The Dynamics of Supranational Adjudication in Central American and the Caribbean

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1. Introduction
The recent proliferation of international courts (ICs) calls for reviving the debate on the role of supranational adjudication in constraining state sovereignty and fostering supranationality.1 The most successful court in these regards is the Court of Justice of the EU (CJEU), which, after decades of pro-integration rulings, transformed the EU Treaties and secondary Community legislation into laws directly enforceable before domestic courts.2 This article compares the dynamics of supranational adjudication of the EU, with those characterizing the Central American System of Regional Integration (SICA) and the Caribbean Common Market (CARICOM). At the beginning of the 1990s, after the peace negotiations of Esquipulas I & II, five Central American countries reformed their almost moribund regional institutions. These changes led to the (re)creation of a Central American common market equipped with a supranational IC, the Central American Court of Justice (CACJ).3 Similarly, in 2001, twelve Caribbean states restructured the CARICOM, with the goal of deepening the commitments related to the Caribbean common market, and established the Caribbean Court of Justice (CCJ).4 During their existence, these two Courts delivered pro-integration rulings aimed at expanding the reach of Central American and Caribbean laws. Yet, the impact of these decisions on state sovereignty and supranationalism in the SICA and the CARICOM remains to be unveiled.

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I investigate if and under what circumstances the pro-integration rulings of the CACJ and of the CCJ have eroded state sovereignty and fostered supranationalism in the SICA and in the CARICOM. I compare these developments with those characterizing the early days of the EU. As the European story is well known, I emphasize the Central American and Caribbean experiences. My argument is that, in general, the rulings of the CACJ and of the CCJ have failed to limit state sovereignty and to foster supranationalism in the SICA and in the CARICOM. This – I argue – is because, thus far, the pro-integration rulings of the two Courts have not triggered positive reactions by other institutional and societal actors, such as national judges, other regional institutions, and academics. Yet, within the CARICOM, the recent rise of a new generation of Caribbean lawyers interested in the legalization of the system, together with the ability of the CCJ to harness different social groupings of trans-national lawyers practicing law in the Caribbean, have caused a re-balancing of the equilibrium of powers in favor of supranationalism.

This analysis has broader implications beyond the empirical comparison between the EU, the SICA, and the CARICOM. Firstly, many theories on supranationalism and supranational adjudication assume that legal and design features, as well as the internal politics of regional organizations and courts are key elements for allowing supranational adjudication to nurture supranationalism. My analysis, conversely, underscores that institutional and societal actors other than ICs play a pivotal role in making supranational adjudication an allied of supranationalism. The point is that formal and legal aspects are of little worth if they fail to generate contextual responses, such as inter-institutional dialogue and societal and political involvement in the integrationist project. Hence, supranational adjudication is likely to nurture supranationalism where the interlocutors of an IC – both in the domestic and in the regional spheres – actively support and take consequential step towards compliance, thus allowing the rulings of an IC to break the surface of states and to produce concrete effects in the national systems.

Section 2 defines supranationalism and successful supranational adjudication, situating my analysis in the existing scholarship. Section 3 analyzes the institutional framework and the politics of the SICA and the CARICOM, together with some of the most relevant rulings of the CACJ and of the CCJ. I show that the dynamics at play in the SICA and the CARICOM resemble those characterizing the foundational period of the EU. In the early days of the EU, the low level of

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supranationalism of the political process of the Community was counterbalanced by the normative supranationalism introduced by the CJEU. Similarly, the CACJ and the CCJ attempted at pushing forward the political process of the SICA and the CARICOM by introducing elements of normative supranationalism. Section 4 analyzes why the efforts of the two Courts failed to transform the SICA and the CARICOM into supranational organizations. This section also explains why recent events in the CARICOM have caused a move towards supranationalism. I claim that the overall failure of the two Courts to nurture supranationalism is mainly a consequence of the missing dialogue between the two regional Courts and other institutional and societal actors, such as the national judges, the regional Secretariats, and the Caribbean and Central American lawyers and academics. Section 5 concludes by providing a more nuanced perspective on how supranational adjudication impacts on national sovereignty and supranationalism.

The article combines legal and institutional analysis with 63 semi-structured qualitative interviews with key stakeholders of the Central American and Caribbean systems of regional integration, including judges, lawyers, civil servants, private business, and civil society groups.6 The interview-based research is informed by the reflexive sociology of law and is chiefly aimed at understanding institutional and legal developments from the perspective of the agents from within the field.7

2 Defining Supranationalism and Successful Supranational Adjudication

Developing a theory of how supranational adjudication impacts state sovereignty and supranationalism requires, firstly, defining supranationalism and successful supranational adjudication, and, secondly, finding theoretical tools to evaluate the interaction between these two elements. In the literature, supranational organizations have often been opposed to international and/or intergovernmental ones. The former require a certain degree of transcendence of the state, while the latter evoke issues related to functional and political cooperation.8 Similarly, supranational adjudication is usually contrasted with international adjudication. Adjudication is

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6 The interviews were conducted during three field trips in Trinidad and Tobago, Barbados, Guyana, Nicaragua, and El Salvador between 2013 and 2014.
supranational when ICs have compulsory jurisdiction, and hear cases involving private parties litigating directly against governments or against each other. Conversely, adjudication is international when ICs have consensual jurisdiction and are entitled to rule only on inter-state disputes.\(^9\) Hence, the distinctive feature of supranationalism and of supranational adjudication is the capacity of regional organizations and tribunals to infiltrate the states and to interact directly with the principal players in the national systems.\(^10\)

While the definitions provided above draw up the contours of supranationalism and supranational adjudication, the very nature of these two concepts is still debated, as it is unclear what it takes for a regional organization to be supranational and for a supranational tribunal to be successful. As to supranationalism, some authors approach the issue from a quantitative and comparative perspective, by coding the *de jure* features of different regional organizations.\(^11\) This scholarship explains how variations in design features, decision rules, and membership restrictions influence regime efficiency. Other scholars analyze supranationalism in terms of a dynamic process, characterized by variations – either in terms of progression or of retrogression – of the distribution of decision-making powers from the member states to the regional organization.\(^12\) As to supranational adjudication, many scholars have tried to gauge the effectiveness of ICs by proposing checklists of factors or of actions that these must either deal with or perform in order to become effective institutions.\(^13\)

These theories bring several elements of interest to the study of supranationalism and supranational adjudication. Yet, as they focus on the formal aspects of institutions and on their internal politics, they underplay crucial elements such as the relationship between regional organizations and courts and other institutional, political and societal actors. In order to analyze how regional organizations and courts interact with these other actors, I provide new definitions of supranationalism and supranational adjudication. As to supranationalism, I distinguish between *de jure* and *de facto* supranationalism. De jure supranationalism refers to the formal powers of a regional organization. These formal powers may be deliberately delegated by the states and/or

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\(^11\) Acharya and Johnston, *Crafting Cooperation: Regional International Institutions in Comparative Perspective*.


\(^13\) Helfer and Slaughter, "Toward a Theory of Effective Supranational Adjudication."
developed independently by the regional organs. De facto supranationalism refers to the concrete exercise of powers by a regional organization and to how these shape and constrain institutional, political, and societal actors.

