITLOS, "Statement by Judge Vladimir Golitsyn, President of the International Tribunal for the Law of the Sea on Agenda Item 74(a) 'Oceans and the Law of the Sea'," 2014.

[126] Interview, König.

For example, when questioned about the ICJ's legitimacy, the former ICJ President Peter Tomka made the bold claim that "As long as the UN exists, the ICJ will be legitimate."[127] There is, therefore, the perception that the ICJ's legitimacy and acceptance primarily derives from the UN system. The ICJ's Statute is annexed to the UN Charter, and therefore all UN member states are automatically "members" of the ICJ[128] and can consent to use the court to adjudicate particular interstate disputes. Within the UN system, the ICJ can adjudicate interstate disputes on any matter of international law, so unlike virtually all other international courts, the ICJ is not upholding a particular body of international law, but rather international law and the UN principle of the peaceful settlement of disputes in general. For example, the Court has noted the "confidence that States have shown in the Court's ability to resolve their disputes."[129] Furthermore, ICJ officials (and the ICJ in its official publications) frequently state that, as "principal judicial organ of the United Nations," it "occupies a special position" within the international community[130] and among the expanding number of international courts.[131]

The ICJ's consent-based jurisdiction, where each party to a dispute consents to the ICJ's jurisdiction, is the most sovereignty-respecting design for an international court, which narrows the cases that the ICJ adjudicates and increases the likelihood that parties will accept the Court's ultimate decision. In practice, even when they contest the Court's decisions, states generally acquiesce to them, supporting the ICJ's perception of high compliance with its decisions "given the great legal and moral and diplomatic authority with which the decisions of the Court are invested."[132] The Court has rendered over one hundred judgments since its inception, and virtually all judgments have been implemented.[133] Only on a few occasions have states disregarded the Court's judgments, but even in these cases, there was eventual or partial

[127] Tomka, "International Courts and Tribunals: Effective and Legitimate?," 2015.
[128] Article 93(1), UN Charter.
[129] ICJ, "Report of the International Court of Justice, 1 August 2008-31 July 2009," 2009, para 31.
[130] E,g, ICJ, "Report of the International Court of Justice, 1 August 2007-31 July 2008," 2008, 6. Former ICJ President Rosalyn Higgins also references the Court's "special status within the UN." See Higgins, "The Changing Position of Domestic Courts in the International Legal Order," 2008.
[131] See Terris, Romano, and Swigart 2007, Chapter 3.
[132] ICJ, "The Role and Activities of the ICJ (2013)" <http://www.icj-cij.org/presscom/gallery.php?p1=6&event=20110101_icj> accessed 30 June 2015.
[133] Compared to international courts with compulsory jurisdiction, there is a less of a chance that states, which have consented to settling a particular dispute at the ICJ, would contest its decision.

compliance by the losing party, or changes in the law or political scene that lessened the relevance of the original decision.[134] Furthermore, there are several cases where states complied with ICJ decisions although noncompliance was generally expected because important interests were involved or due to past military clashes. These cases of acquiescence to unfavourable ICJ decisions show "that states will comply even with judgments contrary to their national interests."[135]As the former President of the ICJ, Rosalyn Higgins, has noted, the ICJ

> enjoys a very high rate of compliance with its judgments from all kinds of States in all types of cases; a rate that compares favourably with that of any national court… even in cases that have been bitterly fought and have a volatile history… we have seen the commitment to implement the Judgment once it is given.[136]

Clearly, officials within the ITLOS and ICJ have very different perceptions of their court's level of acceptance. Thus, all else equal, we would expect that ITLOS officials would likely develop and emphasize socialization strategies to address actors' lack of awareness of the Tribunal's norms, rules, and procedures. The Tribunal would aim to socialize actors in its legal regime to align their standards of legitimate, appropriate behaviour with the Tribunal's norms. Conversely, given their confidence in their court's acceptance, ICJ officials would not be prompted to use socialization as a strategy for promoting compliance.

The ITLOS's Socialization Strategies

The ITLOS thus represents a case where court officials have reacted to indications of actors' lack of awareness of the court's norms and consequently developed policies and practices aimed at socialization. In the ITLOS, such decision-making regarding institutional policies and practices takes place in committees of Tribunal judges, and then the judges and registry officials coordinate implementation. In 2005, the Tribunal decided to establish a committee dedicated to

[134] Schulte 2004, 271-272.
[135] Ibid.,272. The cases referenced are *Temple of Preah Vihear (Cambodia v Thailand)* (1962) and *Territorial Dispute (Libya v Chad)* (1994).
[136] Higgins 2009, 1344-1345.

Public Relations.[137] Initially, the Committee introduced "a set of measures to promote the work of the Tribunal, including… the dissemination of information on the Tribunal and the participation of Tribunal representatives in international legal meetings."[138] These could be seen as general information dissemination strategies, primarily in the interest of publicity. However, over time, and amid rising concern about actors' lack of awareness regarding the Tribunal and maritime law, the committee's activities have expanded to also include regional workshops and legal training, which are more oriented towards norm dissemination and socialization. Both programmes support processes of socialization: the regional workshops focus on persuasive diplomacy, while the training programme aims to persuade legal professionals to study and practice the law of the sea—a form of professional socialization that underpins the spread of expertise in states and, in turn, influences states' compliance decisions. The ITLOS has thus institutionalized several programmes broadly aimed at socializing states, as the Tribunal's targets for compliance, into its norms, rules, and procedures. These initiatives also generally aim to disseminate norms of peaceful dispute settlement under the law of the sea throughout the international community.

With states, at a diplomatic level, the Tribunal holds regional workshops for senior governmental officials, based on officials' perception that workshops "at the ministry level" would be advantageous.[139] The Tribunal has held these workshops since 2006 in various regions, such as West Africa, the Caribbean, and Asia. In 2007 alone, the Tribunal ran three workshops in Gabon (attended by representatives of seventeen African states), Jamaica (attended by representatives of nineteen Caribbean states), and Singapore (with participation from eighteen Asian states).[140] In the regional workshops, Tribunal officials use persuasive strategies, and advocate for the value of ITLOS and dispute resolution under UNCLOS for the inter-state relations of their particular region. For example, in its 2009 workshop organized jointly by the

---

[137] The idea for creating a Public Relations Committee came from ITLOS Judge Rudiger Wolfrum and then gained support of the Tribunal's members. Interview with Julia Ritter, Press Officer, ITLOS, 10 September 2014.
[138] ITLOS, "Annual Report of the International Tribunal for the Law of the Sea for 2005," 2006.
[139] Interview, Ritter.
[140] ITLOS, "Annual Report of the International Tribunal for the Law of the Sea for 2007," 2008.

Tribunal, the Government of Malaysia, and the Asian-African Legal Consultative Organization (AALCO), "the President gave a presentation on the role of the Tribunal as regards piracy" and "Judge Yanai gave a presentation on the role of the Tribunal in maritime delimitation boundaries."[141] In the workshops, Tribunal officials essentially teach senior governmental officials the norms, rules, and procedures of dispute settlement under UNCLOS. The workshops constitute "capacity building to help states work with the Convention"—with compliance with UNCLOS rules and dispute settlement procedures as key components. The workshops clarify the different mechanisms for the settlement of disputes under UNCLOS and the particular norms of dispute settlement under the ITLOS. More broadly, they advocate for international adjudication through ITLOS in lawfully and legitimately settling states' maritime disputes.

Beyond these formal policies, but with similar objectives of norm dissemination and persuasion, Tribunal Presidents also have developed an informal practice aimed at persuading states to support the Tribunal. In view of the Tribunal's challenges, from the outset, the ITLOS Presidents capitalized on their relationship with the UN and the General Assembly as a forum for making persuasive statements to the world's states. The ITLOS Presidents have routinely made speeches ostensibly to address states' lack of awareness of the Tribunal's norms, rules, and procedures. The Tribunal has observer status in the General Assembly,[142] and Presidents have used this forum to make statements persuading states to make declarations selecting the ITLOS as their dispute settlement procedure under UNCLOS, to bring cases to the Tribunal, and more generally, to recognize the importance of peaceful maritime dispute settlement under international law. In their statements, they often frame the relevance of judicialized dispute settlement based on relevant contemporary international issues.

For example, the Tribunal's first President Thomas Mensah presented the Tribunal's activities to the General Assembly and noted that the Tribunal was only "partially used" (for prompt release and provisional measures) and elaborated the various types of cases that states

[141] ITLOS, "Annual Report of the International Tribunal for the Law of the Sea for 2009," 2010, 15.
[142] United Nations General Assembly. "Observer Status for the International Tribunal for the Law of the Sea in the General Assembly." A/RES/51/204, 1996.

could potentially bring to the Tribunal.[143] Beyond merely aiming to generate cases, the President was framing the Tribunal's appropriate role within the international community and maritime issues. Several years later, ITLOS President Chandrasekhera Rao echoed Mensah and, in his statement to the UN General Assembly, noted that "The Tribunal will be able to live up to the community expectations only when litigants, especially States, make full use of it."[144] This persuasion by ITLOS Presidents at the General Assembly has continued, where even in 2007 President Rüdiger Wolfrum argued for the desirability of using the permanent Tribunal over arbitration.[145] Similarly, President José Luis Jesus, in his 2008 statement to the General Assembly, drew attention to the value of the Tribunal's advisory jurisdiction by arguing that, "as the international community faces new challenges in ocean activities, such as piracy and armed robbery, advisory proceedings before the Tribunal… may prove to be a useful tool to States."[146] Thus, Tribunal Presidents have sought to persuade states of the value of peaceful dispute settlement, the law of the sea, and the Tribunal's role in promoting compliance.

The Tribunal has also noted the importance of professional socialization and the development of governmental experts that can advise their governments on their legal obligations under UNCLOS and dispute settlement under the ITLOS. As such, in 2007, the Tribunal established a capacity-building and training programme on dispute settlement under the Convention. Participants attend lectures on topical issues related to the law of the sea and maritime law, and training courses on negotiation and delimitation. Participants also visit other institutions in the law of the sea regime.[147] The programme has aimed to present individuals with counter-attitudinal information, persuade them to develop their expertise in the law of the sea and the ITLOS, and use it in their future work in their respective states. The training programme is

---

[143] ITLOS, "Statement by the President of the Tribunal, Mr. Thomas A. Mensah, on Agenda Item 38: 'Oceans and the Law of the Sea'," 1998.
[144] ITLOS, "Statement by P. Chandrasekhera Rao, President of the International Tribunal for the Law of the Sea, on the Report of the Tribunal," 2002.
[145] ITLOS, "President Wolfum Addresses General Assembly, Asserts the Advantages of Permanent Tribunals over Arbitration" (Press Release, December 11, 2007).
[146] ITLOS, "Statement by Judge José Luis Jesus, President of the International Tribunal for the Law of the Sea, on Agenda Item 70(a)," 2008.
[147] IFLOS, "Annual Report of the International Tribunal for the Law of the Sea for 2007," 2008, 21.

explicitly aimed at socializing current and future governmental officials and thus influencing states' behaviour:

> Upon completion of the training programme, participants are expected to have acquired the necessary knowledge and skills to enable them to provide legal and expert advice to their governments on the various mechanisms of dispute settlement under the Convention and in the implementation of the Convention in their home countries.[148]

ITLOS judges have also, more informally, developed the International Foundation for the Law of the Sea (IFLOS) as a forum in which Tribunal officials can further contribute to professional socialization, the spread of legal expertise, and compliance with the law of the sea and the Tribunal. Formally, the IFLOS and the ITLOS are separate organizations, but in practice, IFLOS activities are integrated with the Tribunal's.[149] Movements to establish the Foundation began in 2000, when "representatives of a number of leading institutions in Hamburg," the Tribunal's seat, expressed their desire to establish a foundation "to promote the study of the international law of the sea," and the Tribunal welcomed the idea.[150] These actors collaborated to design the IFLOS, *inter alia*, to emulate the ICJ's relationship with the Carnegie Endowment for Peace and the Hague Academy for International Law,[151] which was founded in 1923 and is based at the Peace Palace in close proximity to the ICJ and Permanent Court of Arbitration.[152] Though it has no formal relationship with either judicial institution, ICJ judges often lecture there in their personal capacity. The Hague Academy precedent clearly legitimized the idea of ITLOS judges acting as "teachers of norms" through institutionalized educational activities. The idea of the Hague Academy's summer courses strongly influenced the creation of the IFLOS Summer Academy.[153] The IFLOS thus shows that emulation can play a role in international courts' adoption of approaches; however, as the IFLOS is just one facet of the ITLOS's broader

---

[148] Ibid.
[149] Interview, König.
[150] ITLOS, "Annual Report of the International Tribunal for the Law of the Sea for 2000," 2001.
[151] Interview, König.
[152] A Dutch lawyer, Tobias Michael Carel Asser, proposed the idea of creating the Hague Academy of International Law at the Hague Conference of 1907, as part of the broader movement for developing peace through law. When Asser was awarded the Nobel Peace Prize in 1911, he dedicated part of the prize money to the Academy, and the Carnegie Endowment for International Peace provided for its construction at the Peace Palace, close to the International Court of Justice and the Permanent Court of Arbitration. After delays from WWI, the Academy became operational in 1923.
[153] Interview, König.

socialization strategies, the emulation mechanism operates within Tribunal officials' broader reaction to the ITLOS's lack of acceptance.

ITLOS judges have essentially integrated the IFLOS into the Tribunal,[154] and used it as another forum in which judges can socialize prospective legal experts in the law of the sea and adjudication at the Tribunal. The IFLOS similarly exists within the grounds of the Tribunal, but unlike the Hague Academy's mandate of general legal education, the IFLOS exclusively exists to support education on the UNCLOS and ITLOS. Thus, the IFLOS was founded in 2003

> to increase public awareness of the important work of the International to foster the dialogue between the academic world, the Judges of the Tribunal and those working in the field of maritime commerce. In addition the Foundation seeks to strengthen knowledge of law of the sea and maritime law in less developed countries.[155]

Across developed and developing states, there is a perceived scarcity of individuals with expertise in maritime dispute settlement and the ITLOS,[156] but the Foundation especially focuses on "the promotion of knowledge of law of the sea in less developed States," and aims to contribute to "the development of their competence with regard to exercising rights and complying with obligations under the Convention on the Law of the Sea."[157]

The IFLOS Summer Academy is a means of training individuals from a range of countries in maritime law and the workings of the ITLOS. This training, in part, is intended to make the participants "ambassadors" for the ITLOS when they return to their home countries and work as professors teaching maritime law, government advisors, and so on. For example, for the Tribunal's *Bangladesh/Myanmar* case—its first case maritime boundary delimitation case after fifteen years of operation—a 2007 Summer Academy participant was a member of the Bangladeshi delegation, and she appeared to be influential in discussions in Bangladesh behind the decision to adjudicate the dispute under the ITLOS.[158] Such expertise could equally

[154] For example, the Tribunal decided that the President of the Tribunal could serve as an *ex officio* chairman of the Foundation's supervisory body and that judges could also serve on the advisory council of the foundation.
[155] "International Foundation for the Law of the Sea." http://www.iflos.org.
[156] Interview, König.
[157] "International Foundation for the Law of the Sea" http://www.iflos.org.
[158] Interview, König.

influence governmental decisions regarding implementing and complying with the UNCLOS, as well as Tribunal decisions.

The ICJ's Absence of Socialization Strategies

Overall, and in contrast to the ITLOS's activities, the ICJ strongly emphasizes its judicial agency and the activities defined in its Statute; it has not significantly developed its non-judicial activities. The ICJ does engage in "strategic planning," but this relates to how to manage its judicial activities, such as its caseload.[159] The ICJ has limited itself to minimal public communication and diplomatic interactions.

The ICJ's communication strategies are limited to basic efforts at transparency about the Court's activities and dissemination of judgments.[160] The Court is confident that "it ensures the greatest possible global awareness of its decisions through its publications and its website."[161] However, both its publications and website have quite limited content. ICJ officials believe that ICJ judgments speak for themselves, and limiting the information shared with states and other actors to the contents of the judgment does not cause misunderstandings.[162] In addition, as officials believe that the Court's mandate ends when a decision is rendered, the ICJ does not formally monitor compliance with its decisions or "shame" states for noncompliance.[163]The Court's press releases thus focus on cases and merely report the key elements of the judgment, without any further interpretation, elaboration, or context. Unlike many other Courts, the ICJ, for example, does not have a spokesperson and considers such an official unnecessary.[164] It is clear that the Court primarily relies on the persuasiveness of its legal rulings to promote compliance.

In terms of its interactions with states, ICJ officials, usually from the registry, have ad hoc meetings with diplomats and legal advisors based in The Hague, where the Court is seated.

[159] Interview with Registry Official, ICJ, 12 September 2014.
[160] The ICJ issues press releases on its website and, in 2015, began tweeting its basic information about cases before the Court and judgments (@CJI_ICJ).
[161] ICJ, "Report of the International Court of Justice, 1 August 2008-31 July 2009," 2009.
[162] Interview, Registry Official, ICJ.
[163] Ibid.
[164] Ibid.

At these meetings, Court officials may answer technical questions, most often related to the procedure for bringing cases, what documents states should file in cases, and so on. They would not, for example, consult with states considering bringing cases (e.g. persuading them to use the Court), but it could clarify the procedures states should follow once they have decided to bring a case.[165] In this sense, the Court is rather passive, disseminates information when states request it, and is not actively trying to use persuasion or social influence with states. Similarly, the Court receives visits from diplomats, but the Court passively accepts, rather than seeks out, such visits. When invited to conferences and seminars, court officials occasionally speak about the general function of the court but never comment on specific cases, the implementation of judgments, and so on.[166] The Court's training is limited to its internship programme for students seeking to familiarize themselves with the institution and further their training in international law."[167] These activities are similar to the ITLOS's early "public relations" activities, before the Tribunal used its non-judicial agency to expand its policies and practices aimed at socializing states into compliance with UNCLOS and the Tribunal.

The ICJ, essentially, has not developed itself in any significant way as an agent of socialization, though it does recognize that socialization processes are relevant to the Court. Former ICJ President Rosalyn Higgins, for example, has implicitly acknowledged socialization through social influence operates vis-à-vis ICJ decisions, but in other UN organs where states interact. She notes, "No Member State wants to sit in the General Assembly or Security Council, knowing that it is violating a decision issued by another main organ of the UN, which is binding upon it."[168]

---

[165] Ibid.
[166] Ibid.
[167] ICJ, "Report of the International Court of Justice, 1 August 2008-31 July 2009," 2009.
[168] Higgins 2009, 1345.

Analysis

The difference between the ITLOS and ICJ cases is striking. ITLOS officials, in their relatively less established court, expressed continuous anxiety about their role in the international community and states limited awareness of the area of law they govern. In contrast, ICJ officials continuously express strong confidence in the ICJ's legitimacy within the international community and thus states' compliance with its rulings. Given the long history of the UN, and their status within the organization, ICJ officials perceive a high level of acceptance—even if the Court, in reality, experiences episodes of contestation. Officials appear to be take comforting in the fact that, given the ICJ's long existence—perhaps permanence in its broadest sense—the is very little that would warrant the non-judicial entrepreneurship of other, newer international courts.

The ITLOS has dramatically expanded its non-judicial agency in the areas of diplomacy and training, supporting processes of persuasion to address actors' lack of awareness of the Court's norms, rules, and procedures. Essentially, ITLOS officials have been trying to embed themselves within the international community. They have broadly sought to legitimize their organization and the law it governs among states—something ICJ officials, evidently, believe they have achieved through decades of case law and their status within the UN system.

Conclusion

Ultimately, international courts acting as agents of socialization constitutes a dimension of the judicialization of international law and politics that was unforeseen by the creators of these institutions. Instead, through the entrepreneurship of international court officials in response to their challenging regime environments, many international courts have developed themselves as agents of socialization. International courts' core work of adjudication and rendering rulings can certainly support socialization processes, and help address issues related to lack of awareness and contestation within their legal regimes. However, international courts judicial agency may be insufficient to address actors' lack of awareness and contestation of courts' norms, rules, and procedures. This prompts officials to develop policies and practices aimed at socialization and promote compliance through the logic of appropriateness. Thus, in addition to the proliferation of international courts and their rulings, international courts' development at agents of socialization proves to be a key dimension of the judicialization of international law and politics.

Overall, the four cases followed the theoretical expectations regarding international courts' levels of acceptance and their adoption of socialization strategies. They elucidated how court officials' perceptions of lack of awareness and, potentially, contestation of courts' norms, rules, and procedures motivates entrepreneurship and the development of socialization strategies, based on courts' non-judicial agency. As these activities are not embedded in international courts' delegated mandates, it takes signals that international courts lack acceptance by actors in their legal regimes to prompt their adoption of socialization strategies.

As expected, given officials' confidence in their high level of acceptance, the ICJ has not seen socialization activities as necessary. Conversely, given officials' various concerns regarding awareness and contestation of courts' norms, rules, and procedures, the ITLOS, EACJ, and ICC have all chosen to emphasize socialization in many of their non-judicial policies and practices. The ITLOS has stressed persuasion to address actors' lack of awareness of the Tribunal's norms, rules, and procedures, while both the EACJ and ICC have sought to promote processes of persuasion and social influence. In addition, as expected, diffusion played a minor, secondary role, where ITLOS judges sought to roughly emulate ICJ judges' involvement in legal education activities, and helped develop the IFLOS, an institute embedded in the Tribunal, in contrast to the Hague Academy's only informal relationship with ICJ judges. Overall, however, international court officials' overriding motivation in developing themselves as agents of socialization was to address the challenges of actors' lack of awareness and contestation of their norms—which in turn undermine compliance according to the logic of appropriateness. Especially in the EACJ case, where there was debate over whether it was appropriate for judges to conduct such activities, it is clear that international courts' decisions to engage in these activities is significant and, perhaps, a last resort when acceptance is a considerable challenge in their regimes.

Acceptance, however, is just one factor influencing international courts' expansion of approaches for promoting compliance. Rather than a challenge, international courts' level of accessibility can provide opportunities for entrepreneurship, which will be discussed in Chapter 4. While this chapter focused on international courts' strategies for directly altering actors' standards of legitimacy and appropriateness, Chapter 4 will broadly look at international courts' variable engagement with intermediaries, including using intermediaries as agents of socialization.

Chapter 4

International Courts and the Opportunities of Accessibility: Promoting Compliance through Intermediaries

Introduction

Global governance actors are constantly evolving to meet new challenges and seize new opportunities. Many have pointed to the "opening up" of IOs to non-state actors for greater transparency and democracy legitimacy.[1] Other scholars have pointed to a more strategic phenomenon among IOs—"orchestration"—where they facilitate and coordinate intermediaries to achieve their governance goals.[2] International courts have become part of this broader trend in global governance, where, as shown in Chapter 1, they are seizing upon intermediaries to support their core mandate of promoting compliance with international law. Intermediaries may have capabilities, which international courts lack, to change targets' consequences for noncompliance through various mechanisms, including reputational costs, domestic political costs, and the domestic enforcement of international law. Intermediaries may also be well-positioned to induce normative change in favour of compliance, where intermediaries can socialize targets for compliance and alter their logic of appropriateness. Some indirect approaches (e.g. enforcement of international law through national courts) can be embedded in international courts' founding treaties, but many of these indirect approaches are developed through courts' own agency and entrepreneurship.

International courts' use of intermediaries raises several questions. There is considerable variation in whether and how international use indirect approaches for promoting compliance. International courts' adoption of these indirect approaches for promoting compliance has been

[1] Tallberg et al. 2013.
[2] Abbott and Snidal 2010; Abbott et al. 2015.

uneven, with some international courts developing policies and practices involving intermediaries, and others refraining from such external engagement and exclusively focusing on directly influencing their targets for compliance. Under what conditions do international courts turn to intermediaries? Even among those courts that use indirect approaches for promoting compliance, there is significant variation in their strategies vis-à-vis intermediaries. Strategies can be quite general, seeking to influence a broad range of intermediary actors, or can be very targeted to particular kinds of actors in specific contexts. What explains the variation in how international courts use intermediaries to promote compliance? As some, but not all, international courts are delegated judicial mechanisms involving "intermediaries," there is also the question of how embedded approaches relate to adopted approaches involving intermediaries. For example, do international courts' develop indirect approaches to complement or compensate for their embedded approaches?

Building on existing literature stressing the importance of access to international courts, this chapter argues that international courts' formal access rules significantly determine their engagement with intermediaries and adoption of indirect approaches for promoting compliance. Chapter 2 noted that international courts' capacity for entrepreneurship and developing approaches depends on their level of autonomy. Building on that core assumption of international courts having "sufficient" autonomy to adopt new approaches for promoting compliance,[3] this chapter makes the case for international courts' development of indirect approaches as largely dependent on their formal access rules—specifically their level of accessibility. Essentially, access rules shape international courts' strategic incentives and norms for developing various political and legal strategies according to the indirect approaches for promoting compliance.

The chapter develops this argument in three stages. First, it relates the importance of access rules as constraints on international courts' autonomous decision-making and agency for adopting approaches for promoting compliance. Then, drawing on previous typologies of international courts, it conceptualizes courts' variable accessibility, and maps it across the

[3] This is consistent with Abbott et al.'s (2015, 29) hypothesis that "IGOs are more likely to engage in orchestration when their member states have weak institutional control mechanisms."

different permanent, operational international courts in the international system. Finally, it tests hypotheses regarding accessibility and international courts' indirect approaches through case studies, largely based on archival and interview research, on the WTO Appellate Body, EFTA Court, AfCHPR, and IACtHR.

Accessibility as Opportunity

Scholars, largely from a functionalist perspective and focused on private actor access, have repeatedly noted the importance of access rules for international courts in terms of litigation, development of jurisprudence, and enforcement.[4] States may write various actors into international courts' delegation contracts, with rules relating to which types of actors (e.g. states, IOs, national courts, private actors) have legal standing in international courts and their formal means of access.[5] As discussed in Chapter 2, the rules in international courts' delegation contracts shape their incentives and norms, based on the logics of consequences and appropriateness, respectively. Access rules are no exception.

International court officials are attuned to states' concerns about sovereignty and staying within the general bounds of the rules in their delegation contracts. The judicial practices of state-based courts such as the ICJ and WTO DSU indicate their general deference to states' preferences, as reflected in courts' design, to exclude non-state actors. For example, though the idea of broadening the courts' accessibility to individuals and IOs has been raised (even by Court officials),[6] the ICJ has retained its state-only access. State-only international courts are even reluctant to extend *amicus curiae* participation, where third parties submit views on matters of fact and law, and their interests can diverge from those of the parties. Though the ICJ's Statute

[4] E.g. Burley and Mattli 1993; Helfer and Slaughter 1997; Keohane, Moravcsik, and Slaughter 2000; Alter 2006b; Alter 2014.

[5] Article 44(4), Rome Statute. In the exceptional case of the ICC, the Rome Statute allows the Court "in exceptional circumstances" to "employ the expertise of gratis personnel offered by States Parties, intergovernmental organizations or nongovernmental organizations" —which hints at ICC officials' ability to autonomously, but only exceptionally, incorporate actors into the Court's work. Indeed, the Court has used this as a basis for frequently using intermediaries and even drafted a policy paper on intermediaries. See ICC, "Guidelines Governing the Relations between the Court and Intermediaries," 2014.

[6] According to former ICJ President Rosalyn Higgins, "there are powerful reasons for amending the Statute to allow for this development" (Vicuña 2001, 57).

allows the Court to accept *amicus curiae* briefs,[7] in practice, the ICJ has barely allowed such briefs.[8] For example, former ICJ President Gilbert Guillaume argued that the ICJ should resist unwanted amicus submissions, as states and IOs should be protected against “powerful pressure groups which besiege them today with the support of the mass media.”[9] Based on WTO panels’ authority to seek information from any relevant source,[10] the WTO panels and the AB have accepted *amicus curiae* briefs at their discretion[11] and when filed as an attachment to the submission of a state party to the dispute—continuing the court’s emphasis on states’ sovereign authority. The ITLOS has similarly shied away from amicus participation, avoiding developing guidelines on the matter[12] and choosing to ignore submissions.[13] In general, *amicus curiae* participation, though a minor part of the adjudication process, can transform a bilateral judicial process from a bilateral to a public one,[14] which challenges states’ control of the process.

In contrast to the “state-only” design, many international courts have highly permissive formal access rules. Permissive access rules shape international courts’ incentives and norms for engaging with actors beyond their member states, most commonly through developing their non-judicial agency (Appendix 1). Many actors granted access have characteristics that make them suitable intermediaries for promoting compliance, and the more types of actors with formal access, the more potential intermediaries available to international courts. International courts may thus seize opportunities to strengthen their embedded indirect approaches, or compensate for their lack of strong approaches for promoting compliance through intermediaries. In addition

[7] The ICJ does not accept NGO *amicus* briefs in interstate disputes (its contentious jurisdiction), but it has dabbled in allowing *amicus curiae* briefs for providing “information” in advisory proceedings. See Lindblom 2005; von Bogdandy and Venzke 2012b; Bartholomeusz 2005. Under Article 34(2), participation is limited to providing “information."
[8] According to Bartholomeusz (2005, 215), “Although the Court was initially open to NGO participation in its advisory jurisdiction, in 1971 it locked the door, let some materials slip under the door in 1996, and then since 2004 left it slightly ajar.” See also Chinkin (1993) on how the discourages any form of third-party intervention, including through *amicus* briefs.
[9] *Legality of the Threat or Use of Nuclear Weapons, Separate Opinion of Judge Guillaume* (International Court of Justice 1996).
[10] Article 13, DSU.
[11] In a series of rulings, beginning with the *Shrimp/Turtle* dispute, the Appellate Body ruled that WTO panels and the Appellate Body may, on a discretionary basis, accept and consider *amicus curiae* briefs from, inter alia, non-governmental organizations and private individuals (Howse 2003).
[12] ITLOS, “Annual Report of the International Tribunal for the Law of the Sea for 2004”, 2005, para. 41.
[13] In 2010, the ITLOS received an *amicus curiae* submission from two NGOs requesting to participate in advisory proceedings, but it decided not to consider the statement in the case. ITLOS, “Annual Report of the International Tribunal for the Law of the Sea for 2010”, 2011, para. 34.
[14] Ronen and Naggan 2014, 822.

to shaping strategic incentives, accessibility influences international courts normatively. As international courts' constitutive treaties form the basis for officials' norms of appropriateness, permissive access rules legitimate international courts' (and their officials') engagement with actors in their legal regimes, which can support indirect approaches for promoting compliance.

As with acceptance and international courts' socializations strategies, diffusion could occasionally play a role in the kinds of policies and practices international courts acquire through the opportunities afforded by their accessibility. Donors may encourage international courts' engagement with stakeholders and support training schemes according to their preferred models. If multiple courts rely on the same intermediaries (perhaps a global IO, such as the UN), those actors may use their leverage to spread particular policies and practices among international courts. International courts may learn from or emulate other courts' or IOs' policies vis-à-vis intermediaries. For example, they could learn that partnering with advocacy NGOs can create bottom-up pressure for compliance with their judgments. In addition, they could come to believe that training potential litigants is a legitimate role for an international court. However, as discussed earlier, these mechanisms can only operate under narrow circumstances and would be insufficient on their own to overcome states' restrictions on international courts' accessibility. Instead, they would interact with the overarching consideration of international courts' accessibility in guiding officials' formulation of policies and practices vis-à-vis intermediaries.

This argument about the broader implications of access rules on international courts' agency sheds new light on the implications of access beyond the conventional accounts of litigation, development of jurisprudence, and enforcement. Accessibility influences international courts' incentives and norms for engaging with actors in their legal regimes, and how they seek to influence their targets for compliance, both through and beyond adjudication.

Defining Accessibility

International courts' level of accessibility varies based on the range of actors that can submit cases and have standing in adjudication. Actors can have different forms of "access" (e.g. observer and *amicus curiae* status), but who files cases and has standing before the court are states' most significant access-related design choices.[15] The range of actors include states, of course, but also IOs, national courts, and private actors, such as NGOs, corporations, and individuals. What is crucial for an international courts' accessibility is how far the formal access rules depart from the traditional state-based nature of international law and international organizations, as well as international courts' arbitral heritage and inter-state dispute settlement rationale.[16] In courts' formal access rules, states choose which actors to include and exclude: the more actors included by design, the higher an international court's level of accessibility and general inclusiveness.

As a baseline, states, as the creators and traditional users of international courts, always have access. The "state-only" model respects state sovereignty and non-intervention, and assumes that states remain the key actors in international relations, including dispute settlement through international adjudication. According to this model, if any private actor wishes to bring a dispute to an international court, they can do so through their respective states, which ultimately decide whether or not to initiate judicial proceedings. States, however, can act as gatekeepers. For example, when noncompliance with trade agreements negatively affects individuals or businesses, they can pressure their governments to use adjudication through the WTO Dispute Settlement Understanding to resolve the dispute. Still, as one international judge observed of the WTO Appellate Body, "it may be difficult for private individuals or corporations to convince their government to bring a case. They need to find enough information that any harm to their imports or sales is the result of a government measure and not a private behaviour… There may

[15] Some international courts grant observer status, such as human rights courts with alleged victims, and many international courts permit *amicus curiae* ("friends of the court") briefs from private actors.
[16] Romano 2011, 265.

also be reluctance on the part of some governments to participate unless the case is very strong and they have an excellent chance of winning."[17]

Under the state-based model, the government must have functional mechanisms in place for receiving private actors' complaints, and they must have the resources to bring cases. States can choose to do this. For example, Paraguay, Germany, and Mexico brought the *Breard*, *LaGrand*, and *Avena* cases, respectively, on behalf of their nationals on death row in the US to the ICJ, an interstate court, citing violations of the Vienna Convention on Consular Relations.[18] In some ITLOS disputes, such as situations where a vessel is seized on the high seas, the flag state and shipping company can join forces when bringing a case before the ITLOS, though the shipping company, only participates informally in these cases and the state is formally party to the dispute. In these state-only international courts, private actors' access is precarious and states function as gatekeepers.

IOs slightly broaden the range of actors with access to international courts,[19] though states can still exert considerable control. Though Jonas Tallberg and James McCall Smith have argued that supranational IO commissions, secretariats, or bodies with a prosecutorial function fundamentally alter dispute settlement systems, increasing their effectiveness in addressing compliance,[20] this effect on accessibility is still marginal, especially when considering the implications for accessibility on international courts' level of inclusion. IOs—which are created and constituted by states—can only exert a certain degree of independence from their member states.[21] Formally, states could largely control IOs' decision-making (e.g. on case referrals to international courts), and IOs can be reluctant to refer cases that could potentially compromise (especially powerful) states' interests and provoke backlash. The UNSC's referrals to the ICC reflect this dynamic, where Sudan and Libya have been referrals where the permanent five members could achieve consensus, but other key flashpoints for international crimes, such as

[17] BIIJ, " Toward an International Rule of Law," 2010, 48.
[18] Carter 2004.
[19] Notably, Tallberg and McCall Smith (2014) argue that supranational commissions, secretariats, or bodies with a prosecutorial function fundamentally alter dispute settlement systems, increasing their effectiveness in addressing non-compliance.
[20] Tallberg and McCall Smith 2014.
[21] States create, fund, and use IOs, and can thus significantly influence their behaviour. This is most thoroughly discussed in the principal-agent literature on IOs. See, e.g., Hawkins et al. 2006.

Syria, have not been referred to the court due to these powerful states' divergent interests. Supranational commissions have more autonomy from states, but then intra-organizational politics and competition over tasks, resources, and legitimacy can create disincentives for referring cases to international courts. There are numerous examples of these commissions, including the European Surveillance Authority, the Inter-American Commission of Human Rights, and the EAC Council, refraining from referring cases to their respective courts. In general, IOs, as state-based organizations, can only depart from states' preferences to a certain degree. Therefore, states' granting them access to international courts does not mark a significant departure from the state-based model, based on international courts' low level of accessibility.

In contrast, access for substate actors represents states' choice to relinquish control and design international courts with higher accessibility. Depending on design rules, states remove themselves as gatekeepers to initiating cases and/or enforcing international courts' judgements. With non-state actor access to adjudication, states lose their control over the judicialization of disputes and the issues to which international courts can apply international law. International courts' institutional designs can incorporate actors that can be active at the substate, transnational, and international levels, moving well beyond the traditional state-based nature of international law.

National courts are substate actors that can directly access adjudication, particularly in regional integration courts' preliminary ruling procedures. Much has been written about the ECJ's tremendous activity from national courts' references.[22] This access, however, is highly contingent on the robustness and independence of the national judiciary,[23] which depends on states' regime-type, domestic rule of law, and legal cultures.[24] In many states, the executive overtly and subtly interferes with the judiciary. There are many cases where government officials try to convince a national courts to refrain from referring cases to regional integration courts: "The nature of decisions which can be referred by national courts to international jurisdictions

[22] See, e.g., Burley and Mattli 1993; Weiler 1994; Helfer and Slaughter 1997; Alter 2001; Alter 2009.
[23] The issue that relatively independent national judges' preferences can still be opposed to international courts will be discussed later.
[24] E.g. Alter and Helfer (2010) show how national judges use their respective regional courts differently in the Andean Community and European Union.

are commonly delicate and sensitive ones … and thus states may be tempted to put pressure on local national courts to avoid such references."[25] National courts are therefore still state-based institutions, which states can informally control. Their inclusion in international courts' design therefore represents moderate accessibility.

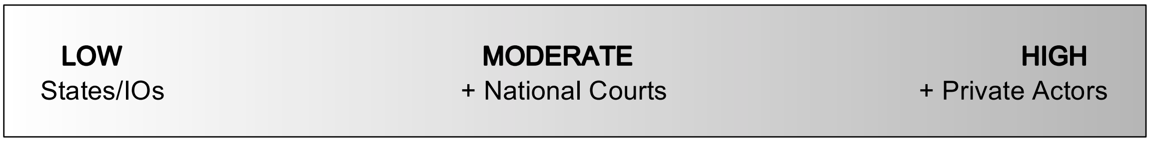
The highest level of accessibility includes private actors, including individuals, NGOs, and corporations, as they are generally the most independent from states and reflect the strongest state commitment to "access to justice," broadly speaking.[26] Instead of having their access to international adjudication mediated by states, commissions, or national courts, private actors can, in some international courts, directly initiate cases in international courts. These actors can represent diverse interests and pursue a variety of objectives, such as civil rights, transnational advocacy campaigns, and returns on investment, through international courts. They thus represent the most significant departure from the state-based nature of "traditional" international law and courts, and their inclusion reflects the highest level of accessibility. Still, their access is perhaps in keeping with the broader shift among IOs from interstate cooperation to more complex forms of governance, involving participation from transnational actors, such as NGOs, corporations, and social movements, acting as policy experts, compliance watchdogs, and stakeholder representatives.[27]

Based on the inclusion of these different sets of actors, accessibility can be conceptualized as a continuum (Figure 4.1).[28] At the lower end of the continuum are international courts where states are the only actors that have standing in adjudication. Non-state actors may occasionally be granted *amicus curiae* status at judges' discretion, but they have no formal standing. A little further along the continuum, IOs, such as regional human rights commissions, can have access, but between states and state-based organizations, this would still constitute low accessibility. Further on the continuum, national courts, in addition to states and IOs, could also

[25] Pettiti 1985, 496.
[26] Of course, these actors can be closely aligned with states and can potentially fulfill states' interests. However, they have greater *potential* for autonomy from states, relative to IOs.
[27] Tallberg et al. 2013, 1.
[28] Keohane, Moravcsik, and Slaughter (2000, 464) conceptualize access as a continuum, based on who has standing: both states must agree (low), a single state can file suit (moderate), and private actors have access (high). Keohane et al.'s framework focuses on adjudication, rather than broader questions of accessibility addressed here.

have access, reflecting increased accessibility. At the upper end of the continuum of accessibility are international courts whose formal access rules permit private actors, such as individuals, NGOs, and private corporations, access to adjudication.

Figure 4.1. International courts' accessibility as a continuum



This continuum forms the basis for explaining not only litigation in international courts, but also international courts' more general engagement with actors in their legal regimes. The level of accessibility states afford international courts in their designs indicates how far they are willing to depart from the traditional state-based nature of international law and adjudication. International courts, with their various constraints, take their delegation contracts seriously, and interpret their accessibility provisions as the basis for their inclusion of actors in their legal regimes as well. Thus, international courts' accessibility influences their decision-making regarding their engagement with intermediary actors and indirect approaches for promoting compliance.

