

The Evolving International Judiciary

Karen J. Alter

Department of Political Science, Northwestern University, Evanston, Illinois 60201;
email: kalter@northwestern.edu

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Abstract

This article explains the rapid proliferation in international courts first in the post–World War II and then the post–Cold War eras. It examines the larger international judicial complex, showing how developments in one region and domain affect developments in similar and distant regimes. Situating individual developments into their larger context, and showing how change occurs incrementally and slowly over time, allows one to see developments in economic, human rights, and war crimes systems as part of a longer-term evolutionary process of the creation of international judicial authority. Evolution is not the same as teleology; we see that some international courts develop and change, whereas others stay in their same role and with the same low level of activity for long periods of time. The evolutionary approach of this article suggests that building judicial authority evolves through practice and takes time and that the overall international judicial context and developments in parallel institutions shape the development of individual international courts.

INTRODUCTION TO THE INTERNATIONAL JUDICIAL COMPLEX

The international judiciary has grown extensively in the post–Cold War era. In 1985, there were 6 permanent international courts (ICs). Today, there are at least 25 permanent ICs and well over 100 quasi-legal and ad hoc systems that interpret international rules and assess compliance with international law (Romano 2011). The changes occurring in international adjudication are easily observable in the rising newspaper coverage of transnational legal bodies, in the language of states and transnational advocates that increasingly use law-based arguments to make their case, and in complaints that international actors are speaking to issues that are or should be purely matters for domestic decision. Yet, we have very little understanding of the forces contributing to these changes.

This article investigates larger dynamics driving the development of the international judiciary. I reconstruct the establishment and amendment of 25 permanent ICs, weaving together legal and institutional histories to embed changes in the international judicial order into the evolving global context. The study builds on the insights of complexity studies, which argue that systems can exist even without a central organizing institution. Within complex systems, individual developments may be best understood in relationship to the larger whole.¹ In this case, the larger whole is the larger international legal complex, where there are a variety of governing legal instruments and courts. New judicial institutions are created to address problems or lacunae in existing rules and institu-

tions, which is why one can best understand individual developments by seeing their relationship to what already exists or has come before.

ICs sit as authoritative actors in this international legal complex (Karpik & Halliday 2011, in this volume), ready to be called upon to resolve disputes about the meaning of international agreements. Insiders and unaffiliated actors invoke ICs to promote compliance with existing laws, to encourage judicial law making that furthers the goals of the advocates and the organization, or to challenge political steps that arguably overexpand or illegally retrench the institution from its larger goals. Where appeals to courts are possible, bargaining occurs in the shadow of a court with each side knowing that a failure to settle the case may lead to a precedent-setting binding legal ruling.

By connecting discrete events and forces shaping the creation and change of international judicial institutions, I hope to help scholars to see general dynamics across international judicial developments and thereby identify new questions to investigate. The article proceeds as follows. First, I provide basic descriptors of the international judiciary today, identifying the realm of transnational courts and the pieces of institutional development that need explaining. Then, I identify three critical events that shape the larger context of international legal regimes—the end of World War II, the Cold War, and the fall of the Berlin Wall. I locate the creation of 25 existing permanent ICs in three important issue areas—economic disputes, human rights, and war crimes—within the dynamics of these events. Next, I offer some explanations of the evolution of the international judicial order by showing how Europe has been a force for the global spread of transnational courts, and how the end of the Cold War accelerated the expansion of existing and new transnational legal systems. The analysis reveals that even when the United States has been ambivalent about ICs, it has been largely unable to stop the trend of international judicialization.

Building on the historical evolution of the post–World War II ICs, I advocate for an evolutionary perspective on ICs. Many of today’s

¹Many different disciplines have considered how complexity matters. In the sciences, complexity is understood as a system characterized by organization without a central organizing principle, where studying the parts may not give any insight into how the whole operates. For example, studying neurons may not tell one much about how the brain works, yet both are affecting each other. For more on how complex systems operate, see http://www.northwestern.edu/nico/about_cs.html. For more on the politics of international regime complexity, see Alter & Meunier (2009) and Keohane & Victor (2011).

ICs are in their early stages of development. We do not yet know what will become of them, but the long-term view of this article helps us see the difficulty of drawing firm conclusions based on the early years of operation. While I advocate for an evolutionary perspective, I do not claim that there is an inevitable trajectory of development. Many ICs today are barely used, despite having institutional designs associated with active and effective ICs and despite having the formal authority to enforce rules that one could imagine would be of use to litigants. Although there is no inevitable trajectory, ICs that do transform, becoming both active and effective, serve as models for all ICs. For the scholar, these models allow us to investigate why some ICs become central to developing the law and influencing politics. For the legal advocate, the models suggest possible trajectories to emulate or avoid. I conclude by identifying new research questions that emerge from the analysis.

THE TWENTY-FIRST-CENTURY TRANSNATIONAL JUDICIAL ORDER

By the end of 2009, there were 25 operational permanent ICs—courts with appointed judges that were being invoked by litigants to render binding legal rulings in cases where states or international institutions were the defendants. Four of these legal bodies were global in reach—the International Court of Justice (ICJ), International Tribunal of the Law of the Seas, the appellate body of the World Trade Organization (WTO), and the International Criminal Court. The rest were regional bodies located in Africa (9 ICs), Europe (6 ICs), Latin America (5 ICs) and Asia (1 IC). These bodies have jurisdiction to hear cases involving economic disputes (17 ICs), human rights issues (4 ICs), and war crimes (3 ICs), and/or the courts have a general jurisdiction that allows them to adjudicate any case state litigants choose to bring (9 ICs). **Table 1** below identifies the 25 operational courts considered in this analysis, including in parentheses the year the courts were created. Of these 25 operating legal bodies, 3 of the most active and important ICs in the world

today were created in the aftermath of World War II. Three more ICs were created during the Cold War. A number of these existing institutions were changed in the 1990s, and the remaining 19 ICs were created following the end of the Cold War. Some ICs have multiple jurisdictions.

Not only are there more ICs now than at any point in history, but newer ICs are qualitatively different entities compared with their historical precursors, such as the ICJ. Newer ICs tend to have compulsory jurisdiction and access for nonstate actors—private litigants, international prosecutors, and supranational commissions—to initiate litigation so that new-style ICs are far more likely to be activated and to be ruling in cases in which states are reluctant participants. These design trends mean that most ICs today are closer to the transnational court ideal type than they are to the interstate dispute resolution model of an IC (Keohane et al. 2000). Given these trends, it is not surprising that the types of cases ICs are adjudicating, and remedies ICs authorize, increasingly impact the internal operation of states. Old-style ICs mainly resolved disputes between states. Today, ICs assess whether states are violating individual's basic rights, whether economic policies and government regulations create illegal barriers to trade, and whether actions undertaken in war constitute war crimes and crimes against humanity (Alter 2010).

ICs are increasingly invoked. By the end of 2009, ICs had issued more than 24,000 binding legal rulings where an international organization or state actor was the defendant. Nearly 90% of these rulings have been issued since the end of the Cold War (1989). **Figure 1** shows increased usage of 18 ICs over time. For now, I exclude the European Court of Justice (ECJ) and the European Court of Human Rights (ECtHR) so as to see better the growth in litigation by all ICs. The first bar includes the sum of international judicial rulings in the four existing ICs before 1989 [ICJ, Benelux, Inter-American Court of Human Rights (IACtHR), Andean Tribunal of Justice (ATJ)] and the General

Table 1 Operational permanent international courts (ICs) by region and subject matter (by year created)^a

Subject matter	Europe	Latin America	Africa	Asia	Pan-regional
Economic courts <i>n</i> = 17	European Court of Justice (ECJ) (1952) Benelux Court of Justice (BCJ) (1974) Economic Court of the Commonwealth of Independent States (ECCIS) (1993) European Free Trade Area Court (EFTAC) (1992)	Andean Tribunal of Justice (ATJ) (1984) Central American Court of Justice (CACJ) (1992) Caribbean Court of Justice (CCJ) (2001) Southern Common Market (Mercosur) (2002)	West African Economic and Monetary Union (WAEMU) (1995) Court of Justice for the Common Market of Eastern and Southern Africa (COMESA) (1998) Common Court of Justice and Arbitration for the Organization for the Harmonization of Corporate Law in Africa (OHADA) (1997) Central African Monetary Community (CEMAC) (2000) Court of Justice of the East African Community (EACJ) (2001) Economic Community of West African States (ECOWAS) Court of Justice (2001) Southern African Development Community (SADC) (2005)	Dispute resolution system of the Association of Southeast Asian Nations (ASEAN) (2004)	World Trade Organization (WTO) Appellate Body (1994)
Human rights courts <i>n</i> = 4	European Court of Human Rights (ECtHR) (1958)	Inter-American Court of Human Rights (IACtHR) (1979)	African Court of Peoples and Human Rights (ACtPHR) (2005) ECOWAS Court Human Rights jurisdiction (2005) [SADC & EACJ can hear cases involving good governance procedures]		
Criminal courts <i>n</i> = 3 (but there are also hybrid systems that are not listed)	International Criminal Tribunal for Former Yugoslavia (ICTY) (1993)		International Criminal Tribunal for Rwanda (ICTR) (1994)		International Criminal Court (ICC) (2002)

(Continued)

Table 1 (Continued)

Subject matter	Europe	Latin America	Africa	Asia	Pan-regional
General jurisdiction <i>n</i> = 9 (because many ICs also have general jurisdiction)	BCJ	CACJ CCJ	WAEMU (1995) CEMAC (2000) EACJ (2001) SADC (2005)		International Court of Justice (ICJ) (1945) Subject matter jurisdiction: International Law of the Sea Tribunal (ITLOS) (1996)
Total courts <i>n</i> = 25	6	5	9	1	4

^aThe full name of the IC is given the first time I introduce it, and I use the acronym each subsequent reference, thereby allowing one to identify which ICs are listed more than once. Starting dates can be hard to ascertain because it may take years for judges to be appointed and rules of procedure crafted. I try to use the common date of origin; where there is no established consensus, I use the date the court first became operational rather than the year states drafted the treaty to establish a court. The table does not include the at-least seven other formally constituted courts that are either dormant or barely active such as the European Nuclear Energy Tribunal (1957–present), the European Tribunal on State Immunity (1972–present), the judicial board of the Organization of Arab Petroleum Exporting Countries (1980–present), the Courts of Justice for the Economic Community of Central African States (1983–present), African Magreb Union (1989–present), and African Economic Community (1991–present). Also missing are a number hybrid criminal tribunals including the Serious Crimes Panels in the District Court of Dili, East Timor (2000–2005), special panels in the Courts of Kosovo (2003–present), War Crimes Chamber of the Court of Bosnia-Herzegovina (2005–present), Special Court for Sierra Leone (2002–present), Extraordinary Chambers in the Courts of Cambodia (2006–present) and the Special Tribunal for Lebanon (2009–present). For a complete list of formally constituted international courts and tribunals, see Romano (2011).