De jure supranationalism can be: institutional and normative. *Institutional supranationalism* relates to the decision-making process of each organ of a regional organization. A regional organ is characterized by high institutional supranationalism when it is formally independent from the states, meaning that its governing body is not composed of national representative directly “instructed” by the national governments.\(^\text{14}\) Within the EU, the Commission, the CJEU, and the Parliament are institutionally supranational, as they enjoy substantial autonomy from the national governments when exercising their powers.\(^\text{15}\) *Normative Supranationalism* relates to the correlation between the policies and laws of a regional organization and those of the states. A regional organization has a high degree of normative supranationalism when its measures and laws have effective precedence over national ones, meaning that they produce effects directly within the legal systems of the member states and that, in case of conflict between national and regional policies, the regional trump the national.\(^\text{16}\) The doctrines of direct effect and supremacy introduced by the CJEU are typical examples of normative supranationalism.\(^\text{17}\)

De facto supranationalism can be: structural and societal. *Structural Supranationalism* refers to the distribution of decision-making powers between the organs of a regional organization and to the manner in which these powers are exercised. A regional organization has a high degree of structural supranationalism when its decision-making powers are shared by various organs, and/or when compliance with regional policies and laws is ensured by means of a decentralized system.\(^\text{18}\) The legislative procedure of the EU – exercised jointly by the Council, the Commission, and the Parliament – is an example of structural supranationalism. Another example of structural supranationalism is the manner in which EU law is enforced by different actors (i.e. the

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\(^\text{16}\) See, Weiler, "The Community System: The Dual Character of Supranationalism."


Commission, the national judiciaries, and private individuals). Finally, Societal Supranationalism refers to aspects related to both objective constraints of prevailing economic and states interests, subjective elements of identity and framing, as well as to the shaping of the professional interests of the stakeholders relating to a regional organization. Societal supranationalism is more difficult to gauge when compared to the other three facets of supranationalism, as it concerns broader sociological and cultural aspects of Community building. Very often, the shifting of interests of the legal and political elites towards regional aspects provides good indicators of societal supranationalism.

I define successful supranational adjudication, when ICs rulings transform de jure into de facto supranationalism. In practice, this is likely to occur when an IC has been able to: i) securing compliance with its judgements; ii) concretely binding member states, public and private enterprises, and individual within the states; and/or, iii) convincing at least a group of stakeholders of the legal and political relevance of its judgements.

To empirically trace the impact of supranational adjudication on supranationalism, I use the authority model developed by Karen Alter, Laurence Helfer, and Mikael Rask Madsen. The model differentiates de jure from de facto authority. De jure authority is a position of normative power granted or constituted by norms. An institution has legal authority when it has the “right to rule”. Yet, because of the peculiar contexts in which ICs are entrenched, formal delegation of powers is insufficient to make them authoritative. In other words, formal legal authority must be transformed into de facto authority. The model is useful for the purpose of this paper as it identifies several contextual factors that shape the authority of ICs. These are institutional specific (i.e. access rules and jurisdiction, alternatives to litigation, and subject matter competence), actor specific (i.e. how different constellations of constituencies assist or impede ICs from gaining

23 Ibid., p. 103.
25 In this view, an international court gains de facto authority when the relevant constituencies: i) recognize its rulings as binding, and ii) engage in meaningful steps toward giving full effect to these rulings.Alter, Helfer, and Madsen, ”How Context Shapes the Authority of International Courts,” pp. 6-7.
authority), and political contexts (i.e. geopolitics and international politics, regional integration politics, as well as domestic politics).\textsuperscript{26}

The article uses this theoretical framework to discuss and assess if and to what extent the activity of the CACJ and of the CCJ eroded state sovereignty and fostered supranationalism in the SICA and the CARICOM. More specifically, the article analyzes the reactions of key actors to the two Courts’ rulings, thus allowing them to foster supranationalism in the SICA and the CARICOM.

3. The Politics of De Jure Supranationalism in Central America and the Caribbean
This section analyzes the legal and political aspects of the institutions of the Central America and the Caribbean integration. The argument is that Central American and Caribbean regional organizations have a low-level institutional supranationalism, as they were originally set up as mere fora for diplomatic and economic cooperation between states. The recent establishment of the CACJ and the CCJ, however, resulted into an increased normative supranationalism of both systems, as the two Courts adopted supranational features in their rulings.

3.1 The Politics and Design Features of the Organs of Regional Integration in Central American and the Caribbean
Regional integration in Central America and in the Caribbean is an old business. The first attempts at integrating the regions date back to the 1950s and 1960s, when the Organization of Central American States (ODECA) (1951), the Central American Common Market (CACM) (1960), the Caribbean Free Trade Association (CARIFTA) (1965) and the Caribbean Common Market (CARICOM) (1973) were established. These organizations were subsequently reformed during the 1990s and early 2000s, when the SICA was created and the CARICOM reformed.

These organizations (both the old and the new) were envisaged like gentlemen’s club rather than like legal regimes. Their aim was to settle trade issues and to foster cooperation between the states, and not to develop binding systems of rules. Accordingly, the equilibrium between law and politics was all in favor of the latter.

\textsuperscript{26} Ibid., pp. 17-29.
3.1.1 *The Old Systems – the ODECA, the CACM, and the first CARICOM*

The main players behind the creation of both the ODECA and the CACM were economists and politicians, not lawyers.\(^{27}\) The two institutions were chiefly aimed at fostering political bargaining between the member states (the ODECA), turning integration into a viable strategy for economic development (the CACM), and, ultimately, pursuing industrial development in the region.\(^ {28}\) The institutional design of both the ODECA and the CACM confirms their intergovernmental philosophy. The main organ of the ODECA was the Meeting of the Ministry of Foreign Affairs, whose decisions were taken by consensus. In 1962, the ODECA was amended, and a supranational tribunal was instituted, which, however, was never called to decide any relevant issue. Similarly, the CACM’s main organ was the Central American Economic Council, composed by the Ministry of Economy of the member states, which decided unanimously whether its decisions were too be adopted by a concurrent vote of all its members or by a simple majority.\(^ {29}\)

Similar to its Central American counterparts, also the CARICOM was envisaged by economists and politicians, and not by lawyers.\(^ {30}\) Accordingly, it was not concerned with legal issues, but with functional and economic integration. Also in this case, the institutional structure of the system underscores its intergovernmental spirit. The CARICOM was controlled by two organs: the Conference of the Heads of Government, and the Council of Ministers, whose decisions were taken by consensus. Both the Conference and the Council were aided by the Secretariat, which, however, was not intended to be a supranational body vested with executive powers, like the European Commission. From its beginning, it was instead invested with mere administrative functions and with the goal of performing technical studies to be presented to the Heads of Government for approval. Finally, the original institutional framework of the CARICOM included an informal and intergovernmental procedure for settling disputes between states. Disputes were solved either by the Conference – if the dispute had arisen on the interpretation or application of the TOC – or by the Council of Ministers – if the controversy derived from a breach of an obligation under the Common Market. In case of the latter, the Council of Ministers could

\(^{27}\) Rafael A. Sanchez Sanchez, *The Politics of Central American Integration* (Routledge, 2009).
\(^{28}\) Ibid.
\(^{29}\) Article XXI of the General Treaty of Central American Economic Integration.
refer the dispute to an ad hoc tribunal. However, this tribunal did not have the power to make binding decisions.\textsuperscript{31}

The key role played by the Ministries of Foreign and Economic Affairs (in Central America) and by the Heads of Government (in the Caribbean), the voting procedure rigorously inspired by unanimity rules, and the lack of functioning supranational judicial institutions, underscore the centrality of governmental preferences in the political processes of the ODECA, the CACM, and the CARICOM, as well as the flexibility of these systems. These, in fact, maintained multiple escape routes and safeguards mechanisms for countries disagreeing with the regional policies.

