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#### **Author**

Madsen, Mikael Rask

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# Who Rules the World? The Educational Capital of the International Judiciary

Mikael Rask Madsen\*

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The creation of a global structure of international courts (ICs) has been an ongoing project throughout the twentieth century and well into the twenty-first. It was—and is—part of a more general endeavor of creating an international community governed by law. While the proliferation of ICs has been described elsewhere,<sup>1</sup> we know surprisingly little about who the actual judges sitting at the helm of contemporary judicialized international law and ruling (on) the world are. What has once been termed the “invisible college of international law”<sup>2</sup> remains to a large extent invisible to this day. But it is now a much larger college as the proliferation of ICs has resulted in a corresponding multiplication of the number of international judges. Today, more than three hundred men and women hold the office of international judge.<sup>3</sup> Most are found in Europe, at the two regional courts of the Court of Justice of

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\* Mikael Rask Madsen is Professor of Law, Faculty of Law, University of Copenhagen, and Director of iCourts, The Danish National Research Foundation’s Center of Excellence for International Courts. The statistical analysis included in this Article has been facilitated by the help of Troels Kjeldberg, a visualization expert at iCourts, and Ioannis Panagis, computer scientist at iCourts. This research is funded by the Danish National Research Foundation Grant no. DNRF105 and conducted under the auspices of iCourts. Thanks to the participants at the Conference on The Globalization of Legal Education: A Critical Study, University of California, Irvine School of Law 8–9 September, 2017.

1. See generally KAREN J. ALTER, *THE NEW TERRAIN OF INTERNATIONAL LAW: COURTS, POLITICS, RIGHTS* (2014); Martti Koskenniemi & Päivi Leino, *Fragmentation of International Law? Postmodern Anxieties*, 15 LEIDEN J. INT’L L. 553, 553–579 (2002); Benedict Kingsbury et al., *The Emergence of Global Administrative Law*, 68 L. & CONTEMP. PROBS. 15, (2005); Cesare P. R. Romano, *The Proliferation of International Judicial Bodies: The Pieces of the Puzzle*, 31 N.Y.U. J. INT’L L. & POL. 752, (1999).

2. Oscar Schachter, *Invisible College of International Lawyers*, 72 NW. U. L. REV. 217 (1977).

3. Leigh Swigart & Daniel Terris, *Who are International Judges?*, in THE OXFORD HANDBOOK

the European Union and the European Court of Human Rights, but many other regional and global courts also employ a significant number of international judges.<sup>4</sup> Besides some mainly descriptive studies of the international judiciary,<sup>5</sup> we have very little analysis of who these people are and what commonalities they have, notably in terms of education, knowledge, and know-how.<sup>6</sup>

In a previous work, in collaboration with Niilo Kauppi, I have argued that the expanding international judiciary is increasingly taking the form of what we coined a “transnational power elite.”<sup>7</sup> We understand a transnational power elite as a transnational grouping that is not simply powerful due solely to its institutional affiliation, but also by its collective, transnational capital in terms of knowledge and know-how of global governance, as well as its connectedness to key national and international legal-political sites.<sup>8</sup> Thinking in terms of transnational power elites—instead of relying on an institutionalist understandings—provides a different access point for analyzing thinking about global governance.<sup>9</sup> Moreover, by approaching the international judiciary as a transnational power elite, the fallacy of institutional analysis can be avoided; that is, it is not the institutions as such that are seen as governing the world (in this case ICs) but the transnational power elites constituting and instituting them. The basic argument is, therefore, the following: in order to make intelligible the power and interest of global legal governance, it is necessary to invert the common logic of inquiry of international institutional analysis by asking not only which organizations and rules govern, but who governs those organizations and rules. In the case of ICs, that involves an analysis of judges.<sup>10</sup>

This Article builds on earlier research and logic of inquiry into the same. The guiding research question, therefore, is the extent to which international judges are indeed such transnational power elites that have both the knowledge and connections marking such a social group. Or, alternatively, whether they are more localized players

OF INTERNATIONAL ADJUDICATION 619, 621 (Cesare P. R. Romano, et al. eds., 2014).

4. *Id.* at 622.

5. See generally DANIEL TERRIS, ET AL., *THE INTERNATIONAL JUDGE: AN INTRODUCTION TO THE MEN AND WOMEN WHO DECIDE THE WORLD’S CASES* (2007).

6. Antonin Cohen, *Dix Personnages Majestueux: En Longue Robe Amarante : La formation de la cour de justice des communautés européennes*, 60 *REVUE FRANÇAISE DE SCIENCE POLITIQUE* 227, 227 (2010); Antonin Cohen & Mikael R. Madsen, *Cold War Law: Legal Entrepreneurs and the Emergence of a European Legal Field (1945-1965)*, in *EUROPEAN WAYS OF LAW: TOWARDS A EUROPEAN SOCIOLOGY OF LAW* 175, 176 (Volkmar Gessner & David Nelken eds., 2007); Antoine Vauchez, *Une Élite D’Intermédiaires: Genèse d’un capital juridique européen (1950-1970)*, in *ACTES DE LA RECHERCHE EN SCIENCES SOCIALES* 54, 166–167 (2007).

7. See generally *TRANSNATIONAL POWER ELITES: THE NEW PROFESSIONALS OF GOVERNANCE, LAW AND SECURITY* (Niilo Kauppi & Mikael R. Madsen eds., 2013); Mikael R. Madsen, *The International Judiciary as Transnational Power Elite*, 8 *INT’L POL. SOC.* 332, (2014).

8. Niilo Kauppi & Mikael R. Madsen, *Fields of Global Governance: How Transnational Power Elites Can Make Global Governance Intelligible*, 8 *INT’L POL. SOC.* 324, 325-26 (2014).

9. *Id.* at 325.

10. Mikael R. Madsen, *Sociological Approaches to International Courts*, in *THE OXFORD HANDBOOK OF INTERNATIONAL ADJUDICATION* 388, 391-94 (Cesare P. R. Romano, et al. eds., 2014).

connecting to more national or regional sites of knowledge, law, and politics? The present analysis is, however, limited in two ways. First, it does not address the larger social spaces created around ICs and their agents. The focus is instead on a more limited set of agents, namely international judges. Second, to speak to the larger project of a critical study of the globalization of legal education, the analysis is further limited to a study of the educational capital of the international judiciary. While this is obviously a limitation to the analysis, the focus on educational capital<sup>11</sup> is nevertheless helpful for drawing up a general picture of the international judiciary and its relative cosmopolitan profile. In its most basic sense, educational capital is an institutionalized form of cultural capital that confers a set of unique properties on the holders of such capital.<sup>12</sup> In the case of judges, who virtually all have law degrees, the unique property is the capacity to speak law and determine its contents—what is sometimes referred to as legal capital.<sup>13</sup> Since practically all agents analyzed in this study have that capital, it is not analytically fruitful to focus on legal-educational capital as such. What is interesting, however, is the relative internationalization of the international judiciary in terms of education: i.e., are international judges national legal champs promoted to international tasks? Or are they internationally trained and thereby part of a more cosmopolitan segment of the legal profession?<sup>14</sup>

The empirical analysis included in this study presents unique new data that has been collected with the goal of, among other things, unpacking the educational profile of the international judiciary. More specifically, the Article conducts a comparative analysis of judges at nine international courts based in Africa, Europe, Latin America, and the Caribbean. These courts operate in different legal subject matters. Three are human rights courts: the European Court of Human Rights (“ECtHR”), the Inter-American Court of Human Rights (“IACtHR”), and the African Court of Human and Peoples Rights (“ACtHPR” or “AF”); three are regional economic courts: the Court of Justice of the European Union (“CJEU”), the East African Court of Justice (“EACJ”), and the Caribbean Court of Justice (“CCJ”); and three are courts with a global reach: the International Court of Justice (“ICJ”), the World Trade Organization’s Appellate Body, and the International Criminal Court (“ICC”). As explained in detail in the sub-sections of the empirical study, the analysis compares these nine ICs in a set of different dimensions with the goal of identifying similarities and differences based on region, nationality of judges, age, frequency of studies

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11. See generally PIERRE BOURDIEU, *THE STATE NOBILITY: ELITE SCHOOLS IN THE FIELD OF POWER* (1996).