Agreement of Tariffs and Trade (GATT) rulings that were adopted. The rest of the table includes litigation for each post-Cold War year including the active ICs where I could find data. Some of these ICs are very active, and some are fairly inactive despite sharing the design of the more active ICs. **Figure 1** shows that after the ECJ and the ECtHR, the next most active courts are the ATJ (1786 rulings), the WTO legal system (139 panel rulings plus 101 appellate body decisions), the Organization for the Harmonization of Business Law in Africa (OHADA) court (358 rulings), and IACtHR (193 rulings).

How does one get their hands around so many varied institutions and legal decisions? Scholars have tried to create hypotheses that categorize legal bodies according to different characteristics. For example, one set of scholars distinguishes between interstate legal bodies, on the one hand, where only states can initiate litigation and where compliance with international legal rulings is, in practice,

voluntary and transnational legal bodies, on the other, where private actors can initiate litigation and legal rulings are implemented by domestic actors (Keohane et al. 2000, Posner & Yoo 2005). Other scholars expect international legal institutions to work differently depending on whether member states are liberal democracies (Moravcsik 1995, Slaughter 1995). A second approach is to classify international legal bodies. Romano (2011) maps out how different courts fit into different classifications—regional versus global bodies, economic versus human rights bodies, judicial versus quasi-judicial bodies—yet he recognizes that doing so is somewhat artificial because individual institutions can span classifications (for a slightly different taxonomy, see Kingsbury 2011).

However, law and legal process do not confine themselves to these categories. States are members of multiple international legal institutions, and reputations for compliance can be diffuse. The OHADA is clearly quite different from the Economic Community of West

African States, the African Union, and the United Nations (UN) (which oversees international criminal law). But African governments can end up as defendants in the legal bodies of all of these institutions, and a growing “rule of law” culture will affect the politics within all four institutions. Although India can certainly ascertain that U.S. violations of international human rights law do not mean that it will break its economic agreements (Guzman 2008), it may be harder to figure out what will happen with respect to a large number of economic agreements that may have ambiguous and contradictory clauses, especially over time as leaderships and contexts change. The lens of international regime complexity allows us to think about how membership in one institution may affect membership in another and how dynamics can cross from one regime to another (Alter & Meunier 2009).

By embedding individual judicial developments into their larger context, we are also better able to see how international judicial developments occur in relation to each other. Lawyers worry that if courts with different jurisdictions make contradictory rulings about similar legal texts, legal certainty will be undermined and litigants will be able to game the legal process and pit judges against each other. The designers of international legal regimes actively avoid legal fragmentation, which means that they take into account the other legal regimes that may be ruling on similar if not identical legal texts. Whereas scholars may choose to specialize in a single institution, countries are members of multiple legal institutions. The legal diplomats, judges, and lawyers who work in these systems usually do not specialize; instead, they inhabit the larger international legal complex. For this reason alone, the larger legal complex shapes the design and development of individual international systems. It is also true that political and legal developments inevitably spill across institutions. Lessons from one institution get drawn and applied to other institutions, with respect or disrespect of international law and the rule of law becoming a tide that can raise and lower all boats.

This article starts from the question, How can we understand the forces leading to the clustered creation of these legal bodies? A related question is, How do we understand the change in the design of ICs over time? Most scholars expect that ICs with compulsory jurisdiction and access for nonstate actors to initiate litigation will be more independent, active, and sovereignty compromising (Helfer & Slaughter 2005, Posner & Yoo 2005). In 1985, four of the seven existing international legal systems (ICJ, ECtHR, IACtHR, and GATT) had optional jurisdictions. Today, 21 of the 25 permanent ICs have compulsory authority.² In addition, 20 ICs allow nonstate actors to initiate litigation against states, further increasing the chance that states will be brought to court.³ By looking at the complete category of permanent and functioning ICs, I can capture all domains in which international legalization is occurring today and identify variation that does not clearly map on to categories of interstate versus transnational courts and that includes variation within various classificatory systems.

CRITICAL JUNCTURES IN THE CREATION OF PERMANENT INTERNATIONAL COURTS: WORLD WAR II, THE COLD WAR, AND THE FALL OF THE BERLIN WALL

Kagan (2002) famously suggested that European governments turn to international law because they are unable or unwilling to use coercion to pressure other states. Delegation to ICs does emanate from Europe, but a more

²The ECtHR and the new permanent WTO appellate body now have compulsory authority. The ICs with optional authority include ICJ, ITLOS, ACtPHR, and IACtHR. For the ECCIS, it is not entirely clear whether or not its authority is compulsory. Twenty-four Latin American states have accepted the IACtHR's compulsory authority, and the IACtHR now assumes its authority is compulsory for signatories.

³State-only courts include ICJ, WTO, Association of South-east Asian Nation (ASEAN), Mercosur, and International Tribunal for the Law of the Seas (ITLOS) (with the exception of the Seabed Authority cases).

convincing explanation of this fact is that World War II provided a shock that changed attitudes in Europe. Having seen the violations of human rights orchestrated through formal legal means, and suspicious of everyone who had exercised power during the authoritarian era, European leaders and citizens distrusted themselves and their legal institutions. Although Europeans were and remain more willing than governments and peoples in other countries to submit to international judicial oversight, European leaders were also wary of international legal oversight in the immediate post-World War II period. Indeed, if I were writing this article in 1975, I would have concluded that European governments were no more likely to submit to robust international judicial oversight than governments elsewhere in the world. I would have made such a declaration, missing that Europe was in the midst of the greatest international judicial revolution in world history.

This section explains how, through practice rather than design, Europe created for the world a model of an effective embedded international legal system. World War II shaped the founding of the ICJ, ECJ, and ECtHR. The Cold War provided the permissive environment facilitating the bottom-up construction of strong international legal mechanisms in Europe, despite the concerns of Europe's political leaders. The end of the Cold War then facilitated the strengthening and spread of existing ICs, most of which adopted Europe's model of embedded international legal systems. **Table 2** forecasts key features of this narrative by locating developments regarding economic, war crimes, and human rights legal systems into their historical evolutionary context. I then explain the gradual development of international judicial enforcement via experimentation and the unintended consequences of earlier decisions. I argue that, following the end of the Cold War, states embraced ICs because the context and options had shifted radically. Embracing international legal oversight in the post-Cold War era now seemed like the best alternative, a lesser evil to submitting to

American- and European-dominated global and national legal institutions.

Critical Juncture 1: World War II and the Onset of the Cold War

Before World War II, there were some ICs, including the Central American Court of Justice (1907–1917) and the Permanent Court of Justice (1922–1946). These early precursors mainly suggested that most disputes between states would not be resolved effectively in court. The Central American Court of Justice heard 10 cases before its founding treaty expired. The Permanent Court issued 32 binding rulings from the 66 contentious and advisory cases raised. When political tensions grew, however, it became increasingly clear that states were unwilling to bring significant disputes to the Permanent Court of Justice for resolution. At its peak, 43 states accepted the optional jurisdiction of the Permanent Court of Justice, but at its end, only 29 states were willing to submit to the Court's authority. When Germany and Japan withdrew from the League in 1935, continued efforts to use League institutions looked increasingly fanciful (Allain 2000). One can find in the UN system remnants of the legal and political conceptions that had animated the League of Nations, and the ICJ in many respects resurrected the Permanent Court of Justice. But expectations were lower this time around. The discrediting of old international legal beliefs combined with the Cold War, however, to make a more limited international legal approach newly attractive.

The atrocities of World War II created in Europe a willingness, if not a desire, to experiment with ICs. The Ally victors of World War II did not want to repeat the mistake of World War I by pursuing collective retribution against all Germans, thereby generating anew the sorts of grievances Hitler exploited in his rise to power. The Allies also sought to create a clear difference between the summary execution/political trial approaches of Soviet Premier Josef Stalin. The Nuremberg Tribunals used law and legal processes to hold specific

Table 2 Historical evolution of international courts across issue areas*

World history	International economic system	War crimes and prosecutions	International human rights system
<p>1940s World War II ends. United Nations (UN) and International Court of Justice (ICJ) created (1945) India gains independence (1947); decolonization begins</p>	<p>General Agreement on Tariffs and Trade adopted as a precursor to International Trade Organization (1947) International Trade Organization charter rejected by US (1950)</p>	<p><i>Nuremberg Trials (1945–1946)</i> <i>Tokyo Trials (1946–1948)</i> Genocide Convention (1948) International Law Commission proposes International Criminal Court (1948)</p>	<p>UN Human Rights Commission created by the UN Economic and Social Council with a focus on standards setting (1947) American & UN Declarations on Human Rights (1948) European Convention on Human Rights (1950)</p>
Cold War sets in			
<p>1950s Decolonization gains political momentum, fueled in part by Cold War rivalries</p>	<p>European Court of Justice (ECJ) founded as part of Coal and Steel Community (1952) Treaties for European Political and Defense Communities are rejected (1954) Treaty of Rome creates European Economic Community, expanding the ECJ's jurisdiction (1958)</p>		<p>European Commission on Human Rights begins operations (1954) European Court of Human Rights (ECtHR) created (1958) Inter-American Commission on Human Rights established (1959)</p>
<p>1960s Civil rights movements Wars of Independence among former colonies</p>	<p>ECJ's legal revolution begins with the ECJ's <i>Van Gend en Loos</i> ruling (1963) First codification reform of the noncompulsory dispute settlement system of the General Agreement of Tarrifs and Trade (GATT) (1966)</p>	<p>Eichmann trial in Jerusalem (1961–1962) German trials of Treblinka and Auschwitz Guards (1960s and 1970s) My Lai Massacre in Vietnam (1968)</p>	<p>Creation of many UN Human Rights conventions in 1960s UN Human Rights Commission starts investigating and reporting on human rights violations (1967) American Convention on Human Rights (1969), which includes protocol to establish Inter-American Court</p>
<p>1970s East-West Détente; Brandt's <i>Ostpolitik</i> (1970), Nixon goes to China (1972) New International Economic Order launched (1973–1974)</p>	<p>Benelux court created (1974) United States Trade Act creates Section 301 mechanism providing for unilateral sanctions for "unfair" trade practices (1974)</p>	<p>William Calley is only US soldier convicted for his role in My Lai Massacre (US military court, 1971) Cambodian killing fields (1975–1979)</p>	<p>Italy, Switzerland, France accept ECtHR authority (1973–1975) Chile's human rights abuses, Argentina's dirty war (1974–1978) Carter administration (US) makes human rights central to American foreign policy, advocates ratification of American Convention (1977–1981)</p>