\textbf{3.1.2 The Present Systems – the SICA and the Reformed CARICOM}

The Central American and Caribbean systems were reformed respectively in 1991 and in 2001. Despite the bold rhetoric of their founding documents, the reforms substantially left unaltered the equilibrium of power between states and Community organs. As to Central America, in the 1990s, as a direct consequence of the peace negotiations of \textit{Esquipulas I & II}, the Central American governments restructured the old systems of regional integration. The first concrete measure in these regards came already during the peace negotiations, when the Central American Presidents established that the Presidential Meetings would be the new engine for regional reforms, and that a directly-elected regional Parliament (the PARLACEN) would be created.\textsuperscript{32} As these reforms turned out not to be sufficient for the establishment of stability within the region, the Presidents of the five Central American states plus Panama signed the \textit{Protocol of Tegucigalpa to the 1962 Charter of the ODECA} (the Protocol). This established the SICA, an “umbrella” institution which provides a point of convergence for the various (conflicting) institutions of the Central American integration and which facilitates economic, political, and legal integration.\textsuperscript{33} Similar to its predecessors, the SICA is almost completely controlled by its member states. Its main organ is the Meeting of Presidents, which decides by consensus.\textsuperscript{34} While the Meeting is characterized by a low level of institutional supranationalism, the PARLACEN has certain supranational traits, as its

\begin{itemize}
\item \textsuperscript{31} For a complete account of the structure of the old CARICOM, see: O'Brien, ”Caricom: Regional Integration in Post-Colonial World.”
\item \textsuperscript{32} Sanchez, \textit{The Politics of Central American Integration}, p. 108.
\item \textsuperscript{33} Andrew, ”The Central American Integration System (Sica) at the Dawn of a New Century: Will the Central American Isthmus Finally Be Able to Achieve Economic and Political Unity?.”
\item \textsuperscript{34} Articles 13 to 15 of the Protocol.
\end{itemize}
members are directly elected by the peoples of the Central American States. Yet, its political and institutional relevance is limited as the PARLACEN has, for the most part, consultative tasks.\textsuperscript{35}

As to the Caribbean, the reforms were pursued with the goal: “to respond to the challenges and opportunities presented by the changes in the global economy”.\textsuperscript{36} The Treaty of Maastricht signed in Europe had put at risk what remained of the economic preferential treatment that the Caribbean countries enjoyed with England, and the signing of North Atlantic Free Trade Area between Canada and the United States jeopardized the favorable conditions of trade with the United States. To overcome these challenges, the Caribbean governments reformed the institutional structure of the CARICOM. They established the Conference of the Heads of Government and the Council of Ministers as the main organ of the CARICOM. The decisions of these two organs are taken by a qualified majority of three quarters of the member states and the recommendations by a majority of two-thirds. While these changes suggest an increased level of institutional supranationalism, concretely the situation is different. The RTC counterbalances the fact that decisions can now be taken by majority, by providing a way for States to opt out from formally binding decisions granted that they had sought the agreement of the Conference of the Heads of Governments and proved that the fundamental objectives of the Treaty were not undermined.

The low institutional supranationalism of the SICA and of the CARICOM is also confirmed by the remaining institutional arrangements. Both organizations are equipped with administrative Secretariats/Commissions. Despite their formal denomination, however, these Secretariats do not have far-reaching executive powers similar to the European Commission, and they are neither independent nor autonomous from the member states, which also contribute directly to the financing of these organs. Moreover, the Secretariats play absolutely no role in the legislative process of the Communities, and they are both highly constrained in relation to their monitoring and implementation functions. In other words, far from being the “watchdog” of the Communities, the SICA and CARICOM Secretariats are mere administrative assistants of the Heads of Government.\textsuperscript{37}

\textsuperscript{35} Article 6 of the PARLACEN Treaty.
The key role played by both the Meeting of the Heads of Government and by the Council of Ministers, the *de facto* veto power to any given proposal enjoyed by the states in the SICA, the possibility of opting out by binding decisions granted to the member states in the CARICOM, and, finally, the lack of independence of the regional Secretariats, clearly indicates the centrality of the states in the decision-making process of the SICA and the CARICOM. It must be noted, however, the low level of institutional supranationalism of these organs did not paralyze the two systems, which, over time, have produced a significant amount of legislation. Yet, the centrality of states in both the Meeting of the Heads of Government and the Council of Ministers has strengthened the intergovernmental political bargaining nature of the decision-making process of both systems, which are perceived as fora for handling diplomatic relations rather than regimes able to establish binding obligations for the States.

### 3.2 The Rise of Normative Supranationalism in the SICA and the CARICOM

The reforms enacted by the Protocol and the RTC, however, brought some elements of de jure supranationalism to the two systems. The two Treaties, in fact, equipped the SICA and the CARICOM with two ICs – the CACJ and the CCJ. These two courts are institutionally supranational, as they are politically autonomous from the member states; they can take independent decisions which are legally binding on the states; and, finally, their judges are appointed with relatively impartial procedures and do not operate as representative of the states that appointed them but in their own capacity.  

In addition to their institutional supranationalism, since the beginning of their operations, both Courts attempted at strengthening the constitutional features of the two Communities, by introducing elements of normative supranationalism. In fulfilling this task, both Courts made extensive use of the some principles of the EU and jurisprudential doctrines developed by the CJEU: *i*) the method of teleological interpretation as developed by the CJEU; *ii*) the legal principle of direct applicability of Community Law as described by the Article 288 of the TFEU;

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38 Article 14 of the Statute of the CACJ; Article IV of the Statute of the CCJ.
40 Ibid. See also: *Costa v Enel* 6/64, [1964] ECR 585.
and iii) the principles of direct effect and supremacy as developed by the CJEU. In what follows, the evolution of the SICA and CARICOM’s normative supranationalism is presented by analyzing some of the landmark decisions of both the CACJ and the CCJ.

3.2.1 Bringing Community Law to Life

Similar to the early decisions of the CJEU, both the CACJ and the CCJ expanded the scope of SICA and CARICOM laws by means of creative approaches to interpretation. One of the judges of the CCJ described their approach to interpretation with the following words:

I think there was a strong impulse toward adopting a dynamic approach. I suppose it is part of the human nature that having been given the opportunity to make a difference, and to give life to this document which served a purpose that we all supported [the Revised Treaty], it seemed normal to not let the letters of the law frustrate you.

