EXIT, VOICE, AND LOYALTY: AN ANALYSIS OF AFRICAN STATES' BEHAVIOUR IN RELATION TO THE INTERNATIONAL CRIMINAL COURT.

BY

MAXINE RUBIN

Thesis Presented for the Degree of

DOCTOR OF PHILOSOPHY

In the Department of Political Studies

UNIVERSITY OF CAPE TOWN

FEBRUARY 2022

Supervisor: Professor Annette Seegers

Co-supervisor: Professor Zwelethu Jolobe

University of Cape Town

The copyright of this thesis vests in the author. No quotation from it or information derived from it is to be published without full acknowledgement of the source. The thesis is to be used for private study or non-commercial research purposes only.

Published by the University of Cape Town (UCT) in terms of the non-exclusive license granted to UCT by the author.

University of Cape Town

Declaration

I declare that this thesis is my own unaided work, both in concept and execution, and that apart from the normal guidance from my supervisor, I have received no assistance. It is being submitted in fulfilment of the requirements for the degree of Doctor of Philosophy, at the University of Cape Town. Neither the substance nor any part of the thesis has been submitted in the past or is being submitted for a degree at this University or at any other university.

Maxine Rubin
2022

ABSTRACT

African states have been divided in their relations with the International Criminal Court (ICC). Despite these divisions, the literature on this relationship has focused on withdrawal behaviour to the neglect of other types of behaviour, such as support for the ICC. Consequently, it is unable to explain what influences the diverse behaviour. This dissertation adapts Albert Hirschman's *Exit, Voice, and Loyalty* (EVL) model into an International Relations model to categorise the different types of behaviour by African states and, subsequently, guide an explanation of the behaviour.

Primary evidence of each African State Party's official policy position toward the ICC consisted of 208 country statements delivered between 2008 and 2018 at relevant United Nations and ICC forums. The study used discourse analysis to interpret satisfaction and dissatisfaction with the ICC in the statements and, consequently, categorise the states into one of the three behaviour groups for each year and forum. The country statement data are complemented by key informant semi-structured interviews, academic literature, news articles, and grey literature to explain the major factors influencing the behaviour of each state.

Five explanatory variables were prevalent as explanations of African states' behaviour in relation to the ICC – head of state interests, domestic factors, regional politics, reputational factors, and economic factors. It was found that behaviour was caused by combinations of these variables. Broadly, exit and voice were primarily influenced by head of state interest and regional politics, whereas loyalty was influenced by reputational factors and/or economic factors.

The results of this study have important implications for the study of Africa's international relations. The findings about the influence of the head of state variable demonstrated the relevance of the personalisation of power and how this affects the production of foreign policy. The heterogeneity of behaviour also challenges the usefulness of 'Africa' as a category and highlights issues of essentialism and reductionism with the treatment of 'Africa' as an indivisible unit of analysis, at least, regarding the withdrawal debate.

ACKNOWLEDGEMENTS

I would like to acknowledge the support offered by everyone who helped make this research possible. I am eternally indebted to my dad, Ivan Rubin, for his boundless love, support, and faith in me, without which I would not have had the courage to pursue a PhD.

I am appreciative of the generosity and advice received from Ceri Kerrin, Grant Hartzenburg, Nicholas Malherbe, Hugo van der Merwe, Uri Rubin, Michael Hathorn, and Astrid Ridgway. The willingness of the individuals interviewed for my study is deeply appreciated and enhanced the quality of the analysis.

I grateful for the financial support received from the Oppenheimer Memorial Trust, the Next Generation in Social Sciences Africa Fellowship, the University of Cape Town, and the British International Studies Association. I am thankful to the UCT's Department of Political Studies, especially Vicki Sinden.

I am thankful for the guidance and expertise shared with me by my primary supervisor, Professor Annette Seegers, and co-supervisor, Professor Zwelethu Jolobe.

Maxine Rubin

Cape Town, South Africa
February 2022

TABLE OF CONTENTS

ABSTRACT II

ACKNOWLEDGEMENTS III

TABLE OF CONTENTS IV

LIST OF TABLES AND FIGURES XI

LIST OF ACROYNMS AND ABBREVIATIONS XII

1. INTRODUCTION 1

1.1. Research Question 4

1.2. Research Design 5

1.3. Objectives 6

1.4. Basic Concepts and Definitions 6

1.4.1. States 6

1.4.2. International Organisations 7

1.4.3. Behaviour 7

1.4.4. Heads of States 9

1.5. Research Method 9

1.5.1. Operationalisation of exit, voice, and loyalty 10

1.5.2. Discourse Analysis 10

1.5.3. Explanations of Behaviour 11

1.6. Evidence 12

1.6.1. Qualitative Evidence 12

1.6.2. Quantitative Evidence 13

1.7. Limitations 14

1.8. Main Findings and Contributions 16

1.9. Chapter Outline 17

2. BACKGROUND INFORMATION: AFRICAN-ICC RELATIONS 20

2.1. African States and the Creation of the ICC 20

2.1.1. Regional Coordination 21

2.1.2. The Rome Conference 24

2.2. The ICC and the Rome Statute System 26

2.2.1. The ICC's Jurisdiction 27

2.2.2. Complementarity 29

2.3. The Review Conference 29

2.4. Africa's Relationship with the ICC 30

2.4.1. The al-Bashir Arrest Warrant 31

2.4.2. The Kenyan Situation 34

2.4.3. The Draft Withdrawal Strategy Document 35

2.5. Conclusion 37

3. LITERATURE REVIEW 38

3.1. Prominent Themes in the Withdrawal Debate Literature 38

3.1.1. The ICC and Accusations of Selection Bias 39

3.1.2. Conflicting International Obligations 45

3.1.2.1. Abuse of Universal Jurisdiction Principle 46

3.1.3. Peace versus Justice Debate 47

3.1.4. Prosecutor's Personality: Luis Moreno Ocampo 48

3.1.5. Gaps 49

3.1.5.1. Economic Factors 50

3.1.5.2. Neo-imperialism: An Empty Signifier 52

3.1.5.3. Reasons for Joining 53

3.1.5.4. Behavioural Analysis 55

3.2. Prominent Approaches to Analysing the Withdrawal Debate 57

3.2.1. Research Design 58

3.2.1.1. Positivist Assessments 58

3.2.1.2. Critical Studies 58

Internal Critiques 59

3.2.1.3. Conceptual and Theoretical Approaches 59

3.2.1.4. Evaluative 60

3.2.2. Research Methods 60

3.2.2.1. Types of Study 61
3.2.2.2. Unit of analysis 64
3.2.3. Evidence 64
3.2.3.1. Primary Evidence: Qualitative 64
3.2.3.2. Primary Evidence: Quantitative 66
3.2.3.3. Secondary Evidence 66
3.2.4. Gaps 66
3.3. Conclusion 67
4. METHODOLOGY 69
4.1. Research Design 69
4.1.1. Unit of Analysis and Research Objective 69
4.1.2. Case Size 71
4.1.3. Temporal Scope 72
4.2. Theory-confirming Case Study Method 73
4.3. Evidence 75
4.3.1. The Discourse Analysis Method 76
4.3.2. Country Statements 78
4.3.2.1. ICC General Debate 81
4.3.2.2. UNGA ICC Report Plenary Sessions 83
4.3.2.3. UNGA General Debate 85
4.3.3. Coding 87
4.3.4. Interviews 88
4.4. Explanatory Factors: Africa's International Relations 89
4.4.1. Head of State Interests 90
4.4.1.1. Measuring Head of State Interest 92
4.4.2. Regional politics 92
4.4.2.1. Measuring Regional Politics 95
4.4.3. Domestic Factors 95
4.4.3.1. Measuring Domestic Factors 96
4.4.4. Reputational factors 97

4.4.4.1. Measuring Reputational Factors 98
4.4.5. Economic Factors 98
4.4.5.1. Measuring Economic Factors 99
4.5. Limitations 99
4.6. Conclusion 101
5. EXIT, VOICE, AND LOYALTY AND THE WITHDRAWAL DEBATE 103
5.1. Overview of Hirschman's Exit, Voice, and Loyalty Model 103
5.2. EVL and the ICC 105
5.2.1. Critical Assessment of Existing IR adaptations of the EVL Model 105
5.2.2. Applying EVL Model to the Withdrawal Debate 109
5.2.2.1. States as the Unit of Analysis 110
5.2.2.2. Context of IOs 111
5.2.2.3. Costs of Exit and Voice 113
5.2.2.4. Competition 115
5.2.2.5. Is the ICC in decline? 118
5.3. The EVL Model and the Withdrawal Debate 119
5.3.1. Exit 119
5.3.2. Voice 119
5.3.3. Loyalty 120
5.4. Conclusion 120
6. EXIT 122
6.1. The Exit Data 123
6.2. Exit Country Statements 125
6.2.1. Questionable Credibility of the ICC 125
6.2.2. Commitment to International Norms 130
6.3. Burundi: 135
6.3.1. Disrespectful Procedural Conduct by the Court 135
6.3.2. Complementarity 137
6.3.3. Acting on Behalf of the People 139

6.4. South Africa: **140**

6.4.1. Dilemma **141**

6.4.2. The Rome Statute is Unclear **143**

6.4.3. Inaction by the UNSC **145**

6.5. The Gambia **148**

6.6. Conclusion **148**

7. VOICE **151**

7.1. The Voice Data **151**

7.2. Voice and the International Criminal Court **152**

7.2.1. Threats of Exit **153**

7.2.2. Solidarity with Other African States **158**

7.2.3. Improve relations with Africa/the AU **161**

7.2.4. Sitting State Officials' Immunity **164**

7.2.5. Complementarity **168**

7.2.6. Selectivity **172**

7.2.7. Concerns with ICC Conduct and Procedure **176**

7.2.8. UNSC Influence **179**

7.3. Conclusion **182**

8. LOYALTY **184**

8.1. The Loyalty Data **184**

8.1.1. Reservations on AU Decisions **185**

8.2. Loyalty and the International Criminal Court **186**

8.2.1. Withdrawal Debate-related Matters **187**

8.2.1.1. Peace versus Justice 187

8.2.1.2. ICC Withdrawal/Membership 191

8.2.1.3. ICC-Africa Relations 194

8.2.1.4. UNSC/Non-States Parties 197

8.2.2. Increasing the ICC's Powers **199**

8.2.2.1. Expanding the Court's Jurisdiction 200

8.2.2.2. Mobilising Resources for the ICC 203
8.2.3. Promoting Cooperation with the ICC 205
8.2.3.1. Generic Pledges of and Calls for Cooperation 205
8.2.3.2. Cooperation as a situation country 209
8.2.3.3. Domestication of the Rome Statute 211
8.2.3.4. Complementarity 212
8.2.4. The ICC is a Credible Institution 215
8.2.4.1. ICC Promotes International Norms 218
8.2.5. Approval of the ICC's Case Selection 221
8.3. Conclusion 225
9. THE MAIN FACTORS AFFECTING AFRICAN STATES' BEHAVIOUR REGARDING THE ICC 227
9.1. Head of State Interest 228
9.1.1. Burundi and The Gambia 229
9.1.1.1. The Gambia's Loyalty Behaviour 233
9.1.2. Kenya 234
9.1.2.1. Kenya's Loyalty Behaviour 245
9.1.3. Liberia 246
9.1.4. Conclusion 248
9.2. Regional Politics 250
9.2.1. South Africa 250
9.2.2. Djibouti and Tanzania 267
9.2.3. Namibia 269
9.2.4. Malawi 271
9.2.5. Conclusion 272
9.3. Domestic Politics 273
9.3.1. Domestic Political Opponents 273
9.3.1.1. Self-referrals 273
9.3.1.2. Preliminary Investigations 280
9.3.1.3. Loyalty and Self-Legitimation 282

9.3.1.4. Voice and Regional Politics 283
9.3.2. Spill-over Conflict 285
9.3.3. Popular Mandate 287
9.3.4. Conclusion 287
9.4. Reputational and Economic Factors 288
9.4.1. 'Good Global Citizens' Status 289
9.4.2. Other International Reputational Factors 297
9.4.3. Economic Drivers 299
9.4.4. Conclusion 301
9.5. Conclusion 303
10. CONCLUSION 308
10.1. The Question of African States' Behaviour in Relation to the ICC 308
10.2. The Analysis of African States' behaviour in relation to the ICC 309
10.3. Implications for the EVL Model 314
10.4. Implications for the African States-ICC Relationship 319
10.5. Implications for studying Africa's IR Behaviour 322
10.6. Implications for Future Research on this Topic 324
11. BIBLIOGRAPHY 327
12. APPENDICES 374
12.1. Appendix 1 374
12.2. Appendix 2 375
12.3. Appendix 3 379
12.4. Appendix 4 384
12.5. Appendix 5 430

LIST OF TABLES AND FIGURES

List of Tables

Table 1: Interview schedule 89
Table 2: Reservations entered on AU decisions by African States Parties 185

List of Figures

Figure 1: Accession to Rome Statute by African States. 23
Figure 2: Map of ICC investigations underway as of January 2022. 31
Figure 3: Table of ICC-ASP General Debate Country Statements 82
Figure 4: Total number of statements related to the withdrawal debate at the ICC GD by year 82
Figure 5: Table of UNGA ICC RP Country Statements 84
Figure 6: Total number of statements related to the withdrawal debate at the UNGA ICC RP by year 84
Figure 7: Table of UNGA GD Country Statements 86
Figure 8: Total number of statements related to the withdrawal debate at the UNGA GD by year 86
Figure 9: Use of Exit Behaviour in Country Statement Data 125
Figure 10: Use of Voice Behaviour in Country Statement Data 152
Figure 11: Continuum of Behaviour 156
Figure 12: Use of Loyalty Behaviour in Country Statement Data 185

LIST OF ACROYNMS AND ABBREVIATIONS

ACP countries	African, Caribbean, and Pacific Group of States
Ad Hoc Committee	Ad Hoc Committee on the Establishment of an International Criminal Court
ASP	Assembly of States Parties
ASP GD	Assembly of States Parties General Debate
AU	African Union
AU Commission on the ICC	Commission on the Implementation of Assembly of the Union on Africa and the International Criminal Court
AUPSC	African Union Peace and Security Council
Benin	Republic of Benin
Botswana	Republic of Botswana
Burkina Faso	Republic of Burkina Faso
Burundi	Republic of Burundi
Cabo Verde	Republic of Cabo Verde
CAR	Central African Republic
Chad	Republic of Chad
CICC	Coalition for the International Criminal Court
Comoros	Union of Comoros
Congo-Brazzaville	Republic of the Congo
CORD	Coalition for Reforms and Democracy
Côte d'Ivoire	Republic of Côte d'Ivoire
Djibouti	Republic of Djibouti
DRC	Democratic Republic of Congo
DV	Dependent variable
Egypt	Arab Republic of Egypt
EU	European Union

EVL	Exit, voice, and loyalty
Gabon	Gabonese Republic
The Gambia	Republic of the Gambia
Ghana	Republic of Ghana
GNI	Gross National Income
Guinea	Republic of Guinea
ICC	International Criminal Court
ICC GD/s	International Criminal Court General Debate/s
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ILC	International Law Commission
IO/s	International organisation/s
IPE	International Political Economy
IR	International Relations
IV	Independent variable
Kenya	Republic of Kenya
Large-n	Large number of cases
Lesotho	Kingdom of Lesotho
Libya	State of Libya
LMG	Like-Minded Group
LRA	Lord's Resistance Army
Madagascar	Republic of Madagascar
Malawi	Republic of Malawi
Mali	Republic of Mali
Mauritius	Republic of Mauritius
Namibia	Republic of Namibia
NGO/s	Non-governmental organisation/s
Niamey Declaration	Niamey Final Declaration on the International Criminal Court
Nigeria	Federal Republic of Nigeria

OAU	Organisation of African Unity
OECD	Organisation for Economic Co-operation and Development
OTP	Office of the Prosecutor
P5	Permanent Five members of the United Nations Security Council
PrepCom	Preparatory Committee on the Establishment of an International Criminal Court
Rome Conference	United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court
Rwanda	Republic of Rwanda
SADC	Southern African Development Community
Senegal	Republic of Senegal
Seychelles	Republic of Seychelles
Sierra Leone	Republic of Sierra Leone
Small-n	Small number of cases
South Africa	Republic of South Africa
Sudan	Republic of the Sudan
Tanzania	United Republic of Tanzania
The African Court	African Court of Justice and Human Rights
The Gambia	Republic of The Gambia
The Malabo Protocol	The Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights
The Ministerial Committee	Open-ended Committee of Foreign Ministers on the International Criminal Court
Tunisia	Tunisian Republic
Uganda	Republic of Uganda

UK	United Kingdom
UN	United Nations
UNGA	United Nations General Assembly
UNGA GD/s	United Nations General Assembly General Debate/s
UNGA ICC RP/s	United Nations General Assembly International Criminal Court Report Plenary/ies
UNSC	United Nations Security Council
US	United States
Zambia	Republic of Zambia

1. INTRODUCTION

The International Criminal Court (ICC) is the first permanent global court created to prosecute the most egregious international crimes: genocide, war crimes, crimes against humanity, and crimes of aggression. The establishment of the ICC in 2002 was a ground-breaking step to promote a moral and just global order. Two decades have passed since the ICC's creation and it spend the second half embroiled in controversy regarding its activities in Africa. The ICC was accused of being biased against Africa by some states and two states – Burundi and the Philippines – have withdrawn their membership. Burundi was the first state to ever withdraw from the ICC, which occurred on 27 October 2017.[1] The previous year, after submitting its notification of withdrawal, Burundi explained that its withdrawal was a consequence of the ICC's failure to honour the principle of complementarity. In recognition of state sovereignty, this principle accepts that states have the primary right to prosecute the four crimes for which the ICC has jurisdiction. However, this explanation rings false or incomplete in the face of empirical evidence. The ICC had recently initiated preliminary investigations into allegations of crimes against humanity and war crimes committed during Burundi's 2015 election period. This suggests that Burundi's withdrawal was, at least in part, reactionary.

The mistiness around Burundi's motivations for its withdrawal is illustrative of a general obscurity about the motivations causing African states' behaviour in relation to the ICC in response to the accusations of its bias. Insight into the causes of this behaviour is important due to the significance of the African bloc within the ICC and the ICC's relevance as an institution promoting a moral global order. Despite Burundi's withdrawal, Africa remains the ICC's largest regional bloc: 33 of the ICC's 123 members (or States Parties) are African states. Furthermore, as of January 2022, ten out of the 16 situations[2] under investigation by the ICC are African states. Initially, the concentration of investigations was not a cause of concern.

[1] On 17 March 2019, the Philippines was the second State Party to withdraw from the Rome Statute after depositing the notification of withdrawal on 17 March 2018.

[2] The ICC uses the word "situation" to refer to the conflicts or crises it investigates, which is differentiated from the court cases brought against individual suspects of the crimes the ICC has jurisdiction over that result from these investigations.

However, accusations that the ICC is prejudiced against African states became a regular refrain after it issued a warrant of arrest in 2009 for former Sudanese President Omar al-Bashir. The warrant of arrest was for al-Bashir's alleged role in crimes against humanity and war crimes committed in the Darfur situation. The al-Bashir arrest warrant sparked what can be referred to as the withdrawal debate: a period between of strained ICC-African relations wherein some African states threatened and advocated in favour of mass African withdrawal from the Court. In the immediate aftermath of the issuance of the al-Bashir warrant, Djibouti, Comoros, and Senegal called for mass withdrawal by African states from the ICC.[3] Additionally, the African Union (AU) issued a decision of non-cooperation where it stated that its member states should not arrest al-Bashir, which presented an obstacle for the ICC and its African States Parties.

The warrant of arrest for al-Bashir was controversial for several reasons. Foremost, it was the first time that Article 27 of the ICC's founding treaty, the Rome Statute, was applied to a sitting head of state or government. Article 27 waives immunity that is held by senior state and government officials sitting in office under customary international law. The inclusion of this article was a game-changing addition to international law as it challenged the conventional impunity that officials enjoy while in office. Consequently, it renders everyone – regardless of their status – equal before the law regarding prosecution of genocide, war crimes, crimes against humanity, and crimes of aggression (referred to collectively as the ICC's 'core crimes').

Relatedly, another reason for the controversy is because Sudan has not ratified the Rome Statute and therefore is not an ICC State Party. It has not willingly waivered this immunity. The Darfur situation was referred to the ICC by the United Nations Security Council (UNSC) in 2005 by virtue of the Rome Statute's Article 16 provisions. Article 16 provides that the UNSC has the power to refer situations meeting certain the admissibility criteria to the ICC or defer situations already before the ICC. Discontent was raised by some African states about the UNSC's referral resulting in the application of the immunity waiver to a non-State

[3] Apiko and Aggad-Clerx 2016, 10; Brett and Gissel 2020a, 49.

Party and the implications it had for conflict mediation efforts that involved al-Bashir. The ICC, however, was undeterred and issued a second warrant of arrest for al-Bashir in 2010, which added the crime of genocide to the previous warrant.

Tensions escalated in March 2011, when the ICC summonsed six Kenyan nationals for crimes against humanity allegedly committed during the 2007/08 post-election violence. Significantly, two of the six accused, Uhuru Kenyatta and William Ruto, were elected to office as President and Deputy-President respectively in 2013. The Kenyan situation was the first time a self-initiated (*proprio motu*) investigation by the ICC's Office of the Prosecutor (OTP) was launched. Furthermore, it became the second time that sitting officials were implicated in the ICC's proceedings. Kenya, unlike Sudan, is a Rome Statute State Party. Once Kenyatta and Ruto were in the presidency, they used their position in the chief executive to regionalise the ICC issue. Kenya joined Sudan's narrative that the ICC was neo-imperialist, anti-African, and unfairly targeting African states and campaigned within the AU for a united African position regarding the ICC.

The next critical juncture in the withdrawal debate was in late 2016 when three states – South Africa, Burundi, and The Gambia – submitted notifications of withdrawal from the ICC. The withdrawal of three states within a one-month period was momentous bearing in mind the repeated threats of a mass African withdrawal by some states. South Africa's withdrawal was especially surprising. South Africa played a significant role in the creation of the ICC, popularisation of the Court on the continent, and was a proactive member since its establishment in 2002. South Africa's withdrawal occurred in the aftermath of its failure to arrest al-Bashir in 2015 when he attended an AU Summit in the country. South Africa's notification of withdrawal was accompanied by a declaratory statement that detailed the reasons for its decision. South Africa noted several areas of concern including the UNSC's relationship with the ICC, the concentration of investigations in Africa, the role that South Africa plays in peacemaking, the matter of sequencing peace and justice, and a perceived conflict in international obligations to the AU and ICC.[4] This suggests a different set of explanatory factors from Burundi but for the same behaviour: withdrawal from the ICC.

[4] Republic of South Africa 2016a.

Ultimately, South Africa and The Gambia retracted their withdrawal notifications in early 2017.

