
Trust in the Court: The Role of the Registry of the European Court of Human Rights

Cosette D. Creamer* and Zuzanna Godzimirska**

Abstract

The growing impact of European institutions on the daily lives of citizens has stimulated greater attention to the public's trust in these bodies. Existing research on trust in the European Court of Human Rights (ECtHR) tends to focus on the role of judges and their rulings. In contrast, this article examines the role of the ECtHR's Registry. We argue that the civil servants of the ECtHR serve a critical function for the court's operation and have the potential to play an indispensable trust-building role. Drawing on interviews with court officials and survey responses from government agents, we identify and discuss the practices and features of the Registry that contribute to, or undermine, member states' estimations of trust in the ECtHR. In light of repeated and mounting criticism by member governments, our findings have important implications for the continued relevance of, and political support for, the Court moving forward.

1 Introduction

Governments delegate authority to international courts under considerable uncertainty: uncertainty about the procedures and practices the court will adopt, the cases that will come before it and the actual outcomes of individual disputes. Trust mitigates this uncertainty and is a critical component in shaping actors' willingness to accept

* Cosette D. Creamer, Assistant Professor, Benjamin E. Lippincott Chair in Political Economy, Department of Political Science and School of Law, University of Minnesota, Minneapolis, USA. Email: ccream@umn.edu.

** Zuzanna Godzimirska, Assistant Professor, iCourts, Centre of Excellence for International Courts, Faculty of Law, University of Copenhagen, Denmark. Email: zuzanna.godzimirska@jur.ku.dk. The authors thank several helpful commentators, interviewees at the Court and Natalie Winston for her research assistance. This research was partly funded by the Danish National Research Foundation Grant no. DNRF105.

judicial decisions and, thereby, international courts' ability to render justice.¹ Despite its central role, scholars have dedicated little attention to the study of trust in these institutions. Recent scholarly attention focuses on international courts' authority and legitimacy² but leaves unanswered questions about the ways in which trust develops among members and parties before the court and how trust-building efforts are received by other court constituents. This is not the case in other disciplines and fields, where scholars have long theorized about trust and attempted to assess empirically its presence in various institutions.³ Disciplinary insights from psychology, political science, institutional economics and sociology have contributed to the fragmentation of the concept of trust,⁴ but they have also given rise to a rich interdisciplinary approach to its study. In this article, we draw on these various insights to conceptualize trust in the specific context of international courts and argue that the degree of trust in these institutions rests on three components: mechanisms of control over the institution; the institution's social capital; and its trustworthiness.

The inferences various actors make about the ways they expect an international court to act are in many cases shaped by the actions and practices of a court's registry or legal secretariat. Although these agencies vary in size and tasks, they serve a critical function for a court's operation and have the potential to play an indispensable trust-building role.⁵ We begin by exploring the trust-building role of the largest existing registry – namely, the Registry of the European Court of Human Rights (ECtHR). Understanding the Registry's practices that contribute to greater levels of trust in member states is particularly critical now since the Court has faced repeated criticism by members in recent years.⁶ Over the past decades, research on the role of judges within international courts has exploded, often in terms of their contribution to increasing legitimacy among various constituents and sometimes implicitly in

¹ Mayoral, 'Impact through Trust: The CJEU as a Trust-Enhancing Institution', in M. Wind (ed.), *International Courts and Domestic Politics* (2018) 160; S.M. Mitchell and E.J. Powell, *Domestic Law Goes Global: Legal Traditions and International Courts* (2011), at 146; T.R. Tyler and Y.J. Huo, *Encouraging Public Cooperation with the Police and Courts* (2002), at 58.

² Alter, Helfer and Madsen, 'International Court Authority in a Complex World', in K.J. Alter, L.R. Helfer and M.R. Madsen (eds), *International Court Authority* (2018); N. Grossman et al. (eds), *Legitimacy and International Courts* (2018) 3.

³ Existing research has unpacked the concept and examined it in the context of schools, business organizations, courts and the police. See M.N.K. Saunders et al. (eds), *Organizational Trust: A Cultural Perspective* (2010); Tschannen-Moran and Hoy, 'A Multidisciplinary Analysis of the Nature, Meaning, and Measurement of Trust', 70 *Review of Educational Research* (2000) 547; Tyler and Huo, *supra* note 1.

⁴ P. Bauer, 'Conceptualizing and Measuring Trust and Trustworthiness', Political Concepts Working Paper Series 61 (2015).

⁵ Cartier and Hoss, 'The Role of Registries and Legal Secretariats in International Judicial Institutions', in C.P.R. Romano, K.J. Alter and C. Avgerou (eds), *The Oxford Handbook of International Adjudication* (2013) 712; Yi-Chong and Weller, "'To Be, but Not Be Seen": Exploring the Impact of International Civil Servants', 86 *Public Administration* (2008) 35.

⁶ Madsen, 'The Challenging Authority of the European Court of Human Rights: From Cold War Legal Diplomacy to the Brighton Declaration and Backlash', 79 *Law and Contemporary Problems* (2016) 141.

terms of their role in building trust.⁷ This focus is understandable given that judges are the most visible figureheads of a court. Yet this also means that studies largely overlook the role of registries and legal secretariats in international courts. This is puzzling given that these court officials are responsible for the day-to-day work of the institution, represent the primary point of contact for parties in a dispute and play critical roles in terms of legal research and the drafting of judgments and decisions. Scholars hint at this critical role in passing,⁸ but rarely has it been the explicit focus of systematic research.⁹ A recent and growing literature on international civil servants (ICS) has sparked interest in these bureaucracies within international organizations more generally but rarely in courts specifically. While acknowledging that ICS remain largely 'invisible', this literature recognizes they do hold the 'strategic position of the highest importance in a pluralist world'.¹⁰ In addition to interdisciplinary studies of trust, this article also builds on recent ICS scholarship to develop an understanding of how international courts build trust among their primary constituents – member states.

The article proceeds as follows. The next part outlines our understanding of the concept of trust and the components that contribute to its presence. It then identifies characteristics and factors relevant to estimations of trust in international courts. Part 3 draws from interviews with court officials, survey responses from government agents and the rules and procedures of the Court to identify the characteristics and practices that contribute to estimations of trust in the context of the ECtHR. Part 4 concludes and outlines questions for future research.

2 Trust in International Courts

The multidimensional nature of the concept of trust has sparked research in a wide range of disciplines, resulting in a vast array of definitions.¹¹ Trust at a very basic level

⁷ Gordon, 'Observations on the Independence and Impartiality of the Members of the International Court of Justice', 2 *Connecticut Journal of International Law* (1987) 397; Hernández, 'Impartiality and Bias at the International Court of Justice', 1 *Cambridge Journal of International and Comparative Law* (2012) 183; Mackenzie and Sands, 'International Courts and Tribunals and the Independence of the International Judge', 44 *Harvard International Law Journal* (2003) 271; Voeten, 'The Impartiality of International Judges: Evidence from the European Court of Human Rights', 102 *American Political Science Review* (2008) 417.

⁸ Alvarez-Jimenez, 'The WTO Appellate Body's Decision-Making Process: A Perfect Model for International Adjudication?', 12 *Journal of International Economic Law* (2009) 289; Yanovich and Zdouc, 'Procedural and Evidentiary Issues', in D. Bethlehem *et al.* (eds), *The Oxford Handbook of International Trade Law* (2009) 345.

⁹ One of the few attempts to shed light on the critical role of registries and legal secretariats was provided by Cartier and Hoss, *supra* note 5.