Similarly, a Central American commentator argues that the CACJ by means of teleological interpretation: “has defined without any doubts the characteristics of an autonomous and peculiar legal order of the Central American region, which the Court did not hesitate to define as Community Law”.

Furthermore, one the judges of the CACJ revealed that the teleological approach to interpretation developed by the ECJ was deliberately used in the first CACJ’s judgements in order to impose the Court’s competences vis-à-vis a hostile socio-political and institutional context.

The two Courts used teleological interpretation chiefly for setting up the basis for the future constitutionalization of both the SICA and the CARICOM. Yet, they did so in different manners. On the one hand, the CACJ interpreted the Protocol creatively in one of its early cases, where the Court was called to ascertain whether the non-recognition of a Guatemalan doctor’s degree in El Salvador violated the SICA legislation. In this case, the CACJ found the University in violation of SICA laws, stating that: “between the laws of integration – Community law – and national laws, harmony must exists since the law is a whole which must be analysed principally in systematic and teleological way”.

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42 Interview n. 3, October 21, 2013.
44 Interview n. 56, July 12, 2014.
45 CACJ 10-05-11-1996.
46 Ibid. at considerando I.
instrumental in allowing the CACJ to import additional EU law principles and doctrines to Central America, despite the low level of institutional supranationalism set up by the SICA legislation.

On the other hand, the CCJ expounded its creative approach to interpretation in a rather technical case, where the CCJ was called to interpret the rules of access for private parties established by the RTC, namely the Article 222 of the RTC. According to many, the Article 222 was drafted with the intention of limiting the private parties’ access to the original jurisdiction and to make the CCJ into a Court specialized in inter-state dispute. However, as pointed out by one judge in an interview, a restrictive interpretation of the Article 222 would have hampered the possibility of the Court to play a meaningful role in the system, as CARICOM states were assumed not to be eager to bring each other before an international court. Accordingly, the CCJ argued by making reference to the objective and the purpose of the Treaty that the Court was put in place to make the RTC effective. The Court emphasized that:

from these and other paragraphs of the preamble, one deduces that, in an age of liberalization and globalization, the Contracting Parties are intent on transforming the CARICOM sub-region into a viable collectivity of States for the sustainable economic and social development of their peoples; that the CSME is regarded as an appropriate framework or vehicle for achieving this end and that private entities, and in particular the social partners, are to play a major role in fulfilling the object and goals of the RTC. The CSME is intended to be private sector driven.

This case provides a successful application of a teleological interpretive approach. Indeed, by means of a teleological approach to the RTC, the CCJ expanded the access of private parties to the original jurisdiction of the Court, a doctrinal development of major impact for the future development of the CCJ, but of little immediate costs for the member states, which abided to the judgement without too many complications.

3.2.2 The Uneasy Relationship between Directly Applicable Community Law and Dualism
The teleological approach to interpretation deployed by both the CACJ and the CCJ in their early cases triggered other decisions by means of which both Courts attempted at strengthening the

49 Interview n. 15, October 24, 2013.
50 [2009] CCJ 1 (OJ) at [13].
51 Although it took some time for Guyana to accept the ruling and to fully comply with the measures prescribed by the Court. See, Ria Mohammed-Davidson, "Show Me the Money: Enforcing Original Jurisdiction Judgements of the Caribbean Court of Justice," Leiden Journal of International Law 29, no. 1 (2016).
supranationalism of the SICA and the CARICOM. One issue faced by both Courts was related to the direct applicability\textsuperscript{52} of the Central American and Caribbean Community Laws. As to the CACJ, one academic, Mejia Herrera, stresses that the SICA’s legal system is moderately dualist and that the SICA legislation does not automatically translate into municipal law, as Article 34 of the Protocol establishes that regional laws must be integrated at the national level by means of executive acts.\textsuperscript{53} Other authors and the CACJ itself support the opposite view, according to which the SICA legislation is automatically integrated within the legal systems of the member states without the necessity of being transposed into national law.\textsuperscript{54} Firstly, in one of its early advisory opinions, the CACJ echoed the words of the CJEU, claiming that Central American Community law constitutes a “new and autonomous legal order” characterized by its direct applicability within the legal system of the member states.\textsuperscript{55} According to the Court, Central American Community law becomes the “law of the land” of the member states automatically, that is without the need of the states to execute any act to incorporate the Community norms into municipal law.\textsuperscript{56}

An additional advisory opinion of the CACJ clarified the features of Central American Community Law’s direct applicability. This was requested by the Secretary General of the SICA, who asked the Court when the laws of the institutions of the SICA would start producing legal effects in national law. To this question, the CACJ answered that: “[t]he obligatory legislative acts of the bodies and institutions of the SICA take effect in the form or from the date, deadline or term that is explicitly established by them with the aim of complying with the obligation that these bodies and institutions are subject to”.\textsuperscript{57}

In more recent decisions, the direct applicability of the Central American Community law has been restated by the CACJ in three important cases: 1) the advisory opinion request by the PARLACEN asking the CACJ to ascertain the competence of the Guatemalan Supreme Court of

\textsuperscript{52} Very often, in the EU literature, the concept of direct applicability is confused with the direct effect. Yet, conceptually - and also practically – the two concepts are different. In this, I follow Winter, "Direct Applicability and Direct Effect: Two Distinct and Different Concepts in Community Law." See also: Michael Dougan, "When Wolds Collide: Competing Visions of the Relationship between Direct Effect and Supremacy," ibid.44 (2007).


\textsuperscript{55} CACJ 09-04-08-1996.

\textsuperscript{56} CACJ 10-05-11-1996, considerando I.

\textsuperscript{57} CACJ 05-05-01-08-1995, considerando II.
ruling over the constitutionality of the Treaty that constituted the PARLACEN;\(^{58}\) 2) the contentious case presented by a group of Costa Rican custom agents asking the CACJ to ascertain the nullity of an act of the National Custom Service of Costa Rica against the State of Costa Rica;\(^{59}\) and 3) the contentious case presented by the PARLACEN against the withdrawal of Panama by the same PARLACEN.\(^{60}\) These three cases are important as they were presented against states – Guatemala, Costa Rica, and Panama – which had not recognized the jurisdiction of the CACJ, as they had ratified only the Protocol but not the Statute. In these three cases, the CACJ strategically used the principle of direct applicability in order to claim jurisdiction over Guatemala, Costa Rica, and Panama. According to the Court, the Guatemalan, Costa Rican, and Panamanian lack of ratification of the Statute were irrelevant: \(i\) because these States had previously ratified the Protocol in which the creation of the CACJ was provided; and \(ii\) because the Statute was signed by the Presidents of the Supreme Courts and of the Republic of all countries, thus generating an obligation to comply with it without the need of transposing it by means of national legislation.\(^{61}\)

Similar legal issues have arisen in the Caribbean, although the facts and details of the cases have been different. First, within the CARICOM the principle of direct applicability is generally contested, given the strong dualistic approach to international law that Caribbean states inherited from the United Kingdom. Yet, according to a leading expert of Caribbean law, David Berry, the provisions of the RTC and some original jurisdiction decisions of the CCJ establish a soft direct applicability within the CARICOM. Firstly, Article 9 of the RTC establishes that member states are required to take all appropriate measures to ensure the carrying out of obligations arising out of the Treaty, and that they shall abstain from any measures which could jeopardize the attainment of the objectives of the Treaty.\(^{62}\) Relying on this norm, in its first judgment, the CCJ constructed a twofold principle of direct applicability. On the one hand, the Court stated that the rights expressly recognized by the RTC apply to individuals directly. On the other hand, the CCJ added that in the circumstances in which the RTC imposes obligations on the member states, correlative