In January 2017, the AU's biannual heads of states and governments meeting included a decision to adopt a document entitled the 'ICC Withdrawal Strategy,' which was leaked in draft form.[5] Cabo Verde, Nigeria and Senegal entered reservations on the entire decision and Liberia entered a reservation on paragraph 8 of the decision, which called on member states to consider implementing the ICC Withdrawal Strategy. Malawi, Tanzania, Tunisia, and Zambia requested more time to study the Withdrawal Strategy. This demonstrates divergences in the behaviour of African states toward the withdrawal debate but the motivations for these differences are not clear.

1.1. Research Question

African States Parties to the Rome Statute have not had a uniform response to the twin pressures of abiding AU decisions as well as upholding their ICC obligations, some of which were in tension during the withdrawal debate. Some African States Parties have made their intention to prioritise their ICC obligations over their AU ones clear while others have overtly preferred their AU duties while others have not taken a public position. Clearly, there is variance in behaviour by African States Parties in relation to the ICC but the reasons for this variance are not obvious.

Thus, the main research question that this dissertation explores is: What are the main factors influencing African States Parties' behaviour in relation to the ICC?

To address this question, two sub-questions must be addressed:

1. What are the different types of behaviour that African States Parties have practiced in relation to the ICC regarding the withdrawal debate?
2. What has caused these different types of behaviour?

[5] African Union 2017; Ngari 2017.

1.2. Research Design

Albert O. Hirschman's exit, voice, and loyalty (EVL) model provides a method for studying behaviour between individuals and organisations when the latter is perceived to be in decline.[6] This dissertation contends that this model can be applied to study African States Parties' behaviour in relation to the ICC regarding the withdrawal debate, whereby the withdrawal debate is a period of perceived decline.

Thus, a theory-confirming case study is the research design used in this dissertation for two purposes. First, a theory-confirming case study tests if the EVL model can be appropriated by International Relations (IR) studies to analyse state-international organisation (IO) behaviour. Second, the EVL model guides the discussion of the withdrawal debate case. It facilitates this discussion by providing three categories of behaviour that can be applied to the African States Parties: exit, voice, and loyalty.

The behaviour of all African States Parties is studied between 2008 and 2018. African States Parties is used as a collective term for all the African states that ratified the ICC throughout this period. This varied as new states joined and one withdrew.[7] For a chronological list of African States Parties' accession to the Rome Statute, see Appendix 1. A trade-off when adopting a large sample size is that the depth of the case studies that a small sample size would allow is foregone due to the infeasibility this poses for carrying out timebound and comparative research. However, this disadvantage is outweighed by the advantages of a large sample size, which surfaces the trends and patterns between states and all types of behaviour in relation to the ICC. The identification of such trends and patterns then enables explanation. The existing literature about the withdrawal debate has neglected precisely these two elements, which confirms the appropriateness of a large sample size for the research design.

[6] Hirschman 1970.

[7] In 2008 there were 30 African States Parties. In 2010 this increased to 31. In 2011, it increased to 33, and in 2013 it increased to 34. In 2017, it decreased to 33 following Burundi's withdrawal.

The temporal scope of 2008 to 2018 inclusively was selected because it includes the critical junctures in the withdrawal debate as well as one year on either side. Scope limitations are necessary to enable a concrete research design and feasible project that can be executed within time and resource limits. For a basic timeline of the major events that occurred during the withdrawal debate period, see Appendix 2.

States are the unit of analysis, but they are treated as divisible actors to recognise how different actors within them shape official ICC policies. African States Parties' behaviour is categorised based on the international level of analysis. However, reference is made to domestic and regional levels too insofar as it helps illuminate on the official behaviour studied.

The intended contribution of this dissertation is to demonstrate that the EVL model can be applied to an IR case, specifically the withdrawal debate, to guide the discussion explaining the differing behaviour, and to explain why a state's behaviour vacillated over time.

1.3. Objectives

Thus, there are two objectives of this study. The primary objective is to export the EVL model to IR. The second objective is to offer insights into the relationship between African States Parties and the ICC during the withdrawal debate period.

1.4. Basic Concepts and Definitions

1.4.1. States

The term 'states' is understood as: (1) a geographical territory with (2) a defined population[8] (3) with a centralised government or regime that is (4) recognised by other states. This official definition of a state is useful and appropriate for this project since the project

[8] This includes residents (including asylum seekers, illegal immigrants etc) within the territorial boundaries of the state as well as citizens of the state that live elsewhere.

develops categories and explanations of official behaviour by recognised African States Parties. The ICC can only be acceded to by states that are officially recognised by the UN.

1.4.2. International Organisations

The term 'international organisations' is used to refer to different types of permanent international multilateral bodies. Its membership consists of states via their designated representatives. Decision-making is made in congress, although the voting structures might vary. Examples include the World Trade Organisation, UN bodies, ICC, the World Bank, and World Health Organisation. Regional bodies, such as the European Union (EU) and AU are also included in this definition.

1.4.3. Behaviour

State's behaviour is a dynamic and complicated concept. As has been noted above, African States Parties' responses to the withdrawal debate are varied, inconsistent, and even self-contradictory. Behaviour also changes depending on audience and context. It is therefore necessary to define the scope and nature of the behaviour that is analysed.

This project focuses on the official international relations behaviour demonstrated by African States Parties in relation to the ICC regarding the withdrawal debate for the purposes of classification. The most direct way to measure this would be to look at voting behaviour since it would indicate whether a state has gone on record as in favour of, against, or abstained from a matter. However, the ICC's Assembly of States Parties (or the ASP – the oversight and legislative branch of the ICC) reaches decisions through consensus and not by vote. It is therefore necessary to look for alternative measurements of a state's official position, communicated at the international level, on an ICC issue. Therefore, country statements delivered at official forums related to the ICC serve a useful and available measure of a state's official stance toward an ICC-related issue that was communicated at the international level.

The ASP's annual General Debate is a forum where States Parties can deliver a timebound address that reflects on areas that they deem important regarding the ICC. Similarly, the President of the ASP delivered an ICC report at the annual UN General Assembly (UNGA) session. Following the report's delivery, a plenary session is held where all UN member states can reflect on their areas of interest and concern regarding the ICC. Thus, the ICC ASP General Debate (ICC GDs) and the UNGA ICC report plenary discussions (UNGA ICC RPs) are two ICC-specific forums where African States Parties can deliver country statements reflecting their satisfaction and dissatisfaction with the ICC to fellow states, observers, and the IO officials.

A third annual forum where African States Parties can reflect on the ICC is the UNGA's General Debate. This is a platform where UN member states have 15 minutes to reflect on issues that they consider to be the most pertinent global affairs. References to the ICC in these discussions is another international platform with a comparable audience to the ICC GD and UNGA ICC RP forums, but with the difference that it is not an ICC-specific forum. Thus, it suggests that an African State Party sees the ICC as important if it refers to it in its UNGA General Debate (UNGA GD) statement.

Unfortunately, the statement or comments made by individual member states in the AU's sessions are not publicly disclosed. This means that it is not possible to draw on comparable country statements delivered at the AU despite its relevance as a multilateral regional organisation in the withdrawal debate.

Thus, three international forums were identified as providing primary qualitative evidence in the form of country statements that reflect the official positions that African States Parties communicated to these international audiences. This has the benefit of holding the audience somewhat constant across the forums studied and enables comparison across the cases using the same data since all states had the opportunity to deliver a statement. These official positions are used to indicate behaviour and to categorise states into exit, voice, or loyalty.

There are limitations with this operationalisation. The delegates that deliver the country statements at these forums are not constant. African States Parties have different resources at their disposal to support their delegate at these forums and the ICC ranks differently on their list of international priorities. This affects the preparedness of the delegate when they deliver country statements. Relatedly, it affects what is said and how it is said since some delegates are differentially equipped to deliver statements that are informed by expertise about the ICC. Similarly, the extent to which these delegates are empowered to act autonomously also varies across states. This is related to the extent that decision-making is centralised or decentralised in a state's government – and more specifically, its executive branch. It also assumes that the ICC is an interest area of the State Party by virtue of a country statement being delivered where there might be other reasons behind the decision to use that platform.

Although there are these differences at play, the evidence remains a reliable measure of the official position that was taken by the state at that forum for that year. Changes in these positions would be captured by the comparative study of the speeches made across the forums in the same year as well as before the same forum across different years. Additionally, the EVL model anticipates that there will be interplay between behaviour categories and that behaviour dynamic and non-linear. This is one of the advantages of the model since it does not preclude the analysis of inconsistent or ambivalent state behaviour in relation to an IO.

1.4.4. Heads of States

For the purpose of this dissertation, 'head of state' is used to refer to the chief executive of a country, which includes the principal leaders of states and governments. Typically, but not universally, the role of the head of state and head of government is fused in Africa, for example the President of South Africa. Head of state is not used, in this study, to refer to a ceremonial position, such as the Queen of England.

1.5. Research Method

1.5.1. Operationalisation of exit, voice, and loyalty

Exit behaviour is measured as the withdrawal of states from the ICC. This is indicated by the submission of a notification of withdrawal in accordance with the Rome Statute's withdrawal clause, Article 127. Statements delivered, at the three IO forums, as justifications in relation to withdrawal notifications also serve as evidence of exit behaviour.

Voice behaviour is measured by country statements delivered by African States Parties at the IO forums studied that aim to signal dissatisfaction with the ICC.

Loyalty is measured by statements that essentially express praise and support for the ICC and defend it against criticism. Additionally, reservations entered on AU decisions that promoted resistance to the ICC were considered loyalty as were collective declarations signed that demonstrated commitment to the ICC. States that did not express a position toward the ICC in the withdrawal debate are considered to show de facto loyalty behaviour since they retain their membership with the Court.

In explaining these official types of behaviour, other evidence is drawn on that supplements this restricted definition of behaviour and recognises less formal behaviour and/or behaviour communicated to other audiences.

1.5.2. Discourse Analysis

Discourse analysis is used as a method to interpret the country statements in recognition of the fact that country statements delivered at IOs are shaped by contextual norms such as diplomatic discourse. Discourse analysis is a method used to study texts (spoken and written and in all kinds of media). It seeks to determine how texts are shaped by and shape social contexts and the power dynamics. Accordingly, the discourse analysis method recognises that the country statements delivered by states reproduce, and are reproduced by, power relations.

Additionally, discourse analysis compels analysts to consider the immediate as well as external power contexts that shape the statements delivered. This is useful for a matter such as the withdrawal debate since it draws analytical attention to the power dynamics at play in the forums in which they are delivered as well as how external political events and relationships – such as the AU and the UNSC – affect the statements delivered and how they are delivered.

1.5.3. Explanations of Behaviour

Derived from the prevailing literature focused on explaining Africa's international relations, five explanatory factors are identified to complement the EVL model in explaining the motivations behind African States Parties behaviour in relation to the ICC regarding the withdrawal debate. The five explanatory factors are head of state interests, regional politics, domestic politics, reputational factors, and economic dimensions.

Head of state interests considers the extent to which a state's behaviour with the ICC was shaped by the self-interest of its president/relevant chief executive authority. This variable is derived from the school of thought that Africa's major political and economic elite, also referred to as "big men" and "strongmen", are actors that determine state policies.[9]

Regional politics is a factor employed to investigate the ways that inter-African politics affects behaviour toward the ICC. This factor includes, but is not limited to, the pan-African solidarity norm.

The domestic politics factor considers if and how African States Parties' behaviour with the ICC is shaped by state responses to domestic threats to their regimes.

Reputational factors refer to behaviour by States Parties to improve and promote their positive international image.[10] The ICC is understood to enhance states' association with

[9] Utas 2012, 1.
[10] Gray and Hicks 2014; Finnemore and Sikkink 1998, 898.

anti-impunity, rule of law, and accountability norms and this factor looks at the extent to which the objective to be associated with such international justice norms drove state behaviour.

The economic factor considers the role of trade and aid in shaping African states' relations with the ICC. This aims to determine at a basic level if there is a correlation between aid and trade relationships with a state's external partners that might explain its behaviour in relation to the ICC.

A sixth explanatory variable was identified as potentially relevant but difficult to measure without further research. The role of an epistemic community that has subscribed to promoting a moral global order through the ICC and its associated norms in shaping states' behaviour would be helpful to understand. However, operationalising this variable required access to information and interviewees that were not available and feasible during this project. It was indicated where this variable might be relevant as the subject for future research.

1.6. Evidence

This research relies primarily on qualitative evidence, but quantitative evidence is also used.

1.6.1. Qualitative Evidence

As noted earlier, the primary qualitative evidence used to classify African States Parties was the country statements delivered by African States Parties at the ICC GDs, UNGA ICC RPs, and UNGA GDs. For exit, notifications of withdrawal deposited with the UN Secretary-General were another source of primary qualitative evidence used. Loyalty was additionally indicated by collective state declarations of support for the ICC and by reservations entered on AU decisions that included positions of non-cooperation with or withdrawal from the ICC.

To explain the motivations behind behaviour, other IO primary sources were used, including UNSC resolutions, ICC judgments, website material, and press releases, and AU decisions and communiques. News articles, academic blogs, academic literature, state websites, and websites and reports by reputable non-governmental organisations (NGOs) were supplementary sources of secondary qualitative evidence used to explain behaviour. Relevant domestic court cases were an additional type of primary evidence, particularly for the South African case, used to explain behaviour.

Fourteen semi-structured interviews with academics, ICC and African IR experts, and government officials were conducted after departmental ethical approval was granted. The interviews took place during the COVID-19 era and, consequently, most were virtual. Chapter 4 provides more details about the interviews.

Efforts to interview former and current AU legal counsel were fruitless, which is an unfortunate omission as their reflections about the politics surrounding the withdrawal debate within the AU and the legal advice that was given would be illuminating. This does not undermine the findings of the project but demonstrates an area for future research that focuses on the role of these technocrats in shaping state behaviour. Such research is related to empirically testing the significance of the epistemic community in the withdrawal debate.

1.6.2. Quantitative Evidence

Quantitative evidence was used to help measure the economic dimensions factor. The World Bank's World Integrated Trade Solution data[11] were used to determine the major import and export partners of the African States Parties when relevant. The Organisation for Economic Co-operation and Development (OECD)'s interactive summary charts of official development assistance (ODA) by recipient country[12] were used together with the OECD's

[11] See https://wits.worldbank.org/Default.aspx?lang=en.
[12] See https://www.oecd.org/dac/financing-sustainable-development/development-finance-data/aid-at-a-glance.htm.

biennial *Aid for Trade at a Glance* reports[13] to determine African States Parties' major aid partners where relevant.

These data sources are from reputable organisations and had consistent data for all the African States Parties studied, which helped with reliable comparison bases. However, these are imperfect measures of trade and aid relationships, let alone of economic relationships, and literature was also used to supplement the quantitative data to identify and triangulate these relationships.

1.7. Limitations

Several limitations were noted in the preceding sections, which are mentioned again briefly for the sake of coherency but are not repeated in detail to avoid duplication. Additional limitations with the project are also noted.

The use of a large sample size to study African States Parties' behaviour in relation to the ICC sees a trade-off between in-depth case studies of a few illustrative examples of each behaviour identified in favour of identifying patterns, trends, and variance across a larger sample. This is preferred because the aim of the project is to better understand what accounts for the different types of behaviour. Existing literature (as elaborated on in Chapter 3) includes in-depth country case studies that include insights into case-specific explanations of behaviour. However, few comparative studies of large samples sizes have been conducted to date – in fact, only two were found related to the withdrawal debate. The objectives of this study considering existing research were determined to be best achieved through a large sample size.

The use of qualitative evidence for a large sample size (large-N) of cases is unusual. It was preferred because of the type of evidence that was available that was best suited for analysing state behaviour regarding the withdrawal debate was country statements. This evidence could have been quantified but this did not have a value-add for the project.

[13] See https://www.oecd-ilibrary.org/development/aid-for-trade-at-a-glance_22234411.

Instead, engaging with the discourses that shaped the evidence and foregrounding this in the process of categorising behaviour was considered a more transparent and robust way to identify a state's behaviour. This approach grapples with the complexities of state behaviour vis-à-vis statements as an overt part of the method, which reflects the complexities of multilateral politics. This helps counterbalance the depth trade-off made when choosing a large-N case study research design.

A large-N qualitative research design was, thus, determined as the best methodology to explain African States Parties' behaviour in relation to the ICC in light of the gaps in existing research.

Another limitation for the study is that only Anglophone literature was studied to inform the literature review and analysis. Francophone country statements were translated into English using Google translate, which could result in mistranslations despite progress in this platform's translation capabilities. Future research could strengthen this project through access to Francophone literature (especially about Francophone states) and/or through interviews with African Francophonie country experts who would be familiar with this literature.

At face value, the focus on Africa might mistakenly be misunderstood to perpetuate negative depictions of African states as pariahs. It is necessary to overtly state that African states are studied due to their relevance in the withdrawal debate, in the ICC, and the need for more refined explanations of Africa's international relations. The effort to use a large-N study avoids the pitfalls of reductionism, where Africa is treated as a monolithic entity, by analysing individual state's behaviour. States from other geographical regions have criticised the ICC and acted non-compliantly. For example, Jordan did not arrest al-Bashir and the Philippines is the only other state, in addition to Burundi, to have withdrawn from the ICC.

The EVL model was not designed for IR studies, but it was intended as an adaptable model for studying individual-organisation relationships in times of dissatisfaction. Chapter 5 elaborates on the difficulties encountered when applying the model to a different level of analysis. The few studies that have applied the EVL model to IR overlook several concerns

when changing the level of analysis and this project argues that these are surmountable once identified.

Lastly, the effect of individual officials on state behaviour is likely an important variable but one that was not feasible for this project to test. Not all state representatives delegated to IOs are sent there based on merit. Sometimes delegates are appointed based on patrimonial relations rather than experience. Relatedly, not all state delegates take their posts seriously – some do the bare minimum required to retain their post. Regardless of how the position is attained, not all state delegates have the same resources and expertise at their disposal to inform the quality of their participation in IO forums. The differences between state representatives and the impacts this has on their participation at the IO forums studied has not been controlled for, which is a limitation for the project.

1.8. Main Findings and Contributions

The withdrawal debate is a case study of African state behaviour that helpfully illustrates insights into Africa's international relations by teasing out various external and internal pressures that influence the agency and decision-making of African states. The EVL categories facilitated the analysis of how different causal mechanisms interacted and interplayed to produce the behaviours. It allowed for trends to be identified without the costs of oversimplification and reductionism.

Important analytical implications are raised by the arguments in this dissertation, which are organised into four categories: (1) implications for the EVL model, (2) implications for the African states-ICC relationship, (3) implications for studying Africa's IR behaviour, and (4) implications for future research on this topic. The concluding chapter comprehensively discusses these.

Briefly, the dissertations finds that the EVL model was a useful tool as it is flexible enough to capture the dynamic behaviour of African States Parties over the withdrawal debate period. However, the empirical evidence suggests that the model could be refined to better capture

and distinguish the states' behaviour while retaining the benefits of its simplicity, by added sub-types of voice and loyalty.

The voice behaviour category would be improved by distinguishing between constructive and critical uses of voice. Constructive-voice would be states that noted discontent with the ICC with the aim of improving the Court, and while making it clear that their remaining members of the Court was not at jeopardy. Critical-voice refers to states that communicated discontent with the Court in a threatening way and without language to convey that the intent of the feedback was to improve the Court.

Loyalty also takes two forms: passive and active. Passive-loyalty refers to states that were generally absent from the withdrawal debate and exercised silence in the forums studied. Active-loyalty refers to states that overtly supported the ICC.

Regarding understanding behaviour by African States Parties during the withdrawal debate, this dissertation finds five prevalent explanatory variables: head of state interests, domestic factors, regional politics, reputational factors, and economic factors. It finds that multivariate explains (i.e. varying combinations of these factors) best explained behaviour. Broadly, exit and voice were primarily influenced by head of state interest and regional politics, whereas loyalty was influenced by reputational factors and/or economic factors.

The results of this study have important implications for the study of Africa's international relations. The findings about the influence of the head of state variable demonstrated the relevance of the personalisation of power and how this affects the production of foreign policy. The heterogeneity of behaviour also challenges the usefulness of 'Africa' as a category and highlights issues of essentialism and reductionism with the treatment of 'Africa' as an indivisible unit of analysis, at least, regarding the withdrawal debate.

1.9. Chapter Outline

The dissertation comprises ten chapters.

Chapter Two provides the background information about the ICC and the withdrawal debate.

Chapter Three situates this study in the existing academic literature about the withdrawal debate. This chapter argues that the literature does not identify all the types of African States Parties behaviour toward the ICC regarding the withdrawal debate and that is does not offer a comprehensive explanation of the causes of the different types of behaviour. This dissertation intends to fill this gap.

Chapter Four explains the methodology used to answer the research question. It explains that an empirical, qualitative large-N theory-confirming case study approach will be used to demonstrate that the EVL model can be used to study an international phenomenon vis-à-vis the withdrawal debate. Additionally, this chapter defines the five explanatory factors and how they will be used for the purposes of answering the research question. These explanatory factors are head of state interests, regional politics, domestic politics, reputational factors, and economic factors.

Chapter Five presents the EVL model proposed studying African States Parties behaviour in relation to the ICC. The chapter identifies gaps in the efforts to adapt the EVL model for the study of IR by demonstrating that three issues have not been resolved in the existing adaptations: (1) they do not sufficiently address the issues that arise with shifting the unit of analysis from studying individual's behaviour to those of states; (2) they fail to adequately discuss the analytical changes entailed by shifting from the domestic to the international level of analysis; and (3) they do not address the fact that Hirschman's model presumes market-based relations as the context affecting behaviour and the challenges this presents for studying IOs. This dissertation proposes an EVL model that takes these issues into account to present a version of the model appropriate for studying African States Parties behaviour regarding the withdrawal debate.

Chapters Six, Seven, and Eight are each dedicated to one of the three behavioural categories from the EVL model. These chapters use discourse analysis to interpret the country statement data to classify each African State Party's statement into a behavioural category

for each year and forum in which it was delivered. The additional measurements used for exit and loyalty, as noted earlier in the introduction, are also used in their respective chapters to explain why states were classified based on that evidence. These chapters cumulatively answer the sub-research question: What are the different types of behaviour that African States Parties have practiced in relation to the ICC regarding the withdrawal debate?

Chapter Nine discusses the main factors explaining African States Parties' behaviour in relation to the ICC withdrawal debate. This penultimate chapter uses the EVL model together with the five explanatory factors to discusses trends across and within the states. The chapter answers the sub-research question, 'what has caused these different types of behaviour?', and the related main research question, 'what are the main factors influencing African states' behaviour in relation to the ICC?'.

Chapter Ten concludes the dissertation with reflections about the EVL model's strengths and weaknesses for studying state-IO behaviour and recommended adjustments to the model. The main causes of African States Parties' behaviour in relation to the ICC are discussed and possible areas for future research are identified.

2. BACKGROUND INFORMATION: AFRICAN-ICC RELATIONS

Perhaps unsurprisingly, the ICC has developed in a context of controversy from inception to present. It was by no means a foregone conclusion that the ICC would be a component of the international peace and security governance system.[14] The purpose of this chapter is to provide a brief background about the ICC to contextualise the withdrawal debate and to demonstrate African states' history with the ICC.