12. See generally Pierre Bourdieu, *The Forms of Capital*, in *CULTURAL THEORY: AN ANTHOLOGY* (Imre Szeman & Timothy Kaposy eds., 2011).

13. Yves Dezalay & Mikael R. Madsen, *The Force of Law and Lawyers: Pierre Bourdieu and the Reflexive Sociology of Law*, 8 ANN. REV. L. & SOC. SCI. 433, 438 (2012).

14. A similar line of inquiry has been pursued in a set of publications by Bryant Garth and Yves Dezalay that explores legal elites, ranging from international arbitrations to national statesmen, and how their positioning between national and the international legal and political fields create a particular transnational legal power. See, e.g., YVES DEZALAY & BRYANT G. GARTH, *ASIAN LEGAL REVIVALS: LAWYERS IN THE SHADOW OF EMPIRE* (John M. Conley & Lynn Mather eds., 2010).

abroad, and attendance of elite universities.

The analysis proceeds the following way. In the first section, I briefly discuss the object of inquiry and some common ways of approaching it—and how the present study compares to the state of the art. I also provide a short introduction to the dataset and its sources. Then, the empirical study follows. In the first section of the empirical study, the Article explores *how international* international judges actually are when assessed in terms of education. The section explores this question using both aggregated and disaggregated data on the nine ICs included in this study. The second empirical section asks the question of *how elitist* international judges are when measured against their education and the educational institutions that they frequently attend. This section also explores the occurrence of doctoral degrees among international judges. The Article concludes with a general discussion of the relative cosmopolitanism of the international judiciary and its implications.

#### STUDYING THE INTERNATIONAL JUDICIARY

The first truly international court (“IC”), the Permanent Court of International Justice (“PCIJ”), was set-up in 1922 under the auspices of the League of Nations. After an initial period of significant activity in the 1920s—a mere jazz-age of international law—the situation became more difficult in the 1930s as the court increasingly faced the rising tension between major European powers. The PCIJ was eventually suspended when WWII broke out. It was resurrected in 1946 as the ICJ; the principal organ of the new United Nations organization, itself in-part a continuation of the defunct League of Nations. The PCIJ impacted the idea of the international judiciary in a less visible yet equally important way. Of particular interest are the many debates documented in the *travaux préparatoires* about who could—or should—be appointed as a judge to rule on matters involving sovereign states.

A set of pre-existing professional groupings emphasized their respective qualifications in this regard. International law professors found themselves particularly competent, in part due to their long commitment to creating international courts and institutions. Diplomats also saw themselves fit for the task ahead, even the obvious choice for the new job. And, finally, judges—at this point implying only national judges—found themselves having the right set of skills.<sup>15</sup> The first bench of the PCIJ was a compromise between these competing professional groupings: “three judges, three legal advisers and five professors.”<sup>16</sup> This caused some consternation among diplomats, but the dominant group of law professors turned out to be good at striking a balance between legal development and political sensitivity. Some forty years later, a group of European judges, dominated by law professors at the ECtHR, would exhibit

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15. Mikael R. Madsen, *Judicial Globalization: The Proliferation of International Courts*, in RESEARCH HANDBOOK ON GLOBAL ADMINISTRATIVE LAW 282, 286 (Sabino Cassese ed., 2016).

16. See generally Ole Spiermann, *The Legacy of The Permanent Court of International Justice: On Judges and Scholars, and Also on Bishops and Clowns*, in LEGACIES OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE 397 (Christian J. Tams & Malgosia Fitzmaurice eds., 2013).

traits of “legal diplomacy that resembled the PCIJ.”<sup>17</sup> Current cases before ICs also suggest that the job of judging international affairs involves both legal development and political sensitivity.<sup>18</sup> This raises the fundamental question of whether the international judiciary is influenced by a form of path dependency derived from its original post-WWI configuration.

Existing studies of international judges generally confirm that the international judiciary is still influenced by these original dynamics. According to one study, by 2006 there were 215 international judges from 86 different countries.<sup>19</sup> Of these 215 judges, 136 were European—most were British and French. Most interesting, however, is that the professional profile of the judges has generally followed the path of the PCIJ: 40 percent were mainly legal academics, 33 percent had pursued careers as judges, and 27 percent had been civil servants of various kinds. By 2012, the number of judges had climbed to 304, distributed among twenty-one ICs.<sup>20</sup> 111 different nationalities were represented, notably by a growth in ICs in Africa. 26 percent had a judicial background, 21 percent a civil servant background, and 19 percent came from legal academia.<sup>21</sup> The rest came from private practice or combinations of the above categories.<sup>22</sup>

I have, in previous publications, challenged these categorizations used by Terris et al. as producing an early one-dimensional portrait of international judges as being either professors, civil servants, or judges.<sup>23</sup> In-depth studies focusing on a single court suggest that a crucial feature of many international judges is a long and complex career weaving in and out of the above categories as well as other professional jobs, notably in policy expertise and politics. A telling example is the first bench of the ECtHR evoked above.<sup>24</sup> It was made-up of elite legal academics—some 80 percent had a doctoral degree—who had worked in or had had real access to a number of other relevant spheres in law and politics.<sup>25</sup> Moreover, this study suggests that these actors were not quite as “denationalized” as critics of ICs often argue.<sup>26</sup> They were instead very powerful domestic actors who had been promoted to international posts due to important national careers and who maintained deep connections to their home states.

17. Mikael R. Madsen, ‘Legal Diplomacy’ - Law, Politics and the Genesis of Postwar European Human Rights, in HUMAN RIGHTS IN THE TWENTIETH CENTURY: A CRITICAL HISTORY 62, 77–78 (Stefan Ludwig Hoffmann ed., 2011).

18. See generally KAREN J. ALTER, ESTABLISHING THE SUPREMACY OF EUROPEAN LAW: THE MAKING OF AN INTERNATIONAL RULE OF LAW IN EUROPE (Oxford, 2001); Gregory C. Shaffer et al., *The Extensive (but Fragile) Authority of the WTO Appellate Body*, 79 LAW & CONTEMP. PROBS. 237, (2016).

19. TERRIS, ET AL., *supra* note 5, at 17.

20. Swigart & Terris, *supra* note 3, at 621.

21. *Id.* at 626.

22. *Id.* at 621.

23. Mikael R. Madsen, *The International Judiciary as Transnational Power Elite*, 8 INTERNATIONAL POLITICAL SOCIOLOGY 332, 334 (2014).

24. *Id.* at 333–34.

25. *Id.*

26. *Id.* at 334.

