7

Conclusion

International courts have risen in prominence over the past few decades. Their numbers have increased, and their jurisprudence has expanded. Many current regional and global problems find their way onto the dockets of these institutions. The ECtHR, for example, has been asked to weigh in on climate change.[1] The ICC and ICJ have been ports of call following the outbreak of war and conflict, like in Ukraine and Gaza. The CJEU has been called upon to consider whether practices of some of the world's largest companies, including Google (Alphabet), Microsoft, and Facebook (Meta), undermine business competition. Closer to the focus on this book, the EACJ has considered whether presidents can run for reelection, and the ACtHPR has been asked to rule on state responsibility for corporate-based human rights abuses. Faced with these questions, among many others, ICs decide whether to accept a state's (or an international organization's) exercise of authority and thereby defer.

This book has examined what factors shape deference by international courts. It has argued that deference is determined by an IC's strategic space – understood as the scope of possible decisions that a court could deliver that would satisfy both legal and political imperatives. The broader this strategic space is, the less inclined a court will be to defer. Moreover, I have hypothesized that two structural factors constitute a court's key political constraints and, thus, its strategic space. These are: (1) *formal independence*, or the formal rules that safeguard a court's isolation from political interference; and (2) *political fragmentation*, conceived of as the heterogeneity in member states' preferences. These two factors have the capacity to alter an international court's strategic space because they condition a court's legitimacy and the feasibility and credibility of collective state resistance. Both are expected to have a

[1] The IACtHR, ITLOS, and ICJ have been asked to address climate change within their advisory jurisdiction.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

positive effect on a court's strategic space, and therefore a negative relationship with deference. I have also suggested that additional factors play a role over time, including past episodes of resistance and the practices that courts develop.

The previous three chapters explored deference by the EACJ, CCJ, and ACtHPR. They revealed each court defers to varying degrees and in different ways. Moreover, the chapters analyzed the evidence in support of the argument. They showed that each court has a unique set of formal rules that enhance or hamper independence, which together affect how stakeholders view the courts and the potential of collective state resistance. These chapters also showed how each court's temporal and cross-sectoral variation in deference corresponds with patterns in political fragmentation among member states – the more homogeneous states' preferences are at any given time or on any given issue, the more deference is observed. Additionally, deference increased following episodes of resistance when they occurred. The analysis also indicates that each court relies on practices of persuasive argumentation and public legitimation to expand their strategic space and enable nondeference, but these practices differ depending on each court's political constraints. Overall, the previous three chapters rely on within-case comparison and empirically support the core argument of the book.

This chapter shifts gears and has two aims. First, it puts the EACJ, CCJ, and ACtHPR into dialogue with each other. Specifically, it draws on the findings of the previous three chapters for the purpose of a cross-case comparison. This provides an opportunity to review the main findings and to offer a final empirical test of the argument. Second, this chapter situates the argument and findings within broader scholarly debates and identifies potential avenues for future research.

Comparing the EACJ, CCJ, and ACtHPR

Chapters 4–6 provided empirical support for the core argument based on within-case comparison. The theoretical framework, however, purports not only to explain variation in deference within a single court's jurisprudence but to also provide an account of how deference varies across courts. This section therefore compares the EACJ, CCJ, and ACtHPR by drawing on the empirical findings of the previous chapters to assess whether the explanation developed in this book accounts for the differences observed in these courts' deference.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

In view of this aim, I recall that the book's core argument consists of five theoretical expectations, which are summarized by the following hypotheses.

H_1: The higher an IC's formal independence is, the less it will defer.
H_2: The more politically fragmented the membership of an IC is, the less it will defer.
H_3: The narrower an IC's strategic space is (as a result of either formal independence or political fragmentation), the more it will rely on persuasive argumentation to facilitate nondeference.
H_4: The narrower an IC's strategic space is (as a result of either formal independence or political fragmentation), the more it will rely on public legitimation to facilitate nondeference.
H_5: All else equal, an international court will defer more when it has experienced past resistance.

I also speculated – although more tentatively – two additional expectations. First, persuasive argumentation may depend more on domestic citations when an international court has a relatively narrow strategic space. Second, ICs to which states can unilaterally exit or enter a court's jurisdiction (or part thereof) may be especially inclined to rely on people-oriented public legitimation narratives.

To determine whether the evidence is congruent with these expectations, I develop observable implications – or claims about what we can expect to see if the hypotheses hold – to guide the comparison of the three ICs. For this purpose, I begin by describing each court's relative level of formal independence and political fragmentation. Chapter 3 measured formal independence and showed that among the three courts analyzed here the EACJ has the lowest formal independence followed by the ACtHPR, while the CCJ has the highest.

To measure political fragmentation, I look at the variability in the EAC, AU, and CARICOM member states' preferences using Freedom House data – assuming state practices reveal preferences.[2] I then calculated the coefficient of variation for each court's membership from 2005 to 2020 on three indicators relating to issues covered within the courts' jurisprudence.[3] Higher values imply greater preference heterogeneity or fragmentation. Figure 7.1 depicts the yearly coefficient of

[2] I use Freedom House because V-Dem includes only six of fifteen CARICOM members. Freedom House includes all members except Montserrat.
[3] The COV is a standardized measure of variability, and it reflects the size of a sample's standard deviation in relation to its mean.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

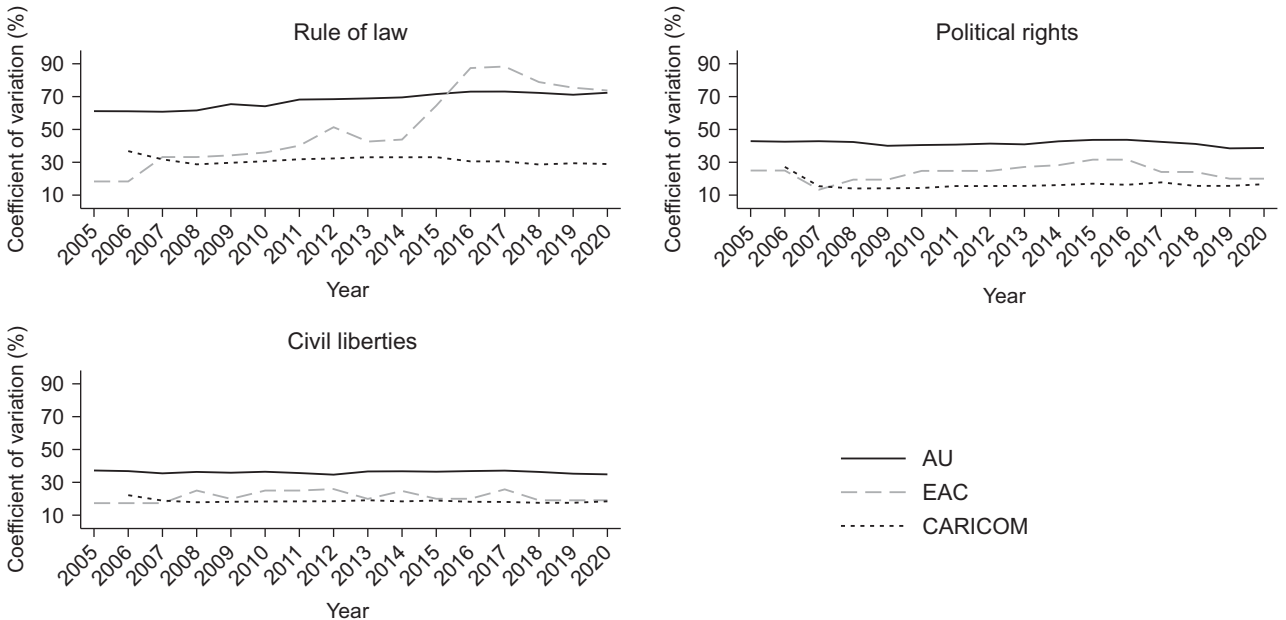


Figure 7.1 Political fragmentation of EAC, CARICOM, and AU.
Note: Calculations and illustration by author.
Data source: Coppedge et al., "V-Dem [Country-Year] Dataset V12."