2.1. African States and the Creation of the ICC

The ICC's founding treaty, the Rome Statute, was finalised in 1998 at the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (the Rome Conference), which took place in Rome in Italy. The Rome Statute was the result of decades of redrafting and renegotiation. Efforts to create a permanent international court that could ensure accountability for serious international crimes, such as genocide, date to 1948 when the nascent UNGA charged the International Law Commission (ILC) with assessing the prospects for such a court as well as drafting a proposed statute.[15] Discussions about the potential international criminal court halted with the beginning of the Cold War and only seriously resumed in 1989 when Trinidad and Tobago submitted to the UN that these discussions should continue (and consider adding transnational crimes to its potential jurisdiction).[16]

[14] The highest authority presiding over matters of international peace and security is the UN Security Council (UNSC), which is an organ of the UN. The UNSC comprises 15 members. Ten of these are elected seats while the remaining five are permanent. The permanent members of the UNSC (the P5) are the US, UK, France, Russia, and China. Each have the power to veto any resolutions. The elected seats are for two-year terms and do not have veto powers. The UNSC has the power to issue binding decisions on the 193 UN member states. Where the UNGA is the principal political organ of the UN, the UNSC is its principal peace and security one. The International Court of Justice (ICJ) was created in 1946 as the primary judicial organ of the UN. The ICJ presides over inter-state legal disputes brought before it by UN State Members or states that have accepted its jurisdiction by ratifying the Statute of the Court or on an *ad hoc* basis. This is known as contentious jurisdiction. The ICJ also has another form of jurisdiction: advisory jurisdiction. This enables any UN agency or organ can submit a legal concern to the Court for a non-binding advisory opinion.

[15] Schabas 2011; UN General Assembly 1948.

[16] Schabas 2011; 'Establishment of an International Criminal Court - Overview' n.d.

In 1994, the ILC circulated a revised draft of the international criminal court statute to the UNGA, which subsequently established the Ad Hoc Committee on the Establishment of an International Criminal Court (the Ad Hoc Committee) to prepare a report in response to the draft. The Ad Hoc Committee included 65 members – 18 (28%) of which were African states.[17] This led to the creation of the Preparatory Committee on the Establishment of an International Criminal Court (PrepCom) to develop a revised draft that could be considered by state representatives at a diplomatic conference. PrepCom operated between 1996 and 1998. Their final meeting was in April 1998, which finalised the consolidated draft statute to be considered at the Rome conference.[18]

2.1.1. Regional Coordination

Efforts to coordinate a joint African position regarding the ICC and its powers ahead of the Rome Conference took place at two regional meetings in Africa. In 1997, the SADC countries[19] met in South Africa and agreed upon ten basic principles of consensus regarding the ICC.[20] The ten principles agreed upon included provisions, inter alia, that the ICC should be independent and impartial, it should complement national judicial processes where they are unavailable or incapable, and the veto vote in the UNSC should not affect ICC processes.[21] The Southern African Development Community (SADC), particularly under South Africa's influence, has been recognised as having contributed positively toward the human rights provisions that were negotiated at the Rome Conference.[22]

---

[17] The members of the Ad Hoc Committee (in alphabetical order and African states in bold) were: **Botswana**, Brazil, Bulgaria, **Cameroon**, Canada, Chile, China, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Egypt, Finland, France, **Gabon**, Germany, **Ghana**, Greece, Hungary, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Kazakhstan, **Kenya**, Lebanon, **Lesotho**, **Madagascar**, **Mauritania**, Mexico, Mongolia, **Morocco**, **Namibia**, Netherlands, **Nigeria**, Norway, Oman, Panama, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, **Senegal**, **South Africa**, Spain, **Sudan**, Sweden, Switzerland, Thailand, Trinidad and Tobago, **Tunisia**, Ukraine, United Kingdom, **United Republic of Tanzania**, United States, Uruguay, Venezuela, Yemen, and **Zimbabwe**. See: United Nations General Assembly 1995.
[18] Eikel 2018, 8.
[19] Angola, Botswana, the Democratic Republic of the Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, Swaziland, the United Republic of Tanzania, Zambia, Zimbabwe, and South Africa.
[20] The Permanent Mission of South Africa to the United Nations 1997; Du Plessis 2008.
[21] The Permanent Mission of South Africa to the United Nations 1997.
[22] Schabas 2011, 19.

The second regional meeting took place on the 5th and 6th of February 1998 in Senegal.[23] Twenty-five African states met and adopted the Dakar Declaration for the Establishment of the International Criminal Court, which built upon SADC's ten basic principles.[24]

There is no readymade answer about why African states ratified the Rome Statute as this has not been queried in the literature. The aftermath of the Rwandan genocide is typically cited as the reasons that African states supported the creation of the ICC to avoid repeating a situation where the international community does not respond to major international crimes.[25] However, there is reason to believe that the Rwanda genocide is an insufficient explanation for the motivations underlying African states' ratifications of the Rome Statute – especially considering that it did not compel Rwanda to join. Other potential causal factors are discussed below although it a singular explanation is unlikely to explain all the states' decisions to accede.

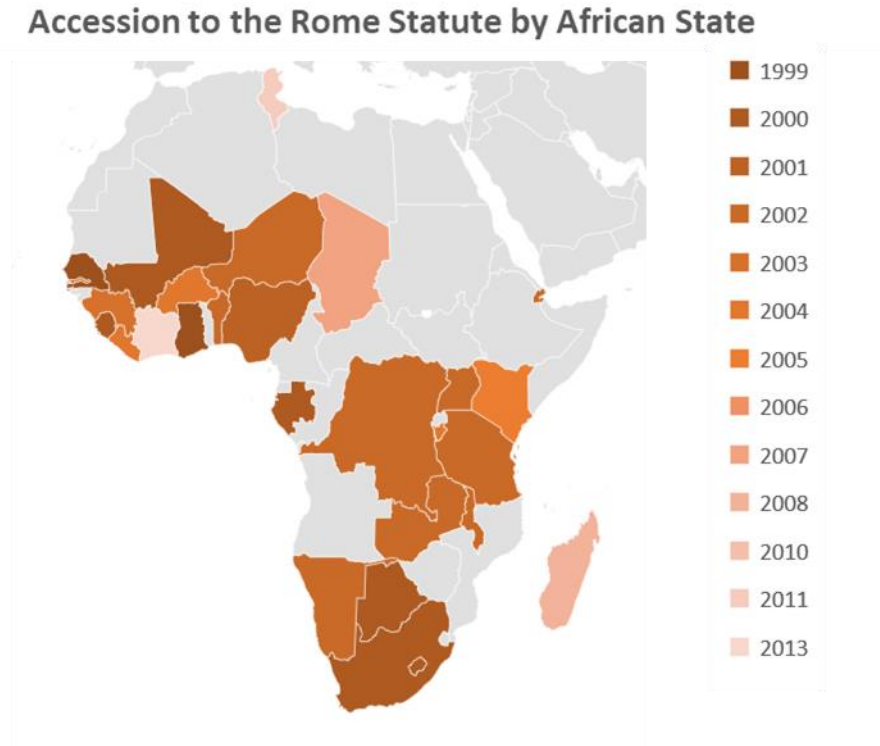
Economic factors might explain African states' accession. The 2005 revision of the primary trade agreement between the EU and the ACP countries, the Cotonou Agreement, required partners to support the ICC: "The Parties shall seek to take steps towards ratifying and implementing the Rome Statute and related instruments."[26] Although no timeframes or sanctions were attached to this clause, the EU is said to have invested "…considerable time and effort in persuading the partner to accept the commitment…"[27] The ICC clause in this agreement illustrates one way that the EU has been able to extend its influence on other states in favour of the ICC.[28]

However, most African states had already joined the ICC before the Cotonou Agreement was revised, which problematises the causal relationship between Rome Statute accession

[23] The Dakar conference was co-sponsored by the EU. Benedetti and Washburn 1999.
[24] 'Dakar Declaration for the Establishment of the International Criminal Court' 1998; Benedetti and Washburn 1999.
[25] Murithi 2014; Jalloh 2009, 446.
[26] Article 11, European Commission 2006.
[27] Davis 2014, 90.
[28] Ibid., 95.

and this clause. As illustrated in *Figure 1* below, there were two major waves of ratification of the Rome Statute by African states: first in 2000 and then in 2002.

Figure 1: Accession to Rome Statute by African States.[29]



Civil society organisations, such as the members of the Coalition for the International Criminal Court (CICC), advocating for their governments to support the Rome Statute might be a causal factor for the accessions.[30]

Notably, African states' accessions might be explained by a norms-cascade or bandwagon effect.[31] There was a general trend in the early 2000s of African states signing onto international normative frameworks,[32] which earned Africa the reputation of signing onto treaties but not fully implementing them.[33] The accession is a form of currency that conveys

[29] The map was created by the author.
[30] The CICC was a collective of civil society groups across the world that campaigned for the ratification of the Rome Statute. Eleven civil society organisations from Africa belong to the CICC, mainly based in Nigeria, South Africa, Kenya, and Uganda.
[31] Murithi 2021.
[32] Goldstone 2021; Brosig 2021.
[33] Mutharika, n.d.

a positive image about the state. The high rates of African state participation in norm creation and treaty-making are partly attributable to their viewing this participation as demonstrative of their equal space within global governance. Due to Africa's size as a regional bloc, their support for treaties is sought by treaty-makers to see the treaty's success. African states knew that their ratification was important for the ICC's establishment, which spurred a type of buy-in for its creation as an exercise of this power.[34] Additionally, some African states, such as Uganda and DRC, believed that the ICC would equalise the application of international criminal law and see power global states being held accountable for their crimes.[35]

2.1.2. The Rome Conference

The Rome Conference took place between 15 and 17 June 1998 and was attended by 160 state delegates. The final Rome Statute drew on existing international law as well as precedents set by other (temporary) international criminal courts/tribunals, such as the Nuremberg trials, the International Criminal Tribunal for the former Yugoslavia, and the International Criminal Tribunal for Rwanda (ICTR).[36] The draft Statute was divided into sections according to subject matter and assigned to working groups that reported to the plenary to maximise the time available to resolve the contested areas of the draft.[37]

The Like-Minded Group (LMG) comprised 60 states, 14 of which were African states.[38] The LMG had formed during the Ad Hoc Committee. Since it comprised middle powers and developing countries, it presented itself as a neutral (i.e. superpower free) group working

[34] International Law Expert 2021.
[35] Gissel 2018; P. Clark 2021.
[36] Bosco 2014.
[37] Arsanjani 1999, 23.
[38] The states that were part of the LMG at the Rome Conference were (African states in bold): Andorra, Argentina, Australia, Austria, Belgium, **Benin**, Bosnia-Herzegovina, Brunei, Bulgaria, **Burkina Faso**, **Burundi**, Canada, Chile, **Congo-Brazzaville**, Costa Rica, Croatia, Czech Republic, Denmark, **Egypt**, Estonia, Finland, **Gabon**, Georgia, Germany, **Ghana**, Greece, Hungary, Ireland, Italy, Jordan, Korea (Republic of), Latvia, **Lesotho**, Liechtenstein, Lithuania, Luxembourg, **Malawi**, Malta, **Namibia**, the Netherlands, New Zealand, Norway, the Philippines, Poland, Portugal, Romania, Samoa, **Senegal**, **Sierra Leone**, Singapore, Slovakia, Slovenia, Solomon Islands, **South Africa**, Spain, Swaziland, Sweden, Switzerland, Trinidad and Tobago, United Kingdom, Venezuela and **Zambia** (Schabas, *An Introduction to the International Criminal Court*, 18-19n63).

toward a fair international system.[39] On the other hand, the P5 (except the United Kingdom, which had joined the LMG before the Rome Conference) formed a bloc pushing for, inter alia, the UNSC to have strong powers in relation to the ICC and stronger limitations on the Court's jurisdiction.[40] There was concern that the proposed crimes that the ICC could preside over would overlap with the mandate of the UNSC, and could therefore undermine the UNSC's work. A proposal by Singapore to grant the UNSC the power to refer situations to the ICC helped overcome this concern by granting the UNSC the power to refer situations to the ICC and to defer situations already before the ICC.[41]

There were three major areas of concern raised by African states (although, it should be noted that African states did not necessarily share the same position regarding these matters): the universal membership of the Court; the ICC's independence from political influence and pressure – for some states this included concerns about proposed UNSC powers;[42] a form of complementarity that prioritised state sovereignty;[43] and establishing a Court that did not reproduce power inequalities institutionalised within the UN.[44]

Ultimately, the Court was designed to be independent of the UN system but has a relationship with the UN ensured by the *Negotiated Relationship Agreement between the International Criminal Court and the United Nations* of 2004.[45] The Agreement establishes that each body will assist the other with their operations when appropriate, observe relevant sessions, and provide documents and information required where appropriate. For example, the ICC delivered an annual report of its activities to the UNGA. Thus, the ICC has

[39] Bosco 2014.
[40] Kirsch and Holmes 1999.
[41] Bosco 2014, 42–43.
[42] Namely, Algeria, Cameroon, Gabon, Libya, Sudan and Tanzania opposed UNSC powers as undermining the ICC's independence; whereas Senegal, Cameroon, and Niger had differing ideas about the type of relationship that could exist between the UNSC and the ICC, but all saw some relationship as appropriate.
[43] "Importantly, they saw the ICC as a Court for positively failed states, not for states with imperfect or politicized justice systems; the ICC was needed not because it was better than national criminal jurisdictions but, rather, because gross human rights violations going unpunished needed to be prevented in situations where there was no viable constitutional order or central authority capable of halting them." Gissel 2018, 741.
[44] Ibid., 735–42.
[45] International Criminal Court, 'Negotiated Relationship Agreement between the International Criminal Court and the United Nations,' 22 July 2004, ICC-ASP/3/Res.1, https://www.icc-cpi.int/pages/item.aspx?name=icc-un-rel-agr.

been designed to operate alongside the UN system while remaining institutionally separate from it.

The US demanded that the Rome Statute's adoption be determined by a vote rather than consensus, which had been the original aim. One hundred and twenty states voted in favour of the Rome Statute, seven voted against it, and 21 states abstained.[46]

2.2. The ICC and the Rome Statute System

The Rome Statute created a system, not just a court.[47] There are three separate bodies that constitute this system: The Assembly of States Parties (ASP), the ICC, and the Trust Fund for Victims. The ICC has four subsidiary organs: The Presidency; the Chambers; the Office of the Prosecutor (OTP); and the Registry.[48]

The ASP and two of the subsidiary ICC organs – the Chambers and the OTP – are relevant for the withdrawal debate and short overviews of these bodies contextualises the analysis of African States Parties behaviour.

The ASP comprises representatives from each of the States Parties to the Rome Statute. The ASP meets annually (or on an *ad hoc* basis for special sessions) and is responsible for overseeing the management of the Court. Among the oversight tasks assigned to the ASP, it adopts the Court's budget, elects the Judges, Prosecutor, and Deputy Prosecutors, and decides upon general guidelines and the Rules of Procedure and Evidence and the Elements of Crime.

The Chambers comprises 18 judges in total and has three judicial divisions: Pre-Trial, Trial, and Appeals. Cumulatively, these divisions are responsible for the judicial proceedings of the Court. The Pre-Trial Chamber was devised to help oversee the Prosecutor's *proprio motu*

[46] Schabas 2011, 21.
[47] Batohi 2014.
[48] Further, the ICC has three institutions: (1) Trust Fund for victims; (2) Victims and Witnesses Unit; and (3) Office of Public Counsel for Victims.

powers to minimise the politicisation of cases. The guiding rule is that cases must be deferred to national courts (i.e. complementarity) unless the Pre-Trial Chamber believes otherwise.[49]

The OTP consists of a Prosecutor and one or more Deputies. The OTP personnel serve a non-renewable nine-year term. The first Prosecutor was Argentina's Luis Moreno Ocampo (2003-2012), who was followed by The Gambia's Fatou Bensouda (2012-2021). The third prosecutor, United Kingdom's Karim Khan, entered office in June 2021. The Prosecutor is responsible for reviewing the evidence provided by a State Party or UNSC referral to determine if formal investigations should be undertaken by the ICC.[50] A referral may be dismissed by the Prosecutor if there is not sufficient evidence to reasonably believe core crimes have been committed; if the case does not meet Article 17's admissibility criteria; and/or pursuing the case is not in the interests of justice.[51] The Prosecutor may reconsider their decision if new information arises.

In the early years of the ICC's operations, a consistent concern raised by the African States Parties was the need for the Rome Statute system to improve its gender and regional (specifically, Africa) representation across its varied organs and branches.[52]

2.2.1. The ICC's Jurisdiction

Three principles underpin the final Rome Statute: complementarity whereby national courts are supreme; jurisdiction over the most serious crimes concerning the international community (genocide, crimes against humanity, war crimes, and crimes of aggression); and the imperative to remain within the realm of customary international law as far as possible (mainly regarding the definition of the core crimes).[53]

[49] Arsanjani 1999, 27
[50] Article 53 of the Rome Statute.
[51] Article 53(2), ibid. The interests of justice are determined by considering the gravity of the crimes, victims' needs, and the perpetrator's age, health, and role in the alleged crimes.
[52] See, generally, speeches given by African States Parties at the ICC's ASP General Debates.
[53] Arsanjani 1999, 25–26.

The ICC's jurisdiction has to be activated through one of three mechanisms: State Party referral,[54] *proprio motu*,[55] or UNSC referral.[56]

State Party referral is the referral of situations that occur in other States Parties' territories or by their nationals. State Party referral was expected to be the least likely used mechanism for triggering jurisdiction because of the "diplomatic discomforts" of complaining about a fellow state.[57] In practice, another form of State Party referral has emerged as popular: the self-referral of situations by States Parties.

The Office of the Prosecutor of the ICC can initiate their own investigations (*proprio motu*).

The UNSC has the power to refer situations that they have deemed appropriate for the ICC to investigate. In a sense, the UNSC referral enables a form of universal jurisdiction for the ICC.[58] It allows for states that are not party to the Rome Statute to be subject to the ICC's authority by virtue of their obligations to the UN. In addition to the power to refer situations to the ICC, the UNSC can defer investigation or prosecution for one year, which is renewable.[59]

The power of the UNSC to refer situations to the ICC has been a significant area of discontent among African States Parties and overlaps with its discontent with the UNSC's power structure generally. This is, partly, due to the lack of permanent seats for Africa on the UNSC and its lack of veto power.[60]

The Rome Statute entered into force on 1 July 2002. The ICC therefore cannot investigate cases preceding this date as it would be the retroactive application of law (*nullum crimen*

[54] Article 14 of the Rome Statute.
[55] Article 15, ibid.
[56] Article 13(b), ibid.
[57] Schabas 2011, 159.
[58] Monageng 2014.
[59] Article 16, ibid.
[60] The AU has adopted the position, in the Ezulwini Consensus, that it is formally against any veto power, but if it is to exist, then it should be democratised through extension to other regions.

sine lege).[61] Its temporal jurisdiction is further limited since it cannot investigate crimes that occurred in a State Party's territory or by its nationals before the date that the state in question acceded to the Rome Statute. States Parties can accept the Court's jurisdiction on an *ad hoc* basis by lodging a declaration with the Registrar, which allows the ICC to investigate crimes committed in an agreed upon period (after July 2002) without the state acceding to the Rome Statute.[62] This same process can be used to extend the Court's jurisdiction to the period before a State Party ratified the Statute. For example, in 2003 Côte d'Ivoire accepted *ad hoc* jurisdiction of the ICC but only ratified the Statute ten years later in February 2013.[63]

2.2.2. Complementarity

One of the core principles governing the ICC's work is that of complementarity and this principle emerged as an area of contention in the withdrawal debate. The ICC is intended as a court that complements national criminal processes.[64] The ICC is intended to intervene only where it is evident that the State Party cannot or will not hold perpetrators of the core crimes accountable. Complementarity has been the subject of many academic studies in relation to the ICC[65] and it is of particular significance in terms of the relationship with Africa due to its emphasis upon respecting national sovereignty.

2.3. The Review Conference

[61] Articles 22 and 23 of the Rome Statute.
[62] Article 12(3), ibid. The ICC has two other types of jurisdictions. Personal jurisdiction refers to the ICC's authority to investigate accusations laid against nationals from its States Parties, or individuals referred to the Court by the UNSC. The ICC does not have jurisdiction over people who were minors (below 18-years-old) at the time of the alleged crimes (Arsanjani 1999, 36). Territorial jurisdiction means that the ICC has jurisdiction over core crimes committed on the territory of its States Parties regardless of the nationality of the accused. Land, state-owned or registered vessels and aircrafts are included in the Statute's definition of "territory". Whether the ICC's territorial jurisdiction is understood to include airspace, territorial waters, and exclusive economic zones remains to be seen (Schabas 2011).
[63] International Criminal Court n.d.
[64] Article 1 of the Rome Statute; and Arsanjani 1999, 24.
[65] See, for example: Bachmann and Nwibo, n.d.; Bergsmo, Bekou, and Jones 2010; Carter 2013; El Zeidy 2001; Hansen 2012a; Heller 2007; Kress 2004; Stigen 2008; Du Plessis, Maluwa, and O'Reilly 2013; 'Complementarity, Catalysts, Compliance: The International Criminal Court in ... - Christian M. De Vos - Google Books' n.d.; Sarah M. H. Nouwen 2013.