In other words, although they were international when sitting at the ECtHR, they were in practice first and foremost prestigious senior lawyers in their domestic fields.

These existing studies have all mainly assessed the international judiciary by using different professional categories. This Article seeks a different assessment in terms of education. Turning to the educational capital of international judges provides a different, but also complementary, way of addressing the questions related to the configuration of the international judiciary. International judges are generally perceived as holding elite positions within the international legal profession. The question is what role education, and particularly commonalities in education, plays in the formation of this elite group. If we accept that education is an access point to the legal market rather than its ends, the question is whether international legal education, notably from prestigious international universities, abounds in the *curricula vitae* of international judges. Or, alternatively, whether it is the top national universities which provide the pathway to the position of international judge. A third hypothesis could be that the selection of international judges is simply not influenced by their educational profile. Existing data from the cited studies give some tentative answers to these questions. Terris et al. observe in 2007 that the world's most prestigious universities, including Oxford, Cambridge, London and Paris in Europe, and Harvard, Yale, and Columbia in the United States, had trained (as primary or secondary degree) close to one-fourth of all international judges—the majority being trained in the United Kingdom.<sup>27</sup> They also indicate that judges originating from the developing world might be more likely to have pursued studies abroad.

This study tests these hypotheses against the backdrop of new data on the education of all judges appointed to the nine ICs included in the dataset. More specifically, we have drawn up a list of all judges appointed to these nine courts since their inception and then collected data on the judges' individual education. Since some courts have been in operation for many decades, for example the ICJ, the ECtHR, and the ECJ, these courts contribute to the dataset with a relatively high number of judges. Also, some international judges have held positions at more than one IC. In those cases, they are counted for each appointment to an IC. Please note that this is a very rare occurrence and without statistical significance. The total number of judges included in the dataset is 504.

Using data on the birthplace of individual judges, we coded their education as being either national or international in terms of whether they studied at home or abroad. In the empirical analysis, we also, in some instances, include the name of the universities where they received their degree to identify universities which have educated many international judges. The data is also coded so that we can identify gender, nationality, and the IC where the judges work or have worked. Moreover, based on nationality or the location of the IC where they have been employed, we can test for regional and sub-regional differences regarding education. We have also included data on the year of appointment to the relevant ICs in order to identify

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27. TERRIS, *supra* note 5, at 18.

different historical moments in this regard.

The data was generally collected using a host of sources: the yearbooks of ICs; the “Who is Who” of a number of countries; and various on-line sources such as newspapers, homepages, and LinkedIn accounts. The information is generally cross-checked against multiple sources when possible. In some instances, we have not been able to detect the place of studies. Of the 504 judges included in the dataset, we lack information about the degree-issuing university in the cases of 52 judges; that is, in roughly 10 percent of the cases, we lack the specific name of the institution, but we have data indicating whether the judge studied abroad or not. In the bigger picture of this study, however, we deemed these limitations to be statistically insignificant.

#### HOW INTERNATIONAL ARE INTERNATIONAL JUDGES? STUDYING HOME OR ABROAD?

Some scholars of globalization have argued that globalization is driven by a global class. Samuel Huntington, for example, identifies denationalization as a key feature of global elites, what he terms “Davos Men”; that is, they are internationalists who pose a threat to the coherence of the nation-State and, specific to Huntington’s analysis, the “American Creed.”<sup>28</sup> Another author, David Rothkopf, is even more radical and argues for the emergence of a global “superclass.”<sup>29</sup> This new class, comprising some 6,000 individuals, according to the author, is defined by the fact that their connections to one another are more important than their connections to their home countries.<sup>30</sup> These are just some examples of literature highly critical of what they present as the rise of a class of globalizers with scant respect for the culture and interests of their countries of origin.<sup>31</sup>

The critique of denationalized globalizers is also very well-known to students of ICs and international judges. ICs have been repeatedly accused of existing in an artificial international legal bubble, far away from the complexities of national societies and politics, and without a sense of obligation towards their home states.<sup>32</sup> The assumption is often that such globalizers have mutual affiliations that formed during their education. Aspiring judicial globalizers—as other members of this alleged global class—are assumed to meet and connect in elitist educational grounds much in same

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28. Samuel P. Huntington, *Who are We?: The Challenges to America’s National Identity* 257–58, 268 (2004); *See generally* Samuel P. Huntington, *The Clash of Civilizations* (2003).

29. DAVID ROTHKOPF, *SUPERCLASS: THE GLOBAL POWER ELITE AND THE WORLD THEY ARE MAKING* xiv (2008).

30. *Id.*

31. For a broader literature review, *see* Niilo Kauppi & Mikael R. Madsen, *Transnational Power Elites: The New Professionals of Governance, Law and Security*, in *TRANSNATIONAL POWER ELITES: THE NEW PROFESSIONALS OF GOVERNANCE, LAW AND SECURITY* 1, 1–15 (Niilo Kauppi & Mikael R. Madsen eds., 2013).

32. *See generally* SPYRIDON FLOGAITIS, ET AL., *THE EUROPEAN COURT OF HUMAN RIGHTS AND ITS DISCONTENTS: TURNING CRITICISM INTO STRENGTH* (2013); PATRICIA POPELIER, ET AL., *CRITICISM OF THE EUROPEAN COURT OF HUMAN RIGHTS – SHIFTING THE CONVENTION SYSTEM: COUNTER-DYNAMICS AT THE NATIONAL AND EU LEVEL* (2016).



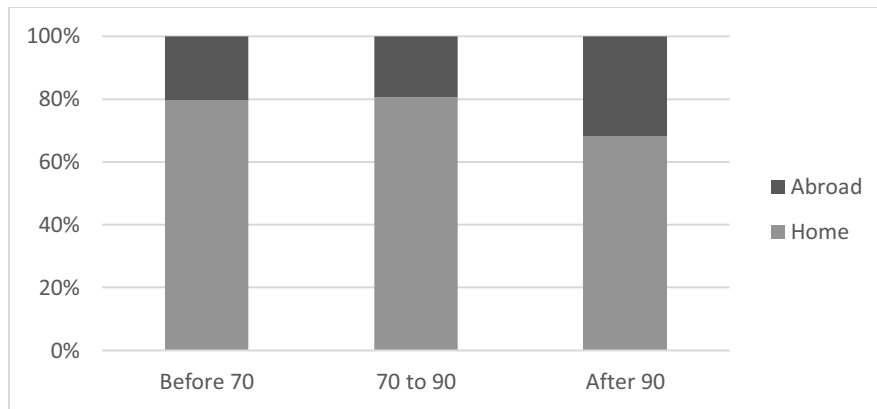
way that the old British elite mingled at Eton and Oxford in earlier days. It is, of course, an empirical question whether this is the case, and one we explore below.

Figure 1 below examines the extent to which international judges have studied at home or abroad. Studying abroad is defined as having earned a university degree from a country other than one’s home country. The statistics on home/abroad in Figure 1 are split into three time periods: (1) before 1970, (2) 1970-1990, and (3) after 1990. The rationale for these periods is that ICs, up until 1970, were a very limited phenomenon; with only the ICJ at the international level and the ECJ and the ECtHR regional courts in Europe.<sup>33</sup> In the subsequent period—1970-1990—a number of other regional courts were established in Latin America and Europe.<sup>34</sup> In the third period, after 1990, there was a significant increase in the number of regional courts in Latin America and Africa, as well as in Europe by the creation of new global courts.<sup>35</sup> Figure 1 presents the number of international judges having received degrees abroad or at home for all courts included in the dataset in two visualizations. Figure 1a provides simple descriptive statistics. Figure 1b visualizes the findings as stacked bar charts.