Levels of Accessibility Across International Courts

Though private actor access generally threatens states' sovereign control over international adjudication, the trend in international courts' institutional design has been towards increasingly permissive access rules.[29] While beyond the scope of this study, which instead looks at the

[29] E.g. Private access is a feature of Alter's ideal type of "new-style" international courts (Alter 2006; 2014).

implications of accessibility levels, it is puzzling why states would permit non-state actor access to international courts. Karen Alter has posited a functional explanation of the trend towards designing “new-style” international courts with private actor access: “As international governance has expanded, the roles [international courts] are designed to play have expanded to replicate at the international level the types of legal checks on public authority that one finds at the domestic level.”[30] Essentially, particular design decisions vis-à-vis access are correlated to certain functions. For example, if there is to be a war crimes court, private actors must have standing. Or, just as citizens can sue their governments for violating their national constitutions, private actors can file cases against supranational authorities that oversee regional integration, such as the European Commission, the EFTA Surveillance Authority, and the Secretary General of the East African Community. The diffusion of European-style regional integration courts in Africa and Latin America has also driven this trend towards non-state actor access, where the European model, with its high accessibility, has been emulated in other regional economic communities.[31]

Table 4.1 reveals the significant variation in international court’s level of accessibility. States have designed only a few international courts according to a state-only model. The WTO AB and ENET are the only operational international courts that are truly state-only.[32] States designed the ECCIS Court and ICJ to have low accessibility: though they allow IOs formal standing in adjudication, they are primarily state-only courts. CIS institutions can initiate cases at the ECCIS, while the General Assembly and, with authorization, other UN organs and specialized agencies can seek non-binding advisory opinions from the ICJ.[33] The ITLOS is another state-only international court, with a very minor exception that one of its many chambers—the Seabed Disputes Chamber—permits private corporations to initiate disputes

[30] Alter 2006, 23.
[31] Alter 2012; Lenz 2012.
[32] The ENET is operational in the sense that judges are regularly appointed and it has the capacity to receive cases, though it has never received one.
[33] See ECCIS, “Applications,” http://courtcis.org/index.php/jurisdiction/application. According to Article 96 of the UN Charter, the General Assembly and, with the General Assembly’s authorization, other UN organs and specialized agencies may seek advisory opinions from the ICJ.

regarding contracts for deep seabed mining.[34] Thus, states have designed these four courts, representing nearly one-sixth of all permanent, operational international courts, to adhere to the traditional, state-based nature of international law and have low accessibility.

Among those international courts with moderate accessibility, states have loosened their grip a little. As will be discussed further in its case study, the IACtHR has only moderate access, as alleged victims can file petitions with the Inter-American Commission, which can then initiate cases against states, but the Commission can still act as a gatekeeper. States have provided the Mercosur Permanent Review Court moderate accessibility, as national supreme courts, in addition to states, can refer questions of Mercosur rules to the Court. Though these international courts essentially have *some* elements beyond the state-only model, states still maintain a considerable level of control.

The majority of international courts, however, have high levels of accessibility, where states have allowed states, IOs, national courts, and, crucially, private actors access to adjudication. This is partially due to the large number of regional integration courts, which states have designed to emulate the ECJ's formal access rules.[35] Though the ECCIS, discussed earlier, is a notable exception, most regional integration courts provide formal access to states, organs of regional organizations (e.g. commissions, councils), national courts, and private actors within the regional economic community, but some have diverged from the ECJ model to varying degrees. For example, the Benelux states did not give its Court of Justice an equivalent of the European Commission, which submits cases to the court, and states not to provide national courts access to the CACJ through a preliminary ruling procedure. Still, in all these international courts, states have clearly departed from the traditional, state-based approach to international adjudication.

[34] UNCLOS negotiators recognized the need to grant access to international organizations and corporations involved in deep seabed exploitation to the ITLOS Seabed Chamber (BIIJ, 2010, 48). UN Convention on the Law of the Sea, Part XI, Article 187.
[35] Alter 2012.

Table 4.1. Variation in International Courts' Accessibility, By Standing in Adjudication

	States	IOs	National Courts	Private Actors	Level of Accessibility
AfCHPR	dark grey	dark grey		dark grey	High
ATJ	dark grey	dark grey	dark grey	dark grey	High
BCJ	dark grey		dark grey	dark grey	High
CACJ	dark grey	dark grey		dark grey	High
CEMACCJ	dark grey	dark grey	dark grey	dark grey	High
CCJ	dark grey	dark grey	dark grey	dark grey	High
COMESACJ	dark grey	dark grey	dark grey	dark grey	High
EACJ	dark grey	dark grey	dark grey	dark grey	High
ECtHR	dark grey	dark grey		dark grey	High
ECCIS	dark grey	dark grey			Low
ECCJ	dark grey	dark grey	dark grey	dark grey	High
ECJ	dark grey	dark grey	dark grey	dark grey	High
EEUCJ	dark grey	dark grey	dark grey	dark grey	High
EFTAC	dark grey	dark grey	light grey	dark grey	High
ENET	dark grey				Low
IACtHR[36]	dark grey	dark grey		light grey	Moderate
ICC	dark grey	dark grey		dark grey	High
ICJ	dark grey	light grey			Low
ITLOS[37]	dark grey	dark grey		light grey	Low
MPRC	dark grey		dark grey		Moderate
OHADACJ	dark grey	dark grey	dark grey	dark grey	High
WAEMUCJ	dark grey	dark grey	dark grey	dark grey	High
WTO AB	dark grey				Low

dark grey: formal standing
light grey: limited access/non-binding rulings

[36] Following amendments, victims now have the right to observe judicial proceedings, though they can only directly file petitions with the IACHR.
[37] Private corporations can submit disputes to the ITLOS Seabed Disputes Chamber, but this is an exception to the Tribunal's overall access rules.

States have also done so with the two remaining regional human rights courts and the International Criminal Court, which focus on individual rights and responsibilities, respectively. In contrast to the IACtHR, the AfCHPR and ECtHR have high accessibility, even with their own unique institutional designs. States redesigned the ECtHR in 1998 to abolish the Commission-based system and provide individuals direct access to the Court.[38] AU states designed the AfCHPR to, by default, allows states and IOs (the ACHPR and other African IOs) access, but if states make a special declaration,[39] individuals and NGOs can directly access the court as well. The ICC has perhaps the most permissive accessibility of any international court. The UNSC and states parties can refer cases, but based on communications from individuals and NGOs, the ICC Prosecutor can also pursue prosecutions. During judicial proceedings, the accused obviously has standing, but the ICC's design also permits victims' "views and concerns to be presented and considered."[40]

The variability of international courts' formal access rules is significant and indicates that states deliberately restrict or open up international courts' formal access rules. International courts' issue area or "roles" may have some bearing on their formal access rules,[41] but the variation of international courts' access rules even within in a given issue area shows states' unwillingness, in some cases, to open up international courts to non-state actors and lose their traditional control over international law and international courts.

---

[38] E.g. Helfer 2008.
[39] Article 34(5), AfCHPR Protocol. As of 2014, of the 28 states parties to the AfCHPR Protocol, Burkina Faso, Cote d'Ivoire, Ghana, Malawi, Mali, Rwanda, and Tanzania had made declarations. See AfCHPR, "Activity Report of the African Court for the Year," 2014, 3.
[40] *Rome Statute*, Article 68(3).
[41] Alter (2013) analyzes the correlation between formal access rules and her typology of four "judicial roles" for international courts, and argues, "It thus seems plausible that the extension of multiple roles to [international courts] may account at least in part for the trend toward new style [international courts]" (2013, 363).

International Courts' Indirect Approaches: Entrepreneurship Based on Accessibility

International court's formal access rules, and their overall level of accessibility, are significant in that they reflect states' intentions for courts' behaviour and engagement with actors in their legal regimes. Formal access rules in courts' design pertain to adjudication (both in terms of litigation and enforcement), but also have implications for courts' more informal relations, and their associated institutional policies and practices. States intentionally design state-only international courts to exclude non-state actors, while states, if they accept the relevance of non-state actors to international courts' activities, embed access for these actors in courts' institutional designs. As such, international courts, through their agency and entrepreneurship, can transform formal access rules into more "informal" approaches for promoting compliance, which are not explicitly prescribed in their founding treaties.

Formal access rules influence international courts' adoption of indirect approaches for promoting compliance in two key ways. First, they embed particular actors in international courts' legal regimes and give them distinct capabilities for serving as intermediaries for promoting compliance. Commissions can prosecute noncompliance through international courts. National courts can refer cases to international courts and then enforce the decision domestically. International courts' associated political bodies receive reports of noncompliance and have the capacity to take enforcement action. The list of potential mechanisms for promoting compliance embedded in formal access rules is long, but these mechanisms are often weak, and actors may not choose to use them.[42] International courts, however, can engage with these actors in their legal regimes and aim to strengthen these mechanisms for prosecuting compliance, domestically implementing international law, and enforcing international courts' decisions with coercive action. International courts can aim to ensure that these actors, with their unique capabilities that international courts lack, serve as courts' intermediaries.

[42] See, e.g. Alter and Helfer (2009) on how national courts tend to only refer intellectual property cases, rather than other relevant questions of Andean Community law.

In a broader sense, formal access rules clarify the regime's level of inclusiveness. If, for example, states have designed a human rights court without individual access, that design choice reflects that they wish to keep the regime relatively exclusive. However, if international courts access rules include a broad range of actors (and virtually all potentially relevant actors in a regime), it indicates a commitment to inclusivity. International court officials, in their decision-making about their institutional policies and practices, can seek to emulate, in a normative sense, and exploit, in a strategic sense, this inclusivity. Using this inclusivity, international courts can expand their scope of potential intermediaries to the actors that are not necessarily explicitly included in their delegation contracts, but have valuable capabilities vis-à-vis courts' targets for compliance. Inclusivity can thus "spill over" to include other types of actors not explicitly cited in courts' founding treaties, but follow a similar logic of inclusion.

Access rules may influence the range of actors international courts use as intermediaries for promoting compliance, but to use these actors as intermediaries, international courts need to *develop* and *mobilize* them through various strategies. The distinction between developing and mobilizing intermediaries is mostly analytical, as these strategic can overlap in practice. However, it is important to note that actors that could potentially serve as intermediaries may not immediately see this role as a means of fulfilling their interests or values. This departs from the existing, predominantly rationalist literature on IOs and intermediaries, which assumes *a priori* the existence of intermediaries with shared objectives and preferences.[43] Essentially, this distinction recognizes that international courts, depending on their organizational environment, may need to "first" develop actors that are supportive of the court before they can "then" mobilize them to address particular compliance problems relating to targets' logics of consequences or appropriateness.

[43] For example, Abbott et al.'s (2015, 22–23) "intermediary availability hypothesis" focuses on how IOs can find intermediaries with complementary goals and capabilities.

Developing Intermediaries. To develop intermediaries, international courts can disseminate information and, to a limited extent, direct resources towards potential intermediaries.[44] International courts can disseminate information to clarify common interests and values in promoting compliance. For example, both human rights courts and human rights advocacy NGOs share a common mission to improve human rights, but NGOs may need clarification on how international courts align with their agenda and the role they could play in bringing cases to the court, monitoring implementation of judgments, lobbying governments to comply with the court's judgments, etc. Though they typically do not have resources to spare, international courts may be able to offer some limited material resources to build the capacity of potential intermediaries, but most commonly, international courts will build potential intermediaries' capacity through training.

Some potential intermediaries, however, may not accept international courts' norms, rules, and procedures, and need to be socialized into them. Once again, international courts can act as agents of socialization vis-à-vis potential intermediaries.[45] For example, with recalcitrant national courts, which may not accept being subject to international courts' authority, international courts can aim to clarify the appropriateness of integrating international and national law, and how referring to international courts' jurisprudence strengthens their judicial reasoning and the authority of their judgments.[46] Here, international courts' level of acceptance—but among intermediaries, rather than the targets for compliance—interacts with their ability to develop indirect approaches for promoting compliance.

Mobilizing Intermediaries. When an international court has its pool of intermediaries "developed" to fulfil particular functions that promote compliance, it can then formulate strategies to mobilize them to address particular areas or cases of noncompliance among their

[44] Tallberg (2015) shows how IOs can provide funding and training to potential litigants to "orchestrate" private enforcement. His argument focuses on litigation, rather than implementation or enforcement per se.
[45] The assumption that international court can socialize intermediaries further refines Abbott et al.'s (2015, 22–23) "intermediary availability hypothesis," where IOs themselves can use socialization to align intermediaries goals with IOs'.
[46] Huneeus (2011, 494), for example, argues that international human rights courts "need to directly engage national justice systems, cultivating them into compliant partners."

targets. Mobilization would inevitably occur in the aspects of the Court's work that are in public domain, including rulings, and international courts can seek to increase public information that will mobilize intermediaries (e.g. broadcasting its public hearings and conferences). Equally, international courts can aim to form direct channels of communication with intermediaries to facilitate their mobilization. The ICC, for example, holds an annual forum for NGOs with which it has a strong working relationship. The forums supports dialogue on issues such as non-cooperation from states, which mobilizes NGOs to advocate for compliance with the Court.

The preceding analysis advanced the claim that international courts' level of accessibility largely influences whether they turn to intermediaries and adopt indirect approaches for promoting compliance. However, accessibility interacts with the other key variables of autonomy and acceptance to explain international courts' adoption of indirect approaches based on consequences or appropriateness. International courts must have a basic level of autonomy in their decision-making to be able to develop new approaches for promoting compliance through intermediaries. Tightly controlled courts, with little freedom for policy entrepreneurship or resources to implement programmes involving intermediaries are likely to refrain from developing indirect approaches. Therefore, all else equal, international courts with higher levels of accessibility are more likely to adopt indirect approaches for promoting compliance.

International courts' levels of acceptance are also relevant in two key ways. Low levels of acceptance drive international courts to use intermediaries as agents of socialization and for changing targets' logic of appropriateness. However, low levels of acceptance may also mean that there are few intermediaries that have accepted a court itself, so the international court might need to socialize and develop intermediaries in their legal regimes. Thus, international courts will adopt indirect approaches to influence targets' logic of appropriateness if they have a high level of accessibility and autonomy, but a low level of acceptance among their targets for compliance.

International Courts' Development of Indirect Approaches: Variation Across the WTO AB, EFTA Court, AfCHPR and IACtHR

To test these theoretical claims regarding accessibility, this empirical analysis combines both diverse cases and a controlled comparison of two most-similar cases. The WTO AB, EFTA Court, AfCHPR, and IACtHR elucidate the full range of levels of accessibility, and how higher levels of accessibility facilitate international courts' adoption of more expansive indirect approaches for promoting compliance. The AfCHPR and IACtHR are not only both regional human rights courts, but they also have similar levels of autonomy and acceptance. They, however, differ significantly in terms of their formal access rules and are therefore ideally suited for a controlled comparison. In addition, since these courts have low levels of acceptance, they can also help test the claim that high levels of accessibility and low levels of acceptance lead international courts to favour using intermediaries to influence their targets' logic of appropriateness.

Table 4.2. Variation in Levels of Accessibility and Engagement with Intermediaries

	WTO AB	EFTAC	AfCHPR	IACtHR
Autonomy			Moderate	Moderate
Acceptance			Low	Low
Accessibility	Low	Moderate	High	Moderate
Engagement with Intermediaries		ESA – prosecution National courts – enforcement EU Courts – legitimacy Epistemic Community – legitimacy	AU – advocacy, enforcement National Courts – enforcement NHRIs – monitoring, advocacy NGOs – prosecution, monitoring, advocacy Media – monitoring, advocacy	National courts – enforcement Lawyers – prosecution Human Rights Institute – advocacy

The WTO AB

The WTO's Dispute Settlement Understanding oversees the legal obligations associated with WTO membership. These obligations cover a detailed set of legally binding international agreements, in which governments commit to specific limits on their domestic trade policy regulation. Within the WTO system, the DSU is the principal means of resolving the inevitable differences that arise from states' various legal obligations of the world trading system.[47] As the WTO Agreement, which includes the DSU, is a "single undertaking," all WTO members are automatically members of the DSU. The DSU is situated within a broader dispute settlement process: as the WTO asserts, "the point is not to pass judgment" but "to settle disputes, through consultations if possible."[48] The AB is the highest authority in the DSU's two-level structure.[49] Disputes first go to arbitral panels, composed of trade law experts, which are appointed for each dispute. This stage is therefore more akin to ad hoc arbitration than international adjudication. In contrast, the AB, a standing body of seven "members" (judges), hears appeals of panel reports. Unlike panels, the AB qualifies as an international court, as it has permanent judges and issues *de facto* binding rulings in inter-state disputes over trade law.[50]

The WTO AB's Low Accessibility

States designed the AB to have a very low level of accessibility, in keeping the WTO's "member-driven" nature.[51] AB rules even only provide access to WTO member states who were party to the original panel report in question.[52] This is the most restrictive and state-controlled access possible for an international court. Individuals and groups may be influential in cases, but only through sub-state processes, in which the DSU itself has no involvement. In practice,

[47] Jackson 2000, 162.
[48] WTO, "Understanding the WTO: Settling Disputes."
[49] The AB was established in 1995 under Article 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes.
[50] The AB's rulings have *de facto* binding effect, requiring a consensus of all WTO members, including in the complainant state, to be overturned, which is practically impossible.
[51] E.g. Elsig 2010.
[52] Article 16(4) of the DSU "makes clear that only the parties to the dispute, not third parties, can appeal the panel report."

injured industries are closely involved in both the initiation and the conduct of the litigation by their governments, at least in the United States,[53] but member governments essentially control access to the legal process.

States have actively resisted any change to the member-driven dynamics established by the WTO's formal rules, and WTO states have overtly sought to deter movements toward inclusivity. The AB's interpretation of its authority to seek information from any relevant source[54] slightly loosened states' monopoly on access to the AB by allowing private actors to submit *amicus curiae* briefs. This was "highly controversial and subject to wide and intense criticism" from WTO members' political representatives, and officials "reacted with anger and hostility to the notion that governments are not exclusive gatekeepers of access to the WTO dispute settlement tribunals."[55] Some WTO members even requested an extraordinary meeting of the Council be convened on the matter,[56] which likely influenced the AB's subsequent reluctance to accept *amicus curiae* briefs.[57] *Amicus curiae* are only supplying information and expertise to aid in judicial decision-making, which is much less intrusive than the kinds of interactions between court officials and non-state actors that support indirect approaches for promoting compliance. By clamping down on even this minor inclusion of non-members in dispute settlement, WTO members clearly indicated the importance of the AB's low accessibility and exclusivity to states, and deterred any potential development of indirect approaches for promoting compliance.

---

[53] Keohane, Moravcsik, and Slaughter 2000, 463.
[54] Article 13, DSU.
[55] Howse 2003, 496. See also Elsig 2015, 71; Mavroidis 2002.
[56] See WTO, "General Council, Minutes of Meeting," 2000, 27. "There was a broad agreement that the rights and obligations under the DSU belonged to WTO Members. It had been repeatedly stated that the WTO was a Member-driven organization. Therefore, most delegations had concluded that since there was no specific provision regarding *amicus* briefs such briefs should not be accepted."
[57] Mavroidis 2002. The WTO's website notes: "Despite the controversy surrounding this issue, the Appellate Body has never considered any unsolicited submission to be pertinent or useful, and thus, has never considered any that have been submitted." WTO, "Dispute Settlement System Training Module, Chapter 9, Participation in Dispute Settlement Proceedings."

The WTO AB's Absence of Indirect Approaches

Matching theoretical expectations, the AB has adhered to its embedded approach of directly creating consequences for noncompliance. Specifically, it may authorize retaliatory sanctions for noncompliance with its decisions, but it is incumbent on the complainant state to implement these sanctions. While this is a robust judicial mechanism for promoting compliance, states have embedded no other approaches for promoting compliance in the AB's design. The AB's entrepreneurship to develop new approaches is generally constrained by its rules, appointments that aim to deter "activism,"[58] and the WTO's "member-driven" values. Furthermore, the backlash the AB received after even slightly loosening access reinforced how its low accessibility prohibits opportunities for promoting compliance through intermediaries. Thus, just as the WTO AB's is constrained in its judicial agency—for instance using "judicial economy"[59]—the AB is constrained in its non-judicial agency vis-à-vis intermediaries.

The AB's restraint is not for its lack of need for intermediaries. While the AB can authorize sanctions for noncompliance with its decisions, only some disputes actually reach that point in the DSU, which encourages parties to resolve disputes through diplomacy as much as possible. The AB and DSU more generally could take a more expansive role in promoting compliance through intermediaries. There is a wide range of private actors generally invested in trade law, competition policies, and compliance with DSU decisions. Corporations, industrial associations, labour unions, and civil society organizations all could be potential intermediaries, which could pressure or persuade states to settle disputes through adjudication, rather than through political negotiations, and to comply with AB decisions. Intermediaries, for example, could be particularly useful for pressuring powerful states to comply in trade disputes with weaker states that perhaps cannot impose retaliatory sanctions.

Intermediaries could also help address developing states' lack of financial, human, and institutional capital necessary to participate fully in the WTO's DSU.[60] Developing states lack the specialist legal expertise and experience in international trade law to know and effectively

[58] Elsig and Pollack 2014.
[59] Busch and Pelc 2010.
[60] E.g. Guzman and Simmons 2005.

defend their rights under the WTO agreements.[61] For example, the Advisory Centre on WTO Law (ACWL) is an obvious potential intermediary for the AB, as it provides developing countries legal advice, support, and training in WTO law, and thus facilitates their use of WTO dispute settlement institutions.[62] WTO member states decided to establish the ACWL as an independent organization, based in Geneva, to help developing countries and least developed countries (LDCs) increase their knowledge of the WTO legal regime and increase their ability to enforce their rights through binding adjudication. The International Centre for Trade and Sustainable Development is another potential intermediary. As an NGO, it "aims to ensure that the WTO's dispute settlement mechanism promotes sustainable development by ensuring policy actors are informed on how the system functions and the implications of its decisions."[63] It particularly focuses on developing country access to dispute settlement systems, but also on strengthening legal capacity, monitoring WTO cases, and building international, regional, and domestic networks of stakeholders.[64] The DSU could shape these organizations to build states' capacity to uphold their rights through the DSU and comply with its decisions, but as one would expect with its low accessibility, these are not viable opportunities for the DSU.

The AB only engages with potential intermediaries in an ad hoc fashion and by the WTO Secretariat's invitation. The Secretariat, at its discretion, asks the AB to present at events mainly on technical cooperation related to dispute settlement.[65] The AB also conducts a session in the annual WTO Forum,[66] organized by the WTO Secretariat in response to the Doha Declaration for greater transparency in the WTO's operations and improved dialogue with the public. The WTO Secretariat also develops Technical Assistance and Training Plans "to provide direct support" to developing states, and "enhance[e] their human and institutional capacities to deal with the

[61] Van Der Borcht 1999, 723; Busch, Reinhardt, and Shaffer 2009.
[62] The centre was established by the Agreement Establishing the Advisory Centre on WTO Law. The ACWL is wholly independent from the WTO, with a separate founding treaty, state membership, and oversight mechanisms.
[63] International Centre for Trade and Sustainable Development, http://www.ictsd.org/themes/global-economic-governance/about.
[64] Ibid.
[65] See Appellate Body annual reports.
[66] For example, in AB held a session in the 2009 Public Forum titled, "Promoting Global Governance by Strengthening the Rule of Law." WTO, "Annual Report for 2009," 2010, 45.

challenges emerging from the multilateral trading system."[67] The AB's staff assists as much as their resource constraints allow. In 2013, for example, due to a "resources freeze" and the volume of disputes the AB faced, AB staff members were unable to respond to certain technical assistance requests under the Technical Assistance and Training Plan.[68] The AB's participation in these activities has varied considerably over the years: in 2009, the AB participated in twenty-five technical assistance activities, compared to five in 2014.[69] The general trend is that these activities are not institutionalized within the AB, conducted ad hoc, and principally initiated through the agency of the WTO Secretariat. The AB's autonomously initiated non-judicial activities are limited to the bare minimum of moot court competitions, briefing visitors, hosting interns, and occasionally participating in academic conferences.[70]

While the AB's lack of engagement with intermediaries is consistent with the expectations regarding its low accessibility, it is difficult to isolate the influence accessibility. The AB's position in the WTO's organization structure would likely generally limit its agency and entrepreneurship. Still, the backlash the AB experienced from slightly opening up access to private actors elucidates the importance of states' delegated access rules and the consequences for "exceeding" the boundaries of those rules. The AB only interacts with actors beyond those included in its access rules at the discretion of the WTO Secretariat, where the AB merely participates, to varying degrees, in the Secretariat's activities. The AB, therefore, likely represents a case of an international court where limited entrepreneurial resources and low accessibility may have combined to restrain engagement with intermediaries for promoting compliance.

[67] WTO, "Annual Report on Technical Assistance and Training 2013." The ACWL also participates in the WTO's training and capacity building programmes for developing countries and LDCs.
[68] WTO, "Annual Report on Technical Assistance and Training 2013."
[69] WTO, "Annual Report for 2009," 2010, 45 and "Annual Report for 2014," 2015.
[70] See, e.g. WTO, "Annual Report for 2014," 2015.

The EFTA Court

The EFTA Court was created in 1994 pursuant to the European Economic Area (EEA) Agreement,[71] which was intended to allow European states to participate in the Single European Market without subjecting themselves to the supranational institutions and rules of the European Community.[72] In creating the EEA Agreement, parties "strived to maintain their formal sovereignty and at the same time mirror the legal effects of the single European market."[73] EEA obligations include EU single market law, with the exception of certain common policies such as agriculture, fisheries, taxation, or foreign trade. The EEA operates based on a "two pillar" system, where EU member states are monitored by the EU Commission and ECJ, while EFTA member states that are members of the EEA Agreement (currently Iceland, Liechtenstein, and Norway)[74] are monitored by the EFTA Surveillance Authority (ESA) and EFTA Court. These two pillars form two separate legal orders but work in concert to ensure "homogeneity" between EU and EEA law,[75] which essentially requires "a regulatory level playing field for citizens and business operators."[76]

The EFTA Court's Moderate Accessibility

Based on the actors included in its rules, and the weakness of some forms of access, the EFTA Court has moderate accessibility overall. In terms of the types of actors that can access the court, the Court's design is quite permissive. EEA/EFTA states and ESA can bring infringement

[71] Article 108, EEA Agreement. The creation of a separate EFTA Court was introduced into the EEA Agreement after the EC Court, in its Opinion 1/91 [1999] had refused the judicial architecture initially proposed of an EEA Court "functionally integrated" into the EC Court. EFTA states are, according to Article 108(2) of the EEA Agreement, under an obligation to establish a court of justice. The EFTA Court was created through the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (Surveillance and Court Agreement, SCA), in compliance with this EEA obligation. It is worth noting that the EEA Agreement is a regular international agreement under public international law, without the level of delegation included in the European Community.
[72] See, e.g., Graver 2002.
[73] Graver 2005, 80.
[74] Switzerland is the one EFTA state that is not a member of the EEA (or EFTA Court). During the Court's first year of operation, it lost three EFTA member states (Austria, Finland, and Sweden) through their accession to the EU (and the ECJ); Switzerland, which had been expected to join the EEA, did not, due to a negative referendum (Baudenbacher and Clifton 2014, 256).
[75] Article 6, EEA Agreement; Article 3, SCA.
[76] (Mackenzie, Malleson, et al. 2010; Terris, Romano, and Swigart 2007).

cases,[77] national courts may make preliminary references,[78] and states or private operators can pursue nullification cases against ESA. These actors' means of access, however, are rather restricted, especially when compared with the ECJ, the EFTA Court's parallel institution in the EEA, and with many other regional integration courts.[79] States and ESA have the usual capabilities vis-à-vis adjudication, but the mechanisms for national courts and private actors are relatively weak. Though states modelled the preliminary reference procedure on the ECJ's, the EFTA mechanism is much weaker, as it is optional and advisory.[80] National courts have complete direction over whether they refer cases, and can therefore act as "gatekeepers" between these private actors and the Court vis-à-vis state noncompliance. These private actors can only directly bring actions against ESA, not EFTA states. Private actor access, therefore, is intended to monitor and check the decisions of supranational administrators in ESA, but not to hold EFTA accountable to their EEA legal obligations. Private actors can indirectly raise cases of state noncompliance, but solely through national courts, which are not obligated to refer cases to the EFTA Court, unlike national courts in the EU with the ECJ.[81] This is a testament to the logic behind the EEA and those European states choosing not to adopt the full spectrum of obligations associated with EU membership.

The EFTA Court, therefore, clearly has incentives to use its agency to strengthen its embedded mobilization mechanisms and, potentially, develop other indirect approaches. Based on the EFTA Court's moderate accessibility, we would expect that the Court would aim to use intermediaries to change actors' logics of consequences and appropriateness to promote compliance with the Court's judgments and EEA law more generally. The EFTA Court has,

[77] Article 32. According to Articles 36 and 37, EFTA states (and national and legal persons) can also bring actions against a decision of the EFTA Surveillance Authority or a failure on the part of the Authority to act in infringement of its obligations under the Agreement.
[78] Article 34, SCA.
[79] Crucially, private actors can only bring cases against ESA, rather than states themselves, as is the case in the EU pillar. In addition, national courts' preliminary references are optional, and the resultant ruling is only advisory.
[80] Article 34, SCA. The ECJ's preliminary rulings are binding, and national courts of last instance in EU states are obliged to refer cases where a question of EU law is unclear.
[81] Judgment of the European Court of Justice, CILFIT, Case 283/81 (6 October 1982). The CILFIT judgment sets limits to the obligation of national courts of last instance to make a reference for a preliminary ruling (Article 177 of the EEC Treaty (now Article 234 of the EC Treaty). Those courts are bound to bring a matter before the Court when, in connection with a case, and irrespective of the considerations of the parties involved, a question arises concerning the interpretation of Community law. It is, however, at the national court's discretion whether the question is relevant.

indeed, met this expectation. Over its two decades of existence, it used its judicial agency to pass rulings to strengthen its mobilization mechanisms, and it has used its non-judicial agency to develop institutional programmes and practices to develop and mobilize intermediaries. In the words of one EFTA Court official, "there are actors that are clearly cooperation partners."[82] The Court's engagement with intermediaries has sought to complement existing mechanisms embedded in the Court's institution design (i.e., the preliminary reference procedure), but has also aimed to institutionalize interactions with its stakeholders (and potential intermediaries) outside the courtroom.

The EFTA Court's Indirect Approaches

The EFTA Court had developed its judicial agency to mobilize intermediaries for compliance and its non-judicial agency mostly to complement these judicial mechanisms. Through its jurisprudence, it has clarified actors' legal obligations to either prosecute cases of noncompliance or enforce EFTA Court rulings. The Court has also fostered judicial dialogue and citations of its decisions to enhance the legitimacy of its law and decisions. But beyond the judicial realm, EFTA Court officials have developed a range of non-judicial activities aimed at mobilize intermediaries. An EFTA Court official, for instance, noted that adjudication is a restrictive form of interaction, where participants are limited in how they communicate and the matters discussed; therefore, the EFTA Court has developed different "platforms for exchange" with a range of actors in its legal regime.[83] The EFTA Court has thus exploited the opportunities of its accessibility to cultivate intermediaries for promoting compliance.

ESA – Prosecution. The EFTA Court, primarily through its judicial agency, has sought to strengthen the role of ESA as an intermediary for promoting compliance through its "prosecutorial" capacity. ESA monitors states' fulfilment of their EEA obligations and can bring

[82] Interview with Philipp Speitler, Legal Secretary and Head of President's Chambers, EFTA Court, 10 June 2015.
[83] Interview, Speitler.

states to the EFTA Court where it suspects noncompliance. Thus, under the EEA Agreement, ESA should function in the EFTA pillar like the European Commission in the EU pillar. However, EFTA Court President Carl Baudenbacher has observed that ESA "appears to be less active in bringing EFTA member states before the court than the European Commission is in the framework of the Community."[84] He has also observed that, because ESA generally wins its cases in the Court, "it may have a tendency to bring 'waterproof' cases, whereas the Commission seems to be willing to seek clarification of the law in cases where the result may not be obvious."[85] ESA, for its part, rejects these accusations, though it concedes "it might be more willing to solve cases informally" rather than referring to the EFTA Court."[86] According to the former ESA President, states seem to exploit this willingness with their tendency "to engage ESA in a protracted dialogue, often by promising solutions once lengthy studies and legislative processes covering broader issues have been completed, but which in the end turn out to be inadequate."[87] The fact that ESA officials are civil servants seconded from national ministries, which might be reluctant to take action against their own governments, could also pose a challenge for mobilizing ESA as an intermediary for prosecuting noncompliance.

The EFTA Court's means of developing ESA as an intermediary, however, are quite limited. The EFTA Court can communicate to ESA via its jurisprudence. Beyond adjudication, the EFTA Court and ESA interact at conferences and other public forums, but they do not have dedicated meetings to discuss certain matters; EFTA Court officials would consider this inappropriate, given the separation of powers within the EFTA.[88] Court officials' academic writings also clarify their expectations of ESA's obligations to act as an intermediary for the Court.

Thus, through its jurisprudence, the EFTA Court has attempted clarify and stress ESA's appropriate role in forwarding infringement cases to the Court, and increase the frequency and

---

[84] Baudenbacher 2005b, 15.
[85] Ibid.
[86] Brunsden, "Are National Interests Weakening the EFTA Court?," *Politico*, October 15, 2008. ESA "does not believe it is applying a different enforcement standard than the Commission" and that it "in the past has sometimes been accused of actually being stricter in its enforcement policy."
[87] Almestad 2012, 82.
[88] Interview, Speitler.

efficiency with which ESA refers states to the Court. The EFTA Court held in a key ruling that if ESA considers that an EEA/EFTA state has failed to fulfil an obligation under the EEA Agreement, ESA must proceed within an appropriate time in assessing whether to bring a contracting party before the Court.[89] While this did not establish a new mobilization mechanism, it aimed to strengthen ESA's legal obligation to use its existing case referral mechanism more effectively.

National Courts – Enforcement. The EFTA Court's design envisions that national courts *can,* but are not obligated, to act intermediaries for promoting states' compliance with EEA law. But the EFTA Court's embedded judicial mechanisms for mobilizing referrals from and enforcement through national courts are therefore weak. Nevertheless, the EFTA Court needs national courts as intermediaries for referring cases and enforcing EFTA Court decisions domestically to promote compliance and serve its broader mandate of ensuring EEA law is implemented consistently and "homegenously" throughout the EEA.

National courts' acceptance of the role as intermediaries for enforcing EFTA Court decisions has been uneven. The Court has noted, even recently, that national courts' "awareness [of the EFTA Court] is limited,"[90] but national courts also seem to believe that they are not obligated to either refer cases or implement EFTA Court decisions. While the EFTA Court generally has a good relationship with Iceland's and Liechtenstein's national courts, the Norwegian Supreme Court, until recently, had not made a preliminary reference to the EFTA Court since 2002. Furthermore, a Norwegian government report found that Norwegian courts are generally refraining from making references, even when applicants requested them.[91] The EFTA

[89] *ESA* v. *Norway* (2012), para. 68.
[90] Baudenbacher, "Speech on the occasion of the visit of the Federal Supreme Court of Switzerland," 2012.
[91] The Norwegian government appointed an independent committee to broadly review the EEA and Norway's obligations within it. The report found that in a number of cases courts rejected applications for a reference without giving adequate reasons. See EEA Review Committee, "Outside and Inside: Norway's European Dilemma," 2012. See also Graver 2005, 89.

Court President has acknowledge that "If this happens occasionally, it is not a problem," but if it is "done systematically," it is problematic for the EFTA pillar of the EEA.[92]

Through its judicial agency, the Court has leveraged its formal access rules, and its mandate to parallel the EU pillar, to attempt to strengthen the role of national courts as intermediaries for promoting compliance with its decisions. The EFTA Court has held that an obligation for national courts to refer relevant cases may follow from other obligations in the EEA Agreement. The EFTA Court interpreted that the EEA Agreement's duty of loyalty[93] and principle of reciprocity[94] that is foundational to the whole EEA Agreement can oblige national courts to refer relevant cases.[95] The duty of loyalty requires that EFTA states' national courts "take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Agreement" and "abstain from any measure which could jeopardise the attainment of the objectives of this Agreement."[96]

Interpreting the principle of reciprocity, the EFTA Court held that "access to justice for citizens and economic operators must essentially be identical in both EEA pillars."[97] Judges have drawn on the European Convention on Human Rights and ECtHR jurisprudence as a source of law regarding individual rights to a fair trial to pressure national courts to forward relevant cases to refer cases when applicants request it or provide legal reasons for denying such requests. In addition, to facilitate enforcement of its decisions through national courts, the EFTA Court has sought to establish through its jurisprudence that, though they are called advisory opinions, its preliminary rulings have the same legal authority as the ECJ's preliminary rulings.[98] This judicial interpretation attempts to develop national courts as intermediaries for domestic enforcement of the EFTA Court's decisions.

---

[92] Baudenbacher, "The EFTA Judicial System Reaches the Age of Majority – Accomplishments and Problems," 2012.
[93] Article 3, EEA Agreement.
[94] Preamble, EEA Agreement.
[95] See Baudenbacher and Clifton 2014, 256. The Court made these interpretations in *Irish Bank Resolution Corporation Ltd* v. *Kaupthing Bank* (2012) paras 57–8, and *The Norwegian State* v. *Stig Arne Jonsson* (2013) para. 60, which it noted national courts' duty to refer "if the legal situation lacks clarity."
[96] Article 3, EEA Agreement.
[97] Baudenbacher, "Opening speech by the President of the EFTA Court," 2014.
[98] See Magnússon 2010, 528.

The international legal community, however, has had mixed reactions to these interpretations of national courts' obligations under the EEA and EFTA Court. For example, Byørn Haug, former Judge President of the EFTA Court, has argued that the EFTA Court has "no mandate…to act a supranational court handing down decisions legally binding on national courts."[99] He has argued that this design feature "was an important peculiarity at the time when the Treaty was signed" and "is still an important aspect today, both legally and politically."[100] He also emphasized the state-based nature of EFTA, arguing that by joining EFTA states merely undertook "an obligation to implement the relevant rules into their national systems" and even though "EFTA States may well breach their Treaty obligations," the EFTA Court does not "have the mandate to by-pass the national legislative bodies and issue legislative decrees with direct national effect."[101]

Norway and its Supreme Court has seemed to similarly question the EFTA Court's interpretation of national courts' obligations regarding preliminary references and the resulting advisory opinions from the EFTA Court. In the landmark *Finanger* case, for example, the Norwegian Supreme Court noted that national courts have a duty to assess independently whether or not to follow the EFTA Court's opinion, while still acknowledging that the EFTA Court's opinions should have "considerable persuasive effect, and the EFTA Court have significant authority."[102] In a subsequent case, the Supreme Court ruled that "it should take a lot for the Supreme Court to depart from the EFTA Court's understanding of the EEA provisions."[103]

Beyond its jurisprudence, and especially when faced with contestation of its judicial interpretations, the EFTA Court has emphasized "non-judicial" dialogue[104] with national judges to persuade them of their obligation to act as the EFTA Court's intermediaries for domestic enforcement. As the EFTA Court President notes, the Court "has been quite active in bringing

[99] Quoted in Graver 2005, 101.
[100] Ibid.
[101] Ibid.
[102] Graver 2005, 90.
[103] Ibid.
[104] Kokott and Dittert (2014) distinguish between the EFTA Court's "formal" and "informal" dialogue, for example.

together judges from [EFTA] countries."[105] The Court holds conferences and meetings with national judges, both by traveling to EFTA states[106] and by inviting national judges to the Court in Luxembourg. For instance, the EFTA Court used its 20th Anniversary Conference, which included various participants from all branches of the legal profession, to develop national courts as intermediaries. The EFTA Court invited the Chief Justice of Norway, President of the Supreme Court of Iceland, and President of the Liechtenstein Administrative to discuss the question, "To refer or not to refer," which clarified the "the approach prevailing in Iceland and in Liechtenstein is quite different from the one used in Norway."[107] With national courts, EFTA Court officials may answer specific questions from these "cooperation partners" on how preliminary references work and should be designed, but officials may also more broadly discuss how the system is functioning and what could be improved in the future.[108] The Court uses these exchanges to both inform national judges and learn from them.[109]

Following the discussions at the Court's 20th Anniversary Conference, the Norwegian Chief Justice invited the EFTA Court to meet with the Supreme Court of Norway on the matter.[110] In October 2014, the EFTA Court visited the Norwegian Supreme Court for a jointly organized seminar on the preliminary reference procedure and the issue "to refer or not to refer."[111] Three EFTA Court judges, including the Judge President, and three justices from the Norwegian Supreme Court "discussed when a reference to the EFTA Court has to be made, but also how it should be made."[112] The Court's Legal Secretary noted that, during the visit, judges openly discussed the reasons why the court had not referred cases for quite a number of years, and this exchange could have contributed to Norwegian Supreme Court requesting its third

[105] Baudenbacher, "Speech on the occasion of the visit of the Federal Supreme Court of Switzerland," 2012.
[106] For example, in 2012, EFTA Court officials traveled to Iceland to hold a conference there, Liechtenstein to speak with judges there, and Norway to meet the Chief Justice. Baudenbacher, "Speech on the occasion of the visit of the Federal Supreme Court of Switzerland," 2012.
[107] EFTA Court, "EFTA Court's 20th Anniversary Conference" (Press Release, June 26, 2014).
[108] Interview, Speitler.
[109] Ibid.
[110] EFTA Court, "EFTA Court's 20th Anniversary Conference" (Press Release, June 26, 2014) .
[111] EFTA Court, "Joint Seminar of Norwegian Supreme Court and EFTA Court on preliminary reference procedure in Oslo" (Press Release, October 9, 2014).
[112] Ibid.

preliminary reference—and the first since 2002—on June 5, 2015.[113] The Court thus perceives that these exchanges with judges from national courts can contribute towards collaboration.[114]

In addition to this more collaborative approach, the EFTA Court President has frequently emphasized national courts' appropriate roles, as well as the consequences for failing to refer cases. In his speeches in various forums, the President often shames national judges for failing in their EFTA legal obligations. For instance, Baudenbacher has argued that, based on surveying the academic literature in EFTA states, there are "Ten Commandments" against making a reference,[115] which are ultimately illegitimate. Baudenbacher has also reminded national courts of the consequences of failing to refer cases. For instance, amid the controversy over the Norwegian Supreme Court's disregard for the EFTA Court's ruling in the so-called "shipbuilders" case,[116] the EFTA Court President made clear that the Norwegian court did not have the final say, and ESA could still intervene and refer Norway to the EFTA Court for noncompliance with EEA law.[117] Baudenbacher has frequently noted, "it is quite clear that if a national court were to disregard our opinion, then ESA would most probably bring an infringement suit against the country concerned and an infringement ruling would be legally binding."[118]

The EU Courts of Justice – Legitimacy. The relationship between the EFTA Court and the Courts of Justice of the EU is natural, given the EEA's two-pillar structure and the principle of

---

[113] Request for an Advisory Opinion from the EFTA Court by the Supreme Court of Norway, (Norges Høyesterett), received on 5 June 2015 in the case of *Holship Norge AS* v. *Norsk Transportarbeiderforbund*.

