

RESOURCING GLOBAL JUSTICE: THE OF RESOURCE MANAGEMENT DESIGN OF INTERNATIONAL COURTS

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Theresa Squatrito, PhD
University of Oslo
theresa.squatrito@jus.uio.no

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Abstract: This article examines the resource management design of international courts (ICs) and asks: how are ICs designed in terms of the management of resources and what factors contribute the resource management design of ICs? Theoretically, this article draws on existing literature to conceptualize resource management as a design feature of international courts and considers three causal mechanisms that might shape the resource management design of ICs: diffusion by emulation, the uploading of domestic governance norms, and bureaucrats who pursue institutional independence and sustainability. Empirically, I examine the resource management design of 24 ICs and assess who selects ICs' chief administrators and approves ICs' budgets. A case study on the Caribbean Court of Justice (CCJ) is also analyzed in order to gain traction on the causal mechanisms generating resource management design of ICs. The article shows that there is strong tendency for ICs to have greater control over the appointment of their chief administrators, but less control over their budgets. States generally retain authority to approve ICs' budgets. Moreover, it suggests that domestic judicial norms and national legal bureaucrats influenced the design of the CCJ's resource management.

States have increasingly recognized international courts (ICs) to be crucial to global governance. As a result, we have witnessed their proliferation. Today, policy makers and academics contemplate the creation of additional courts. Ongoing debates in the area of international investment buzz with ideas for the creation of world investment court and in some circles a global human rights court has gained traction (Scheinin, 2012). Yet when states establish international courts, they face several questions concerning how to design them. One set of questions pertains to their resourcing. How should the resources of a court be governed? Who should control the budgets of ICs? How should administrative staff be selected and to whom are they responsible?

Despite begin among the essential design choices that states must concern themselves with when creating new international courts, we know little about the resource management design, or the rules governing the control of their resources. This is somewhat surprising because existing literature has examined how ICs are financed (Ingadottir, 2004; Ingadottir, 2014; Romano, 2005; Wippman, 2006) and the resourcing of ICs might have consequences for the processes by which IC operate and the outcomes they produce. This article responds to this gap in the literature by examining resource management, conceived as a dimension of institutional design. Specifically, I ask two questions concerning the governance of ICs' material and human resources. First, how are ICs designed in terms of the management of resources? Second, what factors contribute to the resource management design of ICs?

Theoretically, this article draws on existing literature to conceptualize resource management as a design feature of international courts. The article develops an explanatory account of the causal mechanisms that shape resource management design. Three causal mechanisms are considered: diffusion by emulation, the uploading of domestic governance norms, and bureaucrats who pursue institutional independence and sustainability. Empirically, I examine the resource management design of international courts, defined as permanent international judicial bodies that: (1) makes decisions on the basis of international law, (2) follow pre-determined rules of procedure, (3) issue legally binding outcomes, (4) are composed of independent members, and (5) require at least one party to a dispute is a state or an international organization (Romano et al. 2014, p. 6).¹ The article assesses two central rules on resource management of 24 ICs, which comprise all permanent international courts that have been operational in the time period from 1945 to 2014. These two rules define who selects ICs' chief administrators and approves ICs' budgets. A case study on the design of the Caribbean Court of Justice (CCJ) is also analyzed to help adjudicate between the causal mechanisms accounting for resource management design.

The analysis reveals that ICs tend to have greater control over the selection of their chief administrators than over their budgets. States generally retain authority to approve IC budgets. At the same time, the analysis reveals there is also variation across ICs. The similarities in resource management design of ICs accord with a prominent account that international court is the result diffusion by emulation. However, the findings of variation also suggest this is not complete account. Based on a case study that deviates from the expectations of diffusion, the empirical analysis highlights domestic factors also contribute to institutional design. In particular, I argue that the uploading of domestic governance norms and bureaucrats' efforts to ensure the independence and sustainability of new international courts helps to explain additional variation in resource management design.

The article is organized in four sections. In the first section, the article conceptualizes resource management as a feature of institutional design and measures and comparatively maps the resource management design of ICs. The second section identifies and develops three causal mechanisms that might account for the design of resource management. The third section then tests the plausibility of these causal mechanisms through a case study on the CCJ. In the fourth and final section, the article concludes with a discussion of the core findings and their implications.

International Courts and Resource Management as Institutional Design

Previous research has studied the design of international courts, especially along the dimensions of access for private litigants, independence, selection and tenure of judges, and powers (Alter, 2014; Deitelhoff, 2009; Keohane et al., 2000; Mackenzie et al., 2010). In this section, I elaborate on how resource management constitutes a dimension of the institutional design and what it comprises. In addition, I measure and comparatively assess the resource management of all 24 ICs that were operational through the end of 2014.

Resource management, or rules defining what actors have control over the management of resources, is a dimension of institutional design, similar to other aspects related to financing and resource governance of IOs (Graham, 2015, 2016; Johnson, 2014). Like other dimensions of institutional design, such as membership criteria, the scope of issues covered, and access for transnational actors, resource management rules shape how international institutions operate. In terms of rational design, resource management is part of what defines and structures 'control' within an international institution (Koremenos et al.,

2001, p. 772). The rules defining the control of resources, in other words, influence the authority and accountability of institutions.

The resource management of ICs concerns two types of resources (Keohane et al., 2000). First, resource management includes a court's material resources. Control over material resources enables an actor to decide on the priorities and distribution of funds. Resource management thus encompasses the rules governing the budgetary process of ICs, such as those specifying who proposes and approves an IC's budget. Different actors are likely to have different preferences over the allocation of funds and budget priorities. For example, a court might prefer to prioritize outreach programs and funding for witnesses, while states prioritize rapid processing of cases. These are only some of the ways in which budgeting priorities and allocation of funds can differ depending on who has control to approve budgets.

Second, resource management also relates to human resources, or the staff and personnel of an IC. Arguably, the most important human resource assignment (aside from judges) of international courts is the principal administrator, most often called the registrar or secretary (herein referred to as a registrar). Registrars' duties and responsibilities vary, but most often include legal responsibilities, diplomatic responsibilities as well as managerial and administrative tasks (Cartier and Hoss, 2014). For example, a registrar may be the first step in determining if a case is admissible, overseeing communication between disputing parties and the filing of legal documentation. They also act as a public representative for the court, manage court personnel and implement budgets. Some registrars operate under the supervision of the president of an IC, while others are under the direct supervision of states (Cartier and Hoss, 2014).

