

## Appendix for Chapter 5: International court's dispute settlement jurisdiction (organized alphabetically)

This document explains the coding in figure 5.1 (p. 166) of *The New Terrain of International Law* (Princeton University Press, 2014). Included at the end are three systems not listed in figure 5.1 because they lacked operational ICs: the African Union, ASEAN and OAPEEC systems. Unless otherwise stated, the articles referenced correspond to the legal instruments indicated in the Court Treaty Bibliography (p. 407). More information on all of these courts can be found in the book's online appendix, available at [newterrainofinternationallaw.org](http://newterrainofinternationallaw.org).

ICs with role N= 17 (+ AU & OAPEC)	Compulsory Jurisdiction	Inter-State Dispute Settlement	Private Access	Notes (All article references refer to the Court Treaty identified in the bibliography)
Andean Tribunal of Justice (ATJ) (1984)	X	X	Contract and employment disputes	The ATJ is primarily a body for enforcement, constitutional and administrative review. The ATJ envisions that most inter-state disputes will be brought under the court's noncompliance jurisdiction. Complaints must first be raised with the General Secretariat, but member states can pursue the matter themselves if they remain unsatisfied (Article 24). There is also an arbitral system that allows the ATJ (Article 38) or General Secretariat (Article 39) to serve as arbiter for disputes between Andean institutions, and with individuals, regarding contracts, should the parties so agree. Private parties may submit to the Court's arbitration any disputes that may arise as a result of the application or interpretation of aspects contained in private contracts that are governed by the Andean Community's legal system. The ATJ can also hear labor disputes that arise in institutions and bodies of the Andean Integration System (Article 40).
Caribbean Court of Justice (CCJ) (2001)	X	X	Ad hoc	CCJ has jurisdiction to hear disputes between CCJ member states (Article 12(1)(a)). The Court is authorized to decide on a case-by-case basis if the interest of "justice" requires private party's access to the Court (Article 12(1)(d) & Article 24). Member states may also use voluntary modes of dispute resolution (Article 188 (4)) including good offices, mediation, arbitration, a conciliation commission and alternative dispute resolution systems (Articles 191-200, 223).
Central American Court of Justice (CACJ) (1992)	Partial	X	X	The CACJ has wide jurisdiction for contentious cases, including disputes between states (Article 22a) and disputes raised by private litigants (Article 22 ch & g) or members of community institutions. The court's jurisdiction is compulsory, although the jurisdiction applies "when the parties have requested the court" to intervene. Its jurisdiction is explicitly <i>not</i> compulsory for cases concerning frontier, territorial and maritime disputes, disputes between members and non-members, and cases where CACJ sits as an arbitral body (Article 22). The court can also hear appeals regarding internal decisions in disputes with staff (Article 22j)
Court of Justice for the Common Market of Eastern and Southern Africa (COMESA) (1998)	X	X	Contract and Employment disputes	The court has "general jurisdiction" to adjudicate any matter that may be referred to it (Article 23), but the rules regarding the types of claims that can be referred suggest that most cases will be noncompliance claims or challenges to the legality of community acts. The COMESA Court has jurisdiction to determine any matter arising from a claim by any person against the Common Market or its institutions for acts of their servants or employees in performance of their duties (Article 27).
Central African Monetary Community (CEMAC)(2000)	X	X	Contract and Employment disputes	The Court has jurisdiction involving disputes between states (Article 22). The court is the last resort body for damage claims between Community institutions and their agents (Article 20), and the first and last resort body for disputes between the Community and its agents (Article 21).
East African Court of Justice (EACJ) (2001)	Implicit	X	By permission	A special agreement clause allows any dispute among states to be heard by the court (Article 32), but most cases brought by states will challenge another state or a Community institution for an infringement of the treaty or a failure to fulfill an obligation (Article 28). The Court can also hear disputes between the