**Figure 1a:** Location of Education Home/Abroad – All Courts

	Before 1970	1970 to 1990	After 1990
<b>Abroad</b>	20.33%	19.35%	31.71%
<b>Home</b>	79.67%	80.65%	68.29%

**Figure 1b:** Location of Education Home/Abroad – All Courts



33. Please note that we have not included data on the judges of the predecessor of the ICJ, the PCIJ. Our data therefore starts in 1946.

34. Madsen, *supra* note 15, at 288–89 (noting the general expansion of IC’s).

35. For details on the general evolution of ICs, see Karen J. Alter, *The Global Spread of European Style International Courts*, 35 WEST EUROPEAN POLITICS 135, 136–37 (2012); Madsen, *supra* note 15, at 285–89; YUVAL SHANY, ASSESSING THE EFFECTIVENESS OF INTERNATIONAL COURTS 1–3 (2014).

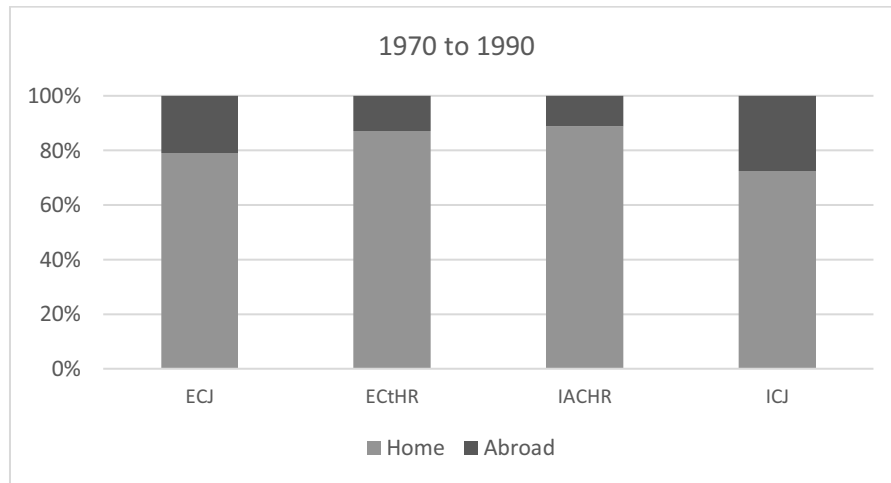
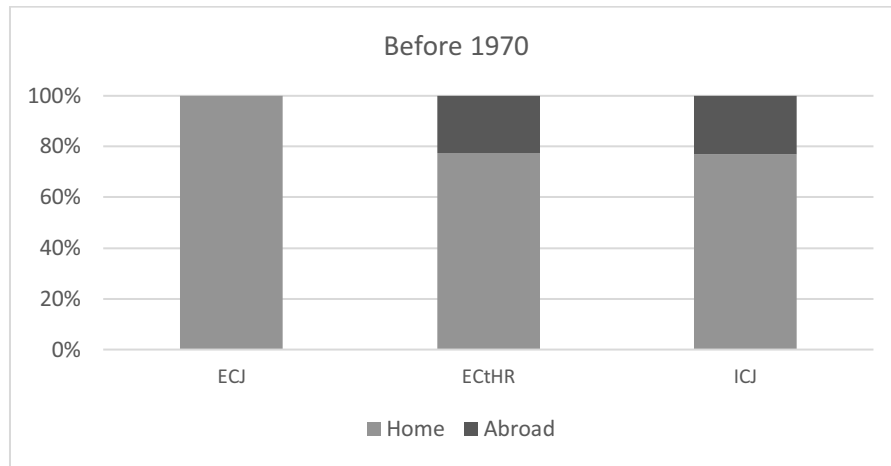
What is most striking from Figures 1a and 1b is the relatively small percentage of international judges who have actually studied abroad. Before the 1990s, only one out of five international judges had studied abroad. After 1990, the number climbs to close to 32 percent. Considering these findings, it is questionable that international judges form close-knit international groupings at the time of their education. That said, it does not exclude the possibility that they create other, more indirect bonds in terms of, for instance, studying very similar subjects at different institutions, or being introduced to similar moral or political ideas. Our dataset, however, cannot detect that. Figure 2 below disaggregates these numbers to identify whether some ICs are more international than others in terms of the educational background of its judges. Figure 2 uses the same periods as above but disaggregates the data so the percentages for each court are visible. In Figure 2a, the data is presented in simple descriptive data and, in Figure 2b, as stacked bar charts.

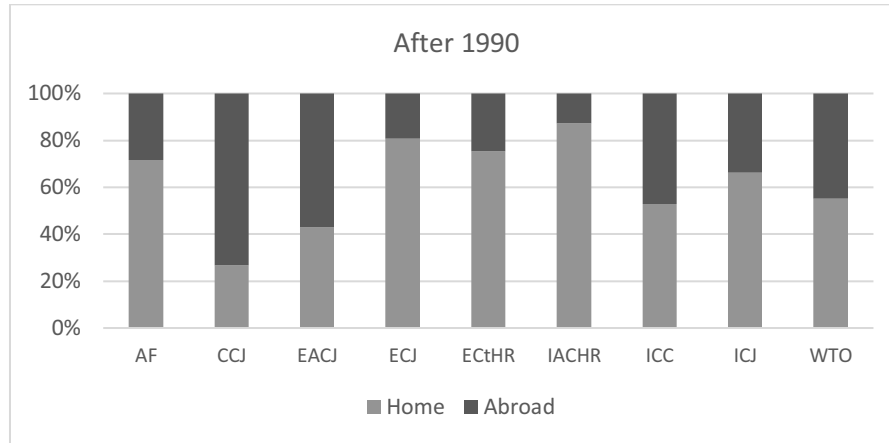
**Figure 2a:** Location of Education Home/Abroad – Individual Courts/Periods

<b>Court</b>	<b>Education Location</b>	<b>Before 1970</b>	<b>1970 to 1990</b>	<b>After 1990</b>
<b>AF</b>	Abroad			28.26%
	Home			71.74%
<b>CCJ</b>	Abroad			73.33%
	Home			26.67%
<b>EACJ</b>	Abroad			57.14%
	Home			42.86%
<b>ECJ</b>	Abroad	0.00%	21.05%	19.39%
	Home	100.00%	78.95%	80.61%
<b>ECtHR</b>	Abroad	22.50%	12.94%	24.78%
	Home	77.50%	87.06%	75.22%
<b>IACHR</b>	Abroad		11.11%	12.77%
	Home		88.89%	87.23%
<b>ICC</b>	Abroad			47.06%
	Home			52.94%
<b>ICJ</b>	Abroad	23.19%	27.63%	33.64%

	Home	76.81%	72.37%	66.36%
<b>WTO</b>	Abroad			44.78%
	Home			55.22%

**Figure 2b:** Location of Education Home/Abroad – Individual Courts/Periods





What is apparent from Figures 2a and 2b is that there are significant differences between the individual courts regarding how many judges studied abroad. Also, the extent to which international judges have studied abroad increased significantly in the third period (after 1990). This increase in study abroad is largely the result of the educational trajectories of judges at non-European ICs, notably in Africa (EACJ) and the Caribbean (CCJ). New global courts such as the WTO AB and the ICC also generally have more judges who have studied abroad.