Two related aspects of IC resourcing should be mentioned, even though they are not included in the analysis here. The selection and appointment of judges, as well as the terms and conditions of their office (e.g., salaries, pensions, etc.) might be seen as an aspect of resource management. I however exclude them here because the selection and tenure of judges is part of a much larger question about judicial independence. To include the judges' selection and terms of office, therefore would stretch the concept of resource management, arguably, and conflate it with judicial independence, which by most accounts is conceptually distinct. How courts are funded also speaks to the resourcing of ICs. However, who funds ICs is less an issue of institutional design than the budgetary process. While the assessment of states' contributions and whether voluntary contributions are permitted can be expressed in formal rules, funding is much more ad hoc. For example, new (voluntary) funders come and

go as their priorities change. Also, the financing of ICs is very often entangled within a larger international organization (Ingadottir, 2004, pp. 600-604), and therefore, their funding is not strictly a design feature of ICs, but of the larger organization. For this reason, funding merits separate analysis.

Mapping Resource Management of ICs

To comparatively map the resource management design of ICs, I assess the formal rules governing the material and human resources for each IC. Specifically, I identify the provisions in the constitutive documents (treaty, statute, rules of procedure, etc.) that specify who approves each IC's budget and selects its registrar. Based on these provisions, each IC is categorized according to whether its budget and registrar are decided upon by: (1) states, (2) a joint decision of states and court, (3) the court, or (4) other entity. A decision by states typically transpires through an intergovernmental decision-making body of an IO or a meeting of state parties. The category of 'joint decision' typically involves the proposal, recommendation or consultation of the court, followed by approval or adoption by states through an intergovernmental decision-making body. The category of 'decided by court' includes instances where budget approval or the selection of the registrar is by the court as a whole or by the president of the court. The category of 'other entity' is usually another organ of the international organization in which the IC is embedded, such as a secretariat, which is not an intergovernmental body comprised of state representatives. Using this categorization scheme, I then compare how ICs are designed with regard to the management of their resources. The appendix lists all ICs and the categorization of each provision.

Table 1 depicts the overall pattern in resource management design and table 2 shows how each IC is categorized. Table 1 reveals two central tendencies in the design of IC resource management. First, states control the budgets of most ICs, as they have final authorization over the budgets of ICs. In fact, states have final say on the budgets of ICs in 23 ICs out of 24. Yet in half of all ICs, the formal rules provide that the courts must be consulted in the formulation of their budgets, even though states give final approval.² In contrast to this tendency, there is only one court – the Caribbean Court of Justice – for which control over the budget is not subject to state approval (table 2).

[TABLE 1 ABOUT HERE]

Second, in contrast to control over budgets, most courts select their registrars. Fourteen ICs have autonomy over the selection of the registrar. In another four, the court is consulted. In seven others, the court is consulted on the appointment, regardless of whether another entity or states make the final decision (see table 2). For instance, the International Criminal Tribunal for the former Yugoslavia (ICTY) and Rwanda (ICTR) recommend their registrars while the Secretary-General of the United Nation makes the final appointment. In the case of the CCJ, the body responsible for the selection of the registrar is chaired by the President of the Court. Conversely, states have sole authority to select the registrar of only two ICs.

[TABLE 2 ABOUT HERE]

Table 2 suggests that there are two dominant models, which together account for 58% of all ICs. The first model for resource management entails high state control over budgets with high court control over the selection of the registrar. This model applies in six ICs, and with the exception of the European Court of Human Rights (ECtHR) occurs in only regional integration courts. The second model combines court consultation on the budget and high court control over the selection of the registrar. This model is found in the design of eight ICs (approximately 33%). This model occurs in regional integration courts, regional human rights courts and two global courts. Of the sixteen possible combinations of rules governing the management of resources, only nine occur. While we can observe two dominant models, table 2 also illustrates that several ICs represent unique combinations of the rules. For example, in only one IC have states relinquished control over both the budget and the appointment of the registrar – the CCJ. Also, only in the case of the East African Court of Justice (EACJ) do states have full autonomy over resource management.

Explaining the Design of Resource Management

How can we explain ICs' resource management design and what accounts for the comparative patterns we observe? Why do some ICs have greater influence over their budgets than others? What determines whether states will relinquish control over the selection of an IC's registrar? Existing literature suggests that the design of international courts is significantly determined by a process of diffusion by emulation (Alter 2012; Lenz 2012). This account builds on a

broader literature that identifies diffusion as a factor shaping the design of international institutions (Börzel and Risse, 2012; Ovodenko and Keohane, 2012). Diffusion in particular explains that a convergence in institutional design is caused by an underlying interdependence between institutions. Similarities in design are not independent developments that occur by mere chance, but rather the result of one institution having causal influence over the design of others. Emulation has been identified as a particularly important mechanism of diffusion, whereby an institution's creators draw lessons from existing institutions. Specifically, they try to replicate the design of existing institutions that have demonstrated effectiveness in the past in a functionally similar context (Ovodenko and Keohane, 2012).

The logic of diffusion by emulation has been applied to the design of international courts. When ICs have been newly established, court creators have emulated the design of existing international courts, drawing lessons from existing, well-functioning established courts (Alter, 2012). Alter argues that most newly established international courts, especially those established within common market systems, have been modeled on the Court of Justice of the European Union (CJEU, also known as the European Court of Justice (ECJ)). According to this account, we would expect ICs within similarly functional context – like problem structures and issue areas – to share similar resource management designs. For example, regional integration courts like the CJEU will most likely have a resource management design that resembles that of the CJEU.

Recalling the descriptive patterns discussed in the previous section, the logic of diffusion by emulation is especially adept to account for some of the central tendencies we observe in resource management design. It most likely is influential to explaining the two dominant models identified in table 2. Nevertheless, there were several instances of ICs that did not correspond to these models, and for which the logic of diffusion by emulation is hard-pressed to explain. How can we understand these other instances of design? What other causal mechanism might affect the resource management design of ICs? In this section, I discuss two additional causal mechanisms that might contribute to resource management design, especially the cases that diverge from the expectations of the diffusion logic. These two causal mechanisms are the uploading of domestic governance norms and bureaucrats' interests for institutional independence and sustainability.