				Community and its employees (Article 31). Any question arising in national courts involving the interpretation of the treaty can be referred to the Court (Article 34).
Economic Community of West African States Court (ECOWAS) (2001)	X	X	Contract and Employment disputes	The Court has jurisdiction over disputes brought by a party, a Member State or the Authority regarding the application and interpretation of the treaty or secondary legislation (Supplementary Protocol, Article 9 a&b, Protocol of the Court). A member state may initiate proceedings on behalf of a national (Article 10, Protocol of the Court). The Court may also hear disputes involving the Community and its officials, and actions for damages or omissions in exercise of official functions (Supplementary Protocol, Article 9 f & g)
Economic Court of the Commonwealth of Independent States (ECCIS) (1991)	Unclear	X		The Court has jurisdiction in disputes that arise during the implementation of economic obligations under the Charter of the Commonwealth of Independent States (Article 32). The ECCIS can find that a member state has failed to fulfill its obligations under the treaty (Article 32). The ECCIS can be given jurisdiction over other agreements among ECCIS states (Article 32). The 1992 Moscow Agreement and Regulations is silent as to whether its jurisdiction is compulsory, but the ECCIS has interpreted <i>Article 3(1)</i> of the 1992 Moscow agreement as providing for compulsory jurisdiction (case c-1/1-97). Only states can be parties to the disputes. For more on this see: (Danilenko 1999, : 91)
European Court of Justice (ECJ) (1952)	Partial	X	Employment disputes	The ECJ is primarily a body for enforcement, constitutional and administrative review. But the court has jurisdiction for any dispute between member states that relates to the subject matter of the treaty. Its dispute settlement jurisdiction is regulated by special agreements between the parties (Article 239). The court has jurisdiction regarding disputes involving contractual liabilities of the Community (Article 235) and arbitration clauses (Article 238). States can raise disputes concerning the European Investment Bank (Article 237).
European Free Trade Area Court (EFTAC) (1992)	X		Contract disputes	EFTAC is primarily designed to monitor the Surveillance Authority as it oversees compliance with the EFTAC agreement and to hear noncompliance cases raised by the Surveillance authority. But EFTAC can hear private cases regarding non-contractual liabilities of the EFTA Surveillance Authority (Article 39 & Article 46, para 2).
International Court of Justice (ICJ) (1945)	Optional Protocol	X		The ICJ has jurisdiction regarding disputes between states. The conditions under which cases may be raised are defined in the subsidiary agreements (usually bilateral or multilateral treaties) (Article 35). An optional protocol allows signatories to agree to accept compulsory jurisdiction with respect to other signatories of the protocol (Article 36.2). The ICJ can also be designated the interpreter of treaties, and there can be compulsory jurisdiction for these specific treaties (Article 36.2 & 36.3).
International Tribunal for the Law of the Sea (ITLOS) (1996)	Optional Protocol Compulsory for disputes pertaining to seizing of vessels and disputes related to the Seabed Authority	X	Contract disputes with Seabed authority.	States are obliged to seek the peaceful resolution of disputes (Article 279) and have a choice of multiple forums for such resolution (Article 289), including the ITLOS court. There is an optional protocol to consent to the ITLOS court's compulsory jurisdiction (Article 287, 288, 291). All dispute settlement procedures are open to state parties (Article 291) and by mutual state agreement any dispute can be brought to the ITLOS court (article 299). But there is a long list of rules specifying limits on claims against the rights of coastal states (Article 197). For the seizing of vessels, if there is no agreement on how to proceed within ten days, the flag state of the vessel may bring the case to the legal body that has been pre-specified by the detaining state (Article 292) (Oxman 2001, Note 14). A separate procedure covers disputes related to the Seabed Authority, and states are obliged to resolve disputes through Seabed Disputes Chamber. This chamber can also adjudicate contract cases between private actors (Article 187c). Article 188 allows such disputes to be heard through binding arbitration too. A 2009 agreement also gives the Tribunal jurisdiction for disputes involving staff members.
Common Court of Justice and Arbitration for the Organization for the Harmonization of	X	Advisory Opinions	X	The OHADA court primarily is an appeals court for national judicial rulings involving OHADA business laws (Article 15). National court rulings will involve disputes about OHADA law, and might be raised by private litigants seeking to enforce OHADA law. In addition, states, national courts and members of the Council of Ministers can request advisory opinions (Article 14) and national courts can send preliminary