[114] Interview, Speitler.

[115] Baudenbacher, "The EFTA Judicial System Reaches the Age of Majority – Accomplishments and Problems," 2012. These Ten Commandments are: (1) The EFTA Court is small and has only a limited docket. (2) Supreme courts are free to refer (wording of Article 34 SCA). (3) Since the EFTA Court's rulings are "only" advisory, there is little to be gained from them. (4) Only the CJEU is entitled to make certain decisions. (5) A national supreme court is in a better position to decide certain sensitive cases. (6) The EFTA Court is a judicial activist. (7) The EFTA Court is more catholic than the Pope. (8) Even in going first cases, the Supreme Court has little to gain from a reference since the answer of the EFTA Court will only be provisional because if the ECJ does not follow, the EFTA Court will have to change its case-law. (9) In case of a conflict between EFTA Court and CJEU case-law, the CJEU's ruling may or should be followed without a reference to the EFTA Court. (10) Delay and costs speak against referring cases.

[116] *STX Norway Offshore AS m.fl.* v. *Staten v/ Tariffnemnda* (2012).

[117] Ahlberg 2013.

[118] Baudenbacher, "The EFTA Judicial System Reaches the Age of Majority – Accomplishments and Problems," 2012. ESA did bring an infringement case against Norway after the Norwegian government urged its Supreme Court not to refer a case (the *Gaming Machines* case) and "keep it in the country," and the Supreme Court did not refer (Baudenbacher 2010, 15).

homogeneity requiring a degree of coordination between the two courts. Indeed, the EEA Agreement calls for a "system of exchange of information concerning judgments" between the two court's registries to ensure the Agreement's uniform interpretation.[119] The EFTA Court, however, has prioritized fostering a close legal and professional relationship between the two courts to raise awareness of its decisions and, through ECJ support, legitimize them.

The EFTA Court has used both judicial and non-judicial means to develop a strong relationship with its sister institution. Building on the homogeneity requirement, the EFTA Court has emphasized judicial dialogue with the EU pillar. This goes well beyond what is prescribed by the EEA Agreement and the Surveillance and Court Agreement (SCA), where homogeneity is essentially one-sided: the EFTA Court has to follow pre-EEA Agreement ECJ case law and to pay due account to new case law,[120] but the ECJ is not bound to follow EFTA Court judgments. However, the EFTA Court has worked to ensure that these rules "have in real life largely been replaced by an on-going judicial dialogue between the EFTA Court, on the one side, and the ECJ and its AGs [Attorney Generals] on the other."[121] As the EFTA Court President has argued, "No matter what is written in the EEA Agreement, our relationship with the ECJ is largely characterized by judicial dialogue."[122] He, for example, argues that because the majority of the EFTA Court's cases involve novel legal questions,[123] it has also made landmark rulings of its own on key aspects of EEA law, which the ECJ has subsequently cited.[124]

The EFTA Court has used non-judicial interactions with the EU courts, which are also based in Luxembourg, to further develop the EU courts as intermediaries. The EFTA Court President has acknowledged the value of the courts' proximity:

> the fact that we are located across the street of our slightly larger sister court, the Court of Justice of the European Union, has proven to be beneficial. It is not that we would talk about cases every day. But over

[119] Article 106, EEA Agreement.
[120] The EFTA Court is bound to follow relevant pre-EEA Agreement ECJ case law and is required to "pay due account" to relevant post-EEA Agreement ECJ case law where those rules in the EU pillar are "identical in substance" to the ones in the EFTA pillar. Article 6, EEA; Article 3, SCA.
[121] Speitler, "The Role of the EFTA Court: Homogeneity Revisited," 2013.
[122] Baudenbacher, "Opening Speech by the President of the EFTA Court," 2014.
[123] Baudenbacher and Clifton 2014: 258.
[124] The Court was the first to rule on the precautionary principle in food law, on a display ban for tobacco products at the point of sale, on the legal nature of a website, and so on. Baudenbacher, "Opening Speech by the President of the EFTA Court," 2014.

> the years, you get to know each other, our legal secretaries are members of the *Amicale des Référendaires*, we take part in our sister court's official functions and they take part in ours. And we also see each other at private events… We have a feeling we have been accepted here.[125]

The ECJ has been a willing intermediary for the EFTA Court. For example, ECJ President Skouris has noted that "Ignoring EFTA Court precedents would simply be incompatible with the overriding objective of the EEA Agreement which is homogeneity," and has also commented that the relationship between the EU Court of Justice and the EFTA Court is a "model for cooperation" which can "serve as a general paradigm of institutional dialogue between judicial institutions."[126] ECJ Judge Allan Rosas has recognized the strength of the ECJ's vertical and horizontal dialogue with the EFTA Court.[127] When the EU courts reference EFTA case law in their rulings, these larger and more influential courts confer legitimacy on the EFTA Court's legal reasoning and can support compliance through a logic of appropriateness.

The EFTA Court clearly sees the value of ECJ support (i.e. citations) for legitimizing its decisions. For example, in the *Sveinbjörnsdóttir* case, the EFTA Court made a landmark ruling that state liability is a part of EEA law, which went against the recommendations of the governments of Iceland, Norway and Sweden, and also against the view of the European Commission. In this instance, the EFTA Court's interpretation of EEA law was controversial; however, the ECJ played a crucial role in legitimizing this interpretation. Just six months after the *Sveinbjörnsdóttir* ruling, the ECJ referred to the EFTA Court's judgment in its *Rechberger* case.[128] According to the EFTA Court President Baudenbacher, the reference "gave us support in a politically sensitive case."[129] Scholars have agreed that the ECJ's reference to *Sveinbjörnsdóttir* was highly influential. It was "more than a 'coup de chapeau,' a salute to the EFTA Court," but an endorsement of the EFTA Court's judgment.[130] More generally, as the EFTA Court often deals with novel questions of EEA law, EFTA Court President Baudenbacher asserts that "it has

[125] Baudenbacher, "Opening speech by the President of the EFTA Court," 2014.
[126] Skouris 2005, 125.
[127] Rosas (2007) argues, "the EFTA Court seems to offer the best example of a court with which the ECJ is engaged in a relationship of horizontal dialogue."
[128] *Walter Rechberger and Others* v. *Austrian Republic* (1999).
[129] Baudenbacher, "Opening speech by the President of the EFTA Court," 2014.
[130] Common Market Law Review, Editorial Comments 1999, 700.

become routine that Advocates General would take into account our case law," and that the ECJ and General Court also commonly cite the EFTA Court.[131] Through judicial dialogue, therefore, the EU's courts serve to legitimize the EFTA Court and its jurisprudence, increasing the normative pressure for compliance with the EFTA Court's interpretations and applications of EEA law.

Epistemic Community – Legitimacy. As a small court of just three member states, which is completely dwarfed by its sister institution and its expansive jurisprudence, the EFTA Court has sought to develop an epistemic community that can promulgate its interpretations of EEA law in both legal and political communities.[132] Disseminating information about the EFTA Court and its interpretation of EEA law can clarify states' incentives to comply, but it is crucial for legitimizing the Court's jurisprudence within its regime.

The EFTA Court hosts an annual conference to foster exchange between academics, officials from EEA institutions (i.e., the EFTA Court, ESA), officials from national institutions, and those generally working in EEA law.[133] It also hosts lunchtime talks as a platform for the European legal and political community based in Luxembourg to have a platform to discuss issues, particularly if those issues have newly arisen.[134] Rather than focusing on cases, which would be inappropriate, the Court welcomes discussions on general issues.[135] Given the difference in size between the EU and EFTA pillars, the Court sees these opportunities for exchanging opinions and experiences as important for maintaining awareness of the EFTA pillar.[136] The EFTA Court also supports scholarly inquiry into the Court by convening conferences and seminars, and by convening experts to produce edited volumes focused on the

[131] Baudenbacher, "Opening speech by the President of the EFTA Court," 2014. This trend began in 1997 with the Court of First Instance citing the EFTA Court in its *Opel Austria* judgment. *Opel Austria* v. *Council of the European Union* (1997), para. 108.
[132] For a seminal account of the role of epistemic communities in international relations, see Haas 1992. Epistemic communities can help states identify their interests, frame issues for collective debate, propose specific policies, and identify salient points for negotiation.
[133] Interview, Speitler.
[134] Ibid.
[135] Ibid.
[136] Ibid.

EFTA Court. Indeed, the EFTA Court has played some role in producing most of the books on the Court.

The EFTA Court's experience is consistent with the hypotheses regarding accessibility. With its moderate accessibility, the EFTA Court has developed ESA, national courts, the EU courts, and the European legal and policy community as intermediaries for promoting compliance with EEA law and the EFTA Courts' decisions. It does not, however, reach out to private actors within EFTA states, reflecting their limited access and the sovereignty-respecting design of the Court. It also supports the hypotheses regarding the interactions between accessibility and acceptance. Due to its lack of acceptance from particular intermediaries (most notably national courts), the EFTA Court has used strategies of persuasion and social influence to secure these actors as intermediaries. In addition, due to the Court's general issues with acceptance, it has also used intermediaries (e.g. the EU courts) to legitimize its decisions.

Controlled Comparison: The AfCHPR and IACtHR

The AfCHPR and IACtHR represent two cases with similar levels of autonomy and acceptance, reflecting their comparable institutional designs and challenges with promoting human rights in regions with relatively weak rule of law and democracy. They, however, differ in their levels of accessibility—a particularly important difference in for human rights courts that ultimately serve individuals. As such, they especially suited to isolating the influence of international courts' accessibility on their development of approaches for promoting compliance.

The AfCHPR and IACtHR are both judicial institutions created to ensure states' compliance within their respective regional human rights systems. The IACtHR was established when the OAS's American Convention of Human Rights came into force in 1978 and the

IACtHR's Statute came into force in 1979.[137] The AfCHPR was established considerably later in 2004, when its founding instrument, a Protocol to the African Charter on Human and Peoples' Rights, entered into force in 2004, and it became operational in 2006.[138] Despite their differences in age, these two regional systems share similar issues,[139] especially when compared with their much older and active European counterpart. In recognition of their common opportunities and challenges, officials from the two courts even have exchanges through meetings and correspondence on these issues. The even share a key donor: GIZ. Divergences in their policies and practices are therefore all the more unexpected, given they identify with each other and face similar influences on their decision-making.

The AfCHPR and IACtHR both have moderate autonomy, based on their rules, appointments, and resources. They both have compulsory jurisdiction when local remedies have been exhausted, and can render binding ruling in contentious disputes and issue non-binding advisory opinions. While IACtHR judges interpret and apply the American Convention and "other treaties concerning the protection of human rights in the Americas,"[140] AfCHPR judges interpret and aply the African Charter on Human and Peoples' Rights and other relevant human rights instruments ratfied by the states concerned.[141] Both courts' judges generally serve part-time, with the exception of the court presidents who work full-time. Beyond this similarity in their judicial autonomy and agency, both courts face similar constraints from external actors. Both courts lack resources and therefore are heavily reliant on donor funding. Nearly half of the IACtHR's funding comes from European donors,[142] and the percentage of donor funding is even

[137] The American Convention on Human Rights (hereafter "the American Convention") entering into force on July 18, 1978, and the Statute of the Inter-American Court of Human Rights entering into force on September 3, 1979.
[138] Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (1998). Hereafter "AfCHPR Protocol."
[139] Interview with Sophia Akuffo, Judge President, AfCHPR, 4 February 2014.
[140] Its contentious jurisdiction covers the interpretation and application of the American Convention, and is only open to states parties and the IACHR. It advisory jurisdiction covers both the American Convention and "other treaties concerning the protection of human rights in the Americas" (American Convention, Art. 64). Only states parties and OAS organs can use the IACtHR's advisory jurisdiction.
[141] Article 7, AfCHPR Protocol.
[142] For example, in 2014, the OAS provided only 47.73% of the Court's income, with the remainder coming from "voluntary contributions from states, international cooperation, and various other agencies," such as GIZ and the European Commission (which are also major AfCHPR donors). See IACtHR, "Annual Report 2014", 2015, 77.

higher for the AfCHPR.[143] The IACtHR has made proposals for reforming the court due to "the actual need of the Court to strengthen its operational and administrative capacity, so that new resources are allocated to covering the expenses of translation, operational costs…"[144] The AfCHPR has openly noted that its lack of resources (e.g. offices, equipment) delayed its establishment.[145] From 2006 to 2008, it focused on administration and addressing its lack of registry, offices, equipment, or resources, as it was not yet ready to discharge its judicial function.[146] These resource constraints have persisted, where, for example, the AfCHPR still has not secured permament premises and the AU Commission is slow to disburse the AfCHPR's allocated funding, which compromises its operations.[147] Both courts have faced *ex post* controls from states. The IACtHR has had three states withdraw from its jurisdiction to sanction the Court for contested decisions (discussed below), while the AfCHPR, despite its short existence, had one state withdraw its declaration allowing individuals and NGOs access to the Court over a controversial case.[148] Both these forms of state controls have restricted the scope of these courts' agency.

The two courts face similarly low levels of acceptance from actors in their legal regimes. As a newer court, lack of awareness is inevitably higher in the AfCHPR, but it is still an issue for the IACtHR as well. The AfCHPR has inferred, "there is an overall lack of awareness about the very existence of the Court among Africans across the board, let alone adequate knowledge about who may access the Court, how they may do so and the nature of applications that might

[143] Its biggest donors include the European Commission (EC) and the German International Cooperation (GIZ). Donors have provided technical assistance (e.g. technological equipment, infrastructure) and supported many of its non-judicial activities, including continue staff training, seminars, and conferences. See AfCHPR, "Activity Report of the African Court for the Year 2014", 2015, para. 66.
[144] IACtHR, "Annual Report 2014," 2015, 80.
[145] The Court's establishment was delayed due to its difficulty in securing a location: it began operations in Addis Ababa, Ethiopia in 2006 and then moved to temporary premises in Tanzania in 2008, pending the construction of a permanent structure. In addition, between 2006 and 2008. the Court focused its work on operational and administrative issues, rather than actual cases. The Court still operates out of these temporary premises, which the Court has argued severally restricts its work. See, e.g., AfCHPR, "Activity Report of the African Court for the Year 2014", 2015.
[146] Akuffo, "Report of the African Court on Human and Peoples' Rights on the Relevant Aspects Regarding the Judiciary in the Protection of Human Rights in Africa," 2012, 4-5.
[147] AfCHPR, "Activity Report of the African Court for the Year 2014", 2015. AfCHPR officials note that the Court's temporary premises are not fit for purpose and undermine their work. The Court's reliance on the AU Commission to disburse its funding, which has often been delayed, has comprised its appoinment of staff, for example.
[148] "Rwanda withdraws from African Court Declaration," *The New Times*, March 5, 2016.

be brought before the Court."[149] Despite being created in 2006, it only received one case before the beginning of 2011, relecting actors' lack of awareness of the Court,[150] but the "steadily increasing number of cases" filed since then have been brought by indviiduals or NGOs whose states have not allowed direct access or have targeted African states that have not joined the Court.[151] Thus, even among those actors aware of the Court's mandate for human rights protection, there is lack of awareness of the court's norms, rules, and procedures. Furthermore, most of the cases have been brought by individuals or NGOs, rather than the ACHPR, African IGOs, or states,[152] indicating many of the actors in the Court's legal regime have not accepted the Court's role in human rights protection through adjudication. The AfCHPR, as it begins to render more judgments, is facing issues with compliance with its decisions.[153]

The IACtHR may have a better overall level of awareness among actors in its legal regimes, given its longer existence, but it still notes the need "to expand the understanding of the functioning of the Court and the inter-American human rights system."[154] Nevertheless, significant contestation from member states has been the main indicator of the IACtHR's low level of acceptance. The IACHR's Chair noted that the institutions of the regional system spend "an increasing amount of time defending the legitimacy of [their] work."[155] States often strongly contest the Court's decisions, with several states, including Trinidad and Tobago,[156] Venezuela,[157] and most recently the Domincan Republic,[158] deciding to withdraw from the Court. The IACtHR was created during the epoch of dirty wars and forced disappearances,[159] and even decades later, Latin America suffers from weak judiciaries, challenges to the rule of law,

[149] Akuffo, "Report of the African Court on Human and Peoples' Rights on the Relevant Aspects Regarding the Judiciary in the Protection of Human Rights in Africa," 2012, 8.
[150] The IACtHR also lacked cases in its initial years, with only three cases submitted in its first decade. See IACtHR, "Annual Report 2014," 2015, 22.
[151] Akuffo, "Report of the African Court on Human and Peoples' Rights on the Relevant Aspects Regarding the Judiciary in the Protection of Human Rights in Africa," 2012, 5-8.
[152] Ibid., 6.
[153] For example, Libya's noncompliance with the AfCHPR's order of provisional measures.
[154] IACtHR, "Annual Report 2014," 2015, 94.
[155] Robinson, "Taking Stock of Developments in Cooperation between the United Nations and the Inter-American Commission on Human Rights," 2014.
[156] Pasqualucci 2012, 33.
[157] Amnesty International, "Venezuela's Withdrawal from Regional Human Rights Instrument Is a Serious Setback," 2013.
[158] Morris, "Dominican Republic Leaves Inter-American Court of Human Rights," *Jurist*, November 6, 2014.
[159] Howse 2003, 496.

opaque separation of powers, and high levels of crime, corrpution, and impunity. This context negatively impact compliance with the IACtHR's judgments.[160]

These two courts, however, substantially diverge in their levels of accessibility, with the AfCHPR's accessibility surpassing the IACtHR's. The AfCHPR's protocol provides basic access to the African Commission on Human and Peoples' Rights, the Court's member states, and African intergovernmental organizations. But, crucially, the protocol also provides states the option to grant further access to the Court through a special declaration, allowing both individuals and NGOs direct access. These private actors can directly petition the AfCHPR if the respondent state has made such a declaration.[161] Only eight states have made these declarations, but it is still significant that even this limited number of individuals and NGOs have access to the Court, and there is the potential for more to gain access if more member states make declarations. The IACtHR, conversely, has only moderate accessibility. Only the IACHR and states parties can directly bring cases to the Court, not individuals or NGOs. Instead, individuals can bring complaints to the Commission, which uses its discretion to determine the admissibility of the complaint (e.g. exhaustion of local remedies), investigates the claim, makes recommendations to the state concerned, and, if appropriate, issues a report on the case. The IACHR plays a gatekeeping role, as it chooses whether to bring a claim against the state at the IACtHR. The Commission filters a significant proportion of claims: since 1979, the Court has received more than 200 cases, while the Commission has dealt with more than 20,000 complaints since its establishment.[162]

Given their differing levels of accessibility, we would expect that the AfCHPR would have relatively more expansive interactions with intermediaries and approaches for promoting compliance than the IACtHR. As the IACtHR has moderate accessibility, it may still use some indirect approaches, but they should be more restricted than its African counterpart. In addition, given their low levels of acceptance, we would expect both courts to use intermediaries to promote state compliance based on the logic of appropriateness.

[160] Bailliet 2013, 477.
[161] Declarations are made under Article 34(6), AfCHPR Protocol.
[162] Mackenzie et al. 2010, 330.

The AfCHPR's Indirect Approaches

Though it has limited approaches for promoting compliance embedded in its design, the AfCHPR has dramatically developed its non-judicial agency for promoting compliance. Its founding treaty contains weak mechanisms that embody the approaches for promoting compliance based on consequentialism. Through its judicial agency, the Court can directly create material consequences for noncompliance: where the Court determines there has been a violation of human and/or peoples' rights, it can issue appropriate orders to remedy the violation, including the payment of compensation or reparation.[163] In addition, the Court has a monitoring and reporting requirement in its protocol, which is intended to mobilize the political organs of the AU to facilitate implementation of its orders.[164]

In many ways, the AfCHPR exemplifies how international courts designed to have high accessibility and inclusive legal regimes can freely develop approaches for promoting compliance through intermediaries. As the Court itself has stated,

> For the Court to achieve the purpose for which it was established, it must involve the different human rights actors, in particular; individuals, NGOs and States Parties to the Charter and the Protocol. These actors must understand not only the existence of the Court, but also its importance, how they can utilize it to seek remedy for human rights violations and such other information as may be useful.[165]

With its broad set of "stakeholders," as included in its founding treaty, the Court has adopted an expansive set of indirect approaches for promoting compliance, targeting all actors in its legal regime. Some of the AfCHPR's activities are oriented towards complementing existing mechanisms for promoting compliance embedded in the AfCHPR Protocol, but many represent a clear divergence from the Court's formal mandate, in the interest of developing and mobilizing intermediaries use their dissemination, advocacy, and enforcement capabilities to promote compliance with the Court's law and decisions.

In addition to targeting specific sets of intermediaries, as will be discussed below, the Court "has taken the unusual policy decision" to adopt a generalized "sensitization programme"

[163] Article 27(1), AfCHPR Protocol
[164] Article 29 and 31, AfCHPR Protocol.
[165] AfCHPR, "Concept Note for North and East Africa Sensitization Seminar," 2012, 2.

to develop a broad base of support (and pool of intermediaries).[166] Since it launched in 2010, the programme involves Court officials holding seminars in states throughout Africa "to raise awareness about the Court in all its dimensions to a wide spectrum of partners of the human rights system"[167]and "inform them of its existence, its mandate and how it may be utilized."[168] In addition to state officials, sensitization seminars "include AU Organs, Regional Courts, National Human Rights Institutions, academic institutions, individuals, NGOs, media and Bar Associations,"[169] reflecting its inclusive legal regime. These seminars are aptly titled, "The African Court on Human and Peoples' Rights: your new partner in strengthening the protection of human rights in Africa."[170] In the seminars, the Court clarifies the role these actors "should play to ensure the effective protection of human rights in general and the effectiveness of the Court in particular."[171] For example, the Court "encourage[es] the public to utilize the Court in settling human rights disputes."[172] At the end of the seminars, participants often adopt conclusions and "plans of action" expressing "their readiness to work with the Court, in collaboration with other relevant stakeholders in their respective countries, as well as across the continent, to promote the Court and ensure its effectiveness."[173]While the sensitization seminars have been quite broad and generally present an overview of the Court to generate awareness among key human rights stakeholders in various African countries, the Court has also used more targeted approaches, holding seminars for specific groups of potential intermediaries.

NGOs – Prosecution, Monitoring, Advocacy. The AfCHPR has particularly focused on mobilizing NGOs as intermediaries. NGOs are included in the AfCHPR's founding protocol, with access to the Court's contentious jurisdiction, provided states parties have made an Article 34 declaration. States have recognized the important role that NGOs can play in the AfCHPR's

[166] Ibid., 8.
[167] AfCHPR, "The African Court and Its Key Partners Agree to Strengthen Partnership in Promoting the Court," 2012.
[168] Akuffo, "Report of the African Court on Human and Peoples' Rights on the Relevant Aspects Regarding the Judiciary in the Protection of Human Rights in Africa," 2012, 8.
[169] AfCHPR, "Concept Note for North and East Africa Sensitization Seminar," 2012, 4.
[170] Ibid.
[171] Ibid.
[172] AfCHPR, "Report of the African Court on Human and Peoples' Rights," 2012, 8.
[173] AfCHPR, "Activity Report of the African Court for the Year 2014," 2015, 26.

legal regime, but the AfCHPR has substantially expanded its relations with NGOs to strengthen their function of prosecuting compliance, and mobilize them to advocate for compliance with the Court and its law. NGOs strongly supported the Court's creation, as NGO observers in the African Commission helped keep the proposal for a regional human rights court on the agenda.[174] As NGOs are already supportive of the Court, the Court's strategies vis-à-vis NGOs have primarily focused on mobilization.

In its sensitization programme, the Court has consistently included NGOs, encouraging them to "partner" with the Court "in strengthening the protection of human rights in Africa[175]and serve a prosecutorial role by raising cases of human rights violations at the Court. It often holds dedicated meetings with NGOs on the side-lines of the main seminar. The Court has also sought to mobilize NGOs to act on particular human rights issues. For example, in 2013, the Court held a "Continental Consultative and Sensitization Seminar on the Promotion of the Court for Women Human Rights NGOs in Africa."[176] Fifty-seven representatives from women's human rights NGOs from over twenty African countries attended this targeted seminar, where "participants adopted conclusions on measures to be taken to promote the Court, ensure its effectiveness and enhance the protection of human rights on the continent."[177]

Some NGOs have stood out as particularly crucial collaborators,[178] which the Court supports through routinely participating in their activities. The African Court Coalition (ACC) does considerable advocacy work, lobbying states to join the Court, allow individual and NGO access, and generally support for the Court and human rights law through workshops, seminars, etc. In addition, the ACC also monitors and reports information regarding states' compliance with Court decisions, which can help create reputational and domestic political consequences for noncompliance. The Court also sees the Pan African Lawyers Union (PALU) as a key intermediary. Not only does PALU litigate human rights cases at the Court, but it also, like the

[174] Mbelle 2008, 297.
[175]AfCHPR, "Activity Report of the African Court for the Year 2013," 2014, 19.
[176] Ibid.
[177] Ibid.
[178] The Registrar specifically named the ACC and PALU in an interview as key NGO collaborators for the Court. Interview with Robert Eno, Registrar, AfCHPR, 4 February 2014.

ACC, performs advocacy, monitoring, and reporting roles. These intermediaries have resource limitations, but they substantially contribute to the advocacy for compliance with the AfCHPR. The Court sees its collaboration with civil society and NGOs as crucial to the effectiveness of its sensitization efforts.[179] Indeed, the Court has recently considered scaling back its own sensitization programme and effectively "outsourcing" a significant portion of its sensitization activities to the ACC and PALU.[180]

NHRIs – Monitoring, Advocacy. Though they, unlike NGOs, are not explicitly included in the AfCHPR's founding protocol, in keeping with its generally inclusive approach to engaging with intermediaries, the AfCHPR has specifically targeted National Human Rights Institutions (NHRIs) for their capacity to domestically pressure governments to comply and to disseminate human rights norms within states. As NHRIs are mandated to monitor government compliance with international and regional human rights obligations, and follow-up on the implementation of recommendations from human rights bodies, they are ideal domestic intermediaries between the AfCHPR and African governments. As the Chairperson of Uganda's NHRI notes, African NHRIs

> are complementary to already established institutions and…are in a good position to make unique contribution to a country's efforts to protect its citizens and to develop a culture that is respectful of human rights and fundamental freedoms. They are vital for enhancement of public awareness of human rights through human rights education, advising and monitoring government's compliance with international human rights instruments and investigation of alleged human rights violations.[181]

The Court thus held a "Sensitization and Consultative Seminar for African National Human Rights Institutions,"[182] which brought dozens of African NHRIs together and clearly aimed to develop NHRIs as intermediaries for the Court. The seminar sought to "raise awareness about the Court amongst National Human Rights Institutions in Africa, with a view to exploring ways and means of working together to engage both their governments and civil society

[179] Ibid.
[180] Ibid.
[181] Kaggwa, "Statement of the Network of African National Human Rights Institutions," 2010.
[182] AfCHPR, "Report of the African Court on Human and Peoples' Rights," 2012, 8.

organizations in the effective utilization of the Court."[183] Through this seminar, NHRIs "adopted a plan of action"[184] to support the Court.

Media – Monitoring, Advocacy. The AfCHPR has even aimed to harness journalists and, more generally, the media for their monitoring and dissemination capabilities. Broad dissemination of information about noncompliance supports reputational costs internationally and electoral costs domestically, for example. Especially with the technical nature of international law, and the potential for states to manipulate information to contest the Court's rulings, the risk of misreporting is significant. The media can be an intermediary for bringing to light and creating costs (internationally and domestically) for noncompliance. In addition, in reporting on the Court's cases and activities, there is an inherent normative dimension, where news coverage can help legitimize the Court's norms, rules, and procedures among the broad range of actors in its legal regime that support compliance.

The Court has sought to develop African media outlets as intermediaries through media training.[185] For example, the Court's Continental Conference brought ten AfCHPR judges in contact with sixty-seven journalists and media practitioners from thirty African countries.[186] Through such activities, the Court aimed to "acquaint the media with complete information and a deeper understanding of the African Human Rights System and its institutions, in particular the African Court, its functions, jurisdictions and activities."[187] With this training, the Court intends for the media to "serve as relays for the Court in disseminating the information about it… With such a contribution, the media would greatly enhance the Court's capacity to discharge its mandate and assure the optimal benefits to the people of Africa." The Court sees its engagement

[183] Ibid.
[184] Ibid.
[185] AfCHPR, "African Media Conclude a 2-Day Continental Conference with the African Court in Arusha, Tanzania," (Press Release, November 22, 2013).
[186] Ibid.
[187] Ibid.

with the media as a long-term endeavor, as it "will continue to collaborate with the media in the joint efforts to protect human rights in Africa."[188]

National Courts – Enforcement. The AfCHPR has focused on developing and mobilizing national judiciaries as key sub-state intermediaries for dissemination and enforcement of regional human rights law. While national courts do not have access to the AfCHPR (as is standard for regional human rights courts), the admissibility of cases at the AfCHPR depends on the exhaustion of local remedies, making national courts the first port of call for the protection of human rights in the African regional human rights system. As such, they are have the potential to serve as intermediaries for the AfCHPR, and the Court, given the inclusivity of various actors in its formal protocol and its broad approach to using intermediaries, has also focused on national courts in African states. These national courts, given their judicial nature, may be predisposed to support the African Court. However, they could equally feel that a regional court could compromise their authority, override their rulings, and generally compete for similar roles in promoting human rights. They could also simply lack knowledge of the Court's norms, rules, and procedures. Thus, the Court has sought to both develop and mobilize national courts as intermediaries.

The AfCHPR has held Continental Judicial Dialogues as a means of mobilizing judges throughout Africa to incorporate the AfCHPR's jurisprudence and regional human rights treaties into their decisions.[189] This "non-judicial" dialogue, similar to the EFTA Court's, aims to complement judicial dialogue, where national courts often incorporate international courts' decisions into their reasoning and judgments. It has, furthermore, lobbied the AU to institutionalize these continental judicial dialogues, as a permanent mechanism for developing and mobilizing national courts as intermediaries that "facilitate the dissemination and application

[188] Ibid. The Court "hopes to organize such conferences on a biennial basis."
[189] See, e.g., AfCHPR, "The Court Organizes a Continental Judicial Dialogue with National Judiciaries in Arusha," (Press Release, November 18, 2013). The AfCHPR convened officials from the African human rights system, African sub-regional courts, and Chief Justices/Presidents of Supreme and Constitutional Courts, and other representatives of national jurisdictions.

of the judgments of the Court."[190] The dialogues focus on clarifying relationship between the domestic and regional levels of human rights protections, including "the principles of subsidiarity, exhaustion of local remedies, complementarity and referrals for interpretation."[191] In addition, the Court aims to disseminate to national courts the "procedures and practices" for applying regional human rights instruments and for enforcing the Court's decisions.[192] The dialogues also aim to formalize the relationship between the Court and its national court-intermediaries, "with a view to establishing a framework for practical and institutionalized cooperation."[193]

AU organs – Advocacy, Enforcement. As the Court has begun issuing decisions and observed noncompliance with its decisions, it has sought to develop the AU Assembly as an intermediary advocating for compliance and potentially taking enforcement action. The AfCHPR Protocol merely requires that the Executive Council, a ministerial level organ, monitor the execution of the Court's judgments on behalf of the AU Assembly,[194] and the Court, in its reports to the AU Assembly, "specify, in particular, the cases in which a State has not complied with the Court's judgment."[195] The Court, however, has sought to building on these relationships embedded in its Protocol to strengthen the AU policy organs' advocacy for and enforcement of compliance. The AU Assembly of Heads of State and Government is a key decision-making organ with representatives from all AU member states, but crucially, it has what the Court lacks: enforcement power.[196] This strategy takes the spirit of what the Court's monitoring and reporting requirement to the AU Assembly that is prescribed in its founding protocol and aims to develop a much more robust mechanism for promoting compliance with its decisions.

---

[190] AfCHPR, "Activity Report of the African Court for the Year 2014," 2015, 32.
[191] See, e.g., AfCHPR, "The Court Organizes a Continental Judicial Dialogue with National Judiciaries in Arusha," (Press Release, November 18, 2013).
[192] Ibid.
[193] Ibid., 1-2.
[194] Article 29(2).
[195] Article 31, AfCHPR Protocol.
[196] There is no explicit provision in the AU's Constitutive Act conferring this power, but Article 23, which delineates the consequences for failing to abide by such decisions, suggested that the AU Assembly is empowered in this regard.

The Court has argued the standard annual reporting requirement for AU organs provides insufficient opportunities for the Court to report cases of noncompliance within an appropriate timeframe.[197] The Court has argued that noncompliance reports are *additional* to its annual reporting requirement,[198] and has thus decided to increase its reporting and attempts to mobilize the AU policy organs against noncompliance with its decisions. The Court, for example, issued an interim report on Libya's noncompliance with provisional measures issued "on account of the extreme gravity and urgency of the allegations raised"[199] in a case regarding Saif al-Islam Gaddafi's conditions of detention. The Court's interim report recommended that the Executive Council "bring the matter to the attention of the Assembly." But it went further, directly calling on the Assembly "to express itself on Libya's non-compliance with the Court Order and to call upon Libya to comply," and "to adopt a decision calling upon all Member States of the Union to comply with and implement Judgments and Orders of the Court."[200] Finally, the Court urged the Assembly "to take such other measures as it deems appropriate to ensure Libya fully complies with the Court order."[201] After the Executive Council urged Libya "to inform the Court on the concrete measures it has taken to implement the Order for Provisional Measures,"[202] Libya at least identified a "focal point appointed by Libya for all issues relating to the Court" but still provided no response.[203]

More generally, the Court has been pressuring the AU institutionalize a mechanism through which the Court could mobilize AU policy organs to enforce the Court's judgments.[204] Building on its existing annual reporting requirement, the Court has pushed for "a concrete mechanism that will enable it [to] report cases of non-compliance, to the policy organs of the

[197] AfCHPR, "Activity Report of the African Court for the Year 2013," 2014.
[198] AfCHPR, "Interim Report of the African Court on Human and Peoples' Rights Notifying the Executive Council of Non-Compliance by a State," para. 2.
[199] AfCHPR, "Activity Report of the African Court for the Year 2013," 2014, 10.
[200] Ibid., 11.
[201] AfCHPR, "Interim Report of the African Court on Human and Peoples' Rights Notifying the Executive Council of Non-Compliance by a State," para. 10.
[202] African Union Executive Council, "Decision on the Mid-Term Activity Report of the African Court on Human and People's Rights," 2014, para. 4.
[203] AfCHPR, "Activity Report of the African Court for the Year 2014," 2015, 16.
[204] Interview, Akuffo.

Union, at any time it deems necessary, for the proper administration of justice."[205] Through more regular reporting to the AU policy organs, the Court would strengthen its ability to mobilize the AU political organs to take action against noncompliance—either through naming and shaming or, though highly unlikely, by using their enforcement power.

The IACtHR's Indirect Approaches

Like the AfCHPR, the IACtHR's has limited approaches for promoting compliance embedded by design. Its founding treaties empower the IACtHR with mechanisms for directly and indirectly altering the consequences of noncompliance. The IACtHR, like the AfCHPR, can create material consequences for states' noncompliance with the American Convention by issuing remedial orders and reparations for victims.[206] The IACtHR transmits all judgments to all its states parties,[207] and, like the AfCHPR, it submits annual reports, which should particularly specify cases of noncompliance, to its political organ, the OAS Assembly.[208] In recent years, based on that monitoring function, it has also strengthened its monitoring role by, since 2007, holding hearings on monitoring compliance with judgments.[209] Monitoring compliance and reporting to the OAS are thus mechanisms for disseminating information about noncompliance and shaming noncompliant states within the OAS community.

The IACtHR is an unusual case where Court officials drafted their own Statute, building off of the American Convention and with subsequent approval by OAS Assembly.[210] In the statute, it embedded a provision allowing for cooperating with non-state actors for dissemination and training purposes, stating that those relations "shall be governed through special

[205] AfCHPR, "Activity Report of the African Court for the Year 2013," 2014, 31. The Executive Council has authorized the Court to propose such a mechanism to the Permanent Representatives' Committee. African Union Executive Council, "Decision on the 2013 Activity Report of the African Court on Human and Peoples' Rights," 2014, para. 1.
[206] Article 63, American Convention.
[207] Article 69, American Convention.
[208] Article 65, American Convention; Article 30, Chapter VI, IACtHR Statute (1980).
[209] The Court notes that since it started these hearings on monitoring compliance with judgments, "favorable results have been achieved, with significant progress being made in fulfillment of the reparations ordered by the Court." IACtHR, "Annual Report 2014," 2015, 8. See also Murray, Long, and Evans 2015, 147.
[210] Article 60, American Convention.

agreements."[211] The Statute specifies that the Court may cooperate with "nonprofit institutions as law schools, bar associations, courts, academies and educational or research institutions dealing with related disciplines in order to obtain their cooperation and to strengthen and promote the juridical and institutional principles of the Convention in general and of the Court in particular.[212] The actors mentioned lie clearly within the legal professional and academic realm. The emphasis is on education, but this education can have the side effect of drawing attention to noncompliance with the Court, and legitimizing its legal norms—though in a highly untargeted way. The Statute notably fails to mention actors, such as human rights NGOs, that are more suited to serve as intermediaries for promoting compliance. The Court, through its Statute, chose to empower itself to interact with non-state actors, but also to limit itself to an educational mission, which is perhaps less threatening and more palatable for states.

As the Court has operated, it has faced strong incentives to expand its approaches for promoting compliance, but it has generally limited itself to its educational mission, with the actors described in its Statute. Partial compliance with the Court's judgments is common, and Court officials recognize that the IACtHR cannot "pragmatically" accept partial implementation of its orders but must maintain a "principled" approach to compliance to safeguard the interests of victims."[213] In addition, the IACtHR's enforcement arm, the OAS Assembly has tended to pass resolutions urging compliance, rather than use coercive enforcement measures.[214] There is a wealth of human rights NGOs in the region, as well as other human rights institutions, such as NHRIs, which would be ideal intermediaries for promoting compliance.

The Court, however, has only developed indirect approaches in a limited sense, maintaining its educational focus. The Court argues that "An essential element of the strengthening of the regional system is training all the human capital that, in future, will be working in the area of human rights."[215] The Courts' approach to developing and mobilizing its

[211] Article 27(2), Chapter VI, IACtHR Statute.
[212] Article 29(1), Chapter VI, IACtHR Statute.
[213] Antonio Augusto Cançado Trindade, former IACtHR President, quoted in Bailliet 2013, 480.
[214] Baillet (2013, 479–480) argues that the OAS Assembly's lack of action is because states are reluctant to have their own human rights issues raised.
[215] IACtHR, "Annual Report 2014," 2015, 94.

limited set of intermediaries focuses on "human rights training and dissemination activities," through which it aims "to expand the understanding of the Court's functions and the inter-American system for the protection of human rights."[216] To this end, the Court often forms cooperation agreements with various national and international institutions "to establish bases for collaboration in order to conduct joint activities with these institutions in the area of human rights research, teaching, dissemination and extension work."[217] At the national level, it has targeted national courts, building on its jurisdictional rule requiring the exhaustion of local remedies.

National Courts – Enforcement. National courts are important intermediaries for the IACtHR, as they are part of the exhaustion of local remedies requirement before cases are admissible before the IACHR and IACtHR. Though they do not have formal standing at the IACtHR, the American Convention recognizes their importance in the Court's legal regime. According to the Convention, the IACtHR is intended for "reinforcing or complementing the protection provided by the domestic law."[218]National courts, therefore, are individuals' first opportunity to bring cases against states for human rights violations, but also have the enforcement capacity that international bodies lack. IACtHR judgments often also place obligations on national courts.[219]

But in the Inter-American setting, having national courts act as intermediaries for compliance with the American Convention can be challenging. Whereas the executive and legislature may have new officials, the judiciary often has the same judges as in the authoritarian era, and therefore may be corrupt and reluctant to pursue prosecutions.[220] The IACtHR suffers low rates of compliance when it orders states (and national courts) conduct domestic criminal investigations, prosecutions, and punishments of perpetrators of human rights violations.[221]

[216] Ibid.
[217] Ibid.
[218] Preamble, American Convention.
[219] According to Article 68(1), states are expected to ensure domestic implementation of judgments by all relevant branches and bodies.
[220] Huneeus 2011.
[221] Basch et al. 2010; Huneeus 2011. According to Basch et al. (2010), examining orders adopted between June 2001 and June 2006, the Court's orders for reparations or restitution of rights had a 61% compliance rate, whereas orders calling for investigation and sanction of perpetrators of human rights had only 15% compliance.

Compared to IACtHR decisions requiring executive action alone, actions requiring compliance by national justice systems (e.g. due process safeguards, nullification of sentences, and reinstatement of judges) experience a lower rate of implementation.[222] Recently, the Supreme Court of Venezuela even advised President Hugo Chavez to withdraw from the IACtHR, after it ordered the Supreme Court to reinstate the judges it had removed.[223] Thus, in the Inter-American context, national courts are not necessarily compliance partners for the IACtHR.