We can better identify these patterns by differentiating the ICs according to the location of the courts. Figure 3 below distinguishes between European courts (ECJ and ECtHR), courts in the Americas and Caribbean (IACtHR and CCJ), in Africa (EACJ and AF), and global courts (ICC, ICJ, WTO AB) (marked “international” in the figure). As in the previous analyses, in Figure 3a we present the simple descriptive statistics and in Figure 3b we use stacked bar charts. In Figure 3b we only include the two last periods (1970-1990 and After 1990) to have a richer dataset. In Figure 3a we indicate the raw numbers as well as the percentages in order to highlight the actual number of judges analyzed.

**Figure 3a:** Education Home/Abroad by Location of Court/Time

Period	Continent	Abroad	Home	Abroad	Home
<b>Before 1970</b>	Europe	9	45	17%	83%
	Americas	0	0		
	Africa	0	0		
	International	16	53	23%	77%
<b>1970 to 1990</b>	Europe	19	104	15%	85%
	Americas	2	16	11%	89%
	Africa	0	0		
	International	2	55	4%	96%
<b>After 1990</b>	Europe	75	249	23%	77%
	Americas	17	45	27%	73%

Africa	37	51	42%	58%
International	99	146	40%	60%

**Figure 3b:** Education Home/Abroad by Location of Court/Time

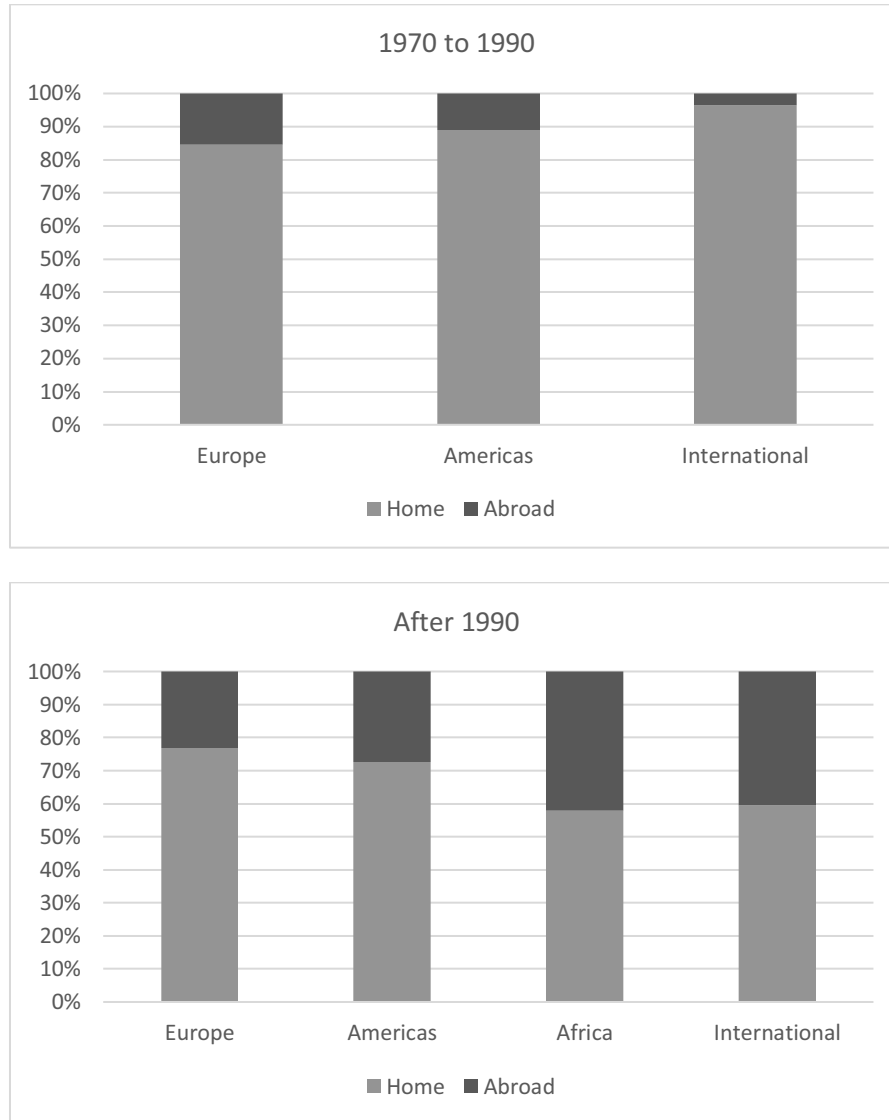


Figure 3 underscores the findings of Figure 2 above, namely that ICs in Africa are the most international in terms of the judges having studied abroad. This is probably, to a large extent, the result of the availability of advanced degrees in those countries and, relatedly, the attractiveness of degrees from abroad in the local job

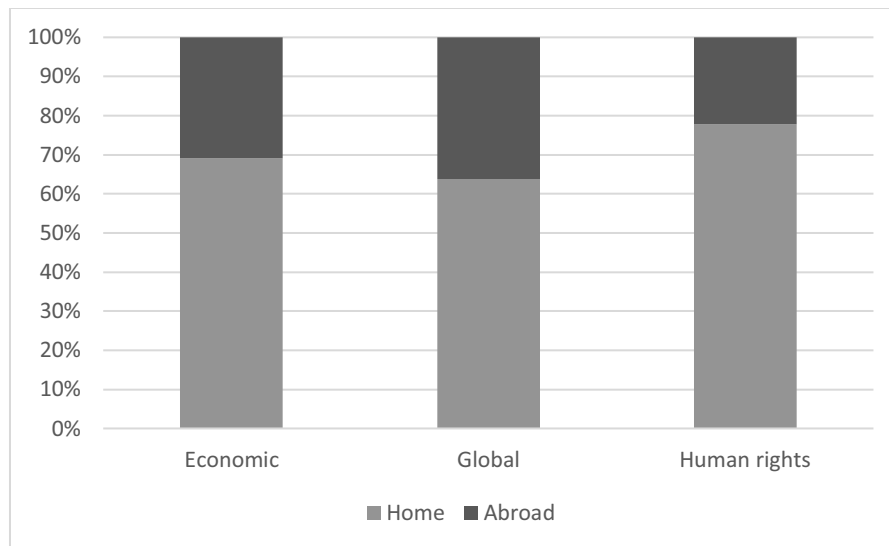
market.<sup>36</sup> The global courts, probably because of increased influence of non-Western judges, are also increasingly internationalized in terms of the education of the judges.

A final assessment of the relative internationalization of international judges, in terms of education, can be done by differentiating the international courts not according to location or specific court as in the previous figures, but by looking at the subject-matters that the courts specialize in. In our dataset, we identify three courts in the area of regional human rights (ECtHR, IACtHR and AF), three in regional economic law (ECJ, EACJ and CCJ), and three in global matters (ICJ, ICC and WTO AB). Figure 4 below provides, first, the simplified statistics (Figure 4a) and then a visualization using stacked bar charts (Figure 4b).