Business Law in Africa (OHADA) (1997)				ruling requests (Articles 15 & 16). OHADA includes an arbitration system, but its arbitral jurisdiction needs to be inserted into contracts or agreed to by parties. In its arbitral role, the court can create awards (Article 25 of Arbitration Procedures). Enforcement of OHADA rulings is governed by national civil procedure rules (Article 46).
Southern African Development Community (SADC) (2005)	X	X	X	The tribunal can hear disputes between states (article 15: 1), between states and the community (Article 17), between individuals and the Community (Article 18), and between individuals and states (Article 15:2). The tribunal is also the appellate body for panels that are convened to resolve disputes regarding subsidiary agreements made between member states (Article 20 a).
Southern Common Market Dispute Settlement Permanent Review Tribunal (MERCOSUR) (1999)	Implicit	X		An informal dispute settlement system has existed since 1999, but most disputes were and continue to be handled through diplomatic channels. Under the Olivas protocol, any disputes between the State Parties regarding the interpretation, application or breach of the Treaties, protocols, agreements, and the Instructions of the MERCOSUR Trade Commission can be submitted directly (Articles 4 and 5) or brought to the Common Market Group (Articles 6 & 7). If there is no resolution, disputes can proceed to an ad hoc arbitration court (article 9), and any party can directly appeal decisions to the Permanent Review Court (Article 17 & 23). Revisions of the Olivas protocol allow litigants can choose the forum for dispute settlement (including the WTO system), but the MERCOSUR system will not consider a case that has been heard in the WTO forum. Revisions to the Olivas protocol also state that the Permanent Review Court can issue advisory opinions for disputes between states and community institutions, and based on questions submitted by national supreme courts (Articles 1, 3 and 4 of revisions).
World Trade Organization Permanent Appellate Body (WTO) (1994)	X	X		The aim of dispute settlement is to preserve the rights and obligations of Members under the covered agreements. Procedures allow any dispute involving WTO agreements to be resolved through mediation, good offices or consultations (Article 5), and be brought to the dispute resolution system (Article 6). In practice, nearly all disputes will involve the rights and obligations of states, and thus the enforcement role.
West African Economic and Monetary Union (WAEMU) (1995)	X	X	Contract and Employment disputes	The Court can hear cases between the Community and its agents (Court Treaty Protocol 1 article 16) and between member states (Court Treaty Protocol 1 article 17). The court is the only body authorized to assess contractual damages caused by the Community (Court's procedural rules Article 15 (5)). The Court oversees charges against individual Commission members for alleged malfeasance (Article 30 of the treaty establishing the WAEMU).

### Three additional systems not included in figure 5.1

African Court of Justice (ACJ) (not yet established)		X	Staff only	The Court will have jurisdiction to ascertain the existence of any fact that, if confirmed, would constitute a breach of a State's obligation (Article 19f). State parties, the Assembly of States, Parliament and other African Union Organs authorized by the Assembly may raise cases (the content of which is not specified) (Article 18). This means that the Commission cannot raise cases. States that are not part of the African Union are specifically precluded from raising cases, and the court has no jurisdiction for disputes involving states that have not ratified the court's protocol (Article 18 (3)).
ASEAN Dispute Resolution Protocol (2004)	X	X		The dispute settlement system is overseen by the "Senior Economic Officials Meeting" (SEOM), which can decide by unanimous consent not to form a panel and not to accept a panel report (Article 5). The panel's stated task is to "make an objective assessment" of the dispute (Article 7). Panel reports can be appealed to an appellate body (Article 12). Most cases are likely to involve noncompliance, and thus the enforcement role.
Judicial Tribunal for Organization of Arab Petroleum-Exporting Countries (OAPEC)	Limited		Limited	The Tribunal has implicit compulsory jurisdiction over disputes between member states in the field of petroleum operations, disputes referred to the Tribunal by the OAPEC Council, and disputes relating to the Agreement (Article 23.1). Member states may consent to the jurisdiction of the Tribunal in a case raised by a private company operating in the member's territory or belonging to another member state (Article 23.2).

1/28/14