Review Conferences can be scheduled by UN Secretary General at any time. The Rome Statute first and only review to date took place between 31 May and 11 June 2010 and was hosted in Kampala in Uganda. The purpose of the Review Conference was for States Parties to consider amendments to the Rome Statute and decide upon some residual matters from the Rome Conference. The main items on the agenda for the Review Conference included a stocktaking of the current state of international criminal justice,[66] possible amendments to the Rome Statute,[67] and improving the enforcement of sentences.[68]

Most significantly, the ICC's jurisdiction over the crime of aggression was activated. However, this jurisdiction could only be exercised once 30 States Parties ratified the related amendments. On 17 July 2018, a resolution was adopted and the ICC's jurisdiction over the crime of aggression entered into force, but only for those States Parties that ratified the crime of aggression amendments.[69]

2.4. Africa's Relationship with the ICC

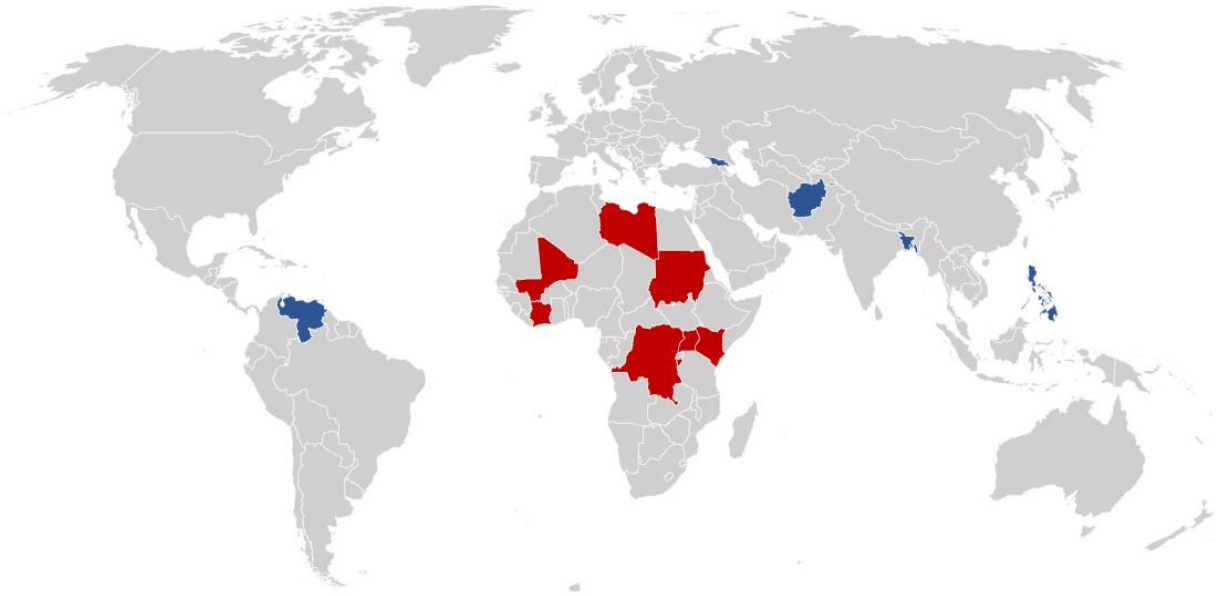
Many African states played an important role in the making of the ICC, as evidenced by it forming the largest regional bloc within the ICC. The first cases investigated by the ICC were self-referrals by African states. For example, the DRC, Uganda, and CAR each self-referred in 2004. The ICC's first investigations were launched into the Ugandan and DRC situations in June and July 2004 respectively. It has been argued that Ocampo sought the self-referrals from the Ugandan and DRC governments to help ensure that the first investigations were successful.[70]

As of 2022, ten of the 16 situations under investigation by the ICC are African: the DRC (2004); Uganda (2004); Darfur, Sudan (2005); CAR I (2007); Kenya (2010); Libya (2011); Côte d'Ivoire (2011); Mali (2013); CAR II (2014); Georgia (2016); Burundi (2017);

[66] Particularly, the impact of the Rome Statute system for victims, the peace and justice debate, the complementarity principle, and cooperation.
[67] Particularly, a review of article 124 and the proposed definition of crimes of aggression.
[68] International Criminal Court 2010.
[69] 'Crime of Aggression' n.d.
[70] P. Clark 2018, 55.

Bangladesh/Myanmar (2019); Afghanistan (2020); the State of Palestine (2021), The Philippines (2021), and Venezuela (2021). See Figure 2 for a visual representation of the current situations under investigation with the African situations highlighted in red.

Figure 2: Map of ICC investigations underway as of January 2022.[71]



Furthermore, as of 2021, all 46 defendants that have been summonsed by the ICC have been African. Five of the ten African situations were self-referred to the ICC.[72] The ICC initiated *proprio motu* investigations into three African situations: Kenya, Côte d'Ivoire, and Burundi. However, Côte d'Ivoire is an exception since it had accepted the ICC's jurisdiction in 2003, years prior to the investigations, which suggests that it should be considered as a self-referred situation in effect. The remaining two cases – Darfur, Sudan and Libya – were referred to the ICC by the UNSC.

2.4.1. The al-Bashir Arrest Warrant

The first controversial incident that caused tension in African-ICC relations was the issuance of arrest warrants for Sudan's former President Omar al-Bashir in 2009 and 2010 for war

[71] Map created by author.
[72] DRC, Uganda, CAR I, CAR II, and Mali.

crimes, crimes against humanity, and genocide in the Darfur situation. The Darfur situation, which was instigated in 2005, was the first instance where the UNSC exercised its referral power. Al-Bashir was the first sitting head of state to be implicated in proceedings by the Court.

Herein lay the controversy. Sudan is not a State Party to the Rome Statute and the applicability of the immunity waiver to non-States Parties is contentious since they have not agreed to the waiver of immunities ensured for state officials under customary international law.[73] The ICC, however, ruled that the UNSC referral triggered the ICC's jurisdiction, which includes the immunity waiver.[74] At the 13th Ordinary Session in July 2009, the AU issued a decision noting concerns about the UNSC's powers of referral and deferral (Articles 13 and 16 of the Rome Statute), ICC procedures, the applicability of the immunity waiver (Article 27) to non-States Parties, practical concerns about conflicts arising from Articles 27 and 98, and the role of regional bodies in relation to the ICC. African States Parties were charged with bringing these matters forward for discussion at the Review Conference. The Decision also noted that the AU's request that the UNSC defer the ICC's investigations into Darfur was ignored. It called upon AU Members to adopt a non-cooperative stance toward the arrest warrant for al-Bashir.[75] Notably, Botswana spoke out against this motion in support of the ICC.[76] The ICC has remained a consistent item on the Assembly of the AU agenda for its biannual meetings since its 12th Ordinary Session in 2009.[77]

As a result of the AU's non-cooperation decisions, African States Parties found themselves pulled in two directions between the ICC and the AU. The applicability of the immunity waiver in the case of al-Bashir was the first major area of contention that caused strain for African States Parties. This is because States Parties are required to cooperate with the ICC's warrants of arrest. Therefore, African States Parties are expected to detain al-Bashir and transfer him to The Hague should he arrive in their territory. However, they are also

[73] Gaeta 2009.
[74] Akande 2009.
[75] At the time of writing, the UNSC has not responded to the deferral request, which has been a cause of grievance for the AU.
[76] Davis 2014, 88.
[77] With the exception of its 20th, 23rd, and 31st Ordinary Sessions.

required to uphold the AU's decisions. This brought Articles 27 and 98 of the Rome Statute into tension for African States Parties. Article 27 waives immunity for officials, which leaves sitting heads of state and government of States Parties open to investigation by the ICC. Article 98 sets out the provisions for cooperating with the immunity waiver and assistance with surrendering suspects. It states that the Court cannot request its States Parties to act in a manner that is inconsistent with its international law obligations pertaining to diplomatic immunity.

Some states avoided this tension by not inviting al-Bashir into their territory whereas others allowed him to enter without being arrested. Al-Bashir visited Chad in 2010, 2011, and 2013 (twice); Malawi in 2011; and Nigeria in 2013.[78] Malawi had defended its non-arrest of Al-Bashir on the grounds that he had immunity since Sudan was not party to the Rome Statute and Article 98(1) could not require that States Parties act in a way that was in conflict with their other obligations. The ICC found Chad and Malawi to be in violation of their obligations to the Rome Statute since they should have approached the ICC for clarity on the matter. The ICC considers non-compliance on a case-to-case basis and found Nigeria's explanation for its non-compliance to be in good faith.[79] Al-Bashir continued to visit African States Parties without being arrested: Chad in 2014; Kenya in 2010; Djibouti in 2011 and 2016; the DRC in 2014; South Africa in 2015; and Uganda in 2016.[80] States Parties that were formally found to have acted non-compliantly with the ICC obligations, such as South Africa, faced no consequences beyond the reputational harms associated with non-compliance.

It is worthwhile noting that the AU did not request that African States Parties to the ICC leave the treaty in the non-cooperation decision. Instead, it advanced that these states operate within the ICC's mechanisms for review (i.e. the Review Conference) to gain clarity on the matters of concern. Furthermore, the AU's push for non-cooperation was very specifically with regards to the arrest of al-Bashir on the grounds that it conflicted with other obligations. It did not call for general non-cooperation with the ICC. The 21st Ordinary

[78] Trendafilova 2014.
[79] Ibid.
[80] Mills and Bloomfield 2018, 116.

Session of the Assembly of the AU, in 2013, saw the shift from Sudan to Kenya within the AU as the focal point of tension with the ICC.[81]

2.4.2. The Kenyan Situation

In March 2010, the OTP opened its the first *proprio motu* investigation, which was into the post-election violence in Kenya that occurred between 2007 and 2008.[82] Six suspects (who became known as the "Ocampo Six") were identified during investigations and two separate cases were created. One case was against William Samoei Ruto, Joshua arap Sang, and Henry Kiprono Kosgey. The other case was against Francis Kirimi Muthaura, Uhuru Muigai Kenyatta, and Mohammed Hussein Ali. Summonses to appear before the ICC were issued on 8 March 2011 for all the suspects. All the suspects were in political office at the time of the summonses except Joshua arap Sang, who was politically connected and a popular radio host.[83] The Kenyan officials voluntarily appeared at ICC proceedings.

Additionally, the UNSC referred the Libya situation on 15 February 2011, which added fuel to the fire since Libya was not a State Party.[84] At this point, three regional powers within the AU were being investigated by the ICC – two of whom were not States Parties to the Rome Statute – and none of them had self-referred to the ICC.

Kenya's next general elections took place in 2013. Kenyatta and Ruto, previously political opponents, joined forces as presidential and deputy-presidential candidates respectively under the Jubilee Alliance. The basis of this unity was pragmatism: to fight the ICC summonses. Building on Sudan's depiction of the ICC, the Kenyan leaders argued that they were being victimised by a 'neo-imperialist', 'racist', and 'anti-African' Court. At the risk of reductionism, the rhetoric was successful – evidenced by their ascent into political office.[85] Through their electoral campaign, Kenyatta and Ruto domesticated their ICC indictments.

[81] Du Plessis, Maluwa, and O'Reilly 2013.
[82] The crimes investigated were crimes against humanity.
[83] Allison n.d.
[84] United Nations Security Council 2011a.
[85] Lugano 2017c.

Once in office, the Jubilee Alliance-led government regionalised the matter by launching a sustained anti-ICC campaign within the AU.

Kenya lobbied other African states to reject the ICC as a puppet of western political powers that targeted Africa[86] and called on the AU for collective action. Kenya proposed an Extraordinary AU Session in October 2013 that focused on Africa's relationship with the ICC. The AU decision emanating from that Extraordinary Session called for the suspension of trials against the Kenyan leaders, adopted a position that heads of state and governments should be immune from prosecutions, and decided that Kenya should request a UNSC deferral.[87] The rationale for supporting a bid for deferral was that sovereignty was undermined by the prosecution of Kenya's executive leaders and that Kenya was a critical actor in the counter-terrorism efforts in the region and, thus, prosecutions risked destabilising related peace and security efforts.[88] Kenya also tried to popularise a mass withdrawal of African states from the ICC at this session, but the proposal did not secure the needed two-thirds majority. Furthermore, Kenya requested a deferral of the ICC investigations into its situation from the UNSC on two occasions: 23 March 2011 and 22 October 2013. Both were unsuccessful.

2.4.3. The Draft Withdrawal Strategy Document

The AU continued to encourage a collective African position regarding ICC matters in its decisions regarding the ICC from its biannual Ordinary Sessions. In June 2015, South Africa hosted the 25th AU Summit, which al-Bashir attended in his capacity as Sudan's head of state. The Southern Africa Litigation Centre (SALC) – a regional human rights organisation – initiated proceedings with a domestic High Court to order the South African government to uphold its obligations to the ICC and arrest al-Bashir. The High Court found that the South African government was required to arrest al-Bashir. Nonetheless, South Africa did not apprehend al-Bashir and was found, by its own courts as well as the ICC, to have reneged its ICC obligations. This incident saw another one of Africa's regional hegemons, South Africa,

[86] Allison n.d.
[87] Helfer and Showalter 2017, 18.
[88] Okoth 2014, 204.

sour toward the ICC and added more impetus to discussions about an African exodus from the ICC.

At the next AU Summit, which took placed in January 2016, the AU decided that the Open-ended Committee of Foreign Ministers on the ICC (the Ministerial Committee)[89] should draft "a comprehensive strategy including collective withdrawal from the ICC to inform the next action of AU member states that are also parties to the Rome Statute".[90] Later that same year, three states lodged notifications of their withdrawal from the ICC: South Africa, Burundi, and The Gambia. Subsequently, at the 28th Ordinary Session of the AU in January 2017, a draft Withdrawal Strategy Document was circulated among AU members.[91] Reservations on the document were entered by Nigeria, Senegal, Cabo Verde, Liberia, Malawi, Tanzania, Tunisia, and Zambia, which suggests that there was no collective position regarding the ICC among African States Parties.

The title of the document is a misnomer and sensationalises a document that is largely a stocktaking exercise of the AU's main areas of concern with the ICC, the relevant legal provisions regarding withdrawal, and a discussion about areas for ICC and UNSC reform.[92] The document's title is misleading since it does not propose a collective withdrawal strategy. Nonetheless, it fanned the discourse of mass African withdrawal from the ICC, which had been lurking since al-Bashir's first arrest warrant in 2009 and a sustained topic since Kenya's proposal in 2013.

In 2017, The Gambia and South Africa each retracted their withdrawals, resulting in Burundi being the only African state to withdraw from the ICC. South Africa initially maintained that it would withdraw. However, by 2019 it was apparent that this was off the agenda although there were indicators preceding this that withdrawal was no longer a priority. The specifics

[89] The Ministerial Committee was established in June 2015 and consisted of 15 States Parties (Burundi, Chad, Congo-Brazzaville, Cote d'Ivoire, Djibouti, Kenya, Madagascar, Mali, Namibia, Nigeria, Senegal, South Africa, Tanzania, Uganda and Zambia) and 13 non-States Parties (the names of nine of these states could be found: Algeria, Angola, Egypt, Eritrea, Ethiopia, Libya, Mozambique, Rwanda, and Sudan).
[90] Para. 10 (iii), Assembly of the African Union 2016a.
[91] Although the document is labelled as being for "restricted circulation", it is available in draft form online. African Union 2017.
[92] Keppler 2012; Kersten 2017b.

about the various African States Parties' (past and present) relationships with the ICC are discussed in Chapters Six, Seven, Eight, and Nine.

2.5. Conclusion

The purpose of this chapter was to provide the necessary historical and contextual information about African-ICC relations to establish the working knowledge needed to engage with this project's effort to answer the question: what are the main factors influencing African states' behaviour in relation to the ICC?

This chapter demonstrated that African states played an important and proactive role in the creation of the ICC. The reasons for the high rates of ratification of the Rome Statute by African states is not definitively clear. However, it seems part of the impetus was for the creation of a court that could help equalise the application of international criminal justice for all states regardless of their power status.

It was also explained that the 'withdrawal debate' refers to the series of events that occurred between African states and the ICC since the arrest warrant was issued for al-Bashir in 2009 – culminating in Burundi's withdrawal from the ICC coming into effect in 2017. It was noted that Kenya's ICC politics was a critical factor, among others, that shaped dynamics within the withdrawal debate.

Lastly, this chapter demonstrated that while there have been movements for collective African action against the ICC, the reality has been that African states have held different positions toward the Court. This was exemplified by several reservations that were entered on the AU's draft Withdrawal Strategy Document in 2017. The next chapter analyses the existing literature that has examined the withdrawal debate to determine what has been identified as the main factors affecting African states' behaviour in relation to the ICC.

3. LITERATURE REVIEW

The withdrawal debate has received significant scholarly attention – especially from those interested in international criminal law and justice and African politics.[93] The purpose of this chapter is to assess the prominent academic literature on the withdrawal debate to determine if and how the research question is answered in the existing body of research. To this end, the literature review is divided into two sections.

The first section organises the withdrawal debate literature thematically to discuss four common themes across the literature. Scholarly engagements typically evaluated the alleged ICC case selection bias; the competing international obligations faced by African states; the peace versus justice debate; and the role of the prosecutor. The second section considers on the main methodologies that have been used within the academic literature to analyse the withdrawal debate. It discusses the main methods, evidence, and research designs that have been used in the academic literature on the withdrawal debate.

Building on these two sections, the chapter identifies gaps in the withdrawal debate literature. The chapter concludes that there are empirical, theoretical, and methodological gaps in the literature that demonstrate the need for further research to answer the question: what are the main factors influencing African States Parties' behaviour in relation to the ICC with regards to the withdrawal debate?

3.1. Prominent Themes in the Withdrawal Debate Literature

Four thematic areas that emerged across the main academic literature on the withdrawal debate. These themes are not mutually exclusive aspects of the withdrawal debate – they

[93] Phil Clark (2018) identifies three fields as relevant for analysing the ICC literature (although his focus is on a broader set of African-ICC relations): international criminal law, international relations, and transitional justice. I have used political studies since this would include relevant sub-disciplines such as international relations and African politics. It is unclear that the transitional justice field has a distinct response to the withdrawal debate, although it certainly has contributed toward the literature that analyses Africa's relationship with the ICC. It seems that this literature's contribution to the withdrawal debate is appropriately captured in the two categories that I have identified (international criminal law and political studies).

are interrelated but distinct. Often scholars discussed more than one of these thematic areas in their consideration of the withdrawal debate and African-ICC relations. This section distinguishes between thematic areas for the purpose of a comprehensive assessment of the existing literature about the withdrawal debate to establish if and how scholars have explained the variation in African States Parties responses to the withdrawal debate.

3.1.1. The ICC and Accusations of Selection Bias

The accusations of the ICC as anti-African and neo-colonial[94] frame the withdrawal debate and serve as the primary point of departure for the different scholarly engagements. Political leaders, such as Kenyatta, al-Bashir, and Uganda's Yoweri Museveni, accused the ICC of being a neo-imperialist body hijacked by global powers by some African states.[95] The fact that ten of the ICC's then eleven investigations were into African situations was typically used as evidence of this bias.

Scholars have agreed that this illustration is misleading and a "sterile debate" because the evidence does not support this conclusion.[96] The common rebuttal to the above accusation is to note that most of the African situations before the ICC are self-referrals, which does not substantiate the accusation of selection bias against African.

However, this is where consensus ended, and the academic debate began.

Building on the above point, some scholars challenge the accusation of neo-colonialism on the basis that the self-referrals show that the ICC is susceptible to political manipulation by political leaders to serve their self-interest.[97] Uganda is used as an illustrative example of

---

[94] Sometimes the term 'neo-imperial' is used. For the purposes of this study, these terms are treated interchangeably.

[95] Namely, al-Bashir accused the Court of being neo-colonial, whereas *inter alia* Kenyatta, Museveni, Paul Kagame (Rwanda), and (the late) John Magufuli (Tanzania) argued that the Court is compromised by global powers. See: https://www.washingtonpost.com/news/monkey-cage/wp/2017/03/06/is-the-international-criminal-court-biased-against-africans-kenyan-victims-dont-think-so/?utm_term=.b801a996f332; https://www.africanews.com/2017/11/12/uganda-s-museveni-tanzania-s-magufuli-condemn-icc-probe-in-burundi//; and https://www.news24.com/Africa/News/ICC-targeting-poor-says-Kagame-20080731.

[96] Yigzaw 2018; Dyani 2012

[97] Du Plessis, Maluwa, and O'Reilly 2013.

this dynamic. In 2004, Uganda's President Museveni invited the ICC to investigate the northern Ugandan conflict with the Lord's Resistance Army (LRA), led by Joseph Kony. During the Juba peace talks between the LRA and Museveni between 2006 and 2008, Kony made his agreement to a peace deal subject to the suspension of the ICC investigations.[98] Museveni assured Kony that he would protect him from the ICC and requested that the ICC suspend its investigations. When the ICC refused to cease its investigations, Museveni's position flipped from being a proponent of the ICC to opposing it as an obstruction to peace.[99] For Museveni, the ICC shifted from being a tool that had helped him bring the LRA to the negotiation table to an obstacle to a peace settlement.[100] Museveni adopted rhetoric that described the ICC was neo-colonial as response to this incident.[101] The Ugandan situation also highlights that there are no provisions in the Rome Statute addressing the withdrawal of self-referrals.[102]

In addition to the point regarding self-referrals, scholars also defended the ICC's focus on the African continent in other ways. Some legal scholars argue that the ICC's focus on the continent is appropriate given the scale and nature of conflict on the continent together with the fact that African states comprise the largest regional bloc within the ICC.[103] Shamila Batohi (a former ICC employee) notes that regardless of how a situation is brought to the ICC, it conducts preliminary examinations following legal criteria in the Rome Statute regarding jurisdiction, admissibility, and interests of justice.[104] The ICC sends regular in-country missions to monitor domestic proceedings in response to issues. She states that if there are genuine proceedings underway, then the ICC does not intervene and tries to support national proceedings. Thus, Batohi challenges the claims that the ICC could unfairly select cases due to the processes that precede the launch of full investigations to ensure that the situation is appropriate and feasible for the ICC to pursue. Batohi's response to the

[98] Bosco 2014, 129; Schabas 2011, 42.
[99] Mills and Bloomfield 2018, 120.
[100] Schabas 2011, 42.
[101] Bosco 2014, 129.
[102] Schabas 2011, 167.
[103] Batohi 2014; Kuwali 2018; Yigzaw 2018
[104] Batohi 2014, 53.

case selection matter evidently uses legal evaluative criteria to reflect on the appropriateness of the ICC's selection of situations.

Contrarily, Phil Clark's research in the DRC and Uganda found that the ICC disregarded and undermined domestic processes. Furthermore, some scholars noted that the ICC's prosecutor, Luis Moreno Ocampo, pursued self-referrals from the DRC and Ugandan governments.[105] The pursuit of these self-referrals challenges the defence of the ICC on the grounds of most situations were voluntarily referred to the ICC since there is a degree of solicitation at play.[106] Furthermore, the ICC is accused of collaborating with states by focusing its investigations and cases against rebel groups and overlooking the role of government forces in the Ugandan and DRC conflicts.[107] The focus on the Ituri province in the DRC investigations is identified as an indication that the ICC's investigations avoid implicating state actors.[108] Ituri is the least likely region where a link between violence and the state would be established unlike other regions such as North and South Kivu.[109] Subsequently, the pursuit of these self-referrals highlight two concerns with the ICC. First, the OTP's close relations with governments call into question its impartiality.[110] Second, the ICC's closeness with governments could be because the ICC lacks the resources and clout to conduct investigations without the good graces of the state in which the conflict is situated. This suggests a form of dependency by the ICC on the governments of the countries it is investigating, which is a conflict of interests when state actors are complicit in crimes.

The contrast between Batohi and Clark's arguments suggests that external critiques of the ICC might be at odds with internal assessments. The contrasts also show how legal and political approaches emphasise different phenomena in answering similar questions.

[105] P. Clark 2018, 55; Sadat 2010, 7; Bosco 2014, 97–98.
[106] P. Clark 2018, 63.
[107] Ibid., 173.
[108] Bosco 2014, 100–101.
[109] P. Clark 2018, 83; Hansen 2014, 169.
[110] Bosco 2014, 98; P. Clark 2018, 63.

Another common position from within the ICC is that the negative perceptions of the ICC espoused by the political elite of Africa are not shared by victims.[111] They argue that victims of these conflicts deserve justice, and the ICC is assisting them in this pursuit. However, such claims made by scholars on behalf of victims generally are not grounded in empirical evidence. They are normative positions. There is a need for systematic studies that empirically research if there is a contrast between the political elite's perceptions of the ICC with those of human rights civil society organisations and victims. Without such research, these defences of the ICC as victim-centred appear as manifestoes rather than empirically grounded rebuttals.