(Continued)

Table 2 (Continued)

World history	International economic system	War crimes and prosecutions	International human rights system
<p>1980s</p> <p>Gorbachev-era reforms in Soviet Bloc (Perestroika & Glasnost)</p> <p>Law of Sea III signed (1982); US refuses to sign convention delaying its implementation</p> <p>Berlin Wall falls (1989)</p>	<p>Andean Tribunal of Justice (ATJ) created (1984)</p> <p>Uruguay Round negotiations in GATT system begin (1986)</p>		<p>Inter-American Court of Human Rights (IACtHR) created (1979)</p> <p><i>Filartiga v. Pena Irala</i>: US Federal Appellate court resurrects the Alien Tort Claims Act, part of the 1789 Judiciary Act, to find a US federal jurisdiction for human rights violations committed outside of US territory (1980)</p> <p>African Charter on Human Rights signed (1981)</p>
Cold War Ends			
<p>1990s</p> <p>Washington Consensus (US, IMF, World Bank) regarding economic policy (1990s)</p> <p>Failed UN intervention in Somalia (1992)</p> <p>EU and Council of Europe first post-Cold War enlargement (1995)</p> <p>International Tribunal for the Law of the Sea finally created (1996)</p>	<p>Maastricht Treaty and reforms of European Union and its legal system (1992), EU enlargement</p> <p>European Free Trade Area gets court as part of agreement with the EU (EFTAC) (1992)</p> <p>Central American Court of Justice resurrected (1992)</p> <p>Economic Court of the Commonwealth of Independent States (ECCIS) created (1993)</p> <p>World Trade Organization's (WTO) new system of compulsory dispute resolution (1994)</p> <p>Court of West African Economic and Monetary Union (WAEMU) created (1994)</p> <p>Court of Justice for the Common Market of Eastern and Southern Africa (COMESA) (1994)</p> <p>Andean legal system reformed (1996 Cochabamba Protocol)</p> <p>Common Court of Justice and Arbitration for the Organization for the Harmonization of Corporate Law in Africa (OHADA) (1997)</p>	<p>War breaks out in Yugoslavia (1991)</p> <p>International Criminal Tribunal for the Former Yugoslavia (ICTY) (1993)</p> <p>Rwandan genocide (1994)</p> <p>International Criminal Tribunal for Rwanda (ICTR) (1994)</p> <p>Rome Statutes of International Criminal Court signed (1998)</p> <p><i>Decision to create hybrid international criminal tribunals for East Timor, Kosovo, and Sierra Leone</i> (1999–2001)</p>	<p>Belgium Parliament passes “law of universal jurisdiction” (1993)</p> <p>ECtHR reformed (Protocol 11 signed 1994)</p> <p>Spanish extradition request for Augusto Pinochet to prosecute human rights violations (1998)</p> <p>European Commission abolished and ECtHR’s reformed system comes into force (1998)</p> <p>Organization of African Unity agrees to create an African Court on Human and Peoples rights (1998)</p>

(Continued)

Table 2 (Continued)

World history	International economic system	War crimes and prosecutions	International human rights system
<p>2000s</p> <p>Era of globalization</p> <p>Attack on United States</p> <p>World Trade Towers (2001)</p> <p>Merger of African Court of Justice and ACtHPR proposed</p> <p>EU and Council of Europe enlargements bring in former Soviet states (2004, 2007)</p>	<p>Central African Economic and Monetary Union Court created (2000)</p> <p>Community Court of Justice of the East African Community (EACJ) (2001)</p> <p>Caribbean Court of Justice (CCJ) (2001)</p> <p>Economic Community of West African States (ECOWAS) Court of Justice (2001)</p> <p>Southern Common Market (Mercosur) (2002)</p> <p>Association of Southeast Asian Nations (ASEAN) dispute settlement system agreed to (2004)</p> <p>Southern African Development Community Court (SADC) created (2005)</p>	<p>International Criminal Court (ICC) created with jurisdiction covering crimes committed after July 1, 2002 (2002)</p>	<p>Inter-American Human Rights Commission decides that it will refer all unresolved cases to the IACtHR (2001)</p> <p>ECOWAS Court gains jurisdiction over human rights issues, including private access to initiate litigation (2005)</p> <p>African Court of Human and Peoples Rights (ACtPHRs) created (2005)</p> <p>ECOWAS court issues a series of human rights rulings on arrest and torture of journalists, modern slavery in Africa, and the right to free public education (2008–2009)</p> <p>ACtPHR delivers first judgment, denying the admissibility of its jurisdiction (2009)</p>

*Permanent international courts are noted in bold; ad hoc international courts in italics.

Germans accountable for specific crimes. The Tokyo trials repeated this strategy, although concerns about inflaming Japanese nationalists led to the decision not to prosecute Japan's wartime Emperor.⁴ Among Western lawyers and politicians, the Nuremburg trials were seen as a very important success in that they opened German eyes to the atrocities of World War II, convinced Germans that actual war criminals were prosecuted and dealt with relatively fairly (Shklar 1964, part II), and helped to construct a historical memory of World War II (Savelsberg & King 2007). But the trials were far from what idealistic international lawyers might aspire.

⁴There were also antecedents to the Nuremburg Tribunals, but the Nuremburg trials represent the first full-fledged international effort to prosecute war crimes. For more on antecedents and on the Nuremburg and Tokyo trials, see Bass (2000).

Legally problematic was the notion that the defendants could be held to account for crimes that did not exist as a matter of law. Only after Nuremburg were laws established so that future trials would not violate the fundamental due process notion of "no punishment without law." Politically problematic was that only the war crimes of Germany (and at the Tokyo trials the crimes of Japanese) were prosecuted. Moreover, prosecution was highly selective in terms of which actors and crimes were pursued, suggesting to many that the Nuremburg and Tokyo trials were yet another example of victor's justice (Bass 2000, ch. 5).

Despite such critiques, the perceived success of the Nuremburg trials in dealing with war crimes contributed to the decision to give the new ICJ jurisdiction to help enforce the Convention on the Prevention and Punishment of

the Crime of Genocide.⁵ This decision proved controversial as a number of countries ratified the genocide convention with reservations and declarations associated with their signatures. The clause generating the most reservations was the agreement to submit disputes to the ICJ.⁶ The UN Declaration on Human Rights was similarly controversial. Many governments refused to agree to anything too concrete or legally binding, so the Declaration became a soft-law aspirational statement adopted by the General Assembly. Even this nonbinding declaration was too much for some states; the UN Declaration on Human Rights was adopted with 48 votes in favor, 0 votes opposed, and 8 abstentions that mostly came from Soviet bloc states.⁷ The UN Commission on Human Rights, from its establishment in 1947 until its reconstitution and renaming in 1967, concentrated on promoting human rights and helping states elaborate treaties, but not on investigating or condemning violators.

Dismayed by the limited international efforts to promote human rights, and wanting to demarcate the Western European approach to protecting human rights from the Soviet

practices in the East, the Council of Europe decided to create its own human rights system (Madsen 2009). Most of the architects of the European Convention on Human Rights were members of the European Movement, a group that included many former antifascist resistance fighters and government officials overseeing national purges of Nazi collaborators. The European Movement envisioned a robust system of international oversight that could sound the alarm should European governments start down the path toward authoritarian fascism (Bates 2011, pp. 44–76).

The dreams of the ECtHR's legal architects were immediately tempered by state sovereignty concerns. A number of countries did not want a highly independent international oversight mechanism; thus, the Commission's formal mandate prioritized friendly reconciliation over enforcement actions (Robertson & Merrills 1994, pp. 5–12, 295–296). Also, states made optional the consent for the right of individuals to petition the Commission and for the Commission to be able to bring cases to the ECtHR. Schermers stated the dilemma as follows:

[P]roper human rights protection requires international supervisory organs. This, however, would be a further infringement of national sovereignty. The supremacy of national courts would be degraded if an international organ would be permitted to criticize their judicial decisions. For many states, this went too far. An inter-European commitment to protect human rights was acceptable, but a European court supervising the Convention would undermine the sovereignty of the state and could not be generally accepted. (Schermers 1999, p. 822)

Originally only Sweden, Ireland, Denmark, Iceland, Germany, and Belgium accepted the ECtHR's compulsory jurisdiction and only Sweden, Ireland, and Denmark accepted the right of individual petition. Moreover, a number of these acceptances were provisional, made for only a few years at a time. The refusal of

⁵Convention on the Prevention and Punishment of the Crime of Genocide adopted by Resolution 260 (III) A of the UN General Assembly on December 9, 1948. Article IX states, "Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

⁶There were 27 reservations involving Article IX: Albania, Algeria, Argentina, Bahrain, Bangladesh, Belarus, Bulgaria, China, Czech Republic, Hungary, India, Malaysia, Mongolia, Morocco, Philippines, Poland, Romania, Russian Federation, Rwanda, Singapore, Slovakia, Spain, Ukraine, United States, Venezuela, Vietnam, and Yemen. Between 1989 and 1999, 11 of these countries removed their reservations regarding the ICJ's authority to resolve disputes involving the treaty. The next largest number of reservations (13) were related to the applicability of the treaty vis-à-vis nonself-governing territories. See <http://www.preventgenocide.org/law/convention/reservations/> (accessed on May 20, 2011).

⁷Countries abstaining included Byelorussia, Czechoslovakia, Poland, Ukraine, USSR, Yugoslavia, South Africa, and Saudi Arabia. See <http://www.un.org/rights/HRToday/declar.htm> (accessed on May 20, 2011).

France and Britain to consent to the right of individual petition or to the ECtHR's authority diminished the sense that Europe as a whole was seriously committed to a robust regional human rights regime (Robertson & Merrills 1994, pp. 13–14). The politically fragile nature of Europe's human rights system led the European Human Rights Commission to proceed with great caution. In the early years, the European Human Rights Commission acted primarily as a political body limiting the types of cases heard by the ECtHR. Between 1954 and 1961, less than one-half of 1% of the 1307 applications filed with the Commission were declared admissible (Schermers 1999, p. 825)—as a result, in its first 10 years of operation, the ECtHR ruled on only 7 cases (on the factors shaping commission decisions to refer cases, see Greer 2006, pp. 33–98; Robertson & Merrills 1994, pp. 264–274, 300–301).

