

## Appendix for Chapter 6: International court's administrative review jurisdiction (organized alphabetically)

This document explains the coding in figure 6.1 (p. 208) of *The New Terrain of International Law* (Princeton University Press, 2014). IC jurisdiction is exclusive with respect to invalidating supranational administrative acts, but not with respect to review of domestic administrative acts. Included are three additional systems not listed in Figure 6.1 because they are not permanent courts- NAFTA Chapter 19, ICSID, and the MERCOSUR system. Unless otherwise stated, the articles referenced correspond to the legal instruments indicated in the Court Treaty Bibliography (p. 407). More information on all of these courts can be found in the book's online appendix, available at [newterrainofinternationallaw.org](http://newterrainofinternationallaw.org).

ICs with role (N=13)	Compulsory Jurisdiction	Private Access	Preliminary Ruling Mechanism	Paraphrased description of IC jurisdiction
Andean Tribunal of Justice (ATJ) (1984)	X	X	X	The ATJ can nullify General Secretariat decisions on the basis of a failure to follow provisions of the Andean legal system or a deviation of powers in cases raised by member states, Andean institutions (Article 17) and private litigants if their direct interest is at issue (Article 19). The ATJ may hear failure to act charges against the General Secretariat, Council of Foreign Ministers and Commission should these institutions abstain from carrying out an activity. Member states and directly effected private individuals can initiate such suits (Article 37). National courts can refer cases involving Andean law to the ATJ, and courts of last instance are required to refer such cases. In practice, all of these cases involve the application of community regulatory rules by national administrative litigants (Article 33). National judges trying the case must adopt the ATJ's interpretation (Article 36).
BENELUX (1974)	X	X	X	A 1969 treaty establishes administrative and judicial cooperation. The Court Treaty defining the BENELUX court's jurisdiction notes: 'The court's primary charge is to create a uniform interpretation of legal rules within the community in cases heard in national courts or in the envisioned Arbitral body (Article 1).' The BENELUX court can hear preliminary references from national courts raising questions regarding community rules (Article 6). The terms for this review are described in Articles 7-9 and in a separate document. Governments can also ask for advisory opinions about community rules (Article 10). Litigants can challenge decision of the Committee of Ministers and its working groups (Articles 1, 2 & 3). Grounds for appeal are the violation of a written law or of due form, the overstepping or abuse of authority, or the violation of any general legal principle (Article 4).
Caribbean Court of Justice (CCJ) (2001)	X	X	X	The CCJ has jurisdiction to review fines levied by the Competition Commission for uncompetitive practices. Private litigants and states can challenge these decisions (Article 175 (12) and Article 176 (6) of the Revised Treaty Establishing the Caribbean Common Market). National courts may refer questions of treaty interpretation or application (Article 14). The court can grant private litigants locus standi when the treaty confers individual rights or there is a question of prejudice in the enjoyment of community rights, and where member states fail to make a claim on the individuals behalf or to authorize the individual to make their claim directly (Article 20)
Central African Monetary Community (CEMAC) (2000)	X	X	X	The Court has jurisdiction to review the legality of legal acts of the CEMAC and related acts raised by any state or community organ for irregularity, incompetence, abuse of power or a violation of community rules (Article 15). National courts can also refer cases involving the legality or interpretation of CEMAC acts (Article 17).
Central American Court of Justice (CACJ) (1992)	Partial	X	X	The court's jurisdiction is compulsory for disputes, but voluntary regarding questions of law and fact.. The court has general authority to hear suits brought by any actor with standing, including states, private litigants, and community institutions, about decisions of any organ of the system, including nullification charges and failure to act charges (CACJ statute Chapter II Article 22(b),(g)). It also has compulsory jurisdiction regarding any legal, regulatory or administrative provision that affect the conventions, treaties and norms of the Laws of Central American Integration (Chapter II Article 22 (c)). The court