First, the design of international courts might be influenced by the uploading of domestic governance norms. This mechanism assumes that states seek to have their domestic governance norms replicated or reflected in international governance. This explanation builds on the core argument of liberal institutionalism that states' international preferences are

shaped by domestic norms (Moravcsik, 1997). A variety of literature has suggested that domestic governance norms do influence the design of international institutions. For example, domestic ideational and normative considerations contribute to design of regional organizations (Acharya et al., 2007). Also, domestic participatory norms affect whether IOs will be designed to grant access to transnational actors (Tallberg et al., 2016).

A similar process of uploading of domestic governance norms may account for the observed variation in the resource management design of ICs. If domestic governance norms influence the design of ICs, states will prefer international courts to resemble their domestic judiciaries. In other words, domestic judiciaries could be an important source of inspiration for how states design international courts. For example, states where judiciaries enjoy greater independence from executive and legislative control may prefer international judicial bodies that are similarly insulated from political influence. States with domestic judiciaries that are less insulated from political pressure, on the other hand, may prefer international courts that are subject to stricter state controls. Moreover, the uploading of domestic governance norms is more likely to occur when a larger proportion of member states share similar norms. If a large proportion of states have common judicial institutions or norms, they are more likely to be reflected in the design of the international court. Thus, if uploading of domestic governance norms influences the design of international courts, we would expect domestic judicial norms to be replicated in their resource management design.

Second, the design of international courts might also be influenced by the interests of bureaucrats who participate in the design process. Johnson (2014) shows that international bureaucrats often participate in and influence the design of international institutions. According to Johnson, international bureaucrats' interests include ensuring that their 'organizational family' is designed with sufficient material security, legitimacy and capacity to advance policy. Consequently, when they are engaged in the design process, they promote design features that minimize state control over the institution. When international bureaucrats have been influential in the creation of new institutions, these institutions tend to have fewer and weaker means for state control.

National bureaucrats involved in the establishment of international institutions might behave similarly when it comes to the design of international institutions that will function within their own organizational family. In particular, national legal and judicial officials can have interests in ensuring the independence, legitimacy and material security of their international counterparts. The authority and independence of national judiciaries can be enhanced with the rise of independent and authoritative international court (Alter, 2001). In

other words, international courts and national judiciaries can share a symbiotic relationship. For this reason, national bureaucrats or government officials who are part of a national judiciary may have self-interests to ensure that an international court is designed to have independence, legitimacy and material security. Thus, when they are involved in the design of an IC, we would expect an IC resource management design to reflect higher court control over resources.

Empirical Analysis: Resource Management at the CCJ

This section examines the three causal mechanisms in the formation of the CCJ. Existing research has shown that diffusion by emulation accounts for the design of some ICs and certain design features. Yet, diffusion is especially adept at explaining similarities in design, but less so instances of divergence or unique design. To improve our understanding of what lies behind these latter instances of design, a deviant case is ideal. A deviant case is one that demonstrates a surprising value for a specific theory (Gerring 2007, p. 105). It is useful for exploring anomalies, and “is usually to probe for new – but as yet unspecified – explanations” (Gerring 2007, p. 106). As a regional integration court, the CCJ’s unique resource management design is striking because it differs from its counterparts embedded in other regional integration organizations. Thus, as a case with unique resource management design, the case study acts as a sort of hard case for the diffusion by emulation logic and as a plausibility probe for the alternative explanations (Levy, 2008). In addition to the theoretical benefit the CCJ offers as a case study, this court has been minimally studied, so the case study provides an empirical contribution.

The case study builds on a variety of data, including primary sources (legal instruments, official reports and documents, etc.) and in-depth interviews which I conducted in March and April 2016. Secondary resources also contribute to the analysis. In the absence of additional case studies, I draw on bivariate analysis of the IC resource management design data and relevant, existing datasets to make preliminary assessments about the case study’s generalizability.

The Caribbean Court of Justice and its Resource Management Design

The Caribbean Court of Justice was established by member states of the Caribbean Community (CARICOM) in 2001 and became operational in 2005. CARICOM is a regional

integration organization including fifteen member states, most of which are English speaking, former British colonies. The CCJ was created with a two-fold set of purposes. The first purpose was to provide the CARICOM nations with a supreme court. As former British colonies, several states at independence did not establish their own national supreme courts, and rather constitutionally recognized the UK's Judicial Committee of the Privy Council as their court of last resort. While the idea of creating a supreme court for the Caribbean circulated among political elites over a long period of time following independence (Birdsong, 2005), the creation of the CCJ in the early 21st century brought this idea to fruition.³ Today, the CCJ has appellate jurisdiction, acting for as a supreme constitutional court, for members of CARICOM that accept this jurisdiction.⁴ The second purpose of the CCJ is to interpret and apply CARICOM's founding treaty, the Treaty of Chaguaramas, originally adopted in 1973 and amended in 2002. The CCJ has compulsory and exclusive jurisdiction over the Treaty of Chaguaramas, which comprises its original jurisdiction.⁵

The CCJ's resource management design is unique (see table 2). Neither the selection of the registrar nor the budget is decided upon by the Court or the member states. Rather, control over the CCJ's resources lies with other organizational entities: the Regional Judicial and Legal Services Commission (RJLSC) and the Trust Fund of the CCJ.

First, the Registrar of the CCJ is selected by the RJLSC, which is an organizational body created by the Agreement establishing the Caribbean Court of Justice (herein CCJ Treaty). The RJLSC is composed of eleven members, which are:

- (a) the President [of the Court] ...;
- (b) two persons nominated jointly by the Organisation of the Commonwealth Caribbean Bar Association (OCCBA) and the Organisation of Eastern Caribbean States (OECS) Bar Association;
- (c) one chairman of the Judicial Services Commission of a Contracting Party selected in rotation...;
- (d) the Chairman of a Public Service Commission of a Contracting Party selected in rotation...;
- (e) two persons from civil society ...
- (f) two distinguished jurists nominated;
- and (g) two persons nominated jointly by the Bar or Law Associations of the Contracting Parties (CARICOM, 2001, Art. 5(1)).