¹⁰ Yi-Chong and Weller, *supra* note 5, at 36, citing G. Langrod, *The International Civil Service: Its Origins, Its Nature, Its Evolution* (1968), at 25.

¹¹ Fisher, van Heerde and Tucker, 'Does One Trust Judgement Fit All? Linking Theory and Empirics', 12 *British Journal of Politics and International Relations* (2010) 161, at 162; Seppänen, Blomqvist and Sundqvist, 'Measuring Inter-Organizational Trust: A Critical Review of the Empirical Research in 1990–2003', 36 *Industrial Marketing Management* (2007) 249, at 254–255.

refers to the ‘firm belief in the reliability, truth, or ability of someone or something’.¹² This idea of trust as a belief accords with most conceptualizations of trust as a subjective state of the truster. Trust represents an expectation, a ‘subjective estimation of ... the probability that the trustee displays behavior preferred by the truster to alternative behaviors’.¹³ In the context of national courts and police, Tom Tyler and Yuen Huo describe trust as an ‘assessment’ or ‘inference’ that people make about the behaviour and character of these institutions.¹⁴ How is it then that international courts and their registries build trust? We theorize that three factors feed into constituents’ estimations of trust in these institutions: mechanisms of control over an institution; the institution’s social capital; and its trustworthiness.

A Control

Some suggest that the presence of control mechanisms obviates the need for trust in an institution since it reduces the risk of ‘slack’ or the institution’s ability to act in unintended ways.¹⁵ Others argue that trust in an institution emerges precisely because constituents possess mechanisms to control its behaviour.¹⁶ Most theory and evidence support this latter view, though organizations rely on different types of control to promote trust (that is, formal rules versus more informal pressures).¹⁷ Many organizations employ legal and other institutional constraints to create incentives for the trustee to act in a trustworthy manner, serving as inducements to fulfil expected commitments.¹⁸

In the context of international courts, governments carefully design the treaties to which they commit themselves.¹⁹ In doing so, they put a great deal of thought into how much authority and discretion to grant ICS and the institutional constraints incorporated within treaties to control these officials.²⁰ Governments often seek to prevent ICS slack; to restrain opportunism, the politicized expansion of authority and corruption; and to incentivize ICS behaviour in line with preferences.²¹ In some instances, these institutional design features are highly detailed, while, in other contexts, ICS retain ample discretion to develop the parameters of their activities. Such

¹² *Oxford English Dictionary* (1989).

¹³ Bauer, *supra* note 4.

¹⁴ Tyler and Huo, *supra* note 1.

¹⁵ Cortell and Peterson, ‘Dutiful Agents, Rogue Actors, or Both? Staffing, Voting Rules, and Slack in the WHO and WTO’, in D. Hawkins *et al.* (eds), *Delegation under Anarchy: States, International Organizations, and Principal-Agent Theory* (2006) 255.

¹⁶ Dietz and Hartog, ‘Measuring Trust inside Organisations’, 35 *Personnel Review* (2006) 557; Mayer, Davis and Schoorman, ‘An Integrative Model of Organizational Trust’, 20 *Academy of Management Review* (1995) 709.

¹⁷ Dietz, Gillespie and Chao, ‘Unravelling the Complexities of Trust and Culture’, in M.N.K. Saunders *et al.* (eds), *Organizational Trust: A Cultural Perspective* (2010) 3, at 13; Möllering, ‘The Trust/Control Duality: An Integrative Perspective on Positive Expectations of Others’, 20 *International Sociology* (2005) 283.

¹⁸ R. Hardin, *Trust and Trustworthiness* (2002), at 82.

¹⁹ B. Koremenos, *The Continent of International Law: Explaining Agreement Design* (2016).

²⁰ X. Yi-Chong and P. Weller, *The Governance of World Trade: International Civil Servants and the GATT/WTO* (2004).

²¹ Cortell and Peterson, *supra* note 15.

constraints or control mechanisms can incentivize registries to act in a trustworthy manner and thereby facilitate greater trust on the part of members.²² All else being equal, registries with less discretion will be more likely to act according to treaty – and member state – expectations.

However, weak institutional constraints or an absence of control mechanisms do not necessarily imply that the ICS will act contrary to those expectations. First, this type of slack tends to occur when officials hold preferences distinct from those of the majority of member states. Andrew Cortell and Susan Peterson suggest this is most likely when a bureaucracy is staffed by international personnel rather than appointees seconded from national governments.²³ While international personnel are more likely to hold preferences distinct from member states, they also ‘form a kind of epistemic community’ that likely seeks to ensure the success of their organization. For this reason, they may restrain themselves and ‘be unlikely to engage in behavior undesired by their members’ because of the consequences such actions may have for the overarching missions and the organization’s reputation.²⁴

B Social Capital

Second, the concept of social capital is often discussed in relation to that of trust.²⁵ Social capital acts as the ‘lubricant of interactions among people’, facilitating collective and collaborative action²⁶ and furthering non-economic goals, such as legitimation, social acceptance and the exercise of power.²⁷ The degree of the social connection between truster and trustee – or the amount of social capital – has been found to contribute to greater levels of trust.²⁸ Social capital may be built in more formal ways – in the course of repeated proceedings before the court and correspondence with the same persons over a number of years – as well as more informally within and outside the court context.

A less palpable aspect of the social capital between court and government officials results from the ICS role in legal and cultural demystification. The nature and meaning of trust often differs across cultural boundaries, which makes the development of trust within cross-cultural institutions like an international – or even regional – court more difficult.²⁹ In some transnational organizational contexts, greater cultural linkages have been found to facilitate the development of trust.³⁰ Within international courts, government representatives and court officials from vastly different

²² Nooteboom, ‘Social Capital, Institutions and Trust’, 65 *Review of Social Economy* (2007) 29, at 44.

²³ Cortell and Peterson, *supra* note 15.

²⁴ *Ibid.*, at 257.

²⁵ Hardin, *supra* note 18.

²⁶ P.K. Blind, *Building Trust in Government in the Twenty-First Century: Review of Literature and Emerging Issues* (2007), at 6, citing K. Arrow, *The Limits of Organization* (1974), at 23.

²⁷ Nooteboom, *supra* note 22.

²⁸ Glaeser *et al.*, ‘Measuring Trust’, 115(3) *Quarterly Journal of Economics* (2000) 811, at 814; but see Hardin, *supra* note 18, at 84; Saunders *et al.*, *supra* note 3.

²⁹ Saunders *et al.*, *supra* note 3.

³⁰ Dietz, Gillespie and Chao, *supra* note 17.

legal and trust systems interact with one another on a regular basis. Greater linkages, ties or familiarity between court officials and parties to a case should thus increase the ability of a registry to contribute positively to trust in the court.

C Trustworthiness

A third critical component of trust relates to the probability that an institution will behave in expected and preferred ways – its trustworthiness.³¹ In contrast to social capital and control, assessments of an institution's trustworthiness are based on the trustee's characteristics and behaviour³² and whether it acts in a manner anticipated or expected by the truster.³³ Existing research finds that judicial institutions are viewed as trustworthy when they act in a fair and effective manner, take into consideration the views of constituents and communicate and engage with citizens.³⁴ Others identify predictability as a central behaviour leading to greater trustworthiness.³⁵ Drawing from, and extending, this research to ICS, we theorize that the estimations of government representatives of an international court's trustworthiness hinge on four factors related to court administration: (i) the qualifications of ICS officials; (ii) the relationship between ICS officials and judges; (iii) the truster's knowledge about ICS activities; and (iv) the institutional memory and capacity of the court.