A few scholars responded to arguments that the ICC is neo-colonial by virtue of its being part of an international criminal system that is fundamentally "western". They have argued that this claim is historically inaccurate, and that the international criminal system has clear roots within Islamic, Hindu, and Chinese traditions as well as so-called western (or liberal peace) values.[112] Furthermore, the AU Constitutive Act shares many of the international values and norms that are in the Rome Statute, which suggests that the AU does not consider these values as alien to Africa or as "unAfrican".[113]

Some scholars identify the UNSC as an external structure that contributes to the perception that the ICC is anti-African and neo-imperialist.[114] The UNSC is a political mechanism that determines the agenda for international justice. The permanent five (P5) members of the UNSC – the US, UK, Russia, China, and France – yield the most influence over the peace and justice agenda due to the veto powers accorded to them. They can safeguard themselves and their allies from UNSC referral to the ICC thanks to their veto powers. Consequently, the P5 and their allies have the power to evade judicial processes that their weaker counterparts do not have, which results in their de facto not being subjected to the same justice requirements.[115] The political, economic, and military power at the disposal of these

[111] Monageng 2014, 17; Batohi 2014, 50–51; P. Clark 2018, 53–54; Brett and Gissel 2020b, 42–45.
[112] Sadat 2010; Tladi 2009.
[113] Tladi 2009.
[114] Murithi 2014; Jalloh, Akande, and Plessis 2011; Mutua 2015.
[115] Murithi 2014.

states enables them to safeguard themselves against potential prosecution in a way that weaker states cannot.[116] For example, the US is not a State Party to the Rome Statute but has the power to evade the ICC by virtue of its superpower position. The US entered into a series of bilateral agreements with (mainly aid recipient) states after the Rome Statute entered into force that ensured immunity for their citizens, including those involved in military and peace operations.[117] The superpower status of the US uniquely allows it to circumvent the ICC in ways that other states are not able to, yet, the US has influence over the ICC's investigations vis-à-vis the UNSC.

Relatedly, some scholars argue that there is a double standard in how international law is applied, which is suggested by the de facto immunity extended to major political powers.[118] These scholars argue that there is selection bias in the situations investigated by the ICC, as a result of ICC's efforts to appease major political powers such as the US and some European states.[119] This suggests that an anti-African bias would be an incidental outcome of the ICC's avoidance of situations that implicate major powers or their allies, such as Palestine, Iraq, and Afghanistan.[120] Although the launch of full investigations into Afghanistan and Palestine, in 2020 and 2021 respectively, challenges this stance, the fact that the ICC took so long to launch such investigations remains. Furthermore, this suggests that the ICC's decisions about which situations to elevate to full investigations has been influenced by global power politics as well as the legal merits of the situations. The ICC's relative weaknesses compared to powerful states such as the US is highlighted as a factor that has compromised its integrity. Bosco captures this position well:

> Far from leaping at the chance to confront the United States, and its allies, the Court's top officials had shown no interest in pursuing investigations that implicated the superpower. The Court had instead focused its efforts on African conflicts where the United States and other leading powers had few objections to investigations.[121]

[116] Rosenthal 2004, 35.
[117] Yigzaw 2018
[118] Sadat 2010; Yigzaw 2018
[119] Dugard 2013, 569.
[120] Ibid.; Bosco 2014, 121
[121] Bosco 2014, 106.

Thus, these arguments see the ICC's bias as a consequence of an unequal global political system and the ICC's holding relatively little power within this system.

Furthermore, some scholars have noted that the UNSC's referral and deferral powers aggravates perceptions that the ICC is used as a tool by major political powers.[122] Only Britain and France of the P5 states are States Parties to the Rome Statute, yet all five permanent members enjoy disproportionate influence in the UNSC over the decision-making processes that determine which situations are referred or deferred. The framing of the ICC as neo-imperialist within this argument positions the ICC as a product of a parochial and unfair system of global governance whereby the P5 serve as an obstacle to reform and abuse their powers for their interests. The UNSC's failure to respond to the AU's deferral request for the Darfur situation fuelled tensions between the ICC and the AU (and some of its members).[123] For example, the July 2009 non-cooperation decision by the AU was a response to the UNSC's refusal to defer the Darfur situation.[124] The concerns raised about the UNSC's powers in relation to the ICC highlight political factors – rather than questions of legality – that affect the ICC-AU relationship. This argument contextualises the withdrawal debate within global *realpolitik* as well as within a history of concerns raised by African and other former colonial states about the institutionalisation of unrepresentative and unequal power within the UNSC. This dynamic is well summarised by Jalloh, Akande, and du Plessis:

> …from the perspective of many African leaders, the ICC's involvement in Sudan has come to reflect their central concern about the UN - the skewed nature of power distribution within the UNSC and global politics. Because of the Council's legitimacy deficit, many African and other developing countries see its work as 'a cynical exercise of authority by great powers,' in particular, the five permanent members.[125]

[122] Murithi 2014.
[123] Murithi 2014; Okoth 2014, 203.
[124] Interestingly, African members of the UNSC did not take forward the AUPSC's request for deferral of Darfur, which is indicative of lack of common position regarding ICC and this case. China supported the request on the basis of sequencing: peace should be prioritising immediately, and prosecutions should come at a later stage. Jalloh, Akande, and Plessis 2011; Murithi 2014.
[125] Jalloh, Akande, and Plessis 2011, 9.

3.1.2. Conflicting International Obligations

The AU's decision of non-cooperation presented a dilemma for African States Parties because they were pressured to choose between their obligations to the AU and the ICC. The extent to which there is a genuine conflict of obligations is contested by scholars. Some scholars have dismissed the discussion about inconsistent articles as a non-starter since there is long-standing precedent in international instruments of waiving customary immunity for state officials for serious international crimes such as genocide, crimes against humanity, and war crimes dating to the Treaty of Versailles.[126] Consequently, these scholars do not doubt the applicability of the immunity waiver because it is precedented for the core crimes.

Other scholars have focused on the substantive elements about whether the two articles are inconsistent.[127] While it is accepted that Article 27 applies to States Parties to the Rome Statute by virtue of their accession to the treaty, it is not self-evident that it applies to third-party states. Since the Darfur situation was the first time the UNSC made use of its referral power to the ICC, it was the catalyst for intense debate about the applicability of the immunity waiver to the sitting officials of a non-State Party.[128] As noted earlier, the ICC found that the waiver is applicable to non-States Parties by virtue of the UNSC referral triggering the ICC's unlimited jurisdiction to the referred situation.[129]

The AU argued that immunity is needed to enable heads of states to fulfil their duties while in office. Threats to the fulfilment of office duties violates sovereignty since it obstructs national processes and self-determination.[130] Some scholars view the AU's response to the immunity issue as a contestation between norms: sovereignty and solidarity on the one hand and anti-impunity on the other. Furthermore, the solidarity norm is esteemed within the AU and is conceptualised as an Afrocentric and anti-imperialism norm dating to African

[126] Olugbuo 2004.
[127] Tladi 2016, 321; van der Vyver 2015.
[128] Du Plessis, Maluwa, and O'Reilly 2013; Kuwali 2018; Materu 2014, 217.
[129] Schabas 2011, 244–46.
[130] Kuwali 2018; Okoth 2014.

independence.[131] Importantly, the solidarity norm prioritises regional responses to the issues confronting AU members ("African solutions for Africa's problems") and, foremost, the pursuit of peace in response to conflicts (this is discussed further in sub-section 3.1.3. below).

3.1.2.1. Abuse of Universal Jurisdiction Principle

Some scholars situate the immunity debate within a broader AU debate about the use of the principle of universal jurisdiction, particularly by European powers.[132]

Universal jurisdiction predates the Rome Statute system and other international criminal courts and tribunals. It is based on the belief that some crimes (such the ICC's core crimes) affect the global community and, consequently, any state can prosecute for these crimes.[133] The AU's concerns with universal jurisdiction are with the exercise of this principle by some European states rather with the substance of the principle.[134] It has been a point of tension in African-European and EU-AU relations dating to 2000 when an arrest warrant was issued for DRC Foreign Minister Ndombasi.[135] Concerns about the targeting of African officials by European countries were raised within the AU, culminating in the Johannesburg Declaration of the Pan-African Parliament on 15 May 2008 opposing this emergent trend – almost a year before the first al-Bashir arrest warrant was issued on 4 March 2009.[136] The Ad Hoc AU-EU Expert Group on the Principle of Universal Jurisdiction, which was created in January 2009 to facilitate EU-AU discussions on the issue, recommended exploring the implications of giving the African court jurisdiction over international crimes, such as genocide, war crimes, and crimes against humanity.[137]

[131] Mills and Bloomfield 2018, 106.
[132] Werle, Fernandez, and Vormbaum 2014; Brett and Gissel 2020b, 41–42.
[133] Similar logic underpins the R2P norm. Jeßberger 2014, 157.
[134] Jeßberger 2014.
[135] Du Plessis, Maluwa, and O'Reilly 2013, 3.
[136] Du Plessis, Maluwa, and O'Reilly 2013, 9.
[137] Du Plessis, Maluwa, and O'Reilly 2013, 9.

Recognising that the immunity issue within the withdrawal debate is interconnected with a longer history of AU discontent with the principle of universal jurisdiction is a useful nuance within the withdrawal debate literature. It historicises the tension with the immunity waiver and shows why the customary waiver of immunity for core crimes dating to the Treaty of Versailles is not a simple solution to the matter. It captures the political tensions at play rather than restricting the issue to one about legality, which could risk overlooking the general concerns about how universal jurisdiction is exercised.

3.1.3. Peace versus Justice Debate

Within the transitional justice field, the peace versus justice debate refers to the (false) dilemma of choosing to prioritise either peace or justice in the aftermath of conflict, which affects the types of transitional justice mechanisms that should be used.[138] This dilemma is involved within the withdrawal debate when the ICC (justice) is alleged to jeopardise national and regional efforts at resolving conflict (peace).[139]

For example, the AU Peace and Security Council (AUPSC) requested that the UNSC defer the Darfur situation because the ICC's investigations "…could seriously undermine the ongoing efforts aimed at facilitating the early resolution of the conflict in Darfur and the promotion of long-lasting peace and reconciliation in the Sudan as a whole…"[140] The AU and AUPSC framed the issue as a matter of peace versus justice, where the ICC's pursuit of justice undermined the AU's pursuit of peace.[141] The AU believed that immunity should be upheld for al-Bashir and it established the AU High-Level Panel for Darfur on 21 July 2008 – after the UNSC referral to the ICC in March 2005.[142] The peace versus justice matter reveals a general challenge for international justice where often the leaders who instigate grave crimes are

[138] See generally: Sriram and Pillay 2010.
[139] Hansen 2014, 170; Juma 2014, 343–54; Brett and Gissel 2020b, 38–40.
[140] African Union Peace and Security Council 2008, para. 9.
[141] Sadat 2010; Tladi 2009; Kuwali 2018; Mills and Bloomfield 2018, 109.
[142] The sequencing of these events does not call into question the legality of the ICC's involvement in Darfur in terms of the Rome Statute given that no processes were underway when the ICC received the Darfur referral. However, it has highlighted that the Rome Statute lacks provisions about when and how the ICC should complement regional bodies, such as the AU.

the ones who need to lead the peace processes.[143] The AU saw the ICC's arrest warrant as complicating their peace negotiations in Sudan because al-Bashir was a necessary actor for the process.

Some authors have argued that the peace versus justice issue within the withdrawal debate is a false dilemma and incorrectly framed.[144] Instead, the matter should be reframed as a choice between initially prioritising negotiations and prosecutions, rather than as peace or justice. Reframing the choice widens the selection of the possible mechanisms that could be used to achieve the priority.[145] This practitioner-oriented recommendation offers a normative solution to this challenge.

However, it does not identify or resolve the political tensions that underpin the peace versus justice matter within the withdrawal debate. For example, contention over sovereignty is an interplaying factor. Related to the neo-imperialism concerns, some African states may resent the ICC's intervention in conflicts – especially those that jeopardise other efforts – because it might be seen as negating national (and regional) determination over how to respond to matters. The emphasis placed upon self-determination and sovereignty within African politics should be understood against the recent history of colonialism.[146] The ICC was created, in part, to intervene in situations where states were unwilling and/or unable to respond to the conflict. This matter is further muddied since there is no guidance in the Rome Statute about the role of regional bodies such as the AU. Tension lies in the grey areas of enforcing these different principles.

3.1.4. Prosecutor's Personality: Luis Moreno Ocampo

The OTP plays a significant role in shaping the ICC's agenda through the investigation and selection of situations. Some scholars identified the personality of Ocampo (the first prosecutor of the ICC) as an aggravating factor that strained the relationship between some

[143] Murithi 2014, 182.
[144] P. Clark 2018, 205–7; J. N. Clark 2012, 294.
[145] P. Clark 2018, 205–7.
[146] Sadat 2010, 4–5.

African states and the ICC as well as AU-ICC relations.[147] Although this argument is not as popular within the literature as the preceding factors, it is worthwhile noting since it interacts with and exacerbates the other factors – especially the anti-African bias arguments.

It is argued that the ICC-Africa relations were worsened by Ocampo's poor communication with the African bloc, which suggests some of the tension that contributed toward the withdrawal debate (at least initially) was personality based.[148] As noted earlier, Ocampo sought the DRC and Ugandan self-referrals to ensure that the ICC's first investigations would be as smooth-sailing as possible.[149] Ocampo's fraternisation with political leadership (African and not) calls into question the ICC's ability to navigate the political spaces that it occupies as well as its status as an impartial institution.[150] Furthermore, Murithi argues that Ocampo's use of preliminary investigations appears as a tactic to avoid prosecutions indefinitely in situations that implicated powerful states,[151] which relates to concerns raised about the ICC's relationship with major political powers and abuses of power. Murithi also argues that the politicisation of the ICC is suggested by its appointment of Fatou Bensouda as Ocampo's successor, which appears to be an effort to demonstrate that the ICC is not anti-African.[152] This suggests political behaviour by the ICC in response to criticism.

3.1.5. Gaps

The preceding discussion assessed the existing literature about the withdrawal debate. It identified four broad thematic arguments that emerged within the withdrawal debate scholarship. It assessed the strengths and weaknesses of these various points and discussed how the arguments in the literature interplay.

[147] Juma 2014, 356.
[148] Du Plessis, Maluwa, and O'Reilly 2013, 2–3; Hansen 2014, 175.
[149] Sadat 2010; Hansen 2014, 168.
[150] P. Clark 2018.
[151] Murithi 2014, 185.
[152] Ibid., 186

The purpose of this section is to consider gaps within the withdrawal debate among scholars. Four gaps are identified and discussed below.

3.1.5.1. Economic Factors

A significant sub-field within Africa's international relations is the relevance of international political economy. Some prevailing explanations of Africa's international relations point to economic factors as a major determinant or influence of foreign policy decision-making and behaviour.[153] Often, this explanation falls within rationalist utilitarian approaches and is shaped by the assumption that African states are rational actors that seek to maximise their material interests.[154] There are two main political economy factors that have not received attention in the withdrawal debate literature that might warrant further examination. The first is the economic relationship between African states and EU countries. The second is the impact of emerging states on relative power within multilateral organisations.

The withdrawal debate literature does not discuss economic factors related to membership of and/or withdrawal from the ICC for African states. It was noted in Chapter 2 that support for the ICC is proscribed to trade partners party to the Cotonou Agreement. Africa's trade and aid relations with EU states could be a factor influencing membership, but this is not assessed within the withdrawal debate.

There is reason to consider this factor. The creation of the ICC was driven primarily by regional powers within the EU, such as Germany.[155] In fact, the significance of EU states' role in the ICC's creation resulted in some sentiments that the ICC is "…just a project of the European Union…"[156] The significance of the EU within the ICC is apparent from the role these states played in its establishment to their ongoing financial contributions to the Court.

[153] Hurt 2004; 2013; Mangala 2010; Mazrui 1977.
[154] Tieku points out that there are explanatory shortcomings with such approaches since they de-emphasise important features of Africa's international relations, such as consensus-based decision-making, solidarity politics, and collectivism. Tieku 2014, 12.
[155] See: Eikel 2018.
[156] Rosenthal 2004, 31.

Their investment in the ICC is also suggested by the Cotonou Agreement's amendment to include provisions requiring support for the Rome Statute.

The EU is one of Africa's major trade and aid partners. Since 2004, EU committed over €1.7 billion from Africa's peace support and operations – Africa Peace Facility 2014-2020 budget received €750 million from the European Development Fund (the main funders were France, Germany, and the UK).[157] Given the significant financial and trade relationships between African and EU states, and particularly between the AU and EU, it would be worthwhile exploring how relevant EU-related economic factors are in influencing the withdrawal debate. Rosenthal suggests that the EU used its position as an aid donor and trade partner to weaker states to secure support for the ICC:

> …the EU has succeeded in rallying support among countries that, for the most part, due either to their small size or to their extreme poverty and large external debt, cannot seriously be regarded as independent players on the world stage. Alongside the world's smallest countries, the ratification registry also features many of its most highly indebted poor ones (Bolivia, Mali, Sierra Leone, Djibouti, etc.). Not surprisingly, on closer inspection, these turn out almost invariably to be privileged beneficiaries of European development aid. With very little to lose and significant financial reward to gain from demonstrating their political "worthiness" of EU assistance, more such countries can be expected to join the court in the future.[158]

Rosenthal's observations about how the EU uses its aid relations to shape behaviour in relation to the ICC suggests the need for more research into this factor.

The second economic factor that warrants consideration is the extent to which the rise of emerging powers, such as China and India, has affected African states' behaviour within multilateral organisations. Some academics have argued that the rise of such powers has facilitated more space for African (and other Global South) states to exercise more assertiveness within global politics.[159] In particular, China has emerged as a significant

[157] Khadiagala 2018, 437.
[158] Rosenthal 2004, 31.
[159] Cornelissen 2009; W. Brown and Harman 2013, 8; Mangala 2010, 10.

(economic) partner for Africa.[160] By 2000, total trade Sino-African trade exceeded US$10 billion and by 2003 Africa's exports to China amounted to US$5.5 billion.[161] As of 2019, China and India were Sub-Saharan Africa's main external import and export partners.[162]

This suggests that there is scope for further research that considers if the rise of powers such as China and India as significant trade partners for African states impacts on its behaviour within multilateral organisations generally, and if this affects relations within the ICC particularly.

3.1.5.2. Neo-imperialism: An Empty Signifier

The academic responses to the accusation of the ICC being neo-imperial and neo-colonial have not typically included a conceptualisation of these key terms – an issue that Res Schuerch observes.[163] Neither concept is self-evident nor is there wide consensus on how to define these terms. Political elite likely rely on using these terms elusively, as Schuerch notes: "Today, it appears that the notion of neo-colonialism has transcended the historical context of post-colonial dependencies and is used to describe all kinds of policies allegedly leading to political subordination and economic exploitation of states in the post-colonial era."[164] However, the elusiveness of this concept is a weakness among the academic responses to the withdrawal debate.

Two scholars stand out in their efforts to define the concept in relation to the withdrawal debate: Schuerch and Tim Murithi (2019). Each propose a qualified definition of neo-colonialism and neo-imperialism respectively. Schuerch proposes a conceptualisation of "legal neo-colonialism" uniquely within international criminal law, which he proposes is defined by any unjustified selective application of international criminal law and if the ICC

[160] Measures of Chinese aid to Africa is complicated by the fact that it does not adopt the concepts, measures, and reporting systems used by other aid granting regions – such as the Development Assistance Committee of the Organisation for Economic Co-operation and Development. China's development aid is primarily disbursed in the form of subsidised loans with a focus on infrastructural development. Lomøy 2021.
[161] Taylor 2004, 93.
[162] World Integrated Trade Solution n.d.
[163] Schuerch 2017.
[164] Ibid., 6.

contributes toward the creation of an international legal system that dichotomises politically powerful and weak states in its prosecutorial practice.[165] Murithi's book proposes the concept "judicial imperialism". He argues that the ICC is a tool of judicial imperialism because it produces and reproduces an international criminal law system that treats powerful and weak states differently.[166] Thus, both conceptions have similar features: they focus on the international legal system's enactment and argue that neo-imperialism is identifiable when this system is applied differently to states on the basis of their relative power.

The importance of defining this concept cannot be overstated. Without defining "neo-imperialism" or "neo-colonialism", it is difficult to meaningfully compare the arguments made in favour or against this accusation. The terms simply imply, rather than describe, a negative attribute of the ICC. This is analytically slippery and imprecise: descriptions of the ICC's parasitic investigative strategy could suggest neo-colonialism because it is extractive; the ICC's relative lack of power could be a serious challenge to claims of neo-imperialism since the imbalance of power is not self-evident – in fact, the consistent ability to resist the ICC by African states suggests a stalemate; the ICC's being a remote institution could lend itself to the descriptor "neo-imperial" but grassroot support for the Court could problematise this description; and so on. There is an apparent need for more widespread efforts by scholars to develop a coherent conceptualisation of these terms (neo-imperial and neo-colonial) within the withdrawal debate literature to facilitate more meaningful discussions and assessments about the applicability of these terms to the ICC.

3.1.5.3. Reasons for Joining

As noted in Chapter 2, the motivations driving African states' (individual) accession to the Rome Statute has not been adequately researched.[167] In fact, there is a tendency to neglect

[165] Ibid., 8.
[166] Murithi 2019, 41.
[167] It was noted that the main reason, usually uncited, was that African states were motivated by the Rwandan genocide. Another factor noted was the effects of the Cotonou Agreement's provisions regarding the ICC. Last, it was noted that there was a trend of acceding to international normative frameworks in the late 1990s and early 2000s by African states.

analysing the factors motivating African states' membership of international judicial initiatives generally.[168]

One work considers the motivations of African states in the creation of the ICC. Gissel has argued that the contemporary criticisms of the ICC by African states should be understood within the context of their vision for the Court when they participated in its creation.[169] Gissel argues that the prevalent concerns among African states that participated in events related to the creation of the ICC between 1993 and 2002 related to the desire to see an ICC that is universal, upholds national sovereignty (i.e. complementarity), is independent of political interference, and that the institutional arrangements of the ICC establishes sovereign equality. Gissel highlights that there was variance among African states with regards to these matters. She then argues that the contemporary issues raised in the withdrawal debate have clear links with these past areas of concern. She argues that allegations of selective prosecution relate to dissatisfaction with the lack of universal membership to the Court; the concerns regarding the ICC's disrupting peace processes relates to complementarity; and the criticisms of the UNSC's powers and the head of state immunity issue relates to concerns about the ICC's independence and its role in the reproduction of global power inequalities vis-à-vis the UNSC.[170]

Gissel's article helpfully illustrates the antecedent debates related to some of the main thematic areas raised in the withdrawal debate. However, her account does not explain why African states joined the ICC despite the ways that the proposed ICC did not conform with their envisioned version of the Court. Furthermore, it does not explain the variance among states' responses to the contemporary critiques of the Court, the ways that some states have politicised the withdrawal debate, or how these historical concerns might have been used for political agenda within the contemporary critiques of the Court.