The RJLSC's composition is distinguishable from an intergovernmental body. Rather than being composed of state representatives, its members are a combination of public officials, legal professionals and academics, and civil society representatives.⁶

The CCJ Treaty specifies the responsibilities of the RJLSC. In particular, it provides that it has responsibility for '(b) making appointments of those officials and employees [of the registry] and for determining the salaries and allowances to be paid to such officials and

employees; (c) the determination of the terms and conditions of service of officials and employees; and (d) the termination of appointments...’ (CARICOM, 2001, Art. 5(3)(1)). Thus, the registrar of the CCJ is selected by the RJLSC, not by a state organ or the court itself.

The second organizational body related to resource management of CCJ is its Trust Fund. In order to fund the CCJ, the CARICOM states, with the assistance of the Caribbean Development Bank, established a Trust Fund with an initial capital investment of \$100 million. The investment income of the fund provides the financial resources for the CCJ. The Trust Fund operates under the direction of a Board of Trustees. The members of the Board of Trustees include:

Secretary-General of CARICOM; the Vice-Chancellor of the University of the West Indies; The President of the Insurance Association of the Caribbean; The Chairman of the Association of Indigenous Banks of the Caribbean; The President of the Caribbean Institute of Chartered Accountants; The President of the Organisation of Commonwealth Caribbean Bar Associations; The Chairman of the Conference of Heads of the Judiciary of Member States of the Caribbean Community; The President of the Caribbean Association of Industry and Commerce; and The President of the Caribbean Congress of Labour (CARICOM, 2004, Art. 6).

Like the RJLSC, the Trust Fund is directed by individuals representing various sectors, including the banking industry, labor, academics, and the legal profession. Also, none of the Trustees are representatives of the member states. The Trust Fund, so long as it is properly managed, finances the CCJ in perpetuity and ensures that the CCJ’s funding is not dependent upon the capacity and willingness of states (or any third party) to adequately provide resources.⁷

The Board of Trustees disburses funds to the CCJ, the budget must fall within the limits of what the Trust is able and willing to release to the Court. At the same time, the RJLSC has administrative responsibility over the CCJ. Consequently, the budget process of the CCJ involves the Registry of the CCJ, the RJLSC and the Trust Fund.⁸ Initially the rules governing the adoption of the budget were ambiguous, but after the CCJ became operational a Protocol on the Interfacing and Interaction of the RJLSC, CCJ and the CCJ Trust Fund (CCJ, 2007) was adopted to clarify the procedure. The Protocol states that the budget is prepared by the Court (through the Registry) and RJLSC, the discussed with the Executive Officer of the Trust Fund. Following the preparation, the budget is then submitted to the RJLSC for approval. After approval, the budget is submitted to the Board of Trustees for comment, and the RJLSC can approve revisions in light of the Board’s comments.⁹

Diffusion by emulation?

Diffusion by emulation accounts for the resource management design of the CCJ to a limited degree, as we would expect from the comparative analysis in the previous section. The comparison of all ICs shows that resource management of the CCJ is unique. It is the only international court for which both budgetary approval and the appointment of the registrar is the responsibility of an independent body. Moreover, the CCJ's resource management design does not resemble that of the CJEU. The CJEU's budget is approved by co-decision of the Council of the European Union and the European Parliament, in consultation with the Court, and the registrar of the CJEU's is appointed by the Court. As the above makes clear, this is dissimilar to the CCJ. This is important because elsewhere the CCJ has been labeled an emulation of the the CJEU (Alter, 2012). Primary documents and secondary material on the founding of the CCJ also make few to no references to the CJEU, especially in reference to the management of resources. For example, neither the Mills Report (CARICOM, 1990) nor the West Indian Commission (1992) in their recommendations to establish a court for CARICOM made reference to the CJEU.

This is however not to say that the CCJ does not have some similarities to the CJEU or that the creators of the CCJ did not draw any lessons from the CJEU. Indeed, the choice to give the CCJ original jurisdiction and the right of individual standing,¹⁰ as well as other institutional design features, were probably informed by the performance of the CJEU. Several points of divergence from the CJEU can nonetheless be seen in the design of the CCJ, such as its appellate jurisdiction, the selection and tenure of judges, rules governing preliminary rulings, among others. While the broader design of the CCJ is beyond the scope of this article, emulation of the CJEU has limited explanatory power in the case of the CCJ's resource management design.¹¹

To test the generalizability of the diffusion by emulation as it relates to resource management, I assess whether the model types of each IC corresponds with its resource management design. To define model types, I use Alter's (2014) four models, which are: the ECJ model (same as the CJEU), WTO model, Nuremburg model, and ECtHR model. In addition, I add a residual model reflecting other ICs, such as the ICJ and the ITLOS. Based on this coding, I then assess whether resource management co-varies by model type. Figure 1 plots the selection of the registrar and budget approval against ICs' model type.

[FIGURE 1 ABOUT HERE]

The figure illustrates that resource management does not co-vary with the model type of ICs. There are several instances where the model types do not correspond with any particular design on resource management. For example, ECJ model courts vary on resource management. All variations of the rules on who appoints the registrar and three of the four categories on budgetary approval exist in one or more of the ECJ model courts. On the other hand, some model types of ICs are associated with particular resource management rules. For example, states retain control over the budget of all WTO model courts. All Nuremburg model ICs have a budget approval process that entails consultation with the court but final decision-making remains with states. Similarly, the registrars of all ECtHR model courts are appointed by the courts themselves. This suggests that diffusion by emulation is likely only a partial account for the resource management features of ICs. Even though diffusion may strongly influence the resource management design in some cases and in other cases lead to the adoption of some but not all rules concerning the management of resources, the variation in general suggests other factors also influence resource management design.

On the other hand, domestic factors might influence resource management design. Using cross-national judicial independence data (Linzer and Staton, 2015), figure 2 plots the average judicial independence of member states against the resource management design of each IC.