First, a court's registry is responsible for its effective and efficient operation.³⁶ Litigating a case before an international court is a costly and time-consuming affair and its efficient handling is crucial for parties and others affected. Efficient proceedings partly depend on the competency of the ICS staff, implying that their expertise and experience likely affect evaluations of a court's trustworthiness. Furthermore, neutrality, impartiality and practices viewed as neutral should all lead to estimations that an international court is trustworthy.³⁷ The institution's trustworthiness thus depends on the extent to which its judges and ICS 'serve the member states and listen to their concerns, regardless of their own state of origin', and treat all members equally.³⁸

Second, the degree of leadership and initiative exhibited by ICS in practice depends on both the organizational structure of the court and the degree of activism (or slack-tivism) exercised by judges in the court's daily operations. In some instances, registry

³¹ Bauer, *supra* note 4, at 4. Bauer states that '[e]ven "when there is no call for trust, a person or institution can possess the attributes of trustworthiness" (Levi and Stoker 2000, 476), i.e. a trustee can be trustworthy independently from whatever level of trust the truster has in him'.

³² Hardin, *supra* note 18, at 29.

³³ Tyler and Huo, *supra* note 1, at 63.

³⁴ Jackson *et al.*, 'Developing European Indicators of Trust in Justice', 8 *European Journal of Criminology* (2011) 267, citing Bradford, Jackson and Stanko, 'Contact and Confidence: Revisiting the Impact of Public Encounters with the Police', 19 *Policing and Society* (2009) 20; Hohl, Bradford and Stanko, 'Influencing Trust and Confidence in the London Metropolitan Police Results from an Experiment Testing the Effect of Leaflet Drops on Public Opinion', 50 *British Journal of Criminology* (2010).

³⁵ Tyler and Huo, *supra* note 1.

³⁶ Alvarez-Jimenez, *supra* note 8, at 315.

³⁷ Cartier and Hoss, *supra* note 5, at 718; Grossman, 'Legitimacy and International Adjudicative Bodies', 41 *George Washington International Law Review* (2009) 107, at 141–142.

³⁸ Yi-Chong and Weller, *supra* note 20, at 50–51.

officials can and do serve as functional substitutes for judges. When judges are not active, have little time to devote to court activities or, for other reasons, are not involved in proceedings, members – consciously or unconsciously – look to the practices of registry officials when evaluating a court’s level of trustworthiness. In other instances, where the registry has limited capacity to act independently and remains subject to strict judicial or party oversight, the trustworthiness of the registry may be viewed as merely one element of the court’s overall trustworthiness. In sum, where the registry can act independently of judges, its ability to affect the trustworthiness of a court will be greatest; when subordinate to judges, its ability to affect the trustworthiness of the court will likely depend on its influence on judicial activity and the degree of activism exercised by judges.

Third, the frequency of members’ interactions with registry officials directly affects members’ awareness of registry activities. Since an awareness of these activities is necessary for members to factor them into their evaluations of a court’s trustworthiness, the registry’s ability to affect trustworthiness depends on the nature and frequency of its communications with members. The frequency and nature of a member government’s interactions will likely vary according to its level of development or wealth. Some governments may need to rely upon and trust the registry more than others. On average, larger states are more self-reliant, while ‘small developing countries may depend on the expertise of the Secretariat for advice, interpretation and assistance on policy development’.³⁹

Fourth, many registries are staffed by career officials who ‘serve as permanent machinery with a coordinating function and a specific set of values’.⁴⁰ This comes in handy when carrying out their duties, as they retain both institutional and personal memories of the practices that have and have not worked in the past. Member governments may look to how a registry contributes to and uses its institutional memory when evaluating the trustworthiness of an international court.⁴¹

These four factors that we suggest shape estimations of a court’s trustworthiness are neither exhaustive nor independent. In reality, they largely complement and sometimes overlap with one another.

3 Building Trust in the ECtHR

The preceding part outlined mechanisms through which international courts may build trust among their constituents and the role of a court’s registry in this respect. We theorized that three factors – control mechanisms, social capital and trustworthiness – will shape member states’ estimations of trust in an international court. The following part unpacks these components in the context of the ECtHR, focusing on how the activities of this court’s Registry relate to each component. In doing so, we draw on studies of organizational trust, the responsibilities of the Registry as outlined

³⁹ *Ibid.*, at 261–262.

⁴⁰ Yi-Chong and Weller, *supra* note 5, at 37.

⁴¹ Yi-Chong and Weller, *supra* note 20, at 37–38.

within the rules and procedures of the Court, interviews conducted with Registry officials⁴² and survey responses of government agents⁴³ to shed light on the Registry's features and practices that may generate or undermine trust in the ECtHR.

A Control: Institutional Design and Autonomy

The Registry of the ECtHR is the largest organ of the Court, composed of lawyers, administrative and technical staff and translators. It is headed by the registrar and consists of five judicial sections, the Office of the Jurisconsult (who is also in charge of the Grand Chamber Registry), Research and Case-Law Information, a Common Services Directorate and a Filtering Section. In the early years, the Commission and the Court were of limited size, with their Secretariat and Registry employing no more than 10 persons.⁴⁴ Today, the Court's Registry comprises some 640 staff members.⁴⁵ The large size of the Registry increases the likelihood that any individual official's preferences may diverge from those of the member states or other constituents, and, thus, the institutional constraints on the ECtHR Registry assume greater importance.

In terms of formal institutional constraints, the registrar acts under the authority of the president of the Court and is assisted by one or more deputy registrars.⁴⁶ The structure of the Registry is incredibly hierarchical, with each of the five judicial sections under the authority of a section registrar and assisted by a deputy section registrar. Sections are further divided into 31 case-processing divisions, each of which is managed by a head of division (manager) and assisted by an administrative team. The Registry's lawyers are assigned to one of the case-processing divisions on the basis of their knowledge of the languages and legal systems of the countries covered by that division.

Despite this hierarchical structure, Registry lawyers enjoy considerable discretion in how they conduct their activities, with little, if any, direct day-to-day oversight. Their

⁴² A total of 12 interviews were conducted on 9–13 January 2017 in Strasbourg, France, at the European Court of Human Rights (ECtHR). Two interviewees were Court judges, while the remainder were registry officials, and their relevant characteristics varied, including section of the Registry, level of seniority, nationality, secondment status and tenure at the Court. The identities of all interviewees have been redacted and replaced with random numbers to ensure interviewee confidentiality.

⁴³ In order to identify and evaluate the practices that impact constituents' evaluations of the Court's trustworthiness, we conducted a survey of government agents who represent their respective states in cases of alleged violations of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) 1950, 213 UNTS 222. The survey instrument was translated into French and, thus, fielded in the two official languages to government agents of all Council of Europe (CoE) states, with the exception of Ireland, France and Greece. The contact information for these countries was more difficult to track down. The survey instrument was fielded electronically via Qualtrics and yielded a total of 22 responses, 10 of which were full. All responses were given a survey identification since the identities of the survey respondents were anonymous. See more on the survey instrument in Appendix 1 at the end of this article.

⁴⁴ Hennette-Vauchez, 'The ECHR and the Birth of (European) Human Rights Law as an Academic Discipline', in A. Vauchez and B.D. Witte (eds), *Lawyering Europe: European Law as a Transnational Social Field* (2013), vol. 37, 117.

⁴⁵ European Court of Human Rights, *ECHR Registry*, available at www.echr.coe.int/Documents/Registry_ENG.pdf.