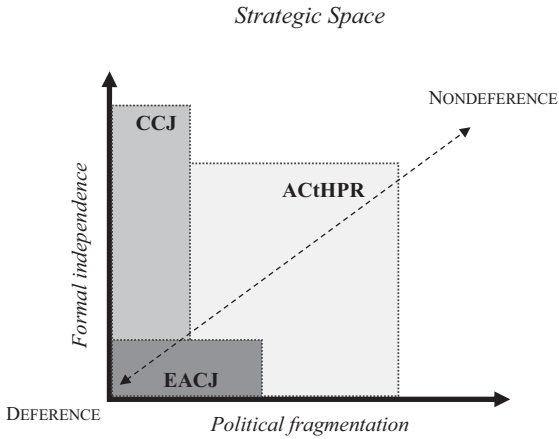


Figure 7.2 Visualization of the strategic space for the EACJ, CCJ, and ACtHPR.

variation for the memberships on the *rule of law*, *civil liberties*, and *political rights*. It reveals that the AU tends to have the highest levels of fragmentation, while CARICOM has the lowest and the EAC lies between.

Taking this information together, Figure 7.2 positions the three ICs within a two-dimensional space to reflect where they reside based on their formal independence and political fragmentation. Each IC's strategic space roughly corresponds to its surrounding shaded box. The EACJ has the smallest strategic space because of its comparatively low formal independence and low-to-midrange political fragmentation. The CCJ has the next largest strategic space, which is a product of high formal independence alongside homogenous preferences among CARICOM states. In contrast, the ACtHPR has both relatively high formal independence and political fragmentation, and consequently has the largest strategic space. The smaller the shaded box, the more deference we expect to observe. This provides the first observable implication. We expect *the EACJ to defer the most, followed by the CCJ, and the ACtHPR to defer the least*.

The empirical findings closely align with the first observable implication. Table 7.1 summarizes the aggregate patterns of deference of each court, presented in Chapters 4–6. During the period under analysis, the EACJ's case outcomes display more deference than the other two courts. It ruled in favor of states in 54 percent of its merits judgments. The CCJ found in favor of states in 33 percent of cases, while the ACtHPR decided

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

Table 7.1 *Comparison of deference by the EACJ, CCJ, and ACtHPR*

Deference	EACJ	CCJ	ACtHPR
Case outcomes Percentage of merits judgments in favor of state (higher percent = more deference)	54%	33%	18%
Interpretation and reasoning	• "work-to-rule" or restrictive interpretations are *commonplace* • limited scrutiny	• "work-to-rule" or restrictive interpretations are *rare* • heightened scrutiny	• "work-to-rule" or restrictive interpretations are *rare* • heightened scrutiny
Remedies Percentage of merits judgments (lower percent = more deference)	• 46 % with consequential orders • 8% with two additional remedies	• 25 %with consequential orders • 13% with two additional remedies	• 33 % with consequential orders • 50 % with two additional remedies

Note: Percentages exclude cases where EAC organs or CARICOM organs are the respondents.

in favor of states the least, or in 18 percent of its merits judgments. This pattern matches the observable implication.

Case outcomes provide an imperfect picture of deference, and a more complete picture of an international court's acceptance of the state's exercise of authority would also include the court's legal interpretation and reasoning and remedial orders. However, comparing courts' interpretation and reasoning is challenging. I have not proposed a quantitative indicator of deference based on interpretation and reasoning. My qualitative assessment of the courts' jurisprudence, however, found that typically (or despite some notable exceptions) the EACJ adopts "work-to-rule" or restrictive interpretations, and it applies limited scrutiny when accessing states' actions or decisions. The CCJ and ACtHPR are the opposite: work-to-rule or restrictive interpretations and limited scrutiny tend to be the exception, not the rule, with these two courts. The observed patterns in interpretation and reasoning, as with case outcomes, closely align with my argument's first observable implication.

The courts' remedial orders also shed light on deference. Deference based on remedies is high when a court abstains from delivering a consequential order. Conversely, it is low when consequential orders are issued. Table 7.1 shows that the CCJ and ACtHPR's deference based on consequential remedies conforms to expectations: The ACtHPR issued consequential orders more often than the CCJ. However, 46 percent of the EACJ judgments include a consequential order, which is higher than both the CCJ and ACtHPR and therefore is at odds with the first observable implication. That said, as Chapter 4 discussed, many of the EACJ's consequential orders intruded less on state sovereignty than would seem at first glance, suggesting that the percentage of decisions with consequential orders overestimates the EACJ's nondeference. Also, deference as seen by consequential orders of the CCJ and ACtHPR might underestimate nondeference as these two courts often make strong recommendations or tie the hands of states without explicitly issuing a consequential order (see discussion on remedies in Chapters 5 and 6).

For these reasons, I also consider how the courts combine remedies. Chapter 2 suggested that nondeference is greater when there is a combination of remedies, as opposed to a single remedy, within a decision. For example, if a court orders both restitution and compensation, it defers less than if it were to only require compensation. Table 7.1 provides data on the portion of disputes that included at least two orders in addition to the declaratory judgment. Based on these data, the empirical results align with the first observable implication. The EACJ rarely

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

issues multiple remedies in cases. Only 8 percent of its judgments extended two remedies after declaring a violation by a state. This contrasts with the CCJ which combined remedies slightly more often (in 13 percent of its cases), and the ACtHPR which combined remedies the most. Half of all ACtHPR's decisions included at least two remedies in addition to a declaratory judgment.

In sum, across all three measures of deference, the ACtHPR defers the least, followed by the CCJ, and the EACJ the most. These findings are congruent with the first observable implication (which corresponds to H_1 and H_2). They also align with H_5, as the EACJ is the only court to have previously faced collective resistance and it displays the most deference.

Adaptive Practices

I have also argued that over time ICs can exercise agency over their strategic space by adopting practices that help to improve their legitimacy while reducing the plausibility of state resistance. I have focused on two adaptive practices: persuasive fragmentation and public legitimation. According to H_3 and H_4, when a strategic space is narrower, these adaptive practices are likely to be more prominent. I measured persuasive argumentation as unanimous judgments and references to external jurisprudence. A second and third observable implication is thus derived from H_3. I begin with the second observable implication, specifically *the EACJ should issue more unanimous judgments than the ACtHPR*. The evidence is congruent with this expectation. Ninety-eight percent of the EACJ's judgments were unanimous, in contrast to 75 percent of the ACtHPR's judgment. Of the two instances of expressed dissent by the EACJ, one included a dissent by the national judge of the respondent state, which was found by the majority to be in violation of its obligations. On the face of it, this dissent reflects strategic voting on the part of the dissenting judge. The ACtHPR did not have such striking examples of strategic voting because the African Court's judges are required to recuse themselves from presiding over disputes involving their national state. The CCJ is not permitted to issue split decisions (within its original jurisdiction), so there are no expectations for the CCJ related to unanimous judgments.