[FIGURE 2 ABOUT HERE]

The figure illustrates that there is no clear association between member states' domestic judicial independence and budgetary approval of ICs. In terms of the selection of the registrar, the figure reveals that the domestic judicial independence does correspond with whether or not states retain control over the appointment of an IC's registrar. Those instances where states retain unilateral control over the registrar fall on the lower end of the judicial independence scale. Low judicial independence, however, does not always correspond with state appointment of the registrar. Yet, average higher domestic judicial independence tends to correspond with either partial or full court control over the selection of an IC's registrar. In the following discussions, I explore whether the resource management design of the CCJ, especially in regards to the appointment of the registrar, reflects domestic judicial norms.

Uploading domestic judicial norms

The design of the CCJ's resource management was shaped by a process of uploading a common domestic judicial norm. National judiciaries vary in terms of their procedures and practices, including how judges and judicial administrative staff are appointed. An independent commission or council which appoints judges and/or court personnel is one particular arrangement that is found in domestic systems (Garoupa and Ginsburg, 2009). The RJLSC closely resembles such commissions. In fact, judicial commissions are a feature common to the national judiciaries of most CARICOM states.¹² A former Attorney General of Barbados, and the chair of the committee which supervised the inauguration of the CCJ, stated: 'More and more throughout the Commonwealth, it is being accepted that appointments to judicial office should be made through an independent, impartial, autonomous body. In the Constitutions of Commonwealth Caribbean States, a Judicial and Legal Service Commission is a common feature of such a body. In the case of the CCJ, a deliberate attempt was made to ensure that appointments were made by such a body' (Simmons, 2005, p. 86).

Table 3 illustrates all CARICOM member states, with the exception of Haiti and Suriname, have judicial and legal services commissions domestically. In four of the member states, these commissions select and appoint registrars and other court personnel. In seven other states, a commission recommends the appointment, but then a governor-general makes the formal appointment.¹³

[TABLE 3 ABOUT HERE]

One of the earliest proposals laying out the structure of the CCJ provided for a judicial commission with the authority to select the CCJ's registrar. Trinidad and Tobago proposed the establishment of a Caribbean court of appeal at the Heads of Government Meeting (HOGM) of CARICOM in 1987 (Pollard, 2004, p. 2). The HOGM concluded this proposal should be considered and mandated the attorney generals of CARICOM states, in consultation with national judiciaries and representative bodies of the legal profession, to study and make recommendations on this proposal (CARICOM, 1987). Two years later, the HOGM 'agreed to the establishment of a regional Judicial Service Commission' (CARICOM, 1989). The HOGM in 1990 approved a draft inter-governmental agreement, which was recommended by a sub-Committee of Attorney Generals. This agreement provided that 'the proposed Regional Judicial Service Commission be responsible for the Appointment of the Registrar and other

staff of the Court instead of the President of the Court as originally decided' (cited in Pollard, 2004, p. 4).

At this point in time, however, it was not yet clear that the proposed court would have original jurisdiction. When states, upon the recommendation of the West Indian Commission (1992), decided to vest the Court with original jurisdiction in 1998, the RJLSC was already accepted as a central design element of the CCJ.¹⁴ It appears that model of a judicial commission, common to many member states combined with the participation of the national judicial officials served as an important influence on the design of the RJLSC.

The CCJ and bureaucrats' interests in independence and sustainability

Bureaucrats (especially national legal and judicial officials) played an important role in designing the CCJ. These bureaucrats were in particular concerned with the political insulation of the CCJ and its financial sustainability. In fact, the decision to have the RJLSC and the Trust Fund integrated in the budget process was largely driven by the national legal officials who participated in the creation of the CCJ.

As described above, national legal officials (e.g., attorney generals) were important to the decision to create the RJLSC. Moreover, the decision to establish the Trust Fund was guided by national legal officials (as well as international bureaucrats). When the CCJ Treaty was approved, the HOGM formed and mandated a preparatory committee to bring the Court into operation. The Committee was comprised of 'the Attorneys General of Barbados, Guyana, Jamaica, St. Kitts and Nevis, Saint Lucia and Trinidad and Tobago, assisted by Chief Parliamentary Counsels and Supreme Court Registrars, and representatives of the Council of Legal Education and the CARICOM Secretariat' (CARICOM, 1999).

One concern that drew the attention of the Preparatory Committee was the financing of the CCJ. Discussions about the creation of the CCJ expressed apprehension that states would not adequately finance the Court. David Simmons (2005, p. 87), the Chairperson of the Preparatory Committee, and Duke Pollard (2004, p. 55), an official with the CARICOM Secretariat at the time, both remarked in their later writings on the establishment of the CCJ that Caribbean regional institutions had previously suffered from states' delinquency in submitting their financial contributions. Moreover, as a report commissioned by the Preparatory Committee found, there was widespread concern about financial security of the Court (Rawlins, 2000). In a Barbados newspaper, for example, an editorial wrote 'we are obliged to face the harsh reality that a Caribbean Court of Appeal will be an expensive

institution...’ (cited in Rawlins, 2000, p. 41). Previously, many Caribbean states were able to offload this expense to the UK since they used the Privy Council. Member states asserted that the Court would not become operation until they were satisfied that the Court would be adequately funded, and they requested the Ministers of Finance to consider arrangements to ensure its financial viability.

Given this concern, the Preparatory Committee developed a potential strategy to deal with the financing of the CCJ (Simmons, 2005, p. 87; Pollard, 2004, p. 56). It suggested to the HOGM that it pursue the establishment of a trust fund to finance the Court. A year later, in 2000, the Legal Affairs Committee drafted a Protocol which provided for the creation of a Trust Fund (Rawlins, 2000, pp. 42-43). The HOGM approached the Caribbean Development Bank with a proposal to provide loans to member states for the initial capital to finance the Trust Fund. In early 2002, the HOGM ‘established a Joint Committee consisting of Attorneys-General and Senior Finance Officials to meet with a representative of the Caribbean Development Bank (CDB) to work out the details regarding the financing of the Court’ (CARICOM 2002). Later in 2002, HOGM ‘authorised the President of the Caribbean Development Bank (CDB) to raise the funds on international capital markets’ for the initial capital for the Trust Fund (CARICOM, 2002b), and in 2003 the Agreement Establishing the Trust Fund was adopted.