				may also resolve prejudicial consultations referred by national judges so as to facilitate a uniform interpretation of legal principles (Chapter II Article 22 (5))
Court of Justice for the Common Market of Eastern and Southern Africa (COMESA) (1998)	X	X	X	Any resident of a member state may ask the court to rule on the legality of any act, regulation, directive or decision of the Council, or of a member state if domestic remedies have been exhausted (Article 26). A national court shall refer questions of treaty interpretation, and questions about the validity of the regulations, directives and decisions of the Common Market to the COMESA Court for a ruling, if the national court considers a ruling on the question necessary for rendering judgment. A national court shall refer a matter to the COMESA Court if no judicial remedy is available under the member state's national law (Article 30).
East African Court of Justice (EACJ) (2001)	X	X	X	Any member state (Article 28), private actor (Article 30), and national court (Article 34) can send to the Court a question about the validity of regulations, directives, decisions, or actions of the Community. Private litigants can challenge any act, regulation, decision or action of a partner state or Community institution on the grounds that the act is unlawful or an infringement of the treaty (Article 30).
European Court of Justice (ECJ) (1952)	X	X	X	The ECJ may rule acts of the Commission void (Article 230 & 231). Member states, and institutions of the Community can raise charges against any European institution for its failure to act. Private litigants may also raise a complaint for failure to address to that person any act other than a recommendation or an opinion (Article 232). The Court of First Instance (now General Court) has first instance jurisdiction in these cases (Article 225). An institution whose action has been declared void or who's failure to act has been declared contrary to the treaty must take necessary measures to comply with the Court's ruling (Article 233). National courts can refer questions of interpretation to the ECJ, and courts of last instance are required to refer questions involving European law (Article 234). References often include challenges to national administrative decisions applying community rules.
Economic Community of West African States Court (ECOWAS) (2001)	X	X	X	The Court has jurisdiction over the interpretation and application of the treaty, conventions and protocols of the Community, and the interpretation and application of the regulations, directives, decisions and other subsidiary legal instruments adopted by ECOWAS (Amended Article 9 (1a, b, c)). Individuals and corporate bodies have access for proceedings for the determination of an act or inaction of a Community official that violates the rights of the individuals or corporate bodies (Amended Article 10 (c)). National courts may refer questions concerning the interpretation of a treaty provision or any regulation or protocol (Amended Article 10 f).
European Free Trade Area Court (EFTAC) (1992)	X	X	Advisory opinions only	EFTA court has unlimited jurisdiction regarding penalties imposed by the Surveillance authority (Article 36). EFTA States can challenge decisions of the EFTA Surveillance authority on grounds of lack of competence, infringement of an essential procedural requirement, or infringement of any EFTA agreement, (Article 36), and its failure to act (Article 37). Private litigants can bring an action before the EFTA Court under the same conditions, if the decision is addressed to them or is of direct and individual concern (Article 36). Private litigants can bring failure to act suits as well (Article 37). These rulings can effectively quash illegal decisions. EFTA court can give advisory opinions raised by states or referred by national courts. States may limit national court references to last instance courts only (Article 34).
International Tribunal for the Law of the Sea—Seabed Chamber (1996)	X	X		Seabed Disputes Chamber can hear disputes between states and Authority concerning acts or omissions of the Authority in violation of the Convention, acts of the Authority in excess of its jurisdiction, and any misuse of its power by the Authority (Article 187b). Court is not allowed to review the exercise of the Authority's discretionary power, nor the legality validity of the rules, regulations, and procedures of the Authority. Reviews must be confined to individual claims concerning the application of Seabed Authority rules or procedures that is in conflict with the obligations of the parties to the dispute, and claims concerning excess of jurisdiction or misuse of power, or damages and remedies (Article 189).
West African Economic and Monetary Union (WAEMU) (1995)	X	Via national courts	X	The Commission has control for competition policy, subject to the review of the Court. Implicitly this means that the court can quash illegal decisions ((Article 90 WAEMU Treaty). The court can hear cases that involve damages caused by Community organs (Court Rules of Procedure (15 (3)). Since private litigants lack direct access, except for contractual disputes (Court Rules of Procedure (Article 16), the case would need to be raised in a national court. National courts of last resort must refer questions about the legality of regulations, laws, directives, and decisions; other national courts may refer questions. (Article 8). Legal interpretations in preliminary rulings are binding on all administrative and legal authorities