⁴⁶ ECHR, *supra* note 43, Art. 25(e).

tasks include maintaining correspondence with the parties on procedural matters, preparing the files and drafting the Court's inadmissibility case notes, communication reports, decisions and judgments. Any oversight is through the rules and operating procedures – called General Instructions – drawn up and promulgated by the registrar but approved by the president of the Court.⁴⁷ Registry officials within interviews emphasized both the importance of following these General Instructions, as '[I]oyalty for the Court is the most important',⁴⁸ as well as their ability to exercise operational discretion in discrete and subtle ways that they view as facilitating case processing.⁴⁹

In terms of hiring control mechanisms, the registrar and deputy registrar are elected by the Plenary Court to ensure operational independence of the Court from the Council of Europe.⁵⁰ All other Registry staff serve on the basis of administrative appointment, following an external recruitment procedure, with the same code of conduct as other Council of Europe staff members. The hiring procedures of these career registry lawyers follow those of the Council of Europe's appointment of permanent staff, which seeks to ensure 'the appointment of staff of the highest ability, efficiency and integrity'.⁵¹ Given this information, and following Cortell and Peterson,⁵² we might expect these international personnel to have preferences closely aligned with, or in support of, the 'European project' more so than those held by individual member governments.

In addition to these international officials, the ECtHR employs a number of seconded lawyers. Secondment is common in many international organizations, including within the political bodies of the Council of Europe. These personnel (domestic lawyers or judges) are likely even more aware than their international colleagues that the Court depends on member states for their existence and resources. The salaries of seconded lawyers are paid by the member state directly and often those salaries are smaller than those of regular employees of the Council of Europe. The number of seconded lawyers has increased in recent years following the Interlaken and Izmir Declarations, when member states were encouraged to send seconded lawyers to the Court's Registry.⁵³

⁴⁷ Rules of the European Court of Human Rights (Rules of the ECtHR), 1 August 2008 (as amended on 19 September 2016), Rule 17(4).

⁴⁸ Interview 4.3, Strasbourg, 12 January 2017.

⁴⁹ 'We are behind the scenes, and are helpful, but reserved.' Interview 4.3, Strasbourg, 12 January 2017.

⁵⁰ ECHR, *supra* note 43, Art. 25(e).

⁵¹ C. Westerdiek, *The Organisation of Work of Legal Secretaries in the Registry of the European Court of Human Rights* (2005).

⁵² Cortell and Peterson, *supra* note 15.

⁵³ Seconded lawyers worked in Court prior to the Interlaken Declaration, but the number has increased significantly since then. See ECtHR Registrar, Information Note from the Registrar: Secondment to the Registry of National Lawyers (2012). Parties shortlist candidates, who are then selected by Court; their contract usually lasts two years and is non-renewable. Currently, there are about 60 seconded lawyers to the Court. See Committee on Legal Affairs and Human Rights, *Need to Reinforce the Independence of the European Court of Human Rights* (2013). Committee of Ministers of the Council of Europe, *Interlaken Declaration of 19 February 2010*, High Level Conference on the Future of the European Court of Human Rights; Committee of Ministers of the Council of Europe, *Izmir Declaration of 27 April 2011*, High Level Conference on the Future of the European Court of Human Rights.

Some judges had initial concerns about the independence of seconded lawyers, but the strong role of the ECtHR in the appointment process provides some reassurance. In the view of one judge, ‘members of the general public who do not have this internal knowledge might question the perceived independence of such lawyers, particularly given there are “very few people who really know the ins and outs of the court”’.⁵⁴ While concerns about the independence of seconded lawyers still appear, the involvement of these lawyers in case processing may serve to increase estimations of trustworthiness on the part of government agents, while decreasing such evaluations by claimants and their lawyers. On the one hand, seconded lawyers bring ‘full knowledge of national legal systems’ that may in turn facilitate ‘more effective national implementation’.⁵⁵ This may contribute to ‘improving mutual understanding’ between the Court and both member governments and complainants.⁵⁶ On the other hand, seconded lawyers who are national government lawyers or judges in their home country may generate an appearance of dependence or bias that could undermine their trust-building capacity vis-à-vis complainants.

In sum, the hierarchical structure of the ECtHR Registry should contribute to positive estimations of trust in the Court on the side of government agents. While the considerable discretion left to Registry staff could lead to concerns about their acting in line with the preferences of the membership, hiring control mechanisms contribute to mitigating such concerns and ensuring trust in the system. Finally, while the presence of seconded lawyers could be expected to negatively affect applicant lawyers’ estimations of trust in the Court, they likely positively affect those estimations made by government agents.

B Social Capital: Cultural and Social Linkages

In addition to the institutional design and level of autonomy of the Registry staff, the ability of the ECtHR Registry to affect the trustworthiness of the Court may depend on pre-existing cultural linkages between the Registry and litigants. Some of these linkages are simply linguistic and legal familiarity; during early stages of application processing, communications ‘can occur in any language of the forty-seven member states’.⁵⁷ This is particularly important for applicants who do not retain a lawyer to help with application submission. For government agents, the role of linguistic linkages with Registry officials is less important; after a case is communicated to a government, the applicant is required to be represented by a lawyer, and all formal communication is then conducted in English or French.⁵⁸

In addition to pre-existing cultural ties, social familiarity engendered by the duration of a relationship has been found to impact the degree of social connection between

⁵⁴ Interview quoted in Dzehtsiarou and Coffey, ‘Legitimacy and Independence of International Tribunals: An Analysis of the European Court of Human Rights’, 32 *Hastings International and Comparative Law Review* (2014) 269.

⁵⁵ ECtHR Registrar, *supra* note 53.

⁵⁶ CoE Steering Committee for Human Rights, Doc. CM(2008)51 (2008).

⁵⁷ Interview 2.1, Strasbourg, 10 January 2010.

⁵⁸ *Ibid.*

truster and trustee.⁵⁹ The length of a state's membership in the ECtHR should thus condition the Registry's ability to impact a government's estimation of its trustworthiness. New members have very few experiences interacting with Registry officials and, thus, may not immediately evaluate its practices in terms of the Court's trustworthiness. As membership length increases, the Registry's activities progressively impact the Court's trustworthiness. However, we suggest that such impact is conditional on the degree, nature and frequency of a government's interactions with the Court. For instance, a state could be a member of the ECtHR for an extended period of time, but having had few interactions with the Registry, its role in trustworthiness evaluations should remain unchanged. The length of acceptance of the jurisdiction of the Court, combined with the degree, nature and frequency of communications, provide a rough proxy, we suggest, for the level of social capital between the Court's Registry and a given member.

Within the ECtHR, those countries with a greater number of applications filed against them by necessity engage in more frequent communications with Registry officials – often the same ones. While Registry officials sometimes find it 'difficult to keep track of government lawyers' of larger countries, they often find that they can 'build up rapport' with agents of smaller countries.⁶⁰ Similarly, the Registry's ability to affect Court trustworthiness depends on the length that the government agent has held her position, conditional on the degree, nature and frequency of communications. For instance, some smaller countries rely on their permanent representative to the Council of Europe or the ECtHR to act as the government agent; since this position tends to rotate every four years, Registry officials often find they must constantly 'rebuild that relationship'.⁶¹

C Trustworthiness: Qualifications, Role and Functions of the Registry

1 Qualifications of Registry Officials

The 1950 text of the European Convention on Human Rights did not contain any provisions on the Registry, and it was not until Protocol no. 11, which entered into force in 1998, that Registry lawyers or their qualifications were even mentioned.⁶² According to the explanatory report on Protocol no. 11, this provision was inserted 'in order to ensure that members of the Court can, if they so wish, be assisted by legal secretaries (law clerks). Such assistants, who may be appointed upon the proposal of the judges, must have the *required qualifications and practical experience to carry out the duties assigned to them* by the judges'.⁶³

⁵⁹ Glaeser *et al.*, *supra* note 28, at 814.