A court's citations practices can also reveal persuasive argumentation. While all courts will cite authoritative sources to make their judgments compelling, a court's strategic space will inform what types of sources will boost legitimacy and mitigate state resistance. I have argued that

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

Table 7.2 *Descriptive statistics on citation practices by court*

	EACJ		CCJ		ACtHPR	
Type of citation	Mean	Standard deviation	Mean	Standard deviation	Mean	Standard deviation
Internal jurisprudence	4.71	4.01	4.61	2.36	8.59	7.09
External jurisprudence	3.84	4.42	8.72	8.88	4.96	9.08
• *International*	1.36	1.92	7.44	6.44	4.52	8.45
• *Domestic*	2.48	3.51	1.28	3.01	0.44	1.37

external citations, especially references to domestic jurisdictions, will be more central to judicial decisions the narrower an IC's strategic space is. This leads to the third observable implication: *the EACJ should cite external jurisprudence the most, followed by CCJ and then the ACtHPR*. Table 7.2 summarizes the descriptive statistics for each court's citation practices. It confirms that each court's practice of citing domestic jurisprudence corresponds to the respective size of their strategic space. On average, the EACJ cites domestic jurisprudence the most often, while the ACtHPR does the least. This suggests that the EACJ boosts the persuasiveness of its judgments by signaling its respect for domestic law. It cites domestic jurisprudence nearly twice as often as the CCJ and nearly five times that of the ACtHPR. One might speculate that this has something to do with the nature of the EACJ's jurisdiction as a regional integration court, where domestic law may be more central to resolving disputes. If this were the case, the EACJ's and CCJ's citation practices should be similar. Yet, not only does the CCJ cite domestic jurisprudence much less than the EACJ, but the CCJ cites international jurisprudence more than the other two courts. This suggests that domestic jurisprudence is not inherently more central to disputes relating to regional integration than international jurisprudence. Looking at domestic and international citations combined, the EACJ cites external jurisprudence the least (as expected). However, the CCJ cites external jurisprudence on average more than the ACtHPR. The ACtHPR might cite external jurisprudence less than the CCJ because the former has much more internal jurisprudence upon which to construct its arguments. Regardless, it seems that references to domestic jurisprudence appear to be the type of persuasive

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

argumentation most closely aligned with the courts' respective strategic spaces. Also, it is worth recalling that Chapters 4–6 showed that when a judgment represents either a loss for state(s) or includes intrusive remedies, external jurisprudence is typically cited. This suggests that references to external jurisdictions are associated with less deference, as expected. Interviews also confirmed that judges view the quality of their judgments, including how they are reasoned and embedded within broader jurisprudence, as essential to having well-regarded decisions that will be respected. In other words, citation patterns are determined not only by a court's legal constraints, but its political constraints also play a role in shaping how a court presents persuasive arguments.

Last, H_4 expected more public legitimation the narrower a court's strategic space is. This leads to a fourth observable implication: *the EACJ presents public legitimation the most, followed by CCJ and then the ACtHPR*. I also posited that unilateral exit options might impact the use of public legitimation, leading to a preference for people-centered narratives.

Interview material, official publications, and speeches for each court make clear that all three courts show concern for their public image, and they have adopted many initiatives to build public awareness and confidence. Most of the data I presented on public legitimation is qualitative. Quantitatively comparing the courts' "off-the-bench" activities is not useful because many of these activities are contingent on financial resources (sometimes from external donors). Moreover, some activities are by invitation (e.g., a judge might be invited as a keynote speaker), and thus are not entirely within the control of the courts themselves. All three courts, however, use social media as part of their public communication strategies. I therefore compare public legitimation based on the courts' communication over Facebook. As described in Chapters 4–6, I used a web-scraping tool to extract each court's posts on their own Facebook pages and then analyzed the texts of the posts for key words and phrases that reflect their respective *people-centered* and *political purpose* narratives.[4] With this data I compare the relative prominence of these narratives in the courts' public communication.[5]

[4] I included all posts from the date the courts opened their Facebook page to the end of 2020. I use Facebook because it was among the first social media outlet these courts used. Also, Facebook does not limit the number of characters or word per post, which could otherwise constrain public legitimation via social media.

[5] The courts opened their Facebook pages in different years. I therefore compare the percentage of posts, as the absolute numbers vary significantly (but the number of posts per year is roughly comparable).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

Table 7.3 *Prominence of public legitimation narratives on courts' Facebook pages*

	EACJ	CCJ	ACtHPR
Narrative(s)	Percent of posts with narrative(s)	Percent of posts with narrative(s)	Percent of posts with narrative(s)
People-centeredness	4.73	10.46	4.39
Political purpose	12.31	4.9	3.01
People-centeredness or political purpose	12.88	12.75	6.58
$N =$	528	306	897

Table 7.3 depicts the extent to which the courts' social media posts feature either of the public legitimation narratives. The findings corroborate H_4. The EACJ presents either of the public legitimation narratives slightly more than the CCJ. In contrast, the ACtHPR conveys one of the two narratives the least.

While the EACJ and CCJ are roughly similar in the overall portion of their communication that features public legitimation narratives, they favor different narratives. The EACJ emphasizes its political purpose while the CCJ, as well as the ACtHPR, highlights its people-centeredness. These differences reflect the varied sources of political constraints. The CCJ and ACtHPR are both constrained by the politics of states' unilateral acceptance (or withdrawal) to parts of their jurisdiction. In contrast, the EACJ places greater emphasis on its political purpose – unilateral exit is not an option as the EACJ's jurisdiction is compulsory for EAC members, and it has a narrow strategic space. Thus, the EACJ focuses on portraying itself as central to the process of integration, while the CCJ and ACtHPR signal their ties to the Caribbean peoples and African peoples, respectively.

Alternative Accounts

The above comparison shows that the evidence is largely consistent with the theoretical framework advanced by this book. The argument was developed against the backdrop of two other perspectives – support networks, and political norms and legal culture. The preceding chapters also assessed these two perspectives within the context of each court. In the following, I briefly apply them comparatively.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

Existing literature attributes aspects of judicial decision-making to ideational factors, especially political norms and legal culture. As illustrated in Chapters 4–6, the EACJ, ACtHPR, and CCJ share important similarities regarding their ideational setting. Colonial legacies shaped the normative environments in which these courts were created and operate. First, the origins for the EACJ, ACtHPR, and CCJ are connected to the colonial pasts of their member states. Impulses toward regional unity, regionalism, and cooperation existed alongside strong norms of noninterference and sovereignty. Both the EAC and CARICOM were rooted in failed experiments of integration under their colonial oppressors. In the case of the OAU, colonialism spurred sentiments of solidarity and cooperation, but largely led states to favor norms of noninterference. For all three of these ICs, they were created at a time when ideas supportive of regional cooperation were spreading but coexisting with principles of sovereignty and noninterference. This tension has had lasting impacts on the courts and broader regional organizations within which they are embedded.

Also related to their colonial histories, the EACJ, CCJ, and ACtHPR function within legal cultures that are characterized by pluralism and fragile faith in state (or formal) law and courts. Pluralism arises from the mix of civil and common law systems both within and across the members of all three courts. In addition, customary and religious law operates alongside state law, and alternative dispute resolution is widespread. Legal culture in most member states is also shaped by public distrust or a lack of faith in state law and courts. Finally, as newer courts, their sui generis legal cultures are mutable and evolving.

A comparison of these three courts, therefore, reveals strong similarities based on ideational factors. In methodological terms, the research design and selection of ICs aimed to hold these considerations constant. Thus, my argument complements theoretical perspectives that highlight the role of ideational factors, and it suggests additional factors are instrumental to international judicial deference. Also, the analysis revealed that colonial legacies had both political and legal impacts. This sits comfortably with the view that a court's decision-making will be informed by both political and legal imperatives.

Previous research has pointed to the pivotal role of judicial support networks. If a strong and active support network were crucial to explaining why an international court forgoes deference, we would expect ICs that typically defer to feature few channels of access for its supporters, to minimally mobilize its supporters, or for its support network to be

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

inactive or lack political influence. Conversely, ICs that demonstrate less deference would have various opportunities for access and demonstrate efforts to mobilize their supporters and for the support network to be strong and active. Knowing that the EACJ is the most deferential court of the three ICs studied, while the ACtHPR is the least deferential followed by CCJ, we would expect the EACJ to have a weak or inactive support network. Conversely, the ACtHPR should have the most active and strongest support. Similarly, we should also observe variation in access opportunities and efforts to mobilize supporters.