The interview data referred to in Chapter 2's discussion about the motivations behind African states' joining the ICC also indicate possible explanations that require more robust

[168] Brett and Gissel 2018, 215.
[169] Gissel 2018.
[170] Ibid., 745-46.

research: the trend among African states in the late 1990s and early 2000s to join international treaties; the legitimising effect of joining the ICC; the bandwagon effect on Rome Statute ratifications; and the economic incentives to join.

There is, therefore, scope for more considered research into the factors driving African states' motives for joining the ICC in the first place and analysing if this is relevant for (1) their maintaining their membership, and (2) how they have behaved within and regarding the ICC.

3.1.5.4. Behavioural Analysis

Few studies within the withdrawal debate literature have attempted to theorise the behaviour of African states in response to the ICC. Destaw Yigzaw and Marco Bocchese each argue that self-preservation drives the objections to the ICC by African states that are not yet implicated in the Court's investigations due to fear of losing power are a result of ICC investigations.[171]

Yigzaw also theorises that regime type predicts behaviour with the ICC: credible democracies (except South Africa) are in favour of ICC and African states that are anti-ICC are those led by strongmen (such as The Gambia).[172] Yigzaw's suggestion that regime type could be a predictor of behaviour is not convincing since it does not account for all sets of responses to the ICC by African states, such as states that have not taken a vocal position in favour or against the ICC. Furthermore, it does not accommodate changes in behaviour toward the ICC over time by the same state. It also encounters conceptual and empirical issues around "credible democracy". Concepts of consolidated democracy mean that violent outbreaks around elections casts a shadow over the credibility of, for example, Kenya's democracy. Similarly, the dominant party systems of Botswana and South Africa bring into question the stability of these seemingly entrenched democracies should the dominant

[171] Yigzaw 2018; Bocchese 2020.
[172] Yigzaw 2018

parties lose their stronghold on power. Therefore, the regime type predictor encounters analytical difficulties that make comparison difficult and muddy analysis.

Part of Humphrey Sipalla's analysis of the withdrawal debate includes a section focused on state withdrawals from international jurisdictions and organisations.[173] He does not limit his analysis to Africa. Rather, he draws on withdrawal behaviour and threats of withdrawal by a variety of states to support his argument that withdrawal is not an unusual form of behaviour in international law. While Sipalla's study helpfully highlights that withdrawal is not necessarily unusual, it does not explain the different behavioural responses within the withdrawal debate. It historicises one type of behaviour.

Mills and Bloomfield theorise African state behaviour in response to the withdrawal debate from a constructivist approach. They suggest that African states' responses to the ICC can be understood as responses to the anti-impunity norm (represented by the ICC). They suggest that state interactions with norms can be categorised into four behavioural groups on a linear scale: pure norm entrepreneurs (seek to change the status quo); competitor entrepreneurs; creative resisters; and pure norm antipreneurs (seek to maintain status quo).[174] Mills and Bloomfield propose that two norms are in play within the withdrawal debate – the anti-impunity norm, which is defended by pure norm entrepreneurs versus the sovereignty and solidarity norms, which are defended by pure norm antipreneurs. These norms are contested by the entrepreneur and antipreneur states within the political bodies where the African states meet, namely, the ICC ASP, the UNSC, and the AU. Mills and Bloomfield's approach is refreshing as it uses a conceptual approach to explain two sets of behaviour – support for and resistance against the ICC – whereas the literature has mostly focused on states that have been anti-ICC.

Nonetheless, Mills and Bloomfield's approach neglects to study the behaviour of those states that have abstained from taking an active position for or against the ICC. This means that not all sets of behaviour within the withdrawal debate have been accounted for under

[173] Sipalla 2017, 78–92.
[174] Mills and Bloomfield 2018, 103–4.

their approach. The study also presumes that behaviour is norm driven without empirically proving this claim.

Oumar Bâ identifies four patterns of behaviour by African situation countries in relation to the ICC: strategic self-referral; complementarity; limited state cooperation with the ICC; and the strategic use of the ICC in domestic politics. Through in-depth case studies of Uganda, Libya, Kenya, and Côte d'Ivoire, Bâ shows how these patterns of behaviour came to life. He argues that these patterns are present in the other African situation countries too and presents brief case discussions of the DRC, CAR, Mali, Gabon, Sudan, and Burundi to this end. Furthermore, he points to other non-situation countries that have been relevant for the withdrawal debate, namely, The Gambia, South Africa, and the Philippines.[175] Through his examination of state behaviour in relation to the ICC, Bâ shows the challenges that the ICC and international criminal justice confront within the context of global power politics.

Bâ's analysis is a comprehensive account of the behaviour of major cases related to the withdrawal debate and demonstrates the benefit of small sample case studies. There is scope for this work to be expanded to explore the causes of behaviour for a wider sample size to identify generalised explanatory factors of behaviour and test the initial findings from this material.

3.2. Prominent Approaches to Analysing the Withdrawal Debate

This section reviews how the withdrawal debate is analysed. It identifies the main types of research designs, methods, and evidence that are used to inform these studies. The strengths, weaknesses, and gaps in these predominant academic approaches support the conclusion that a theoretical case study is important for understanding the main factors that influence African States Parties' behaviour in relation to the withdrawal debate.

[175] Oumar Bâ, *States of Justice: The Politics of the International Criminal Court* (Cambridge University Press, 2020), 138–56.

3.2.1. Research Design

The withdrawal debate has been overwhelmingly qualitative – no prominent quantitative studies about the topic were found at the time of writing. The next sections discuss the methods and evidence used by these different approaches to studying the withdrawal debate. Empirical approaches are not discussed as a separate research design category because empirical approaches have featured to some extent within each of the broad research designs outlined below.

3.2.1.1. Positivist Assessments

Legal scholars typically adopted a positivist approach to assess the legality of one or more withdrawal debate related phenomena.[176] The questions asked include, for example, "is the ICC unfairly targeting African states?" or "should al-Bashir be arrested?" and the legal dimensions relevant to the question are assessed.[177] For example, a positivist response to the question of the ICC's targeting Africa is one that assesses whether the legal requirements for the ICC's investigations into cases were met. This is not to suggest that other non-legal considerations are neglected altogether. Rather, the definitive approach used to answer the question used this type of legal assessment.

3.2.1.2. Critical Studies

Most of the literature on the withdrawal debate adopts a critical studies approach. Such studies have debated the merits of the allegations that the ICC is biased – particularly against Africa and/or African states.[178] It is unsurprising that it has received significant scholarly attention given that this is the central accusation levelled against the ICC by dissenting African states. A critical studies approach to the withdrawal debate typically adjudicates the merits of all sides of the debate. Such approaches generally structured their assessment (a) phenomenologically, whereby they structure their assessment by the critical

[176] Tladi 2016; Woolaver 2019b; Jalloh, Akande, and Plessis 2011; Jalloh and Bantekas 2017.
[177] Tladi 2015; 2013; Jalloh, Akande, and Plessis 2011; Kemp 2019; Jalloh and Bantekas 2017.
[178] Yigzaw 2018; Murithi 2014; Okoth 2014; Kuwali 2018.

junctures in the relationship between the ICC and African states and/or the AU,[179] or (b) thematically, whereby they structure their analysis by discussing different themes within the withdrawal debate (as was done in section 3.1 above).[180]

Internal Critiques

Within the critical studies category, it is possible to distinguish a subset of literature that come from within the ICC. 'Internal critiques' refers to those evaluations of the Court conducted by current and former ICC employees. Typically, such evaluations found that there are areas of weakness that the Court could address, but they ultimately defended the ICC's work in Africa and dismissed allegations of bias.[181]

3.2.1.3. Conceptual and Theoretical Approaches

There have been a handful of studies that have used a conceptual or theoretical approach to study the withdrawal debate or an aspect thereof. Section 3.1.5.2 discussed two studies that used the concept "neo-imperialism" in their studies of the withdrawal debate.[182]

Kamari Clarke's *Affective Justice* uses the "affect" concept as a lens to study the withdrawal debate. She argues that affect helps to reveal the emotional regimes used by political actors within the withdrawal debate to further their political objectives. She also demonstrates how this was possible because of the emotional shared history related to colonialism on the African continent.[183]

Mills and Bloomfield argue that analysing the withdrawal debate in terms of norm entrepreneurs and norm antipreneurs is a useful approach to understanding the debate in normative terms. Norm entrepreneurs refer to those states who seek to challenge impunity

[179] For example, Keppler 2012.
[180] For example, Du Plessis, Maluwa, and O'Reilly 2013.
[181] Batohi 2014; Trendafilova 2014; Monageng 2014.
[182] Murithi 2019; Schuerch 2017.
[183] Clarke 2019.

through supporting the creation and maintenance of the ICC whereas norm antipreneurs refers to those states that resist the ICC, and therefore inhibit the anti-impunity norm through challenging the ICC.[184]

Franziska Boehme also used a conceptual framework in her study of state rhetoric about the ICC. Although her study is not focused solely upon the withdrawal debate, her analysis of state support of or opposition toward the ICC was catalysed by it.[185] She uses Albert Hirschman's exit, voice, and loyalty model to categorise states' rhetoric, delivered within UNGA meetings, about the ICC.

3.2.1.4. Evaluative

An evaluative study assesses the strengths and weaknesses of a subject. Evaluative studies establish criteria of assessment by which to determine the merits and demerits of a subject. Marco Bocchese's 'In the Eye of the Beholder: Elite Assessments of the ICC's Performance' draws on online survey data conducted with state diplomats stationed at the UN's headquarters to assess their evaluations of the ICC's successes and failures. Bocchese discusses the absence of defined criteria of assessment for evaluating the ICC's performance and uses the survey information to identify the evaluation criteria prevalent among diplomats in their assessments of the ICC.[186]

3.2.2. Research Methods

This section assesses the main methodical approaches used by scholars in their analysis of the withdrawal debate. "Method" refers to the way that the data has been analysed. The literature analysed is organised into two sets of broad methods: the type of study and the unit of analysis.

[184] Mills and Bloomfield 2018.
[185] "…this article provides a contrasting foil for these recent developments [between the ICC and African states]." Boehme 2018, 421.
[186] Bocchese 2021a.

3.2.2.1. Types of Study

Two types of studies are identified within the withdrawal literature: single case studies and comparative studies. The latter can be sub-divided into literature with a small sample size (small-N) studied and those with a large sample size (large-N) studied. Small-N studies compare at least two cases.[187] The upper limit of small-N studies is less clearly agreed upon: Lijphart says four to five cases maximum whereas Creswell and Creswell identify 12 as the upper limit.[188] Large-N studies consider 20 or more cases.[189] Thus, "medium-N studies" is proposed to refer to the in-between comparative studies of 13 to 19 cases. This section identifies the literature that systematically examined country cases to inform their findings. Literature that referred to cases in passing or used them to contextualise the withdrawal debate were not considered as using a case study method.

The main single case studies conducted in the withdrawal debate were Sudan,[190] Kenya,[191] South Africa,[192] and Uganda.[193] The first three cases were each the states involved in critical junctures in the trajectory of the withdrawal debate and Uganda is an important case for the ICC as one of its first situation countries.

The Sudanese case is often referred to in the literature because the arrest warrants for al-Bashir marked the turning point in the relationship between the ICC and AU/some African states, and, consequently, serves as the starting point of the withdrawal debate. In-depth analyses of the Sudan case explore the legal dimensions and novelty of the UNSC referral,[194] to evaluate the ICC's enforcement and accountability capabilities,[195] and illustrate the conflict between the AU and ICC over diplomatic immunities for non-States Parties to the

[187] Lijphart 1971.
[188] Ibid.; Creswell and Creswell 2018, 186.
[189] Blomquist 2007, 261.
[190] Akande 2009; Du Plessis and Gevers 2005; Barnes 2011; Udombana 2005; Van der Vyver 2011; R. J. V. Cole 2013; de Waal 2008.
[191] Helfer and Showalter 2017; Lynch 2014; Lugano 2017c; Cheeseman, Lynch, and Willis 2014; Materu 2014.
[192] Boehme 2016; Tladi 2016; Grant and Hamilton 2016; Du Plessis and Gevers 2018; van der Vyver 2015; Isike and Ogunnubi 2017.
[193] Branch 2007; 2017; J. N. Clark 2010; Greenawalt 2009; Keller 2007; Wierda and Otim 2008; Clarke 2009.
[194] Akande 2009; Du Plessis and Gevers 2005.
[195] Barnes 2011; Udombana 2005.

Rome Statute.[196] Kenya serves as a case study to illustrate how Kenyan politicians politicised (nationally and regionally) the ICC's investigations into the Kenyan post-electoral violence for their self-interests.[197] Kenya is also used to assess and evaluate the ICC's conduct[198] and to discuss the legal and jurisprudential elements of the ICC's investigations into the Kenyan situation.[199] Less commonly, the Kenyan case was used to test popular support for the ICC at the citizen level[200] and other Kenyan stakeholders in the ICC's case.[201] Single case studies of South Africa focus, typically, on themes related to non-compliance with the Rome Statute in relation to the non-arrest of al-Bashir in 2015[202] and South Africa's withdrawal (and the retraction thereof) from the ICC in October 2016.[203] Case studies of Uganda focus on the ICC's conduct during its investigations[204] and tensions between peace and justice.[205]

The limits of the ICC's legal provisions are a theme tested and explored in the literature of three cases: Sudan tested the immunity waiver in Article 27; Kenya challenged Article 63's requirements for the accused to be physically present at The Hague for proceedings; and South Africa tested the conflict of international obligations provision in Article 98.

Comparative studies are used by scholars to analyse the withdrawal debate in different ways. The comparison of the ICC's involvement in two cases is a popular approach to assessing or evaluating the ICC's operations. These studies often refer to matters concerning the withdrawal debate and/or incidentally reflect on matters relevant for the withdrawal debate. Comparisons of the DRC and Uganda,[206] Uganda and Libya,[207] and Uganda and

[196] Van der Vyver 2011.
[197] Helfer and Showalter 2017; Lynch 2014; Chaudoin 2016; Kendall 2014; Lugano 2017c; Mueller 2014.
[198] Hansen 2012b.
[199] Jalloh 2011; Sriram and Brown 2012.
[200] Dancy et al. 2020; Lekalake and Buchanan-Clarke 2015.
[201] Lugano 2017a.
[202] van der Vyver 2015; Tladi 2016; de Wet 2015; Du Plessis 2009; Tladi 2015; Ventura 2015.
[203] Isike and Ogunnubi 2017; Boehme 2016; Beresford and Wand 2020; Du Plessis and Gevers 2018; Grant and Hamilton 2016; Woolaver 2019b; Kemp 2017.
[204] Branch 2007.
[205] Keller 2007.
[206] P. Clark 2008; 2018 It could be argued that Clark's book could be considered a medium-N study since it briefly covers the ICC's operations in six other countries in one of its chapters, however, the focus of the book is undoubtedly on the comparison of two cases.
[207] Kersten 2016.

Sudan were conducted.[208] However, a more popular comparison is of Kenya and Sudan, which are compared to demonstrate the similarities and differences in the allegations that the ICC is neo-imperialist[209] and how these allegations contribute to the withdrawal debate.[210] Additionally, Bower used these two cases in an consequentialist study to assess if they have negatively impacted on the anti-impunity norm.[211] Other comparative studies compare three cases. Judith Okoth draws on the Sudanese, Libyan, and Kenyan cases to analyse the merits of the AU's deferral requests to the UNSC[212] and Ssenyonjo compares South Africa, Burundi, and The Gambia to analyse the reasons for their notifications of withdrawal notifications from the ICC and the impact of their withdrawal notifications on the politics of the withdrawal debate.[213]

Mills and Bloomfield draw on six cases (Burundi, South Africa, The Gambia, Kenya, Namibia, and Uganda) to advance their argument that the withdrawal debate could be understood within a norm "entrepreneurial versus antipreneurial" framework.[214] Oumar Bâ also conducts a small-N comparative study of four African situation countries to discuss four themes (self-referrals using Uganda, complementarity using Libya, compliance using Kenya, and domestic politics using Côte d'Ivoire) that he identifies as related to the ICC's functions.[215] Murithi also adopts a case study approach that looks at four cases to discuss three thematic areas related to the withdrawal debate: Sudan and the UNSC's powers in relation to the ICC; Kenya and the accusations of prosecutorial selectivity; and Uganda and Côte d'Ivoire to discuss the ways that domestic factors resulted in the ICC's being instrumentalised by political leaders.[216]

[208] S. M. H. Nouwen and Werner 2010.
[209] Lugano 2017c.
[210] Murithi 2015a.
[211] Bower 2019.
[212] Okoth 2014.
[213] Ssenyonjo 2018.
[214] This framework is discussed further below. As was the case with Clark's *Distant Justice*, these authors also referred to other cases illustratively in addition to their in-depth case studies. Mills and Bloomfield 2018.
[215] Bâ's concluding chapter includes short overviews of other African situation countries to demonstrate the consistency of his findings. Bâ, *States of Justice*.
[216] Murithi 2019.

Boehme and Gissel are two exceptions. Each scholar adopts a large-N qualitative study. Boehme's study includes all UNGA member states whereas Gissel's research focuses on African states.[217]

3.2.2.2. Unit of analysis

The main units of analysis within the withdrawal debate are individual African states, the AU, and/or the ICC. Some studies look at the relationship between the ICC and 'Africa,' where Africa is treated as an indivisible unitary actor. Boehme's study differs since her unit of analysis is the references made by states to the ICC, rather than the states themselves.[218]

The treatment of Africa as an individual actor risks essentialism and reductionism – especially if this treatment is not explained. Such treatment of Africa as a category has been the subject of critique by Africanist scholars.[219]

3.2.3. Evidence

This section reviews the types of evidence used in the mainstream academic literature related to the withdrawal debate.

3.2.3.1. Primary Evidence: Qualitative

Official institutional documents from the ICC, AU, and UN – such as decisions and resolutions – were the popular types of primary qualitative evidence used by scholars within the withdrawal debate.[220] News articles and opinion articles by scholars were also a popular source to illustrate the political discourses around the withdrawal debate and for

[217] Boehme 2018; Gissel 2018.
[218] Boehme 2018, 426.
[219] For a satirical example, see Wainaina 2005.
[220] Dugard 2013; Yigzaw 2018; Jalloh, Akande, and Plessis 2011; Tladi 2009; Monageng 2014; Murithi 2014; Okoth 2014; Mills and Bloomfield 2018.

establishing a chronology of events.[221] Case law and international legislation were used by some scholars within the withdrawal debate,[222] but to a lesser extent than it was used in scholars' assessments of the ICC's work in Africa.

Less commonly, country statements delivered before the ICC and UNGA serve as primary evidence.[223] Gissel analyses 148 country statements delivered by 34 African states at various conferences between 1993 and 2002 leading to the ICC's establishment. Gissel uses a content analysis approach since she codes concepts (merging ones that were thematically similar) and counts the frequency that they were referred to within the statements as an indicator of the importance placed on the matter. She considered issues repeated across African states as a shared African concern. She supplements her country statement analysis with written submissions by individual African states to triangulate her findings and control for taboo and insincerity.[224] Boehme also uses content analysis to categorically classify 605 statements delivered by 106 UNGA member states and 35 statements related to the ICC delivered by regional blocs between 2002 and 2016 to gauge state support for or critique of the Court.[225]

These studies suggest two significant advantages that the use of country statements as primary evidence for comparative studies enables: (1) the comparative analysis of states using the same type of data; and (2) the comparative analysis of states over time (both the comparison across states as well as how individual states' positions change over time).

Interview data is also a popular source of qualitative evidence. Oumar Bâ's *States of Justice* made use of 60 in-depth, semi-structured, face-to-face interviews[226] conducted in The Hague, Kenya, Uganda, and Mali.[227] A noteworthy qualitative study that relied on interview

[221] Bâ, *States of Justice*; Du Plessis, Maluwa, and O'Reilly, 'Africa and the International Criminal Court'; Kuwali, 'Africa and the World'; Mills and Bloomfield, 'African Resistance to the International Criminal Court'.
[222] Trendafilova 2014; Kemp 2014; Jeßberger 2014; Okoth 2014.
[223] Gissel 2018; Boehme 2018.
[224] Gissel 2018, 730.
[225] Boehme 2018, 426.
[226] Interviews were conducted with ICC and government officials, legal experts and professionals, journalists, human rights activists, other researchers, political violence victims, and local citizens.
[227] Bâ, *States of Justice*, 13.

data is Phil Clark's *Distant Justice*. He collected 653 interviews between 2006 and 2017 with residents of conflict affected communities, combatants, ICC officials, senior government officials, local and international civil society actors, journalists, traditional and religious leaders, and other relevant international officials on-site such as US embassy.[228] The interviews were gathered over a period of 19 field trips to Uganda and the DRC, seven ICC visits, and various interviews conducted in other countries, such as Rwanda, Kenya, South Africa, and the UK.

3.2.3.2. Primary Evidence: Quantitative

Quantitative studies are not popularly used by academics studying the withdrawal debate. A policy paper published by a research institution, Afrobarometer, drew on face-to-face interview survey data to determine popular attitudes among Kenyans toward the ICC.[229] A nationally representative sample of 2400 Kenyans were interviewed in 2014. Bocchese surveyed 31 diplomats in his article evaluating state's representative's perceptions of the ICC.

3.2.3.3. Secondary Evidence

The main source of evidence used by academics who analyse the withdrawal debate is other academic texts. The types of texts used are peer-reviewed journal articles and books dedicated to the evaluating the ICC as well as its relationship with and conduct in Africa. Primary data is triangulated using such academic texts.

3.2.4. Gaps

This section notes some methodological gaps in the predominant withdrawal debate literature.

---

[228] Four-hundred and twenty-six of the interviews were conducted with "everyday" people (presumably, meaning not direct conflict participants or officials) in conflict-affected communities. P. Clark 2018, 8.
[229] Lekalake and Buchanan-Clarke 2015.

The focus on single or small-N case studies means that there are few large-N case studies within the withdrawal debate literature. Since this dissertation seeks to account for the major factors shaping African states' behaviour in relation to the ICC, the absence of large-N case studies of (African) states is a notable gap in the literature.

The exceptions to this trend, Gissel and Boehme, are helpful but not sufficient for answering the main research question. Gissel focuses on situating critiques of the ICC from African states within their historical context and Boehme explores general levels of support or critique among UN member states for the ICC. In other words, neither author's study attempts to explain the motivations behind states' behaviour.

A related omission is the attempt to theorise or explain African states that indicate their ongoing support for the ICC. Additionally, analyses also omit African states that did not exhibit an official public position regarding the withdrawal debate. This results in a bias within the withdrawal debate literature, which almost exclusively analyses adversarial states' behaviour. While this is important for many reasons, it is also necessary to consider the factors that influence states to remain members of and express support for the ICC. Failure to do this results in the failure to fully comprehend the international relations of African States Parties as well as factors that affect IO membership generally.

Relatedly, an underdeveloped area within the literature is the explicit examination of African states' relations with the ICC within the context of IR studies. This is a ripe case for theoretical development and to critically test and reflect on the dominant explanations of African states' international relations behaviour. The existing literature generally has not discussed the theoretical implications of African states' behaviour regarding the withdrawal debate in relation to state-IO relations or IR theory about African states.