\(^{58}\) CACJ 09-04-08-1996.
\(^{59}\) CACJ 87-06-08-09-2008.
\(^{60}\) CACJ 105-02-26-03-2010.
\(^{61}\) CACJ 87-06-08-09-2008. In this case, the CACJ stated that the lack of ratification of the Protocol does not exempt the State from the jurisdiction of the Court also because: The Republic of Costa Rica has made a series of acts accepting the jurisdiction of the Central American Court of Justice. […] [and that] The conduct of the Judiciary of Costa Rica during the preparatory works demonstrates that the State accepted that the Protocol of Tegucigalpa created the Court and established its compulsory jurisdiction.
\(^{62}\) Article 9 of the RTC.
rights are granted to private entities throughout the entire community, thus expanding the outreach of the Treaty.\footnote{[2009] CCJ I (OJ) at [32].}

3.2.3 Copy-Paste and Adaptations: the Tropicalization of Direct Effect and Supremacy
Having gone this far in making Central American and Caribbean Community Laws direct applicable, the Central American and Caribbean judges were inevitably faced with the issues of the enforceability of Community law and with its relationship with national laws – that is, with the direct effect and the supremacy of Community law. As to the SICA, the Protocol is silent about the question of direct effect and, accordingly, Mejia Herrera argues that it is left to the discretion of the CACJ whether or not to export this principle to Central America.\footnote{Mejía Herrera, \textit{La Unión Europea Como Modelo De Integración: Análisis Comparativo Del Sistema De La Integración Centroamericana}, p. 515.} In relation to the hierarchical relationship between national and community legislation, Article 22 of the Protocol adopts a contradictory position, as it attributes to the SICA legislation a para-legal status when compared to the national legislation.\footnote{Article 22 of the Protocol.} Despite the limited role that the Protocol assigns to Central American Community law, in more than an instance, the CACJ affirmed the existence of the doctrines of direct effect and supremacy within the SICA directly citing the CJEU. According to the CACJ, the SICA legislation occupies a hierarchically superior position when compared to the national legislation of the member states,\footnote{CACJ 03-03-1995.} and it creates rights and obligations on physical and juridical persons.\footnote{CACJ 09-04-1996, 12-01-01-03-1997, 13-02-01-05-1997, 26-06-03-12-1999, and 25-05-29-11-1999.} The CACJ also vested the national judges with the power to apply and interpret SICA legislation as if she was a Community judge. According to the CACJ, national judges control the submission of the internal law, of whatever rank, to the legal system of the Community.\footnote{CACJ 61-03-18-02-2003.}

The CACJ concretely applied the notions of direct effect and of the supremacy in a contentious case in which the CACJ was asked to rule over the validity of the withdrawal of Panama from the PARLACEN.\footnote{CACJ 02-26-03-2010.} In this case, the CACJ held that the Panamanian law which established the withdrawal of that State from the PARLACEN violated the SICA legislation on the ground that the obligations stemming from Community law occupy a higher position in the
system and that national laws cannot contravene Community legislation and obligations. In an additional advisory opinion, the CACJ further ruled that:

Community Law is embedded in the national legal order of the Member States. This manifests in the direct applicability, direct effect and primacy. The Community constitutes a new legal order, in which the benefit of the Member States have limited, albeit in a restricted manner, their sovereign rights.

Within the CARICOM, the RTC is equally silent on the key questions of direct effect and supremacy. Generally, the strong dualistic approach to international law which characterizes the legal systems of the majority of Caribbean states seems to limit the applicability of these two doctrines to the system. Mr. Michael de la Bastide – the first President of the CCJ – repeatedly denied the existence of direct effect and supremacy of the Caribbean Community law. Firstly, according to him, the RTC explicitly attributes to the CCJ exclusive jurisdiction to rule over controversies related to CARICOM law. In turn, this disposition entails that – differently from the EU – national judges are not empowered to rule over issues of Community law. De la Bastide also pointed to some key institutional differences between the CARICOM and the EU. In particular, he alleged that the firm rejection of creating an Executive body modelled on the European Commission by the member states signals an implicit rejection of the idea of a directly enforceable Caribbean Community Law. Similarly, Berry have underlined how the dualistic approach to international law that characterize the legal systems of the majority of the CARICOM States impedes the existence of the far-reaching principle of supremacy of Community Law as developed within the EU law framework.

Yet, in the Myrie case – the Van Gend en Loos moment of the CARICOM as it has been defined by several informants in the interviews – the CCJ introduced some important principles that echo the notions of direct effect and of the supremacy. In Myrie – a case concerning a violation of the right to freedom of movement of a Jamaican citizen by Barbados – the CCJ was called to ascertain the validity of a decision by the Heads of Government of the CARICOM which was not converted into municipal law by Barbados. In this case, the CCJ was placed in a difficult

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70 CACJ 02-26-03-2010 at considerando VI.
71 CACJ 09-04-08-1996.
72 Article 211 of the RTC.
74 Berry, Caribbean Integration Law.
75 Interview n. 10, October 23, 2013.
position, because of the dualist conception of international law of most Caribbean states according to which international law is valid only to the extent that it is converted into national law. To begin with, the CCJ echoed the words of the ECJ and declared that Caribbean Community Law constitutes a new legal order, thus implying the application of some aspects of the direct effect to the CARICOM.\textsuperscript{77} Yet, the CCJ further added that:

Although it is evident that a State with a dualist approach to international law sometimes may need to incorporate decisions taken under a treaty and thus enact them into municipal law in order to make them enforceable \textit{at the domestic level}, it is inconceivable that such a transformation would be necessary in order to create binding rights and obligations \textit{at the Community level}. […] If binding regional decisions can be invalidated at the Community level by the failure of the part of a particular State to incorporate those decisions locally the efficacy of the entire CARICOM regime is jeopardized and effectively the States would not have progressed beyond the pre-2001 voluntary system that was in force.\textsuperscript{78}

Despite the rhetoric of the CCJ, which directly recalled the wording of the CJEU in \textit{Van Gend en Loos}, conceptually speaking the Court did not introduce the principle of direct effect to the CARICOM. The doctrine of direct effect, in fact, presupposes the capacity of Community norms to be invoked by individuals in national courts, which are bound to apply them.\textsuperscript{79} The principle developed by the CCJ in \textit{Myrie} is different, as Caribbean Community Law produces effects only at the regional level. Yet, if read in conjunction with the doctrine of “correlative rights” established in one of the CCJ’s former cases,\textsuperscript{80} this unique doctrine reinforces the normative supranationalism of the CARICOM, as it entails that Caribbean Community law can be enforced at the Community level by private litigants bringing cases directly before the CCJ.\textsuperscript{81}

4. Explaining the Persisting Intergovernmental Nature of the SICA and the CARICOM

Despite the bold normative efforts of both the CACJ and the CCJ, the SICA and the CARICOM remain largely intergovernmental. Both systems are still dominated by the member states, which: control the majority of regional organs; for the most part; fail to comply with regional policies and

\textsuperscript{77} In [2013] CCJ 3 (OJ) at [69]. The CCJ so held: “[T]he very idea and concept of a Community of States necessarily entails as an exercise of sovereignty the creation of a new legal order and certain self-imposed, albeit perhaps relatively modest, limits to particular areas of State sovereignty”.