Both national and international bureaucrats, as reflected in the participation of the CDB, CARICOM secretariat officials and national attorney generals, played a key role in the creation of the CCJ, and especially in the design around the resource management of the Court. These bureaucrats, as well as legal elites more broadly, had a central concern for the independence of the Caribbean judiciaries and that of the CCJ (Simmons, 2005, p. 77; Caserta and Madsen 2016; Pollard, 2004; Rawlins, 2000). Likewise, there were concerned about financial viability of the CCJ. These concerns, I argue, were at the heart of the resource management design of the CCJ.

Conclusion

This article has examined the resource management design of ICs. It has shown that ICs tend to have greater control over the appointment of their chief administrators, but states generally retain authority to approve ICs’ budgets. The analysis suggests that ICs’ resource management design is not explained fully by emulation. Rather, the CCJ case provides

compelling evidence that domestic judicial norms, especially when they enhance judicial independence, as well as bureaucrats who participate in the creation of a new IC and are concerned with the independence and financial sustainability of the court, contribute to a resource management design that minimizes high state control. The CCJ is a rather unique case, where isolating the influence of a domestic judicial norm and the influence of bureaucrats is especially illustrative.

How generalizable is the CCJ case? The complementary evidence suggested domestic governance norms, especially, have influence in more cases: domestic governance norms that weaken judicial independence appear to be associated with an IC design that ensures stronger state control over resources. Moreover, some existing work on the creation of ICs points to evidence that the actors who are involved in the design process play a vital role in determining the design of ICs. For example, in the creation of the ECtHR, “important work was done” by the Committee of Legal Experts that was convened by the Committee of Ministers, and the Committee of Legal Experts “produced what were really the first proper Convention draft” (Bates 2011, pp. 27). Similarly, in the creation of the International Criminal Court, the UN’s Preparatory Committee, of which the “majority of delegates were therefore legal advisors while often higher ranking political advisors were in the minority”, significantly contributed to the design of the Court (Deitelhoff 2009, pp. 55-56). Both of these accounts suggest that bureaucratic legal experts were instrumental in the design process, and often shifted the outcomes to something other than what would have been created in their absence. The CCJ case study points to the plausibility of the theoretical argument, but in-depth case studies into the establishment of other ICs, is necessary to further substantiate the generalizability of the role of bureaucrats and domestic governance norms.

This article has implications for research. First, this article contributes to literature on the design of international institutions, illustrating domestic governance norms and bureaucrats are instrumental to the establishment of international institutions. This argument strikes parallels to a growing literature on *new interdependence* which shows that sub-state actors and domestic institutions shape institutions across borders (Farrell and Newman 2014). Additionally, it builds on existing work that suggests that domestic governance norms (e.g., Tallberg et al., 2016) and bureaucrats matter to the design of institutions (e.g., Johnson, 2014). This article extends the realm of applicability of these arguments to international courts. Second, this article contributes to literature of institutional design by arguing that resource management is an important dimension of institutional design. Moreover, I have introduced a method for measuring and comparatively assessing this design feature. While this measure is

specific to ICs, a similar approach which identifies the rules structuring the control over budgetary decisions and human resources could be applied to other types of international institutions.

Third, this article contributes to IC literature by bringing resources to the fore. While some research has paid attention to the financing of ICs (e.g., Romano 2005), the control over resources, in particular, has been almost void from literature. Even though this article focuses on design in particular, it aims to begin a broader conversation about the resourcing of ICs. For example, the control and management of resources might affect how ICs perform. As other contributions to this issue suggest (Ege and Bauer; Conceicao-Heldt and Schmidtke), the control over resources might also affect institutional independence. In this sense, bringing resources to future research on ICs might shed light on our understanding of their independence. Also, resourcing is significant to understand problem-solving in a wide array of issue areas, including development and health (see Michaelowa, this volume), but it is likely to matter for global justice as well. Actors who control the budget of a court influence how funds are allocated, such as whether funds are used for fact-finding, expert testimony, support staff, or public relations, all of which can be essential to the speedy and fair administration of justice. Attention to ICs resourcing and resource management thus might have important implications for understanding the impact and performance of ICs.

Author bio: Theresa Squatrito is a postdoctoral research fellow at PluriCourts - Centre for the Study of the Legitimate Roles of the Judiciary in the Global Order, University of Oslo. She holds a PhD in political science from the University of Washington. Her research focuses on international law and organizations.

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Appendix

Court	Abbreviation	Year in operation	Budgetary Approval	Selection of Registrar
African Court of Human and Peoples' Rights	ACtHR	2006	Joint	Court
Andean Tribunal of Justice	ATJ	1984	Joint	Court
Benelux Court of Justice	BCJ	1974	States	Joint
Central American Court of Justice	CACJ	1992	Joint	Court
Caribbean Court of Justice	CCJ	2005	Other	Other
Central African Economic and Monetary Community Court of Justice	CEMAC CJ	2000	States	Court
Court of Justice of the European Union	CJEU	1952	Joint	Court
Common Market for Eastern and Southern Africa Court of Justice	COMESA CJ	1998	Joint	States
East African Court of Justice	EACJ	2001	States	States
Economic Court of the Commonwealth of Independent States	ECCIS	1993	States	Court
Economic Community of West African States Court of Justice	ECOWAS CJ	2002	States	Court
European Court of Human Rights	ECtHR	1959	States	Court
European Free Trade Agreement Court of Justice	EFTA CJ	1994	Joint	Court
Inter-American Court of Human Rights	IACtHR	1979	Joint	Court
International Criminal Court	ICC	2002	Joint	Joint
International Court of Justice	ICJ	1947	Joint	Court
International Criminal Tribunal of Rwanda	ICTR	1994	Joint	Other*
International Criminal Tribunal of the former Yugoslavia	ICTY	1993	Joint	Other*
International Tribunal for the Law of the Sea	ITLOS	1996	Joint	Court
Mercosur Permanent Review Tribunal	Mercosur PRT	2002	States	Joint
Organization for the Harmonization of Business Law in Africa Common Court of Justice and Arbitration	OHADA CCJA	1996	States	Joint
Tribunal of the Southern African Development Community	SADC T	2005	States	Court
Western African Economic and Monetary Union Court of Justice	WAEMU CJ	1995	States	Court
World Trade Organization Appellate Body	(WTO AB	1994	States	Other*

* The responsible entity is required to consult with the court.