Chapters 4–6 demonstrated that the EACJ, CCJ, and ACtHPR alike have established practical (legal aid schemes, sub-registries, etc.) and extensive "off-the-bench" activities to mobilize their would-be supporters. Moreover, the three courts feature access for private actors, substate actors, and/or supranational actors. Substate actors (i.e., national courts) and supranational actors have been reluctant supporters of all three courts as they have rarely made use of their available access channels. National courts can refer cases to the EACJ and the CCJ, but except for one referral to the EACJ, this channel has not been utilized. Supranational actors can make referral in all three courts, although this is more limited in the case of the CCJ, but this opportunity has not generated much, if any, litigation for the EACJ, CCJ, or ACtHPR. Thus, these courts are roughly similar in their opportunities and use by substate and supranational actors.

Private actors, whether individual, NGOs, or for-profit organizations, can access all three courts. Nonetheless, private access varies to some degree among the EACJ, CCJ, and ACtHPR. For example, the hurdles for private access to the ACtHPR are significant because many states have not submitted Article 34(6) declarations and the two-month time limit on filing makes a successful petition to the EACJ challenging. The restrictiveness of access to these two courts is difficult to reconcile with their very different approaches to deference.

Also, the strength and activeness of private actors does not align with how much each court defers. Table 7.4 summarizes the empirical findings on support networks. It shows that the ACtHPR has had the fewest portion of its cases represented by repeat lawyers, as one measure of the strength and activity of a judicial support network, yet it has been the least deferential of the three courts. On the other hand, the most deferential court, the EACJ, has a large portion of applications represented by repeat lawyers. Also, the CCJ had the largest portion of cases represented by repeat lawyers, yet deference by this court has not been the lowest.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

Table 7.4 *Summary of findings on support networks by court*

	EACJ	CCJ	ACtHPR
Cases represented by repeat lawyers	54 %	67 %	22 %
Cases involving an NGO	28 %	6 %	40 %
Statistical findings			
Are violations declared, if merits consider, more often with repeat counsel?	No	Yes*	Yes*
Are violations more often declared when NGO participates?	No	No	Yes*
Are consequential orders more frequent with repeat counsel?	Yes*	Yes*	No
Are consequential orders more frequent when NGO participates?	Yes*	No	No
Are additional remedies issued more often with repeat counsel?	Yes*	No	No
Are additional remedies applied more often when NGO participates?	Yes*	No	No

* Findings are congruent with theoretical expectations of the support network logic.

A second measure for the relative strength and activity of a support network is the proportion of cases involving an NGO. As the support network logic would expect, the ACtHPR is the least deferential court and had the largest portion of cases with NGO participation. However, the EACJ had a relatively high portion of cases involving NGOs, even though it was the most deferential among the three courts. Also, NGO participation at the CCJ has been limited, yet this court is less deferential than the EACJ.[6]

Last, Table 7.4 summarizes the findings related to whether deference in legal outcomes and remedies is associated with the involvement of repeat

[6] NGO participation occurred in only one case before the CCJ. Considering alternative measures of support network activity for the CCJ does not better align with the expectations of the support network logic. For example, 22 percent of cases involved a private actor as a third party, which is still below the 28 percent for the EACJ, or 56 percent included either a private actor or supranational actors as a third party, which is higher than the ACtHPR. Regardless of measure, the level of participation does not align with the expectation that the CCJ should fall between the EACJ and ACtHPR if activity of supporters accounted for deference.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

lawyers or NGOs. This shows that these relationships are not systematically congruent with the expectations of the support network logic. For instance, the EACJ does not declare violations more often when repeat lawyers or NGOs are involved in disputes than when they are not. Similarly, nondeferential remedies occur less often in the CCJ and ACtHPR when these actors are involved in the litigation.

Overall, the analysis suggests that support networks provide an incomplete account – a court's supporters do not systematically predict deference. This is not to say they are insignificant to the development of international courts. Indeed, individuals, NGOs, and lawyers have been essential to the litigation before the EACJ, CCJ, and ACtHPR. Thus, my argument and findings do not reject that support networks have an important function for international courts and their performance. Rather, it complements this perspective in a few ways. First, my argument assumes that court's need proponents to ensure a broad strategic space. This includes litigants – as would be the case for the support network logic – but it also includes the broader public, as I have argued. Second, I have focused on two adaptive practices that ICs employ to expand their strategic space. An IC's mobilization of its support networks is another type of adaptive practice that could have bearing on a court's strategic space. Third, *time* is an important element of my argument. That is, the structural factors I have highlighted are crucial in the early years of a court, or at t_0 (see Figure 2.3). A court's support network – even if civil society and the legal profession were key to its creation – is likely to also be in a nascent stage at t_0. My argument does not exclude the possibility that support networks may be capable of empowering a court, and thus altering its strategic space, with time.

Summarizing the Argument

Taken together, the empirical record supports the core argument advanced in this book. Judicial deference is shaped by an international court's strategic space. Two political constraints – formal independence and political fragmentation – are key to structuring this strategic space. Formal independence and political fragmentation have bearing on how a court takes decisions because they interact to shape a court's legitimacy, or how it is perceived by stakeholders, and affect the plausibility of state resistance. Higher formal independence and a more fragmented membership provide ICs with a broader strategic space, leading them to defer less. However, even with a generous strategic space, ICs will defer at

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

times, often due to legal constraints. To extend the strategic space and enable nondeference that a court might not otherwise feel secure in executing, it will lean into practices of persuasive argumentation and public legitimation. These will take unique forms depending on the nature of the court's underlying political constraints. Courts with narrower strategic space will favor unanimous judgments and highlight the compatibility of their decisions with external (especially domestic) jurisprudence. They will also be more inclined to integrate legitimation narratives into their public communications, especially by conveying commitment to their political purpose if there are no unilateral exit options for states. Those with a broader space will be more at ease expressing dissent on the bench (when permitted by the formal rules) and external jurisprudence will be less central to the reasoning of their decisions. While not neglectful of public perceptions, their public communications will focus less on legitimation narratives.

The empirical findings are congruent with this argument. Namely, I have shown that the EACJ has the narrowest strategic space of the three ICs studied, due to *pervasive constraints* arising from its low formal independence and moderate political fragmentation among the EAC members. At the same time, it has been the most deferential. Unlike the other courts, the EACJ's strategic space has also been affected by past collective resistance. Given its narrow strategic space, the EACJ leans into the practice of publishing unanimous judgments and citing domestic law to construct compelling arguments. Also, its public communication portrays the Court as dutiful to its intended political purpose, signaling the Court's respect for state sovereignty and the limits of its mandate. These practices help to buttress the Court's nondeference. Even with these practices in place, however, the EACJ overall displays *substantial deference*.

The CCJ's strategic space is larger than the EACJ's. It enjoys high formal independence yet minimal political fragmentation, constituting *intermediate constraints* and leading the CCJ to be *moderately deferential*. The CCJ defers especially when it perceives states as likeminded and likely to reject its preferred position. Regardless, to make nondeference palatable to states and other audiences, the CCJ cites external jurisprudence (especially international case law) to make arguments compelling. Public legitimation also benefits nondeference and helps the Court to gain public acceptance of its appellate jurisdiction. Given past reluctance of states (and their voting public) to join the appellate jurisdiction, the CCJ's public communication emphasizes legitimation narratives that

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

illustrate its people-centeredness and representation of the Caribbean people.

Of the three courts, the ACtHPR has the broadest strategic space, due to its robust formal safeguards to independence and marked political divisions among member states, and it deferred the least among the three courts studied. In other words, the ACtHPR's *subtle constraints* enable *minimal deference*. The Court's nondeference has been facilitated additionally by persuasive argumentation that emphasizes international jurisprudence as well as its own case law, and public legitimation that highlights people-centered narratives. Yet, state resistance, especially their reluctance to accept private actors' right to petition the Court and withdrawals of Article 34(6) declarations, has affected the Court's strategic space. This is made evident by an increase in deference.