The Commission's timid approach to human rights oversight was a disappointment to legal idealists and arguably a sign that postwar international law approaches would not achieve much more than interwar international law had achieved. Although the Commission's prudence was designed to reassure member governments that international oversight would not be deeply sovereignty compromising (Schermers 1999), in 1974 the European Human Rights system teetered on the brink of failure. To signal its displeasure with the European Commission and Court actions, the United Kingdom shortened its acceptance of the Court's authority to two years and suggested that it would withdraw from the right of individual petition. But at around the same time, domestic political efforts culminated with Italy, Switzerland, Greece, and France accepting the ECtHR's jurisdiction, and the ECtHR issued a number of important rulings that reinforced the object and purpose of human rights law in Europe. Bates (2011, pp. 277–318) argues that what looked like a near collapse ended up being an awakening of Europe's human rights system, a turning point where Europe transitioned from ambivalent concern about the ECtHR to an onus to

accept the ECtHR's authority to demonstrate commitment to liberal democratic ideals.

Europe's other approach to international law enforcement in the post–World War II era was to develop the European Coal and Steel Community (ECSC). The main impetus for founding the ECSC was a concern that the United States intended to return to Germany full sovereignty over its coal and steel industry. France, Italy, Belgium, the Netherlands, and Luxembourg feared that Germany would exploit its dominance in coal and steel, putting its neighbors at a competitive disadvantage at a time when they needed to rebuild their industries and economies (Gillingham 1991). The ECSC included the ECJ, added in part to create a check should the High Authority be dominated by the more powerful member states (Boerger-De Smedt 2008). The ECJ of the ECSC had compulsory jurisdiction and private access so that individuals could challenge arguably illegal High Authority actions.

The European Movement also supported European integration efforts. Members of the movement hoped that the ECSC would be the launching point for further integration endeavors. European federalists imagined that the European human rights system would become part of a larger federal Europe united under the supreme authority of a European Constitution and a European Constitutional Court (Friedrich 1954, introduction). The first steps toward fulfilling the visions of both groups were the drafting of charters for the European Political Community and European Defense Community. Sovereignty concerns interceded again when the French parliament rejected the European Defense Community in 1954. In this sense, the 1958 Treaty of Rome, which created the European Economic Community (EEC), was a big disappointment (Milward 1992, pp. 186–223). The Treaty of Rome rechristened the ECSC High Authority as the Commission (not to be confused with the completely separate European Commission on Human Rights). The EEC Commission could not rule on state or firm compliance with European rules; rather it was authorized

to bring state violations to the ECJ, which could declare that a member state had “failed to fulfill its obligations” under the Treaty of Rome. Such a declaration was largely toothless in that no remedies were associated with an ECJ finding of a violation of European law.

For the activists of the European Movement, both the Treaty of Rome and the legal system of the European Convention on Human Rights were disappointments. Concerns about state sovereignty had watered down the agreements leaving only a minimalist commitment to integration and supranationalism. Integration enthusiasts then watched in further dismay as French President Charles De Gaulle assumed office in 1959 and led a successful full-on assault on the supranational elements of the EEC, culminating in the arguably illegal “Luxembourg compromise” where the treaty-mandated switch to qualified majority voting was derailed by political agreement (Hoffmann 1966). De Gaulle’s efforts to dismantle the already quite limited European supranational structures led activists to turn to a legal strategy to promote European integration (Cohen 2007). With so few countries accepting the authority of the ECtHR, the ECJ became the focus of their legal activities.

Scholars use the term “revolution” to characterize what then happened. Basically, in the 1960s the ECJ made a number of legal rulings that repudiated existing international legal doctrine and boldly asserted the supreme authority of European law within national legal orders (Stein 1981, Weiler 1991). We now know that members of the European Movement, who had helped found associations of lawyers, judges, and scholars committed to or merely interested in the laws of European integration, spurred these revolutionary rulings. Euro-law jurist advocacy movements located test cases and used their positions of legal power to advance the cause of European legal integration (Alter 2009, ch. 4; Rasmussen 2010; Vauchez 2010). In the 1960s, the ECJ’s revolutionary rulings were mostly dicta, but they became authoritative in the 1970s as lawyers and national courts

adjusted national legal doctrine to incorporate the ECJ’s radical legal doctrines (Alter 2001).

Much more could be said about this revolution, but the key point is that it changed the way the European Community’s enforcement system operated. For both the EEC and the European Convention on Human Rights, the main enforcers were supposed to be the more politically controllable supranational commissions—the EEC Commission and the Council of Europe’s Human Rights Commission. In the 1960s, both of these Commissions were understandably deferential to the concerns of national governments. But the ECJ’s legal revolution harnessed private litigants as monitors of state compliance with European law and national courts as key enforcers of community legal obligations. Allowing private litigants to challenge arguably illegal national policies in cases raised in national courts affected the number and types of cases raised. Private litigants pursued cases that the Commission had dropped out of political concerns, and private litigants framed their challenges boldly. National court enforcement has ended up providing a number of benefits. There were few international costs to ignoring ECJ rulings, but ignoring national court rulings was politically more difficult (Burley & Mattli 1993). National courts could also apply the same remedies for violations of European law as existed for violations of domestic law. Elsewhere I explain exactly how the ECJ’s transformation of the preliminary ruling process forced a change on European governments, despite their clear aversion to robust international judicial oversight (Alter 1998).

At around the time that the ECJ was flexing its new legal muscle (1980s), the European Commission on Human Rights began to let more cases proceed to the ECtHR. Schermers explains that “over the years the Commission became more critical of the behavior of Governments. In 1993 there was no longer a reasonable risk that member states would not renew the right of individual petition or that they would withdraw from the Convention.

Public opinion in the member states and the Council of Europe would not easily accept such a step” (Schermers 1999, p. 825).

The transformation of Europe’s supranational legal systems introduced to the world a new form of IC, a European model where IC authority is embedded in domestic legal orders and where ICs are able to induce greater compliance with international agreements (Helfer & Slaughter 1997). There are, of course, significant sovereignty costs associated with Europe’s international judicial model. Because the EEC’s laws and legal system are embedded into domestic legal orders, litigants can turn to the ECJ to pursue social, economic, and political objectives only distantly related to facilitating trade (Harlow & Rawlings 1992). Litigants can turn to the ECtHR as a sort of constitutional court for Europe.

The nationally embedded European legal systems took three decades to construct from the bottom up. In the 1960s, the ECJ’s legal revolution was primarily a matter of legal doctrine. Only in the 1970s did the ECJ begin to issue rulings with political resonance and consequence.⁸ By the 1980s, politicians were complaining about ECJ activism and lost sovereignty. But by then, European leaders were also becoming concerned that economic competition from the United States and Japan would threaten the European “embedded liberal” economic system (Ruggie 1983). Curbing the European legal system’s perceived excesses would be a blow to European integration at the very moment that national governments were embracing European integration as the central tool to ensure that European economies became internationally competitive (Hanson 1998).

Around this time and a continent away, Latin America began embracing ICs. In the 1970s, Latin America’s military dictatorships engaged in serious human rights violations

including abductions, torture, and disappearances (Sikkink 2004). In response to these violations, the Organization of American States decided to finally augment their existing human rights system by adding a court. The architects of the Inter-American Court copied the model of the ECtHR, including the optional nature of the Court’s authority (Cavallaro & Brewer 2008, pp. 778–81). It took until 1979, and pressure by human rights advocates in U.S. President Jimmy Carter’s administration, for enough states to ratify the agreement accepting the Inter-American Court’s authority. Meanwhile, in the late 1970s, the Andean Pact countries (Colombia, Ecuador, Bolivia, Venezuela, and Peru) also decided to recommit themselves to economic integration, adding a court to their flailing integration system. The Andean Community copied the model of the ECJ, hoping to emulate its success in encouraging greater compliance with collective rules (Alter et al. 2011).

The Western trading system also had a dispute settlement mechanism, created in the post–World War II period. This mechanism began informally, because states had expected the GATT to be replaced by the International Trade Organization. The draft charter of the International Trade Organization had a defined mechanism to resolve disputes, and it envisioned that ultimately the ICJ could resolve disputes. But after the United States defeated the Havana Convention, states were left with the GATT, which did not have a formal dispute-resolution system (Dunoff 2009, pp. 327–33). Diplomats constructed an informal system to resolve disputes in the 1950s and 1960s, which became increasingly formalized over time. The early GATT dispute-resolution system allowed states to initiate mediation and then ask for a panel of experts to render a ruling. But defendant states had to consent for a panel to be formed and for the panel’s ruling to be accepted. When developing countries sought to make the system more useful for themselves, by creating financial remedies and by allowing for remedies even if a country had not participated in the original case, Europe and the United

⁸Also at this time, the Benelux countries created a court to answer questions about Benelux regulations that fell outside of the authority of the ECJ.

States stopped using the GATT system. From 1965 to 1980, only nine disputes reached the stage of a panel's formal decision being accepted (Hudec 1993, pp. 31–34). Frustration with the GATT dispute-resolution system combined with growing American trade deficits in the 1970s to provoke the passage of the U.S. Trade Act of 1974. Under Section 301 of this act, the U.S. Trade Representative (USTR) was to pursue the unfair trade practices of other states. The Section 301 system was better at engendering resentment than it was at resolving intractable trade disagreements (Noland 1997). The United States complained, however, that the GATT system had no other effective means to address “unfair trade” by its trading partners. The U.S. Section 301 innovation spurred the creation of private-public partnerships where firms worked with governments to identify and challenge national barriers to trade.

By the mid 1980s, there were permanent ICs in Europe and Latin America. The ECJ was becoming increasingly active as an enforcer of European law in cases raised by the European Commission and in rulings based on national court references. The experience of the ECJ suggested that ICs could find a broader base of political support. By contrast, the rest of the existing international legal systems remained quite limited. U.S. use of Section 301 spurred renewed interest in working with the GATT dispute-resolutions system, if only to stave off and redirect U.S. unilateralism. Neither the European nor Latin American human rights systems were used often. The ATJ opened its doors for operation in 1984, but it was also mostly inactive in the 1980s (Helfer & Alter 2009). **Figure 2** shows the relatively low level of litigation in existing legal systems before the end of the Cold War. The ECJ, with its compulsory jurisdiction and legal revolution, is a clear outlier in terms of level of activity. Litigation rates in systems lacking compulsory jurisdiction—the ICJ, GATT, ECtHR, and IACtHR—were much lower. But one can already begin to see changes in the 1980s when

the EEC Commission and the European Commission on Human Rights decided to exercise their right to refer more cases to their courts.

At this point, the end of the Cold War provided a second critical juncture in the evolution of ICs. Existing enforcement systems were strengthened, and ICs proliferated.