⁶⁰ Interview 4.1, Strasbourg, 12 January 2017.

⁶¹ *Ibid.*

⁶² ECHR, *supra* note 43; Protocol no. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms 1994, ETS 155.

⁶³ CoE, Explanatory Report on Protocol No. 11, ETS no. 155 (1994), paras 65–67 (emphasis added).

According to Rule 15 of the Rules of the European Court of Human Rights, the registrar should be of high moral character and must possess the legal, managerial and linguistic knowledge and experience necessary to carry out the functions attaching to the post.⁶⁴ In practice, the position of the registrar has been filled by lawyers who have served within the Registry for a considerable period of time, such that '[i]t often seems that this appointment is some sort of in-house business that the outside world has little to do with'.⁶⁵ While familiarity with the working methods of the Court increases the experience necessary to carry out the registrar's functions, it could also lead to bureaucratic myopia or other institutional pathologies.⁶⁶ One survey respondent stressed that she had 'not always been given sincere answers to [her] questions put in writing as there has usually been very formal replies to the questions', which (s)he considered could 'point to problems in the way the Court and the Registry work'.⁶⁷

ECtHR judges assigned to cases are often unfamiliar with the domestic legal system from which the application originates. In fact, in order to avoid perceptions of partiality, they may only be involved in cases originating in their country involving judges from other contracting states – that is, those assigned to a committee, Chamber or Grand Chamber.⁶⁸ Depending on the judge(s) assigned to a case, the case lawyers' understanding of the facts and the domestic legal system – and, thus, their qualifications and practical experience – have potentially determinative effects on case outcomes.

In terms of legal background, most case lawyers hold a law degree from their own country, and some have studied in other Council of Europe countries as well,⁶⁹ acquiring familiarity with a number of relevant legal systems.⁷⁰ Many have specialized in human rights law and European law, in particular.⁷¹ Most case lawyers obtain their position through a competitive international call or competition, for which the prize is training at the Court.⁷² The fact that these officials are drawn from a pool of highly qualified individuals with the necessary language skills, as well as expertise in and understanding of both their own domestic legal system and other relevant ones, has the potential to affect evaluations of the trustworthiness of the Court, particularly given their central and even decisive role in the processing of applications.

⁶⁴ Rules of the ECtHR, *supra* note 47.

⁶⁵ K. Dzehtsiarou, Appointment of the Court's Registrar: Towards More Transparency, 22 April 2015, available at <https://strasbourgobservers.com/2015/04/22/appointment-of-the-courts-registrar-towards-more-transparency/>.

⁶⁶ Barnett and Finnemore, 'The Politics, Power and Pathologies of International Organizations', 53 *International Organization* (1999) 699.

⁶⁷ Survey response 2.1.

⁶⁸ Rules of the ECtHR, *supra* note 47, Rule 52A.

⁶⁹ Interview 2.1, Strasbourg, 10 January 2017; Interviews 3.1, 4.1 and 4.3, Strasbourg, 12 January 2017.

⁷⁰ Interestingly, most of the interviewed case lawyers (both junior and senior) had a legal education from countries outside their country of origin but stressed that they were 'atypical'. Interview 2.1, Strasbourg, 10 January 2017; Interviews 4.1 and 4.3, Strasbourg, 12 January 2017.

⁷¹ Interview 2.1, Strasbourg, 10 January 2017; Interview 4.1, Strasbourg, 12 January 2017.

⁷² Interview 2.1, Strasbourg, 10 January 2017.

Case lawyers perform the bulk of day-to-day processing of applications, but higher ranked Registry officials do become involved when the case moves on to the Chamber stage. Each judicial section within the Registry is divided into divisions headed by a manager who oversees the work of the case lawyers and who is often a Grade A4 career lawyer with considerable experience in the Court.⁷³ Managers are recruited following an external recruitment procedure and have professional experience acquired in the legal field and a thorough knowledge of their national legal system. With greater Court experience presumably comes the appearance of greater competency in the handling of the case, which likely shapes evaluations of the Court's trustworthiness.

Experience and competency in case handling clearly shape government agents' evaluations, who name the Registry as 'the backbone of the Court',⁷⁴ 'its most important player'⁷⁵ and critical in 'running the machinery of the Court'.⁷⁶ Still, considerable intra-institutional experience may also lead to less adaptability to changing circumstances, which could negatively impact estimations of the Court's competency. One survey respondent, for example, found the 'very formal and official' responses given by Registry officials to hinder truthful answers to his questions.⁷⁷

2 Role and Functions vis-à-vis Judges

The role and functions of the ECtHR Registry have changed significantly over the past few decades.⁷⁸ Before the Court became a permanent institution in 1998,⁷⁹ the Registry played a critical role in ensuring continuity, as the judges would come to Strasbourg for deliberations for only one week each month.⁸⁰ While the Registry's role in today's system is still largely related to ensuring continuity and coherence in the Court's case law and maintaining the institutional memory of the Court,⁸¹ its role and functions vis-à-vis the judges are 'a bone of contention'.⁸² Survey responses from government agents who had longer experience with the Court, however, hinted that the Registry was 'the quintessential player', with 'the judges' involvement in a case [varying] from judge to judge'.⁸³

On a general level, it is clear that 'judges often depend on the registrars and their teams',⁸⁴ the norm being 'that the judge is confronted with the observations and within

⁷³ Westerdiek, *supra* note 51.

⁷⁴ Survey response 1.1.

⁷⁵ *Ibid.*

⁷⁶ Survey response 2.1.

⁷⁷ *Ibid.*

⁷⁸ E. Fribergh, *The Transfer of the Staff from the Old to the New System* (2008).

⁷⁹ Protocol no. 11, *supra* note 62, which came into force on 1 November 1998, set up a single permanent court replacing a two-tier system consisting of a part-time court and commission.

⁸⁰ Interview 4.3, Strasbourg, 12 January 2017.

⁸¹ Interview 4.1, Strasbourg, 12 January 2017.

⁸² E. Yildiz, *A Court with Many Faces: Institutional Identities and Interpretive Preferences: The Case of the European Court of Human Rights and the Norm against Torture* (2016), at 106.

⁸³ Survey response 1.1.

