

## Appendix for Chapter 7: International court's enforcement jurisdiction (organized alphabetically)

This document explains the coding in figure 7.1 (p. 248) of *The New Terrain of International Law* (Princeton University Press, 2014). Included at the end is one system not listed in figure 7.1 because it lacked an operational IC: the African Union 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=18)	Compulsory Jurisdiction	Actors that may initiate litigation			Paraphrased Description of IC jurisdiction (All articles cite relevant Court Treaty identified in the bibliography)	Remedies
		State Actors	Supranational Prosecutor	Private Access		
African Court on Human and Peoples' Rights (ACtHPR) (2006)	States must have ratified the court's protocol.	X	African Commission on Human and Peoples' Rights		The Commission is charged with the protection and promotion of human rights, and interpreting the charter. The court is intended to complement the Commission's protective mandate (Article 1). The court has jurisdiction for any dispute or case submitted concerning the Charter (Article 3). Any institution of the African Union and any African organization recognized by the African Union can request an advisory opinion (Article 4). The African Commission and any State parties working with the Commission or that has an affected national can initiate a claim in front of the court (Article 5). States signing optional provisions authorize private litigants or NGOs to bring cases to the Commission (Article 5(3)).	Where a breach is found, the Court may order a remedy including compensation, reparations, and it can require provisional measures in cases of extreme gravity and urgency (Article 27).
Andean Tribunal of Justice (ATJ) (1984)	X	X	Secretary General	X	The General Secretariat (Article 23), member countries (Article 24), private litigants (Article 25) may bring to the ATJ a noncompliance case involving a member states. The Court Treaty allows domestic courts to hear noncompliance cases (Article 30), but this provision is subject to domestic legislation and Andean domestic systems have yet to be empowered to adjudicate such complaints. National courts can refer cases involving Andean law to the ATJ, and courts of last instance are required to refer such cases (Article 33). In practice, nearly all preliminary ruling references involve the application of community rules by national administrative actors. National judges adjudicating the case must adopt the ATJ's interpretation (Article 36).	The General Secretariat can authorize retaliatory sanctions for noncompliance with a Community law. So far the Community levies small tariffs on a small number of goods. I have heard that countries are yet to actually retaliate, despite being authorized to do so. The ATJ may authorize the adoption of unspecified "other measures" (Article 27).
Caribbean Court of Justice (CCJ) (2001)	X	X		Via national courts.	The CCJ has dispute settlement rather than enforcement jurisdiction, but national courts can refer cases to the CCJ (Article XIV) and private litigants are allowed to raise cases where the CCJ determines that a right or benefit conferred by community rules enures to private litigants, and where prejudice has contributed to the denial of such right, or where a state declines to espouse a claim, or where the issue of justice is concerned (Article XXIV). In its appellate jurisdiction, the court can review superior court rulings involving constitutional and fundamental rights violations and other areas of superior court jurisdiction (Article XXV (2(d & e))).	For its appellate jurisdiction, the court can review decisions involving property and rights exceeding \$25,000 EC, and the court has jurisdiction and powers that are parallel to that of national court of appeals (Article XXV (6)).