Thus, the IACtHR has used strategies of judicial and "non-judicial" dialogue and training to develop and mobilize national courts as its intermediaries for domestically enforcing human rights law. The dialogues focus on having domestic judges incorporate human rights treaties and the Court's jurisprudence its their reasoning and decisions. To facilitate these exchanges, the Court has signed numerous cooperation agreements with national institutions, such as ministries of justice, national judiciaries, and national ombudsmen, where they agree to participate in the Court's training events (e.g. conferences, seminars, forums), conduct professional visits to the IACtHR, and access the Court's human rights search engine and systematized case law. [224]

The court has organized several "international specialization courses" on the Inter-American human rights system for judges and prosecutors in national judiciaries, to educate these key national officials on the inter-American system and the Court's jurisprudence.[225] For example, the Court has clarified to national judiciaries that when they make a decision in accordance with the American Convention, it is not necessary to submit it to the Court for "approval" or "confirmation."[226] The Court also seeks to mobilize national judges on particular human rights issues. For example, it held workshops in Mexico City with Mexico's Supreme Court of Justice of the Nation, Federal Council of the Judicature, Ministry of Foreign Affairs, which included discussions of enforced disappearance of persons and military jurisdiction.[227] As

[222] Basch et al. 2010; Huneeus 2011.
[223] *Apitz Barbera* v. *Venezuela* (2008).
[224] E.g. IACtHR, "Annual Report 2014," 2015, 98.
[225] See, e.g., the course for the Peruvian judiciary referenced in IACtHR, "Annual Report 2012," 2013, 95.
[226] IACtHR "Annual Report 2014," 2015, 65.
[227] IACtHR, "Annual Report 2012," 2013, 96.

judges have observed, “There is a lively judicial dialogue now between the IACtHR and the constitutional courts of its Member States, and national judges use the precedents of the IACtHR in their own judgments.”[228]

Lawyers – Prosecution. In keeping with the Court’s general focus on legal education, as suggested in its founding statute, the Court has prioritized training lawyers, which can marginally assist in prosecuting states for noncompliance by serving as representatives for victims in proceedings; the IACHR, however, retains its true prosecutorial function in the Court. The Court holds training and seminars discussing topical issues in the inter-American system with public defenders in states parties. The training aims to “enhance the technical and juridical capabilities of public defenders in this country, and also to make a substantive contribution to public defense policies and strategies in order to reinforce the exercise of human rights, especially in the sphere of inter-American litigation.”[229] The Court’s seminars with public defenders highlight the Court’s developing case law and topical issues.[230] This strategy serves to mobilize public defenders to promote states’ compliance with the American Convention by bringing cases to the IACtHR.

Inter-American Institute of Human Rights – advocacy. One intermediary the Court essentially created in 1980, through an agreement with the Government of Costa Rica (the Court’s seat), is the Inter-American Institute of Human Rights. In the Court’s first year of operation, it convened experts in human rights from around the world “to advise the Court on the necessity of establishing an Inter-American Institute of Human Rights and its possible activities.”[231] The experts recommended the Institute should be based in San José, at the seat of the Court; should be “a non-governmental, autonomous body that would collaborate with the Court” and other

[228] BIIJ, "The International Rule of Law in a Human Rights Era", 2013, 19.
[229] IACtHR, “Annual Report 2012,” 2013, 95.
[230] For example, at the IACtHR’s 2012 Forum on Current Issues, “topics covered included the Court’s case law on the rights to life, to personal liberty, and to personal integrity, and the reparations it establishes, as well as the enforced disappearance of persons, extrajudicial executions, massacres, and the positive obligations of the States in order to protect human rights.” IACtHR, “Annual Report 2012,” 2013, 96.
[231] IACtHR, “Annual Report 1980,” 1981, 14.

IGOs based on “full institutional and academic integrity and independence”; and “would be of an academic and educational nature and *not an activist organization*.”[232] Thus, education rather than advocacy was the institute’s mandate. IACtHR judges formulated the Institute’s statute accordingly, creating “an autonomous, international academic institution, with a global, interdisciplinary approach to the teaching, research and promotion of human rights.”[233] The Institute’s funding is provided by non-OAS sources.

The Inter-American Institute of Human Rights conducts various academic activities, but its efforts to educate state officials on the IACtHR’s norms, rules, and procedures is perhaps the strongest means by which this intermediary serves to promote compliance. Alongside the IACHR and IACtHR, the Inter-American Institute of Human Rights provides an annual training course for state officials “on the main normative, procedural and institutional aspects of the inter-American system.”[234] The course focuses on “assembling officials from ministries of foreign affairs, offices of the attorney general and other public institutions linked directly to the proceedings before the Inter-American Commission and the Inter-American Court, for training activities, discussions and an exchange of experiences in an academic environment.”[235] By guiding state officials “from theoretical, conceptual and normative aspects to their practical application in the inter-American litigation process,”[236] the course, essentially, aims to socialize state officials into the regional human rights system’s norms, rules, and procedures. The Institute’s education of state officials is particularly valuable, as studies have shown that orders requiring action by public ministries and the legislature, such as repealing an amnesty law or other institutional reforms, are subject to noncompliance, as these types of orders require consensus among diverse political interests.[237]

---

[232] Ibid. Emphasis added.
[233] Ibid., 15.
[234] IACtHR, “Annual Report 2011,” 2012, 73.
[235] Ibid.
[236] Ibid.
[237] Mackenzie et al. 2010, 330.

Overall, the IACtHR has only marginally developed indirect approaches beyond in its Statute. With national courts and lawyers, the IACtHR has developed intermediaries for enforcement and prosecution in a targeted way, but its other activities are far more general educational efforts. For example, the Court's adjustment of its practices vis-à-vis its hearings is telling. The Court has moved towards making its sessions generally more accessible by holding them outside of Costa Rica at IACtHR states parties and, like the AfCHPR and many international courts, streaming them online. Beginning in 2005, the Court has distributed many of its extraordinary sessions throughout states parties "to more broadly disseminate inter-American jurisdiction and to increase awareness regarding the matters submitted to the Court."[238] The Court, however, does not hear cases relating to the host country during these sessions and is careful not to treat the sessions as a strategy for promoting compliance. Indeed, it has reassured states that

> the key objective of the special sessions is to fulfill the judicial function that corresponds to the Court…. holding sessions away from the seat of the Court in no way constitutes an *in loco* visit, an investigation into the facts, or a general evaluation of human rights. We limit ourselves strictly to the Court's jurisdiction, on which it should focus its attention and its resources.[239]

Streaming hearings online has a similar, though more muted, effect of serving general dissemination purposes, rather than targeting intermediaries. It streams hearings "to allow more people to have access to its jurisdictional work at the inter-American level."[240] The Court's sees streaming as a general means of dissemination: "The live transmissions achieve the objective of spreading the work of the Court, giving greater publicity to the facts that have harmed the victims and, above all, disseminating the discussion and analysis of different issues of the inter-American human rights reality."[241] This kind of transparency and dissemination could mobilize intermediaries, but it is a relatively weak and passive mechanism.

[238] The Court finances this through donor funding (e.g. from the EU) and has noted, "This activity would be impracticable if it had to be covered by the regular resources of the Court." Quiroga, "Summary of the Annual Report of the Inter-American Court of Human Rights for the 2007 Fiscal Year, Presented to the OAS Committee on Juridical and Political Affairs", 2008.
[239] Ibid.
[240] IACtHR, "Annual Report 2012," 2013, 85.
[241] Ibid.

Analysis

The difference in approaches between the AfCHPR and IACtHR is subtle but still significant, supporting this chapter's core conjecture that accessibility provides international courts opportunities for engaging with intermediaries and developing indirect approaches for promoting compliance. Compared to the AfCHPR's expansive indirect approaches, the IACtHR has engaged with intermediaries in a relatively restricted way, reflecting its lower level of accessibility. It has stressed its educational mandate, and largely focused on intermediaries embedded in its design and generally sought state approval before developing partnerships. Given the nature of human rights regimes, one might expect that the IACtHR would use NGOs as intermediaries for monitoring and advocacy, but the IACtHR has not exploited these potential intermediaries. In contrast, under the broad umbrella of "sensitization," the AfCHPR has engaged with virtually every potential kind of intermediary available in its regime. Whereas the IACtHR has focused on following the provisions in its Statute, the AfCHPR's policies and practices vis-à-vis intermediaries have moved far beyond the provisions of its constitutive treaty.

These two cases also support the proposition regarding the interaction of accessibility and acceptance, as both have sought to use intermediaries for aligning states' standards of appropriateness with human rights law. The IACtHR, even with its limited engagement with intermediaries, has used the Inter-American Institute to disseminate its norms to states, and the AfCHPR has broadly mobilized NGOs, NHRIs, and even the media to spread its norms and promote compliance among states.

Conclusion

It is clear that international courts' level of accessibility beyond their member states has significant implications for their indirect approaches for promoting compliance. Accessibility facilitates international courts' engagement with a more diverse set of actors in their legal regimes, which have the potential to serve as intermediaries for influencing courts' targets for compliance. International courts scope for engaging with potential intermediaries is largely circumscribed by their formal access rules, which are devised by their member states and reflect states' intentions regarding international courts' overall openness to non-state actors. International courts with higher levels of accessibility, therefore, can exploit their more permissive formal access rules and broadly engage with relevant actors in their legal regimes, while courts with more restrictive, and particularly state-only access rules, are careful to respect states' intentions and refrain from expanding their relations with non-state actors. Higher levels of accessibility thus facilitate international courts' adoption of indirect approaches for promoting compliance. Considering states have designed international courts with generally high levels of accessibility, indirect approaches are highly salient in international courts' overall agency for promoting compliance.

Formal access rules often establish mechanisms for promoting compliance through intermediaries, based on access to adjudication. However, international courts can build upon and considerably expand these embedded approaches. They may develop these approaches through their case law, as was the case in the EFTA Court, or procedural rules, with the IACtHR's expansion of its monitoring function. More commonly, international courts expand their interactions with intermediaries through their non-judicial agency. They complement judicial dialogue with "non-judicial" dialogue, and train actors to prosecute noncompliance and enforce their orders. The case studies showed that international courts can also aim to mobilize intermediaries outside the legal sphere to exploit different capabilities vis-à-vis their targets for compliance. The EFTA Court, through its academic conferences and seminars, reaches out to Luxembourg-based European policy community, and the AfCHPR seeks to mobilize politically-active intermediaries, such as NGOs and NHRIs. The AfCHPR has most dramatically stepped outside of the legal sphere and into political mobilization, compared to the EFTA Court and especially the IACtHR, which primarily engage intermediaries on a legal, educational basis. The IACtHR, in developing the Inter-American Institute of Human Rights, explicitly assured states that it would not be an "activist" organization. In contrast, the AfCHPR's high level of accessibility, even extending to NGOs, is likely to have emboldened it to widely engage with potential intermediaries in its regime.

Conclusion

This study proceeded from the judicialization of international law and politics, and the ascendance of international courts in the international system. Particularly in the post-Cold War era, there has been considerable optimism that more treaties, and courts to uphold them, would contribute to a more lawful international order. States have increasingly created and used international courts to bind themselves and other actors to international law within different international regimes. International courts interpret and apply international law to adjudicate international disputes, but their mandate, at its core, is to promote compliance with international law. This study has focused on how international courts aim to perform this mandate and, more broadly, how they attempt to have influence in a challenging international environment.

After all, despite this optimism about the judicialization phenomenon, international courts' challenges are significant. As Judith Shklar notes, "The idea that all international problems will dissolve with the establishment of an international court…is an invitation to political indolence. It allows one to make no alterations in domestic political action and thought, to change no attitudes, to try no new approaches."[1] Thus, with creating international courts, the work of promoting compliance is not done, and international courts essentially continue these legalization and judicialization processes in distinct ways. Of course, they adjudicate disputes and render judgments. However, as international courts are IOs, the full scope of international courts' agency necessarily includes the variety of judicial and non-judicial activities carried out by judges and other officials. Most analyses have bracketed international courts off from the broader universe of IOs, but conceptualizing international courts as IOs, with both judicial and non-judicial agency, can elucidate important aspects of international courts' relevance in regional and global governance.

[1] Shklar 1986, 134.

A Broader Conception of International Courts' Agency

A broader conception of international courts' agency, including both its judicial and non-judicial dimensions, supports a wide range of potential mechanisms for influencing actors' behaviour and promoting compliance with international law. From a theoretically pluralistic perspective, there is no one path to compliance, and international courts may combine various approaches to promote compliance. This study's foundation is a framework, based on theories of international relations and international law, for analyzing how international courts can influence behaviour and promote compliance. It delineates the four core approaches that are available to international courts, based on their judicial and non-judicial agency. To promote compliance, international courts can aim to influence actors' logic of consequences or appropriateness, either directly or indirectly through intermediaries.

The analysis of the incidence of the four approaches across all permanent operational international courts, based on an original dataset on courts' design, jurisprudence, policies, and practices, was revealing in several respects. There was a clear distinction between the approaches embedded in international courts' constitutive treaties, as opposed to the ones they developed through their own agency. The designed approaches, guiding international courts' judicial agency, were predominantly based on consequentialism and making noncompliance costly. Many international courts can directly create costs for noncompliance through their delegated ability to order compensation, reparations, and remedial measures. Still, international courts are also designed to indirectly create consequences for noncompliance, with national courts serving as intermediaries for the domestic enforcement of international law. It was also striking that, with one slight exception where IACtHR judges inserted a provision that states then approved, states have not designed international courts to have any means of influencing actors' logic of appropriateness to promote compliance. Persuasion and social influence are embedded in international courts' rulings, but states have not designed international courts to have further means of influencing actors' standards of legitimate, appropriate behaviour.

Overall, the distribution of designed and developed approaches clearly demonstrates the necessity of considering international courts' non-judicial agency, alongside the traditional focus on judicial agency. Across twenty-three international courts, only three have substantively expanded their approaches for promoting compliance through their judicial agency. Thus, the bulk of international courts' development of their agency for promoting compliance has originated from their non-judicial agency. Fifteen of twenty-three international courts—nearly two thirds—have adopted approaches for promoting compliance through their non-judicial agency. In addition, in taking advantage of their relative freedom of action in this realm of activity, international courts have moved beyond the consequentialist orientation of their embedded approaches and incorporated approaches aimed at influencing actors through both the logics of consequences and appropriateness. In general, international courts' emphasis on the managerial approach over the enforcement approach in their adopted approaches is likely due to international courts' limited coercive capacities beyond adjudication, rather than officials necessarily finding the managerial approach superior to enforcement. Though there is a strong emphasis on capacity-building and spreading legal expertise, many of international courts' activities attempt to seize intermediaries for their enforcement capabilities.

Very often, international courts' development of activities beyond adjudication aims to complement existing judicial mechanisms for promoting compliance. Legal education for national judiciaries on preliminary ruling mechanisms, for instance, uses "non-judicial" dialogue (communication and interaction in non-judicial forums) to enhance judicial dialogue (communicating through legal rulings). Still, international courts' non-judicial activities can mark a significant departure from their judicial mechanisms. The African Court's workshop with stakeholders on women's rights in Africa, for example, was broadly aimed at agenda-setting and not necessarily focused on litigation in the Court. Similarly, regional integration courts, such as the East African Court of Justice, often promote the importance of regional integration in general, rather than "legal integration" as such. In international courts' non-judicial activities, therefore, officials emerge from the strict confines of adjudication and more directly participate in the political, social, and economic arenas of the broader international community. International courts' rulings often have implications in these various areas, but international courts' judicial agency is restricted to the cases it receives, the law it interprets and applies, and so on. With their non-judicial agency, however, these restrictions are removed, and court officials can more freely engage with actors in their legal regimes.

The four approaches, and the analysis of their prevalence across international courts, thus reveals that international courts' non-judicial agency is a vital means through which they transform their delegated mandates into "ways of acting in the world."[2] International courts' judicial agency is still crucial for performing their mandates, but international courts' non-judicial activities are clearly an area for different forms of strategic action, formulated by international judges and other officials. Thus, analyzing international courts' agency for promoting compliance based on their institutional designs, or even their legal doctrines, is likely to omit key means through which international courts aim to strengthen their legal regimes. It could, by extension, lead to dismissing international courts without high levels of litigation and a sizeable body of case law as largely irrelevant. States may design international courts to influence their regimes in particular ways, but international court officials evidently can develop their own strategies for influencing behaviour and promoting compliance.

Rethinking International Courts' Autonomy

In many ways, the dramatic expansion of international courts' approaches for promoting compliance is yet another indication that international courts are, overall, highly autonomous IOs. For example, the case studies of the SADC Tribunal and ICC reveal that, when international courts aim to expand their non-judicial agency and adopt approaches for promoting compliance, it is through their officials' entrepreneurship. In the SADC Tribunal case, court officials first sought to conduct outreach activities and then planned to approach donors, given the Tribunal's resource constraints. The ICC case, furthermore, showed how officials lobbied states for an outreach programme. The other case studies support the general conclusion that entrepreneurship originates from court officials. For example, the EACJ's sensitization programme was the product of discussions between judges and the registrar, and the idea for the ITLOS to conduct

[2] Barnett and Finnemore 2004, 5.

regional workshops and capacity-building activities originated from judges' initiatives within their various organizational committees. In contrast to some IOs, where member states drive changes, international courts' expansion of approaches for promoting compliance is the product of court officials' development of policies and practices.

Still, not all international courts have expanded their approaches, and some courts have developed approaches more than others, so this entrepreneurship is subject to constraints. Thus, building on existing hypotheses regarding IO entrepreneurship and international judicial independence, the logics of consequences and appropriateness were also applied to theorize the constraints on international courts' autonomy and, by extension, officials' entrepreneurship vis-à-vis courts' approaches for promoting compliance. The extensive literature on international judicial independence notes that international judges' decision-making is shaped by a combination of strategic incentives, guided by various constraints from states, and legal norms. International judicial independence is constrained, but international judges are not mere "diplomats in robes,"[3] performing according to their national governments' or powerful states' preferences. As the analysis of international courts' approaches has shown, international judges can adopt expansive legal interpretations to develop judicial mechanisms for promoting compliance, but this is very rare, given the strategic and normative constraints influencing judges' decision-making.

In contrast, international courts' non-judicial realm of activity evidently provides significant opportunities for officials' entrepreneurship and development of approaches for promoting compliance. The analysis of international courts' approaches, after all, showed that international courts primarily expanded their approaches for promoting compliance through their non-judicial agency. External influences on international courts' incentives and norms for their non-judicial agency operate considerably, but not entirely, differently. International court officials' decision-making regarding their non-judicial activities is relatively unconstrained by rules and legal norms. States place minimal rules-based constraints on international courts' non-judicial agency, as these activities are largely absent from their delegation contracts, and unlike

[3] Voeten 2013a, 421; 2014, 560.

international legal standards affecting judicial decision-making, the norms influencing non-judicial decision-making—perhaps loosely relating to efficient administration—are relatively thin. However, just as with their judicial decision-making, states' control over appointments, resources, and delegation contracts can influence international courts' incentives in their non-judcial decision-making and constrain how they develop their agency for promoting compliance. In addition, as international courts can use donors and intermediary actors for their non-judicial activities, these actors may impose constraints on their non-judicial decision-making as well. As international courts insert themselves beyond the international legal community and into the broader international community, particularly through their non-judicial activities, they may be vulnerable to normative constraints from a broader range of actors. Thus, an expanded conception of international courts' agency also expands the range of constraints external actors may impose on international courts.

The case studies elucidated these strategic and normative influences on international courts' decision-making regarding their adoption of approaches for promoting compliance. The SADC Tribunal and ICC cases showed how particular constraints influence officials' decision-making, entrepreneurship, and approaches for promoting compliance. The SADC Tribunal's resource constraints prevented officials from conducting outreach activities, and states' control over appointments and imposition of contractual controls eliminated the Tribunal's agency completely. The ICC case showed how constraints can more subtly influence officials' decision-making. Resource constraints precipitated a procedural change in how judges adjudicate particular cases of noncompliance, and influenced the scale and procedures of the OTP's investigations and prosecutions. Lack of resources also constrained court officials' development of their non-judicial agency for promoting compliance—not so significantly that they have been unable to adopt general approaches, but enough to limit their activities within those approaches (e.g. outreach, advising national judiciaries). The ICC's high reliance on intermediaries also proved to constrain the Court's autonomy in developing its indirect approaches for promoting compliance. Furthermore, the case of the WTO AB seemed to suggest an international courts' position within its broader IO's organizational structure (a general rules-based constraint) can significantly constrain officials' entrepreneurship and development of approaches for promoting compliance.

International Courts' Strategic Challenges and Opportunities in their Regimes

Supported by high levels of autonomy, international courts are dynamic and strategic actors, which address challenges and exploit opportunities to increase their influence and promote greater respect for international law within their regimes. As the case studies showed, international courts respond to their perceived lack of acceptance with socialization strategies, and they seize opportunities for engaging with intermediaries, based on their accessibility. Occasionally, donors' or intermediaries' preferences shape activities, and court officials may learn from or emulate other courts' practices, but their levels of acceptance and accessibility determine their overall tendency to adopt approaches for influencing actors' standards of appropriate behaviour and for engaging intermediaries, respectively.

Acceptance

International courts are responsive to their organizational environments, and signs that they lack acceptance by actors in their legal regimes can prompt entrepreneurial action from court officials. When actors lack awareness of international courts' norms, rules, and procedures, and especially when they openly contest them, international court officials are driven to adopt socialization strategies. Socialization can promote actors' compliance according to the logic of appropriateness—either when actors conform to norms within their community, or when they internalize norms and alter their beliefs and behaviour. International courts can socialize actors through their rulings, but moving beyond adjudication, either by developing themselves or using intermediaries as agents of socialization, can considerably enhance processes of socialization within their legal regimes. In these strategies, international court officials use persuasive argumentation, praise compliance, and shame noncompliance to socialize actors into courts' norms, rules, and procedures.

The case studies revealed considerable variation in court officials' perceptions regarding actors' acceptance of their courts. The ICJ was openly confident in its embeddedness within the international community, legitimacy within the UN system, and ability to secure compliance with its judgments, while officials within newer courts expressed varying levels of apprehension regarding their acceptance. In general, these court officials were concerned by the disparity between their legal authority, as defined by their constitutive treaties, and their *de facto* authority among actors in their legal regimes. Furthermore, officials were conscious that their courts' norms, rules, and procedures are highly technical and easily misunderstood. They perceived they could not address these challenges by relying on their judicial agency alone, and thus they were mobilized to develop themselves as agents of socialization, through their non-judicial agency. Officials recognized the benefits of non-judicial communication for not only providing distinct opportunities for socialization, but also allowing them to reframe their norms, rules, and procedures in less legalistic, more accessible terms to enhance socialization processes among their targets for compliance. The ICC emphasized common "narratives," and the EFTA Court noted the value of academic debate and exchange beyond the adjudicatory process, for instance.

In developing themselves as agents of socialization, international courts are exploiting non-judicial channels of communication and interaction to actively spread their legal norms, rules, and procedures. Officials coordinate these socialization strategies at the organizational level, in response to their courts' apparent lack of acceptance, considering actors' acceptance of courts' norms, rules, and procedures underpins compliance. Partially, this is direct towards professional socialization within the legal community. However, international courts are also aiming to socialize states and other actors in their regimes, and broadly transform traditional conceptions of diplomacy, sovereignty, and the place of law within the international community. Socialization is a long-term process, but it can have enduring influences on actors' beliefs and behaviour, including compliance with international law and courts.

Scholars have noted that there has been only minimal exchange between IR constructivism and international law,[4] so this account of international courts' socialization strategies represents an important interdisciplinary contribution. In general, it highlights a more normative dimension to the judicialization phenomenon and the consequences of delegating authority to international courts. It also can speak to the interaction between "legal" and "non-legal" norms,[5] considering international court officials often feel the need to "translate" legal norms in their strategies of persuasion and social influence, and reframe them in the context of other political and social norms. International judges' direct interaction with actors in their legal regimes also opens up new pathways for the socialization of international judges. Dialogue obviously goes both ways, so it is possible for judges to be socialized by their increased interaction with actors in their legal regimes,[6] and this could raise concerns regarding their autonomy.

Accessibility

Private actor access to international courts has received a significant amount of scholarly attention, focusing on how access rules influence regime dynamics in terms of litigation and enforcement. This study's findings help refine the existing literature's general optimism about international courts with private actor access. The implications of access rules, based on this analysis, are more far-reaching than originally assumed. Generally, scholars have argued that granting private actors access to international courts promotes litigation, rulings, and increased compliance, as private litigants are likely to initiate more disputes than states. But access rules can have even broader implications, particularly for international court officials' reading of their mandates.

[4] Brunnée and Toope 2013, 138.
[5] E.g. Finnemore 1999.
[6] As discussed in Chapter 2, the literature on domestic judges recognizes the potential for "on-the-job" socialization, though it focuses on socialization through their judicial activities (e.g. Carp and Wheeler 1972).

Essentially, when states loosen their grip on international courts and increase accessibility, they alter international court officials' incentives and norms towards openness and engagement in their legal regimes, providing them distinct opportunities for influence. Non-state actors' access to adjudication in international courts creates strategic opportunities for interaction, and courts' rules often embed particular actors (e.g. national courts) as intermediaries for enforcement. But international court officials can also interpret access rules as reflecting states' intentions for the overall inclusivity of international courts' legal regimes. Thus, accessibility also has a normative dimension, which can influence the appropriateness of particular policies and practices, and legitimize officials' greater engagement with their "stakeholders." This opens up international courts and increases their ability to engage with intermediaries for promoting compliance. In the case studies of the WTO AB, EFTA Court, IACtHR, and AfCHPR, their levels of accessibility clearly influenced officials' decision-making regarding their interactions with intermediaries, where higher levels of accessibility promoted wider engagement with potential intermediaries. Accessibility also seemed to influence the range of intermediaries international courts engaged, where the courts with lower accessibility (the EFTA Court and IACtHR) tended to focus on intermediaries within the legal community, while the AfCHPR also focused on mobilizing politically-active intermediaries for promoting compliance.

In addition to contributing to the literature on access to international courts, this study's analysis of international courts' use of intermediaries contributes to the broader IR literature on IOs' governance through intermediaries.[7] The existing studies on IO "orchestration" of intermediaries, for example, devote little attention to the conditions that promote IO entrepreneurship in using intermediaries and instead focus on state-led orchestration efforts.[8] It appears that international courts are a unique category of highly autonomous and entrepreneurial IOs, which systematically initiate orchestration efforts in their regimes. The ICC is apparently the only case where states have advocated adopting a policy involving intermediaries (i.e.

[7] E.g. Abbott and Snidal 2010; Abbott et al. 2015.
[8] Abbott et al. 2015, 375.

outreach through civil society organizations), which officials ultimately resisted. Rather, seemingly in contrast to the broader universe of IOs, international court officials drive engagement with intermediaries, in pursuit of encouraging compliance in their legal regimes. The key enabling condition for this activity—their accessibility—helps refine the existing literature's recognition of the general role of state oversight in deterring IOs' entrepreneurship in using intermediaries. Specifically, states' seem to deter international courts' engagement with intermediaries through restrictive access rules, while permissive access rules encourage courts to develop and mobilize intermediaries.

This also refines our understanding of the "opening up" of IOs in recent years,[9] alongside demands for increased transparency, accountability, and democratic legitimacy in global governance. With international adjudication, and its rules of confidentiality and closed judicial deliberations, these ideals can only be applied so far. Transparency and accountability, for example, could risk compromising judicial independence. International courts can make their judicial proceedings more accessible to observers, and many have begun streaming their public hearings online, but this primarily increases transparency. International courts, however, are using their non-judicial agency and indirect approaches for promoting compliance to address issues of accountability and legitimacy. They can explain and educate actors on their rules and procedures, and frame their mandates based on the public interest and in terms of access to justice.[10] Supported by their accessibility, they can draw in a range of actors, including civil society stakeholders, into their activities. While there are charges that international courts enhance the democratic deficit of international organizations,[11] international courts' non-judicial communication to and interaction with actors in their legal regimes is oriented towards addressing these issues. International court officials are capitalizing on this broad trend in global governance towards transparency and stakeholder participation—but within the limits of how states have designed their levels of accessibility.

[9] E.g. Jönsson and Tallberg 2010; Tallberg et al. 2013.
[10] von Bogdandy and Venzke (2012a; 2012b; 2013) argue that international courts, through their judgments, exercise public authority; they can bolster this role, perhaps more effectively, through their non-judicial agency.
[11] Voeten 2014, 559.

Opportunities for Further Comparative Research Across International Courts

One key objective of this study was to address the need for more comparative, systematic research on international courts. Especially with their post-Cold War proliferation, international courts are operating in new issue areas and contexts, which provide opportunities for both testing the scope of existing theories and developing new ones. Given the predominant focus on adjudication, comparative researchers have been largely dismissive of many of the courts that have low rates of litigation and have yet to establish a substantial body of case law.[12] As a consequence, scholars have developed most of their theories of international courts based on the older and/or European international courts.[13] With its broader focus, this study has viewed these under-studied international courts as an important source of variation, and means of refining our understanding of and explanations for international courts' agency. It is clear that looking beyond international courts with high litigation rates and developed jurisprudence captures distinct dimensions of the judicialization phenomenon, and how and why international courts have variable agency in their legal regimes.

Researchers interested in international courts' broader agency could build on this study's approach in several directions. While it was an empirically demanding task, its analysis of the law, policies, and practices across all permanent operational international courts pointed to fruitful areas for further comparative research. The breadth of the analysis of international courts' approaches for promoting compliance was useful for elucidating patterns of variation in their overarching approaches. The "snapshot" approach, contrasting approaches that are designed from the outset with those reflected in international courts' recent activities, however, was a pragmatic choice. Time could very well factor into the development (and abandonment) of approaches, and future researchers could tackle this empirical challenge.

[12] Exceptions include Terris, Romano, and Swigart 2007; Alter 2014. In contrast, Alter and Helfer (2009; 2010) explicitly justify their selection of the ATJ (for comparison against the ECJ), in part, because it is "the third most active international court" in the world, in terms of litigation.
[13] A classic example is Helfer and Slaughter's theory of effective supranational adjudication, based on the ECJ and ECtHR. A more recent example is Shany's (2014) study that assesses the effectiveness of international courts relies on case studies of the ICJ, WTO DSU, ICTY, ICTR, ECtHR, and ECJ. Though it has impressive empirical breadth, and claims to reflect "the diversity of the field of international adjudication," it also reflects this bias towards selecting cases of international courts with larger bodies of case law.

Though particular policies and practices were coded according to the approaches, the data reveal that there can be variation within these approaches, in terms of specific kinds of activities. For example, a few African regional courts conduct "sensitization" activities, but they may pursue the same overarching objective of promoting compliance through different tactics. The ECCJ, for example, conducts sensitization "through the instrumentality of the press and media" and external hearings, while the AfCHPR focuses on direct interaction through seminars and workshops with a wide range of stakeholders.[14] Some of these nuances in international courts' policies and practices within particular approaches were drawn out through the case studies, but future researchers could do this more systematically. They could, of course, also investigate these nuances in greater depth, beyond the policy level, and examine the variation in how international courts implement their policies in practice and how actors in their regimes receive them.

Further comparative research could also refine this study's three core variables for explaining international court officials' incentives and norms in their decision-making and entrepreneurship. The case studies elucidated the framework's theorized mechanisms, but further comparative empirical research through interviewing and perhaps surveying court officials, participant observation, and other methods would develop and test these propositions regarding international court officials' decision-making and entrepreneurship. For example, each constraint identified in Chapter 2 could be more systematically investigated across international courts. Some elements of the three variables (e.g. donor and intermediary influence) are less familiar than others (e.g. access rules), and their detailed study across international courts could yield important insights into international courts' incentives and norms. More generally, as acceptance and accessibility highlighted the importance of court officials' perceptions of their environment and mandates, respectively, qualitative research on officials' perceptions seems a fruitful area for further comparative empirical research. In general, the non-judicial area of international courts' activity is relatively more accessible, facilitating data collection and supporting comparative empirical approaches.

[14] See Appendix 1.

Evaluating Effectiveness

Related to the need for further empirical research, and directly flowing from international courts' expansion of approaches for promoting compliance, is the question of whether these efforts are effective in promoting compliance or, perhaps, achieving other objectives. This study focused on detailing international courts' strategic behaviour and left aside questions of whether international courts' strategies succeed in their aims and actually induce behavioural changes—either in the narrow sense of compliance with particular judgments or rules, or in the broader sense of promoting an international rule of law.

As Yuval Shany notes, states have created international courts without first undertaking any serious impact assessment, with negotiators seeming to believe that an increase in the number and power of international courts would strengthen international law and improve international relations.[15] International court officials, in their expansion of non-judicial activities, have apparently followed this logic and largely evaded questions of effectiveness. Once officials formulate a strategy, they appear to adhere to it with little interest in (or perhaps expertise and funding for) monitoring and evaluating the effectiveness of that strategy. When pressed on why they continue with these strategies, they provide anecdotal evidence that, in their minds, justifies those activities.[16] The ICC's Outreach Programme is perhaps an exception, where officials collect data and aim to evaluate the results of their interventions. For example, they track the kinds of questions participants ask over time to see if their awareness and understanding improves.[17] Still, the vast majority of policies and practices international courts adopt through their non-judicial agency are based on untested assumptions about their effectiveness. There are, however, clear indications that many of these strategies are ineffective, at least in the short term. For example, despite the African Court's promotional activities and workshops to "sensitize" NHRIs, a recent survey of NHRI officials found that most officials believe they have not

[15] Shany 2014, 3.
[16] Interview with Robert Eno, Registrar, AfCHPR, 4 February 2014; Interview with Claudia Perdomo, Head of Outreach Unit, Registry, ICC, 4 June 2014; Interview with Joachim König, Director, IFLOS, 11 September 2014; Interview with John Ruhangisa, Registrar, EACJ, 27 January 2014.
[17] Interview, Perdomo.

engaged with the Court and have no role to play in monitoring or assisting in implementing the Court's decisions at the national level.[18]

As discussed earlier, scholars have devoted considerable attention to the effects of international courts' judicial mechanisms (e.g. sanctions, compensation, and enforcement through national courts) on behavioural outcomes, with increasing methodological sophistication, but this study has shown that the impacts of international courts' strategies beyond adjudication also warrant study. Research from a range of disciplinary perspectives, including political science, law, sociology, and anthropology, would produce valuable insights. Studies of the effectiveness of international courts' approaches would need to grapple with the challenges of establishing causality, and differentiating between motivations for action among international courts' intermediaries and targets for compliance. They would also need to address longstanding debates on measuring effectiveness.[19] Given the diversity of international courts' approaches for promoting compliance—some targeted to generating litigation, and others more oriented towards appreciation for international law—the effects of these approaches could be evaluated on their own terms, or compared across a single metric to evaluate their relative effectiveness, for example.

Normative and Ethical Issues in Moving Beyond Adjudication

International courts' expansion of approaches for promoting compliance also raises normative and ethical questions. Judges' engagement with actors in their legal regimes beyond adjudication can challenge relatively settled legal norms regarding judicial conduct. Norms of impartiality and confidentiality may be relatively easily translated to non-judicial forums, but there are also broader concerns about the international courts publicizing and marketing themselves to generate "demand" for their services, according to "corporate," expansionist logic. For example, EACJ

[18] Network of African National Human Rights Institutions, "What Do National Human Rights Institutions (NHRIs) Know about the African Court on Human and Peoples' Rights (Court)? How Could NHRIs Support Effective Implementation of the Decisions by the Court?," 2015.
[19] For a review overview of these debates vis-à-vis international courts, see, e.g., Shany 2012; 2014.

officials, when developing their sensitization programme, were mindful of "the need to avoid the perception of touting for cases or in any way compromising [judges'] professional integrity, independence and neutrality."[20] It is also debatable whether international courts should be extending their reach beyond adjudication and into perhaps more political areas of their regimes. While the division between law and politics is never absolute, through their non-judicial activities, international courts can step much further into the realm of politics.

With the recent proliferation of international courts, the scale of their expansion of activities beyond adjudication is unprecedented, and the standards of appropriateness for these activities are largely undefined. However, new norms of international judicial behaviour outside of the judicial realm of activity could emerge, driven by court officials themselves, the international legal community, or perhaps the broader international community. In the Brandeis Institute for International Judges, for instance, judges have debated the appropriateness of engaging with national courts, civil society, and the media.[21] While there is currently no normative consensus, norms regulating international court behaviour beyond adjudication could emerge in the future.

There are more general normative questions regarding the distributional implications of international courts' non-judicial interventions in their regimes. Do these efforts mitigate or exacerbate inequalities of access to justice, resources, expertise, etc? Capacity-building obviously aims to mitigate inequalities, but given international courts' limitations in these initiatives, they may feed into patterns of marginalization and inequality. For example, with international courts' outreach and efforts towards legal awareness in Africa, they typically hold a single session in the state capital, with actors already engaged in legal and political processes. This approach, however, perpetuates the marginalization of rural communities, which likely have greater needs for capacity-building and access to justice.[22] In addition, in selecting and mobilizing their intermediaries, international courts might privilege the well-resourced, Western

[20] EACJ, "Tenth Year Report," 2011, 20.
[21] E.g. Brandeis Institute for International Judges 2012.
[22] E.g. Cotula 2007.

NGOs over more local organizations. With greater attention to international courts' non-judicial activities, these questions become highly salient and also feed into questions of effectiveness.

There is also the overarching question of who bears responsibility for promoting a more lawful international order, assuming that is desirable. International courts' strategic expansion of their non-judicial activities can be considered a self-help effort for promoting the relevance of law and courts in their regimes and the international community more broadly. In many instances, the enthusiasm with which states create international courts dissipates once cooperation proceeds, and legal regimes, and the courts within them, stagnate. States, for example, do not take steps to implement international law domestically, politically enforce international courts' decisions, educate potential litigants in their jurisdictions, and so on. Or, as the SADC Tribunal case indicates, they take dramatic measures to restrict the role of law and access to justice. Equally, international courts' associated commissions, national courts, and civil society actors may allow legal regimes to deteriorate. International courts' expansion of approaches for promoting compliance shows that many international court officials feel a sense of responsibility for sustaining their legal regimes and the relevance of international law more generally, and take extraordinary measures to fulfil their perceived responsibility.

However, whether international courts should be solely bearing this responsibility, and whether other actors are failing in their responsibilities, is an open question. The distribution of capacities among different actors may influence prescriptions and evaluations of responsibility. With democracy and rule of law promotion initiatives, actors outside international courts' legal regimes may also have a responsibility to support international courts' mandates, as indicated by donors' involvement in international courts in developing regions. As one international judge cautioned, international courts are created to serve the international community, and "if that community comes to the conclusion that the institution does not serve its purpose, then, in the long term, that would be the end of it."[23] In many ways, international courts' approaches for promoting compliance aim to ensure that the international community will never draw such a

[23] BIIJ, "The International Rule of Law in a Human Rights Era," 2013, 47.

conclusion, but it is questionable whether international courts should be moving beyond adjudication to bear this responsibility, or whether it should primarily fall on other actors.

While this study raises numerous questions, one conclusion is clear. International courts are multidimensional IOs, which first and foremost interpret and apply international law to adjudicate disputes, but also develop considerable activities beyond adjudication and in line with their broad mandate of promoting compliance. States may have created international courts with particular intentions, but international courts, as highly autonomous agents, have been acquiring new areas of activity and potential influence in the international system. That IOs can exceed their defined mandates is well known. However, this study has shown that international courts are quite unique in the autonomy with which they acquire these additional activities, the challenges they address, and the opportunities they exploit. Thus, it has elucidated a significant, and largely unintended, consequence of judicialization and states' delegation of authority to international courts—the rise of international courts as actors in their own right, with varied attempts at influence beyond adjudication.

Appendix 1

The Four Approaches Across Twenty-Three International Courts

This appendix details the dataset of approaches for promoting compliance across all twenty-three permanent, operational international courts. It describes the data sources that contributed to the assessment of international courts' approaches for promoting compliance, as well as the treaty provisions, case law, policies, and practices underpinning courts' various approaches. The results of this analysis are discussed in Chapter 1 and summarized in Table 1.2.

Data sources. International courts' founding treaties, case law, reports, and websites (including press releases, news items, and descriptions of programmes) were manually coded. These multiple sources were combined to capture as much publicly available data as practically possible across twenty-three international courts. As discussed in the Introduction, international courts' reports and websites, though the best available sources for data on courts' non-judicial activities,[1] might have underreporting biases and therefore underestimate courts' approaches for promoting compliance. Nevertheless, these sources reflect the full scope of data on courts' activities that courts release to the public, and they were analyzed for a two-year period to create a "snapshot" of the approaches courts have developed over time,[2] in contrast with those designed in their founding treaties.