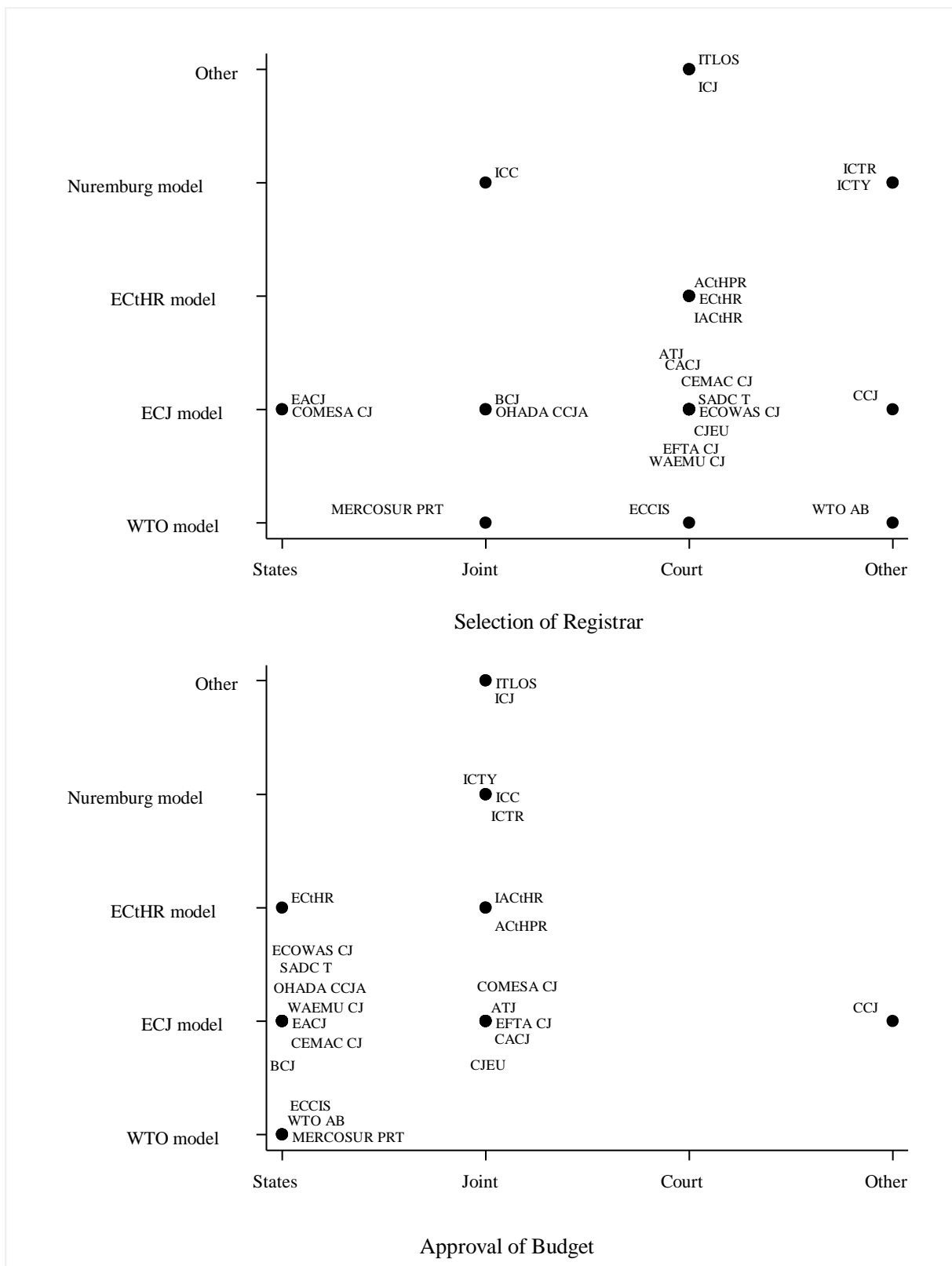


Figure 1. Scatterplots of registrar appointment and budgetary approval against five IC model types (N=24)

Table 1: Resource Management of ICs (N=24)

	Budget	Registrar
<i>States decide</i>	11 (45.8%)	2 (8.33)
<i>States decide with consultation of court</i>	12 (50)	4 (16.67)
<i>Courts decides</i>	0	14 (58.33)
<i>Other entity decides</i>	1 (4.17)	4 (16.67)

Table 2: Resource Management of ICs

Registrar	Budget			
	<i>States decide</i>	<i>Joint decision</i>	<i>Court decides</i>	<i>Other entity</i>
<i>States decide</i>	EACJ	COMESA CJ		
<i>Joint decision</i>	BCJ Mercosur PRT OHADA CCJA	ICC***		
<i>Court decides</i>	CEMAC CJ ECCIS ECOWAS CJ ECtHR SADC T WAEMU CJ	ACtHPR ATJ CACJ CJEU EFTAC IACtHR ICJ ITLOS		
<i>Other entity</i>	WTO AB**	ICTR*, ICTY*		CCJ

Notes: *The registrar is appointed on recommendation of the tribunals and approval of the UN Secretary-General.

**The Director of the Secretariat to the WTO AB is appointed by the Director-General of the WTO Secretariat in consultation with the Chairperson of the Dispute Settlement Body (an intergovernmental decision-making body), see Establishment of WTO AB, para. 17.

***The ICC's registrar is recommended by the Assembly of State Parties but appointed by the Court.

Table 3. National appointment procedures for registrars

	Registrar appointed by national Judicial and Legal Services Commission	National Judicial and Legal Services Commission advises on appointment of registrar, confirmed by other entity	No national judicial and legal services commission
Antigua		X*	
Bahamas		X*	
Barbados		X*	
Belize	X		
Dominica		X	
Grenada		X*	
Guyana	X		
Haiti			X
Jamaica		X*	
St. Lucia	X		
St. Kitts and Nevis		X*	
St. Vincent and the Grenadines		X*	
Suriname			X
Trinidad and Tobago	X		

* Appointment confirmed by Governor-General.

Note: This table excludes Montserrat as information was unavailable.

Source: Authors own compilation. Constitutions found at the Constitute Project, Available from: <https://www.constituteproject.org/> (accessed August 2016).