Central American Court of Justice (CACJ) (1992)	X	X		X	The court has jurisdiction to hear noncompliance cases brought by “any interested party” (Article 22c). States can propose questions to the court related to conflicts between treaties and between treaties and the national law of each member state (Article 23). Human rights cases are excluded because such cases fall under the “exclusive jurisdiction” of the Inter-American Court of Justice (Article 25)	Rulings are clearly binding, and the court can review noncompliance with judicial verdicts (Article 22f), but no remedies are specified.
Central African Monetary Community (CEMAC)(2000)	X	X	X	X	Any state, organ of the Community or person with a legitimate interest can raise any violation of the treaties or subsequent conventions (article 14). CEMAC rulings are explicitly binding on national administrative authorities and national judges (Article 18). The Executive Secretary, any organ of CEMAC and any person can raise a case alleging that a member state has misinterpreted the treaty or subsequent conventions (Article 19). National courts may and courts of last instance are obliged to send preliminary rulings to the CEMAC court (Article 17).	Failure to comply with a CEMAC ruling can be referred to a conference of heads of state (Article 16). The court has authority to order interim measures when it has been validly seized (Article 24)
Court of Justice for the Common Market of Eastern and Southern Africa (COMESA) (1998)	X	X	Secretary General	X	Member states (Article 24) or the Secretary General (Article 25.1) may raise infringement charges against a member state. A Council of States must agree before the Secretary General’s assertion of a legal violation can be referred to the Court (Article 25.3). Member states do not need Council assent to raise noncompliance suits. Private litigants can ask the court to rule on any act, regulation, directive or decision of the Council or of a member state (for questions about member state behavior, domestic remedies must be exhausted) (Article 26). National courts must refer questions of interpretation, and questions about the validity of the regulations, directives and decisions of the Common Market to the COMESA court for preliminary ruling if such ruling is deemed necessary for the national tribunal to make a judgment (Article 30).	The Court may prescribe sanctions it considers necessary against a party that does not implement its ruling (Article 34).
East African Court of Justice (EACJ) (2001)	X	X	Secretary General	X	The Court’s role is to ensure the adherence to the law and compliance with the treaty (Article 23). The Secretary General can investigate noncompliance and submit observations to member states. If the state concerned does not adequately respond within four months, the matter can be referred to the Council of States. If the Council does not resolve the matter, it can direct the General Secretary to refer the matter to the court (Article 29). Member states can also raise non-compliance suits, without the step of obtaining the Council’s assent (Article 28). Private individuals can challenge any act, regulation, directive or decision of a state that infringes on a provision of the treaty (Article 30). Any question arising in national courts involving the interpretation of the treaty can be referred to the Court (Article 34).	The court can issue interim orders (Article 39) and domestic processes to ensure executions of judgments apply to CEMAC court decisions (Article 44).
Economic Court of the Commonwealth of Independent States (ECCIS) (1991)	X	X			The Court has jurisdiction in disputes arising during the implementation of economic obligations under the Charter of the Commonwealth of Independent States (Article 32). The ECCIS can find in these cases 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). While the treaty is unclear on this point, the Court has also ruled that all disputes falling	I have no information regarding remedies.