There was some variation in the availability of sources across international courts (Table 1). Sources relevant to international courts' judicial activities (i.e., treaties, case law) were consistently available. However, the availability of data sources that are particularly relevant to international courts' non-judicial activities (i.e., reports, websites) was more variable. As there is

[1] For each international court, a basic internet search was conducted to ensure that there were no non-judicial activities that were absent from courts' reports and websites, but reported elsewhere. In all cases, no additional data that would alter the case's coding was found. In addition, in the six courts were interviews were conducted, the interviews did not reveal any approaches for promoting compliance beyond those indicated by the data available in courts' treaties, case law, reports, and websites.
[2] Typically, reports from 2013-2014 were coded, but in some cases, the two most recent reports available would cover 2011-2012.

generally overlap in the activities included in courts' reports and websites, the coding results would only be significantly affected if neither reports nor detailed websites[3] were available for a particular court. As Table 1 indicates, of the twenty-three courts, fourteen provided reports, and nineteen had detailed websites. Thus, availability of sources of data on international courts' non-judicial activities (and therefore potential approaches that rely on non-judicial activities) was only significantly limited in four of the twenty-three courts (the CEMACCJ, ENET, OHADACJ, and WAEMUCJ). Therefore, the availability of data sources only minimally affected the assessment of the overall prevalence of approaches for promoting compliance and the variation in approaches detailed in Table 1.2 in Chapter 1.

Coding. Table 2 indicates how the theorized approaches for promoting compliance were operationalized in the coding. Codes were directly derived from the theorized mechanisms underpinning the four approaches for promoting compliance, as outlined in Chapter 1. The text of international courts' treaties, case law,[4] reports, and websites were manually coded for the four approaches. Coding the legal sources (treaties and case law) concerning courts' judicial activities was relatively straightforward compared to coding the non-legal sources (reports and websites) covering their non-judicial activities. These legal documents were coded for designed approaches, based on courts' treaties, and developed approaches, based on courts' case law. A treaty provision or doctrine was coded if it enabled the court to influence their targets or intermediaries for compliance according to the mechanisms theorized in the four approaches. Courts' reports and websites similarly were coded when they referenced a policy or practice that corresponded to the theorized mechanisms in the four approaches for promoting compliance. The description of the reasoning behind and substantive content of the policy or practice determined its categorization as a particular approach. A single treaty provision, doctrine, policy, or practice

[3] For a website to be considered "detailed," it would need to provide information on the court's general activities (e.g. news/events, programmes).
[4] The courts with substantial bodies of case law were coded based on accounts of courts' jurisprudence in secondary literature. For courts with fewer cases and without much scholarly attention, cases were directly analyzed.

could be coded as multiple approaches, depending on its complexity and the mechanisms of influence underpinning it.

Table 1. Data Availability Across International Courts

	Court Treaty	Court Rules	Reports	Website
AfCHPR	■	■	■	■
ATJ	■	■	■	■
BCJ	■	■		■
CACJ	■	■		■
CEMACCJ	■	■		
CCJ	■	■	■	■
COMESACJ	■	■	■	■
EACJ	■	■	■	■
ECtHR	■	■	■	■
ECCIS	■	■		■
ECCJ	■	■	■	■
ECJ	■	■	■	■
EEUCJ	■	■		■
EFTAC	■	■	■	■
ENET	■	■		
IACtHR	■	■	■	■
ICC	■	■	■	■
ICJ	■	■	■	■
ITLOS	■	■	■	■
MPRC	■	■		■
OHADACJ	■	■		
WAEMUCJ	■	■		
WTO AB	■	■	■	■

Table 2. Codes for Approaches for Promoting Compliance

Approach	Code	Sources/Examples
Directly Influencing Consequences	Authorizing sanctions for noncompliance	Treaty: judges may authorize injured party to impose sanctions for noncompliance
	Ordering costs for noncompliance	Case law: doctrine of state liability for noncompliance
		Treaty: judges may order compensation to injured party
Indirectly Influencing Consequences	Implementing law/decisions through domestic actors	Treaty: national courts are obligated to refer cases and/or implement decisions
		Case law: doctrine obligates national courts to implement decisions
		Policies/Practices: meetings with national judges encouraging case referrals and/or implementation of rulings
	Mobilizing litigants	Policies/Practices: programmes training lawyers in court's law/procedures
	Mobilizing substate actors against noncompliance	Policies/Practices: publicizing noncompliance among substate compliance constituencies
	Promoting reputational costs for noncompliance	Policies/Practices: publicizing noncompliance among cooperation partners
	Promoting enforcement	Policies/Practices: pressuring political bodies to enforce decisions
Directly Influencing Appropriateness	Persuading targets to comply	Policies/Practices: workshops with governmental officials on appropriateness of adjudication
	Praising compliance or shaming noncompliance of targets within community	Policies/Practices: statements of praise/shame for targets in associated political bodies
Indirectly Influencing Appropriateness	Promoting norm advocacy/legitimization	Treaty: collaboration with research institute to disseminate norms, rules, procedures
		Policies/Practices: coordination of NGO advocacy for court's legitimacy and actors' obligation to comply

1. **African Court on Human and Peoples' Rights (AfCHPR) (2004)**
    a. Key data sources
        i. *Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights* (1998).
        ii. Formal annual reports available (when approved by the AU Assembly, so there are gaps when this approval is delayed).
        iii. Detailed website available at http://en.african-court.org/.
    b. Direct/Consequences
        i. Ordering costs for noncompliance
            1. Article 27: when they find noncompliance, judges can order compensation and reparations.
    c. Indirect/Consequences
        i. Promoting reputational costs for noncompliance
            1. Article 31: "The Court shall submit to each regular session of the Assembly, a report on its work during the previous year. The report shall specify, in particular, the cases in which a State has not complied with the Court's judgment."
            2. Increased reporting, especially on noncompliance
                a. The Court has intentionally increased its reporting to the AU Assembly/Executive Council to attempt to mobilize the AU vis-à-vis state (i.e., Libya's) noncompliance with judgments (AfCHPR 2015).
        ii. Implementing law/decisions through domestic actors
            1. Institutionalized "Continental Judicial Dialogue" (AfCHPR 2015)
                a. Proposed by AfCHPR for approval by the AU, "a continental judicial dialogue will go a long way to strengthen the relationships between the Court and national and sub-regional judiciaries, as well as other quasi-judicial bodies and human rights stakeholders on the continent, and facilitate the dissemination and application of the judgments of the Court" (AfCHPR 2015, 32).
        iii. Mobilizing litigants
            1. Engagement between the Court and the African Commission on Human and Peoples' Rights
                a. "strengthening their working relationship in a bid to enhance the promotion and protection of human rights on the continent" (AfCHPR 2015, 30).
            2. Legal Assistance Fund
                a. Proposed by the AfCHPR for approval by the AU, the Legal Assistance Fund "is intended to provide indigent applicants with effective access to the Court and to present their cases in a structured manner that will provide the Court with cogent information to make quality decisions" (AfCHPR 2015, 32).
        iv. Promoting enforcement
            1. "Concrete Reporting and Monitoring Mechanism for the Court" (AfCHPR 2015)
                a. Proposed by the AfCHPR for approval by the AU, the mechanism "will ensure proper monitoring of compliance with the judgments of the Court" (AfCHPR 2015, 32).
        v. Mobilizing litigants; mobilizing substate actors
            1. Information dissemination through sensitization programme
                a. Disseminates information to African states, potential litigants before the Court, and civil society actors that can generate costs for noncompliant governments.
                b. "The aim of the sensitization visits was to raise public awareness among human rights stakeholders" (AfCHPR 2015, 22).

d. Direct/Appropriateness
   i. Sensitization programme aims to persuade governments to join Court, make declarations allowing NGOs and individual direct access, and support the Court's work (AfCHPR 2015, 22).
   ii. Letters to Libya to comply (AfCHPR 2015).
e. Indirect/Appropriateness
   i. Sensitization programme also aims to mobilize national judiciaries, civil society actors, and the media to persuade their states to ratify the Court's Protocol and make special declarations allowing individual and NGO access.
   ii. Relations with African Court Coalition for advocacy in support of African Court.

2. Andean Tribunal of Justice (ATJ) (1984)

a. Key data sources
   i. *Treaty Creating the Court of Justice of the Cartagena Agreement* (1979); *Trujillo Protocol* (1996); *Cochabamba Protocol* (1996).
   ii. Formal annual reports available.
   iii. Detailed website available at http://www.tribunalandino.org.ec/sitetjca1/index.php
b. Direct/Consequences
   i. Authorizing sanctions for noncompliance
      1. Article 27: When the Court decides that a state has not complied, and the state does not execute the judgment within 90 days after notification, the Court, after hearing the opinion of the General Secretariat, "shall establish the limits within which the claimant country or any other Member Country may restrict or suspend, in whole or in part, the benefits obtained by the Member Country at fault under the Cartagena Agreement." If these measures "worsen the situation to be resolved or fail to be effective in that regard" the Court "may order the adoption of other measures," as stipulated by the Court's Organization Law.
c. Indirect/Consequences
   i. Implementing law/decisions through domestic actors
      1. Article 29: National courts of last instance are obligated to request preliminary rulings and implement them.
d. Indirect/Appropriateness
   i. Promoting legitimization
      1. "Academic Activities, Collaboration, and Institutional Strengthening" (ATJ 2010, 6)
         a. "to flag the existing of the Court of the Andean Community, its competence, its structure, and its invaluable work within the Andean Community and Latin American integration… and to show that Latin American integration can achieve social justice and quality of life for the inhabitants of the subregion."

3. Benelux Court of Justice (BCJ) (1974)

a. Key data sources
   i. *Treaty Concerning the Establishment and the Statute of a Benelux Court of Justice* (1965)
   ii. No formal reports available.
   iii. Detailed website available at http://www.courbeneluxhof.be/.
b. Indirect/Consequences
   i. Implementing law/decisions through domestic actors
      1. Article 6: In BENELUX states where national courts' decisions are not subject to appeal under national law, national courts are obliged to submit questions of BENELUX law to the Court. Otherwise, it is optional. Article 7: National courts are then bound by the Court's interpretation.

4. **Central American Court of Justice (CACJ) (1992)**
    a. Key data sources
        i. *Protocol of Tegucigalpa* (1991), Article 12; *Convention of the Statute of the Central American Court of Justice* (1992).
        ii. No formal reports available.
        iii. Detailed website available at http://portal.ccj.org.ni/ccj2/.
    b. Indirect/Consequences
        i. Implementing law/decisions through domestic actors
            1. Statute, Chapter II, Article 22: The Court can adjudicate cases referred by national judges.
        ii. Implementing law/decisions through domestic actors; mobilizing litigants
            1. Seminars on "Central American Community Law"[5]
                a. E.g. Seminars have "the aim of publicizing the work and the powers of the Court, for judges and other officials of the judiciary, prosecutors and guarantors of the application of Community law." Seminars also focus on "the applicability and internalization" of Central American Community law.
    c. Direct/Appropriateness
        i. Persuading targets to comply
            1. Seminars on "Central American Community Law"
                a. Target government officials that are relevant to compliance and promote "internalization" of Community Law, which "is essential to continue to build peace, democracy, development, and progress" in Central America.

5. **Caribbean Court of Justice (CCJ) (2003)**
    a. Key data sources
        i. *Agreement Establishing the Caribbean Court of Justice*
        ii. Biannual reports available.
        iii. Detailed website available at http://www.caribbeancourtofjustice.org/.
    b. Direct/Consequences
        i. Ordering costs for noncompliance
            1. Article XXV(6): In appeal cases, the Court has "all the jurisdiction and powers" of the Contracting Party's national court of appeals. Judgments are therefore directly enforced in national systems.
    c. Indirect/Consequences
        i. Mobilizing litigants
            1. Caribbean Academy for Law and Court Administration (CALCA)
                a. E.g. "The Caribbean Academy for Law and Court Administration (CALCA) is the educational arm of the Caribbean Court of Justice and administered by a Management Committee under the ultimate authority of the President of the Court."[6]
                b. The Court views the Moot Competition as an excellent medium and opportunity to foster an interest in and familiarisation with the principles of the Revised Treaty of Chaguaramas among existing and upcoming regional legal practitioners" (CCJ 2013, 22).
                    i. For legal departments of universities within CARICOM, based on CCJ's "commitment to the budding attorneys in the region… By making the Treaty the centerpiece of its annual moot, the Court has found an excellent, highly visible and recognisable avenue to imprint

[5] Central American Court of Justice, "Corte Centroamericana de Justicia, Noticias," accessed April 17, 2016, http://portal.ccj.org.ni/CCJ2/Default.aspx?tabid=89.
[6] Caribbean Court of Justice, "About CALCA, Caribbean Association for Law and Court Administration," accessed April 17, 2016, http://www.calca-ccj.org/about-calca.

the rule of law in the eyes and hearts of the future attorneys of the region" (CCJ 2013, 15).

2. Website
    a. Main objective: "provide a forum for the efficient and effective dissemination of information about the CCJ to its customers, thereby facilitating greater customer awareness of the roles and functions of the Court" (CCJ 2013, 32).

ii. Implementing law/decisions through domestic actors
1. Conference of Heads of Judiciary and Chief Justices for justice sector reform in CARICOM
    a. Focuses on "a harmonized regional approach to justice sector reform" with the CCJ as the agency "overseeing the planning, coordination and execution of the initiative" (CCJ 2013, 35-36).

d. Direct/Appropriateness
i. Persuading targets to comply
1. CCJ Symposia
    a. "Primary Objective: Positive Dialogue to Promote Accession to the Caribbean Court of Justice"[7]

e. Indirect/Appropriatness
i. Promoting norm advocacy
1. CALCA
    a. E.g. "To provide advanced tutelage in International Law so as to achieve and maintain a high level of awareness of, and advocacy and passion for, regional integration law and Caribbean jurisprudence."[8]

ii. Promoting legitimization
1. Public education activities
    a. To ensure "the people of the region are duly informed of the Court's operations and activities; the public perceives the Court as independent, fair and impartial; public trust and confidence are engendered and maintained" (CCJ 2013, 30).
    b. Includes "public education visits to CARICOM countries, visits and tours of the Court's headquarters by students, public and private sector organisations, media and staff from other CARICOM judiciaries" (CCJ 2013, 30).

6. Central African Monetary Community Court of Justice (CEMACCJ) (2000)

a. Key data sources
i. *Convention regissant la Cour de Justice de la C.E.M.A.C.* (1996)
ii. No formal reports available.
iii. No independent website; merely page within Commission's website: http://www.cemac.int/service/la-cour-de-justice-de-la-cemac.

b. Direct/Consequences
i. Ordering costs for noncompliance
1. Article 20: the Court can award damages.

c. Indirect/Consequences
i. Implementing law/decisions through domestic actors
1. Article 17: National courts can, but are not required to, refer cases involving questions of CEMAC law to the Court.
2. Article 18: Preliminary rulings have direct effect.

[7] E.g. Caribbean Court of Justice, "CCJ Symposium: Advancing the Case for Regionalism and Indigenous Jurisprudence," 2015, http://www.caribbeancourtofjustice.org/wp-content/uploads/2015/01/CCJ-Symposium-Advancing-the-Case-for-Regionalism-and-Indigenous-Jurisprudence.pdf.

[8] Caribbean Court of Justice, "About CALCA."

7. **Common Market of Eastern and Southern Africa Court of Justice (COMESACJ) (1998)**
   a. Key data sources
      i. *Common Market for Eastern and Southern Africa Treaty* (1994), Article 7
      ii. No independent reports. Included in COMESA Annual Reports.
      iii. Detailed website available at http://comesacourt.org/.
   b. Direct/Consequences
      i. Authorizing sanctions for noncompliance
         1. Article 34(4): If a party does not implement a ruling, the Court can authorize sanctions.
   c. Indirect/Consequences
      i. Implementing law/decisions through domestic actors
         1. Article 30: National courts are obligated to seek preliminary rulings when they receive cases involving questions of COMESA law.
      ii. Mobilizing litigants
         1. Publicity seminars
            a. The Court's publicity seminars aim to "increase the volume of cases referred to the Court for resolution."[9]
            b. "The Court's publicity seminars sought to undertake serious and in-depth dialogue with Member States and court users concerning the existence and functions of the court." The seminars include "members of the national judiciary, law societies, Bar associations, chambers of commerce and industry, the private sector, arbitration and reconciliation agencies, the diplomatic community and academia." They aim to address "the general lack of knowledge about the functions of the Court, Jurisdiction and commencement of proceedings in the COMESA Court of Justice" (COMESA 2012, 14).
   d. Direct/Appropriateness
      i. Persuading targets to comply
         1. Publicity seminars include "serious and in-depth dialogue with Member States…concerning the existence and functions of the court" (COMESA 2012, 14).
   e. Indirect/Appropriateness
      i. Promoting norm advocacy
         1. Publicity seminars include wide range of stakeholders that can advocate for compliance (e.g. academia, bar associations).

8. **East African Court of Justice (EACJ) (2001/2007)**
   a. Key data sources
      i. *Treaty for the Establishment of the East African Community*, Chapter 8 (1999/2007).
      ii. Annual reports submitted to the EAC; summaries included in EAC meeting reports.
      iii. Detailed website available at http://eacj.org/.
   b. Direct/Consequences
      i. Ordering costs for noncompliance
         1. Rule 69: Orders "specify clearly the relief granted."
   c. Indirect/Consequences
      i. Implementing law/decisions through domestic actors
         1. Article 34: National courts are obligated to request preliminary rulings from the EACJ "if it considers that a ruling on the question is necessary to enable it to give judgment" and then implement that ruling.

[9] COMESA Court of Justice, "Court of Justice Meets," 2014, http://www.comesa.int/index.php?option=com_content&amp%3Bview=article&amp%3Bid=1142%3Acourt-of-justice-meets&amp%3Bcatid=5%3Alatest-.

2. Sensitization workshops including national court judges, and members of civil society organizations, the private sector, academia, legal institutions, and the media.
    a. E.g. “East African Court of Justice Workshop for the Judges of the National Courts and the Civil Society Organizations on the role of the Court in the East African Community integration” aimed at “increasing awareness to the public to ensure the East Africans enjoy the benefits of the regional integration through adherence to justice, rule of law and fundamental rights and freedoms through the interpretation and application of and compliance with the East African law.”[10]

ii. Mobilizing litigants
1. Reduction of fees for filing cases
    a. “parties need not pay any fee at the time of filing the cases in the East African Court of Justice. This is the practice in all international and regional courts and the EACJ by adopting it embraces the spirit of bringing justice near to the people” (EACJ 2013, 44).

d. Direct/Appropriateness
i. Persuading targets to comply
1. Sensitization to “proactively influence a positive shift in [states’] mindset… concerning the role and place of the Court” (East African Court of Justice 2010, 19)
2. Cooperation with states for sub-registries (EACJ 2013, 44).

e. Indirect/Appropriateness
i. Promoting norm advocacy
1. Sensitization workshops to increase appreciation of the Court among all stakeholders
    a. E.g. “encouraged everyone to advocate for the Court in the Region”[11]

9. European Court of Human Rights (ECtHR) (1952/1998)

a. Key data sources
i. *European Convention on Human Rights*, Section II.
ii. Formal annual reports available.
iii. Detailed website available at http://www.echr.coe.int/.

b. Direct/Consequences
i. Ordering costs for noncompliance
1. Article 41: For noncompliance, the Court can “afford just satisfaction” to the applicant.

c. Indirect/Consequences
i. Implementing law/decisions through domestic actors
1. Training Unit in Registry “to bring the Convention closer to home” (ECtHR 2014, 69).
    a. Training “judges and other legal professionals in specific countries” (ECtHR 2014, 73).
    b. Targeted training programmes for magistrates and prosecutors (ECtHR 2014, 73).
2. Meetings with the Supreme Courts of member states (ECtHR 2014); “Dialogue between Judges” annual seminars.[12]

---

[10] East African Court of Justice, “EACJ Workshop for Judges of the National Courts & Civil Society Workshop Concludes,” September 26, 2014, http://eacj.org/?p=2580.

[11] Ibid.

[12] European Court of Human Rights, “Dialogue between Judges,” accessed April 17, 2016, http://www.echr.coe.int/Pages/home.aspx?p=court/events&c=#n14338512935024058350598_pointer.

ii. Promoting enforcement
    1. Article 46: the Court can refer cases of noncompliance to the Committee of Ministers “for consideration of the measures to be taken.”

d. Indirect/Appropriateness
    i. Promoting legitimization
        1. General outreach to public (e.g. website, social media, public relations materials) (ECtHR 2014, 74-75).
            a. “A campaign to make the target group aware of these new conditions was launched as soon as Rule 47 came into force” (ECtHR 2014, 74).
        2. Seminars and meetings at the Court on topics in human rights law[13]

10. Economic Court of the Commonwealth of Independent States (ECCIS) (1991)

a. Key data sources
    i. *Charter of the Commonwealth of Independent States*, Article 32
    ii. No formal reports available.
    iii. Detailed website available at: http://courtcis.org/.
b. Indirect/Consequences
    i. Mobilizing litigants
        1. Cooperation with the CIS Executive Committee
            a. The CIS Executive Committee “initiate[s] the largest number of cases considered by the Economic Court.”[14]
c. Direct/Appropriateness
    i. Persuading targets to comply
        1. “An important component of the Economic Court is the interaction with the States members of the Commonwealth of Independent States, representing their senior officials, state bodies and organizations.”[15]
        2. “Co-operation with the judicial authorities of CIS member states is a special and very important activity of the Economic Court and carried out both on the basis of relevant agreements, and through continuous interaction on various issues.”[16]

11. Economic Community of West African States Court of Justice (ECCJ) (2001/2005)

a. Key data sources
    i. *Revised Treaty of the Economic Community of West African States (ECOWAS)* (1993), Article 6 and 15
    ii. Formal annual reports available.
    iii. Detailed website available at http://www.courtecowas.org/.
b. Direct/Consequences
    i. Ordering costs for noncompliance
        1. Article 10 of the *Protocol of the Community Court of Justice*: The Court can provide “relief” for human rights violations.
c. Indirect/Consequences
    i. Mobilizing litigants
        1. Training for bar association in Benin

---

[13] European Court of Human Rights, “Seminars and Meetings at the Court,” accessed April 17, 2016, http://www.echr.coe.int/Pages/home.aspx?p=court/events/ev_ar.
[14] Economic Court of the Commonwealth of Independent States, “The Economic Court of the Commonwealth of Independent States - Cooperation of the Economic Court with the Commonwealth Bodies and Institutions,” accessed April 17, 2016, http://sudsng.org/cooperation/cooperationcis3/.
[15] Economic Court of the Commonwealth of Independent States, “The Economic Court of the Commonwealth of Independent States - Cooperation of the Economic Court with the Senior Officials, Agencies and State Organizations,” accessed April 17, 2016, http://sudsng.org/cooperation/cooperationcis2/.
[16] Economic Court of the Commonwealth of Independent States, “The Economic Court of the Commonwealth of Independent States - Cooperation of the Economic Court with the Judicial Authorities of the States,” accessed April 17, 2016, http://sudsng.org/cooperation/cooperationcis/.

a. "The training session was aimed at acquainting lawyers with the practices at the Court and to cultivate their interest towards the Community norms of ECOWAS, so as to encourage them to come and plead cases before the Community Court of Justice, before which they are expected to play an important role."[17]

ii. Mobilizing litigants; mobilizing substate actors against noncompliance; promoting reputational costs for noncompliance
    1. Sensitization programme "through the instrumentality of the press and media" and through "external hearings" (ECOWAS 2012).

d. Indirect/Appropriateness
  i. Promoting norm advocacy
    1. Cooperation with the WAEMUCJ, AfCHPR, United Nations High Commissioner for Human Rights in West Africa (ECOWAS 2012).
  ii. Promoting legitimization
    1. Sensitization programme

12. Court of the Eurasian Economic Union (EEUC) (2012)

a. Key data sources
  i. *Treaty on the Establishment of the Eurasian Economic Community* (2000), Article 8
  ii. No formal reports available.
  iii. Detailed website available at http://sudevrazes.org/en/main.aspx/.

13. European Court of Justice / Court of Justice of the European Union (ECJ/CJEU) (1952)

a. Key data sources
  i. *Treaty Establishing the European Coal and Steal Community* (1951); *Treaty Establishing the Functioning of the European Union* (consolidated treaty) (2012)
  ii. Formal annual reports available.
  iii. Detailed website available at http://curia.europa.eu/

b. Direct/Consequences
  i. Ordering costs for noncompliance
    1. Article 260, TFEU: For noncompliance with infringement rulings, it may, upon the request of the Commission, impose a fixed or a periodic financial penalty.
    2. ECJ doctrine (the *Francovich* (1991) doctrine) creates state liabilities when states fail to implement European directives. In *Francovich*, the Court ruled that in certain circumstances states could be liable to pay damages because of a failure to obey EU law. This was subsequently codified in the *Maastricht Treaty*, which includes a provision enabling the Court to issue fines on states.

c. Indirect/Consequences
  i. Implementing law/decisions through domestic actors
    1. Article 299, TFEU: Decisions are enforceable in national systems, according to national civil procedure.
    2. The Court established the principle of direct effect in *Van Gend en Loos v. Nederlandse Administratie der Belastingen* (1962). An EU article provision must be clear; a negative rather than positive obligation; unconditional; containing no reservation on the part of the member state; and not depend on any national implementing measure. If so, then it can be enforced before national courts. The Court has subsequently expanded the principle. For example, in *Defrenne v. SABENA* (1976), the Court found that there is both vertical and horizontal direct effect. Vertical direct effect pertains to EU law

---

[17] ECOWAS, "ECOWAS Court Completes Training Session for Bar Association of Benin Republic," Press Release (Abuja, Nigeria, November 29, 2012), http://www.courtecowas.org/site2012/index.php?option=com_content&view=article&id=170:bar-association-benin&catid=14:pressrelease&Itemid=36.

and national law. Horizontal direct effect concerns the relationships between individuals.

d. Indirect/Appropriateness
    i. Promoting norm advocacy/legitimization
        1. Conferences, seminars, e.g. "50th anniversary of the judgment in Van Gend en Loos" (European Court of Justice 2013)

14. European Free Trade Association Court (EFTAC) (1994)

a. Key data sources
    i. *Agreement between the EFTA States on the Establishment of Surveillance Authority and a Court of Justice (Surveillance and Court Agreement)* (1992)
    ii. Formal annual reports available.
    iii. Detailed website available at http://www.eftacourt.int/
b. Direct/Consequences
    i. Ordering costs for noncompliance
        1. EFTA Court jurisprudence has developed state liability for violations for EEA law. The Court established in *Sveinbjörnsdóttir* (1998) that it will order states pay compensation for violations causing damage to individuals or economic operators.
c. Indirect/Consequences
    i. Implementing law/decisions through domestic actors
        1. Article 34: The EFTA Court has jurisdiction to give advisory opinions on the interpretation of the EEA Agreement. "Where such a question is raised before any court or tribunal in an EFTA State, that court or tribunal may, if it considers it necessary to enable it to give judgment, request the EFTA Court to give such an opinion."
        2. Judicial doctrines regarding national courts' obligation to refer cases and implement EEA law (Baudenbacher 2005, 4).
        3. Visits to national courts promote preliminary references. "The President and the Judges of the Court paid visits to national Courts, including the Supreme Court of Norway, and Government Ministers in Iceland, Norway and Liechtenstein" (EFTAC 2014).
d. Direct/Appropriateness
    i. Persuading targets to comply
        1. Speeches in EFTA States
            a. "The Judges, the Court's Registrar and Legal Secretaries have given speeches on the EEA and the Court and on European integration in general in all the EFTA States" (EFTAC 2014).
e. Indirect/Appropriateness
    i. Promoting norm advocacy
        1. Publishing books, articles to encourage academic debate on EFTA Court, its decisions, and EEA law (EFTAC 2014).
        2. Holds regular seminar series for Luxembourg-based European diplomats and bureaucrats (EFTAC 2014).

15. European Nuclear Energy Tribunal (ENET) (1960)

a. Key data sources
    i. *Convention on the Establishment of a Security Control in the Field of Nuclear Energy* (1957), Part III
    ii. No formal reports available.
    iii. No independent website, merely page within Nuclear Energy Agency website: https://www.oecd-nea.org/law/european-nuclear-tribunal.html.

16. Inter-American Court of Human Rights (IACtHR) (1979)

a. Key data sources
   i. *American Convention on Human Rights* (1969); *Statute of the Inter-American Court of Human Rights* (1980)
   ii. Formal annual reports available.
   iii. Detailed website available at http://www.corteidh.or.cr/.
b. Direct/Consequences
   i. Ordering costs for noncompliance
      1. Article 63: For noncompliance, the Court can provide remedies and compensation for violations.
c. Indirect/Consequences
   i. Mobilizing substate actors against noncompliance; promoting reputational costs for noncompliance; promoting enforcement
      1. Articles 33, 62, and 65 of American Convention; Article 30 of Statute: Monitoring compliance with judgments
         a. It periodically requests information on the measures taken to comply with the said judgments from states, and then obtains the observations of the Commission and of the victims or their representatives.
         b. It assesses whether the State has complied with the measures ordered, provide guidance for the actions taken by the State to that end and, if appropriate, convene a monitoring hearing.
      2. Since 2007, the Court has held hearings on monitoring compliance with its judgments to strengthen its monitoring function.
d. Indirect/Appropriateness
   i. Promoting norm advocacy/legitmization
      1. Training and dissemination activities on human rights in order to expand understanding of the function of the Court and the Inter-American human rights system.
      2. Agreements with national public institutions for training and research on human rights.

17. International Criminal Court (ICC) (2002)

a. Key data sources
   i. *Rome Statute of the International Criminal Court* (1998)
   ii. Formal annual reports available.
   iii. Detailed website available at https://www.icc-cpi.int/.
b. Direct/Consequences
   i. Ordering costs for noncompliance
      1. Article 77: The Court can impose several penalties on a person convicted of a crime: imprisonment (up to life in prison “when justified by the extreme gravity of the grime” and the person’s “individual circumstances”); a fine; and forfeiture of proceeds, property, and assets derived directly or indirectly from that crime.
c. Indirect/Consequences
   i. Promoting reputational costs for noncompliance; promoting enforcement
      1. Article 87(7): When an ICC state party “fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, thereby preventing the Court from exercising its functions and powers under this Statute, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council.” Either body can then exert pressure for compliance; theoretically, the Security Council could take enforcement action.
   ii. Promoting reputational costs for noncompliance
      1. Office of the Prosecutor releases statements (press releases, op-eds, speeches) reporting states’ noncooperation with the ICC.

iii. Promoting enforcement
1. Office of the Prosecutor reports to the United Nations Security Council and seeks greater enforcement of its resolutions referring situations to the Court.

iv. Implementing law/decisions through domestic actors
1. Office of the Prosecutor’s Jurisdiction, Complementarity and Cooperation Division advises national courts on how to hold domestic trials in compliance with Rome Statute obligations.

d. Direct/Appropriateness
i. Persuading targets to comply
1. Presidency and Office of the Prosecutor hold diplomatic meetings with states regarding Rome Statute obligations (cooperation, domestic implementation, etc)
2. Registry’s Outreach Program disseminates norms of individual criminal accountability in affected communities (of potential perpetrators).

ii. Praising compliance or shaming noncompliance of targets within community
1. Office of the Prosecutor releases publicly shames states’ noncooperation with the ICC.

e. Indirect/Appropriateness
i. Promoting norm advocacy
1. Court holds regular meetings with NGOs/representatives of civil society, which advocate for cooperation and compliance with the Court.
2. Court meets with various IOs, including UN, AU, OAS, for generating support for state cooperation with the Court.

18. International Court of Justice (ICJ) (1946)

a. Key data sources
i. *Charter of the United Nations* and *Statute of the International Court of Justice* (1945)
ii. Formal annual reports available from 1968.
iii. Detailed website available at http://www.icj-cij.org/

19. International Tribunal for the Law of the Sea (ITLOS) (1996)

a. Key data sources
i. *United Nations Convention on the Law of the Sea; Statute of the International Tribunal for the Law of the Sea* (1982)
ii. Formal annual reports available.
iii. Detailed website available at https://www.itlos.org/

b. Direct/Appropriateness
i. Persuading targets to comply
1. Regional workshops on the law of the sea and procedures of the ITLOS.
2. Capacity-building and training programme for junior to mid level government officials from an administration or government agency, dealing with ocean affairs or sea-related matters as well as legal issues relating thereto.
3. Presidents speeches to the UN, urging states to peacefully settle disputes through the Tribunal.

c. Indirect/Appropriateness
i. Promoting norm advocacy/legitimization
1. Summer Academy for the Law of the Sea
a. Run by the International Foundation for the Law of the Sea, with ITLOS judges as advisory board members and course providers, and hosted at the Tribunal.
2. Capacity-building and training programme for researchers working in the field of law of the sea or dispute settlement.

20. **Southern Common Market (Mercosur) Dispute Settlement Permanent Review Court (MPRC) (2002)**
    a. Key data sources
        i. *Protocol of Olivos for the Settlement of Disputes* (2002)
        ii. No formal reports available.
        iii. Detailed website available at http://www.tprmercosur.org/.
    b. Direct/Consequences
        i. Order costs for noncompliance
            1. Article 31: If the Court decides in favour of a state, and that state considers the fulfillment of that decision by the other party to be insufficient, it will be authorized to apply compensatory measures.
            2. Article 32: The MPRC can review such measures.
    c. Indirect/Appropriateness
        i. Promoting legitimization
            1. Academic seminars, e.g. “10 years of the TPR and the current prospects of international tribunals,” “A look at the future of regional integration” (MPRC 2016)

21. **Common Court of Justice and Arbitration of the Organization for the Harmonization of Business Law in Africa (OHADA CCJA) (1998)**
    a. Key data sources
        i. *Traité relatif à l'harmonisation du droit des affaires en Afrique* (1993), Titles III/IV.
        ii. No formal reports available.
        iii. No independent website; coverage of judicial/arbitral activities within OHADA website at http://ohada.org/.
    b. Indirect/Consequences
        i. Implementing law/decisions through domestic actors
            1. Article 15: Acts as a final court of appeal for questions of OHADA law, but only if national courts choose to refer cases to the CCJA.

22. **Court of Justice of the West African Economic Monetary Union (WAEMUCJ) (1995)**
    a. Key data sources
        i. *Treaty of the West African Monetary Union*, Chapter 3 (1994)
        ii. No formal reports available.
        iii. No independent website, merely page within West African Economic Monetary Union website: http://www.uemoa.int/Organes/CourdeJustice.aspx.
    b. Indirect/Consequences
        i. Implementing law/decisions through domestic actors
            1. Article 15(6): Preliminary ruling procedure, where national courts refer cases of WAEMU law and implement rulings domestically.

23. **World Trade Organization Appellate Body (WTO AB) (1995)**
    a. Key data sources
        i. *Agreement Establishing the World Trade Organization* (1994); *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Article 17 (1994)
        ii. Formal annual reports available from 2003.
        iii. Detailed website within the WTO’s “Dispute Settlement” gateway: https://www.wto.org/english/tratop_e/dispu_e/appellate_body_e.htm.
    b. Direct/Consequences
        i. Authorizing sanctions for noncompliance
            1. Article 22: The AB can authorize “suspending concessions or other obligations under the covered agreements.” Essentially, if the parties to a dispute have not agreed on satisfactory compensation, the AB can grant the complainant permission to impose trade sanctions against the respondent that has failed to implement the ruling.

Appendix 2 – Interviews

As part of a standardized interview protocol, individuals—all currently-serving officials at their respective organizations—were contacted in advance with an invitation to participate in an interview and a document containing basic information on the research project. The vast majority of officials contacted agreed to an interview. Explicit, written consent was obtained. The interviews most commonly took place in the privacy of the official's office, and their length ranged from forty-five minutes to two hours. In most cases, interviews were recorded and quotes could be attributed to the interviewees with their approval. However, for a few interviewees, accommodations were made based on their preferences regarding attribution and/or recording.

International Courts

African Court on Human and Peoples' Rights (AfCHPR), Arusha, Tanzania

1. Sophia Akuffo, Judge President, 4 February 2014
2. Jester H. Charewa, Deputy Registrar, 23 January 2014
3. Robert Eno, Registrar, 4 February 2014
4. Julius Kamya, IT Specialist, 31 January 2014
5. Thomas Peter Mhando, ICT Specialist, 31 January 2014
6. Levina Mosha, Library Assistant 23 January 2014
7. Fidelis K. Mutisya, Head Librarian, 23 January 2014
8. Francis Mwalabu, Principal Protocol Officer, 23 January 2014

East African Court of Justice (EACJ), Arusha, Tanzania

9. Jean Bosco Butasi, Principal Judge, 5 February 2014
10. Nzimpora Pierre Claver, Librarian, 22 January 2014
11. Isaac Lenaola, Deputy Principal Judge, 3 February 2014
12. Annah Nabaasa, Public Relations Assistant, 5 February 2014
13. Aggrey Nkondola, EAC Principal Information Technology Officer, 5 February 2014
14. Harold R. Nsekela, Judge President, 4 February 2014
15. John Eudes Ruhangisa, Registrar, 27 January 2014
16. Geraldine Umugwaneza, Deputy Registrar, 3 February 2014

European Free Trade Association Court (EFTAC) (Phone)

17. Philipp Speitler, Legal Secretary / Head of the President's Chambers, 10 June 2015

International Criminal Court (ICC), The Hague, The Netherlands

18. Carrie Comer, Associate Outreach Officer, Registry, 4 June 2014
19. Fadi El Abdallah, ICC Spokesperson and Head of Public Information and Documentation Unit, 5 June 2014
20. Matias Hellman, External Relations Advisor, Presidency, 13 June 2014
21. Official, Office of the Public Counsel for Defence, 13 June 2014

22. Claudia Perdomo, Head of Outreach Unit, Registry, 4 June 2014
23. Rod Rastan, Legal Advisor, Office of the Prosecutor, 4 June 2014
24. Rod Rastan, Legal Advisor, Office of the Prosecutor, 6 June 2014
25. Fabio Rossi, Associate International Cooperation Adviser, Office of the Prosecutor, 10 June 2014
26. James Stewart, Deputy Prosecutor, Office of the Prosecutor, 9 June 2014
27. Osvaldo Zavala Giler, Special Assistant to the Registrar / Legal Officer, Registry, 11 June 2014

International Court of Justice (ICJ), The Hague, The Netherlands
28. Official, Registry, 12 September 2014

International Tribunal for the Law of the Sea (ITLOS), Hamburg, Germany
29. Philippe Gautier, Registrar, 10 September 2014
30. Julia Ritter, Press Officer, 10 September 2014

Associated Organizations

Coalition for the International Criminal Court (CICC), The Hague, Netherlands
31. Alix Vuillemin Grendel, Legal Officer, 6 June 2014

German Gesellschaft für Internationale Zusammenarbeit (GIZ) (Phone)
32. Iris Breutz, Project Director, Strengthening the Capacities of the African Court on Human and Peoples' Rights, 23 June 2015

International Bar Association (IBA) ICC Programme, The Hague, Netherlands
33. Clair Duffy, Senior Legal Advisor, 26 May 2014
34. Lorraine Smith van Lin, Programme Manager, 21 May 2014

International Foundation for the Law of the Sea (IFLOS), Hamburg, Germany
35. Joachim H. König, Director, 11 September 2014

Open Society Justice Initiative, The Hague, Netherlands
36. Alpha Sesay, Legal Officer, International Justice, 27 May 2014

Pan African Lawyers Union (PALU), Arusha, Tanzania
37. Donald Deya, Chief Executive Officer, 19 January 2014

Parliamentarians for Global Action (PGA), The Hague, Netherlands
38. Nuria Vehils, Communications Officer, International Law and Human Rights Programme, 10 June 2014

Bibliography

Academic Sources

Abass, Ademola. “Prosecuting International Crimes in Africa: Rationale, Prospects and Challenges.” *European Journal of International Law* 24, no. 3 (2013a): 933–46.

———. “The Proposed International Criminal Jurisdiction for the African Court: Some Problematical Aspects.” *Netherlands International Law Review* 60, no. 1 (May 2013b): 27–50.

Abbott, Kenneth W., Philipp Genschel, Duncan Snidal, and Bernhard Zangl, eds. *International Organizations as Orchestrators*. Cambridge: Cambridge University Press, 2015.

Abbott, Kenneth W., Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal. “The Concept of Legalization.” *International Organization* 54, no. 3 (2000): 401–19.

Abbott, Kenneth W., and Duncan Snidal. “Hard and Soft Law in International Governance.” *International Organization* 54, no. 3 (2000): 421–56.

———. “International Regulation without International Government: Improving IO Performance through Orchestration.” *The Review of International Organizations* 5, no. 3 (2010): 315–44.

———. “Law, Legalization, and Politics.” In *Interdisciplinary Perspectives on International Law and International Relations*, edited by Jeffrey L. Dunoff and Mark A. Pollack, 33–56. Cambridge University Press, 2013.

———. “The Governance Triangle:” In *The Politics of Global Regulation*, 44–88. Princeton University Press, 2009.

———. “Why States Act through Formal International Organizations.” *Journal of Conflict Resolution* 42, no. 1 (February 1, 1998): 3–32.

Aberbach, Joel D., and Bert A. Rockman. “Conducting and Coding Elite Interviews.” *Political Science & Politics* 35, no. 4 (2002): 673–76.

Acharya, Amitav. “How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism.” *International Organization* 58, no. 2 (April 2004): 239–75.

Acharya, Amitav, and Alastair I. Johnston, eds. *Crafting Cooperation: Regional International Institutions in Comparative Perspective*. Cambridge: Cambridge University Press, 2007.

Ahlberg, Kerstin. “The Efta Court Clashes with Norway’s Supreme Court.” *Nordic Labour Journal* 7 (2013).

Akande, Dapo, Max du Plessis, and Charles C. Jalloh. “Assessing the African Union Concerns about Article 16 of the Rome Statute of the International Criminal Court.” *African Journal of Legal Studies* 4, no. 1 (2011): 5–50.