Critical Juncture 2: The End of the Cold War and the Global Spread of International Courts

The end of the Cold War contributed to the strengthening and spread of ICs. The dismantling of the Soviet empire unfroze the political dynamic, whereby the Soviet Union and its satellites blocked global multilateral efforts and membership in Western institutions. Countries escaping from the Soviet orbit rushed to bind themselves to the international institutions of the West. In anticipation of expanding membership and legal rules, states moved quickly to address long-standing problems in existing international judicial systems. Three key changes contributed to the spread of permanent ICs. First, reforms to the GATT dispute-resolution system negotiated as part of the transition to the WTO made legalized dispute resolution compulsory, so that all WTO members increasingly faced the prospect of litigation in the WTO forum. This reality, along with the perceived failure of state-led economies, promoted the diffusion of regional trade agreements that now included international legal mechanisms. Second, the increased willingness of American and European judges to hear human rights and war crimes violations under revived universal jurisdiction provisions introduced the prospect of foreign trials for human rights abuses. This prospect spurred the creation of regional human rights systems so that local judges would deal with abuses. Third, the post-Cold War conflict in Yugoslavia provoked the creation of UN War Crimes Tribunals. These three events spurred legal mobilization and fueled the larger changes in the international judicial system. The next section first describes

the post–Cold War strengthening of existing systems and then the spread of ICs around the globe.

Strengthening existing enforcement systems in the Post–Cold War era. Whereas the ICJ and the Benelux system remained the same, the rest of the existing international legal systems were reformed in the post–Cold War era. **Table 3** below summarizes key institutional changes in existing systems, all of which were designed to increase the capacity of the ICs to deal with state noncompliance. The timing of the changes flows from the end of the Cold War. For the ECJ, ECtHR, and WTO systems, existing member states changed their systems in anticipation of enlargement to include former Soviet satellite states. Changes in the ATJ, IACtHR, Southern Common Market (Mercosur), and Economic Community of West African States (ECOWAS) systems all stemmed from changes brought by WTO membership, from the increased willingness of European and American courts to adjudicate legal violations that took place in other countries, and from increased government tolerance for transnational judicial oversight.

For the European Community, the impetus to reform its system was a sense that compliance with European Community law and ECJ decisions was uneven.⁹ To improve respect for European law, in the late 1980s and early 1990s, member states streamlined the Commission-initiated noncompliance procedure for enforcing European law, created a Tribunal of First Instance to relieve the growing caseload pressure on the ECJ, and added to the European legal system financial sanctions for those states that persistently ignore ECJ decisions (Tallberg 2003, pp. 54–91). This new system, as well as the common law *acquis communautaire*, applied to all new member states.

⁹According to Börzel, the perceived “compliance crisis” was a result of Commission action and it was overstated, designed to build support for a more resourced and muscular European legal system (Börzel 2001; Tallberg 2003, pp. 48–53).

For the European human rights system, the impetus to reform was a growing backlog of unresolved cases. In the 1960s and 1970s, few European governments had accepted the ECtHR’s authority, and the Commission dealt with most cases on its own. The part-time ECtHR judges could handle the caseload during their regular meetings. But when more states accepted the ECtHR’s jurisdiction, and when the European Commission on Human Rights began to refer more cases in the 1980s, the existing apparatus became overburdened and slow. After years of studying problems in the system, a majority of existing member states finally agreed to accept Protocol 11, which abolished the European Commission on Human Rights, required that all member states accept the ECtHR’s compulsory jurisdiction and the right to individual petition, and converted the ECtHR into a full-time body (Bates 2011, ch. 11). New Council of Europe members thus joined a fundamentally different system than that of the original member states.¹⁰ Formally speaking, the ECtHR’s power is much the same. But with private actors able to pursue cases on their own, the ECtHR became a *de facto* review body for national court decisions involving human rights violations. According to Helfer (2008), these changes in design are best understood as an acknowledgment that Europe’s human rights obligations and the ECtHR’s authority have become deeply embedded into Europe’s national legal orders. This evolution—private direct appeals and a full-time international human rights court—was clearly not what European governments expected when they first created the European human rights systems.

For the GATT system, the impetus for change was the growing dissatisfaction with the U.S. unilateral enforcement strategies combined with a desire to simplify and universalize the GATT system before membership

¹⁰Moravcsik (2000) argues that formerly Communist systems embraced these changes to demonstrate their deep commitments to democracy and the rule of law.

Table 3 International courts (ICs) with significant design changes over time

Court	Year of reform	Significant design changes
European Court of Justice (ECJ)	1988, 1993, 2009	Tribunal of First Instance (TFI), created in 1988 to relieve pressure on the ECJ, hears labor disputes and direct action cases against the European Commission. Its rulings can be appealed to the ECJ; thus the ECJ gained appellate jurisdiction in 1989. TFI jurisdiction extended in 1993, 1994, and 2004, allowing it to make references to the ECJ for certain questions. The Maastricht Treaty (1993) created a system for financial sanctions for noncompliance with ECJ rulings. The Lisbon Treaty (2009) gives the ECJ jurisdiction over some asylum and criminal cases.
World Trade Organization (WTO)	1994	The WTO system makes panel formation automatic and requires a unanimous vote to keep panel reports from being accepted. In other words, the WTO system has compulsory jurisdiction where the General Agreement of Tariffs and Trade (GATT) system did not.
Andean Tribunal of Justice (ATJ)	1996	The Cochabamba reforms allowed private actors to bring noncompliance suits to the attention of the Andean General Secretariat, and to raise the suit directly in front of the ATJ. With this change, the General Secretariat could overcome state reluctance to raise a suit, since secretariat officials could tell the state that one way or another, the case would end up in front of the ATJ.
European Court of Human Rights (ECtHR)	1998	Protocol 11 made the Court's jurisdiction compulsory for all Council of Europe members, and it eliminated the role of the Commission in bringing cases to the ECtHR. Now private actors are able to make direct appeals to the ECtHR, after they have exhausted domestic remedies.
Inter-American Court of Human Rights (IACtHR)	2000 & 2001	In 2000, the Court changed its rules of procedure to allow representation by nongovernmental organizations. Before 2001 the Inter-American Commission on Human Rights decided on majority vote whether or not to refer a case to the IACtHR, and there was a bias against referring cases. As of 2001 the Inter-American Commission submits to the court cases where it has found a violation. These changes lead to more cases being referred to the IACtHR.
Southern Common Market (Mercosur) (2002)	2002	The interim system of the Treaty of Asunción created the model of interstate dispute resolution where unresolved disputes were sent to the political Common Market Council. The Olivas Protocol allows for unhappy parties to appeal the dispute to a Permanent Review Court. There is discussion about replacing this system with an ECJ style court.
Court of Justice of the Economic Community of West African States (ECOWAS)	2005	The ECOWAS court, established by treaty in 1995 but only constituted in 2001, gained jurisdiction over human rights violations in 2005. Private actors were given direct access to the ECOWAS court to pursue human rights violations, with no requirement that private actors first exhaust domestic remedies.

expanded. The USTR became particularly aggressive in its pursuit of Section 301 violations whenever the President sought trade negotiation authority from the Congress, appeasing Congress but creating much disgruntlement among trading partners. The lead up and beginning of the Uruguay Round led to enhanced U.S. monitoring of “unfair trade” of trade partners, making the 1980s an especially contentious period (Dunoff 2009, pp. 342–45). The USTR sought a more effective trade remedy, and other states sought a reprieve from U.S. unilateralism. In this context, revising the long-problematic GATT dispute-settlement system became a least-bad alternative for all involved. The Uruguay Round trade talks became the moment to make this change. With the dismantling of the Soviet trading system, many countries that had stayed outside of the GATT system now wanted access to the West’s preferential trading system. These new countries could be forced to accept the entire package as the price of admission. Meanwhile, given how long negotiations had already taken, existing GATT members realized that change would only be harder going forward, precisely because GATT membership was likely to expand. States used the Uruguay Round to consolidate the many changes that had been agreed upon during previous GATT trade negotiation rounds and to create a single undertaking that would apply to old and new members alike (Barton et al. 2006, pp. 67–73, 160–78).

The changes in the GATT dispute-resolution system looked small, but they were significant. The dispute-settlement system of the rechristened WTO still has panels composed of litigating parties rendering decisions that must be accepted by the Dispute Settlement Body before they become binding. But now it takes a unanimous vote to reject a panel report, so that adopting panel reports is essentially automatic. Also, a permanent Appellate Body was created so that “faulty” panel rulings can be appealed. GATT law always allowed plaintiff states to claim compensation if their rights had been nullified and impaired

by defendant states, but the ability of states to block the adoption of panel rulings had rendered this provision ineffective. Now the legal authority of WTO panels is compulsory, and panel decision making takes place in the shadow of an appellate body appeal, which has made the panel stage less diplomatic and, perhaps ironically, both more legal and more contentious in nature (Alter 2003, Weiler 2000). These changes combined with “learning” by the U.S. trade partners about the benefit of harnessing firms to identify and build the legal case to support trade litigation. In 2004, the European Union passed the Trade Barrier Regulation, which allows private firms to petition the Commission to investigate trade matters and bring claims on their behalf to the WTO (Shaffer 2003, p. 85). As governments became more willing to use the WTO system, more resourced governments built up legal expertise in WTO litigation and legal firms started offering their services to facilitate the preparation of legal cases that could then be brought before the WTO (Shaffer et al. 2008). By contrast, the changes to the Inter-American Human Rights, Andean, Mercosur, and ECOWAS systems are more recent, and thus better understood as a spillover of the changes in the WTO and Europe.

The global expansion of international economic, human rights, and war crimes courts.

The end of the Cold War, and with it the discrediting of Marxism and Socialism, led to the end of Soviet economic subsidies and the ascendance of neoliberal economic thought in international institutions and the American and European foreign policy elite (Dezalay & Garth 2002). Hence forth, any state that wanted help from foreign investors, the International Monetary Fund, and the World Bank needed to show that they were undertaking economic reform. Entering the WTO system and reinvigorating regional trading agreements were ways governments could show their commitment to neoliberal economic ideas. Changes in U.S. and European foreign policy, and the changes brought by WTO membership, ended

up indirectly affecting state choices about regional trade systems. The WTO system allows regional economic communities to grant preferential market access to members, making regional agreements attractive in their own right (Mansfield & Reinhardt 2003). By adding compulsory enforcement mechanisms to these regimes, countries within the regional regime can create a complement to using the WTO system. This regional alternative can replicate the WTO system (as is the case with Mercosur and ASEAN), but common-market regional trade agreements tended to adopt the ECJ model instead because it also included administrative and constitutional review procedures and mechanisms for national courts to dialogue with ICs about the application of community secondary legislation (Alter 2011). The treaties for most of the regional economic courts were created in the 1990s, but they were not implemented until enough member states had ratified the agreement.