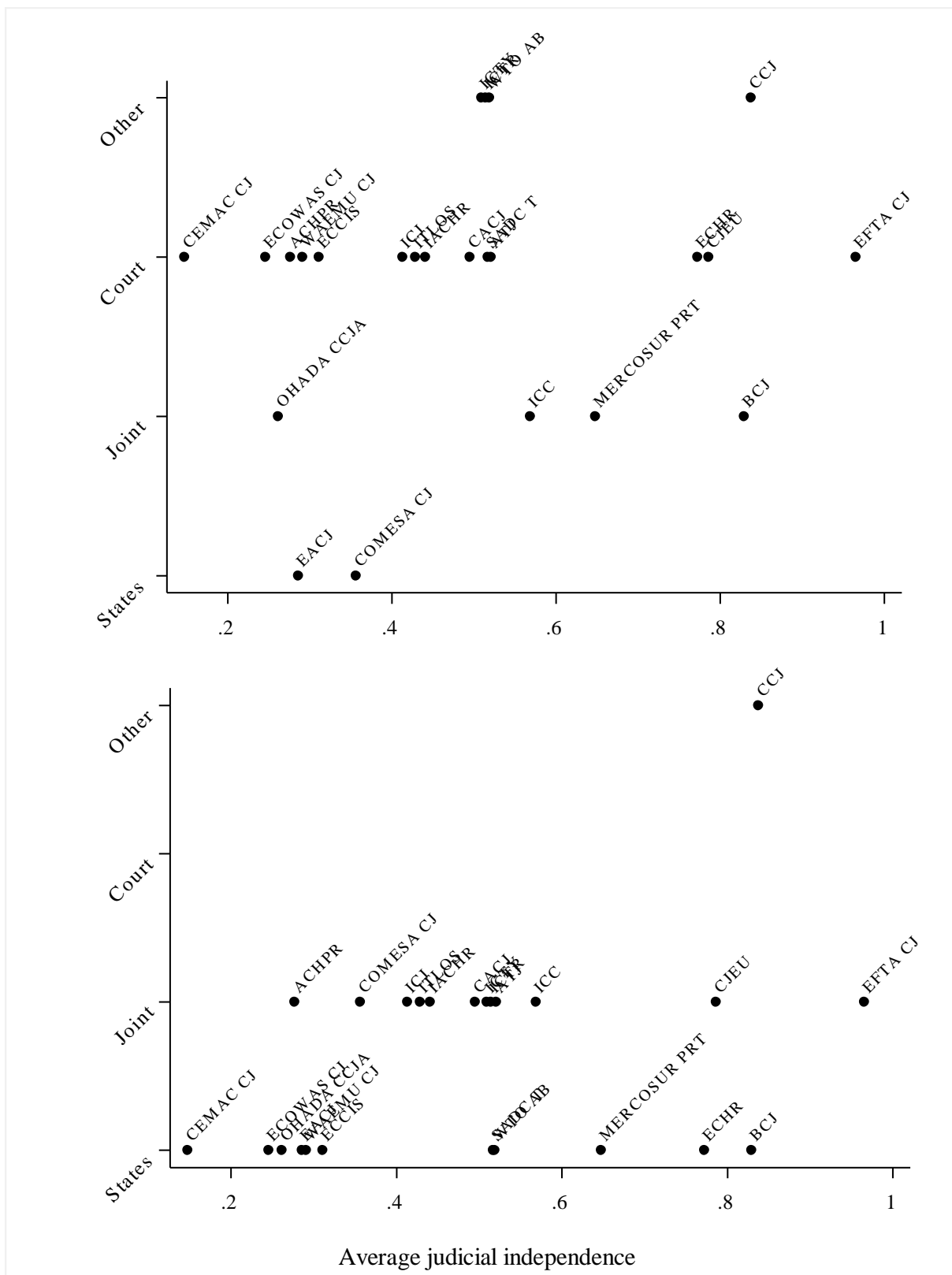


Figure 2. Scatterplots of registrar selection and budgetary approval based against judicial independence (member state average) (N=24)

¹ Permanence is defined by whether judges hold permanent positions as opposed to being selected on an ad hoc basis per each dispute (Romano, 2011, p. 262).

² Courts might be consulted informally in the other courts, even though the codified rules do not mandate it.

³ Caserta and Madsen (2016) provide a thorough discussion of the historical, political, and legal context in which the CCJ was formed.

⁴ As of September 2016, four states (Barbados, Guyana, Belize and Dominica) have accepted the CCJ's appellate jurisdiction.

⁵ De Mestral (2015) offers a thorough discussion of the dual nature of the CCJ.

⁶ The President of the CCJ is most likely influential in the decision-making of the RJLSC. For this reason, it is not independent of the Court *per se*. The key point here however is that it is institutionally independent from states.

⁷ Other contributions to this issue consider the impact of third party funders on IOs, see Martens and Seitz, this issue; Graham, this issue.

⁸ Anonymous Interview, April 1, 2016. Port of Spain, Trinidad and Tobago.

⁹ The Registrar is likely influential in the decision-making of the CCJ's budget. For this reason, the Trust Fund is not independent of the Court *per se*. The key point here however is that it is institutionally independent from states.

¹⁰ While both courts have some form of standing for individuals, their rules governing individual standing, nonetheless, differ. The CCJ allows for direct individual standing in actions against states and community actions with leave. On the other hand, individuals have been granted access since 1989 to bring direct actions against the EU to the ECJ's Court of First Instance (renamed the General Court of the CJEU in 2009). However, individuals cannot directly bring suits against states before the General Court, nor do they have the right of direct standing at the ECJ (meaning the superior court) in any action. See O'Brien and Morano-Foadi (2009, pp. 409-410) for more.

¹¹ O'Brien and Morano-Foadi (2009) provide a good comparative discussion of the CJEU and the CCJ.

¹² Reginald T.A. Armour S.C., President of the Law Association of Trinidad and Tobago, Interview, April 5, 2016. Port of Spain, Trinidad and Tobago.

¹³ The Governor-General is a representative of the British monarch. This position is by-and-large a ceremonial role.

¹⁴ This suggests that the role of domestic institutions in part enabled by the dual functions of the CCJ, contributing in part to the overall uniqueness of the CCJ in terms of resource management design.