Alexandroff, Alan S., and Centre for International Governance Innovation, eds. *Can the World Be Governed?: Possibilities for Effective Multilateralism*. Studies in International Governance. Waterloo, Ont.: Wilfrid Laurier University Press, 2008.

Alford, Roger P. “The Proliferation of International Courts and Tribunals: International Adjudication in Ascendance.” *American Society of International Law Proceedings* 94, no. 160 (2000).

Allee, Todd L., and Paul K. Huth. “Legitimizing Dispute Settlement: International Legal Rulings as Domestic Political Cover.” *American Political Science Review* null, no. 0\2 (May 2006): 219–34.

Almestad, Knut. “Reflections on the Postal Services Directive and the EEA Review.” In *Judicial Protection in the European Economic Area*, edited by The EFTA Court. Stuttgart, 2012.

Almqvist, Jessica Maria. “The Accessibility of European Integration Courts from an NGO Perspective.” In *Civil Society, International Courts, and Compliance Bodies*, edited by Tullio Treves, 271–91. The Hague: T.M.C. Asser Press, 2005.

Alston, Philip. “Against a World Court for Human Rights.” *Ethics & International Affairs* 28, no. 2 (June 2014): 197–212.

Alter, Karen J. “Agents or Trustees? International Courts in Their Political Context.” *European Journal of International Relations* 14, no. 1 (2008a): 33–63.

———. “Delegating to International Courts: Self-Binding vs. Other-Binding Delegation.” *Law and Contemporary Problems* 71, no. 1 (2008b): 37–76.

———. “Delegation to International Courts and the Limits of Re-Contracting Political Power.” In *Delegation and Agency in International Organizations*, edited by Darren G. Hawkins, David A. Lake, Daniel L. Nielson, and Michael J. Tierney, 312–38. New York: Cambridge University Press, 2006a.

———. “Do International Courts Enhance Compliance with International Law?” *Review of Asian and Pacific Studies* 25 (2003): 51–78.

———. *Establishing the Supremacy of European Law: The Making of an International Rule of Law in Europe*. Oxford Studies in European Law. Oxford: Oxford University Press, 2001.

———. “Jurist Advocacy Movements in Europe.” In *The European Court’s Political Power: Selected Essays*, edited by Karen J. Alter, 63–91. Oxford: Oxford University Press, 2009.

———. “Private Litigants and the New International Courts.” *Comparative Political Studies* 39, no. 1 (2006b): 22–49.

———. “The Global Spread of European Style International Courts.” *West European Politics* 35, no. 1 (2012): 135–54.

———. “The Multiple Roles of International Courts and Tribunals: Enforcement, Dispute Settlement, Constitutional and Administrative Review.” In *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art*, edited by Jeffrey L. Dunoff and Mark A. Pollack, 345–70. Cambridge: Cambridge University Press, 2013.

———. *The New Terrain of International Law: Courts, Politics, Rights*. Princeton, New Jersey: Princeton University Press, 2014.

———. “Who Are the ‘Masters of the Treaty’?: European Governments and the European Court of Justice.” *International Organization* 52, no. 1 (December 1998): 121–47.

Alter, Karen J., and Laurence R. Helfer. “Nature or Nurture? Judicial Lawmaking in the European Court of Justice and the Andean Tribunal of Justice.” *International Organization* 64, no. 4 (October 2010): 563–92.

Alter, Karen J., Lawrence R. Helfer, and Jacqueline R. McAllister. “A New International Human Rights Court for West Africa: The ECOWAS Community Court of Justice.” *American Journal of International Law* 107 (2013): 737–79.

Alter, Karen J., and Sophie Meunier-Aitsahalia. “Judicial Politics in the European Community European Integration and the Pathbreaking Cassis de Dijon Decision.” *Comparative Political Studies* 26, no. 4 (1994): 535–61.

Andersen, Stine. *The Enforcement of EU Law: The Role of the European Commission*. First edition. Oxford Studies in European Law. Oxford: Oxford University Press, 2012.

Armstrong, J. D., Theo Farrell, and Hélène Lambert. *International Law and International Relations*. Themes in International Relations. Cambridge: Cambridge University Press, 2007.

Atkinson, Carol. “Constructivist Implications of Material Power: Military Engagement and the Socialization of States, 1972–2000.” *International Studies Quarterly* 50, no. 3 (2006): 509–37.

Axelrod, Robert, and Robert O. Keohane. “Achieving Cooperation under Anarchy: Strategies and Institutions.” *World Politics* 38, no. 1 (October 1985): 226–54.

Bailliet, Cecilia M. “Measuring Compliance with the Inter-American Court of Human Rights: The Ongoing Challenge of Judicial Independence in Latin America.” *Nordic Journal of Human Rights* 31, no. 4 (2013): 477–95.

Barnett, Michael, and Martha Finnemore. *Rules for the World: International Organizations in Global Politics*. Ithaca: Cornell University Press, 2004.

———. “The Politics, Power, and Pathologies of International Organizations.” *International Organization* 53, no. 4 (September 1999): 699–732.

Bartholomeusz, Lance. “The Amicus Curiae Before International Courts and Tribunals.” *Non-State Actors and International Law* 5, no. 3 (2005): 209–86.

Basch, Fernando, Leonardo Filippini, Ana Laya, Mariano Nino, Felicitas Rossi, and Barbara Schreiber. “The Effectiveness of the Inter-American System of Human Rights Protection: A Quantitative

Approach to Its Functioning and Compliance with Its Decisions." *SUR, International Journal on Human Rights* 12 (2010).

Bates, Ed. *The Evolution of the European Convention on Human Rights: From Its Inception to the Creation of a Permanent Court of Human Rights*. Oxford: Oxford University Press, 2010.

Baudenbacher, Carl. "Globalization of the Judiciary." *Texas International Law Journal* 38 (2003): 397–404.

———. "Ten Years of the EFTA Court: Symposium 21 October 2004." In *The EFTA Court: Ten Years On*, edited by Carl Baudenbacher, Per Tresselt, and Thorgeir Orlygsson, 1–9. Oxford: Hart Publishing, 2005a.

———. "The EFTA Court and Court of Justice of the European Union: Coming in Parts But Winning Together." In *The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case-Law - La Cour de Justice et La Construction de l'Europe: Analyses et Perspectives de Soixante Ans de Jurisprudence*, edited by Court of Justice of the European Union, 183–203. The Hague: T. M. C. Asser Press, 2013.

———. *The EFTA Court in Action: Five Lectures*. Stuttgart: German Law Publishers, 2010.

———. "The EFTA Court Ten Years On." In *The EFTA Court: Ten Years On*, edited by Carl Baudenbacher, Per Tresselt, and Thorgeir Orlygsson, 13–52. Oxford: Hart Publishing, 2005b.

Baudenbacher, Carl, and Michael-James Clifton. "Courts of Regional Economic and Political Integration Agreements." In *The Oxford Handbook of International Adjudication*, edited by Cesare P. R. Romano, Karen J. Alter, and Yuval Shany, 250–77. Oxford: Oxford University Press, 2014.

Baudenbacher, Carl, Philipp Speitler, Bryndís Pálmarsdóttir, and EFTA Court, eds. *The EEA and the EFTA Court: Decentred Integration: To Mark the 20th Anniversary of the EFTA Court*. Oxford: Hart Publishing, 2014.

Baudenbacher, Carl, Per Tresselt, and Thorgeir Orlygsson, eds. *The EFTA Court: Ten Years On*. Oxford: Hart Publishing, 2005.

Bearce, David H., and Stacy Bondanella. "Intergovernmental Organizations, Socialization, and Member-State Interest Convergence." *International Organization* 61, no. 4 (October 2007): 703–33.

Beer, Christopher Todd, Tim Bartley, and Wade T. Roberts. "NGOs: Between Advocacy, Service Provision, and Regulation." In *Oxford Handbook of Governance*, edited by David Levi-Faur, 326–34. Oxford: Oxford University Press, 2012.

Benvenisti, E. "The Empire's New Clothes: Political Economy and the Fragmentation of International Law." *Stanford Law Review* 60, no. 2 (2007): 595–631.

Bernier, Alexandre. "Constructing and Legitimating: Transnational Jurist Networks and the Making of a Constitutional Practice of European Law, 1950–70." *Contemporary European History* 21, no. 3 (August 2012): 399–415.

Berry, Jeffrey M. "Validity and Reliability Issues in Elite Interviewing." *Political Science & Politics* 35, no. 4 (2002): 679–82.

Betts, Alexander, and Phil Orchard, eds. *Implementation and World Politics: How International Norms Change Practice*. Oxford: Oxford University Press, 2014.

Biersteker, Thomas J., Peter J. Spiro, Chandra Lekha Sriram, and Veronica I. Raffo. *International Law and International Relations: Bridging Theory and Practice*. Abingdon: Routledge, 2006.

Binder, Martin, and Monika Heupel. "The Legitimacy of the UN Security Council: Evidence from Recent General Assembly Debates." *International Studies Quarterly* 59, no. 2 (2015): 238–50.

Biondi, Andrea, and Martin Farley. *The Right to Damages in European Law*. Kluwer Law International, 2009.

Bloomfield, Alan. "Norm Antipreneurs and Theorising Resistance to Normative Change." *Review of International Studies* 42, no. 2 (April 2016): 310–33.

Borght, K. Van der. "The Advisory Center on the WTO Law: Advancing Fairness and Equality." *Journal of International Economic Law* 2, no. 4 (1999): 723–28.

Börzel, Tanja A., ed. *Roads to Regionalism: Genesis, Design, and Effects of Regional Organizations*. The International Political Economy of New Regionalisms Series. Burlington: Ashgate, 2012.

Börzel, Tanja A., and Rachel A. Cichowski. *The State of the European Union, 6*. Oxford: Oxford University Press, 2003.

Börzel, Tanja A., Tobias Hofmann, Diana Panke, and Carina Sprungk. “Obstinate and Inefficient: Why Member States Do Not Comply With European Law.” *Comparative Political Studies* 43, no. 11 (2010): 1363–90.

Bosco, David. *Rough Justice: The International Criminal Court’s Battle to Fix the World, One Prosecution at a Time*. New York: Oxford University Press, 2014.

Bossche, Peter van den, and Werner Zdouc. *The Law and Policy of the World Trade Organization: Text, Cases, and Materials*. Cambridge: Cambridge University Press, 2013.

Bourdieu, Pierre. “The Force of Law: Toward a Sociology of the Juridical Field.” *Hastings Law Journal* 38 (1986): 805–53.

Bower, Adam. “Arguing with Law: Strategic Legal Argumentation, US Diplomacy, and Debates over the International Criminal Court.” *Review of International Studies* 41, no. 2 (April 2015): 337–60.

Brewster, Rachel. “Pricing Compliance: When Formal Remedies Displace Reputational Sanctions.” *Harvard International Law Journal* 54 (2013a): 259–314.

———. “Reputation in International Relations and International Law Theory.” In *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art*, edited by Jeffrey L. Dunoff and Mark A. Pollack, 524–43. Cambridge: Cambridge University Press, 2013b.

———. “Unpacking the State’s Reputation.” *Harvard International Law Journal* 50 (2009): 231–69.

Brunnée, Jutta, and Stephen J. Toope. “Constructivism and International Law.” In *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art*, edited by Jeffrey L. Dunoff and Mark A. Pollack, 119–45. Cambridge: Cambridge University Press, 2013.

———. *Legitimacy and Legality in International Law: An Interactional Account*. Cambridge: Cambridge University Press, 2010.

Brus, Marcel. *Third Party Dispute Settlement in an Interdependent World: Developing a Theoretical Framework*. Dordrecht: M. Nijhoff, 1995.

Buergenthal, Thomas. “Proliferation of International Courts and Tribunals: Is It Good or Bad?” *Leiden Journal of International Law* 14, no. 2 (2001): 267–75.

Buisman, Caroline. “Delegating Investigations: Lessons to Be Learned from the Lubanga Judgment.” *Northwestern Journal of International Human Rights* 11, no. 3 (2013): 31–82.

Burley, Anne-Marie, and Walter Mattli. “Europe Before the Court: A Political Theory of Legal Integration.” *International Organization* 47, no. 1 (December 1993): 41–76.

Busch, Marc L. “Overlapping Institutions, Forum Shopping, and Dispute Settlement in International Trade.” *International Organization* 61, no. 4 (October 2007).

Busch, Marc L., and Krzysztof J. Pelc. “The Politics of Judicial Economy at the World Trade Organization.” *International Organization* 64, no. 2 (April 2010): 257–79.

Busch, Marc L., Eric Reinhardt, and Gregory Shaffer. “Does Legal Capacity Matter? A Survey of WTO Members.” *World Trade Review* 8, no. 4 (2009): 559–77.

Caron, David D. “International Claims and Compensation Bodies.” In *The Oxford Handbook of International Adjudication*, edited by Cesare Romano, Karen Alter, and Yuval Shany, 278–94. Oxford: Oxford University Press, 2014.

———. “Towards a Political Theory of International Courts and Tribunals.” *Berkeley Journal of International Law* 24 (2006): 401–23.

Carp, Robert, and Russell Wheeler. “Sink or Swim: The Socialization of a Federal District Judge.” *Journal of Public Law* 21 (1972): 359–93.

Carruba, Clifford J., Matthew Gabel, and Charles Hankla. “Understanding the Role of the European Court of Justice in European Integration.” *American Political Science Review* 106, no. 1 (February 2012): 214–23.

Carrubba, Clifford J., and Matthew J. Gabel. “Courts, Compliance, and the Quest for Legitimacy in International Law.” *Theoretical Inquiries in Law* 14 (2013): 505–42.

Carrubba, Clifford J., Matthew Gabel, and Charles Hankla. “Judicial Behavior under Political Constraints: Evidence from the European Court of Justice.” *American Political Science Review* 102, no. 4 (2008): 435–52.

Carter, Linda E. “Lessons from Avena: The Inadequacy of Clemency and Judicial Proceedings for Violations of the Vienna Convention on Consular Relations.” *Duke Journal Of Comparative & International Law* 15 (2004): 259–80.

Cartier, Stephanie, and Cristina Hoss. “The Role of Registries and Legal Secretariats in International Judicial Institutions.” In *The Oxford Handbook of International Adjudication*, edited by Cesare Romano, Karen Alter, and Yuval Shany, 712–33. Oxford: Oxford University Press, 2014.

Cavallaro, James L., and Stephanie Erin Brewer. “Reevaluating Regional Human Rights Litigation in the Twenty-First Century: The Case of the Inter-American Court.” *The American Journal of International Law* 102, no. 4 (2008): 768–827.

Charney, Jonathan I. “The Impact on the International Legal System of the Growth of International Courts and Tribunals.” *New York University Journal of International Law and Politics* 31 (1999): 697–708.

Chayes, Abram, and Antonia Handler Chayes. “On Compliance.” *International Organization* 47, no. 2 (March 1993): 175–205.

———. *The New Sovereignty: Compliance with International Regulatory Agreements*. Cambridge, MA: Harvard University Press, 1995.

Checkel, Jeffrey T. “International Institutions and Socialization in Europe: Introduction and Framework.” *International Organization* 59, no. 4 (October 2005): 801–26.

———. “Norms, Institutions, and National Identity in Contemporary Europe.” *International Studies Quarterly* 43, no. 1 (March 1999): 84–114.

———. “Why Comply? Social Learning and European Identity Change.” *International Organization* 55, no. 3 (June 2001): 553–88.

Chinkin, Christine. *Third Parties in International Law*. Oxford: Oxford University Press, 1993.

Cho, Sungjoon. *The Social Foundations of World Trade*. Cambridge: Cambridge University Press, 2014.

Christoffersen, Jonas, and Mikael Rask Madsen. *The European Court of Human Rights between Law and Politics*. Oxford: Oxford University Press, 2011.

Cichowski, Rachel A. *The European Court and Civil Society: Litigation, Mobilization and Governance*. Themes in European Governance. Cambridge: Cambridge University Press, 2007.

Clarke, Kamari Maxine. *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa*. Cambridge: Cambridge University Press, 2009.

Clark, Janine Natalya. “International War Crimes Tribunals and the Challenge of Outreach.” *International Criminal Law Review* 9, no. 1 (2009): 99–116.

Clark, Phil. “Chasing Cases: The ICC and the Politics of State Referral in the Democratic Republic of the Congo and Uganda.” In *The International Criminal Court and Complementarity*, edited by Carsten Stahn and Mohamed El Zeidy. Cambridge: Cambridge University Press, 2011.

———. “Law, Politics and Pragmatism: ICC Case Selection in the Democratic Republic of Congo and Uganda.” In *Courting Conflict? Peace, Justice and the ICC in Africa*, edited by Phil Clark and Nicholas Waddell. London: Royal African Society, 2008.

Clark, Phil, and Nicholas Waddell, eds. *Courting Conflict? Justice, Peace and the ICC in Africa*. London: Royal African Society, 2008.

Cogan, Jacob Katz. “Competition and Control in International Adjudication.” *Virginia Journal of International Law* 48 (2008): 411–49.

———. “Noncompliance and the International Rule of Law.” *Yale Journal of International Law* 31 (2006): 189–210.

Common Market Law Review, Editorial Comments. “European Economic Area and European Community: Homogeneity of Legal Orders?” *Common Market Law Review* 36, no. 4 (August 1999): 697–702.

Cook, Beverly Blair. “The Socialization of New Federal Judges: Impact on District Court Business.” *Washington University Law Quarterly*, 1971, 253–79.

Cooley, Alexander, and James Ron. “The NGO Scramble: Organizational Insecurity and the Political Economy of Transnational Action.” *International Security* 27, no. 1 (July 2002): 5–39.

Cooley, Alexander, and Hendrik Spruyt. *Contracting States: Sovereign Transfers in International Relations*. Princeton, NJ: Princeton University Press, 2009.

Cowell, Frederick. “The Death of the Southern African Development Community Tribunal’s Human Rights Jurisdiction.” *Human Rights Law Review* 13, no. 1 (2013): 153–65.

Dai, Xinyuan. “Information Systems in Treaty Regimes.” *World Politics* 54, no. 4 (July 2002): 405–36.

———. “Why Comply? The Domestic Constituency Mechanism.” *International Organization* 59, no. 02 (April 2005): 363–98.

Danilenko, Gennady M. “Economic Court of the Commonwealth of Independent States, The.” *New York University Journal of International Law & Politics* 31 (1998): 893–918.

———. “Implementation of International Law in CIS States: Theory and Practice.” *European Journal of International Law* 10, no. 1 (1999): 51–69.

Danner, Allison Marston. “Enhancing the Legitimacy and Accountability of Prosecutorial Discretion at the International Criminal Court.” *American Journal of International Law* 97, no. 3 (July 2003): 510–52.

Davis, Christina L. *Food Fights over Free Trade: How International Institutions Promote Agricultural Trade Liberalization*. Princeton, NJ: Princeton University Press, 2003.

Davis, Kevin, Angelina Fisher, Benedict Kingsbury, and Sally Engle Merry, eds. *Governance by Indicators: Global Power through Quantification and Rankings*. Oxford: Oxford University Press, 2012.

Deitelhoff, Nicole. “The Discursive Process of Legalization: Charting Islands of Persuasion in the ICC Case.” *International Organization* 63, no. 1 (January 2009): 33–65.

Dellmuth, Lisa Maria, and Jonas Tallberg. “Elite Communication and Popular Legitimacy in Global Governance,” 2016. Available at: ssrn.com/abstract=2757650.

———. “The Social Legitimacy of International Organisations: Interest Representation, Institutional Performance, and Confidence Extrapolation in the United Nations.” *Review of International Studies* 41, no. 3 (2015): 451–75.

De Vos, Christian, Sara Kendall, and Carsten Stahn, eds. *Contested Justice: The Politics and Practice of International Criminal Court Interventions*. Cambridge: Cambridge University Press, 2015.

de Wet, E. “The Rise and Fall of the Tribunal of the Southern African Development Community: Implications for Dispute Settlement in Southern Africa.” *ICSID Review* 28, no. 1 (2013): 45–63.

Dezalay, Yves, and Bryant G. Garth. *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order*. Chicago: University of Chicago Press, 1998.

Dickerson, Claire Moore. “Harmonizing Business Laws in Africa: OHADA Calls the Tune.” *Columbia Journal of Transnational Law* 44 (2005): 17–73.

Diehl, Paul F., Charlotte Ku, and Daniel Zamora. “The Dynamics of International Law: The Interaction of Normative and Operating Systems.” *International Organization* 57, no. 1 (December 2003): 43–75.

Dothan, Shai. *Reputation and Judicial Tactics: A Theory of National and International Courts*. New York: Cambridge University Press, 2015.

Downs, George W., and Michael A. Jones. “Reputation, Compliance, and International Law.” *The Journal of Legal Studies* 31, no. 1 (2002): 95–114.

Downs, George W., David M. Rocke, and Peter N. Barsoom. “Is the Good News about Compliance Good News about Cooperation?” *International Organization* 50, no. 3 (June 1996): 379–406.

Dunoff, Jeffrey L., and Mark A. Pollack. *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art*. Cambridge: Cambridge University Press, 2013.

Du Plessis, Max, and Christopher Gevers. “Darfur Goes to the International Criminal Court (Perhaps).” *African Security Review* 14, no. 2 (January 2005): 23–34.

Duquet, Sanderijn, Joost Pauwelyn, Ramses A. Wessel, and Jan Wouters. “Upholding the Rule of Law in Informal International Lawmaking Processes.” *Hague Journal on the Rule of Law* 6, no. 1 (January 2014): 75–95.

Eberechi, Ifeonu. “‘Rounding Up the Usual Suspects’: Exclusion, Selectivity, and Impunity in the Enforcement of International Criminal Justice and the African Union’s Emerging Resistance.” *African Journal of Legal Studies* 4, no. 1 (2011): 51–84.

Eisenberg, Theodore, Talia Fisher, and Issi Rosen-Zvi. “Actual versus Perceived Performance of Judges.” *Seattle University Law Review* 35 (2012): 695–727.

Elsig, Manfred. "Orchestration on a Tight Leash: State Oversight of the WTO." In *International Organizations as Orchestrators*, edited by Kenneth Abbott, Philipp Genschel, Duncan Snidal, and Bernhard Zangl, 65–87. Cambridge: Cambridge University Press, 2015.

———. "The World Trade Organization at Work: Performance in a Member-Driven Milieu." *The Review of International Organizations* 5, no. 3 (2010): 345–63.

Elsig, Manfred, and Mark A. Pollack. "Agents, Trustees, and International Courts: The Politics of Judicial Appointment at the World Trade Organization." *European Journal of International Relations* 20, no. 2 (2014): 391–415.

Engelbrecht, Gysbert. "The ICC's Role in Africa." *African Security Review* 12, no. 3 (2003): 61–69.

Engstrom, Par, and Andrew Hurrell. "Why the Human Rights Regime in the Americas Matters." In *Human Rights Regimes in the Americas*, edited by Monica Serrano and Vesselin Popovski, 29–55. Tokyo: United Nations University Press, 2010.

Epstein, David, and Sharyn O'Halloran. *Delegating Powers: A Transaction Cost Politics Approach to Policy Making Under Separate Powers*. Cambridge: Cambridge University Press, 1999.

European Court of Justice (ECJ), ed. *50th Anniversary of the Judgment in Van Gend En Loos, 1963-2013: Conference Proceedings, Luxembourg, 13 May 2013*. Luxembourg: Publications Office of the European Union, 2013.

Evans, Malcolm D., and Rachel Murray. *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2006*. Cambridge: Cambridge University Press, 2008.

Fauchald, Ole Kristian, and Andre Nollkaemper, eds. *The Practice of International and National Courts and the De-fragmentation of International Law*. Oxford: Bloomsbury Publishing, 2012.

Finnemore, Martha. "Are Legal Norms Distinctive." *New York University Journal of International Law and Politics* 32 (1999): 699–705.

———. "International Organizations as Teachers of Norms: The United Nations Educational, Scientific, and Cultural Organization and Science Policy." *International Organization* 47, no. 4 (September 1993): 565–97.

Finnemore, Martha, and Kathryn Sikkink. "International Norm Dynamics and Political Change." *International Organization* 52, no. 4 (September 1998): 887–917.

Finnemore, Martha, and Stephen J. Toope. "Alternatives to 'Legalization': Richer Views of Law and Politics." *International Organization* 55, no. 3 (June 2001): 743–58.

Fisher, Roger. *Improving Compliance with International Law*. Charlottesville: University Press of Virginia, 1981.

Fitzmaurice, G. G. "The Foundations of The Authority of International Law and The Problem of Enforcement." *The Modern Law Review* 19, no. 1 (January 1, 1956): 1–13.

Franck, Thomas M. *Fairness in International Law and Institutions*. Oxford: Clarendon Press, 1995.

Fredriksen, Halvard Haukeland. "The Troubled Relationship between the Supreme Court of Norway and the EFTA Court – Recent Developments." In *The Rising Complexity of European Law*, edited by Peter-Christian Müller-Graff and Ola Mestad, 11–38. Berlin: Berliner Wissenschafts-Verlag, 2014.

Gantz, David A. "An Appellate Mechanism for Review of Arbitral Decisions in Investor-State Disputes: Prospects and Challenges." *Vanderbilt Journal of Transnational Law* 39 (2006): 39–76.

Garrett, Geoffrey. "The Politics of Legal Integration in the European Union." *International Organization* 49, no. 1 (December 1995): 171–81.

Garrett, Geoffrey, R. Daniel Kelemen, and Heiner Schulz. "The European Court of Justice, National Governments, and Legal Integration in the European Union." *International Organization* 52, no. 1 (December 1998): 149–76.

Garrison, Marsha. "How Do Judges Decide Divorce Cases - an Empirical Analysis of Discretionary Decision Making." *North Carolina Law Review* 74 (1996): 401–53.

Gathii, James. "Mission Creep or a Search for Relevance: The East African Court of Justice's Human Rights Strategy." *Duke Journal of Comparative & International Law* 24 (2013): 249–96.

Gathii, James Thuo. *African Regional Trade Agreements as Legal Regimes*. Cambridge: Cambridge University Press, 2011.

———. “Saving the Serengeti: Africa’s New International Judicial Environmentalism.” *Chicago Journal of International Law* 16, no. 2 (2016): 386–438.

Gavison, Ruth. “The Implications of Jurisprudential Theories for Judicial Election, Selection, and Accountability.” *Southern California Law Review* 61 (1987): 1617–62.

Gegout, Catherine. “The International Criminal Court: Limits, Potential and Conditions for the Promotion of Justice and Peace.” *Third World Quarterly* 34, no. 5 (June 2013): 800–818.

George, Alexander L., and Andrew Bennett. *Case Studies and Theory Development in the Social Sciences*. BCSIA Studies in International Security. Cambridge, MA: MIT Press, 2005.

Gerring, John. “Case Selection for Case-Study Analysis: Qualitative and Quantitative Techniques.” In *The Oxford Handbook of Political Methodology*, edited by Janet M. Box-Steffensmeier, Henry E. Brady, and David Collier. Oxford: Oxford University Press, 2008.

———. *Case Study Research: Principles and Practices*. Cambridge: Cambridge University Press, 2007.

Geyh, Charles Gardner. “Informal Methods of Judicial Discipline.” *University of Pennsylvania Law Review* 142, no. 1 (1993): 243–331.

Gibson, James L., and Gregory A. Caldeira. “The Legitimacy of Transnational Legal Institutions: Compliance, Support, and the European Court of Justice.” *American Journal of Political Science* 39, no. 2 (1995): 459–89.

Gilardi, Fabrizio. “Transnational Diffusion: Norms, Ideas, and Policies.” In *Handbook of International Relations*, edited by Walter Carlsnaes and Thomas, 453–77. London: SAGE, 2013.

Gilligan, Michael J. “Is Enforcement Necessary for Effectiveness? A Model of the International Criminal Regime.” *International Organization* 60, no. 4 (October 2006): 935–67.

Gilligan, Michael, Leslie Johns, and B. Peter Rosendorff. “Strengthening International Courts and the Early Settlement of Disputes.” *Journal of Conflict Resolution* 54, no. 1 (2010): 5–38.

Ginsburg, Tom. “Bounded Discretion in International Judicial Lawmaking.” *Virginia Journal of International Law* 45, no. 3 (2005): 631–73.

Ginsburg, Tom, and Richard H. McAdams. “Adjudicating in Anarchy: An Expressive Theory of International Dispute Resolution.” *William and Mary Law Review* 45 (2003): 1229–339.

Goldberg, Susan L. “Judicial Socialization: An Empirical Study.” *Journal of Contemporary Law* 11 (1985): 423–51.

Goldstein, Judith, and Lisa L. Martin. “Legalization, Trade Liberalization, and Domestic Politics: A Cautionary Note.” *International Organization* 54, no. 3 (2000): 603–32.

Goldstone, Richard J. “International Judges: Is There a Global Ethic?” *Ethics & International Affairs* 29, no. 3 (2015): 249–58.

Goodman, Ryan, and Derek Jinks. “How to Influence States: Socialization and International Human Rights Law.” *Duke Law Journal* 54, no. 3 (2004): 621–703.

———. *Socializing States: Promoting Human Rights through International Law*. New York: Oxford University Press, 2013.

Grant, Ruth W., and Robert O. Keohane. “Accountability and Abuses of Power in World Politics.” *American Political Science Review* 99, no. 1 (February 2005): 29–43.

Graver, Hans Petter. “Mission Impossible: Supranationality and National Legal Autonomy in the EEA Agreement.” *European Foreign Affairs Review* 7, no. 1 (2002): 73–90.

———. “The Effects of EFTA Court Jurisprudence on the Legal Orders of EFTA States.” In *The EFTA Court: Ten Years On*, edited by Carl Baudenbacher, Per Tresselt, and Thorgeir Orlygsson, 79–104. Oxford: Hart Publishing, 2005.

Greenhill, Brian. “The Company You Keep: International Socialization and the Diffusion of Human Rights Norms.” *International Studies Quarterly* 54, no. 1 (2010): 127–45.

Grossman, Nienke. “Legitimacy and International Adjudicative Bodies.” *The George Washington International Law Review* 41 (2010): 107–79.

Gruszczynski, Lukasz, and Wouter Werner, eds. *Deference in International Courts and Tribunals: Standard of Review and Margin of Appreciation*. Oxford: Oxford University Press, 2014.

Gutner, Tamar, and Alexander Thompson. “The Politics of IO Performance: A Framework.” *The Review of International Organizations* 5, no. 3 (2010): 227–48.

Gutterman, Ellen. “The Legitimacy of Transnational NGOs: Lessons from the Experience of Transparency International in Germany and France.” *Review of International Studies* 40, no. 2 (April 2014): 391–418.

Guzman, Andrew T. *How International Law Works: A Rational Choice Theory*. New York: Oxford University Press, 2008a.

———. “International Tribunals: A Rational Choice Analysis.” *University of Pennsylvania Law Review* 157, no. 1 (2008b): 171–235.

———. “The Cost of Credibility: Explaining Resistance to Interstate Dispute Resolution Mechanisms.” *The Journal of Legal Studies* 31, no. 2 (2002): 303–26.

Guzman, Andrew T., and Beth A. Simmons. “Power Plays and Capacity Constraints: The Selection of Defendants in World Trade Organization Disputes.” *Journal of Legal Studies* 34, no. 2 (2005): 557–98.

Haas, Peter M. “Introduction: Epistemic Communities and International Policy Coordination.” *International Organization* 46, no. 1 (December 1992): 1–35.

Haddad, Heidi Nichols. “Judicial Institution Builders: NGOs and International Human Rights Courts.” *Journal of Human Rights* 11, no. 1 (January 2012): 126–49.

Hafner-Burton, Emilie M., David G. Victor, and Yonatan Lupu. “Political Science Research on International Law: The State of the Field.” *American Journal of International Law* 106, no. 1 (2012): 47–97.

Haftel, Yoram Z., and Alexander Thompson. “The Independence of International Organizations Concept and Applications.” *Journal of Conflict Resolution* 50, no. 2 (2006): 253–75.

Hansen, Thomas Obel. “Africa and the International Criminal Court.” In *Handbook of Africa’s International Relations*, edited by Tim Murithi, 165–79. New York: Routledge, 2013.

Hansungule, Michelo. “The Suspension of the SADC Tribunal.” *Strategic Review for Southern Africa* 35, no. 1 (2013): 135–45.

Hawkins, Darren G., David A. Lake, Daniel L. Nielson, and Michael J. Tierney, eds. *Delegation and Agency in International Organizations*. New York: Cambridge University Press, 2006.

Hawkins, Darren, and Wade Jacoby. “Agent Permeability, Principal Delegation and the European Court of Human Rights.” *The Review of International Organizations* 3, no. 1 (2007): 1–28.

———. “Partial Compliance: A Comparison of the European and Inter-American Courts of Human Rights.” *Journal of International Law and International Relations* 6, no. 1 (2010): 35–119.

Helfer, Laurence R. “Forum Shopping for Human Rights.” *University of Pennsylvania Law Review* 148, no. 2 (1999): 285–400.

———. “Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash against Human Rights Regimes.” *Columbia Law Review* 102 (2002): 1832–911.

———. “Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime.” *European Journal of International Law* 19, no. 1 (February 1, 2008): 125–59.

———. “Why States Create International Tribunals: A Theory of Constrained Independence.” *Conferences on New Political Economy*, 23, no. 1 (2006): 253–76.

Helfer, Laurence R., and Karen J. Alter. “Andean Tribunal of Justice and Its Interlocutors: Understanding Preliminary Reference Patterns in the Andean Community, The.” *New York University Journal of International Law and Politics* 41 (2009): 871–930.

Helfer, Laurence R., Karen J. Alter, and M. Florencia Guerzovich. “Islands of Effective International Adjudication: Constructing an Intellectual Property Rule of Law in the Andean Community.” *American Journal of International Law* 103 (2009): 1–46.

Helfer, Laurence R., and Anne-Marie Slaughter. “Toward a Theory of Effective Supranational Adjudication.” *The Yale Law Journal* 107, no. 2 (1997): 273–391.

———. “Why States Create International Tribunals: A Response to Professors Posner and Yoo.” *California Law Review* 93, no. 3 (2005): 899–956.

Helfer, Laurence R., and Erik Voeten. “International Courts as Agents of Legal Change: Evidence from LGBT Rights in Europe.” *International Organization* 68, no. 1 (2014): 77–110.

Helfer, Lawrence R. "Why States Create International Tribunals: A Theory of Constrained Independence." In *International Conflict Resolution*, edited by Stefan Voigt, Max Albert, and Dieter Schmidtchen. Tubingen: Mohr Siebeck, 2006.

Henkin, Louis. *How Nations Behave*. New York: Columbia University Press, 1979.

Hernández, Gleider I. "The Judicialization of International Law: Reflections on the Empirical Turn." *European Journal of International Law* 25, no. 3 (2014): 919–34.

Higgins, Rosalyn. *Problems and Process: International Law and How We Use It*. Oxford: Clarendon Press, 1995.

———. *Themes and Theories: Selected Essays, Speeches, and Writings in International Law*. Oxford: Oxford University Press, 2009.

Hillebrecht, Courtney. "Rethinking Compliance: The Challenges and Prospects of Measuring Compliance with International Human Rights Tribunals." *Journal of Human Rights Practice* 1, no. 3 (2009): 362–79.

———. "The Domestic Mechanisms of Compliance with International Human Rights Law: Case Studies from the Inter-American Human Rights System." *Human Rights Quarterly* 34, no. 4 (2012): 959–85.

———. "The Power of Human Rights Tribunals: Compliance with the European Court of Human Rights and Domestic Policy Change." *European Journal of International Relations* 20, no. 4 (2014): 1100–1123.

Hilson, Chris. "New Social Movements: The Role of Legal Opportunity." *Journal of European Public Policy* 9, no. 2 (2002): 238–55.

Hinarejos, Alicia. "Social Legitimacy and the Court of Justice of the EU: Some Reflections on the Role of the Advocate General." *Cambridge Yearbook of European Legal Studies* 14 (January 2012): 615–33.

Hirschl, Ran. "The New Constitutionalism and the Judicialization of Pure Politics Worldwide." *Fordham Law Review* 75, no. 2 (2006): 721–54.

Hirschman, Albert. *Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations and States*. Cambridge, MA: Harvard University Press, 1990.

Howse, Robert. "Membership and Its Privileges: The WTO, Civil Society, and the Amicus Brief Controversy." *European Law Journal* 9, no. 4 (2003): 496–510.

Howse, Robert, and Ruti Teitel. "Beyond Compliance: Rethinking Why International Law Really Matters." *Global Policy* 1, no. 2 (2010): 127–36.

Hulse, Merran, and Anna van der Vleuten. "Agent Run Amuck: The SADC Tribunal and Governance Transfer Roll-Back." In *Governance Transfer by Regional Organizations*, edited by Tanja A. Borzel and Vera van Hullen, 84–103. Basingstoke: Palgrave Macmillan, 2015.

Huneeus, Alexandra. "Compliance with Judgments and Decisions." In *The Oxford Handbook of International Adjudication*, edited by Cesare Romano, Karen Alter, and Yuval Shany, 437–62. Oxford: Oxford University Press, 2014.

———. "Courts Resisting Courts: Lessons from the Inter-American Court's Struggle to Enforce Human Rights." *Cornell International Law Journal* 44, no. 3 (2011): 493–533.

Hurd, Ian. "Legitimacy and Authority in International Politics." *International Organization* 53, no. 2 (March 1999): 379–408.

———. *International Organizations: Politics, Law, Practice*. Cambridge: Cambridge University Press, 2013.

Hurrell, Andrew. *On Global Order: Power, Values, and the Constitution of International Society: Power, Values, and the Constitution of International Society*. Oxford: Oxford University Press, 2007.

Hurrell, Andrew, and Ngaire Woods, eds. *Inequality, Globalization, and World Politics*. Oxford: Oxford University Press, 1999.

Ikenberry, G. John, and Charles A. Kupchan. "Socialization and Hegemonic Power." *International Organization* 44, no. 3 (1990): 283–315.

Jackson, John H. *The Jurisprudence of GATT and the WTO*. Cambridge: Cambridge University Press, 2000.

Jacobs, Francis. *The Sovereignty of Law*. Cambridge: Cambridge University Press, 2007.

Jacovides, Andrew. *International Law and Diplomacy: Selected Writings*. Leiden: Brill, 2011.

Janis, Mark W., ed. *International Courts for the Twenty-First Century*. Dordrecht: Martinus Nijhoff Publishers, 1992.

Johns, Leslie. *Strengthening International Courts: The Hidden Costs of Legalization*. Ann Arbor: University of Michigan Press, 2015.

Johnston, Alastair Iain. “Treating International Institutions as Social Environments.” *International Studies Quarterly* 45, no. 4 (2001): 487–515.

Jönsson, Christer, and Jonas Tallberg, eds. *Transnational Actors in Global Governance*. Basingstoke: Palgrave Macmillan, 2010.

Juma, Dan. “Access to the African Court on Human and Peoples’ Rights: A Case of the Poacher Turned Gamekeeper?” *Essex Human Rights Review* 4, no. 2 (2007): 1–21.

Jurdi, Nidal Nabil. *The International Criminal Court and National Jurisdictions: A Contentious Relationship*. International and Comparative Criminal Justice. Burlington, VT: Ashgate, 2011.

Kahler, Miles. “Conclusion: The Causes and Consequences of Legalization.” *International Organization* 54, no. 3 (2000): 661–83.

———. “Multilateralism with Small and Large Numbers.” *International Organization* 46, no. 3 (June 1992): 681–708.

Katzenstein, Suzanne. “In the Shadow of Crisis: The Creation of International Courts in the Twentieth Century.” *Harvard International Law Journal* 55 (2014): 151–209.

Kembayev, Zhenis. *Legal Aspects of the Regional Integration Processes in the Post-Soviet Area*. Berlin: Springer, 2009.

Keohane, Robert O., Andrew Moravcsik, and Anne-Marie Slaughter. “Legalized Dispute Resolution: Interstate and Transnational.” *International Organization* 54, no. 3 (2000): 457–88.

Keohane, Robert O. *After Hegemony: Cooperation and Discord in the World Political Economy*. Princeton, NJ: Princeton University Press, 1984.

———. “The Demand for International Regimes.” *International Organization* 36, no. 2 (1982): 325–55.

Keppler, Elise. “Managing Setbacks for the International Criminal Court in Africa.” *Journal of African Law* 56, no. 01 (April 2012): 1–14.

King, Gary, Robert O. Keohane, and Sidney Verba. *Designing Social Inquiry: Scientific Inference in Qualitative Research*. Princeton, NJ: Princeton University Press, 1994.

Kingsbury, Benedict. “International Courts: Uneven Judicialization in Global Order.” In *The Cambridge Companion to International Law*, edited by James Crawford and Martti Koskenniemi, 203–27. Cambridge: Cambridge University Press, 2011.

———. “Is the Proliferation of International Courts and Tribunals a Systemic Problem.” *New York University Journal of International Law and Politics* 31 (1999): 679–96.

———. “The Concept of Compliance as a Function of Competing Conceptions of International Law.” *Michigan Journal of International Law* 19 (1998): 345–68.

Kiyani, A. G. “Al-Bashir & the ICC: The Problem of Head of State Immunity.” *Chinese Journal of International Law* 12, no. 3 (2013): 467–508.

Klabbers, Jan, and Touko Piiparinen, eds. *Normative Pluralism and International Law: Exploring Global Governance*. Cambridge: Cambridge University Press, 2013.

Klamberg, Mark. *Power and Law in International Society: International Relations as the Sociology of International Law*. Abingdon: Routledge, 2015.