⁸⁴ Yildiz, *supra* note 82, at 106, citing interview with an ECtHR judge; see also Dzehtsiarou and Coffey, *supra* note 54, at 284.

six months there is a draft and the judge signs or not and then sends it back with additional instructions'.⁸⁵ That being said, the extent of the role of the Registry vis-à-vis judges in Court proceedings differs depending on the Chamber composition to which an application is assigned. For instance, applications that are assigned to a single judge are those the case lawyers find to be 'clearly inadmissible',⁸⁶ and while a judge's involvement in each decision varies slightly according to the country, the judge often does not rely on more than '15 lines [by the non-judicial rapporteur] to make an assessment'.⁸⁷ The judge's input in these cases 'is very small',⁸⁸ and the role of Registry staff so prominent, that one might wonder whether there is at all a role for the Court's judges in 'single judge' cases.⁸⁹

When a case is not considered clearly inadmissible, the application is assigned to a three-judge committee.⁹⁰ For these cases, there is established case law applicable to the complaint; it seems clear what the ruling should be and, thus, there is 'no discussion'.⁹¹ The case lawyers draft the judgment before presenting it to the judges, and, on that basis, the judges either agree that there exists established and determinative case law on the issue or not. If they do not agree, the application is sent to a Chamber consisting of seven judges. Up until this point in the life of an application to the Court, the case lawyers have been the only officials with insight into the entire case file; only in cases that reach a Chamber do the judges get to 'see the entire arguments of the parties'.⁹² Even in Chamber cases, however, the file is accompanied by a fully drafted decision written by the Registry officials assigned to the case.⁹³ Any of the seven judges sitting on a Chamber case may contact the case lawyer to obtain more information about the case. In practice, then, judicial involvement is largely a matter of personal preferences, with some judges often requiring more information and some being satisfied with less.⁹⁴

Grand Chamber cases, which are the most delicate cases, are also those in which the role of the judges is the most prominent, at least in terms of the drafting of decisions. This does not necessarily imply that the role of the Registry proportionally decreases in these cases. Rather, one judge is appointed as rapporteur for the case and

⁸⁵ Interview 2.1, Strasbourg, 10 January 2017.

⁸⁶ Interviews 2.1 and 2.2, Strasbourg, 10 January 2017.

⁸⁷ Interview 2.2, Strasbourg, 10 January 2017.

⁸⁸ *Ibid.*

⁸⁹ A significant amount of criticism has been directed at the Court for breaching Art. 45 of the ECHR, *supra* note 43, by not providing applicants with reasons when dismissing cases under Rule 51A(1), in particular, in cases that are considered as 'manifestly ill-founded'. While some lawyers try to include a reference to previous case law to give the applicant(s) and their lawyers a hint at why their application was rejected, most just receive a standardized letter from the Court (Interview 2.1, Strasbourg, 10 January 2017). Now that the Court has cleared its huge backlog of cases, this procedure, which might affect evaluations of the trustworthiness of the Court on the side of applicants (but not visibly on the side of government agents) is about to change (Interview 2.2, Strasbourg, 10 January 2017).

⁹⁰ Interviews 2.1 and 2.2, Strasbourg, 10 January 2017; see also ECHR, *supra* note 43, Arts 26–28.

⁹¹ Interview 2.2, Strasbourg, 10 January 2017.

⁹² *Ibid.*

⁹³ Interview 4.2, Strasbourg, 12 January 2017.

⁹⁴ Interview 2.2, Strasbourg, 10 January 2017.

works directly with the case lawyer(s) to prepare notes for the Grand Chamber and to go through drafts of the judgment, which then forms the basis of discussion among the judges.⁹⁵ Similar to Chamber cases, '[t]he extent of intervention, supervision and work of the judge Rapporteur depended on the personality, diligence and industry of the particular judge'.⁹⁶ In those instances, where the judge rapporteur did not possess those qualities, the 'view of the member of the Registry frequently prevailed'; she or he would give 'the direction to the solution of the case; i.e. whether the case should be declared admissible or inadmissible, whether it should be communicated and whether a violation should be found'.⁹⁷ Government agents with longer and more extensive experience with the Court seem aware that 'the overwhelming majority of decisions are drafted by the registry lawyers', albeit 'in cooperation with, and under the instructions of, the judge rapporteur'.⁹⁸

Finally, one section of the Registry – the Office of the Jurisconsult – has the formal power to 'provide opinions and information' (Rule 18b), and, although 'the bench doesn't have to follow',⁹⁹ interviews suggested that the office often plays a decisive role in case outcomes. After decisions have been drafted (with the involvement of the case lawyers), the jurisconsult examines 'to which extent each draft [– that is, its reasoning and decisions –] was compatible'.¹⁰⁰ If the jurisconsult has any concerns regarding the analysis, he 'passes it on to the five lawyers who then read the file in light of his concerns'.¹⁰¹ The Office of the Jurisconsult consists only of the jurisconsult and the deputy jurisconsult, which is why it sometimes draws on the assistance of the section lawyers, typically 'experts in particular areas'.¹⁰² To strengthen the analysis, the jurisconsult might also request international law, comparative law or case law reports.¹⁰³

In sum, the involvement of the various Registry sections and officials in the different life stages of an application – be it a 'single judge' declaration that a case is clearly inadmissible or the jurisconsult's role in Chamber cases – demonstrates the Registry's capacity to affect the trustworthiness of the Court. There is one significant exception to this norm of procedure – the drafting of separate or dissenting opinions in Grand Chamber cases. In such cases, the relationship between judges and Registry officials is 'non-existent'.¹⁰⁴

3 *Role and Functions vis-à-vis Parties*

Agents that appear before the ECtHR on a regular basis have more opportunities to interact with the Court's Registry, have greater familiarity with their activities and,

⁹⁵ Interview 4.2, Strasbourg, 12 January 2017.

⁹⁶ Loucaies, 'Reflections of a Former European Court of Human Rights Judge on His Experiences as a Judge', 1 *Roma Rights Journal* (2010).

⁹⁷ *Ibid.*

⁹⁸ Survey response 2.1.

⁹⁹ Interview 1.1, Strasbourg, 9 January 2017.

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ Interview 2.2, Strasbourg, 10 January 2017.

¹⁰⁴ Interview 4.2, Strasbourg, 12 January 2017.

thus, will be more likely to rely on these activities in evaluating the ECtHR's trustworthiness. The degree, nature and frequency of communications varies along a number of dimensions. Agents' communications with Registry officials may differ according to who the agent represents: the applicant or government. With the exception of a very small number of applicant agents who regularly appear before the Court, correspondence between Registry officials and applicants (through their agents) is conducted exclusively in writing. In fact, it is not 'technically' possible for them to communicate orally or through email with the Registry regarding a case, as the staff does not 'give out personal email or phone number'.¹⁰⁵ Every communication (whether it be a question or a request for additional information or documentation) with the Registry – and, by extension, with the Court – must be carried out by post. Most letters sent by the Registry follow a standardized scheme, and those sent to the applicant before the case has been communicated to the government are all signed by the case lawyers themselves, either temporary or permanent ones. It is only after the case has been communicated to the government that letters are signed by the section registrar or deputy section registrar – but still not by a judge.¹⁰⁶

While the same procedures generally apply to government agents, communication with the Registry seems slightly less formal, with government agents often in possession of a Registry official's email or phone number.¹⁰⁷ The degree of communication with government agents varies from country to country, and while some 'countries will insist that all contact occurs at a higher level, others are more informal'.¹⁰⁸ Overall, interviews suggested that government agents are more likely than applicant agents to make a phone call or send an email to the case lawyer to 'ask about the status of the case'¹⁰⁹ and may even receive a call from a case lawyer reminding them of an upcoming deadline.¹¹⁰

If a case reaches a Chamber or the Grand Chamber, the interaction between agents and the Registry changes. Communication with heads of divisions or section registrars replaces parties' communications with junior or senior case lawyers. Interaction also shifts from the Registry to the Court's judges during oral arguments. Outside the context of specific disputes, Registry lawyers may act as 'go-betweens', helping to interpret and explain decisions or actions of the Court to agents. Their ability to do so likely impacts constituents' evaluations of a court's trustworthiness by helping 'to disambiguate causality in the interpretation of events, separating mishaps, lack of competence and opportunism'.¹¹¹ In the ECtHR, the Registry meets with government agents during special meetings to discuss 'structural problems' with the system itself.¹¹² These meetings provide unique opportunities for Court officials to explain

¹⁰⁵ Interview 4.1, Strasbourg, 12 January 2017.