					under its jurisdiction must be resolved in the ECCIS court. Only states can be parties to the disputes. For more on this see: (Danilenko 1999, especially at 901).	
Economic Community of West African States Court (ECOWAS) (economic 2001/ human rights 2005)	X		Executive Secretary	X (2005, human rights cases only)	The Court has jurisdiction over the failure by member states to honor their obligations under the treaty, conventions, and protocols, regulations, directives or decisions of ECOWAS (Revised Article 10 a, Article 4 of the Amended protocol on the Jurisdiction of the Court). Member states or the Executive Secretary can bring cases against a member state for failure to fulfill its treaty obligations (Article 9d Revised Protocol replacing Article 9 and creating new article 10 (a).) The Court has jurisdiction to determine cases of violation of human rights that occur in any member state (Article 9(1) and 9(4) of the Amended Protocol on the Jurisdiction of the Court.) Individuals have access for applications for relief for violation of their human rights (Article 10 (b & d) of the Amended Protocol on the Jurisdiction of the Court.) The Supplementary Protocol (revised Article 10a) mentions that another protocol can specify limits on the Executive Secretary's authority to raise noncompliance suits.	The Authority (not the court) may authorize a number of sanctions for noncompliance including the suspension of loans, suspension of any ECOWAS distributions of resources, suspension of voting rights and the right to present candidates (Article 77 ECOWAS Treaty). For human rights cases, the court is able to create 'relief' for violations of human rights, which usually means compensation for past violations but can also mean ordering the cessation of ongoing violations.
European Free Trade Area Court (EFTAC) (1994)	X		Surveillance Authority		The Surveillance Authority can bring an action against an EFTA state if it considers that the EFTA state has failed to fulfill an obligation under the EEA Agreement or the ESA/EFTA Court Agreement, and the infringing state fails to comply after being duly notified by the Authority (Article 31).	The Surveillance Authority can impose penalties (Article 19), which the EFTA Court can review (Article 35).
European Court of Justice (ECJ) (1952)	X	X	Commission	Via national courts	Commission can raise infringement suits (Article 226). Member states may also raise infringement suits against each other, but must go through the Commission first (Article 227). National courts can refer questions of interpretation to the ECJ, and courts of last instance must refer questions to the ECJ (Article 234).	Noncompliance with ECJ infringement decisions may lead to financial penalties (Articles 228-229). ECJ doctrine also creates state liabilities when states fail to implement European directives (the Frankovitch doctrine). ECJ decisions are enforceable in national systems, as governed by national civil procedures (Article 256).
European Court of Human Rights (ECtHR) as changed in 1998 (1952)	X	X	Commission eliminated in 1998	X	Any state can refer to the court a breach of a treaty provision or protocol by another state (Article 33). Any person, non-governmental organization or group claiming to be a victim of a state violation can apply to the court (Article 34). The court decides on the admissibility of all applications based on criteria defined in Article 35, and at any time may strike out a case based on criteria defined in Article 37.	In the event of a breach, the court is authorized to "afford just satisfaction" to the injured parties (Article 41).
Inter-American Court of Human Rights (IACtHR)	States must have ratified the court's protocol	X	Commission		The Commission can investigate cases (Article 48) and it works with the parties to resolve the issue. Where attempts to resolve the case fail, the Commission can issue a report, to which states can add their formal dissents. This report is transmitted to the relevant state, but not published (Article 50). The case is	In the event of a breach, the court is authorized to rule that the injured party shall be "ensured enjoyment of his right

(1979)					either referred to the Court (where the Court's jurisdiction has been accepted), or if the case is not referred and the issue not resolved the Commission may decide by majority vote to publish its report (Article 51). Only state parties and the Commission can submit cases to the Court and the procedures stipulated in Article 48 and 50 must be met (Article 61). States may sign an optional protocol accepting the IACHR's compulsory jurisdiction (Article 62). Any member state may consult the IACHR regarding violations in the "American States." A Commission may consult the Court too, subject to its competence stipulated in Chapter X of the Charter (Article 64). In 2001 the Commission adopted new procedures; it now refers to the court all cases where it finds a violation (and the court's jurisdiction has been accepted).	or freedom" that was violated, that violations be remedied and fair compensation paid (Article 63).
International Criminal Tribunal for the Former Yugoslavia (ICTY) (1993)	X		Prosecutor		ICTY has jurisdiction over enumerated war crimes committed in the territory of the former Yugoslavia since 1991 (Statute of the ICTY Article 1-5). The prosecutor raises cases.	Convicted criminals are sentenced to specified prison terms in accordance with Yugoslavian practices with imprisonment being the only remedy (e.g. the death penalty is not allowed). Illicit proceeds may be ordered to be returned (Article 24).
International Criminal Court (ICC) (2001)	For states adopting the Rome Statute. But the Security Council can refer any case.		Prosecutor		ICC has jurisdiction over enumerated war crimes (Rome Statute Article 5). The Court also has jurisdiction over cases referred to the Prosecutor by a state party or the Security Council, or cases investigated by the Prosecutor on its own initiative where the state is a signatory of the Rome Statute (Rome Statute Article 13, 14, & 15).	Convicted criminals are sentenced to specified prison terms and fines property forfeiture may be authorized (Article 77). The death penalty is implicitly excluded.
International Criminal Tribunal for Rwanda (ICTR) (1994)	X		Prosecutor		ICTR has jurisdiction over enumerated crimes committed in Rwanda between 1/1/1994 and 12/31/1994. (Statute of the ICTR: Article 1-5). The prosecutor raises cases.	Convicted criminals are sentenced to specified prison terms in accordance with Rwandan practices with imprisonment being the only remedy (e.g. the death penalty is not allowed). Illicit proceeds may be ordered to be returned (Article 23).
Southern African Development Community (SADC) (2005)	X	X		X	The original SADC treaty gives the tribunal jurisdiction to ensure adherence to the provisions of the SADC and its subsidiary instruments (Article 16 SADC Treaty). States can raise enforcement actions since the tribunal has authority over all cases raised by states (Article 15 SADC Court Treaty). National courts can refer any question to the SADC tribunal (Article 16 SADC Court Treaty). The SADC tribunal's jurisdiction is compulsory in any case that is referred, but subsidiary agreements may not be binding on all member states. The original Court Treaty allows private litigants to raise cases against states after domestic	A Council can agree to sanctions for noncompliance (Article 33 SADC Treaty). This provision has actually been invoked.

