

Appendix for Chapter 8: International court's constitutional review jurisdiction (organized alphabetically)

This document explains the coding in figure 8.1 (p. 288) of *The New Terrain of International Law* (Princeton University Press, 2014). IC jurisdiction is compulsory and exclusive with respect to invalidating Community acts, but not with respect to review of state acts. Included at the end are four systems not listed in figure 8.1 because they lack operational ICs (the African Union system) or they do not have explicit constitutional review jurisdiction (European Court of Human Rights, Inter-American Court of Human Rights, the International Criminal Court). Should a culture of constitutional obedience emerge, these courts can assume a de facto constitutional review jurisdiction. More information on all of these courts can be found in the book's online appendix, available at newterrainofinternationalallaw.org. Unless otherwise stated, the articles referenced correspond to the legal instruments indicated in the Court Treaty Bibliography (p. 407).

ICs with role (N=10 + AU)	Actors that may initiate litigation			Paraphrased jurisdiction to review validity of IO Acts	Paraphrased jurisdiction to review validity of state acts
	State Actors	Supranational Actors	Private Access		
Andean Tribunal of Justice (ATJ) (1984)	X	Secretary General	X	The ATJ can nullify decisions of the Commission, and resolutions of the Board on the basis of a failure to follow provisions of the Andean legal system or a deviation of power. Member states, the Commission, the General Secretary, and private litigants whose interests are affected can bring cases (Articles 17-19).	None specified, but the supremacy of Andean law suggests a power to review the compatibility of community law with national law.
Caribbean Court of Justice (2004)	(under discussion)		X	The CCJ has original jurisdiction for cases involving Caribbean Common Market laws, but it has no explicit authority to review the validity of such laws (Article XII). Given that CARICOM is a common market system, it would not surprise me if the court were given jurisdiction to review the validity secondary legislation of the Caribbean Common Market. But for now this power is yet to be defined.	The CCJ has appellate jurisdiction over supreme court decisions involving constitutional violations of a litigant's human rights (Article XXV d). This jurisdiction applies only when domestic constitutions allow. In practice, only Guyana and Barbados fall under the CCJ's appellate jurisdiction. Nine Caribbean island states have opted instead to have the East Caribbean Supreme Court serve as the highest appellate body. The book's appendix includes a brief summary of both the CCJ and the East Caribbean Supreme Court.
Central African Monetary Community (CEMAC)(2000)	X		X	The Court has jurisdiction to review the legality of legal acts of the CEMAC and related acts (Article 15.) The relevant provision defines the terms under which an act can be deemed illegal including incompetence, exceeding authority or violating rules of law. States, all community institutions and any individual with a legitimate interest can challenge any violation of the treaty (Article 14). National courts can also refer cases involving the legality or interpretation of CEMAC acts (Article 17).	Any state, CEMAC or private actor with a valid legal claim can at any time question the legality of a legal act of a member state or a CEMAC organ (Article 14)

Central American Court of Justice (CACJ) (1992)	X	Any community institution	X	The Court has general jurisdiction to hear suits brought by any actor with standing, including member states, private litigants, and Community institutions, about decisions of any organ of the system, including nullification charges and failure to act charges (Article 22b).	The Court may hear questions that arise with respect to the “fundamental powers or organs of the member states, and disputes that may arise when judicial verdicts are not respected” (Article 22f). Any member state can refer a question about conflicts between treaties and national laws of each member state. (Article 23)
Court of Justice for the Common Market of Eastern and Southern Africa (COMESA) (1998)	X		X	Any member state may ask the court to rule on the legality of any act, regulation, directive or decision of the Council (Article 24.2). 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 (Article 26). National courts can refer questions of interpretation, and questions about the validity or the regulations, directives and decisions of the Common Market to the COMESA Court for a ruling. Last instance domestic courts are obliged to refer such questions (Article 30).	Article 26 also authorizes private litigants initiate challenges the legality of any act, regulation, directive or decision of a member state, after domestic remedies are exhausted (Article 26).
East African Court of Justice (EACJ) (2001)	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. Article 28 clearly allows for claims raised by states, for arguments that acts of partner state are ultra vires or unlawful. The treaty also clearly states that EACJ decisions have precedence over national court decisions on similar matters (Articles 33 and 34).	Community law is supreme, and private litigants can challenge any act, regulation, decision or action of a partner state on the grounds that the act is unlawful or an infringement of the treaty (Article 30).
Economic Community of West African States Court (ECOWAS) (2001)		Executive Secretary		Member states, the Council of Ministers and the Executive Secretary may bring proceeding for the determination of the legality of an action in relation to any Community text (Article 4 of the Supplementary Protocol, which revises Article 10 (b)). National courts may send questions of interpretation to the ECOWAS court; the text is silent as to whether such references can include challenges to community acts (Article 4 of the Supplementary Protocol, which revises Article 10 (f)).	Certain community laws have legal supremacy in the domestic realm. Private litigants have access to seek relief for violations of their human rights; the treaty is silent as to whether such relief includes invalidating illegal acts but the court can order the cessation of ongoing violations (Article 4 of the Supplementary Protocol, which revises Article 10 (c)). A culture of constitutional obedience to human rights law would give this court a de facto constitutional review role vis-à-vis domestic acts.