¹⁰⁶ Interview 2.1, Strasbourg, 10 January 2017.

¹⁰⁷ Interview 4.1, Strasbourg, 12 January 2017.

¹⁰⁸ *Ibid.*

¹⁰⁹ Interviews 31, 4.1 and 4.3, Strasbourg, 12 January 2017.

¹¹⁰ *Ibid.*

¹¹¹ Nooteboom, *supra* note 22, at 44. Nooteboom notes that '[s]ome of the roles of go-betweens facilitate control and others facilitate trust building'.

¹¹² Interview 4.1, Strasbourg, 12 January 2017.

and receive feedback about procedural or jurisprudential innovations. Through these meetings and other interactions, Registry officials play a key go-between role and use it to ‘cultivate this relationship with the governments’.¹¹³ Yet, at the same time, Registry officials recognized that while a ‘cordial relationship with government[s]’ may be necessary for the efficient and effective processing of case applications, it ‘[c]an never be friendly though ... trust in the Registry [rests] in that distance’.¹¹⁴

In sum, the degree, nature and frequency of communications between government agents and various types of registry officials varies according to the number of applications against a country, the existence of structural problems, the size of the government’s office dealing with ECtHR cases and, finally, the ‘personal rapport’ established over time between the agent(s) and Registry officials. For those country–Registry relationships that involve more frequent interaction and greater rapport, we would expect the Registry’s practices to have a greater influence on a government agent’s evaluation of the Court’s trustworthiness.

4 Institutional Memory

The role of the Registry in terms of maintaining the Court’s institutional memory has varied over the years, with the Registry playing a critical role in the transition from an ad hoc Court to a permanent one in 1998.¹¹⁵ In today’s Court, three characteristics of the Registry play a role in helping ensure various aspects of the Court’s institutional memory. The first two relate to the formal responsibilities of the jurisconsult, while the third relates to the more informal role played by long-term or permanent lawyers within the Registry.

The formal responsibility for safeguarding the institutional memory of the Court rests with the jurisconsult,¹¹⁶ who is responsible for ‘ensuring ... consistency of [the Court’s] case-law’.¹¹⁷ In addition to formally overseeing and ensuring coherence in the Court’s case law, the jurisconsult has been responsible for the preparation of ‘[t]he Reports of Judgments and Decisions’, which was a (now discontinued) official collection of the Court’s leading judgments, decisions and advisory opinions since 1998.¹¹⁸ Both of these formal responsibilities visibly manifest the Court’s institutional memory. In addition, other career Registry officials play a more informal role in that personal and career memories may contribute to bureaucratic and procedural consistency.¹¹⁹ For instance, although the current registrar has only been in office since 2015, the former registrar, Erik Fribergh, held the office for 10 years (2005–2015), in addition to previous positions as deputy registrar and section registrar of the Court (a total of

¹¹³ Interview 4.2, Strasbourg, 12 January 2017.

¹¹⁴ *Ibid.*

¹¹⁵ Fribergh, *supra* note 78; see also Interview 4.3, Strasbourg, 12 January 2017. On the role played by the Registry in the transition period, see, e.g., Hennette-Vauchez, *supra* note 44.

¹¹⁶ The Office of the Jurisconsult was established in 2001 and currently consists of the jurisconsult and the deputy jurisconsult.

¹¹⁷ Rules of the ECtHR, *supra* note 47, Rule 18b.

¹¹⁸ The selection of the most important cases is made by the Bureau following a proposal by the jurisconsult.

¹¹⁹ Cartier and Hoss, *supra* note 5.

30 years of experience at the Court/Commission). This longevity in Registry oversight arguably has contributed to ensuring procedural regularity over the years.

Other permanently employed staff also play an important role in accumulating and regularizing personal experiences and practices that they have found to work (or not) during their interaction with the parties' agents.¹²⁰ These lawyers possess expert knowledge on the European Convention on Human Rights and its application in cases before the Court and acquire increasing sensitivity to various interests at stake in each case. The fact that ECtHR judges only serve on the bench for nine years endows the permanent lawyers, who often stay for much longer terms, with the ability to 'prolong the memory of the institution by looking for similar cases and apply[ing] the similar techniques',¹²¹ thus ensuring 'solidity and coherence'.¹²² While some may find this problematic, in that the 'input of the individual judge is minimized', this role within the Court might also be highly relevant in assessments of the institution's trustworthiness. Comparable to other international courts, the ECtHR's Registry 'provide[s] the continuity and the cement, the credibility and the connections'.¹²³ Permanent or long-term lawyers build up the normative and diplomatic knowledge and experience necessary to 'deal with the complex interlinkages that are characteristic of international regimes'.¹²⁴ Considering that the judges are rarely in direct contact with the parties, this diplomatic knowledge is critical in shaping agents' evaluations of the Court's trustworthiness.

4 Conclusion

Despite the central role of trust in shaping actors' willingness to accept judicial decisions and, thereby, contributing to international courts' ability to render justice, little scholarly attention has been paid to the ways in which these institutions build trust. This article has sought to fill part of this gap by first theorizing factors that feed into estimations of trust in international courts more generally. Drawing on interviews with Court officials, surveys with government agents and the Rules of Court, we have examined and discussed these factors in the specific context of the ECtHR.

We have suggested that three components contribute to assessments of trust in an international court: mechanisms of control over the institution, the institution's social capital and its trustworthiness. Building on research on ICS, we have argued that registries and legal secretariats of international courts have the potential to play an important trust-building role in these institutions, which is largely overlooked in existing literature. Starting with the international court with the largest registry – the ECtHR – we then examined and discussed the institutional design

¹²⁰ Interview 4.3, Strasbourg, 12 January 2017.

¹²¹ Interview 2.2, Strasbourg, 10 January 2017.

¹²² *Ibid.*

¹²³ Yi-Chong and Weller, *supra* note 20, at 279.

¹²⁴ S. Bauer, P.-O. Busch and B. Siebenhüner, 'Administering International Governance: What Role for Treaty Secretariats?', Global Governance Working Paper 29 (2007).

of the Court and the role and practices of its Registry in shaping (dis)trust in this institution.

In terms of formal control mechanisms or institutional constraints, the Registry's hierarchical structure appears to contribute to strengthening trust in the Court. Yet, in spite of this hierarchical structure, Registry lawyers enjoy considerable discretion in how they conduct their activities, with little, if any, direct day-to-day oversight. However, formal hiring control mechanisms – such as external recruitment procedures and adherence to the same code of conduct as other Council of Europe staff members – have thus far mitigated concerns that Registry staff hold or act upon preferences contrary to those held by the wider membership. While the presence of seconded lawyers may negatively affect applicant lawyers' estimations of trust in the Court, to date they have had a relatively positive influence on estimations made by government agents.

In addition to institutional control mechanisms available to the broader membership of the Council of Europe, an important trust-building component rests with the cultural and social linkages between parties' lawyers and Registry staff. While this may play a more prominent role in applicant lawyers' estimations of trust in the Court, we do find that the relationship – and social capital – developed between government agents and Registry staff feed into the former's trust estimations. Agents with a greater number of applications filed against their home country engage in more frequent communications with Registry officials – often the same individuals – enabling them to build up rapport over time.