Scope of the Argument

While my theoretical framework may generalize to a broad set of ICs, the argument was developed and tested within a specific set of conditions. First, this argument is a story of *new* international courts and the early years of their development. In the early years of an institution, institutional design is likely to have a heightened importance as relationships between states, societal actors, the public, and courts are in formation. Appearances make stronger impressions on legitimacy beliefs in the absence of prior performance, states have not yet shown resistance, and the resilience of a court is not yet proven. In other words, courts and their judges are growing into their relationship with states, and states are navigating new terrain. The early years for international courts are not necessarily determinative of their future trajectories. While there is some evidence from previous scholarship that sui generis cultures, practices, and path dependencies can set in, for which formative years may be pivotal, the argument assumes that the political environment can change, and the empirical evidence supports this assumption. Political fragmentation is not static. Fragmentation fluctuates due to factors such as changes in memberships and governments. Also, resistance, if it arises, can also alter the strategic space. In the end, additional research is needed to understand if and how an international court's early years are formative and constrain their future trajectories. Put differently, looking back at the nascent stages of older courts – like the ECtHR – could offer new perspectives on where they are today.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

Second, the argument has been evaluated in the context of international courts that operate in the Global South and mostly low- and middle-income countries. The relationship between development and how international courts engage with their stakeholders is not entirely clear. Socioeconomic considerations have previously been shown to have an impact on engagement with international courts and tribunals. For instance, development has been the focus of research on legal outcomes in international investment arbitration,[7] legal representation before the ICJ,[8] and whether states launch litigation at the WTO,[9] to name a few. Development and wealth could have a range of potential effects, including state legal capacity and expertise, and societal access to courts and capacity to litigate. It might also affect legal consciousness, and therefore how courts perceive their political constraints. Moreover, research that questions the impact of formal independence of domestic judiciaries finds a contrast between developing and developed states.[10] Yet, this study has by and large set these issues aside by looking only at courts among primarily low- and middle-income countries. Thus, the argument is linked to this context, even though the book may raise questions about how far the argument travels beyond these boundaries.

Third, the argument has not been developed to apply to interstate jurisdictions and disputes. Admittedly, other factors might affect an international court's legitimacy and the credibility of state resistance within its interstate jurisdiction. For example, the distribution of power may affect deference in interstate disputes. Also, the threefold measure of deference used here may not fit interstate disputes. Thus, further

[7] Daniel Behn, Tarald Laudal Berge, and Malcolm Langford, "Poor States or Poor Governance? Explaining Outcomes in Investment Treaty Arbitration," *Northwestern Journal of International Law & Business* 38, no. 3 (2018); Sergio Puig and Anton Strezhnev, "The David Effect and ISDS," *European Journal of International Law* 28, no. 3 (2017).

[8] Shashank P. Kumar and Cecily Rose, "A Study of Lawyers Appearing Before the International Court of Justice, 1999–2012," *European Journal of International Law* 25, no. 3 (2014).

[9] Andrew Guzman 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); Thomas Sattler and Thomas Bernauer, "Gravitation or Discrimination? Determinants of Litigation in the World Trade Organisation," *European Journal of Political Research* 50, no. 2 (2011).

[10] Hayo and Voigt, "The Long-Term Relationship between De Jure and De Facto Judicial Independence."

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

theoretical and empirical analysis would most likely be necessary to modify the approach presented by this book for it to apply to interstate adjudication.

Thus, the generalizability of the argument beyond these conditions requires further research. Many readers, nonetheless, will want an indication of how my argument applies to the international courts they know best. Thus, I offer a brief interpretation of the WTO Appellate Body (AB) and the ECtHR, but with two important caveats. First, I have not measured deference for these courts and can only rely on previous scholarly descriptions of their jurisprudence and existing data as a preliminary indicator of their deference. Second, these interpretations are tentative.

The WTO AB seemingly presents a challenging case for my argument. It began operating within a midrange strategic space, due to its limited formal independence (see Figure 3.2) and a politically fragmented membership.[11] Yet, by many accounts the WTO AB has typically been nondeferential. Many scholars suggest that "it has shown a strong inclination for gap-filling and ambiguity clarification, which is often achieved through considerable judicial creativity."[12] Also, most cases (or 89 percent of disputes) resulted in a finding of at least one violation.[13] Does this undermine my argument, as the WTO AB deferred less than we would expect? I would suggest that the WTO AB needs to be interpreted in light of its predecessor – the General Agreement on Tariffs and Trade (GATT) dispute settlement system. In contrast to the WTO, GATT's dispute settlement system was less independent and the membership less fragmented.[14] The WTO AB's strategic space was broader than under GATT

[11] See Joseph Jupille, Walter Mattli, and Duncan Snidal, *Institutional Choice and Global Commerce* (Cambridge: Cambridge University Press, 2013), 100. The authors describe preference heterogeneity as very high at the WTO's founding and during the Doha Round.

[12] Gao and Zhou, "'Overreaching' or 'Overreacting'?" 959; Robert Howse, "The World Trade Organization 20 Years On: Global Governance by Judiciary," *European Journal of International Law* 27, no. 1 (2016); Judith L. Goldstein and Richard H. Steinberg, "Regulatory Shift: The Rise of Judicial Liberalization at the WTO," in *The Politics of Global Regulation*, ed. Walter Mattli and Ngaire Woods (Princeton: Princeton University Press, 2009); Steinberg, "Judicial Lawmaking at the WTO."

[13] Simon Lester, "U.S. "Wins" and "Losses" in WTO Disputes," *International Economic Law and Policy Blog*, March 15, 2020, https://ielp.worldtradelaw.net/2020/03/us-wins-and-losses-in-wto-disputes.html. This figure includes all WTO disputes (panels and AB).

[14] Jupille, Mattli, and Snidal, *Institutional Choice and Global Commerce*, 100. Jupille et al. describe heterogeneity as moderate during GATT.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

and its creation an endorsement of a stronger dispute settlement system. Armed then with a broader strategic space, the WTO AB demonstrated more "judicial lawmaking," "filling of gaps," or "agent slack" than had been seen under GATT's dispute settlement.[15] Thus, seen in this light, the shift from the GATT to the WTO corresponds to my expectations: the expansion in formal independence and fragmentation meant that the WTO AB has comparatively wider strategic space, giving rise to less deference. Moreover, as fragmentation continued to grow with the expansion of membership, for example, with the membership of China, the WTO AB continued to not defer.

My argument brings out two additional points about the WTO Appellate Body. First, episodes of resistance are important. The WTO Dispute Settlement Understanding (DSU) did face attempted collective resistance in its first decade of operation. Member states tried to reform the WTO DSU when the AB determined that it would accept amicus submission.[16] This attempted reform signaled to the AB that collective resistance was unlikely to be successful as states could not find enough agreement.[17] In other words, these events effectively green-lighted non-deference. Second, courts can misread their political environment and miscalculate the plausibility of resistance as well as their legitimacy. That is, they may perceive their strategic space to be different from what it is. This would seem to have been the case for the WTO AB. The WTO AB did not anticipate the United States would use appointment procedures to paralyze it, even if the United States had previously blocked reappointments.[18] The WTO AB did not appear to appreciate that international courts could indeed fall victim to such a strategy. Although under very different circumstances, the SADC Tribunal was also paralyzed through an intentional strategy of refusing to appoint judges.[19] It does not appear

[15] Goldstein and Steinberg, "Regulatory Shift"; see also Howse, "The World Trade Organization 20 Years On."

[16] Theresa Squatrito, "Opening the Doors to the WTO Dispute Settlement: State Preferences on Ngo Access as Amici," *Swiss Political Science Review* 18, no. 2 (2012). Some states wanted to permit amicus curiae submissions, while others wanted to prohibit them.

[17] Howse, "The World Trade Organization 20 Years On," 28.

[18] Elsig and Pollack, "Agents, Trustees, and International Courts"; Mark A. Pollack, "International Court Curbing in Geneva: Lessons from the Paralysis of the WTO Appellate Body," *Governance* 36, no. 1 (2023).