3.3. Conclusion

There is no unanimous 'African' position toward the ICC and academic inquiry into the withdrawal debate that recognises and seeks to explain this variance among African states

toward the ICC is critical for improving the understanding of Africa's IR generally as well as the withdrawal debate.

As outlined above, the literature largely evaluates the merits of the antithetical position taken by some African states and the AU from both legal and political lenses. The few scholars that analyse the behaviour of states largely focus on withdrawal or threats of withdrawal and neglect other types of behaviour, including other forms of critique, support, and abstention from the debate. This means that the behaviour of most African States Parties to the ICC is not analysed. Furthermore, there is a need to capture the dynamism of African States Parties' relations with the ICC – states are often not singular or linear in their official position toward the ICC. African States Parties have vacillated over time between different categories of behaviour. This indicates there is a need for a typology of African States Parties' behaviour in relation to the ICC.

The existing literature cannot satisfactorily answer the research question that this dissertation seeks to address: what are the major factors influencing African states' behaviour in relation with the ICC? Furthermore, the existing literature leaves other related and important questions unaddressed: What accounts for differences between African states regarding the ICC? Why have some decided to leave when others have pronounced their strong support for the Court, and others have remained silent on the matter? Are the dominant explanations of Africa's IR able to explain this different behaviour?

This chapter has demonstrated that while there is significant existing literature examining the withdrawal debate, it does not account for the variance in behaviour toward the ICC among African States Parties. The chapter demonstrates the need for a study that (1) identifies and classifies different types of behaviour and (2) explains the influential factors affecting behaviour while recognising that states' behaviour in relation to the withdrawal debate is dynamic. The next chapter proposes a research methodology to achieve these goals and, therefore, address these gaps in the literature.

4. METHODOLOGY

The previous chapter noted gaps in the literature that identifies and explains African States Parties' behaviour in relation to the ICC. The purpose of this chapter is to explain why a theory-confirming case study research design is appropriate to address these gaps, the evidence used, and how this evidence was collected and treated.

The chapter first explains the research design of the dissertation before explaining why a case study approach was chosen. Next, this chapter describes and justifies the evidence used and the method for analysing it: discourse analysis. The chapter then discusses five explanatory factors of African state behaviour drawn from prevalent IR literature about Africa. It discusses the strengths and weaknesses of these variables and demonstrates how they will be operationalised.

In conclusion, it should be clear that this project is a theory-confirming case study. It tests the applicability of Hirschman's EVL model to the international level by applying it to the withdrawal debate case. Furthermore, the research design addresses methodological gaps in the withdrawal debate literature gap: the lack of large-N studies and insufficient theorisation of behaviour. Cumulatively, my project contributes an EVL model that can be used to study states' responses to discontent within the context of multilateral organisations.

4.1. Research Design

4.1.1. Unit of Analysis and Research Objective

A project's unit of analysis and its case are conceptually distinct. George and Bennett argue that a case is an "instance of a class of events", where a "class of events" refers to phenomena of inquiry, such as electoral systems, war, and politicians.[230] The case studied in this dissertation is the withdrawal debate, which is an instance of state-IO relations.

[230] George and Bennett 2005, 24.

There are many possible units within this case that can be analysed. For example, the ICC, the AU, ICC States Parties, and the personnel of these IOs are all potential units of analysis within the case. The research question guides the selection of the appropriate unit of analysis. Thus, African States Parties to the Rome Statute are the units of analysis since the question is about their individual responses to the withdrawal debate.

The AU is noted as a relevant actor within the withdrawal debate – as a participant and influencer. Its role is analysed in terms of its impact on African States Parties' behaviour. Similarly, non-States Parties such as Ethiopia and Rwanda were prominent anti-ICC voices within the AU. Their influence is accounted for vis-à-vis the AU. A limitation of this study is that the state-to-state political influence is not measured since this information is not recorded. Furthermore, minutes from AU sessions are not publicly available, which also limits the insight into the individual member states' positions regarding the ICC within the AU.

The ICC itself is also an actor within the withdrawal debate. Its responses to the withdrawal debate and individual states are noted where relevant but are not the subject of this dissertation. The focus is on African States Parties' behaviour to enhance the scholarship about Africa's IR. Future research that systematically analyses how the ICC responded to this behaviour would be useful for analysing ICC behaviour and how state behaviour influences IO behaviour.

Rather than explaining how or why the withdrawal debate arose, the central concern is explaining how and why African states responded – or their behaviour in relation – to the withdrawal debate period. There are many types of behaviour that emerged – some formal and informal, some made at the domestic level while others were in the international sphere. The type of behaviour this dissertation focuses on is official behaviour communicated within IOs and ICC-related forums. It is necessary to restrict the type of behaviour focused on to make the project manageable and the cases comparable. Official state behaviour communicated by their delegates within IOs is selected due to the

documentary evidence available from multiple IOs, which promotes more robust and comparable results.

The research objective is therefore to explain the variation between African States Parties' behaviour regarding the withdrawal debate.

4.1.2. Case Size

The study is a large-N case study of 34 African states. The African states studied are current and former ICC African States Parties. During the period studied, this number fluctuates as new African states acceded to the Rome Statute and one left (see Figure 1 for the accession timeline).

A large-N study allows the identification of patterns across states and time. This allows nuanced discussions and insights into the causal pathways between explanatory factors and behaviour. Large-N studies typically are used for quantitative studies, which foregoes the richness of contextual factors offered by a qualitative approach in favour of generalisability.

Instead, this study uses qualitative evidence to study the states' behaviour. This combination is preferable to answer the research question, which requires a nuanced discussion about behaviour patterns across time and states to determine the main factors explaining behaviour. It was noted that the current literature does not account for the different types of behaviour by all African states regarding the withdrawal debate. Thus, a large-N study addresses this gap – at least regarding the African States Parties to the ICC.

The focus on African States Parties to the ICC is because these states opted into the Rome Statute system. They decided – for whatever reasons – to join the ICC and their behaviour emerges from a point of departure where they have bought into the ICC at some level. African states that did not accede to the Rome Statute would be expected to be disparaging or disinterested since they never indicated buy-in to the ICC by ratifying the Statute.

Illustrative examples will be drawn from the various States Parties to demonstrate patterns and exceptions. The large-N qualitative study strikes a balance between contextually rich explanations of behaviour and recognises similarities and dissimilarities across African States Parties. A small-N study that focuses on single cases to illustrate a behaviour might overlook patterns, which limits the implications drawn for understanding behaviour regarding the withdrawal debate. Furthermore, single case studies often were used to study ICC-African relations and the gap remains in the literature about the main factors explaining behaviour, which attest to the benefits of a large-N study for addressing the research question.

4.1.3. Temporal Scope

The type of behaviour used for classifying the African States Parties is restricted to official behaviour communicated between 2008 and 2018. The operationalisation of this type of behaviour is elaborated on further in this chapter. The purpose of this section is to justify the temporal scope selected.

Official state behaviour is measured between 2008 and 2018. This period is selected because it captures the critical junctures in the withdrawal debate and allows the build-up to them and aftermath to be captured while enabling the feasibility of the project.

The OTP requested the arrest warrant for al-Bashir from the Pre-Trial Chamber for an arrest warrant for al-Bashir on 14 July 2008. Although the arrest warrant was only issued one year later and the first critical juncture in ICC-African relations followed, precursory indications of dissatisfaction with the arrest warrant began in 2008. For example, the AUPSC's response to this application was announced on 21 July 2008 and noted concern about the impact of the potential arrest warrant on peace processes and stability in the Sudan.[231]

2018 was selected as the cut-off year for the study for four reasons. First, it includes the aftermath of the withdrawals that were initiated in 2016 by Burundi, South Africa, and The

[231] African Union Peace and Security Council 2008.

Gambia. Second, and similarly, it includes the impact of Burundi's finalised withdrawal as well as the AU's withdrawal strategy document in 2017. Third, the threat of withdrawal from the ICC declined significantly by 2018. This suggests that the main driving factors for the withdrawal debate can be ascertained from an analysis of the 2008 to 2018 period. Fourth, it is methodologically necessary to contain the period studied to one that is practically feasible within the time constraints imposed by doctoral studies and the use of qualitative evidence. The large number of cases studied as well as the volume of primary qualitative evidence used for this study require that a clear cut-off date is selected to make the project feasible.

Thus, the selection of 2008 to 2018 (inclusive) as the temporal scope for this study is justified on empirical grounds, since it captures the critical junctures within the withdrawal debate, as well as methodological grounds, since it enables the feasibility of a large-N qualitative case study (which was a methodological approach justified by theoretical, empirical, financial, and COVID-19 factors).

4.2. Theory-confirming Case Study Method

This dissertation employs a type of theory-confirming case study method to answer the question, what are the main factors influencing African States Parties' behaviour in relation to the ICC regarding the withdrawal debate.

The aim of the case study is to confirm the utility of Hirschman's EVL model for studying behavioural phenomena within international relations by demonstrating that it can be adapted from the domestic level to the international level and be used to study relationships that are not market-based. By showing that the EVL model can be adapted in this way, the applications of the EVL model to the international level are improved by addressing the two methodical dilemmas: (1) that authors to date had failed to explain how the EVL model should be adjusted to take into account its movement from the domestic to the international level and (2) the fact that the basis of state relations with IOs is not strictly market-based whereas Hirschman assumes such relations in his model. The next chapter

elaborates on the EVL model and how these issues are resolved. The purpose of this section is to justify the method chosen.

A theory-confirming case study is the research design chosen because it serves to develop the EVL model for IR studies. This is done by testing its application to a state-IO relationship using the African States Parties and the ICC relationship regarding the withdrawal debate as the case study. Furthermore, studying this relationship is facilitated by the EVL model. The model guides the analysis of the case material by identifying the types of behaviour practiced by African States Parties and facilitating an examination of the causes of the behaviour. Case studies test the validity of concepts and their corresponding indicators using empirical evidence.[232] Consequently, a theory-confirming case study method refines the EVL model for application to state-IO relations.

The study seeks to confirm the heuristic value of the EVL model. Models and theories both seek to explain real world phenomena, but theories generate hypotheses. Theories intend to systematically explain and predict phenomena through interrelated concepts and ideas, and theories should be generalisable.[233] Models can be derived from a theory, but they can also be used independently of a theory or used in conjunction with a theory that did not influence it. Models are more versatile and less prescriptive. This is evidenced by the EVL model's use by multiple disciplines to explain behaviour. The research design is consistent with theory-confirming case studies since it applies the model to a case to prove its applicability by explaining the case material, which is why the method terminology is retained. The method used is a type of theory-confirming case study as it aims to confirm the EVL model's heuristic value for studying an IR phenomenon – namely, the withdrawal debate.

One of the strengths of the case study method is that it preserves the realities and complexities of the behaviour studied. The contextual factors that shape case-specific behaviour accounted for in the analysis.[234] The large sample size means some of the depth

[232] George and Bennett 2005, 26.
[233] Trifiletti et al. 2005, 299.
[234] Yin 2009, 49.

of a case study is foregone in favour of identifying patterns across the African States Parties and across time, which is justified because of the gaps in the literature noted earlier.

4.3. Evidence

Evidence is used in two ways regarding the analysis of African States Parties behaviour: (1) to classify the behaviour, and (2) to explain the behaviour.

For the purposes of classification, the type of behaviour studied is restricted to official state behaviour within three IO forums: the annual ICC ASP General Debates (ASP GD), UNGA ICC Report Plenary Sessions (UNGA ICC RP), and UNGA General Debates. Behaviour demonstrated within these forums was preferred as it is unquestionably the official position that a state communicates at the international level. Additionally, all states can make use of these forums, which provides a rich pool of comparable data over several years where the purpose of the statements and the audiences are held constant. States Parties' voting patterns could not be used as an indicator of behaviour since the ICC reaches decisions through consensus.[235] Voting would be, otherwise, preferable as it indicates clear-cut behavioural categories: in favour, against, or abstention. In the absence of voting data, country statements delivered at these three forums are used to indicate official behaviour.

The explanations of the classified behaviour supplements country statements with additional sources of evidence. Fourteen key informant interviews were conducted with ICC, international law, and African politics experts and academics, and current and former government officials. Details about the interviews follow below. Additionally, the analysis draws on news articles, academic literature, reputed non-governmental organisations' websites and reports to enrich the discussion about behaviour. This helps embed the official behaviour within other types of behaviour regarding the withdrawal debate where evidence is available.

[235] Decision-making through consensus at the ICC is by design. The trend toward consensus-based decision-making over majoritarian voting processes is argued, by some, to be designed to advantage Global North countries in multilateral institutions since they are a geographical minority. Payton 2014

4.3.1. The Discourse Analysis Method

A drawback with using country statements is that they cannot be taken at face value. Often, state officials use jargon and the conventions of a forum to shape their statements. The meaning of the statements can be obscured by such conventions and, if taken at face value, the underlying messages of statements can be overlooked. In recognition of the fact that the statements delivered are shaped by diplomatic and justice discourses, discourse analysis is used to interpret the statements. Discourse analysis provides a useful framework to decipher the country statements.[236]

Discourse analysis is a method used to study texts (spoken and written and in all kinds of media). It seeks to determine how texts are shaped by, and shape, social contexts and power dynamics.[237] Discourse analysis, broadly, purports that what is expressed (in text, speech, video etc) shapes and is shaped by broader power relations. It sees discourses as constructions of power and as constructing power.[238] The logic that informs the discourse analysis approach is useful for the purposes of this study because serves as an analytical tool to navigate the sometimes-hidden meanings of speeches given by states in official IO settings.

Discourse analysis allows the context in which the speech is delivered to be appreciated as a conditioning factor that shapes what is said and how. It considers contexts beyond the IO forum as a factor shaping discourse (and vice versa). Discourse analysis draws attention to who adopts the discourse, how and why they perform it, and encourages a critical interpretation of what is said. In other words, discourse analysis does not take speeches (or other discursive data) at face value. It requires that analysts consider what is implicitly or indirectly being communicated in addition to the direct statements. It also recognises that

---

[236] The discourse analysis approach has many iterations – some theoretical and some strictly methodological. One of the most significant contributions to the approach is Norman Fairclough's Language and Power (1989). The discourse analysis approach has been expanded upon and deepened by himself and others, such as Wodak. Varyingly, it is referred to as critical discourse analysis and this approach to discourse analysis informs the method used for this study.

[237] Fairclough 1989.

[238] This assumption has clearly underpinned some major schools of thought within IR, such as the Copenhagen School's use of speech act theory to study securitisation.

how something is expressed adopts a particular way of being delivered because of the context in which it is found.

This is useful for this study because it recognises the diplomatic discourse that shapes how speeches are structured and delivered at the ICC GDs, UNGA ICC RPs, and UNGA GDs. Significantly, discourse analysis reveals how high-level diplomatic speeches are used to legitimise the different responses to withdrawal debate issues held by the African States Parties, how these vary over time and among the states, and how states vary their positions over time (and, possibly, institutions). Discourse analysis, therefore, helps identify how these speeches are exercises of a type of political power by African states within an international relations context (IOs) and about an international relations issue (the withdrawal debate).

Fairclough posits that there are three dimensions (or stages) of discourse analysis: (1) description; (2); interpretation; and (3) explanation. The first stage of discourse analysis, description, focuses upon the technical (i.e. descriptive) properties of the text.[239] The analytical focus is dissecting the text to identify its features. For example, the words used, references made, relational elements, active or passive voice etc. Essentially, description answers the questions: what is said in the text and how is it said? The application of this to the withdrawal debate sees description as the process of identifying the parts of the country statements that relate to the withdrawal debate, considering what the content of these excerpts are, and analysing how they were expressed.

Interpretation focuses to the interpretation of the discourse by the participants (as opposed to the conclusions drawn by the analyst).[240] Participants' interpretation of a discourse is shaped by the cognitive assets that people have to produce and interpret texts, which includes their knowledge of language, values, beliefs, and representations of the world.[241]

[239] Fairclough, 1989: 26; 110-111.
[240] Fairclough, 1989: 141; 162.
[241] Fairclough notes that the interpretation stage necessarily is shaped by the analyst's understanding of the participant's members' resources, which is why some discourse analysis iterations emphasise self-reflexivity as an analyst.

Fairclough provides three questions that can help guide the interpretation stage: (1) how do participants interpret the (immediate and broader) context; (2) which discourse types are used; and (3) are there differences among the participants to questions (1) and (2), and do they change during the interaction studied?

Explanation aims to show how discourse is embedded in a social process whereby discourse is shaped by social structures but also how it sustains or changes these structures as discourse is reproduced.[242] The three questions Fairclough proposes to guide explanation are: (1) what are the power relations that shape this discourse; (2) which ideologies are in play; and (3) how is the discourse positioned in relation to (overt and covert) struggles (within and outside of the immediate context), and what are the effects of this discourse?

The three dimensions of discourse analysis offer a useful tool for interpreting the country statement data in order to classify behaviour into the exit, voice, or loyalty categories. It helps to make the rationale behind the interpretation of the statements explicit. The identification and separation of the three dimensions is a useful analytical tool. However, given the volume of cases studied, it is preferable to follow the descriptive elements of the empirical evidence used with the interpretation and explanation as immediately as possible to avoid redundancy.

4.3.2. Country Statements

Individual country statements delivered between 2008 and 2018 by the African States Parties at the annual ICC GDs,[243] UNGA ICC RPs,[244] and UNGA GDs[245] are the sources evidence used to classify behaviour in the EVL model.

---

[242] Fairclough, 1989: 162-163.
[243] Country statements are publicly available at https://asp.icc-cpi.int/en_menus/asp/sessions/general%20debate/Pages/general%20debate.aspx.
[244] The official records for the UNGA ICC RPs can be found at https://digitallibrary.un.org/search?ln=en&as=1&cc=Meeting+Records&m1=e&p1=international+criminal+court&f1=&op1=a&m2=a&p2=&f2=&op2=a&m3=a&p3=&f3=&dt=&d1d=01&d1m=01&d1y=2008&d2d=31&d2m=12&d2y=2018&rm=&ln=en&action_search=Search&sf=&so=d&rg=100&c=Meeting+Records&c=&of=hb&fti=1&fti=1.
[245] UNGA General Debate statements for 2008 are available at https://www.un.org/en/ga/63/generaldebate/ and the statements from 2009 onwards are available at https://gadebate.un.org/en/sessions-archive/64.

The ICC GD is selected because it is the most direct platform where a State Party can communicate its satisfaction or dissatisfaction with the ICC to the ICC. Similarly, the UNGA ICC RPs are a space where member states can reflect on the ICC's annual report and note their satisfaction or dissatisfaction with the ICC's performance. Lastly, the UNGA GD was used as an additional forum to supplement the ICC-specific forums. It is expected that reference to the ICC by a State Party in its UNGA GD statement indicates the importance it attaches to that reflection since it is a platform used to generally reflect among UN member states on important international issues.

The statements are considered in their entirety and classified into the EVL typology based on the statement's main message/s. The reason for considering them in their entirety is because there are conventions for how country statements are delivered in IOs. For example, ICC statements typically include professions of support for norms such as anti-impunity, but the rest of the statement might include details that indicate that has other overriding priorities or that it does not see the ICC as the avenue for achieving these norms.

Country statements were typically delivered by African States Parties' ambassadors to The Netherlands and New York, ministers at permanent missions to the United Nations and New York, and other official representatives such as national ministers of justice. The statements are delivered by state representatives but might be written by speech writers and advisers.[246]

Nonetheless, the statements are used to represent the official position of the African State Party regarding the ICC and is not used as an indication of the individual viewpoints of the state representative delivering the statement. This is not to imply that who produces these texts is an unimportant factor. It is simply not a significant consideration for this project given that the individuals who wrote speeches and the individuals who delivered them have been sanctioned to do so on behalf of the state, and their messages have been approved by

[246] George and Bennett 2005, 81–82.

state authorities as appropriate representations of the states' responses to the withdrawal debate.[247]

Some of the statements were delivered in French, and only the French version was uploaded to the website. For these statements, a trial version of Adobe Acrobat Pro was used to convert the PDFs into Word Documents. Some of the conversions were not entirely accurate and were manually corrected by cross-referencing with the original document. Google Translate to translate the French into English.[248] While this is not the most ideal way of translating the documents, time and financial limitations made it the most feasible. Furthermore, the translations were of sufficient quality to understand the main positions taken by the states.

It is possible that some meaning was lost in translation. Similarly, text-based statements are devoid of tone and gesture, regardless of their language, which also risks misinterpretation. A further difficulty that emerges is that a single statement might contain (seemingly) conflicting messages. For example, a state might pledge their support to cooperate with the ICC but then be unapologetic about their failure to arrest al-Bashir. Diplomatic language might also obscure criticism or at least make it difficult to determine how scathing the criticism might be. The use of multiple sources for the evidence used helps to minimise these risks of misinterpretation since they provide additional context for determining how to classify the state in question.

A total of 208 country statements were interpreted using discourse analysis and classified into exit, voice, or loyalty categories. Labelling the behaviours facilitates their explanation for the simple reason that it is difficult to explain phenomena that are unidentified. The frequencies with which the different types of behaviour were demonstrated suggests that

[247] Although, it was noted in the Introduction that the degree of centralised decision-making for each state might vary and that this is not taken into consideration for this study.
[248] The following countries delivered their statements in French: Benin, Burkina Faso, Central African Republic, Chad, Congo-Brazzaville, Côte d'Ivoire, the DRC, Madagascar, Senegal, and Tunisia (except in 2018 when the delivery was in English).

loyalty is the most performed behaviour at the IOs. Chapter 9 examines the motivations behind this.

4.3.2.1. ICC General Debate

The purpose of the ICC GD is a timebound (15 minute) opportunity to formally address the ICC's ASP, observer states and organisations to air grievances with or note successes of the ICC in the year since the last General Debate. However, due to media coverage of these sessions, it is possible that a secondary audience is domestic.