				within member states. A failure to observe these rulings may give rise to an infringement charge (Article 13).
Southern African Development Community (SADC) (2005)	X	X	X	The tribunal has jurisdiction regarding the validity of all protocols and subsidiary instruments adopted by the Community, and all acts of the Community (Article 14). The tribunal has jurisdiction over disputes between member states, and between individuals and member states once domestic remedies are exhausted (Article 15), between member states and the community (Article 17) and between individuals and the Community (Article 18). The treaty does not specify whether specific litigants can bring specific suits, suggesting that all authorized actors can raise suits that fall under the tribunal's jurisdiction, thus all actors can ask the tribunal to assess the validity of community acts (presumably, however, there is some requirement that the act be of direct concern to private litigants). The tribunal has jurisdiction to hear preliminary ruling references concerning the interpretation, application or validity of provisions at issue (Article 16). Some of these provisions may have been changed in the reforms of August 2012.

### Three additional international administrative review mechanisms not included in figure 6.1

ICs with role	Compulsory Jurisdiction	Private Access	Preliminary Ruling Mechanism	Paraphrased description of IC jurisdiction
North American Free Trade Area Chapter 19 (1994)*	X	X		The Chapter 19 system applies only to goods regulated by the importing Party's antidumping or countervailing duty law (Article 1901). Each party replaces final domestic judicial review of anti-dumping and countervailing duty determinations with bi-national panel reviews. An affected party may request a bi-national panel review the administrative record that led to the finding of illegal dumping, and records used to generate antidumping or countervailing duty determinations. The panel assesses whether administrative action is in accordance with the antidumping or countervailing duty law <i>of the defendant state</i> . The procedure for such reviews is then further defined (Article 1904). Should a state party interfere with the functioning or application of the bi-national panel review process, a state party can request (after consultations) the formation of a "special committee" to investigate the issue. The special committee can stay a panel review process and review panel process and findings (Article 1905). Additional specially formulated bi-national panels may review amendments to national antidumping or countervailing duty laws to see if changes affect preexisting agreements and understandings (Article 1903).
International Centre for the Settlement of Investment Disputes (ICSID)	As specified in bi-lateral investment treaties and contracts	X		ICSID is an autonomous international institution established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States with over one hundred and forty member States. The Convention sets forth ICSID's mandate, organization and core functions. The primary purpose of ICSID is to provide facilities for conciliation and arbitration of international investment disputes. (taken from the ICSID website):
Southern Common Market (MERCOSUR) (1999)	X	X	X	Private parties can file claims with national chapters of the Common Market Group, raising a complaint that the adoption or application of legal or administrative measures by a state party has a restrictive, discriminatory or unfair competition effect in violation of MERCOSUR Treaties (Article 39 & 40). The Common Market Group shall call upon a group of experts (defined in Article 43) to review all valid claims, and private individuals and state parties shall have an opportunity to be heard (Article 42). National supreme courts can also refer questions involving MERCOSUR rules to the Permanent Review Body. While not expressly stated in the Olivos protocol, decisions of MERCOSUR's political organs authorize national supreme courts to request advisory opinions.

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\*NAFTA Chapter 19 replaces and updates a previous bi-national procedure defined by the Canada-United States Free Trade Agreement (1987). The base legislative document is Chapter Nineteen: Review and Dispute Settlement in Antidumping and Countervailing Duty Matters included in the North American Free Trade Agreement 32 *I.L.M.* 289 (1993). (available at: <http://www.nafta-sec-alena.org/en/view.aspx?conID=590>, last visited April 20, 2012.)