\textsuperscript{78} [2013] CCJ 3 (OJ), at [50], [51], and [52].


\textsuperscript{80} See above subsection 3.2.2

\textsuperscript{81} Berry, \textit{Caribbean Integration Law}. 
laws; and perceive the two systems as mere fora where to conduct diplomatic relations rather than binding legal regimes.\textsuperscript{82} In what follows, I argue that actor-specific contextual factors – i.e. the missing interplay between the two ICs and the national judges, the regional Secretariats, and other societal actors explain the failure of the CACJ and of the CCJ to erode state sovereignty and to foster supranationalism in the SICA and the CARICOM. Yet, recently, the rise of a new generation of Caribbean lawyers interested in the legalization of the CARICOM and the CCJ’s ability to harness the two main social groupings of transnational Caribbean lawyers has caused a move of the CARICOM towards supranationalism.

\textbf{4.1 The Missing Structural Supranationalism of the SICA and the CARICOM}

The relatively low impact of the normative efforts of the CACJ and of the CCJ can be explained by referring to the overarching lack of structural supranationalism of the SICA and the CARICOM. The two Courts are, in fact, the only supranational institutions guarding the implementation and execution of the Treaties. Courts, however, control neither the sword nor the pursue, and, in order to secure compliance with their judgements, are dependent on the behavior of other actors, such as regional Secretariats and national judges.\textsuperscript{83} Yet, these two sets of actors have shown little interest in ensuring that the rulings of both Courts would be concretely implemented and/or followed. Things are slowly changing in the CARICOM, where recently the Secretariat has shown a renewed interest in the CCJ’s activity.

\textbf{4.1.1 The Limited Cooperation between the Two ICs and the Regional Secretariats}

The experience of the EU revealed that Commissions/Secretariats play a key role in supporting normative supranationalism. In the EU, the Commission has played and still plays a central role in transforming the normative efforts of the CJEU into concrete legal and political realities. The Commission monitors on the actual implementation of the Treaties, and presents non-compliance cases before the CJEU, thus functioning as “watchdog” of the EU Treaties.\textsuperscript{84}

\textsuperscript{82} Interviews n. 23\textsuperscript{rd} of October, 2013 at 4:00 pm, n. 24, 31\textsuperscript{st} of October, 2013 at 2:00 pm, 9\textsuperscript{th} of July, 2014 at 9:30 am, and n. 57, 17\textsuperscript{th} of July, 2014 at 11:00 am. See also, O’Brien and Foadi, “Caricom and Its Court of Justice.” Mejía Herrera, \textit{La Unión Europea Como Modelo De Integración: Análisis Comparativo Del Sistema De La Integración Centroamericana}.

\textsuperscript{83} Alter, Helfer, and Madsen, "How Context Shapes the Authority of International Courts."

The SICA and the CARICOM Secretariats are struggling to become institutional allies of their respective regional courts. This is chiefly because they: lack independent powers related to the monitoring and implementation of Community law; cannot raise non-compliance cases against the states; and are even directly financed by the states, which perceive them as mere servant of their interests.\textsuperscript{85} These dynamics are more evident in the SICA. My interviews revealed that two related issues affect the ability of the two main regional Secretariats of the system – the Secretariat of the SICA and the Secretariat of the Central American Economic Integration (SIECA) – to support the normative supranationalism of the CACJ. Firstly, the Secretariats are not the fora where private parties bring issues related to the lack of implementation of regional policies and laws. SICA law issues are instead submitted to the Heads of Government after mediation of the Ministries of Foreign Affairs.\textsuperscript{86} This means that, in the SICA, issues related to the lack of implementation of Community laws and policies are solved by pressuring governments politically, rather than by legal means through the Secretariats and the CACJ. Secondly, in the mid-1990s-early 2000s, the Secretariats entered into a heated conflict with the CACJ, as the latter was called to rule over some inter-institutional conflicts between the Secretariats themselves and between these and the member states and other regional organs (i.e. Costa Rica and the PARLACEN). This led the Secretariats to often ignore the jurisprudence of the Court, and even to push the Heads of Government to create an alternative system of dispute resolution through arbitration, which now stands in direct opposition to the Court.\textsuperscript{87}

Similarly, in the CARICOM, the Secretariat is perceived to facilitate the work of the member states, rather than operate independently to enforce regional policies.\textsuperscript{88} The CARICOM Secretariat is limited in its implementation powers, as it can file infringement cases before the CCJ only after the unanimous vote of the Heads of Government. The limited role of the CARICOM Secretariat is chiefly a product of the philosophy that inspired the CARICOM itself, both before and after the reforms enacted by the RTC. Two stakeholders close to the Secretariat confirmed this in the interviews. The first one underlined that the CARICOM was not meant to establish a legal space able to impose supranational obligations on the member states, but to create institutions able

\textsuperscript{85} Articles 25-28 of the Protocol and Articles 23-25 and 228 of the RTC.

\textsuperscript{86} Interviews n. 57, 17\textsuperscript{th} of July, 2014 at 11:00 am, and n. 58, 17\textsuperscript{th} of July, 2014 at 2:00 pm.

\textsuperscript{87} Interviews n. 46, 10\textsuperscript{th} of July, 2014 at 9:00 am, and n. 57, 17\textsuperscript{th} of July, 2014 at 11:00 am. See also, Miranda, \textit{ Derecho De La Comunidad Centroamericana}.

\textsuperscript{88} Interviews n. 2, 21\textsuperscript{st} of October, 2013 at 1:00 pm, and n. 24, 31\textsuperscript{st} of October, 2013 at 2:00 pm. See also, Berry, \textit{Caribbean Integration Law}. 

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to merely facilitate intra-state commerce. The second one described the frustration that had characterized his days at the Secretariat, where a team of lawyers worked hard to produce papers and suggestions for the Conference of the Heads of Government in order to reform and strengthen the system. The Conference, in return, constantly rejected or ignored the lawyers on the basis that their advices would have pushed the CARICOM toward a more legalistic framework, which would have compromised the sovereignty of states.

Yet, recently, the rise of a new generation of lawyers trained in Caribbean Community law and, hence, interested in making the Secretariat the main engine of Caribbean integration has caused a re-balancing of the equilibrium of powers between the Secretariat and the CCJ. This has impacted positively on the ability of the CCJ to foster supranationalism in the CARICOM. In the Myrie case, because of the involvement of this new generation of lawyers in the proceedings of the case, the Secretariat played a key role, intervening as a third party, providing the Court with important documents needed to reach its conclusions, and, ultimately, giving leverage to the Court in producing one of its boldest and pro-integration judgements. The institutional support of the Secretariat also played a key role in the enforcement of the CCJ’s ruling against Barbados, which, after some months of diplomatic negotiations and false promises fully complied with it. While these developments are still of little significance when compared to the ones occurred in the EU, they constitute a significant attempt by the CARICOM Secretariat at supporting the normative supranationalism of the CCJ.