We lack good histories of the establishment of permanent economic and human rights courts in the 1990s. Where such histories exist, they seldom consider the larger international legal complex, and thus they often fail to consider how developments in parallel and overlapping institutions contributed to the decisions being made. Nonetheless, it is clear that the end of the Cold War and developments in other international legal systems often directly contributed to the establishment of new ICs. The Economic Court of the Commonwealth of Independent States was created to facilitate the resolution of disagreements among what were now independent yet deeply dependent post-Soviet states (Danilenko 1999). The desire to create more foreign investment led directly to the founding of the OHADA, which included a supranational judicial enforcement and arbitration system (Mouloul 2009). The OHADA system did not directly copy the ECJ model because its members wanted to avoid conflicts with the economic and monetary unions to which they also belonged. Within the Andean system, impending WTO membership led the Andean Pact to adopt new intellectual-property

rules beginning in the early 1990s. These new rules activated what was until then a barely used Andean legal system (Helfer et al. 2009, pp. 6–18).

The second global force for change was the outbreak of war in Yugoslavia. Yugoslavia was arguably a Cold War state. The multiethnic polity was held together by the Soviet support of Serbia and the tacit willingness of the West to accept that Yugoslavia was part of the Soviet sphere of influence. When the Cold War ended, a number of Yugoslavian territories sought independence. European governments fumbled in their early efforts to deal with the situation, contributing to the outbreak of war by recognizing the legitimacy of the Slovenian, Croatian, and Bosnian independence claims. The United States and the UN nonetheless hoped that the European Community, with its new foreign policy apparatus, might deal with the regional crisis. The UN's failed intervention in Somalia (1992) had sapped enthusiasm for UN intervention. Meanwhile, the United States hoped that Europe could become a regional leader so that it could capture a peace dividend from the end of the costly Cold War. While Western political leaders tried to avoid involvement in any humanitarian intervention, human rights groups published accounts of concentration camps bringing images to America and Europe that greatly resembled the concentration camps of World War II. Political inaction became increasingly embarrassing for American and European leaders.

Eventually, the West responded through the UN, establishing a “commission of experts” to gather evidence of war crimes. According to Bass (2000, pp. 210–14), this commission was set up to move slowly. UN officials obstructed its efforts, and the Commission's paltry budget starved the commission of the resources needed to carry forth its task. But commission member Cherif Bassiouni raised funds from private foundations and relied on students and non-governmental organizations, amassing strong evidence of war crimes. Embarrassed by UN inaction, especially in light of the mounting evidence of mass atrocities, yet still unwilling to

use military force to counter Serbian atrocities, the UN Security Council agreed in 1993 to create an international tribunal to prosecute war crimes committed in Yugoslavian wars.

The International Criminal Tribunal for the Former Yugoslavia (ICTY) broke the mold of past war crimes systems, leading to a new form of international war crimes court. Already different was that the Nuremberg trials had created legal precedents so that the ICTY did not face the legitimacy problem of enforcing legal rules that did not exist. More significant were the ICTY's political and institutional innovations. The Yugoslavian Tribunal was a UN body, and as such, it was filled with lawyers from a wide variety of countries (though still primarily Western). The ICTY had an independent prosecutor empowered to decide which cases to pursue, and it investigated crimes by multiple parties so that war crimes prosecution would not be victor's justice. Also, the Tribunal was created while the war (and thus war crimes) was still ongoing. The ICTY's charismatic prosecutors, Richard Goldstone, Louise Arbour, and Carla Del Ponte, used their prosecutorial prerogatives to shape what the ICTY, and subsequent international war crimes tribunals, would become (Hagan 2003, Hagan et al. 2006).

These innovations were important, but it is also important to recognize how this turn to international criminal courts was limited. Western countries created the ICTY so as to claim credit for doing something to address the human rights violations appearing every day in national newspapers. Western governments refused, however, to intervene to stop atrocities, and they did not require local actors to turn over indicted war criminals as a condition for Western political aid. The commitment was also very circumscribed. The jurisdiction of the ICTY was limited to crimes committed in the Yugoslavian crisis between the onset of war in 1991 through the war's cessation. There was an unstated understanding that the focus was on the crimes of the local warring parties, not actions associated with NATO intervention. In this way, the ICTY reflected an other-binding delegation of enforcement authority (Alter 2008).

Moreover by creating the ICTY through an act of the UN Security Council, permanent members of the Security Council could ensure that the ICTY precedent would not extend to them.

The very limited nature of the ICTY's authority raised questions. On what basis could one prosecute crimes in Yugoslavia, but not crimes elsewhere? Furthermore, was it just that "crimes" by NATO forces be exempt from investigation?¹¹ The 1994 Rwandan genocide provided an early test of international resolve. Especially after the debacle of the UN's Somalian intervention, Western powers did not want to commit troops to stop the genocide, nor did they want to suggest that African lives were of less value than European lives. The international community responded by creating another international criminal tribunal for Rwanda. Calls for special international tribunals for other regions and violations proliferated.

Inspired by these political advances, human rights activists advocated for a global model. Surely, a global war crimes court made more sense than multiple ad hoc war crimes tribunals. The political impetus for a permanent criminal court came from the UN General Assembly. Working groups gave way to an ad hoc committee, which became a preparatory committee for multilateral negotiations. By the time formal negotiations for the International Criminal Court began, more than 60 states had united into a "like-minded caucus" committed to a number of key propositions that were at odds with the preferences of permanent members of the Security Council. This group pushed for inclusion of core crimes (genocide, crimes against humanity, war crimes, and, perhaps, aggression), for the elimination of any Security Council veto on prosecution, for an independent prosecutor with the power to initiate proceedings, and for a rule that would prohibit reservations to the statute (Schabas 2001, pp. 14–16).

¹¹Slobodan Milosevic tried to create a focus on the crimes of NATO, and a prosecutor investigated complaints that NATO had bombed a prison. See Hagan (2003, pp. 217–19).

These provisions ultimately prevailed, leading the United States to oppose the Rome Statute. The result was the new International Criminal Court (created in 2002), and a host of ad hoc hybrid systems to deal with crimes that were committed before and outside of the framework of the new International Criminal Court (e.g., abuses in Sierra Leone, East Timor, Kosovo, and Cambodia). The new International Criminal Court represents the first ever self-binding commitment to international oversight of how state actors conduct war.

The establishment of war crimes courts also affected human rights legal systems. War crimes courts would be dealing with the worst offenses in war; meanwhile, human rights violations have long been seen as a potential precursor to all out war. With war crimes on the rise, in the 1990s, national courts in Belgium and the United Kingdom became more willing to invoke universal jurisdiction to prosecute human rights abuses in Latin America and Africa and to limit claims of foreign sovereign immunity. The new European grants of jurisdiction followed changes in the U.S. application of its revived Alien Tort Claims Act (Burley 1989). The prospect of prosecuting human rights violations in Europe and America led Latin American courts to reverse grants of amnesty so as to prosecute human rights violations themselves (Sikkink & Lutz 2001). With the end of violent military dictatorships, and the growth of membership in the inter-American human rights system from 11 countries in 1979 to 24 countries today, it became possible for the inter-American human rights system to start working (Cavallaro & Brewer 2008). These changes contributed to the Inter-American Commission's decision to start forwarding more cases to the Inter-American Court and to allow greater participation of nongovernmental organizations.

The African human rights system has been slower to evolve. The sorts of challenges that affected the early European human rights systems continue to plague the nascent African Court of Human and Peoples Rights. Few countries have accepted the African Court's jurisdiction, which

makes both the Commission and the Court hesitant to use their formal powers. Frustrated by the slow growth of the African human rights system, regional integration systems have expanded their human rights actions. The largest change has occurred in the ECOWAS, which in 2005 gave its Court of Justice the authority to hear private appeals of human rights violations. As ECOWAS leaders sought to transform their system, they often found themselves limited by the existence of the West African Economic and Monetary Union (WAEMU). To disband the WAEMU would certainly cost jobs, and it may undermine the negotiating leverage of the smaller francophone countries. Indeed, nonfrancophone Nigerian countries complain bitterly that WAEMU members vote as a block and paralyze ECOWAS, even when doing so is counter to the interests of certain WAEMU states (Adebajo & Rashid 2004, pp. 40–41). The desire not to conflict with WAEMU, and the major political barriers to activating the African Union's human rights system, may help explain why major reform of the ECOWAS legal system involved giving it a human rights jurisdiction when authorizing private litigants to bring violations of the economic community law to the community court may have made more functional sense. The difficulties human rights activist face in the African Union system also led to innovation in the ECOWAS human rights system. Unlike the European, inter-American, and African human rights systems, the ECOWAS system does not require that litigants first exhaust domestic remedies (Nwogu 2007).

With the important exception of the Court of the Organization for the Harmonization of Business Law in Africa, Africa's economic courts have barely been involved in litigating economic disputes. However, the ECOWAS Court has been willing to make bold demands of member states with respect to human rights (Ebobrah 2010). The courts of the South and East African Development Communities have also used "good governance" provisions as a tool to promote democracy and respect for human rights. The provisional authority of the

Court of the South African Development Community (SADC) is currently in abeyance as the region tries to deal with push back from Zimbabwe's leader over SADC rulings condemning the seizing of land (Ebobrah 2010). The East African Court of Justice (EACJ) still operates, but its rulings involving Kenyan elections have led to the creation of an appellate body and a procedural change that allows judges to be suspended from the EACJ if they are facing investigations at home.¹² These amendments are facing legal challenges, and democracy advocates are highly mobilized, pressing for meaningful change. Thus, one should not yet count these courts out (Gathii 2010), but the prospects for Africa's regional courts depend to a large extent on whether democracy and the rule of law can better establish themselves in African member states.

AN EVOLUTIONARY PERSPECTIVE ON INTERNATIONAL JUDICIAL AUTHORITY

The ICs created since the end of the Cold War are understandably at an earlier stage of development compared with their European counterparts. If Europe is any guide, it may take a long time for them to establish their authority. This is not to say that all ICs will follow the trajectories of Europe's ICs. Rather, my point is that Europe's ICs also did not look very impressive in their first years of operation. **Figure 3** crudely captures what could be considered an "evolutionary perspective" on ICs. Litigation rates are indicative of legal demand for IC rulings, which would occur only if IC rulings were seen as useful. New international legal systems begin slowly, as awareness

of the legal system is low and potential litigants are uncertain of whether litigation makes sense. The real question is, What happens over time? The graphs in **Figure 3** suggest that the more recent ICs are not much different from the ECJ and ECtHR in their early days. An evolutionary perspective also suggests that short-term assessments can be very misleading. For both the ECJ and the ECtHR, political crises led advocates to rally around each legal system. Crisis, as opposed to indifference, may be less dangerous for an IC, because crises focus political attention and make accepting IC rulings and IC authority a rallying cry for opposition politicians. For all these reasons, it is too early to draw any firm conclusions about the post-Cold War ICs.