[19] The SADC Tribunal's fate is well-known story to international jurists today. For a detailed account of what transpired, see, for example, Nathan, "The Disbanding of the SADC Tribunal"; Alter, Gathii, and Helfer, "Backlash Against International Courts in West, East and Southern Africa," 306–14.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

that the AB adopted practices to help alleviate political constraints either. For example, the WTO AB did little in the way of public legitimation,[20] even though it undoubtedly had developed a relationship with the legal community.[21] Thus, the WTO AB for all intents and purposes miscalculated or undervalued its evolving political environment and failed to recognize how intricacies of its institutional design, like the rules related to the selection and tenure of its judges, could be significant.

The ECtHR also presents an interesting case for my argument. Over the years, the ECtHR has seen many changes. The formal independence of the ECtHR increased at two points, first in 1998 when Protocol 11[22] entered into force; and again in 2010 when Protocol 14[23] entered into force. Political fragmentation has fluctuated over the years. It was moderate to high until the early 1970s, then declined and remained low until the early 1990s. It increased markedly in the mid-1900s and was relatively high. Since the early 2000s, fragmentation has increased modestly (see Figure A7.1). Based on my argument, we therefore expect the first ten to fifteen years of the Court to show some deference, the early 1970s until the early 1990s to be a period of relatively high deference, and for deference to decrease in the mid-to-late 1990s onward. Madsen's summary of the ECtHR's authority roughly corresponds to these expectations, although he does not speak in terms of deference. He argues that, even though the Court had few cases in its first decade, from its inception until the mid-to-late 1970s the Court "deploy[ed] a relatively restrictive and often state-friendly interpretation of the Convention."[24] The first time it declared a violation was in 1968.[25] In the period of 1970 to 1990, he describes the ECtHR as having "narrow and

[20] See WTO, "Appellate Body Annual Reports," accessed August 4, 2024, www.wto.org/english/tratop_e/dispu_e/ab_an_rep_e.htm.

[21] Gregory Shaffer, Manfred Elsig, and Sergio Puig, "The Extensive (But Fragile) Authority of the WTO Appellate Body," *Law and Contemporary Problems* 79, no. 1 (2016).

[22] Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, restructuring the control machinery established thereby (adopted May 11, 1994, entered into force November 1, 1998), U.N.T.S. 2061, at 7–24. In relation to formal independence, Protocol 11 changed the length of a judicial term from nine to six years, modified rules on the selection of the registrar so the Court did not have to consult with the Secretary-General and introduced a rule on the removal of judges.

[23] ECHR Protocol No. 14. In relation to formal independence, the Protocol changed the term length from six to nine years and removed the possibility of reappointment.

[24] Madsen, "The European Court of Human Rights," 244.

[25] Ibid., 250.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

intermediate authority, with flashes of expansive authority."[26] These flashes were mostly in relation to the United Kingdom, and expansive authority toward other states did not arise until the 1990s.[27] The 1990s marked a new era for the Court, in which it spun "an expansive and tighter normative web of European human rights."[28] Another measure of deference, which I have used in the previous chapters, is the portion of cases in which the respondent was found to have committed at least one treaty violation. Figure A7.2 depicts the ECtHR's annual deference rate on merits judgments. This figure roughly corresponds to Madsen's characterization of ebbs and flows in the ECtHR's jurisprudence. Deference in the first fifteen years fluctuated significantly, but also there were few merits decisions. From the late 1970s to early 1980s, a clear pattern evolves. Deference was relatively high and steadily declined until the late 1990s. In the 2000s, deference steeply declined and was at an all-time low. This pattern also roughly aligns with the expectation mentioned above.

The ECtHR, however, has been more deferential throughout the 2010s, in what has been called its "procedural turn."[29] Can my theoretical framework account for the procedural turn, viewed as deference? The Court's formal independence was at its highest point from 2010 onward, and its fragmentation increased modestly, both of which are at odds with increased deference. I would suggest that the procedural turn and uptick in deference reflects how episodes of state resistance can affect a court's strategic space, all else equal. Discontent was a growing reality for the ECtHR in the 2000s, ranging from outrage at the backlog to pesky noncompliance and pushback by key states, like the UK and Russia. The resistance came to a head around the Brighton Declaration of 2012, which incorporated a principle of subsidiarity and effectively narrowed the Court's authority.[30] Thus, in the case of the ECtHR, resistance played an important role in shrinking the Court's strategic space to affect its deference. At the same time, it was not until this time that the

[26] Ibid. 257.
[27] Ibid., 251–57.
[28] Ibid., 259.
[29] Oddný Mjöll Arnardóttir, "The 'Procedural Turn' Under the European Convention on Human Rights and Presumptions of Convention Compliance," *International Journal of Constitutional Law* 15, no. 1 (2017); Miles Jackson, "Judicial Avoidance at the European Court of Human Rights: Institutional Authority, the Procedural Turn, and Docket Control," *International Journal of Constitutional Law* 20, no. 1 (2022).
[30] Madsen, "The European Court of Human Rights."

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

ECtHR became more attentive to its public legitimacy in my estimation. For instance, the Court's 2013 Annual Report was the first to note its outreach activities.[31]

As these two brief illustrations suggest, my argument has broader applications and could shed light on older and more widely known international courts. That said, a test of the generalizability outside the conditions outlined above requires analysis beyond what I can do here.

Implications for Scholarship on International Courts and International Organizations

This book contributes to interdisciplinary scholarship on international courts. It also offers new insights for IR research on international organizations in contemporary world politics. I conclude with a brief discussion of these implications.

Interdisciplinary Approaches to International Courts

This book contributes empirically to interdisciplinary research on international courts. While I am not the first to research the EACJ, CCJ, and ACtHPR, this book has uniquely presented the most comprehensive data to date on the judgments of these courts, as well as their broader political and normative context and practices. The book also introduced original data on the formal independence of twenty-six international courts, which revealed two important findings about the judicialization of world politics and the proliferation of ICs. First, the independence of these courts on average has declined over time. This contrasts with other trends in the design of international courts, which reflect a progression or expansion of liberal design elements. For example, elsewhere it has been shown that the expansion of private actor access has been part and parcel with the proliferation of courts.[32] Formal independence bucks this generally progressive trend. Second, rules defining the appointment and terms of office for international judges as well as the managerial autonomy of ICs drive most of the observed variation in formal independence. This finding is significant because comparative judicial politics research has shown these are the elements of de jure independence that have the

[31] See ECtHR, "Reports," accessed August 4, 2024, www.echr.coe.int/annual-reports.

[32] Theresa Squatrito, "The Democratizing Effects of Transnational Actors' Access to International Courts," *Global Governance* 24, no. 4 (2018): 600–601.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

largest impact on de facto independence.[33] It also supports the move toward better understanding the managerial aspects of international courts, ranging from the funding and control over resources as well as the influence of their registries and secretariats.[34]

The book also contributes theoretically to literature on the performance of international courts, seen as the extent to which and how they resolve disputes, clarify law, and facilitate compliance in discrete instances as well as their broader impacts on peaceful settlement, a rule-based order, and international cooperation.[35] Some might refer to some of these broader impacts as judicial power.[36] This book shows that two factors interact to play a crucial role in understanding the performance or power of ICs: institutional design and preferences of states. Elsewhere it has been shown that the institutional rules by which an international court is governed affect various aspects of judicial performance, including capacity to generate compliance,[37] early dispute settlement,[38] and legal clarification (e.g., judicial activism or restraint).[39] Design has also been found to have links to the politicization of international courts as well as state exit,[40] both of which are likely to have profound consequences for if and how courts impact peaceful settlement, the rule-based order, and international cooperation. I add to this

[33] Melton and Ginsburg, "Does De Jure Judicial Independence Really Matter?"