**Figure 4a:** Education Home/Abroad Subject Area of Court

	Abroad	Home
<b>Economic</b>	30.98%	69.02%
<b>Global</b>	36.26%	63.74%
<b>Human rights</b>	22.16%	77.84%

**Figure 4b:** Education Home/Abroad Subject Area of Court



In these aggregated numbers for each of the three subject-areas of the ICs in focus, we find that the least internationalized area is international human rights. Interestingly, this area of international law makes the most direct claim to universality of international law, but it is nevertheless the least internationalized in terms of the education of the judges who end up ruling on matters of international human rights.

36. This generally corresponds with the findings on the globalization of education. As concerns international law, *see* ANTHEA ROBERTS, *IS INTERNATIONAL LAW INTERNATIONAL?* 67 (2017) (noting that receiving a foreign law degree is associated with increased job prospects).

One plausible explanation is that the member-states drawing up the list of candidates for positions at ICs in the area of human rights are well aware that the universalizing discourse on international human rights might be countered by the appointment of judges who are more trained in national ways of understanding human rights. A recent study of the ECtHR confirms this explanation, arguing that the way in which the member-states have recently sought to counter the Europeanizing tendencies of the ECtHR has been by promoting national judges to the international bench.<sup>37</sup> Such appointment strategies, it appears, seek tacitly to ensure that knowledge and know-how of domestic legal systems are readily available with the goal of influencing the system at large.<sup>38</sup>

#### ELITE UNIVERSITIES AND THE INTERNATIONAL JUDICIARY

This Article has so far mainly presented data that differentiated ICs with regard to whether the judges employed by those courts have studied abroad or not. We have not, however, zoomed in on whether they have studied in some particular areas of the world or at some specific universities when they pursue their studies. This section seeks to answer that question by providing data on the universities that most frequently issued degrees to international judges. Using this data, we also seek to visualize, on a world map, the center of global legal education as it concerns international judges. Finally, we test for the prevalence of advanced degrees in terms of doctoral degrees and whether the pursuit of advanced degrees can explain patterns of relative internationalization of judges at ICs.

As noted above, it is often assumed that globalization is driven by a certain class of people who are educated at the same universities and thereby bestowed with inter-subjective ideas about politics, economics and law. Historically, universities have played a major role in the reproduction of elites as documented in numerous studies of the Ivy League in the United States, Oxbridge in the United Kingdom, or the *grandes écoles* in France, for example.<sup>39</sup> Law faculties or law schools are often highlighted as particularly elitist sites of education—however not always because of academic rigor but more often because of the social connections which can be acquired at those establishments.<sup>40</sup> For the purpose of this analysis, it is not relevant whether elite law schools provide rigorous training or good social connections. The main goal is to identify whether there are single institutions or clusters of institutions that have trained a significant number of international judges.

Using our dataset on international judges, Figure 5 below calculates the top ten universities that have educated most international judges. The assessment is made by

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37. Mikael R. Madsen, *The Legitimization Strategies of International Courts: The Case of the European Court of Human Rights*, in SELECTING EUROPE'S JUDGES 259, 277 (Michal Bobek ed., 2015).

38. Swigart & Terris, *supra* note 3, at 623 (noting some ways in which nationality of international judges is significant).

39. The literature is very large, *but see* for example PIERRE BOURDIEU, *THE STATE NOBILITY: ELITE SCHOOLS IN THE FIELD OF POWER* 315–26 (1996); Michael Hartmann, *Class-specific Habitus and the Social Reproduction of the Business Elite in Germany and France*, 48 THE SOC. REV. 241, 245 (2000); Dean Lillard & Jennifer Gerner, *Getting to the Ivy League: How Family Composition Affects College Choice*, 70 THE J. OF HIGHER EDUC. 706, 724 (1999); Ann L. Mullen, *Elite Destinations: Pathways to Attending an Ivy League University*, 30 BRITISH J. SOC. OF EDUC. 15, 17 (2009).

40. *See generally* RALF DAHRENDORF, *LAW FACULTIES AND THE GERMAN UPPER CLASS*, in THE SOCIOLOGY OF LAW 294 (Wilhelm Aubert ed. 1969).

adding up the total number of degrees issued by each university to persons who have been appointed to the ICs included in this study.

**Figure 5:** The Top Ten Universities in the Education of International Judges

<b>University Top Ten Descending</b>	<b>Total</b>
University of Cambridge	38
University of London	33
Harvard University	25
University of Paris	24
University of Oxford	19
Columbia University	14
Yale University	11
University of Madrid	10
University of Bonn	10
New York University	10

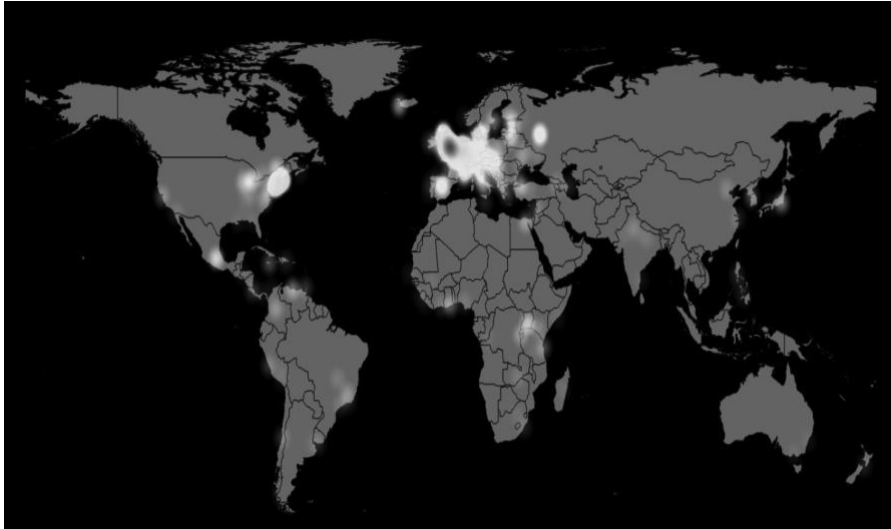
To scholars of elite international legal education, this top ten list comes with few surprises. Indeed, some of the best-known international elite universities in the U.K., the U.S., and France appear on the list. Considering the general European dominance on ICs, and international law more generally, it is also unsurprising that European elite universities are represented with four out of the top five institutions on the list. Among the positions from six to ten, we do find some surprises, notably the University of Bonn. We have no particular explanation for the place of the University of Bonn except that its location close to the Benelux countries has made it attractive for more students, and it is generally well-respected in Germany for legal education. Other major German universities are also repeat players but they are not reflected on Figure 5. This is because Figure 5 only includes the ten highest-scoring universities. But because of the decentralized profile of German higher education, quite a few universities (Frankfurt, Heidelberg, Berlin, Hamburg and Munich) are the producers of degrees for international judges.<sup>41</sup> Less surprising is that the University of Madrid appears on the list, considering its attraction for Latin American students pursuing advanced degrees in law in Spanish. The remainder of the universities (Yale, Columbia, and NYU) is all well-known institutions of international elite education in law, and in the field of international law. Their lower position on the list probably reflects that there are only a limited number of U.S. international judges.