The graphs in **Figure 3** also raise many interesting questions. What explains rising litigation levels in some systems? There may be endogenous sources of change: learning and the development of international jurisprudence, the building of legal fields, and changes in the legal order adopted to improve the systems' functioning. And there may be exogenous sources of change in litigation rates. For human rights courts, for example, litigation rates may rise as human rights violations rise. For economic courts, rising usage may well track the extent of secondary legislation in effect and the extent of trade among member states. In most cases, however, there will be a mix of endogenous and exogenous change. Law may create the changes in trade and human rights, generating a virtuous circle in which law generates and increases demand (Stone Sweet 1999).

Equally interesting is that some systems maintain relatively stable rates of litigation. This could be because legal issues are resolved so that disputes settle outside of court or because dissatisfaction with existing legal systems leads to disuse of the system or to the creation of new international legal orders that siphon off demand. For the WTO line shown in **Figure 3**, the lowering levels of litigation may reflect, in part, that outstanding and unresolved disputes (pent up demand from the GATT system) got resolved. It is also possible that the existence

¹²The Kenyan government felt that its member of the EACJ used the EAC procedures for his own partisan ends, prompting the reform that allows it to investigate and suspend its own judge. For a discussion of these changes, and legal challenges to them, see <http://www.theeastafrican.co.ke/news/-/2558/255150/-/t68v1pz/-/index.html> (last accessed August 1, 2011).

of regional trade systems affect the choice of forum where disputes get raised.

One should not confuse an evolutionary perspective with a teleological perspective where one assumes a given trajectory for IC development. The graphs in **Figure 3** show great diversity in the usage of international legal systems. Some of the variation is easily explained. The IACtHR, ECtHR, and original GATT system were lightly used because the lack of compulsory jurisdiction for the courts made potential litigators more cautious. The Benelux and EFTAC systems are lightly used because few countries fall under each court's jurisdiction. Less clear, however, is why similarly designed institutions show such diversity in usage. Why did Europe's ICs evolve? Why do some of Africa's ICs seem to be awakening, whereas others are not? Why have African and Latin American regional systems borrowed the European model of ICs, whereas Asia has only one international legal mechanism, which by all appearances is a paper tiger, and the Middle East, as yet, has no functioning systems? An evolutionary perspective begs such questions.

Explaining the Spread of Permanent International Courts

This brief history of the evolution and spread of ICs has a number of common themes. First, Europe has been a leader in creating international economic, criminal, and human rights courts. Why Europe? After World War II, European governments turned to diplomats and leaders who had been active in the antifascist resistance movement. This elite in particular believed that European governments needed more than a nonbinding UN General Assembly declaration and a paralyzed UN Commission on Human Rights to ensure that gross violations of human rights would be addressed. Although a number of European leaders were skeptical about international institutions, the architects of Europe's supranational systems and the officials who populated these institutions were committed to a political project of subjugating European gov-

ernments to international oversight (Madsen & Vauchez 2005, Sacriste & Vauchez 2007).

Nonetheless, it is important to note that Europe did not set out to be an exporter of international legal systems. In the 1960s, a number of regions copied Europe's approach to regional economic integration, omitting, however, the Economic Community's legal mechanisms. Most of these regional integration efforts were seen as failures (Haas 1970, 1975; Mattli 1999; Nye 1971). Whereas observers did not attribute the failure to a lack of a supranational legal structures, participants in these endeavors could not help but notice that Europe's ECJ was proving useful in addressing legal issues associated with regional integration. When the Cold War ended, the European Community assumed the role of perhaps the most powerful political promoter of democracy and the rule of law around the world, through enlargement of its own membership and by once again advocating the spread of regional integration systems. When regional integration returned as a policy objective in the 1980s and 1990s, integration architects paid greater attention to the legal problems presented by regional integration. Legal architects drew up blueprints for regional ICs in the 1980s and 1990s, emulating the European Community's legal system. It took some time to convince political leaders to embrace international judicial oversight, but eventually the European approach to international law spread (Alter 2011).

In yet another unintended twist, the European Union's failure to stop war from breaking out in Yugoslavia and its inability to stop atrocities in Europe and Rwanda helped pave the way for the creation of the International Criminal Tribunal for Yugoslavia and the assertion of universal jurisdiction over human rights abuses in other countries. These two steps helped fuel the drive for an International Criminal Court.

Second, the Cold War encouraged Europe's supranational initiatives, and the end of the Cold War facilitated the spread of ICs. The Cold War was a silent background force shaping the development of Europe's supranational legal institutions. With UN institutions

blocked by Cold War rivalries, and the International Trade Organization rejected by the U.S. Senate, the only solution left was for Europe to construct its own regional human rights and trade institutions. The Cold War then facilitated European integration by creating a common threat that kept European governments focused on working together. Economic prosperity and respect for human rights remained politically important because they served to differentiate Western from Eastern Europe in the ideological war between capitalist democracy and authoritarian socialism, keeping domestic support for communist parties in the West limited. Knowing that a strong Western European economy served the United States' own Cold War political and economic interests, the United States actively supported and facilitated European integration efforts. The United States agreed to special exemptions for regional trade agreements in the GATT trading system, and it maintained for many years a negative terms of trade so that European countries and Japan could grow their economies. The relative stability and predictability of the Cold War also helped in the slow transformation of the European Community's legal system.

The end of the Cold War unleashed a series of changes—a rush of states and peoples wanting to escape the Soviet orbit and the rise and spread of neoliberal economic ideas. Europe and the United States wanted to bring former Soviet satellites into the Western economic and security system. The prospect of growing membership provided an impetus to address a number of problems that had accrued within existing economic and human rights structures.

Third, the overlapping nature of national, regional, and international jurisdiction propels advancements at each level. The lens of regime complexity allows us to see how developments reverberate across international legal systems. Where international litigation advances take hold, liberal democracies find themselves already constrained by international legal rules. These countries then advocate for the spread of binding rules and for improvements in the international legal mechanisms to

address noncompliance by others, so that other states will be equally bound by international legal commitments. Regionally based activists simultaneously learn from developments in the United States and Europe, adapting foreign models to the specific needs of the region. Meanwhile, the least attractive enforcement system for international rules has courts in one country sitting in judgment over the behavior of actors in another country, which occurred when the United States passed its 1974 Trade Act, when American and European courts started to assert universal jurisdiction over crimes committed in Latin America and Africa, and when the UN Security Council started creating ad hoc war crimes bodies. Because of these external assertions of judicial authority, multilateral legal systems became newly attractive. And where multilateral systems exist, governments still prefer to resolve disagreements close to home rather than experience international adjudication. Thus, multilateral enforcement gives rise to regional enforcement mechanisms and to domestic enforcement of international rules so as to stave external assertions of authority.

We also find spillovers across international legal systems. The weakness of the African Union's human rights system contributed to the grant of human rights jurisdiction to the ECOWAS court as well as to the EACJ and SADC courts' willingness to entertain legal cases that invoked the vague "good governance" provisions of the economic communities. Most trade specialists assume that Africa's regional courts are empty gestures. Their awakening with respect to human rights litigation is yet another example of how regime complexity creates cross-institutional reverberations.

Fourth, the United States is a present, yet ambivalent, participant in the spread of ICs. The United States helped to found the UN, and it supported European integration to create a strong counter to the Soviet Union. However, American conservatives have been a constant force challenging the authority and legitimacy of international institutions. In the 1940s, Republicans ran against President Franklin

Delano Roosevelt on a platform that opposed many initiatives in the UN that Roosevelt had supported. Republican candidates lost, but the Republican Vice Presidential candidate in 1944, John Bricker, became a Senator in 1946. In 1949, he proposed to the Republican-dominated Congress a constitutional amendment, the so-called Bricker Amendment, that would have significantly restricted the ability of the United States to negotiate and ratify international treaties. The Senate rejected Bricker's amendment in 1954, but the amendment failed by just one vote. To win the fight against the Bricker Amendment, the Secretary of State John Foster Dulles testified that the administration did not intend to submit the Genocide Convention or the Covenant on Civil and Political Rights to the Senate for approval. The Brickerite coalition and sentiment have remained enduring forces in American politics. The United States is not consistently opposed to ICs and tribunals (Romano 2009), if only because Congress is only sometimes able to shape U.S. positions on international legal issues. When it comes to ratifying treaties (Moravcsik 2005) and to political positions taken by Republican administrations, the political power of the Brickerite coalition reveals itself. The conservative movement has been able to limit the American embrace of international legal instruments, with the one exception of the United States support of a more robust legal system for the WTO. While there remains a strong base of domestic political support for multilateralism and for ICs (Kull & Ramsay 2009), America has been unable either to lead or to stop the global spread of international legal authority.

CONCLUSION: NEW RESEARCH QUESTIONS ABOUT INTERNATIONAL COURTS

Especially for more recently created ICs, we lack adequate histories and explanations for why member states decided to submit to international judicial oversight. This article has suggested that global forces emanating from Europe and the end of the Cold War facilitated

the spread of international judicial approaches around the world. I argued for an evolutionary approach to considering the development of international legal systems, where one does not make firm conclusions based on crises or recent histories of ICs. At the same time, clearly the spread of ICs reflects the dominance of American and European power. Although the United States and Europe may not have directly pressured regions around the world to create or enhance their international legal systems, belief in the benefits of liberal economics, democracy, and the rule of law drives the United States and Europe to support actors that demand their governments submit to judicial accountability.

The lens of international regime complexity encourages viewing the international judiciary as a system, even if there is no formal hierarchy organizing different international judicial systems. Legal scholars often fear that without hierarchy and order there will be chaos. But as scientists well know, systems can and do exist without hierarchy just as order exists within chaos and international anarchy. It is likely that the international judicial system will remain incomplete. There will be gaps in legal coverage even if the laws, formally speaking, are equally binding across systems. There will be possibilities that ICs contradict each other, and maybe even inconsistencies in legal doctrines, which persist for long periods of time. But this will not necessarily create legal confusion. We likely all wish that the international legal system were less complex to understand and navigate and that it was consistently as effective as the most effective national legal systems. But just as law in action differs from law on the books within national systems, the international legal system can survive and function without ever reaching an ideal state of organization and efficiency.