European Court of Justice (ECJ) (1952)	X	Commission	Via national courts	European acts must respect the principles of liberty, democracy, human rights and fundamental freedoms, the rule of law, and principles that are common to member states (Article 6). A number of provisions further specify a Community obligation to respect human rights, which can be invoked during judicial review of community acts (e.g. Article 181a). Member states, the European Parliament, the European Council or the European Commission can raise challenges to the validity of acts adopted by the European Council, Parliament, Commission, and European Central Bank (Article 230). ECJ may declare the act void (Article 231). An institution whose action has been declared void must take necessary measures to comply with the Court’s ruling (Article 233). National courts may refer cases raised by private litigants where there are questions as to the validity and interpretation of European laws (Article 234).	None specified, but the ECJ’s judicial revolution, which asserted the supremacy of European law, implicitly allows the ECJ to adjudicate the compatibility of community law and national law.
Southern African Development Community (SADC) (2007)	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 tribunal’s competence for disputes between individuals/member states and the community is exclusive (revisions of Articles 17 & 18). The treaty does not specify whether specific litigants can bring specific suits, suggesting that all authorized litigants can raise suits that fall under the tribunal’s jurisdiction assessing the validity of community acts.	The original Court Treaty allows private litigants can raise cases against states after domestic remedies are exhausted (Article 15 SADC Court Treaty). This provision has been changed. Secondary legislation can still authorize private suits and make community rules supreme.
West African Economic and Monetary Union (WAEMU) (1995)	X	Council or Commission	X	A member state, the Council or the Commission can ask the Court to assess the legality of any regulation, directive or decision. National courts of last instance are obliged to seize the Court in such cases (Article 8). The rules of procedure clarify that any state, the Council, the Commission or directly effected individual can raise challenges to the legality of Community acts (Rules of Procedure Article 15 (2)).	None specified, but supreme community law would trump conflicting domestic law.

ICs not listed on table 8.1 that have delegated or morphed constitutional review roles

ICs	Actors that may initiate litigation			Paraphrased jurisdiction to review validity of IO Acts	Paraphrased jurisdiction to review validity of state acts
	State Actors	Supranational Actors	Private Access		
African Court of Justice (ACJ) (not yet established)	X	Political organs of the African Union		The Court has jurisdiction regarding the interpretation, application or validity of Union Treaties and all subsidiary legal instruments adopted within the framework of the African Union (Article 19b) and jurisdiction over all acts, decisions, regulations or directives of the Union (19d). State parties, the Assembly of States, Parliament and other African Union Organs authorized by the Assembly may raise cases (Article 18).	None
African Court on Human and	X	African Commission on			A culture of constitutional obedience to human rights law would give this court a

Peoples' Rights (ACtHPR) (2006)		Human and Peoples' Rights			de facto constitutional review role vis-à-vis domestic acts.
European Court of Human Rights (ECtHR) as changed in 1998 (1952)	X	Commission eliminated in 1998	X	The ECtHR has adjudicated the compatibility of European Union and UN actions vis-à-vis the European Convention.	A culture of constitutional obedience to human rights law gives this court a de facto constitutional review role vis-à-vis domestic acts.
Inter-American Court of Human Rights (IACtHR) (1979)	X	Commission			A culture of constitutional obedience to human rights law would give this court a de facto constitutional review role vis-à-vis domestic acts.
International Criminal Court (ICC) (2001)		Prosecutor		The ICC can develop international criminal law, but it has yet to adjudicate issues that touch on the power and competences of United Nations bodies.	Developments in international criminal law can penetrate into the national level, since ratification of the Rome Statute requires domestic legislation to prosecute war crimes.