41. Mikael R. Madsen, *Universities in the Education of International Judges Dataset* (2017).

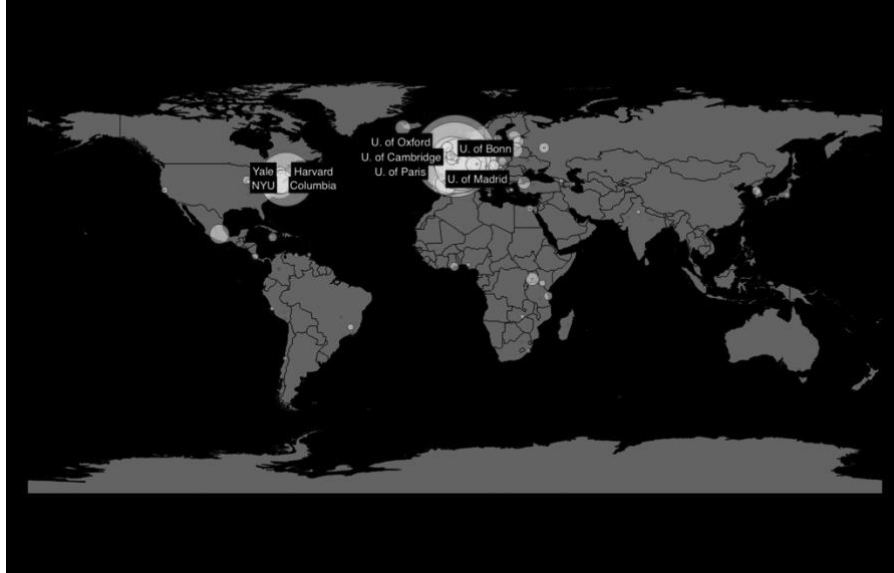


Comparing the set of identified universities, notably the list of universities with a score of more than ten degrees, and other universities that have trained international judges, we can visualize the landscape of educating international judges using the tool of so-called heatmaps. This allows us to visualize where the “heat is on” in terms of the higher education of international judges. Figure 6a presents the heatmap of the entire world in this regard.

**Figure 6a:** Heatmap of Major Educational Institutions of the International Judiciary



It is apparent from Figure 6a that a small cluster of universities around the Paris-London axis and surroundings and the traditional U.S. East Coast legal educational establishment are the leading producers of international judges. To further identify these patterns, Figure 6b below uses a different visualization technique that, in addition to coloring the location of major universities, also adds circles relative to the number of graduates of that institution. In addition, labels have been added for the top universities in this regard.

**Figure 6b:** Major Educational Institutions of the International Judiciary

Both Figure 6a and 6b highlight the centrality of the same few educational institutions to the training of international judges. A few additional institutions of relevance, however, can be observed using this visualization, notably the National Autonomous University of Mexico and Moscow State University. The former, it appears from the dataset, has trained a number of Latin American judges.<sup>42</sup> The latter has catered to East European judges, particularly from neighboring countries of the former Soviet Union.<sup>43</sup> Another circle worth noting is in Kampala, Uganda, where a number of African judges have received training.<sup>44</sup>

The statistics presented in Figures 5 and 6 do not distinguish between regular degrees or advanced degrees. The existing studies of international judges cited above generally suggest that there is a relative high number doctoral degree holders among international judges.<sup>45</sup> In what follows, we first detect the total number of doctors among international judges in the dataset, and then see if we can identify particular patterns with respect to the different ICs included in the analysis. For doctoral degree we included a set of post-graduate degrees that lead to the title doctor, including Ph.D, LL.D., and Doctor Juris. However, a J.D. degree is not considered a doctoral degree in this context as it is a law degree more similar to a European *candidatus/candidata juris*.<sup>46</sup> In the charts below, judges without doctoral degrees are not considered. As a consequence, the CCJ is not included in the figures as none of its judges have received doctoral degrees.<sup>47</sup>

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42. *See id.*

43. *See id.*

44. *See id.*

45. *See id.*

46. *See id.*

47. We also exclude from the analysis honorary doctoral degrees.

Figure 7 provides the statistics on the relative frequency of doctoral degrees among international judges. Figure 7a first provides the general picture of the frequency of doctoral degrees among international judges in absolute numbers and in percentage in three different time-periods. Figure 7b distinguishes the different ICs in this regard and provides the percentage of judges with doctoral degrees at the individual courts.

**Figure 7a:** Number of Doctoral Degrees and Number of Judges per Period

Period	No. of Doctoral Degrees	Total No. of Judges	Percentage
Before 1970	44	70	62.9%
1970 to 1990	67	123	54.5%
After 1990	192	356	53.9%

**Figure 7b:** Percentage of Doctoral Degrees at Individual Courts per Period

	Before 1970	1970 to 1990	After 1990
AF	0.0%	0.0%	26.3%
EACJ	0.0%	0.0%	16.7%
ECJ	44.4%	45.5%	57.1%
ECtHR	82.6%	70.6%	64.6%
IACHR	0.0%	41.7%	51.9%
ICC	0.0%	0.0%	40.6%
ICJ	55.3%	42.1%	48.8%
WTO	0.0%	0.0%	87.0%

Figures 7a and 7b make an interesting finding. International judges, when compared to the legal profession at large, have a disproportionately high number of individuals with doctoral degrees. Although the average figure has been declining since the first period (Figure 7a), the current number is close to 54 percent, which is high when compared to the legal profession at large. Only legal academia as an institution can compete with that. Among courts, the only other major national court that has a similarly high percentage of judges with doctoral degrees is the German Constitutional Court (*Bundesverfassungsgericht*), which has a 100 percent score of doctoral degrees in its First Senate and 75 percent in its Second Senate.<sup>48</sup> Other major supreme courts do not come close to these numbers.<sup>49</sup> However, as Figure 7b illustrates, there is also noticeable variation among the courts. The two African courts included in the study have the lowest total number of doctoral degrees. At the other end of the continuum,

48. For details, see *Bundesverfassungsgericht*, LEAFLET ABOUT THE FED. CONST. CT., [http://www.bundesverfassungsgericht.de/EN/Service/Infothek/Faltblatt/faltblatt\\_node.html](http://www.bundesverfassungsgericht.de/EN/Service/Infothek/Faltblatt/faltblatt_node.html) (2017).

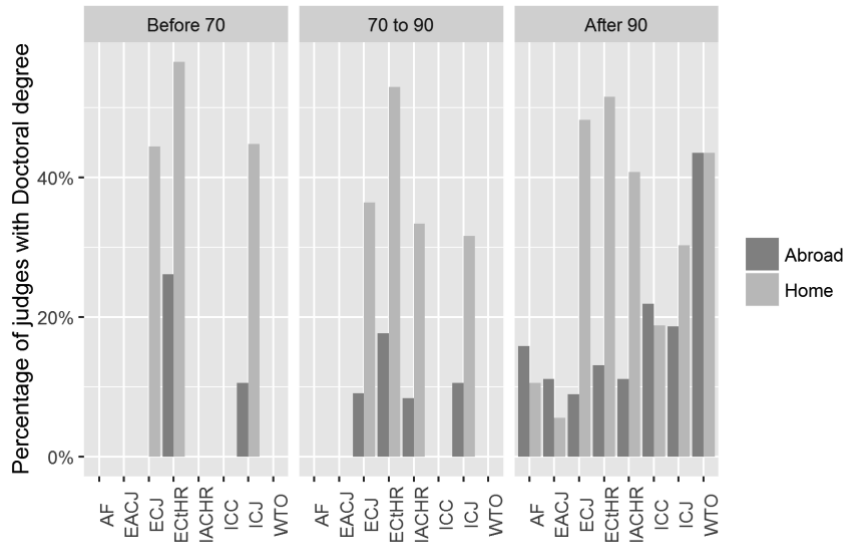
49. This was based on a brief internet survey of major supreme courts around the world, including the United States, South Africa, India, the United Kingdom, and France.

we find the WTO AB, which has close to 90 percent. The ECtHR, which started out with 80 percent of the judges holding doctoral degrees, has now dropped to 65 percent. Overall, for the courts included in this study, around 50 percent of the judges hold doctoral degrees.