For the scholar, the advent of international judicialization in diverse regions and across different issue areas creates new laboratories where one can investigate what makes international law and international legal systems more and less effective in shaping societal and state behavior. We can investigate how international economic, human rights, and war crimes

systems differently affect individual states and societies. We can investigate how similarly designed systems may work differently in different contexts. We can chart how legal communities get informed and built around international legal mechanisms and, thus, how legal fields change in light of increased international judicial activity. We can investigate the mechanisms of cross-fertilization across international legal institutions. And we can investigate why the distribution of interna-

tional judicialization is so uneven (Kingsbury 2011). Why do some countries readily agree to international judicial oversight, whereas others refuse to submit to international legal authority? Why do some countries submit but then violate international legal rules, knowing they may be brought to court? Why do some legal violations lead to litigation, whereas others are ignored? These and many other questions naturally arise in light of the trend and variation this article has identified.

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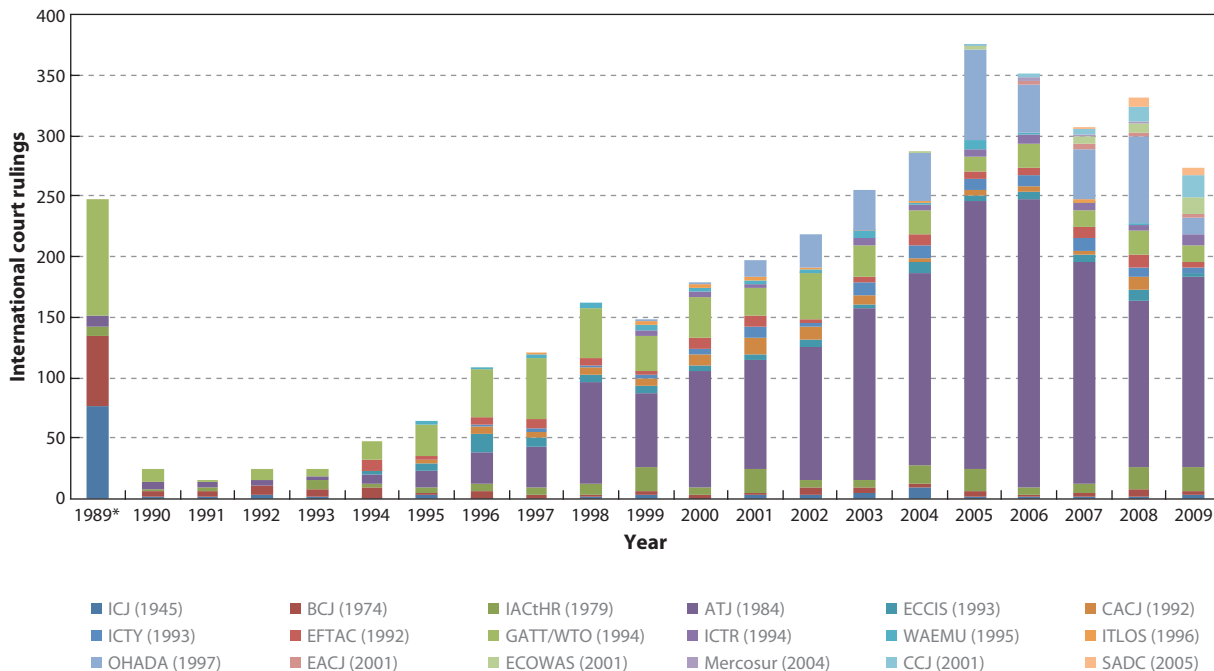


Figure 1

Growth in international court (IC) decision making through 2009 (European Court of Justice and European Court of Human Rights excluded). The asterisk indicates the sum of ruling since the court's founding (in parentheses) through 1989. Data excludes employee disputes and interim rulings. Adapted from Alter 2010. Abbreviations: ATJ, Andean Tribunal of Justice; BCJ, Benelux Court of Justice; CACJ, Central American Court of Justice; CCJ, Caribbean Court of Justice; EACJ, Court of Justice of the East African Community; ECCIS, Economic Court of the Commonwealth of Independent States; ECOWAS, Economic Community of West African States; EFTAC, European Free Trade Area Court; GATT, General Agreement of Tariffs and Trade; IACtHR, Inter-American Court of Human Rights; ICJ, International Court of Justice; ICTR, International Criminal Tribunal for Rwanda; ICTY, International Criminal Tribunal for the Former Yugoslavia; ITLOS, International Law of Sea Tribunal; Mercosur, Southern Common Market; OHADA, Organization for the Harmonization of Business Law in Africa; SADC, Southern African Development Community; WAEMU, Court of West African Economic and Monetary Union; WTO, World Trade Organization.

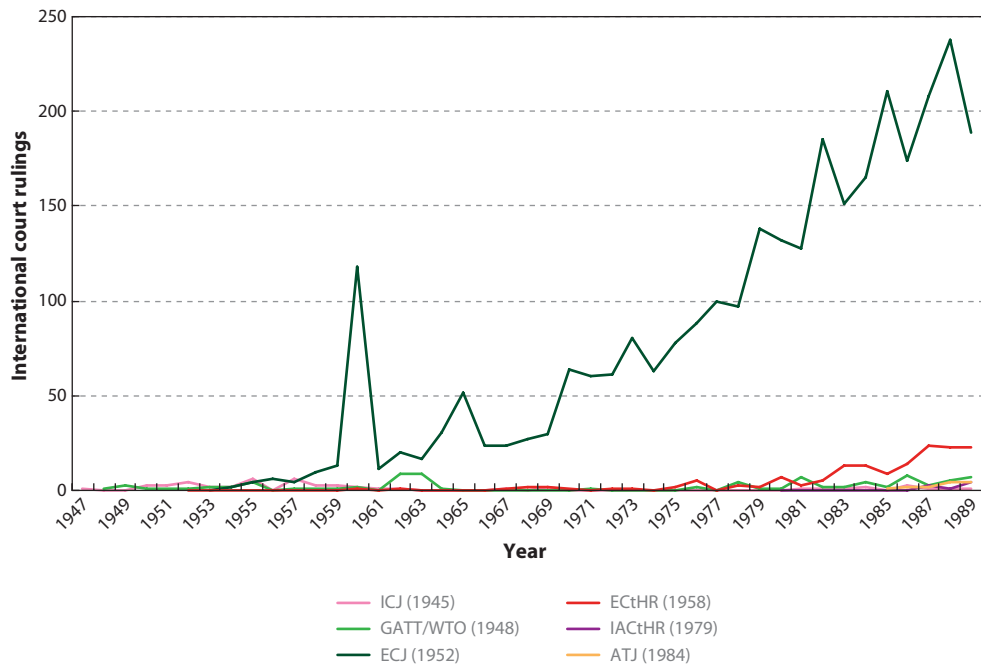


Figure 2

Binding rulings issued by the ICJ, GATT/WTO, ECJ, ECtHR, ATJ, and IACtHR (founding to the end of the Cold War). Abbreviations: ATJ, Andean Tribunal of Justice; ECJ, European Court of Justice; ECtHR, European Court of Human Rights; GATT, General Agreement of Tariffs and Trade; IACtHR, Inter-American Court of Human Rights; ICJ, International Court of Justice; WTO, World Trade Organization.

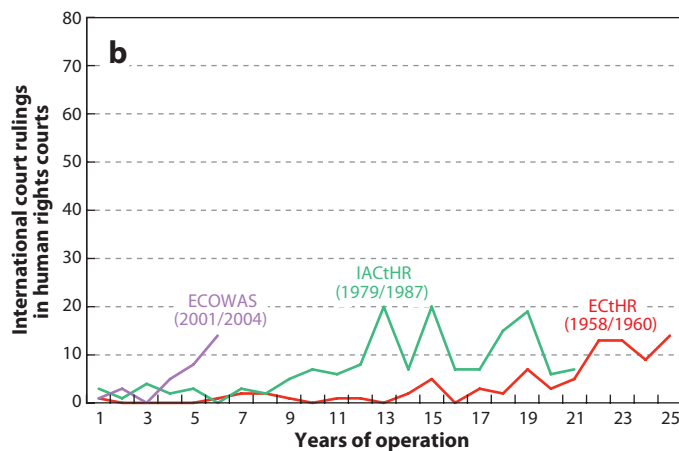
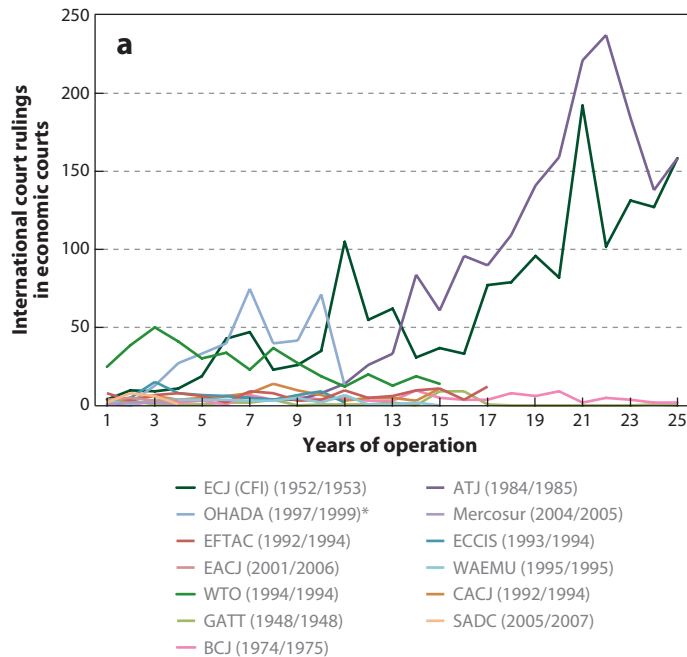


Figure 3

Binding rulings over time in (a) economics courts and (b) human rights courts. 1 = first year court issues a binding ruling. The year the court was created and the year it issued its first ruling are also noted in parentheses. Interim rulings and employee disputes are excluded. Abbreviations: ATJ, Andean Tribunal of Justice; CACJ, Central American Court of Justice; EACJ, Court of Justice of the East African Community; ECCIS, Economic Court of the Commonwealth of Independent States; ECJ, European Court of Justice; EFTAC, European Free Trade Area Court; GATT, General Agreement of Tariffs and Trade; Mercosur, Southern Common Market; OHADA, Organization for the Harmonization of Business Law in Africa; SADC, Southern African Development Community; WAEMU, Court of West African Economic and Monetary Union; WTO, World Trade Organization.



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Errata

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