4.1.2 The Missing Dialogue between the Two ICs and the National Judiciaries
The impact of the normative supranationalism in the SICA and the CARICOM has also been limited by the missing dialogue between the two ICs and the national judges. One of the keys of the success of EU law stemmed from the virtuous dynamics prompted by the widespread use of preliminary references. The vast majority of the landmark judgments of the CJEU were, in fact, decided after a national court requested the Luxembourg Court to give a judgment on the interpretation of EU law in a preliminary ruling. This, ultimately, created an alliance between national judges and the CJEU aimed at monitoring the enforcement of regional policies and laws.

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89 Interview n. 11, 23rd of October, 2013 at 4:00 pm.
90 Interview n, 2, 21st October, 2013 at 1:00 pm.
In the EU, national courts – although to a varying degree – effectively function as reviewing bodies of the policies of state executives, and, thus, participate in protecting individual rights and in implementing EU law.\(^92\)

In Central America – although the CACJ has granted SICA legislation with direct effect and supremacy – presently, this plays a marginal role. While the national Supreme Courts endorsed the principles developed by the CACJ in few decisions,\(^94\) and ordinary judges have shown a relatively developed awareness of their role of enforcers of SICA law,\(^95\) generally, the Central American national judges have been reluctant in engaging in a judicial dialogue with their regional counterpart. Since the Court opening in 1994, only a handful of not particularly relevant preliminary rulings have reached the CACJ.\(^96\) Also the Caribbean judges largely ignore the rulings of the CCJ and CARICOM law. Although the CCJ has ruled that national judges are obliged to refer cases to the CCJ whenever they face questions of Community law, from the opening of the Court in 2005, not a single preliminary reference reached the CCJ.

This widespread lack of preliminary references is of pivotal importance for explaining the limited impact of normative supranationalism in the SICA and the CARICOM. Firstly, the lack of preliminary references has not allowed the two Courts to receive those cases that neither the member states nor private parties alone were willing to file directly before the two regional Courts, thus limiting significantly the docket of the two Courts. Secondly, this missing dialogue between the two ICs and the national judges ultimately brings the question of compliance and enforcement of regional policies and laws back to the member states. While, disobeying a decision of the CJEU nowadays means, in most cases, disobeying national courts,\(^97\) disobeying the rulings of the CACJ and the CCJ has not the same legal and political consequences. This means that, within the SICA and the CARICOM, compliance with the two regional Courts’ decisions almost completely

\(^{92}\) Nordic countries are reluctant in engaging in institutional dialogue with the CJEU. See, Jens Elo Rytter and Marlene Wind, "In Need of Juristocracy? The Silence of Denmark in the Development of European Legal Norms," *International Journal of Constitutional Law* 9, no. 2 (2011).


\(^{94}\) Perotti, "La Autoridad De La Doctrina De La Corte Centroamericana De Justicia, Su Aporte a La Consolidacion Del Bloque Regional Y La Actitud Al Respecto De Los Tribunales Constitucionales/Supremos De Los Estados Miembros."

\(^{95}\) Interview n. 53, 11th of July, 2014 at 11:00 am.


\(^{97}\) Alter, "The European Court's Political Power," p. 94.
depends on the goodwill of the member states. This has been problematic especially in Central America, where the vast majority of the cases decided by the Court have been strongly opposed by the states on the losing side of the disputes. In 2004, Honduras even suspended its participation in the Court’s activity claiming the overall failure of this institution to fulfill its goals and to get its sentences enforced.\(^98\) Although in the Caribbean compliance with the CCJ’s decisions is less problematic as states have generally complied with them, the limited role played by the national judges in these regards has complicated to task of the Court in getting its cases complied with. Both in the *TCL* and in the *Myrie* cases, in fact, compliance with the CCJ’s decisions occurred after several months and only after the other member states applied political pressure on the states on the losing side of the disputes (in those instances Guyana and Barbados). Had these cases been brought through the avenue of preliminary references, these difficulties would have been avoided, or at least softened.

### 4.2 The Missing Societal Supranationalism of the SICA and the CARICOM

The low impact of the normative efforts of the CACJ and of the CCJ on the de facto supranationalism of the SICA and the CARICOM is also a consequence of socio-political factors. Most notably, the disengagement of lawyers and the feeble academic mobilization around the two ICs. One of the keys of the success of the normative supranationalism in the EU was that the CJEU’s rulings found fertile ground within the European legal professions, both practitioners and academics. Over time, Euro-law advocacy movements used their positions of power to suggest domestic legal support for the CJEU’s decisions,\(^99\) while legal scholars celebrated the new legal developments and worked to constitute a legal field of Community law lawyers.\(^100\) The judgements of the CJEU, thus, constituted “an essential lever for Euro-implicated lawyers to objectify their own role and, consequently, to constitute themselves as a group of ‘Euro-lawyers’ despite their many divisions and differences”.\(^101\) In other words, the pro-integrationist jurisprudence of the Luxembourg Court did not remain a dead letter, but it became the object of a complex interpretive

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\(^100\) Alter, "The European Court's Political Power."

process of a widespread network of Euro-lawyers, who managed to transform the rulings of the CJEU into a judicial theory of Europe.

The Central American and Caribbean socio-political environments are different from the EU experience. As to the legal practitioners, both in the SICA and the CARICOM, proactive networks of lawyers interested in transforming the normative efforts of the two ICs into concrete realities are far from being established. Thus far, the Central American and Caribbean lawyers have shown little interest in the legalization of the SICA and the CARICOM, and have oriented their professional practices elsewhere, most notably toward trans-regional constitutional issues in the Caribbean and inter-state arbitration in Central America. This lack of engagement of lawyers is a consequence of the fact that both the CACJ and the CCJ are at odds with the professional interests of the Central American and Caribbean legal professions. In Central America, both because of the CACJ’s wide jurisdiction,102 and of the highly conflictual regional political environment, the CACJ has been often called to rule over politically fraught cases. While this has allowed the Court to survive until today and to decide a rather significant amount of cases, many Central American lawyers revealed that the Court’s intrusion in political issues has scared away the business attorneys, who prefer to solve trade related disputes by means of international commercial arbitration.103

Also in the Caribbean, the Court is at odds with the professional interests of the legal professions. The CCJ is a landmark institution in the movement toward the independence of the Caribbean from the England.104 In its unique double (appellate and original) jurisdiction,105 the CCJ challenges the Caribbean colonial past.106 Formally, the appellate jurisdiction replaces the appeals to the Judicial Committee of the Privy Council in London that characterized the legal systems of the Caribbean British colonies during and after the colonial times. In its original jurisdiction, the CCJ deals with international law and with trade matters arising within the CARICOM.107 This twofold function placed the CCJ in the midst of a professional power battle