[34] Squatrito, "Resourcing Global Justice"; Baetens, *Legitimacy of Unseen Actors in International Adjudication*; Thordis Ingadottir, "The Financing of International Adjudication," in *The Oxford Handbook of International Adjudication*, ed. Cesare Romano, Karen Alter, and Yuval Shany (Oxford: Oxford University Press, 2014); Jonathan O'Donohue, "Financing the International Criminal Court," in *The Realities of International Criminal Justice*, ed. Dawn L. Rothe, James Meernik, and Þórdís Ingadóttir (Leiden: Brill, 2013); Stéphanie Cartier and Cristina Hoss, "The Role of Registries and Legal Secretariats in International Judicial Institutions," in *The Oxford Handbook of International Adjudication*, ed. Karen Alter, Cesare Romano, and Yuval Shany (Oxford: Oxford University Press, 2014); Pauwelyn and Pelc, "Who Guards the 'Guardians of the System'?"

[35] Squatrito et al., "A Framework for Evaluating the Performance of International Courts and Tribunals."

[36] Staton and Moore, "Judicial Power in Domestic and International Politics."

[37] Tallberg and McCall Smith, "Dispute Settlement in World Politics"; Helfer and Slaughter, "Towards a Theory of Effective Supranational Adjudication"; Leslie Johns, *Strengthening International Courts: The Hidden Costs of Legalization* (Ann Arbor: University of Michigan Press, 2015).

[38] Johns, *Strengthening International Courts*.

[39] Stiansen, "(Non)Renewable Terms and Judicial Independence in the ECtHR."

[40] Johns, *Strengthening International Courts*; Elsig and Pollack, "Agents, Trustees, and International Courts."

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

literature by highlighting formal independence as a design feature – distinct from de facto independence and other design elements like access – which has not been underscored by previous research. The book establishes that the formal independence of ICs contributes to their deference. While I did not examine if and how formal independence has bearing on other aspects of IC performance, such as compliance, this book provides the conceptual and empirical tools for future exploration into how sweeping the effects of formal independence are.

In addition, I have shown that state preferences, namely, in terms of how aligned states' preferences are, have bearing on how international courts judge. While previous research suggests that preference heterogeneity among states affects international organizations, including their policy agendas[41] and autonomy,[42] it has received less attention by scholars of ICs.[43] This book gives credence to its impact on adjudication. At the same time, it leaves room for future theoretical advances. However, it remains unclear exactly how courts ascertain states' preferences. I have assumed that courts gather information from various sources, like existing domestic law and practices, intergovernmental decisions, or states' third-party participation during legal proceedings (e.g., observations). If political fragmentation is indeed important to understanding international judicial decisions, additional research is needed to understand how courts come to know of their political environments, especially the preferences of states. Participation in legal proceedings, which is relatively common in the WTO dispute settlement or before the CJEU, is not necessarily widespread practice in other courts. In these circumstances, researchers might ask what information on states' preferences is available to courts, what information do they regard as credible information, and under what conditions are courts likely to misread information signals.

The empirical analysis reveals two additional implications for future research. First, I observed a somewhat surprising lack of engagement by

[41] Magnus Lundgren, Theresa Squatrito, and Jonas Tallberg, "Stability and Change in International Policy-Making: A Punctuated Equilibrium Approach," *Review of International Organizations* 13, no. 4 (2018).

[42] Heldt, "Regaining Control of Errant Agents?"

[43] For notable exceptions, see, for example, Stone Sweet and Brunell, "Trustee Courts and the Judicialization of International Regimes"; Garrett, Kelemen, and Schulz, "The European Court of Justice, National Governments, and Legal Integration in the European Union"; Larsson and Naurin, "Judicial Independence and Political Uncertainty."

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

national courts and supranational organs. I speculated that the absence of these partners is not reducible to legal constraints – substate and supranational actors face their own political constraints.[44] For example, the underusage of the preliminary references to the EACJ could reflect the vulnerabilities of domestic courts to their executives. Referring cases to the EACJ could exacerbate these vulnerabilities, rather than empower them in the absence of strong domestic political opposition. Similarly, delegation to CARICOM organs is minimal and intergovernmentalism is the modus operandi. CARICOM organs formally have limited capacity to refer cases to the CCJ and their inclination to act independently of states is restricted. The African Commission on Human Rights also has its own constraints that make it less likely to refer cases to the ACtHPR. Thus, the extent to which substate and supranational actors do make referrals is likely shaped by political constraints that are not yet fully understood, opening new avenues for research: under what conditions are national courts or supranational institutions likely to engage with international courts? Recent research on the European Commission and its referrals (infringement proceedings) to the CJEU suggest that the Commission's relationship with national governments, and its efforts to stand in their good graces and maintain intergovernmental support, affect how the Commission acts as an enforcer and its referrals to the CJEU.[45] These dynamics are more likely when pressures against supranationalism are greater. The cases examined here suggest that such dynamics may extend to other international courts.

Moreover, the case studies raise questions about the role of hierarchy in international judicial politics. Some scholars have argued that hierarchy, not anarchy, structures international judicial politics, much like domestic judicial politics.[46] They claim that judicial politics is best understood through the perspective of a separation of power and call for researchers to avoid imposing strict divisions between domestic and international courts. I take the view that one can find traces of both anarchy and hierarchy,[47] and I draw from studies on comparative judicial

[44] Alter also recognizes that such actors can have their own political constraints; see Alter, *The New Terrain of International Law*.

[45] Kelemen and Pavone, "Where Have the Guardians Gone?"

[46] Staton and Moore, "Judicial Power in Domestic and International Politics."

[47] Some IR scholarship rejects the validity of a strict dichotomy between anarchy and hierarchy and suggests that both shape international relations; see, for example, David A. Lake, *Hierarchy in International Relations* (Ithaca: Cornell University Press, 2009); Helen Milner, "The Assumption of Anarchy in International Relations Theory:

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

politics and international relations. My examination of the EACJ, CCJ, and ACtHPR, however, points to another dynamic – the potential effects of "global hierarchies."[48] Global hierarchies are akin neither to the separation of power nor to anarchy. Rather, they refer to informal inequalities that often crosscut interstate boundaries and are distinct from sights of formal political authority (e.g., legislature, executives, judiciaries).

I observed impacts on the creation of ICs, on their judicial decisions and practices, and the accessibility of international justice. In terms of creation, legacies of colonialism and the inequalities they imbue shaped the origins of these courts. Inequalities enabled external actors to influence decision to create new courts.[49] The EACJ, CCJ, and ACtHPR cite external jurisprudence, especially the European courts and courts from the Global North – although there are also citations from other regions. In terms of public legitimation, while there is a history of African domestic courts engaging in such efforts,[50] foreign funders enable the EACJ, CCJ, and ACtHPR to engage in public legitimation. Both the German and Canadian development agencies, for example, have been crucial funders for the off-the-bench activities. Hierarchies and inequalities also seem to affect the accessibility of ICs. Most litigation before the EACJ, CCJ, and ACtHPR benefits from epistemic resources, common to repeat lawyers and NGOs. These actors have literacy and skills about how to translate grievances into legal complaints, and they have knowledge about the competencies and procedures of the relevant international court. All of this suggests that the accessibility of international justice is contingent not only on formal access but also on access to epistemic resources. In other words, global inequalities in terms of socioeconomic conditions play a role in whether individuals access justice mechanisms.[51] It further speaks to a broader understanding of how international law can be exclusionary and institutionalize global inequalities.[52] Overall,

A Critique," *Review of International Studies* 17, no. 1 (1991). Additionally, principal-agent theory arguably assumes both are at work; see, for example, Hawkins et al., *Delegation and Agency in International Organizations*; Pollack, *The Engines of European Integration*. I embrace these perspectives.

[48] Mattern and Zarakol, "Hierarchies in World Politics."

[49] Lenz, *Interorganizational Diffusion in International Relations*; Karen J. Alter, "The Global Spread of European Style International Courts," *West European Politics* 35, no. 1 (2012).

[50] Widner, *Building the Rule of Law*; Trochev and Ellett, "Judges and Their Allies."

[51] Steinert, "Elitist Remedies?"