Finally, a number of factors condition the Registry's ability to affect government agents' estimations of the Court's trustworthiness. In particular, we identify four factors related to court administration that we see as shaping views on trustworthiness: the qualifications of Registry officials; the relationship between the Registry and ECtHR judges; the relationship between the Registry and the parties; and the institutional memory and capacity of the Court. We have found that the qualifications required of Registry officials ensure greater understanding of both their own and other relevant domestic legal systems, with the potential to improve evaluations of the Court's trustworthiness. However, the lengthy tenure of many Registry officials in the Court may also lead to bureaucratic formalism and a lack of adaptability to changing circumstances, which we found has negatively shaped some government agents' views of the Court.

In terms of the relationship between Registry officials and judges, we have found that the involvement of Registry sections and the role of judges vary considerably in the different life stages of an application. During the day-to-day case application processing, the Registry is the primary face of the Court, suggesting that judges may have a smaller role to play in shaping routine evaluations of trustworthiness. This all depends necessarily on the parties' knowledge of the role and activities of the Registry. Our preliminary survey of government agents suggests that many are very much aware of the critical role played by the Registry and that their regular interactions with these officials shape overarching views on the Court. Lastly, the longevity of Registry oversight has contributed to ensuring procedural regularity as well as jurisprudential

consistency, which a number of government agents identified as being central to the Registry's role in the Court.

This article has sought to unpack the concept of trust in international courts and shed new light on the role that registries and legal secretariats may play in constituents' trust estimations, although our analysis and findings are limited to the distinctive context of the ECtHR. Research on the importance of trust for the functioning of international courts and the presence – or absence – of it in these institutions is still in nascent stages. We see two lines of inquiry as being desperately in need of further exploration. First, more research is needed to gauge the trust-building role registries and legal secretariats play in other international and regional courts. To what extent does our conceptualization of trust and the role of the registry in shaping estimations of trust travel to different contexts? How do institutional design features, the composition of registry staff, their qualifications and their role vis-à-vis parties and judges affect their ability to contribute to their (dis)trust in other international courts? Second, we urge scholars to draw on existing research in other fields and to engage in interdisciplinary debates in order to develop measures for the empirical assessment of trust. Looking beyond the ability of registries and legal secretariats to build trust in courts, how do their roles, functions and day-to-day work actually affect estimations of trust among various court constituents? Do these factors affect the trust estimations of different constituents – like citizens, lawyers, academics, civil society or government representatives – differently; how and why does this vary across courts? Providing answers to these questions has the potential to contribute to discussions about reforms of such institutions and to ensure their stable and effective functioning and, thereby, their ability to render justice.

Appendix 1: Survey with Government Agents

In order to identify and evaluate the practices that impact constituents' evaluations of the Court's trustworthiness, we conducted a survey of government agents who represent their respective states in cases of alleged violations of the European Convention of Human Rights.

The survey instrument was developed along four lines of inquiry. The first line of questions sought to identify government agents' level of experience with the institution, to assess the extent to which familiarity plays an important role in evaluations of Court practices. The second line of inquiry aimed to evaluate government agents' knowledge about the inner workings of the Court: what do government agents actually know about the Registry, the relationship of Registry officials with judges and which court practices they thought they could (not) attribute to the Registry.

The third line of inquiry aimed to map agents' interactions with the Court both formally within and as well as outside judicial proceedings. These questions sought

to identify the practices they consider relevant in assessing the Court as well as the extent to which they are aware of or think about their interactions with Registry officials.

The fourth and final line of inquiry asked respondents to identify, in order of importance, the features or characteristics of their interaction with the Court that they saw as being critical to assessments of their satisfaction or dissatisfaction with the Court. Through these questions, we sought to uncover inductively those practices on which government agents rely when they evaluate the Court and specifically those that shape their evaluations of the institution's trustworthiness.

Since interviews revealed that the Registry interacts or communicates differently with government agents and applicant lawyers, we theorize separately about the ways in which Registry practices might affect evaluations of the trustworthiness of the Court by these two groups. The survey instrument was fielded in the two official languages to government agents of all CoE states.¹²⁵ While we are ultimately interested in examining the role of the Registry within the wider constituency of the Court – such as applicants, their agents, NGOs that file *amicus curiae* to the Court or assist applicants – we focused on government agents as a first step.

Survey Instrument

I Agent Background & Experience

1. How many years have you held the function of government agent to the ECtHR?
2. Did you have any former experience with the ECtHR prior to your position as a government agent to the ECtHR?
 - a. No.
 - b. Yes. Please specify _____.
3. How many times (approximately) have you personally represented your government in a case before the ECtHR?
4. Of the cases that you have been involved with, how many cases (approximately) have been dealt with as committee cases?
5. Of the cases that you have been involved with, how many cases (approximately) have been dealt with as chamber cases?
6. Of the cases that you have been involved with, how many cases (approximately) have been dealt with as Grand Chamber cases?

II Organs of the ECtHR

7. In your opinion, what is the role of the ECtHR Registry?
8. What types of administrative functions do you think the ECtHR Registry exercises?
9. What types of judicial functions do you think the ECtHR Registry exercises?

¹²⁵ With the exception of France, Ireland and Greece. The contact information for these countries has been more difficult to track down. The survey instrument was fielded electronically, via Qualtrics.

10. In your opinion, what is the division of labour between the ECtHR Registry and the ECtHR Judges?

III Interaction with the ECtHR in the Context of Cases Before the Court

In the following questions, 'assistance' refers to any type of correspondence with the ECtHR, whether formal or informal.

Rule 39 Cases (interim measures)

Please answer the following questions if you have been involved in cases in which the ECtHR considered or indicated interim measures according to Rule 39.

11. Has the ECtHR ever provided you with any assistance during the course of such proceedings?
- Yes. If yes, what was the nature of this assistance?
 - No.
12. What aspects of your interaction with the ECtHR did you find were the most important or useful to you during proceedings regarding interim measures? Please list up to three.

Committee and Chamber Cases

Please answer the following questions if you have been involved in cases that have been dealt with as Committee or Chamber cases.

13. Has the ECtHR ever provided you with any assistance during the course of such proceedings?
- Yes. If yes, what was the nature of this assistance?
 - No.
14. What aspects of your interaction with the ECtHR did you find were the most important or useful to you during Committee or Chamber cases? Please list up to three.

Grand Chamber Cases

Please answer the following questions if you have been involved in cases that have been dealt with as Grand Chamber cases.

15. Has the ECtHR ever provided you with any assistance during the course of such proceedings?
- Yes. If yes, what was the nature of this assistance?
 - No.
16. What aspects of your interaction with the ECtHR did you find were the most important or useful to you during Grand Chamber cases? Please list up to three.

IV Interaction with the ECtHR Outside the Context of Cases Before the Court

17. Have you communicated with employees of the ECtHR outside the context of a case before the Court?
 - a. Yes.
 - b. No.
18. If yes, what was the position of the ECtHR employee?
19. If yes, please indicate at a general level what the communication was about.
20. If yes, what was the type or method of your communication? Please tick all the boxes that apply.
 - a. Regular post.
 - b. Email.
 - c. Phone.
 - d. In person.
 - e. Other, please specify.

Overall Evaluation of Experience with ECtHR

21. To the extent that you were satisfied with your experience(s) with the ECtHR, please list in order of importance five features or characteristics of your interaction(s) with the Court that you think contributed to your satisfaction with the institution.
22. To the extent that you were not satisfied with your experience(s) with the ECtHR, please list in order of importance five features or characteristics of your interaction(s) with the Court that you think contributed to your dissatisfaction with the institution.