					remedies are exhausted (Article 15 SADC Court Treaty), but this provision was revised in August 2012. I do not yet know the results of the revisions.	
Southern Common Market Dispute Settlement Permanent Review Tribunal (MERCOSUR) (2002)	X	X		Arbitration only	Disputes are first arbitrated by the Common Market Group (Chapter V) or by ad hoc arbitration (Chapter VI). The MERCOSUR court reviews ad hoc arbitral rulings (Article 17 & 23). Awards by the Ad Hoc Arbitration Court and Permanent Review court require majority vote (Article 25). Private litigants can initiate complaints against states, but the case will be reviewed and decided upon by the Common Market Group (Article 39-44). While not expressly stated in the Olivos protocol, decisions of MERCOSUR's political organs authorize national supreme courts to request advisory opinions.	Where states that do not comply with arbitral awards, the injured state can be authorized to interrupt concessions or similar obligations for one year (Article 31). The Permanent Court can review measures taken (Article 32).
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. "Where there is an infringement, the action is considered prima facie to constitute a case of nullification or impairment (DSU Annex 2 Article 3.8). If states fail to reach an agreement amongst themselves (DSU Annex 2 Article 3), they may request the formation of a panel (DSU Annex 2 Article 6). Panel rulings go to the Dispute Settlement Body, which adopts them if not rejected unanimously (DSU Annex 2 Article 16.4). Parties to the dispute may appeal a panel ruling to the permanent Appellate Body (DSU Annex 2 Article 17.4). The Appellate Body makes recommendations to the state (DSU Annex 2 Article 19) and the Dispute Settlement Body oversees compliance with the recommendations (DSU Annex 2 Article 21).	Compensation or suspension of obligations may be requested to enforce a decision of the Dispute Settlement Body. The WTO's appellate body may authorize a country to levy duties against another country's goods, up to a specified amount. (DSU Annex 2 Article 22).
West African Economic and Monetary Union (WAEMU) (1995)	X	X	Commission		The Commission can bring to the court any action against a WAEMU state if it considers that the state has failed to fulfill an obligation. States may also bring cases, but they must first work through the Commission (Court Treaty Protocol 1 article 5). Court rulings are explicitly binding on national judges and administrators (Court Treaty Protocol 1 article 13). The Commission can seize the court if it suspects that a national court has failed to refer a case, and the court can inform the highest national jurisdictions regarding the correct interpretation of Community rules (Court Treaty Protocol 1 article 14).	If states do not comply with the ruling, the Commission can convene a Conference of a Head of States which can, upon 2/3 vote, agree to unspecified sanctions (WAEMU Treaty Article 74 and Court Treaty Protocol 1 article 6).

## Courts not listed in figure 7.1

<b>African Court of Justice</b> (ACJ) (not yet established)	<i>States must have ratified the court's protocol</i>	X			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)).	The court will be able to determine any reparations that follow from a breach (Article 19g).
---	---	---	--	--	--	--