Figures 8a and 8b below identify the patterns with regard to each of the courts studied regarding whether the holders of doctoral degrees have studied abroad or at home. Figure 8a provides the simple statistics of the percentage of holders of doctoral degrees who have studied abroad or at home, as well as the total number. Please note that judges without doctoral degrees are not included in Figure 8a. Figure 8b provides a different analysis, namely the percentage of judges with doctoral degrees in the total number of judges split between degrees awarded at home or abroad.

**Figure 8a:** Location of Education of Doctoral Degrees per Court and Period

Court		Before 1970		1970 to 1990		After 1990	
		No.	%	No.	%	No.	%
<b>AF</b>	Abroad					3	60.00%
	Home					2	40.00%
<b>EACJ</b>	Abroad					2	66.67%
	Home					1	33.33%
<b>ECJ</b>	Abroad	0	0.00%	2	20.00%	5	15.63%
	Home	4	100.00%	8	80.00%	27	84.38%
<b>ECtHR</b>	Abroad	6	31.58%	9	25.00%	17	20.24%
	Home	13	68.42%	27	75.00%	67	79.76%
<b>IACHR</b>	Abroad			1	20.00%	3	21.43%
	Home			4	80.00%	11	78.57%
<b>ICC</b>	Abroad					7	53.85%
	Home					6	46.15%
<b>ICC</b>	Abroad	4	19.05%	4	25.00%	8	38.10%
	Home	17	80.95%	12	75.00%	13	61.90%
<b>WTO</b>	Abroad						50.00%
	Home						50.00%

**Figure 8b:** Judges with Doctoral Degrees per Period and Court and Location of Degree

As it appears from these final statistics, there is a noticeable variation among the courts studied with regard to the location of the institutions that have awarded the doctoral degrees to its international judges. Compared with the analysis presented above in Figures 2 and 3, about the frequency of studies abroad, the pattern with respect to doctoral degrees is similar. Most judges with doctoral degrees received from abroad are found in African courts (AF and EACJ) and at new global courts (ICC and WTO). However, the number of doctoral degrees among African judges is, as demonstrated right above, the lowest in the total dataset when excluding the CCJ. The regional courts in Europe (ECJ and ECtHR) and Latin America (IACtHR) stand out as the least international in this regard. It is well-known that, at least until recently, the value of domestic doctoral degrees in law was generally very high, notably in Europe—and in some European countries, notably the larger ones, higher than foreign doctoral degrees.<sup>50</sup> This underlying logic is probably reflected in the patterns seen with regard to the two European courts. It is possible that the same is the case with regard to the IACtHR in terms of a valorization of domestic degrees. Moreover, it is likely that the choices of governments, when identifying candidates for regional ICs, are influenced—deliberately or not—by considerations of knowledge of domestic law. All things being equal, domestic doctoral degrees are more likely to focus on nationally-informed questions than degrees from abroad. But this remains speculative and cannot be supported by the dataset used in this analysis.

50. See generally ROBERTS, *supra* note 36.

## DISCUSSION AND CONCLUSION

The number of international courts has proliferated over the past two decades, resulting in a multiplication of the number of international judges. Currently, more than three hundred men and women hold the office of international judge. A fair share of these judges are found at the two mega-regional courts of the CJEU and the ECtHR, but many other regional and global courts now also employ a significant number of international judges.<sup>51</sup> Scholarship of ICs has generally been marked by an institutionalist approach. This has provided very little insight into who the men and women are who decide important cases in international human rights, international economic law, international criminal law or, for example, draw up the boundaries of states. This Article has attempted to unpack the international judiciary by a comparative analysis of nine ICs based in Africa, Europe, and Latin America and the Caribbean in order to provide a more precise picture of this alleged global class of judges.

The Article has more precisely addressed two related questions by examining the educational backgrounds of international judges. First, how *international* international judges are in practice as measured by their educational background. Second, whether international judges belong to an international elite in terms of having studied at the same international elite educational institutions. To answer those two questions the Article first conducted a number of statistical analyses on the general educational profile of international court judges, as well as variations among them related to their location and subject-matter jurisdiction. The study then identified the role of elite universities in the production and reproduction of international judges, as well as the frequency of international judges with doctoral degrees, another marker of distinction of this professional group.

Generally, and perhaps counter to popular intuition, we can observe that international judges are predominantly trained at domestic institutions of higher education. This is particularly true for European ICs, while African and Caribbean ICs employ more internationally trained judges. Global courts, particularly the ones established since 1990 (WTO AB and ICC), also feature a larger proportion of internationally trained judges. In fact, the general patterns of internationalization of their education are similar to students in general, including students of international law.<sup>52</sup> International judges, however, stand out with regard to the frequency of doctoral degrees among them as compared to the legal profession at large. More historical studies of ICs note that international judges, since the PCIJ, have included many academics or semi-academic lawyers. This, in part, accounts for the high frequency of doctoral degrees. Another explanation is that doctoral degrees function as a marker of distinction when appointing international judges. The holders of doctoral degrees have, in other words, a slight competitive advantage over other jurists in the competition for seats on the international bench.

The general conclusion of this study is that international judges hardly form a detached or denationalized elite based on their educational profile. In fact, the data and analysis presented suggest that international judges tend to be educationally embedded in national legal fields. This finding seems to confirm earlier studies of global legal elites that have similarly emphasized how international lawyers make large

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51. *See id.*

52. *See id.*

parts of their careers in domestic fields.<sup>53</sup> What is highlighted by such studies, as well as the present one, is that the international sphere of law to a large extent is a continuation of domestic forms of reproducing elites.<sup>54</sup> The different patterns observed in this study between, for example, Europe and Africa are in fact not different from the regional models of producing elites. While European elites typically pursue elite education in their top national universities, African elites are more likely to go abroad. The case of the CCJ, with its extreme internationalization, is clearly a case in point in this regard.

Education is, of course, only one way of assessing the social construction of the international judiciary. To get a fuller picture, one will also have to study the longer professional trajectories of the relevant agents. What such studies tend to find is that international judges have multiple engagements across relevant social fields. In many cases, these agents are quite embedded in national legal fields—both educationally and professionally—but they are not limited by these boundaries, a typical trait of elites everywhere. To understand the real power of ICs, therefore, it is necessary to look beyond the institutionally delineated category of judges and include in the analysis the broader transnational, professional constituency emerging around these institutions and practices. It is precisely the rise of this broader complex of legal power and power elites, in which international judges play a key part, that has made international courts prominent features of global governance.

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53. PIERRE BOURDIEU, *Foreword*, in DEALING IN VIRTUE: INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER vii, viii (Yves Dezalay & Bryant G. Garth eds., 1996); MIKKEL JARLE CHRISTENSEN, *International Prosecution and National Bureaucracy: The Contest to Define International Practices Within the Danish Prosecution Service*, 43 LAW & SOC. INQUIRY 1, 12 (2016).

54. See Dezalay & Madsen, *supra* note 13 (providing further discussion).