Klein, Natalie. *Dispute Settlement in the UN Convention on the Law of the Sea*. Cambridge: Cambridge University Press, 2009.

Koh, Harold Hongju. “Trasnational Legal Process.” *Nebraska Law Review* 75 (1996): 181–208.

———. “Why Do Nations Obey International Law?” *Yale Law Journal* 106, no. 8 (1997): 2599–659.

Kokott, Juliane, and Daniel Dittert. “European Courts in Dialogue.” In *The EEA and the EFTA Court: Decentred Integration*, edited by EFTA Court, 43–52. Oxford: Hart Publishing, 2014.

Koremenos, Barbara. “Contracting around International Uncertainty.” *American Political Science Review* null, no. 4 (November 2005): 549–65.

———. “If Only Half of International Agreements Have Dispute Resolution Provisions, Which Half Needs Explaining?” *The Journal of Legal Studies* 36, no. 1 (2007): 189–212.

———. “The Continent of International Law.” *Journal of Conflict Resolution* 57, no. 4 (2013): 653–81.

———. “When, What, and Why Do States Choose to Delegate?” *Law and Contemporary Problems* 71, no. 1 (2008): 151–92.

Koremenos, Barbara, and Timm Betz. “The Design of Dispute Settlement Procedures in International Agreements.” In *Interdisciplinary Perspectives on International Law and International Relations*, edited by Jeffrey L. Dunoff and Mark A. Pollack, 371–93. Cambridge: Cambridge University Press, 2013.

Krasner, Stephen D. *International Regimes*. Ithaca, NY: Cornell University Press, 1983.

Lee, Roy S. K. *The International Criminal Court: The Making of the Rome Statute : Issues, Negotiations and Results*. Dordrecht: Martinus Nijhoff Publishers, 1999.

Lenz, Tobias. “Spurred Emulation: The EU and Regional Integration in Mercosur and SADC.” *West European Politics* 35, no. 1 (January 2012): 155–73.

Lindblom, Anna-Karin. *Non-Governmental Organisations in International Law*. New York: Cambridge University Press, 2005.

Llamzon, Aloysius P. “Jurisdiction and Compliance in Recent Decisions of the International Court of Justice.” *European Journal of International Law* 18, no. 5 (2007): 815–52.

Lombardini, Michele. “The International Islamic Court of Justice: Towards an International Islamic Legal System?” *Leiden Journal of International Law* 14, no. 3 (September 2001): 665–80.

Lowe, Vaughan. “The Function of Litigation in International Society.” *International and Comparative Law Quarterly* 61, no. 1 (2012): 209–22.

Lupu, Yonatan, and Erik Voeten. “Precedent in International Courts: A Network Analysis of Case Citations by the European Court of Human Rights.” *British Journal of Political Science* 42, no. 2 (April 2012): 413–39.

Lynch, Gabrielle. “Electing the ‘Alliance of the Accused’: The Success of the Jubilee Alliance in Kenya’s Rift Valley.” *Journal of Eastern African Studies* 8, no. 1 (2014): 93–114.

Mackenzie, Ruth, Kate Malleson, Penny Martin, and Philippe Sands. *Selecting International Judges: Principle, Process, and Politics*. Oxford: Oxford University Press, 2010.

Mackenzie, Ruth, Cesare Romano, Yuval Shany, and Philippe Sands. *Manual on International Courts and Tribunals*. Oxford: Oxford University Press, 2010.

Madsen, Mikael R. “The International Judiciary as Transnational Power Elite.” *International Political Sociology* 8, no. 3 (2014): 332–34.

———. “The Protracted Institutionalization of the Strasbourg Court: From Legal Diplomacy to Integrationist Jurisprudence.” In *The European Court of Human Rights between Law and Politics*, edited by Jonas Christoffersen and Mikael Rask Madsen, 43–60. Oxford: Oxford University Press, 2011.

Magliveras, K. D., and G. J. Naldi. “The International Criminal Court’s Involvement with Africa: Evaluation of a Fractious Relationship.” *Nordic Journal of International Law* 82, no. 3 (2013): 417–46.

Magnússon, Skúli. “On the Authority of Advisory Opinions.” *Europarättslig Tidskrift* 13, no. 3 (2010): 528–51.

Majone, Giandomenico. “Two Logics of Delegation Agency and Fiduciary Relations in EU Governance.” *European Union Politics* 2, no. 1 (2001): 103–22.

Maqungo, Sivu. “The Establishment of the International Criminal Court: SADC’s Participation in the Negotiations.” *African Security Review* 9, no. 1 (2000): 42–53.

March, James G., and Johan P. Olsen. *Rediscovering Organizations: The Organizational Basis of Politics*. New York: Free Press, 1989.

———. “The Institutional Dynamics of International Political Orders.” *International Organization* 52, no. 4 (September 1998): 943–69.

Martin, Lisa L. “Against Compliance.” In *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art*, edited by Jeffrey L. Dunoff and Mark A. Pollack, 591–610. Cambridge: Cambridge University Press, 2013.

Martor, Boris, Nanette Pilkington, David S Sellers, and Sebastien Thouvenot. *Business Law in Africa: OHADA and the Harmonization Process*. London: GMB Publishing, 2007.

Mattli, Walter, and Anne-Marie Slaughter. “Law and Politics in the European Union: A Reply to Garrett.” *International Organization* 49, no. 1 (1995): 183–90.

———. “Revisiting the European Court of Justice.” *International Organization* 52, no. 1 (December 1998): 177–209.

Mattli, Walter, and Ngaire Woods, eds. *The Politics of Global Regulation*. Princeton, NJ: Princeton University Press, 2009.

Maveety, Nancy, ed. *The Pioneers of Judicial Behavior*. Ann Arbor: University of Michigan Press, 2003.

Mavroidis, Petros. “Amicus Curiae Briefs Before the WTO: Much Ado About Nothing.” In *European Integration and International Coordination: Studies in Transnational Economic Law in Honour of Claus-Dieter Ehlermann*, edited by Armin von Bogdandy, Petros Mavroidis, and Yves Mény. The Hague: Kluwer Law International, 2002.

May, Christopher. “Capacity Building and the (Re)production of Intellectual Property Rights.” *Third World Quarterly* 25, no. 5 (2004): 821–37.

Mbelle, Nobuntu. “The Role of Non-Governmental Organisations and National Human Rights Institutions at the African Commission.” In *The African Charter on Human and Peoples’ Rights: The System in Practice 1986–2006*, edited by Malcolm Evans and Rachel Murray, 289–315. Cambridge: Cambridge University Press, 2008.

McCubbins, Mathew D., and Thomas Schwartz. “Congressional Oversight Overlooked: Police Patrols versus Fire Alarms.” *American Journal of Political Science* 28, no. 1 (1984): 165–79.

Merrills, J. G. *International Dispute Settlement*. Cambridge: Cambridge University Press, 2011.

Mills, Kurt. “‘Bashir Is Dividing Us’: Africa and the International Criminal Court.” *Human Rights Quarterly* 34, no. 2 (2012): 404–47.

Minow, Martha, C. Cora True-Frost, and Alex Whiting. *The First Global Prosecutor: Promise and Constraints*. Ann Arbor: University of Michigan Press, 2015.

Mitchell, Sara McLaughlin, and Emilia Justyna Powell. *Domestic Law Goes Global: Legal Traditions and International Courts*. Cambridge: Cambridge University Press, 2013.

Mohamed, Abdelsalam A. “Individual and NGO Participation in Human Rights Litigation before the African Court of Human and Peoples’ Rights: Lessons from the European and Inter-American Courts of Human Rights.” *Journal of African Law* 43, no. 02 (September 1999): 201–13.

Mondré, Aletta, Gerald Neubauer, Achim Helmedach, and Bernhard Zangl. “Uneven Judicialization: Comparing International Dispute Settlement in Security, Trade, and the Environment.” *New Global Studies* 4, no. 1 (2010).

Moravcsik, Andrew. “A New Statecraft? Supranational Entrepreneurs and International Cooperation.” *International Organization* 53, no. 2 (1999): 267–306.

Morse, Julia C., and Robert O. Keohane. “Contested Multilateralism.” *The Review of International Organizations* 9, no. 4 (2014): 385–412.

Mueller, Susanne D. “Kenya and the International Criminal Court (ICC): Politics, the Election and the Law.” *Journal of Eastern African Studies* 8, no. 1 (2014): 25–42.

Müller, Harald. “Arguing, Bargaining and All That: Communicative Action, Rationalist Theory and the Logic of Appropriateness in International Relations.” *European Journal of International Relations* 10, no. 3 (2004): 395–435.

Murithi, Tim, ed. *Handbook of Africa’s International Relations*. Abingdon: Routledge, 2013.

Murray, Rachel, Debra Long, and Malcolm Evans. *The Implementation of the Findings of the African Commission on Human and Peoples’ Rights*. Cambridge: Cambridge University Press, 2015.

Murungu, C. B. “Towards a Criminal Chamber in the African Court of Justice and Human Rights.” *Journal of International Criminal Justice* 9, no. 5 (2011): 1067–88.

Nardin, Terry. “Theorising the International Rule of Law.” *Review of International Studies* 34, no. 3 (July 2008): 385–401.

Nathan, Laurie. “The Disbanding of the SADC Tribunal: A Cautionary Tale.” *Human Rights Quarterly* 35, no. 4 (2013): 870–92.

Nay, Olivier. “What Drives Reforms in International Organizations? External Pressure and Bureaucratic Entrepreneurs in the UN Response to AIDS.” *Governance* 24, no. 4 (2011): 689–712.

Nmehielle, Vincent O. “‘Saddling’ the New African Regional Human Rights Court with International Criminal Jurisdiction: Innovative, Obstructive, Expedient?” *African Journal of Legal Studies* 7, no. 1 (2014): 7–42.

Northedge, F. S. *International Disputes: The Political Aspects*. London: David Davies Memorial Institute of International Studies / Europa, 1971.

Nouwen, Sarah M. H., and Wouter G. Werner. “Monopolizing Global Justice International Criminal Law as Challenge to Human Diversity.” *Journal of International Criminal Justice* 13, no. 1 (2015): 157–76.

Nowak, Manfred. “The Need for a World Court of Human Rights.” *Human Rights Law Review* 7, no. 1 (2007): 251–59.

Nyandu, Mpume. “The International Criminal Court.” *African Security Review* 13, no. 4 (2004): 1–2.

Oda, Shigeru. “Dispute Settlement Prospects in the Law of the Sea.” *International & Comparative Law Quarterly* 44, no. 4 (October 1995): 863–72.

Odinkalu, Anselm Chidi. “Analysis of Paralysis or Paralysis by Analysis? Implementing Economic, Social, and Cultural Rights Under the African Charter on Human and Peoples’ Rights.” *Human Rights Quarterly* 23, no. 2 (2001): 327–69.

O’Donohue, Jonathan. “Financing the International Criminal Court.” *International Criminal Law Review* 13, no. 1 (2013): 269–96.

Oellers-Frahm, Karin. “Multiplication of International Courts and Tribunals and Conflicting Jurisdiction Problems and Possible Solutions.” *Max Planck Yearbook of United Nations Law* 5 (2001): 67–104.

Oestreich, Joel E., ed. *International Organizations as Self-Directed Actors: A Framework for Analysis*. Abingdon: Routledge, 2012.

Okoth, Juliet. “Africa, the United Nations Security Council and the International Criminal Court: The Question of Deferrals.” In *Africa and the International Criminal Court*, edited by Gerhard Werle, Lovell Fernandez, and Moritz Vormbaum. The Hague: T.M.C. Asser Press, 2014.

Olson, M. *The Logic of Collective Action: Public Goods and the Theory of Groups*. Cambridge, MA: Harvard University Press, 1974.

Oppong, Richard Frimpong. “Legitimacy of Regional Economic Integration Courts in Africa.” *African Journal of Legal Studies* 7, no. 1 (2014): 61–85.

Ouguergouz, Fatsah. *La Charte africaine des droits de l’homme et des peuples: Une approche juridique des droits de l’homme entre tradition et modernite*. Paris: Presses universitaires de France, 1993.

Park, Susan. “Socialisation and the Liberal Order.” *International Politics* 51, no. 3 (May 2014): 334–49.

Pasqualucci, Jo M. *The Practice and Procedure of the Inter-American Court of Human Rights*. Cambridge: Cambridge University Press, 2012.

Pegram, Thomas. “Diffusion Across Political Systems: The Global Spread of National Human Rights Institutions.” *Human Rights Quarterly* 32, no. 3 (2010): 729–60.

Peskin, Victor. “Caution and Confrontation in the International Criminal Court’s Pursuit of Accountability in Uganda and Sudan.” *Human Rights Quarterly* 31, no. 3 (2009): 655–91.

Peters, Anne. “International Dispute Settlement: A Network of Cooperational Duties.” *European Journal of International Law* 14, no. 1 (2003): 1–34.

Pettiti, Louis-Edmond. “Independence of International Judges.” In *Judicial Independence; New Conceptual Demintions and Contemporary Challenges*, edited by Shimon Shetreet and Jules Dechênes. Lancaster: Martinus Nijhoff, 1985.

Poletti, Arlo. “World Trade Organization Judicialization and Preference Convergence in EU Trade Policy: Making the Agent’s Life Easier.” *Journal of European Public Policy* 18, no. 3 (2011): 361–82.

Pollack, Mark A. "Delegation, Agency, and Agenda Setting in the European Community." *International Organization* 51, no. 1 (1997): 99–134.

———. "Principal-Agent Analysis and International Delegation: Red Herrings, Theoretical Clarifications and Empirical Disputes," Bruges Political Research Paper No. 2, 2007.

———. *The Engines of European Integration: Delegation, Agency, and Agenda Setting in the EU*. Oxford: Oxford University Press, 2003.

———. *When Cooperation Fails: The International Law and Politics of Genetically Modified Foods*. 1st ed. Oxford: Oxford University Press, 2009.

———. "Political Science Theories and International Adjudication." In *The Oxford Handbook of International Adjudication*, edited by Cesare Romano, Karen Alter, and Yuval Shany, 357–87. Oxford: Oxford University Press, 2014.

Posner, Eric A. *The Perils of Global Legalism*. Chicago: University of Chicago Press, 2009.

Posner, Eric A., and John C. Yoo. "Judicial Independence in International Tribunals." *California Law Review* 93 (2005): 1–74.

Pouliot, Vincent. "The Logic of Practicality: A Theory of Practice of Security Communities." *International Organization* 62, no. 2 (April 2008): 257–88.

Powell, Emilia Justyna, and Sara McLaughlin Mitchell. "The International Court of Justice and the World's Three Legal Systems." *The Journal of Politics* 69, no. 2 (May 2007): 397–415.

Prott, Lyndel V. "Role, Consensus and Opinion Analysis at the International Court of Justice." *Netherlands Yearbook of International Law* 14 (December 1983): 69–85.

Putnam, Robert D., Robert Leonardi, and Raffaella Y. Nanetti. *Making Democracy Work: Civic Traditions in Modern Italy*. Princeton, NJ: Princeton University Press, 1994.

Rajkovic, N. M. "'Global Law' and Governmentality: Reconceptualizing the 'Rule of Law' as Rule 'through' Law." *European Journal of International Relations* 18, no. 1 (2012): 29–52.

Ralph, Jason. *Defending the Society of States: Why America Opposes the International Criminal Court and Its Vision of World Society*. Oxford: Oxford University Press, 2007.

Ranganathan, Surabhi. *Strategically Created Treaty Conflicts and the Politics of International Law*. Cambridge: Cambridge University Press, 2014.

Raustiala, Kal. "Compliance and Effectiveness in International Regulatory Cooperation." *Case Western Reserve Journal of International Law* 32, no. 3 (2000): 387–440.

———. "Police Patrols & Fire Alarms in the NAAEC." *Loyola of Los Angeles International and Comparative Law Review* 26 (2004): 388–413.

Raustiala, Kal, and Anne-Marie Slaughter. "International Law, International Relations and Compliance." In *Handbook of International Relations*, edited by Walter Carlsnaes, Thomas Risse-Kappen, and Beth A. Simmons, 538–58. London: SAGE, 2002.

Reinalda, Bob, and Bertjan Verbeek, eds. *Autonomous Policy Making By International Organisations*. London: Routledge, 2003.

Reisman, William Michael. *Systems of Control in International Adjudication and Arbitration: Breakdown and Repair*. Durham, NC: Duke University Press, 1992.

Risse, Thomas. "'Let's Argue!': Communicative Action in World Politics." *International Organization* 54, no. 1 (December 2000): 1–39.

Risse, Thomas, Stephen Ropp, and Kathryn Sikkink, eds. *The Power of Human Rights: International Norms and Domestic Change*. Cambridge: Cambridge University Press, 1999.

Risse, Thomas, and Kathryn Sikkink. "The Socialization of International Human Rights Norms into Domestic Practices: Introduction." In *The Power of Human Rights: International Norms and Domestic Change*, edited by Thomas Risse, Stephen Ropp, and Kathryn Sikkink, 1–38. Cambridge: Cambridge University Press, 1999.

Romano, Cesare, Karen Alter, and Yuval Shany, eds. *The Oxford Handbook of International Adjudication*. Oxford: Oxford University Press, 2014.

Romano, Cesare P. R. "A Taxonomy of International Rule of Law Institutions." *Journal of International Dispute Settlement* 2, no. 1 (2011): 241–77.

———. “The Proliferation of International Judicial Bodies: The Pieces of the Puzzle.” *New York University Journal of International Law and Politics* 31 (1999): 709–51.

Ronen, Yaël, and Yael Naggan. “Third Parties.” In *The Oxford Handbook of International Adjudication*, edited by Cesare Romano, Karen Alter, and Yuval Shany, 807–25. Oxford: Oxford University Press, 2014.

Rosas, Allan. “The European Court of Justice in Context: Forms and Patterns of Judicial Dialogue.” *European Journal of Legal Studies* 1, no. 2 (2007): 121–136.

Ruppel, Oliver C., and Francois X. Bangamwabo. “The SADC Tribunal: A Legal Analysis of Its Mandate and Role in Regional Integration.” *Monitoring Regional Integration in Southern Africa Yearbook* 8 (2008): 179–220.

Sandholtz, Wayne. “Dynamics of International Norm Change: Rules against Wartime Plunder.” *European Journal of International Relations* 14, no. 1 (2008): 101–31.

Sands, Philippe, Ruth Mackenzie, and Yuval Shany, eds. *Manual on International Courts and Tribunals*. London: Butterworths, 1999.

Sang-Hyun, Song. “Preventive Potential of the International Criminal Court.” *Asian Journal of International Law* 3, no. 2 (July 2013): 203–13.

Schiff, Benjamin N. *Building the International Criminal Court*. New York: Cambridge University Press, 2008.

Schulte, Constanze. *Compliance with Decisions of the International Court of Justice*. Oxford: Oxford University Press, 2004.

Seawright, Jason, and John Gerring. “Case Selection Techniques in Case Study Research A Menu of Qualitative and Quantitative Options.” *Political Research Quarterly* 61, no. 2 (2008): 294–308.

Shaffer, Gregory. “The Challenges of WTO Law: Strategies for Developing Country Adaptation.” *World Trade Review* 5, no. 2 (July 2006): 177–98.

Shaffer, Gregory, and Tom Ginsburg. “The Empirical Turn in International Legal Scholarship.” *The American Journal of International Law* 106, no. 1 (2012): 1–46.

Shany, Yuval. *Assessing the Effectiveness of International Courts*. Oxford: Oxford University Press, 2014.

———. “Assessing the Effectiveness of International Courts: A Goal-Based Approach.” *American Journal of International Law* 106, no. 2 (2012): 225–70.

———. *Regulating Jurisdictional Relations Between National and International Courts*. Oxford: Oxford University Press, 2007.

———. *The Competing Jurisdictions of International Courts and Tribunals*. Oxford: Oxford University Press, 2003.

Shapiro, M. “Juridicalization of Politics in the United States.” *International Political Science Review* 15, no. 2 (1994): 101–12.

Shapiro, Martin, and Alec Stone Sweet. *On Law, Politics, and Judicialization*. Oxford: Oxford University Press, 2002.

Shaw, Timothy M., J. Andrew Grant, and Scarlett Cornelissen. *The Ashgate Research Companion to Regionalisms*. Burlington, VT: Ashgate, 2011.

Shelton, Dinah, ed. *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System*. New York: Oxford University Press, 2003.

Shelton, Dinah L. “Form, Function, and the Powers of International Courts.” *Chicago Journal of International Law* 9, no. 537 (2009): 537–71.

Shklar, Judith N. *Legalism: Law, Morals, and Political Trials*. Cambridge, MA: Harvard University Press, 1986.

Sikkink, Kathryn. *The Justice Cascade: How Human Rights Prosecutions Are Changing in World Politics.* London: W.W. Norton & Company, 2011.

Simmons, Beth A. *Mobilizing for Human Rights.* New York: Cambridge University Press.

Simmons, Beth A., and Allison Danner. “Credible Commitments and the International Criminal Court.” *International Organization* 64, no. 2 (April 2010): 225.

Simmons, Beth A., Frank Dobbin, and Geoffrey Garrett. “Introduction: The International Diffusion of Liberalism.” *International Organization* 60, no. 4 (2006): 781–810.

Simmons, Beth A., and Richard H. Steinberg, eds. *International Law and International Relations*. International Organizations Books. New York: Cambridge University Press, 2006.

Skouris, Vassilios. "The ECJ and the EFTA Court under the EEA Agreement: A Paradigm for International Cooperation between Judicial Institutions." In *The EFTA Court: Ten Years On*, edited by Carl Baudenbacher, Per Tresselt, and Thorgeir Orlygsson, 123–29. Oxford: Hart Publishing, 2005.

Slater, Dan, and Daniel Ziblatt. "The Enduring Indispensability of the Controlled Comparison." *Comparative Political Studies* 46, no. 10 (2013): 1301–27.

Slaughter, Anne-Marie. "International Law and International Relations Theory: Twenty Years Later." In *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art*, edited by Jeffrey L. Dunoff and Mark A. Pollack, 613–25. Cambridge: Cambridge University Press, 2013.

———. "International Law in a World of Liberal States." *European Journal of International Law* 6 (1995): 503–38.

———. "A Typology of Transjudicial Communication." *University of Richmond Law Review* 29 (1994): 99–137.

Slaughter, Anne-Marie, and William Burke-White. "The Future of International Law Is Domestic (or, the European Way of Law)." *Harvard International Law Journal* 47 (2006): 327–52.

Slaughter-Burley, Anne-Marie. "International Law and International Relations Theory: A Dual Agenda." *The American Journal of International Law* 87, no. 2 (1993): 205–39.

Smith, James McCall. "The Politics of Dispute Settlement Design: Explaining Legalism in Regional Trade Pacts." *International Organization* 54, no. 1 (December 2000): 137–80.

Souaré, Issaka K. "The International Criminal Court and African Conflicts: The Case of Uganda." *Review of African Political Economy* 36, no. 121 (September 2009): 369–88.

Spelliscy, Shane. "The Proliferation of International Tribunals: A Chink in the Armor." *Columbia Journal of Transnational Law* 40 (2001): 143–75.

Spiermann, Ole. *International Legal Argument in the Permanent Court of International Justice: The Rise of the International Judiciary*. Cambridge: Cambridge University Press, 2010.

Spohn, Cassia. "The Sentencing Decisions of Black and White Judges: Expected and Unexpected Similarities." *Law and Society Review* 24, no. 5 (1990): 1197–216.

Ssenyonjo, Manisuli. "The Rise of the African Union Opposition to the International Criminal Court's Investigations and Prosecutions of African Leaders." *International Criminal Law Review* 13, no. 2 (2013): 385–428.

Stahn, Carsten. "Admissibility Challenges before the ICC : From Quasi-Primacy to Qualified Deference?" In *The Law and Practice of the International Criminal Court*, edited by Carsten Stahn, 228–59. Oxford: Oxford University Press, 2015.

Stahn, Carsten, ed. *The Law and Practice of the International Criminal Court*. First edition. Oxford: Oxford University Press, 2015.

Staton, Jeffrey K., and Will H. Moore. "Judicial Power in Domestic and International Politics." *International Organization* 65, no. 3 (July 2011): 553–87.

Staton, Jeffrey K., and Georg Vanberg. "The Value of Vagueness: Delegation, Defiance, and Judicial Opinions." *American Journal of Political Science* 52, no. 3 (2008): 504–19.

Steffek, Jens. "Explaining Cooperation between IGOs and NGOs – Push Factors, Pull Factors, and the Policy Cycle." *Review of International Studies* 39, no. 04 (October 2013): 993–1013.

Steinberg, Richard H. "Judicial Lawmaking at the WTO: Discursive, Constitutional, and Political Constraints." *The American Journal of International Law* 98, no. 2 (April 2004): 247–75.

Stephan, Paul B. "Courts, Tribunals, and Legal Unification-The Agency Problem." *Chicago Journal of International Law* 3, no. 2 (2002): 333–52.

St John, Taylor. *ICSID and the Rise of Investor-State Arbitration*. Oxford: Oxford University Press, forthcoming.

Stone Sweet, Alec. "The European Court of Justice and the Judicialization of EU Governance." *Living Reviews in European Governance* 5 (2010).

———. *The Judicial Construction of Europe*. Oxford: Oxford University Press, 2004.

———. "Judicialization and the Construction of Governance." *Comparative Political Studies* 32, no. 2 (1999): 147–84.

———. "The European Court and the National Courts: A Statistical Analysis of Preliminary References, 1961–95." *Journal of European Public Policy* 5, no. 1 (1998): 66–97.

Stone Sweet, Alec, and Thomas Brunell. "The European Court of Justice, State Noncompliance, and the Politics of Override." *American Political Science Review* 106, no. 1 (February 2012): 204–13.

Stone Sweet, Alec, and Thomas L. Brunell. "Trustee Courts and the Judicialization of International Regimes: The Politics of Majoritarian Activism in the European Convention on Human Rights, the European Union, and the World Trade Organization." *Journal of Law and Courts* 1, no. 1 (2013): 61–88.

Striebinger, Kai, Lukas Goltermann, Mathis Lohaus, and Tanja A. Börzel. *Roads to Regionalism: Genesis, Design, and Effects of Regional Organizations*. Basingstoke: Ashgate, 2013.

Szazi, Eduardo. *NGOs: Legitimate Subjects of International Law*. Leiden: Leiden University Press, 2012.

Tallberg, Jonas. "Delegation to Supranational Institutions: Why, How, and with What Consequences?" *West European Politics* 25, no. 1 (2002a): 23–46.

———. *European Governance and Supranational Institutions: Making States Comply*. Routledge, 2003.

———. "Orchestrating Enforcement: International Organizations Mobilizing Compliance Constituencies." In *International Organizations as Orchestrators*, edited by Kenneth Abbott, Philipp Genschel, Duncan Snidal, and Bernhard Zangl, 166–88. Cambridge: Cambridge University Press, 2015.

———. "Paths to Compliance: Enforcement, Management, and the European Union." *International Organization* 56, no. 3 (2002b): 609–43.

———. "Supranational Influence in EU Enforcement: The ECJ and the Principle of State Liability." *Journal of European Public Policy* 7, no. 1 (2000a): 104–21.

———. "The Anatomy of Autonomy: An Institutional Account of Variation in Supranational Influence." *JCMS: Journal of Common Market Studies* 38, no. 5 (2000b): 843–64.

Tallberg, Jonas, Lisa M. Dellmuth, Hans Agné, and Andreas Duit. "NGO Influence in International Organizations: Information, Access and Exchange." *British Journal of Political Science* (2015): 1–26.

Tallberg, Jonas, and J. McCall Smith. "Dispute Settlement in World Politics: States, Supranational Prosecutors, and Compliance." *European Journal of International Relations* 20, no. 1 (2014): 118–44.

Tallberg, Jonas, Thomas Sommerer, Theresa Squatrito, and Christer Jönsson. *The Opening Up of International Organizations: Transnational Access in Global Governance*. Cambridge: Cambridge University Press, 2013.

Tamm, Ditlev. "The History of the Court of Justice of the European Union Since Its Origin." In *The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case-Law - La Cour de Justice et La Construction de l'Europe: Analyses et Perspectives de Soixante Ans de Jurisprudence*, edited by Court of Justice of the European Union, 9–35. The Hague: T. M. C. Asser Press, 2013.

Tamm, Henning, and Duncan Snidal. "Rational Choice and Principal-Agent Theory." In Thomas G. Weiss and Rorden Wilkinson, eds, 132–43. *International Organization and Global Governance*. Abingdon: Routledge, 2014.

Tan, Morse. "Compliance Theory and the Inter-American Court of Human Rights." *Bepress Legal Series* 3 (2005): 1–26.

Tarrow, Sidney. "The Strategy of Paired Comparison: Toward a Theory of Practice." *Comparative Political Studies* 43, no. 2 (2010): 230–59.

Terris, Daniel, Cesare P. R. Romano, and Leigh Swigart. "Toward a Community of International Judges." *Loyola of Los Angeles International and Comparative Law Review* 30 (2008): 419–71.

Terris, Daniel, Cesare Romano, and Leigh Swigart. *The International Judge: An Introduction to the Men and Women Who Decide the World's Cases*. New York: Oxford University Press, 2007.

Tiemessen, Alana. "The International Criminal Court and the Politics of Prosecutions." *The International Journal of Human Rights* 18, no. 4–5 (2014): 444–61.

Tladi, Dire. "The Immunity Provision in the AU Amendment Protocol Separating the (Doctrinal) Wheat from the (Normative) Chaff." *Journal of International Criminal Justice* 13, no. 1 (2015): 3–17.

Tomuschat, Christian. “International Courts and Tribunals.” In *Max Planck Encyclopedia of Public International Law*. Oxford: Oxford University Press, 2011.

Trachtman, Joel P. “The Domain of WTO Dispute Resolution.” *Harvard International Law Journal* 40 (1999): 333–77.

Treves, Tullio, ed. *Civil Society, International Courts, and Compliance Bodies*. The Hague : New York: T.M.C. Asser Press; Distributed by Cambridge University Press, 2005a.

Treves, Tullio. “Judicial Lawmaking in an Era of ‘Proliferation’ of International Courts and Tribunals: Development or Fragmentation of International Law?” In *Developments of International Law in Treaty Making*, edited by R. Wolfrum and V. Röben, 587–620. Heidelberg: Springer, 2005b.

Trindade, Antônio Augusto Cançado. *The Access of Individuals to International Justice*. Oxford: Oxford University Press, 2011.

Urpelainen, Johannes. “Unilateral Influence on International Bureaucrats An International Delegation Problem.” *Journal of Conflict Resolution* 56, no. 4 (2012): 704–35.

Urpelainen, Johannes, and Thijs Van de Graaf. “Your Place or Mine? Institutional Capture and the Creation of Overlapping International Institutions.” *British Journal of Political Science* 45, no. 4 (October 2015): 799–827.

Van Der Borcht, Kim. “Advisory Center on WTO Law: Advancing Fairness and Equality, The.” *Journal of International Economic Law* 2 (1999): 723–28.

Van Der Mei, Anne Pieter. “Regional Integration: The Contribution of the Court of Justice of the EAC.” *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 69 (2009): 403–25.

———. “The New African Court on Human and Peoples’ Rights: Towards an Effective Human Rights Protection Mechanism for Africa?” *Leiden Journal of International Law* 18, no. 1 (March 2005): 113–29.

Vaubel, Roland. “Principal-Agent Problems in International Organizations.” *The Review of International Organizations* 1, no. 2 (2006): 125–38.

Vauchez, Antoine. “Communities of International Litigators.” In *The Oxford Handbook of International Adjudication*, edited by Cesare Romano, Karen J. Alter, and Yuval Shany, 655-68. Oxford: Oxford University Press, 2014.

Vanhala, Lisa. “Legal Mobilization.” In *Oxford Bibliographies Online*, Oxford University Press, November 29, 2011. http://www.oxfordbibliographies.com/display/id/obo-9780199756223-0031.

Vicuña, Francisco Orrego. “Individuals and Non-State Entities before International Courts and Tribunals.” *Max Planck Yearbook of United Nations Law* 5 (2001): 53–66.

Viljoen, Frans. *International Human Rights Law in Africa*. Oxford: Oxford University Press, 2012.

Voeten, Erik. “Borrowing and Nonborrowing Among International Courts.” *The Journal of Legal Studies* 39, no. 2 (2010): 547–76.

———. “International Judicial Behavior.” In *The Oxford Handbook of International Adjudication*, edited by Cesare Romano, Karen Alter, and Yuval Shany, 550–67. Oxford University Press, 2014.

———. “International Judicial Independence.” In *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art*, edited by Jeffrey L. Dunoff and Mark A. Pollack, 421–44. Cambridge: Cambridge University Press, 2013a.

———. “Public Opinion and the Legitimacy of International Courts.” *Theoretical Inquiries in Law* 14, no. 2 (January 2013b): 411–36.

———. “The Impartiality of International Judges: Evidence from the European Court of Human Rights.” *American Political Science Review* 102, no. 4 (November 2008): 417–33.

von Bogdandy, Armin, and Ingo Venzke. *International Judicial Lawmaking: On Public Authority and Democratic Legitimation in Global Governance*. New York: Springer, 2012a.

———. “In Whose Name? An Investigation of International Courts’ Public Authority and Its Democratic Justification.” *European Journal of International Law* 23, no. 1 (2012b): 7–41.

———. “On the Functions of International Courts: An Appraisal in Light of Their Burgeoning Public Authority.” *Leiden Journal of International Law* 26, no. 1 (March 2013): 49–72.

von Stein, Jana. "The Engines of Compliance." In *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art*, edited by Jeffrey L. Dunoff and Mark A. Pollack, 477–501. Cambridge: Cambridge University Press, 2013.

Wanberg, Connie R., ed. *The Oxford Handbook of Organizational Socialization*. Oxford: Oxford University Press, 2012.

Wang, Qingxin Ken. "Hegemony and Socialisation of the Mass Public: The Case of Postwar Japan's Cooperation with the United States on China Policy." *Review of International Studies* 29, no. 1 (2003): 99–119.

Webb, Philippa. *International Judicial Integration and Fragmentation*. International Courts and Tribunals Series. Oxford: Oxford University Press, 2013.

Weiler, J. H. H. "A Quiet Revolution The European Court of Justice and Its Interlocutors." *Comparative Political Studies* 26, no. 4 (1994): 510–34.

Welch Jr, Claude E., and Ashley F. Watkins. "Extending Enforcement: The Coalition for the International Criminal Court." *Human Rights Quarterly* 33, no. 4 (2011): 927–1031.

Werle, Gerhard, Lovell Fernandez, and Moritz Vormbaum, eds. *Africa and the International Criminal Court*. The Hague: T.M.C. Asser Press, 2014.

White, Penny J. "Judging Judges: Securing Judicial Independence by Use of Judicial Performance Evaluations." *Fordham Urban Law Journal* 29 (2002): 1053.

Wiener, Antje. *The Invisible Constitution of Politics*. Cambridge: Cambridge University Press, 2008.

Williamson, Cécile Aptel. "Justice Empowered or Justice Hampered: The International Criminal Court in Darfur." *African Security Review* 15, no. 1 (January 2006): 20–31.

Yarbrough, Beth V., and Robert M. Yarbrough. "Dispute Settlement in International Trade: Regionalism and Procedural Coordination." In *The Political Economy of Regionalism*, edited by Edward L. Mansfield and Helen V. Milner, 134–63. New York: Columbia University Press, 1997.

Young, Oran R. *Compliance and Public Authority: A Theory with International Applications*. Baltimore: Johns Hopkins University Press, 1979.

Zangl, Bernhard. "Judicialization Matters! A Comparison of Dispute Settlement Under GATT and the WTO." *International Studies Quarterly* 52, no. 4 (2008): 825–54.

Zangl, Bernhard, Achim Helmedach, Aletta Mondré, Alexander Kocks, Gerald Neubauer, and Kerstin Blome. "Between Law and Politics: Explaining International Dispute Settlement Behavior." *European Journal of International Relations* 18, no. 2 (2012): 369–401.

Other Sources

African Court on Human and Peoples' Rights (AfCHPR). "Activity Report of the African Court for the Year 2013." EX.CL/825(XXIV), African Court on Human and Peoples' Rights, 2014. http://en.african-court.org/images/Activity%20Reports/AfCHPR_Report_2013_English.pdf.

———. "Activity Report of the African Court for the Year 2014." African Court on Human and Peoples' Rights, 2015.

———. "African Media Conclude a 2-Day Continental Conference with the African Court in Arusha, Tanzania." Press Release. Arusha, Tanzania: African Court on Human and Peoples' Rights, November 22, 2013. http://www.african-court.org/en/images/documents/New/Press_Release_-_No_56_-_2013_-_Closing_the_Continental_Conference_for__the_Media_in_Arusha.pdf.

———. "Concept Note for North and East Africa Sensitization Seminar." Addis Ababa, Ethiopia: African Court on Human and Peoples' Rights, August 22, 2012. http://www.au.int/en/sites/default/files/newsevents/pressreleases/26539-pr-concept_note_for_north_and_east_africa_sensitization_seminar.pdf.

———. "Interim Report of the African Court on Human and Peoples' Rights Notifying the Executive Council of Non-Compliance by a State." African Court on Human and Peoples' Rights, n.d. http://www.african-court.org/en/images/documents/Reports/AFCHPR_Interim_Report__Non_compliance_by_a_State__-_Libya.pdf.

———. “Prime Minister of Chad Opens African Court’s Central Africa Regional Sensitization Seminar.” Press Release. Arusha, Tanzania: African Court on Human and Peoples’ Rights, December 21, 2015. en.african-court.org/index.php/news/press-releases/item/57-prime-minister-of-republic-of-chad-opens-african-court-s-central-africa-regional-sensitization-seminar-and-says-protection-of-human-rights-vital-for-africa.

———. “Report of the African Court on Human and Peoples’ Rights.” Addis Ababa, Ethiopia: EX.CL/718(XX), African Union, January 23, 2012. http://www.peaceau.org/uploads/ex-cl-718-xx-e.pdf.

———. “Report of the Eighth Session of the African Court on Human and Peoples’ Rights.” African Court on Human and Peoples’ Rights, 2008.

———. “Report of the Fifth Session of the African Court on Human and Peoples’ Rights.” AfCHPR/Draft/Rpt(5), African Court on Human and Peoples’ Rights, 2007.

———. “The African Court and Its Key Partners Agree to Strengthen Partnership in Promoting the Court.” African Court on Human and Peoples’ Rights, August 24, 2012. http://www.au.int/en/sites/default/files/newsevents/workingdocuments/26539-wd-court_24_august_2012_pr_en_auccourt_press_release_-_closing_of_the_regional_seminar.pdf.

———. “The Court Organizes a Continental Judicial Dialogue with National Judiciaries in Arusha.” Press Release. Arusha, Tanzania: African Court on Human and Peoples’ Rights, November 18, 2013. http://www.au.int/ar/sites/default/files/Press%20Release%20%20-%20No%2051-2013-%20Continental%20Judicial%20Dialogue%20with%20National%20Judiciaries.pdf.

“African Union Announces South Sudan War Crimes Court.” *BBC News*, September 29, 2015. http://www.bbc.co.uk/news/world-africa-34393329.

African Union Assembly. “Decision on Africa’s Relationship with the International Criminal Court (ICC).” Addis Ababa, Ethiopia: Ext/Assembly/AU/Dec.1, Extraordinary Session of the Assembly of the African Union, October 12, 2013. http://www.au.int/en/sites/default/files/decisions/9655-ext_assembly_au_dec_decl_e_0.pdf

African Union Executive Council. “Decision on the 2013 Activity Report of the African Court on Human and Peoples’ Rights.” Addis Ababa, Ethiopia: EX.CL/Dec.806(XXIV), Executive Council, African Union, January 21, 2014.

———. “Decision on the 2014 Activity Report of the African Court on Human and Peoples’ Rights - Doc. EX.CL/888(XXVI).” Addis Ababa, Ethiopia: EX.CL/Dec.865(XXVI), Executive Council, African Union, January 23-27, 2015. http://summits.au.int/en/sites/default/files/EX%20CL%20Dec%20851%20-%20872%20(XXVI)%20_E.pdf.

———. “Decision on the Election of Judges of the African Court on Human and Peoples’ Rights.” Khartoum, Sudan: EX.CL/Dec.261 (VIII), Executive Council, African Union, January 16-21, 2006. http://www.au.int/en/sites/default/files/decisions/9639-ex_cl_dec_236_-_277_viii_e.pdf.

———. “Decision on the Mid-Term Activity Report of the African Court on Human and People’s Rights.” EX.CL/857(XXV), Executive Council, African Union, June 20-24, 2014. http://summits.au.int/ar/sites/default/files/EX%20CL%20Dec%20813%20-%20850%20(XXV)%20_E.pdf.

Akuffo, Sophia. “Report of the African Court on Human and Peoples’ Rights on the Relevant Aspects Regarding the Judiciary in the Protection of Human Rights in Africa.” First Summit of Constitutional, Regional and Supreme Court Justices. Mexico City, Mexico, November 8, 2012. http://www.african-court.org/en/images/documents/Court/Activity%20Reports/Report_of_the_African_Court_on_Human_and_Peoples_Rights_in_the_Protection_of_Human_Rights_in_Africa_final.pdf.

Ali, Wasil. “Sudan Rules out Plans to Challenge ICC Jurisdiction over Darfur.” *Sudan Tribune*. March 18, 2007. http://www.sudantribune.com/spip.php?article20845.

Amnesty International. “International Criminal Court: Rome Statute Implementation Report Card.” London, United Kingdom: Amnesty International, May 1, 2010.