102 The Court rule over inter-state, community law s, separation of power between the constitutional organs of the Member States, as well as over arbitration and advisory issues.
103 Interviews n. 45, 9th of July, 2014 at 4:00 pm, n. 46, 10th of July, 2014 at 9:00 am, n. 59, 18th of July, 2014 at 9:00 am, n. 60, 18th of July, 2014 at 9:00 am.
105 Available at: http://www.caricom.org/jsp/community/revised_treaty-text.pdf, Last visit, 15th December, 2015.
107 Article 211 of the RTC.
between an older generation of English educated Caribbean lawyers – whose professional practices are oriented towards the Privy Council and who see with skepticism the CCJ – and a more recent generation of locally educated Caribbean lawyers – more inclined to accept both the replacement of the Privy Council with a local court of appeal and a regional economic court aimed at fostering regional integration. For decades – and still nowadays – the old English educated lawyers (together with the young professional that followed their steps) have been skeptical of the normative supranationalism developed by the CCJ. These legal developments threatened their privileged professional position of Caribbean lawyers of practicing law both locally and transnationally. Recently however, the Court has proactively attempted at initiating a constructive dialogue with these legal professions by means of extrajudicial outreach activities. Moreover, by means of Myrie, the CCJ attempted at creating an intersectional constituency of support by making leverage both on the interest of the old Caribbean legal elites in seeing fundamental rights protected and on the concern of the young Caribbean lawyers related to the development of the common market. While Caribbean lawyers remain generally reluctant in engaging with the CCJ, these latest developments signal a shift towards societal supranationalism of the system.

As to the involvement of academia, the Central American and Caribbean situations are different. In Central America, only a handful of universities adopted classes on Community law as part of their curricula. Moreover, rather often, the few institutes interested in SICA law do not cooperate with each other. This scattered system of Central American legal education did not facilitate the creation of a cohesive social grouping of academics ideologically and professional interested in the legal developments of the SICA and competent to deal with Central American Community law. This is confirmed by the rather limited involvement of academics around both the CACJ and the SICA. Besides the few doctrinal studies that have been recently produced, the

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109 Interviews n. 2, 21st of October, 2013 at 1:00 pm, and n. 5, 22nd of October, 2013 at 12:00 am. See also, the events organized by the Caribbean Academy for Law & Court Administration, available at: http://www.caleza-ccj.org/.
110 Between the most important universities that developed such classes one can find: the Faculty of Law of the University of Leon and the American College in Nicaragua, the Central American University in El Salvador, and the University of San Carlos in Guatemala.
111 Interview n. 43, 9th July 2014 at 9:30 am.
vast majority of academic production on the CACJ and the SICA is constituted by promotional writings of the judges and other internal stakeholders of the system. Finally, legal academia is completely uninterested in litigating before the CACJ. Thus far, no academics have participated to the workings of the Court neither as lawyers of the parties nor as advisers of states. This suggests a complete disconnection between legal academia, the CACJ, and the SICA.

The situation is different in the Caribbean, where the founding of the University of the West Indies (UWI) in the 1940s, and the opening of its Faculty of Law in 1970, allowed for the recent development of a generation of academics interested in the legalization of the CARICOM. Since its early days, campuses of the UWI were animated by a cosmopolitan spirit. The UWI played a central role in fostering independence from the UK and regional integration in the area on a social and cultural level. In the entire region, there were only three campuses, one in Jamaica for medicine, one in Trinidad and Tobago for engineering, and, later, the Faculty of Law in Barbados. This organizational structure forced students to move throughout the region to study. Especially the students coming from the little islands left their home-countries to confront themselves with a larger, more urbanized, and cosmopolitan reality. At the same time, a certain mobility within academics started to develop and scholars developed a West Indian career. Altogether, the UWI fostered regional cultural and social integration within the Caribbean. When the Faculty of Law opened in 1970, it enhanced the same dynamics, naturally becoming one of the main supporters of legal integration within the region. It taught Caribbean students all the Caribbean laws, training them to practice law in every jurisdiction of the Caribbean. At the same time, the curricula covered classes on Caribbean history and culture that strengthened the creation of a Caribbean identity. In other words, the Faculty of Law of the UWI became a laboratory in

114 Interview n. 5, 22nd of October 2013 at 12:00 pm.
115 Interview n. 15, 24th of October 2013 at 2:30 pm.
117 Interview n. 15, 24th of October 2013 at 2:30 pm.
119 Interviews n. 1, 21st October 2013 at 10:00 am, and n. 5, 22nd of October, 2013 at 12:00 pm
which a new generation of Caribbean lawyers was formed. These lawyers became natural supporters of the idea of Caribbean integration through law and of the establishment of the CCJ (few of them today even sit on the bench of the CCJ), thus providing support to the rulings of the CCJ. This can be for example seen in the academic mobilization around the CCJ that followed the Myrie case. Professor Berry, the Dean of the UWI Law Faculty, was part of the legal team that had defended Barbados. In relation to this, Myrie provoked a new phase of scholarship on Caribbean law. Whereas in the pre-Myrie period academic scholarship on the CCJ had been dominated by more promotional writings, Myrie inspired a number of conferences of a more empirical nature. Myrie also coincided with the publication by Professor Berry of the first comprehensive manual on Caribbean integration law with Oxford University Press. While a lot of road still have to be done in order to transform the CARICOM into a truly supranational institution, these latest developments signal an increase of societal supranationalism.

5. Conclusions
The article showed that the trajectory of the de jure supranationalism in the SICA and the CARICOM follow dynamics similar to those characterizing the early period of the EU. While the political processes of both the CARICOM and the SICA were characterized by a low level of institutional supranationalism, the CACJ and the CCJ introduced aspects of normative supranationalism with the goal of eroding national sovereignty and fostering supranationalism. While recent developments of the Caribbean signal an increasing impact of the normative efforts of the CCJ on the supranationalism of the CARICOM, in general, the rulings of the two Courts have failed to transform the SICA and the CARICOM into supranational organizations. This – I have argued – can be explained by means of actor-specific contextual factors – most notably, the missing interplay between the two ICs, the national judges, the regional Secretariats, and other societal actors, such as legal professionals and academics.

These findings allow for a more nuanced understanding on if and to what extent supranational adjudication can foster supranationalism. The case studies of the SICA and the CARICOM show that the pro-integration rulings of international judicial granting “the right to rule” to a regional organization over more or less specific policy issues, do not necessarily translate into supranationalism. This means that design features and normative efforts do not always play a

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120 Berry, Caribbean Integration Law.
central role in empowering supranational tribunals and organization. Although both the Protocol and the RTC include rules and judicial institutions similar to those of the Treaties of the EU, and despite the fact that the CACJ and the CCJ have mimicked the caseload of the CJEU, both the SICA and the CARICOM maintain intergovernmental features. This means that supranational adjudication is likely to foster supranationalism only to the extent to which it manages to make de jure supranationalism operational, meaning that either at the structural level of the organization or at the societal level (if not at both levels), the rulings of an IC are able to concretely subtract powers and competences to the member states and to exercise them independently. In sum, supranational adjudication is likely to become a successful source of supranationalism only when it is supported by a set of institutional (Commissions/Secretariats, national judges, etc.) and societal (legal professionals, networks of lawyers, academics, etc.) actors allowing the concrete enforcement of the rulings of the international tribunal in the national legal systems.