[52] Viola, *The Closure of the International System*.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

these findings point to a need to explore the processes through which global hierarchies and inequalities affect international law and courts.[53]

International Organizations in Contemporary World Politics

This book also contributes to literature on international organizations in contemporary world politics. In recent years, observers of IOs, including international courts, point to two key developments. First, there is a heightened recognition that IOs are publicly salient and that IOs are aware of their public perceptions. Second, many are concerned that IOs are facing hard times, experiencing waves of noncooperation and contestation, and we are witnessing a crisis of multilateralism or the end of the liberal international order. International courts are part of these dynamics. This book contributes to IR literature by integrating these two realities of contemporary world politics into how we think about IOs.

There is a growing sense that the public is more attuned to international organizations, including international courts, and vice versa. This has led to an extensive body of literature on the legitimacy and legitimation of IOs.[54] This book has integrated the concepts of legitimacy and legitimation into theorizing the relationship between IOs and states. In other words, it adds an important nuance to rational institutionalist perspectives, especially in the tradition of principal-agent (PA) theory.[55] While I do not use the terminology common to PA theory, I draw extensively from it. Like PA theory, my argument assumes that states delegate responsibilities to international courts and that both ICs (agents) and states (principals) are self-interested actors. Moreover, the interests

[53] TWAIL scholars have elucidated how colonialism has had lasting impacts on international law (and international organizations); see, for example, Anghie, *Imperialism, Sovereignty and the Making of International Law*; Anghie, "Rethinking International Law"; Gathii, "Promise of International Law."

[54] Tallberg and Zürn, "The Legitimacy and Legitimation of International Organizations"; Imerman, "Contested Legitimacy and Institutional Change"; Hurd, *After Anarchy*; Ian Hurd, "Legitimacy and Authority in International Politics," *International Organization* 53, no. 2 (1999); Buchanan and Keohane, "The Legitimacy of Global Governance Institutions"; Follesdal, "Survey Article: The Legitimacy of International Courts"; Dellmuth and Tallberg, *Legitimacy Politics*; Zaum, *Legitimating International Organizations*; Tobias Lenz and Henning Schmidtke, "Agents, Audiences and Peers: Why International Organizations Diversify Their Legitimation Discourse," *International Affairs* 99, no. 3 (2023); Dingwerth et al., *International Organizations Under Pressure*.

[55] Hawkins et al., *Delegation and Agency in International Organizations*.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

of states and ICs diverge. Institutional design, including the nature of institutional safeguards to independence, provides mechanisms of control that can disincentivize agency slack (or the agent's pursuit of her interests that are contrary to the principal's interests). Moreover, it is feasible for principals to utilize mechanisms to regain their control, but this may depend on fragmentation in instances of multiple principals. My framework, however, incorporates legitimacy into a theoretical account of how agents and principals interact, suggesting that legitimacy serves as a crucial mechanism shaping the behavior of agents.[56] In particular, I have argued that legitimacy can empower agents vis-à-vis their principals by making it politically costly for the latter to utilize the mechanism of controls available to them, and that agents can exercise agency over their legitimacy. Thus, my argument diverges from traditional PA theory and contributes more broadly to our understanding of the relationship between IOs and states because it conceives of legitimacy as the main source of power available to international organizations.[57] This not only distinguishes my argument from traditional PA theory, but it also suggests future research might explore which IO practices have the capacity to change public opinion[58] and under what conditions public opinion alters states' preferences and their willingness to utilize mechanisms of control.

Second, the book contributes to current debates related to contestation and noncooperation, including backlash, pushback, delegitimation, and other forms of resistance. In recent years, observers of IOs have been struck by a wide range of examples of noncooperation and contestation, ranging from the paralysis of the WTO AB, protests against other international economic organizations or UN peacekeepers, or exit from key international institutions, like Brexit or the withdrawals from the ICC by Burundi and the Philippines. Scholars have developed conceptual tools for defining the various forms of contestation and noncooperation that have been observed in contemporary world politics. This research

[56] Mark Pollack argues that principal-agent theory does not fully capture the dynamics of legitimacy concerns; see Pollack, *The Engines of European Integration*. The trustee model integrates the concept of legitimacy but not in relation to public beliefs per se; see Alter, "Agents or Trustees?"

[57] Hurd, "Legitimacy and Authority in International Politics"; Franck, *The Power of Legitimacy Among Nations*.

[58] Chapman, "Audience Beliefs and International Organization Legitimacy"; Greenhill, "How Can International Organizations Shape Public Opinion?"; Grieco et al., "Let's Get a Second Opinion."

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

offers a variety of theoretical accounts about the causes and consequences of noncooperation and contestation. Among the causal explanations that have been offered are the role of ideology, like nationalism and populism,[59] geopolitical factors,[60] the expansion of authority,[61] the power and influence of institutional proponents or conversely institutional opponents,[62] and the domestic distributional impacts of IOs,[63] to mention some. Others have suggested that the consequences of noncooperation and contestation might include institutional death or paralysis, creation, and adjustments,[64] or contagion effects.[65] Yet, we know much less about how noncooperation and contestation affect the performance of IOs. In other words, how do they respond? Do they alter their decisions and policy outputs that they produce? Do we see impacts on legitimation practices? What factors condition their reactions to backlash, resistance, delegitimation, or politicization?

This book suggests that IOs might respond in terms of their decisions, outputs and practices, yet not always in expected ways. For instance, following the backlash experienced by the EACJ, deference increased. In the face of withdrawals of Article 34(6) declarations, the ACtHPR also seems to defer more frequently. This suggests that resistance can affect IOs' decisions and outputs. The case studies reveal resilience and reactions we might not expect. For instance, the EACJ, CCJ, and ACtHPR's legitimation practices do not necessarily become defensive in reaction to

[59] Jack Snyder, "The Broken Bargain: How Nationalism Came Back," *Foreign Affairs* 98, no. 2 (2019); Erik Voeten, "Populism and Backlashes Against International Courts," *Perspectives on Politics* 18, no. 2 (2020).

[60] von Borzyskowski and Vabulas, "Hello, Goodbye"; Kruck and Zangl, "The Adjustment of International Institutions to Global Power Shifts."

[61] Michael Zürn, Martin Binder, and Matthias Ecker-Ehrhardt, "International Authority and Its Politicization," *International Theory* 4, no. 1 (2012).

[62] Alter, Gathii, and Helfer, "Backlash Against International Courts in West, East and Southern Africa"; Gonzalez-Ocantos and Sandholtz, "The Sources of Resilience of International Human Rights Courts."

[63] Hillebrecht, *Saving the International Justice Regime*; Stephen Chaudoin, "How Contestation Moderates the Effects of International Institutions: The International Criminal Court and Kenya," *Journal of Politics* 78, no. 2 (2016); Tabea Palmtag, Tobias Rommel, and Stefanie Walter, "International Trade and Public Protest: Evidence from Russian Regions," *International Studies Quarterly* 64, no. 4 (2020).

[64] Kruck and Zangl, "The Adjustment of International Institutions to Global Power Shifts"; Morse and Keohane, "Contested Multilateralism"; von Borzyskowski and Vabulas, "Hello, Goodbye."

[65] Stefanie Walter, "Brexit Domino? The Political Contagion Effects of Voter-Endorsed Withdrawals from International Institutions," *Comparative Political Studies* 54, no. 13 (2021).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007

resistance or politicization. I observe no significant shift in how the three courts analyzed here portray themselves or the initiatives they adopt to gain additional support from stakeholders. This suggests that legitimation may be ordinary practices for institutions, and that explicitly defending them against attacks is rare – international judges and IO bureaucrats may think defensive legitimation is risky. Some previous work suggests that resilience comes from external factors.[66] The case studies here, however, suggest resilience may also come from within an IO. Changes in IO decision-making behavior and other practices may contribute to institutional resilience. While the jury is out on what factors determine IO resilience, this book contributes by looking at ICs in their early years to reveal aspects of how IOs navigate hard times.

[66] Gonzalez-Ocantos and Sandholtz, "The Sources of Resilience of International Human Rights Courts"; Alter, Gathii, and Helfer, "Backlash Against International Courts in West, East and Southern Africa."

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 04:04:01, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009607636.007