———. “Venezuela’s Withdrawal from Regional Human Rights Instrument Is a Serious Setback.” Press Release, September 6, 2013. https://www.amnesty.org/en/latest/news/2013/09/venezuela-s-withdrawal-regional-human-rights-instrument-serious-setback/.

Assembly of States Parties, International Criminal Court. "Newsletter: ASP Special Edition #3." The Hague, The Netherlands: International Criminal Court, January 2010. https://www.icc-cpi.int/iccdocs/asp_docs/Publications/Newsletter-ASP-3-ENG-web.pdf.

———. "Proposed Programme Budget for 2014 of the International Criminal Court." The Hague, The Netherlands: International Criminal Court, November 20, 2013. https://www.icc-cpi.int/iccdocs/asp_docs/ASP12/ICC-ASP-12-10-ENG.pdf.

———. "Report of the Court on Impact of Measures to Bring the Level of the International Criminal Court's Budget for 2014 in Line with the Level of the 2013 Approved Budget." The Hague, The Netherlands: International Criminal Court, November 20, 2013. https://www.icc-cpi.int/iccdocs/asp_docs/ASP12/ICC-ASP-12-11-ENG.pdf.

———. "Resolution ICC-ASP/12/Res.7, Amendments to the Rules of Procedure and Evidence." International Criminal Court, November 27, 2013. https://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ASP12/ICC-ASP-12-Res7-ENG.pdf.

———. "Special Segment as Requested by the African Union: 'Indictment of Sitting Heads of State and Government and Its Consequences on Peace and Stability and Reconciliation.'" The Hague, The Netherlands: International Criminal Court, November 20, 2013. https://www.icc-cpi.int/iccdocs/asp_docs/ASP12/ICC-ASP-12-61-ENG.pdf.

Bartels, Lorand. "Review of the Role, Responsibilities and Terms of Reference of the SADC Tribunal." Cambridge: WTI Advisors, March 6, 2011.

Baudenbacher, Carl. "Opening Speech by the President of the EFTA Court." presented at the EFTA Court's 20th Anniversary Conference, Luxemburg City, Luxembourg, June 20, 2014. http://www.eftacourt.int/fileadmin/user_upload/Files/News/BAUDENBACHER_Carl_speech.pdf.

———. "Speech on the Occasion of the Visit of the Federal Supreme Court of Switzerland." Lausanne, Switzerland, February 14, 2012. http://www.eftacourt.int/fileadmin/user_upload/Files/News/2012/14_02_12_CB_Speech_Visit_of_the_Swiss_Supreme_Court.pdf.

———. "The EFTA Judicial System Reaches the Age of Majority – Accomplishments and Problems." presented at the EEA Seminar, Brussels, Belgium, January 19, 2012. http://www.eftacourt.int/fileadmin/user_upload/Files/News/2012/CB_The_EFTA_Judicial_System_reaches_the_Age_of_Majority_final.pdf.

———. "The Role of the EFTA Court." presented at the EEA Seminar, Brussels, Belgium, December 16, 2010. http://www.efta.int/media/documents/eea/seminars/eea-a10/Carl-Baudenbacher.pdf.

Bensouda, Fatou. *ICC Prosecutor, on FIDH and the Role of NGOs at the Court*, 2015. https://www.youtube.com/watch?v=tGSLrqCp-Ng&feature=youtube_gdata_player.

Bowcott, Owen. "Backlog at European Court of Human Rights Falls below 100,000 Cases." *The Guardian*, January 30, 2014. http://www.theguardian.com/law/2014/jan/30/european-court-human-rights-case-backlog-falls.

Brandeis Institute for International Judges (BIIJ). "Authority and Autonomy: Defining the Role of International and Regional Courts." Waltham, MA: The International Center for Ethics, Justice, and Public Life, Brandeis University, July 20, 2003. https://www.brandeis.edu/ethics/pdfs/internationaljustice/biij/BIIJ2003.pdf.

———. "Complementarity and Cooperation: Challenges for International Justice." Waltham, MA: The International Center for Ethics, Justice, and Public Life, Brandeis University, January 3, 2006. https://www.brandeis.edu/ethics/pdfs/internationaljustice/biij/BIIJ2006.pdf.

———. "Complementarity and Cooperation: International Courts in a Diverse World." Waltham, MA: The International Center for Ethics, Justice, and Public Life, Brandeis University, July 28, 2004. https://www.brandeis.edu/ethics/pdfs/internationaljustice/biij/BIIJ2004.pdf.

———. "Coordination and Collaboration in Global Justice." Waltham, MA: The International Center for Ethics, Justice, and Public Life, Brandeis University, January 3, 2012. https://www.brandeis.edu/ethics/pdfs/internationaljustice/biij/BIIJ2012.pdf.

———. "Independence and Interdependence: The Delicate Balance of International Justice." Waltham, MA: The International Center for Ethics, Justice, and Public Life, Brandeis University, July 23, 2007. https://www.brandeis.edu/ethics/pdfs/internationaljustice/biij/BIIJ2007.pdf.

———. “International Courts, Local Actors.” Waltham, MA: The International Center for Ethics, Justice, and Public Life, Brandeis University, January 4, 2015. https://www.brandeis.edu/ethics/pdfs/internationaljustice/biij/BIIJ2015.pdf.

———. “International Justice: Past, Present, and Future.” Waltham, MA: The International Center for Ethics, Justice, and Public Life, Brandeis University, January 4, 2009. https://www.brandeis.edu/ethics/pdfs/internationaljustice/biij/BIIJ2009.pdf.

———. “The International Rule of Law in a Human Rights Era.” Waltham, MA: The International Center for Ethics, Justice, and Public Life, Brandeis University, July 28, 2013. https://www.brandeis.edu/ethics/pdfs/internationaljustice/biij/BIIJ2013.pdf.

———. “Toward an International Rule of Law.” Waltham, MA: The International Center for Ethics, Justice, and Public Life, Brandeis University, July 25, 2010.

Brunsden, Jim. “Are National Interests Weakening the EFTA Court?” *Politico*, October 15, 2008. http://www.politico.eu/article/are-national-interests-weakening-the-efta-court/.

Caribbean Court of Justice (CCJ). “About CALCA, Caribbean Association for Law and Court Administration.” http://www.calca-ccj.org/about-calca.

———. “CCJ Symposium: Advancing the Case for Regionalism and Indigenous Jurisprudence,” 2015. http://www.caribbeancourtofjustice.org/wp-content/uploads/2015/01/CCJ-Symposium-Advancing-the-Case-for-Regionalism-and-Indigenous-Jurisprudence.pdf.

———. “CCJ Trust Fund.” http://www.caribbeancourtofjustice.org/about-the-ccj/ccj-trust-fund.

———. “Code of Judicial Conduct,” 1998. http://www.caribbeancourtofjustice.org/papersandarticles/ccj-code%20of%20conduct.pdf.

———. “Court Report 2005-2006.” Port of Spain, Trindad & Tobago: Caribbean Court of Justice, 2006. http://www.caribbeancourtofjustice.org/annual_report/ar0506.pdf.

———. “Court Report 2011-13.” Port of Spain, Trindad & Tobago: Caribbean Court of Justice, 2014. http://www.caribbeancourtofjustice.org/publications/annual-reports.

Central American Court of Justice (CACJ). “Corte Centroamericana de Justicia, Noticias.” http://portal.ccj.org.ni/CCJ2/Default.aspx?tabid=89.

Common Market for Eastern and Southern Africa Court of Justice (COMESACJ). “COMESA Annual Report 2011.” Lusaka, Zambia: Common Market for Eastern and Southern Africa, 2012. http://www.comesa.int/attachments/article/21/comesa_annualReport%202011_12_final.pdf.

———. “Court of Justice Meets,” 2014. http://www.comesa.int/index.php?option=com_content&amp%3Bview=article&amp%3Bid=1142%3Acourt-of-justice-meets&amp%3Bcatid=5%3Alatest-.

Cotula, Lorenzo. “Legal Empowerment for Local Resource Control: Securing Local Resource Rights within Foreign Investment Projects in Africa.” London: International Institute for Environment and Development, 2007.

Davenport, David. “International Criminal Court: 12 Years, $1 Billion, 2 Convictions.” *Forbes*, March 12, 2014. http://www.forbes.com/sites/daviddavenport/2014/03/12/international-criminal-court-12-years-1-billion-2-convictions-2/#6e2fe3ed6440.

Domingo Guariglia, José. “Q&A: Budget Woes Could Hamper ICC Investigations.” *Inter Press Service*, July 25, 2011. http://www.globalissues.org/news/2011/07/25/10611.

East African Community (EAC). “Communiqué of the 16th Ordinary Summit of the EAC Heads of State.” Nairobi, Kenya, February 20, 2015.

———. “Report of the 8th Summit of the East African Community Heads of State.” Arusha International Conference Centre, Arusha, Tanzania, November 30, 2006.

———. “Report of the 28th Meeting of the Council of Ministers.” Arusha, Tanzania, November 29, 2013. http://www.meac.go.tz/sites/default/files/Documents/FINAL%20SIGNED%20REPORT%20FOR%20THE%20MINISTERIAL%20SESSION%2028th%20MEETING%20OF%20THE%20COUNCIL.pdf.

———. “Report of the 30th Meeting of the Council of Ministers.” Nairobi, Kenya, November 20, 2014. http://www.mineac.gov.rw/fileadmin/templates/Documents/Council_Reports/28TH%20Nov%202014__%20FINAL%20SIGNED%20REPORT%20OF%20THE%2030TH%20COUNCIL.pdf.

East African Court of Justice (EACJ). “Arbitration Rules,” 2012. http://eacj.org/?page_id=502.

———. “EACJ Judges’ Training on Emerging Trends in Arbitration Sets off.” Press Release, April 16, 2015. http://eacj.org/?p=2798.

———. “EACJ Workshop for Judges of the National Courts & Civil Society Workshop Concludes,” September 26, 2014. http://eacj.org/?p=2580.

———. “Strategic Plan 2010-2015.” East African Court of Justice, April 2010. http://eacj.org/wp-content/uploads/2013/09/EACJ_StrategicPlan_2010-2015.pdf.

———. “The East African Court of Justice: Tenth Year Report.” Arusha, Tanzania: East African Court of Justice, November 2011.

East African Legislative Assembly. “Resolution of the Assembly Seeking the EAC Council of Ministers to Implore the International Criminal Court to Transfer the Case of the Accused Four Kenyans Facing Trial in Respect of the Aftermath of the 2007 Kenya General Elections to the East African Court of Justice and to Reinforce the Treaty Provisions.” East African Community, April 26, 2012.

Economic Court of the Commonwealth of Independent States (ECCIS). “Application to the Court.” http://courtcis.org/index.php/jurisdiction/application.

———. “The Economic Court of the Commonwealth of Independent States - Cooperation of the Economic Court with the Commonwealth Bodies and Institutions.” http://sudsng.org/cooperation/cooperationcis3/.

———. “The Economic Court of the Commonwealth of Independent States - Cooperation of the Economic Court with the Judicial Authorities of the States.” http://sudsng.org/cooperation/cooperationcis/.

———. “The Economic Court of the Commonwealth of Independent States - Cooperation of the Economic Court with the Senior Officials, Agencies and State Organizations.” http://sudsng.org/cooperation/cooperationcis2/.

ECOWAS Court of Justice (ECCJ). “2006 Annual Report.” Abuja, Nigeria: Research and Documentation Department, ECOWAS Community Court of Justice, November 26, 2006. http://www.courtecowas.org/site2012/pdf_files/annual_reports/activities_report_2011.pdf.

———. “ECOWAS Court Completes Training Session for Bar Association of Benin Republic.” Press Release. Abuja, Nigeria, November 29, 2012. http://www.courtecowas.org/site2012/index.php?option=com_content&view=article&id=170:bar-association-benin&catid=14:pressrelease&Itemid=36.

———. “ECOWAS Court Opens Workshop on Monitoring and Evaluation.” Press Release. Abuja, Nigeria, November 29, 2012. http://www.courtecowas.org/site2012/index.php?option=com_content&view=article&id=169:workshop-monitoring-evaluation&catid=14:pressrelease&Itemid=36.

———. “ECOWAS Court President Defends Region’s Preoccupation with Politics.” Press Release. Abuja, Nigeria, November 5, 2015. http://www.courtecowas.org/site2012/index.php?option=com_content&view=article&id=278:ecowas-court-president-defends-regions-preoccupation-with-politics&catid=14:pressrelease&Itemid=36.

———. “External Court Session of the Community Court of Justice, ECOWAS, at Ibadan, Oyo State.” Press Release. Abuja, Nigeria, December 17, 2012. http://www.courtecowas.org/site2012/index.php?option=com_content&view=article&id=175:courtesesion-ibadan&catid=14:pressrelease&Itemid=36.

———. “Summary of Activities for the Year 2011.” Abuja, Nigeria: ECOWAS, 2012. http://www.courtecowas.org/site2012/pdf_files/annual_reports/activities_report_2011.pdf.

———. “Work Program,” 2007.

EEA Review Committee. “Outside and Inside: Norway’s European Dilemma.” Official Norwegian Reports NOU 2012, December 2012.

Erasmus, Gerhard. “The New Protocol for the SADC Tribunal: Jurisdictional Changes and Implications for SADC Community Law.” Stellenbosch: TRALAC, 2015.

European Court of Human Rights (ECtHR). “Annual Report 2013.” Strasbourg: European Court of Human Rights, 2014. http://www.echr.coe.int/Documents/Annual_report_2013_ENG.pdf.

———. “Dialogue between Judges.” http://www.echr.coe.int/Pages/home.aspx?p=court/events&c=#n14338512935024058350598_pointer.

———. “Resolution on Judicial Ethics,” June 23, 2008. http://www.echr.coe.int/Documents/Resolution_Judicial_Ethics_ENG.pdf.

———. “Seminars and Meetings at the Court.” http://www.echr.coe.int/Pages/home.aspx?p=court/events/ev_ar.

———. “The Pilot-Judgment Procedure: Information Note Issued By the Registrar,” 2009. http://www.echr.coe.int/Documents/Pilot_judgment_procedure_ENG.pdf.

European Court of Justice (ECJ). “Code of Conduct.” Official Journal of the European Union, September 22, 2007.

European Court of Justice (ECJ). “The Court Marks the 50th Anniversary of the Judgment in Van Gend En Loos,” May 13, 2013. http://curia.europa.eu/jcms/jcms/P_99297/.

European Free Trade Association Court (EFTAC). “EFTA Court’s 20th Anniversary Conference.” Press Release, June 26, 2014. http://www.eftacourt.int/press-publications/detail/article/efta-courts-20th-anniversary-conference-20-june-2014/.

———. “Joint Seminar of Norwegian Supreme Court and EFTA Court on Preliminary Reference Procedure in Oslo.” Press Release, October 9, 2014. http://www.eftacourt.int/press-publications/detail/article/joint-seminar-of-the-norwegian-supreme-court-and-the-efta-court-on-the-preliminary-reference-procedu/.

———. “Report of the EFTA Court 2013.” EFTA Court, April 10, 2014. http://www.eftacourt.int/press-publications/annual-reports/all/.

———. “Report of the EFTA Court 2014.” EFTA Court, April 21, 2015. http://www.eftacourt.int/press-publications/annual-reports/all/.

Evenson, Elizabeth. “The ICC: Too Important to Let Fail.” *The Globe and Mail*, August 7, 2015. http://www.theglobeandmail.com/globe-debate/the-icc-too-important-to-let-fail/article25866909/.

García-Ramírez, Sergio. “Summary of the Annual Report of the Inter-American Court of Human Rights for the 2006 Legal Year.” Washington, D. C., March 29, 2007. scm.oas.org/pdfs/2008/Corte/eng/3anexos/Appendix61.doc.

“Govt Bid to Save SA Property ’futile’.” *The Standard*, September 27, 2015. http://www.thestandard.co.zw/2015/09/27/govt-bid-to-save-sa-property-futile/.

Griffiths, Courtenay. “The International Criminal Court Is Hurting Africa.” *The Telegraph*, July 3, 2012. http://www.telegraph.co.uk/news/worldnews/africaandindianocean/kenya/9373188/The-International-Criminal-Court-is-hurting-Africa.html.

———. “Speech at the Launch of the EACJ Sub-Registry in Dar Es Salaam.” Dar es Salaam, Tanzania, September 7, 2012. http://www.newtimes.co.rw/section/article/2012-09-07/57132/.

———. “Speech at the Launch of the EACJ Sub-Registry in Kampala.” Kampala, Uganda, September 18, 2012. http://www.judiciary.go.ug/files/downloads/Remarks%20by%20Hon%20Mr%20Justice%20Herald%20R%20Nsekela%20(PRESIDRNT%20EACJ).pdf.

Hickey, Shane. “African Union Says ICC Should Not Prosecute Sitting Leaders.” *The Guardian*, October 12, 2013. http://www.theguardian.com/world/2013/oct/12/african-union-icc-kenyan-president.

Human Rights Watch. “SADC: Take Concrete Steps to Improve Rights.” Press Release. Johannesburg, August 16, 2015. https://www.hrw.org/news/2015/08/16/sadc-take-concrete-steps-improve-rights.

———. “SADC: Take Concrete Steps to Improve Rights.” https://www.hrw.org/news/2015/08/16/sadc-take-concrete-steps-improve-rights.

“ICC Forum.” http://iccforum.com/.

“ICC Prosecutor Visits Kenya Violence Victims.” *Al Jazeera*. October 25, 2012. http://www.aljazeera.com/news/africa/2012/10/201210251763823340.html.

Inter-American Court of Human Rights (IACtHR). “Annual Report 1980.” San José, Costa Rica: Organization of American States, April 15, 1981. http://www.corteidh.or.cr/sitios/informes/docs/ENG/eng_1980.pdf.

———. “Annual Report 2011.” San José, Costa Rica: Organization of American States, March 29, 2012. http://www.corteidh.or.cr/sitios/informes/docs/ENG/eng_2012.pdf.

———. “Annual Report 2012.” San José, Costa Rica: Organization of American States, March 29, 2013. http://www.corteidh.or.cr/sitios/informes/docs/ENG/eng_2012.pdf.

———. “Annual Report 2014.” San José, Costa Rica: Organization of American States, 2015. http://www.corteidh.or.cr/sitios/informes/docs/ENG/eng_2014.pdf.

———. “Rules of Procedure of the Inter-American Court of Human Rights,” 2009.

International Centre for Trade and Sustainable Development. “International Centre for Trade and Sustainable Development.” http://www.ictsd.org/themes/global-economic-governance/about.

International Court of Justice (ICJ). “Report of the International Court of Justice, 1 August 2007-31 July 2008.” New York: United Nations, October 30, 2008. http://www.icj-cij.org/court/en/reports/report_2007-2008.pdf.

———. “Report of the International Court of Justice, 1 August 2008-31 July 2009.” New York: United Nations, September 1, 2009. http://www.icj-cij.org/presscom/files/3/15593.

———. “Report of the International Court of Justice, 1 August 2013-31 July 2014.” New York: United Nations, September 15, 2014. http://www.icj-cij.org/court/en/reports/report_2013-2014.pdf.

International Criminal Court (ICC). “Al-Senussi Case: Appeals Chamber Confirms Case Is Inadmissible before ICC.” Press Release. International Criminal Court, July 24, 2014. https://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1034.aspx.

———. “Code of Judicial Ethics.” International Criminal Court, March 9, 2005.

———. “Establishment of an Independent Oversight Mechanism.” International Criminal Court, November 26, 2009. https://www.icc-cpi.int/iccdocs/asp_docs/Publications/Compendium/Resolution-Establishment-IOM-ENG.pdf.

———. “Guidelines Governing the Relations between the Court and Intermediaries,” March 2014. https://www.icc-cpi.int/en_menus/icc/legal%20texts%20and%20tools/strategies-and-guidelines/Documents/GRCI-Eng.pdf.

———. “Integrated Strategy for External Relations, Public Information and Outreach.” International Criminal Court, n.d. https://www.icc-cpi.int/NR/rdonlyres/425E80BA-1EBC-4423-85C6-D4F2B93C7506/185049/ICCPIDSWBOR0307070402_IS_En.pdf.

———. “Notice of withdrawal of the charges against Uhuru Muigai Kenyatta,” ICC-01/09-02/11, December 5, 2014. https://www.icc-cpi.int/iccdocs/doc/doc1879204.pdf.

———. “Outreach Report 2008.” International Criminal Court, n.d. https://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/outreach/outreach%20reports/Pages/icc%20outreach%20report%202008.aspx

———. “Paper on Some Policy Issues before the Office of the Prosecutor,” September 2003. https://www.icc-cpi.int/NR/rdonlyres/1FA7C4C6-DE5F-42B7-8B25-60AA962ED8B6/143594/030905_Policy_Paper.pdf

———. “Policy Paper on Case Selection and Prioritisation.” International Criminal Court, February 29, 2016. https://www.icc-cpi.int/iccdocs/otp/29.02.16_Draft_Policy-Paper-on-Case-Selection-and-Prioritisation_ENG.pdf.

———. “Policy Paper on Interests of Justice.” International Criminal Court, September 2007. https://www.icc-cpi.int/NR/rdonlyres/772C95C9-F54D-4321-BF09-73422BB23528/143640/ICCOTPInterestsOfJustice.pdf.

———. “Policy Paper on Preliminary Examinations.” International Criminal Court, November 2013. https://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Documents/OTP%20Preliminary%20Examinations/OTP%20-%20Policy%20Paper%20Preliminary%20Examinations%20%202013.pdf.

———. “Statement by the Prosecutor of the International Criminal Court, Fatou Bensouda, ahead of Elections in Nigeria: ‘I Reiterate My Call to Refrain from Violence.’” Press Release. International Criminal Court, March 16, 2014. https://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Pages/otp-stat-23-12-2015.aspx

———. “Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the Status of the Government of Kenya’s Cooperation with the Prosecution’s Investigations in the Kenyatta Case.” Press Release. International Criminal Court, December 5, 2014. https://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-04-12-2014.aspx.

———. “Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the Withdrawal of Charges against Mr. Uhuru Muigai Kenyatta.” Press Release. International Criminal

Court, December 5, 2014. https://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-statement-05-12-2014-2.aspx.

———. “The ICC Judges Provisionally Amend the Rules of Procedure and Evidence and Adopt a New Regulation in the Regulations of the Court.” Press Release. International Criminal Court, March 1, 2016. https://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1194.aspx.

———. “Twenty-First Report pursuant to Paragraph 8 of UN Security Council Resolution (UNSCR) 1593.” International Criminal Court, June 29, 2015. https://www.icc-cpi.int/iccdocs/otp/21st-report-of-the-Prosecutor-to-the-UNSC-on-Dafur_%20Sudan.pdf.

International Foundation for the Law of the Sea. “International Foundation for the Law of the Sea.” *International Foundation for the Law of the Sea*. http://www.iflos.org/en/home.aspx.

International Law Association. “The Burgh House Principles On The Independence Of The International Judiciary,” 2004. http://www.ucl.ac.uk/laws/cict/docs/burgh_final_21204.pdf.

International Tribunal for the Law of the Sea (ITLOS). “Annual Report of the International Tribunal for the Law of the Sea for 2000.” SPLOS/63. New York: Meeting of States Parties, United Nations Convention on the Law of the Sea, May 14, 2001. https://www.itlos.org/fileadmin/itlos/documents/annual_reports/ar_2000_e.pdf.

———. “Annual Report of the International Tribunal for the Law of the Sea for 2004.” SPLOS/122. New York: Meeting of States Parties, United Nations Convention on the Law of the Sea, June 16, 2005. https://www.itlos.org/fileadmin/itlos/documents/annual_reports/ar_2004_e.pdf

———. “Annual Report of the International Tribunal for the Law of the Sea for 2005.” SPLOS/136. New York: Meeting of States Parties, United Nations Convention on the Law of the Sea, June 19, 2006. https://www.itlos.org/fileadmin/itlos/documents/annual_reports/ar_2005_e.pdf.

———. “Annual Report of the International Tribunal for the Law of the Sea for 2007.” SPLOS/174. New York: Meeting of States Parties, United Nations Convention on the Law of the Sea, June 13, 2008. https://www.itlos.org/fileadmin/itlos/documents/annual_reports/ar_2007_e.pdf.

———. “Annual Report of the International Tribunal for the Law of the Sea for 2009.” SPLOS/204. New York: Meeting of States Parties, United Nations Convention on the Law of the Sea, June 18, 2010. https://www.itlos.org/fileadmin/itlos/documents/annual_reports/ar_2009_e.pdf.

———. “Annual Report of the International Tribunal for the Law of the Sea for 2010.” SPLOS/222. New York, June 13, 2011. https://www.itlos.org/fileadmin/itlos/documents/annual_reports/ar_2010_e.pdf

———. “ITLOS-Nippon Programme.” https://www.itlos.org/le-greffe/formation/programme-tidm-nippon-foundation/.

———. “Committees,” <*www*.itlos.org/en/the-tribunal/committees/>.

———. “President Wolfum Addresses General Assembly, Asserts the Advantages of Permanent Tribunals over Arbitration.” Press Release. International Tribunal for the Law of the Sea, December 11, 2007. https://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_118_E.pdf.

———. “Statement by Judge José Luis Jesus, President of the International Tribunal for the Law of the Sea, on Agenda Item 70(a).” presented at the The Plenary of the Sixty-Third Session of the United Nations General Assembly, New York, December 5, 2008. https://www.itlos.org/fileadmin/itlos/documents/statements_of_president/jesus/general_assembly_051208_eng.pdf.

———. “Statement by Judge Vladimir Golitsyn, President of the International Tribunal for the Law of the Sea on Agenda Item 74(a) ‘Oceans and the Law of the Sea.’” presented at the The Plenary of the Sixty-Ninth Sesion of the United Nations General Assembly, New York, December 9, 2014. https://www.itlos.org/fileadmin/itlos/documents/statements_of_president/Golitsyn/Statement_GA_09122014_FINAL_EN.pdf.

———. “Statement by P. Chandrasekhera Rao, President of the International Tribunal for the Law of the Sea, on the Report of the Tribunal.” presented at the Twelfth meeting of the States Parties to the Law of the Sea Convention, New York, April 16, 2002. https://www.itlos.org/fileadmin/itlos/documents/statements_of_president/chandrasekhara_rao/msp_160402_eng.pdf.

———. “Statement by the President of the Tribunal, Mr. Thomas A. Mensah, on Agenda Item 38: ‘Oceans and the Law of the Sea.’” presented at the The 69th Plenary Meeting of the Fifty-Third Session of the United Nations General Assembly, New York, November 24, 1998. https://www.itlos.org/fileadmin/itlos/documents/statements_of_president/mensah/ga_241198_eng.pdf.

Kaggwa, Med S. K. “Statement of the Network of African National Human Rights Institutions.” presented at the 48th Ordinary Session of the African Commission on Human and Peoples’ Rights, Banjul, Gambia, November 10, 2010. http://www.achpr.org/files/sessions/48th/statements/med-s.-k.-kaggwa/achpr48_speech_opening_nhris_2010_eng.pdf.

Karuhanga, James. “Rwandans to Learn about EACJ’s Arbitration Process.” *The New Times*. April 12, 2010.

Kendemeh, Emmanuel. “Taking CEMAC Court of Justice To Law Actors.” *Cameroon Tribune*, February 26, 2008.

“Kenya MPs Vote to Withdraw from ICC.” *BBC News*, September 5, 2013. http://www.bbc.co.uk/news/world-africa-23969316.

Kenyatta, Uhuru. “President Uhuru Kenyatta’s Statement On ICC Delivered At the AU Summit, Addis Ababa.” presented at the Twenty-Fourth African Union Summit, Addis Ababa, Ethiopia, January 31, 2015. http://allafrica.com/stories/201502020165.html.

Kersten, Mark. “Why Is the International Criminal Court Stepping out of Africa and into Georgia?” *The Washington Post*, February 5, 2016. https://www.washingtonpost.com/news/monkey-cage/wp/2016/02/05/why-is-the-international-criminal-court-stepping-out-of-africa-and-into-georgia/.

Konrad-Adenauer-Stiftung. “A Call for Restoring the SADC Tribunal.” The Centre for Human Rights, Faculty of Law, University of Pretoria, September 1, 2014. http://www.kas.de/rspssa/en/publications/38707/.

Kimani, Mary. “Pursuit of Justice or Western Plot?” *Africa Renewal*, October 2009.

Ligami, Christabel. “EACJ Has High-Calibre Judges, so We Can Handle Human-Rights Cases.” *The East African*. May 30, 2015. http://www.www.theeastafrican.co.ke/news/Interview-with-Emmanuel-Ugirashebuja-president-of-EA-court/-/2558/2734774/-/gjxkjg/-/index.html.

Mataboge, Mmanaledi. “AU Not Ready to Relinquish Donor Funding.” *Mail & Guardian*, June 19, 2015. http://mg.co.za/article/2015-06-18-au-not-ready-to-relinquish-donor-funding.

Menya, Walter. “Africa Seeks Withdrawal from ICC.” *The Star*, May 24, 2013. www.the-star.co.ke/news/article-121600/africa-seeks-withdrawal-icc.

Mercosur Permanent Review Court (MPRC). “TPR Mercosur - Activities.” http://www.tprmercosur.org/es/actividades.htm.

Morris, Addison. “Dominican Republic Leaves Inter-American Court of Human Rights.” *Jurist*, November 6, 2014. http://www.jurist.org/paperchase/2014/11/dominican-republic-leaves-inter-american-court-of-human-rights.php.

“Mugabe Commends Tribunal Suspension.” *New Zimbabwe*, August 21, 2010. http://www.newzimbabwe.com/news-3107-Mugabe+commends+Tribunal+suspension/news.aspx.

Musau, Nzau and Gideon Keter. “9 AU Countries Threaten Bid to Amend ICC Regulations.” *The Star*, November 18, 2013. www.the-star.co.ke/news/article-143974/9-au-countries-threaten-bid-amend-icc-regulations.

“Museveni to Move Motion for Africa to Withdraw from the ICC.” *The East African*, December 13, 2014. http://www.www.theeastafrican.co.ke/news/Museveni-to-move-motion-for-Africa-to-withdraw-from-the-ICC/-/2558/2555174/-/ilne4k/-/index.html.

Network of African National Human Rights Institutions (NANHRI). “What Do National Human Rights Institutions (NHRIs) Know about the African Court on Human and Peoples’ Rights (Court)? How Could NHRIs Support Effective Implementation of the Decisions by the Court?” Nairobi, Kenya: Network of African National Human Rights Institutions (NANHRI), 2015. http://www.nanhri.org/index.php?option=com_phocadownload&view=category&id=8&Itemid=878&lang=en.

Nsekela, Harold R. “Overview of the East African Court of Justice.” presented at the Sensitization Workshop on the Role of the EACJ in the EAC Integration, Imperial Royale Hotel, Kampala, Uganda, November 1, 2011.

Open Society Justice Initiative. “Intermediaries and the International Criminal Court: A Role for the Assembly of States Parties.” Open Society Foundations, December 12, 2011. https://www.opensocietyfoundations.org/sites/default/files/intermediaries-20111212.pdf.

Organization of African Unity. “Draft African Charter on Human and Peoples’ Rights.” OAU Doc CAB/LEG/67/1, Organization of African Unity, December 28, 1979.

Peter Fabricius. “Follow Me, I’m Right behind You, Says Kenyatta.” *ISS Today*, February 4, 2016. https://www.issafrica.org/iss-today/follow-me-im-right-behind-you-says-kenyatta.

Peter Tomka, International Court of Justice. “International Courts and Tribunals: Effective and Legitimate?” presented at the European Society of International Law 11th Annual Conference, Oslo, Norway, September 10, 2015.

Pillay, Ariranga G. “SADC Tribunal Dissolved by Unanimous Decision of SADC Leaders.” n.d. http://www.osisa.org/sites/default/files/article/files/Speech%20by%20former%20President%20of%20SADC%20Tribunal.pdf.

Quiroga, Cecilia Medina. “Summary of the Annual Report of the Inter-American Court of Human Rights for the 2007 Fiscal Year, Presented to the OAS Committee on Juridical and Political Affairs.” presented at the OAS Committee on Juridical and Political Affairs, Washington, D. C., April 3, 2008.

Robinson, Tracy. “Taking Stock of Developments in Cooperation between the United Nations and the Inter-American Commission on Human Rights.” presented at the Workshop on Enhancing Cooperation between United Nations and Regional Mechanisms for the Promotion and Protection of Human Rights, Palais des nations, Geneva, October 8, 2014. http://www.ohchr.org/Documents/Countries/Cooperation/TracyRobinson.pdf.

Rozenberg, Joshua. “Delay in Lubanga Judgment Demonstrates ICC Weaknesses.” *The Guardian*, March 14, 2012. http://www.theguardian.com/law/2012/mar/14/delay-lubanga-weaknesses-icc-model.

Ruhangisa, John E. “Role of the East African Court of Justice in the Realization of Customs Union and Common Market.” presented at the Inter-Parliamentary Relations Seminar, Burundi National Assembly, Bujumbura, Burundi, January 27, 2010.

“Rwanda Withdraws from African Court Declaration.” *The New Times*, March 5, 2016. http://www.newtimes.co.rw/section/article/2016-03-05/197697/.

“SADC Summit: Beheading the Monster.” *The Economist*, Agugust 2012. http://www.economist.com/blogs/baobab/2012/08/sadc-summit.

Southern African Development Community (SADC). “Communiqué of the 34th Summit of the SADC Heads of State and Government.” Victoria Falls, Zimbabwe: Southern African Development Community, August 17, 2014.

———. “Final Communiqué of the 32nd Summit of SADC Heads of State and Government.” Maputo, Mozambique: Southern African Development Community, August 18, 2012. http://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/Communique_32nd_Summit_of_Heads_of_States.pdf.

———. “SADC Tribunal Review.” Windhoek, Namibia: Southern African Development Community Tribunal, February 2010.

Speitler, Philipp. “The Role of the EFTA Court: Homogeneity Revisited.” presented at the EEA Seminar, March 2013. http://www.efta.int/media/documents/eea/seminars/eea-s13/EFTA_Seminar_-_Presentation_-_Speitler.pdf.

“Sudan Protests to US over Blocked Visa for President Bashir.” *The Independent*, September 28, 2013. http://www.independent.co.uk/news/world/africa/sudan-protests-to-us-over-blocked-visa-for-president-bashir-8846111.html.

The Judiciary, Republic of Kenya. “East African Court of Justice Sub Registry Launched in Nairobi,” October 24, 2014. http://www.judiciary.go.ke/portal/blog/post/east-african-court-of-justice-sub-registry-launched-in-nairobi.

The Role and Activities of the ICJ (2013). http://www.icj-cij.org/presscom/gallery.php?p1=6&event=20110101_icj.

Tjønneland, Elling N. “SADC and Donors – Ideals and Practices.” Botswana Institute for Development Policy Analysis, April 2006. http://www.sarpn.org/documents/d0002078/SADC_donors_BIDPA_2006.pdf.

United Nations General Assembly. “Observer Status for the International Tribunal for the Law of the Sea in the General Assembly.” A/RES/51/204, 88th Plenary Meeting, United Nations General Assembly, December 17, 1996. http://www.un.org/documents/ga/res/51/a51r204.htm.

United Nations. “The Bangalore Principles of Judicial Conduct,” 2001.

World Trade Organization (WTO). “Annual Report for 2009.” Geneva, Switzerland: World Trade Organization, February 2010. https://www.wto.org/english/tratop_e/dispu_e/ab_annual_report09_e.doc.

———. “Annual Report for 2014.” Geneva, Switzerland: World Trade Organization, July 2015. https://www.wto.org/english/news_e/news15_e/ab_03jul15_e.htm.

———. “Dispute Settlement System Training Module, Chapter 9, Participation in Dispute Settlement Proceedings.” https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c9s1p1_e.htm.

———. “Minutes of Meeting.” WT/GC/M/60, General Council, World Trade Organization, November 22, 2000.

———. “Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes,” December 11, 1996.

———. “Understanding the WTO: Settling Disputes.” http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm.

WTO Institute for Training and Technical Cooperation. “Annual Report on Technical Assistance and Training 2013.” WT/COMTD/W/205, World Trade Organization, September 3, 2014. http://gtad.wto.org/publish/Annual_report_2013_e.pdf.

Treaties

Agreement between the EFTA States on the Establishment of Surveillance Authority and a Court of Justice, 1992. (“SCA”)

Agreement Establishing the Advisory Centre on WTO Law, 1999.

Agreement Establishing the Caribbean Court of Justice, 2001.

Agreement on the European Economic Area, 1992.

Agreement on the Statute of the Economic Court, 1992.

Charter of the Commonwealth of Independent States, 1993.

Charter of the United Nations, 1945. (“UN Charter”)

Cochabamba Protocol, 1996.

Common Market for Eastern and Southern Africa Treaty, 1994.

Convention of the Statute of the Central American Court of Justice, 1992.

Convention on the Establishment of a Security Control in the Field of Nuclear Energy, 1957.

Convention regissant la Cour de Justice de la C.E.M.A.C., 1996.

European Convention on Human Rights, 1959. (“European Convention”)

Protocol of Olivos for the Settlement of Disputes, 2002.

Protocol of Tegucigalpa, 1991.

Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, 2014. (“International Crimes Protocol”)

Protocol on the Tribunal in the Southern African Development Community, 2014. (“SADC Tribunal Protocol”)

Protocol on Tribunal in the Southern African Development Community, 2000.

Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of the African Court on Human and Peoples’ Rights, 1998. (“AfCHPR Protocol”)

Revised Treaty of the Economic Community of West African States (ECOWAS), 1993. ("ECOWAS Treaty")

Rome Statute of the International Criminal Court, 1998. ("Rome Statute")

Statute of the Inter-American Court of Human Rights, 1980. ("IACtHR Statute")

Statute of the International Court of Justice, 1945 ("ICJ Statute")

The American Convention on Human Rights, 1969. ("American Convention")

Traité Relatif à L'harmonisation Du Droit Des Affaires En Afrique, 1993.

Treaty Concerning the Establishment and the Statute of a Benelux Court of Justice, 1965.

Treaty Creating the Court of Justice of the Cartagena Agreement, 1979.

Treaty Establishing the European Coal and Steal Community, 1951.

Treaty Establishing the Functioning of the European Union, 2012.

Treaty Establishing the West African Economic and Monetary Union, 1994.

Treaty for East African Cooperation Act, 1967. ("Treaty for East African Cooperation")

Treaty for the Establishment of the East African Community, 1999.

Treaty of Maastricht on European Union, 1993. ("Maastricht Treaty")

Treaty of the Benelux Court of Justice, 1981.

Treaty of the Southern African Development Community, 1992.

Treaty on the Establishment of the Eurasian Economic Community, 2000.

Trujillo Protocol, 1996.

Understanding on Rules and Procedures Governing the Settlement of Disputes, 1994. ("DSU")

United Nations Convention on the Law of the Sea; Statute of the International Tribunal for the Law of the Sea, 1982. ("UNCLOS")

Cases

Anyang Nyong'o v. *Attorney General of Kenya* (East African Court of Justice 2007).

Apitz Barbera v. *Venezuela* (Inter-American Court of Human Rights 2008).

Avena and Other Mexican Nationals (Mexico v. United States of America) (International Court of Justice, 2004) ("Avena").

Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (International Court of Justice 2004).

Case Concerning the Vienna Convention on Consular Relations (Paraguay v. United States of America) (International Court of Justice 1998) ("Breard").

CILFIT v. *Ministero della Sanità* (European Court of Justice 1982).

Defrenne v. *Sabena* (European Court of Justice 1976).

EFTA Surveillance Authority v Norway (EFTA Court 2007) ("Gaming Machines Case").

Erla María Sveinbjörnsdóttir v. *Iceland* (EFTA Court 1998).

ESA v. *Norway* (EFTA Court 2012).

Francovich v. *Italy* (European Court of Justice 1991).

Government of the Republic of Zimbabwe v. *Fick and Others* (Constitutional Court of South Africa 2013).

Holship Norge AS v. *Norsk Transportarbeiderforbund* (EFTA Court 2015).

Irish Bank Resolution Corporation Ltd v. *Kaupthing Bank* (EFTA Court 2012).

James Katabazi v. *Secretary General of the EAC* (East African Court of Justice 2007).

LaGrand Case (Germany v. United States of America) (International Court of Justice 2001) ("LaGrand").

Legality of the Threat or Use of Nuclear Weapons, Separate Opinion of Judge Guillaume (International Court of Justice 1996).

Mike Campbell (Pvt) Ltd and Others v. *Republic of Zimbabwe* (Southern African Development Community Tribunal 2008).

Opel Austria v. *Council of the European Union* (EFTA Court 1997).

Shrimp and Sea Turtle Protection (Court of International Trade 1998).

STX Norway Offshore AS m.fl. v Staten v/ Tariffnemnda (EFTA Court 2012) ("Shipbuilders Case").

Temple of Preah Vihear (Cambodia v. Thailand) (International Court of Justice 1962).

Territorial Dispute (Libyan Arab Jamahiriya v. Chad) (International Court of Justice 1994).

The Norwegian State v. *Stig Arne Jonsson* (EFTA Court 2013).

United States - Import Prohibition of Certain Shrimp and Shrimp Products (WTO Appellate Body, 1998) ("Shrimp/Turtle Case").

Van Gend en Loos v. *Nederlandse Administratie der Belastingen* (European Court of Justice 1962).

Walter Rechberger and Others v. *Austrian Republic* (EFTA Court 1999).