The ICC hosted General Debates annually since 2006 and all the statements presented have been uploaded in PDF documents on their website.[249] The ASP's General Debate has based its order of speakers on the practices of the UN's General Assembly: Heads of State; Heads of Government; Ministers; statements delivered on behalf of groups; Ambassadors; and lastly, other state representatives.[250]

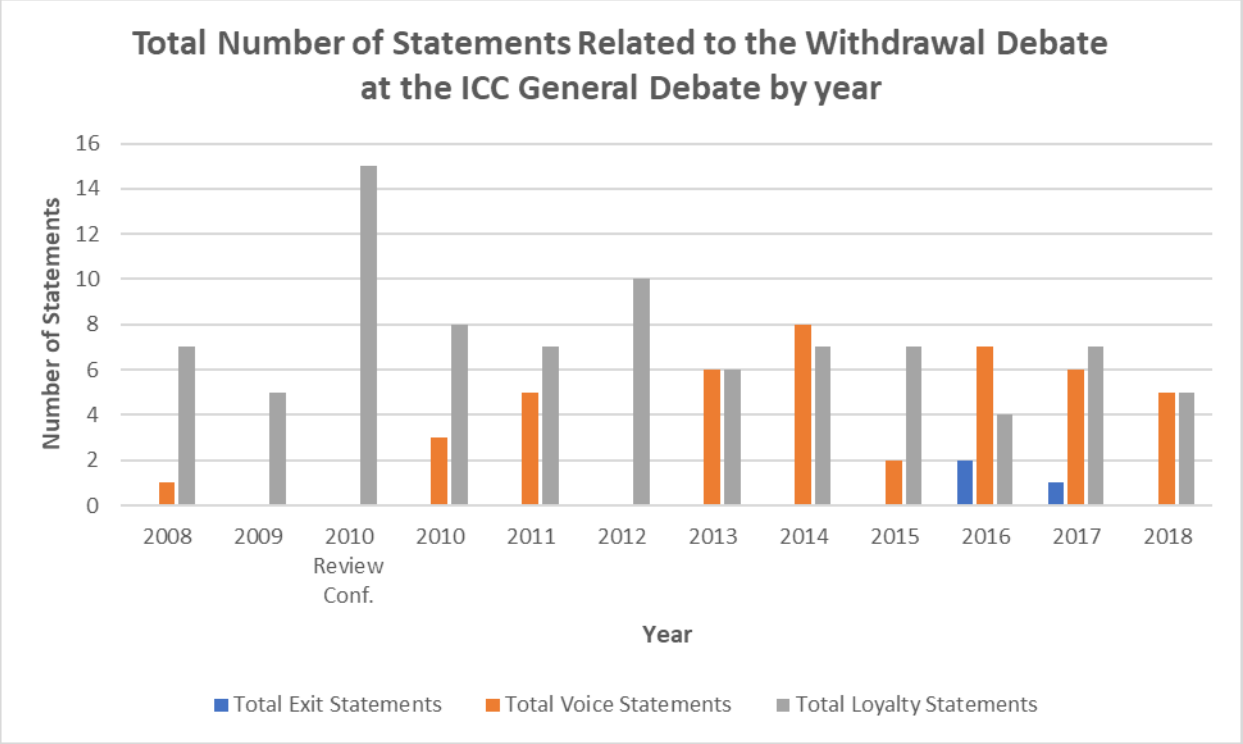
There was a total of 134 country statements that were delivered by African States Parties in the ICC GDs between 2008 and 2018. This is summarised in Figure 3 below where "E" in red represents statements classified as exit, "V" in orange represents statements classified as voice, and "L" in green represents statements classified as loyalty. Additionally, 'Doc Missing' indicates where there is a record that the state delivered a statement, but it was not available online.[251] Some states were not yet Rome Statute States Parties and only joined at a later date. Blocks are greyed out to indicate the years that a state was not yet party to the Rome Statute. Missing documents were not included in the total counts.

[249] 'ICC - General Debate' n.d.
[250] Bureau of the Assembly of States Parties, Agenda and Decisions, Eleventh Meeting 29 November 2007, para (d).
[251] Documents were missing from the ICC's website for the following states despite there being a note that they presented a statement in the year in question: Benin (2007); Burkina Faso (2009, 2018); the DRC (2007, 2018); Guinea (2010); Lesotho (2009, 2010); Malawi (2018); and Mali (2018).

Figure 3: Table of ICC-ASP General Debate Country Statements

	Nov-08	Nov-09	Jun-10	Dec-10	Dec-11	Nov-12	Nov-13	Dec-14	Nov-15	Nov-16	Dec-17	Dec-18				
	7th Session	8th Session	Review Conference	9th Session	10th Session	11th Session	12th Session	13th Session	14th Session	15th Session	16th Session	17th Session	Total Exit per country	Total Voice per country	Total Loyalty per country	Total Statements
Benin											L		0	0	1	**1**
Botswana	L		L	L	L	L	L		L	L	L	L	0	0	10	**10**
Burkina Faso		Doc Missing	L	L	L			V		V	V	Doc Missing	0	3	3	**6**
Burundi									V	E			1	1	0	**2**
Cabo Verde													0	0	0	**0**
Central African Republic			L	L	Doc illegible								0	0	2	**2**
Chad													0	0	0	**0**
Comoros													0	0	0	**0**
Congo			L				V						0	1	1	**2**
Côte d'Ivoire							L	L		L	L		0	0	4	**4**
Democratic Republic of the Congo	L	L		V	V		L	V		V	V	Doc Missing	0	5	3	**8**
Djibouti													0	0	0	**0**
Gabon													0	0	0	**0**
Gambia			L		N/A		V	L	V		L	V	0	3	3	**6**
Ghana			L	L	L	L	L	L	L	L	L	L	0	0	10	**10**
Guinea			L	Doc Missing									0	0	1	**1**
Kenya		L	L	L	V	L	V	V	V	V	V	V	0	7	4	**11**
Lesotho	L	Doc Missing	L	Doc Missing	L			V			V	V	0	3	3	**6**
Liberia													0	0	0	**0**
Madagascar						L			L				0	0	2	**2**
Malawi								V				Doc Missing	0	1	0	**1**
Mali									L	V	V	Doc Missing	0	2	1	**3**
Mauritius			L										0	0	1	**1**
Namibia					V	L	V	V		V			0	4	1	**5**
Niger													0	0	0	**0**
Nigeria	L	L	L	L	L	L	V	L		L	L	L	0	1	10	**11**
Senegal	L		L	L							L		0	0	4	**4**
Seychelles							V						0	1	0	**1**
Sierra Leone	V		L			L		L				L	0	1	4	**5**
South Africa	L	L	L	V	V	L	L	L		E	E	V	2	3	6	**11**
Tunisia					L	L	L	L	L			V	0	1	5	**6**
Uganda	L	L		V	L	L		V	L	V	V	L	0	4	6	**10**
United Republic of Tanzania			L		V			V		V			0	3	1	**4**
Zambia				3									0	0	1	**1**
Total Statements	**8**	**5**	**15**	**11**	**13**	**10**	**12**	**15**	**9**	**13**	**14**	**10**	**3**	**44**	**87**	**134**
KEY:	E = Exit	V = Voice	L = Loyalty	N/A = ICC mentioned but not relevant to withdrawal debate												

Figure 4: Total number of statements related to the withdrawal debate at the ICC GD by year



Only 3 (2%) of the 134 total statements delivered were related to exit (withdrawal from the ICC in terms of Article 127 of the Rome Statute). Forty-four (33%) of the total statements were voice statements and 87 (65%) were loyalty statements.

4.3.2.2. UNGA ICC Report Plenary Sessions

The ICC reports to the UNGA annually in accordance with Article 6 of the Negotiated Relationship Agreement between the International Criminal Court and the United Nations.[252] During these sessions, states can comment and/or pose questions to the ICC representative.

The phrase "International Criminal Court" was entered into the 'Meeting Records' search page on the UN Digital Library website and filtered to display results between January 2008 and December 2018.[253] The ICC Report meeting records were searched for the terms "International Criminal Court", "Rome Statute" and for African States Parties' names to determine if they contributed to the session and if that contribution is relevant to the withdrawal debate. The contributions made by state representatives are captured in reported form therefore it is not the same as the country statements analysed from the ICC-ASP General Debate. The UNGA records translated statements into English but noted in brackets when the original speech was delivered in a different language.

There was a total of 51 statements were delivered by African States Parties at the UNGA ICC RPs between 2008 and 2018. The same coding system used for the ICC GD statements except no statements were missing or unapplicable to the withdrawal debate. The results are summarised in Figure 5 below.

---

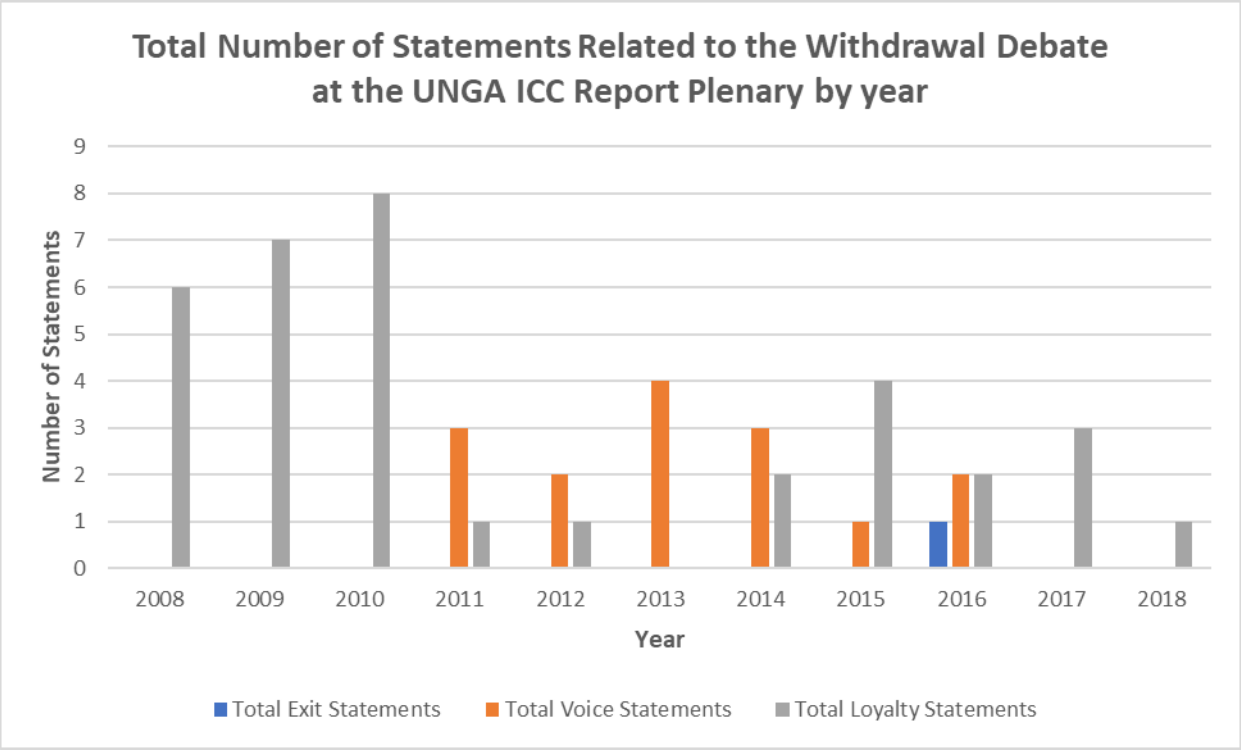
[252] International Criminal Court 2004.

[253] The official records for the UNGA ICC RPs can be found at https://digitallibrary.un.org/search?ln=en&as=1&cc=Meeting+Records&m1=e&p1=international+criminal+court&f1=&op1=a&m2=a&p2=&f2=&op2=a&m3=a&p3=&f3=&dt=&d1d=01&d1m=01&d1y=2008&d2d=31&d2m=12&d2y=2018&rm=&ln=en&action_search=Search&sf=&so=d&rg=100&c=Meeting+Records&c=&of=hb&fti=1&fti=1.

Figure 5: Table of UNGA ICC RP Country Statements

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018				
	Sixty-third session	Sixty-fourth session	Sixty-fifth session	Sixty-sixth session	Sixty-sixth session	Sixty-seventh session	Sixty-eighth session	Sixty-ninth session	Seventieth session	Seventy-second session	Seventy-third session	Total Exit per country	Total Voice per country	Total Loyalty per country	Total Statements
Benin												0	0	0	0
Botswana		L	L					L				0	0	3	3
Burkina Faso												0	0	0	0
Burundi									E			1	0	0	1
Cabo Verde												0	0	0	0
Central African Republic												0	0	0	0
Chad												0	0	0	0
Comoros												0	0	0	0
Congo												0	0	0	0
Côte d'Ivoire												0	0	0	0
Democratic Republic of the Congo		L	L	V		V						0	2	2	4
Djibouti												0	0		0
Gabon		L										0	0	1	1
Gambia												0	0	0	0
Ghana	L		L							L		0	0	3	3
Guinea												0	0	0	0
Kenya	L			V		V	V	V	V			0	5	1	6
Lesotho	L		L		V							0	1	2	3
Liberia												0	0	0	0
Madagascar								L				0	0	1	1
Malawi												0	0	0	0
Mali												0	0	0	0
Mauritius												0	0	0	0
Namibia						V						0	1	0	1
Niger												0	0	0	0
Nigeria	L	L			V		V	L	L	L		0	2	5	7
Senegal	L	L	L				L	L	L	L	L	0	0	8	8
Seychelles												0	0	0	0
Sierra Leone			L									0	0	1	1
South Africa		L	L	L	L	V	L					0	1	5	6
Tunisia												0	0	0	0
Uganda	L	L	L				V					0	1	3	4
United Republic of Tanzania				V					V			0	2	0	2
Zambia												0	0	0	0
Total Statements	6	7	8	3	3	4	5	5	5	3	1	1	15	35	51
KEY:	E = Exit	V = Voice	L = Loyalty												

Figure 6: Total number of statements related to the withdrawal debate at the UNGA ICC RP by year



Of the total 51 statements delivered at the UNGA ICC RP, only 1 (2%) was an exit statement. Fifteen (29%) were voice statements and 35 (68%) were loyalty statements.

4.3.2.3. UNGA General Debate

The speeches from the UNGA GDs from 2008 until 2018 were available online.[254] An English summary of each speech, the original speech (English translations for the French speeches were varyingly available), a video of the speech, as well as audio files in the five UN languages are available on each state's page for the Session in question.

All 34 African States Parties studied in this dissertation were searched for on the session pages for all the UNGA General Debates available online. The French documents were searched for the key words "Statut de Rome", "Cour pénale internationale", and "CPI" ("Rome Statute", "International Criminal Court", and "ICC" respectively) when an English translation was not provided. In the event that a PDF was not searchable, the PDF was converted into a Word Document and then copy-pasted into Google Translate – following the same procedure as that for the French documents from the ICC GDs. The English speeches were searched using the terms "Rome Statute", "International Criminal Court", and "ICC".

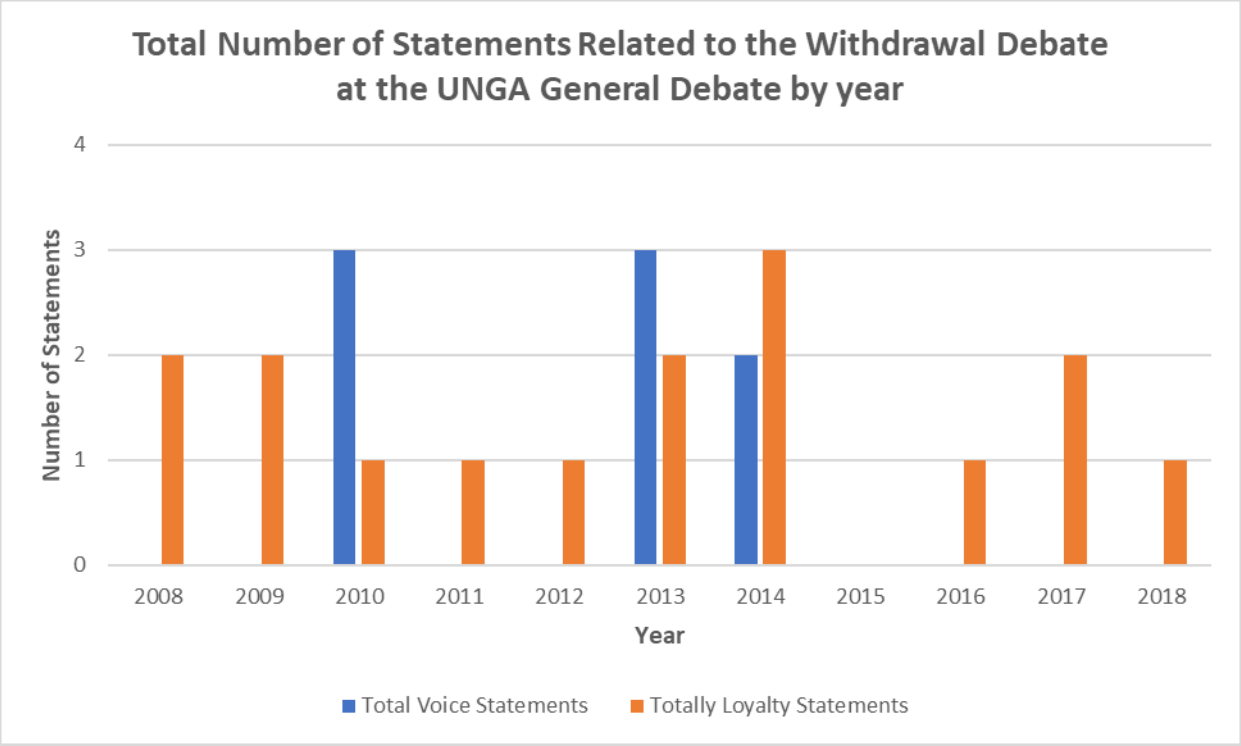
There was a total of 23 country statements that were delivered by African States Parties at the UNGA GDs between 2008 and 2018. This is summarised in Figure 7 below using the same coding system as the ICC GD table.

[254] See: https://gadebate.un.org/en/sessions-archive. 2008's records were available on a different online website: https://www.un.org/en/ga/63/generaldebate/.

Figure 7: Table of UNGA GD Country Statements

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018				
	63rd Session	64th Session	65th Session	66th Session	67th Session	68th Session	69th Session	70th Session	71st Session	72nd Session	73rd Session	Total Exit per country	Total Voice per country	Total Loyalty per country	Total Statements
Benin	-	-	-	-	-	-	-	-	-	-	-	0	0	0	0
Botswana	L	L	L	L	-	L	L	-	-	L	L	0	0	8	8
Burkina Faso	-	-	-	-	-	-	-	-	-	-	-	0	0	0	0
Burundi	-	-	-	-	-	V	-	-	-	-	-	0	1	0	1
Cabo Verde					-	-	-	-	-	L	-	0	0	1	1
Central African Republic	-	-	-	-	-	-	L	-	-	-	-	0	0	1	1
Chad	-	-	-	-	-	-	V	-	-	-	-	0	1	0	1
Comoros	-	-	-	-	-	-	-	-	-	-	-	0	0	0	0
Congo	-	-	-	-	-	-	-	-	-	-	-	0	0	0	0
Côte d'Ivoire						-	-	-	-	-	-	0	0	0	0
Democratic Republic of the Congo	-	-	-	-	-	-	-	-	-	-	-	0	0	0	0
Djibouti	None	-	None	-	-	None	None	-	None	-	-	0	0	0	0
Gabon	-	-	-	-	-	-	-	-	-	-	-	0	0	0	0
Gambia	-	-	V	-	-	-	-	-	-	L	-	0	1	1	2
Ghana	-	-	-	-	-	-	-	-	-	-	-	0	0	0	0
Guinea	-	-	-	-	-	-	-	-	-	-	-	0	0	0	0
Kenya	-	-	-	-	-	None	-	-	-	-	-	0	0	0	0
Lesotho	L	L	-	-	-	-	-	-	-	-	-	0	0	2	2
Liberia	-	-	-	-	-	-	-	-	-	-	-	0	0	0	0
Madagascar	-	None	None	-	-	-	-	-	-	-	-	0	0	0	0
Malawi	-	-	V	-	-	-	-	-	-	-	-	0	1	0	1
Mali	-	-	-	-	L	-	-	-	-	-	-	0	0	1	1
Mauritius	-	-	-	-	-	-	-	-	-	-	-	0	0	0	0
Namibia	-	-	-	-	-	-	-	-	-	-	-	0	0	0	0
Niger	-	-	-	-	-	-	-	-	-	-	-	0	0	0	0
Nigeria	-	-	-	-	-	-	-	-	-	-	-	0	0	0	0
Senegal	-	-	V	-	-	-	-	-	-	-	-	0	1	0	1
Seychelles			-	None	-	-	-	-	-	-	-	0	0	0	0
Sierra Leone	-	-	-	-	-	-	V	-	-	-	-	0	1	0	1
South Africa	-	-	-	-	-	-	-	-	-	-	-	0	0	0	0
Tunisia				-	N/A	L	N/A	-	-	-	-	0	0	1	1
Uganda	-	-	Missing Doc	-	-	V	-	-	-	-	-	0	1	0	1
United Republic of Tanzania	-	-	-	-	-	V	-	-	-	-	-	0	1	0	1
Zambia	-	-	-	-	-	-	-	-	-	-	-	0	0	0	0
Total Statements	2	2	4	1	2	5	5	0	0	3	1	0	8	15	23
KEY:	V = Voice	L = Loyalty	N/A = ICC mentioned but not relevant to withdrawal debat					- = No references to the ICC			None = no speech				

Figure 8: Total number of statements related to the withdrawal debate at the UNGA GD by year



No exit statements were included in the UNGA GD country statements. Of the total 23 statements that included references to withdrawal debate themes, eight (35%) were voice statements and 15 (65%) were loyalty statements. Most of the UNGA GD statements did not include references to the ICC withdrawal matter.

4.3.3. Coding

Sections 5.3.1, 5.3.2, and 5.3.3 define and explain the categories “exit”, “voice”, and “loyalty”. This section briefly explains how the country statements were coded into these categories, while also trying to avoid duplicating those sections. It is important to preface the coding discussion with the note that the statements were read in their entirety, but the coding was based on the elements of the statement that were related to the withdrawal debate. These were considered the substantive elements of the statements that determined their categorisation.

Country statements were coded as “exit” when their primary purpose was to explain the decision to withdraw from the ICC.

Country statements were coded as “voice” when the main substance of the statement conveyed discontent with the ICC. The overall tone of the message did not have to be antagonistic to be coded as “voice”. Statements where the overriding intent seemed to be to communicate dissatisfaction with the ICC were considered “voice”.

Country statements were coded as “loyalty” when the purpose of the statement seemed to be to communicate support for and/or satisfaction with the ICC.

A challenge that emerges when coding overall country statements – as opposed to excerpts from statements – is that the diplomatic protocols of the forums in which they were delivered means that a polite and diplomatic discourse is typically used. There is a common formula among the various statements by the different African states, and across the forums, whereby states typically declare their commitment to the principles that the ICC stands for (such as non-impunity, justice, and accountability).

Critical discourse analysis is an aid to decipher the major point/s of the statement. For example, platitudes about supporting the fight against impunity, some statements continued to communicate dissatisfaction with the ICC's handling of themes relevant to the withdrawal debate. Such statements were considered "voice" even if there were sentiments of loyalty expressed.

Of course, statements are not neat, and some have a combination of substantive points that demonstrate loyalty as well as voice. In such ambiguous cases, the coding decision was made in favour of what seemed to be the predominant behavioural category with respect to the themes relevant to the withdrawal debate (bearing in mind that statements included matters that fell beyond the remit of the withdrawal debate). These statements were flagged and revisited to double-check the original interpretation and coding decision.

4.3.4. Interviews

Fourteen key informant interviews were conducted in 2021 with ICC and African International Relations academics, government officials (former and current), and legal experts. Twelve of the interviews were conducted using the video conferencing platform, Zoom. One interview was email based and one was conducted face-to-face. All interviewees were given information sheets about the project and informed consent forms that explained the nature of the project, way that the information shared would be used for this project and future research, and asked questions related to confidentiality and anonymity. Interviewees were reminded that they can retract their information at a later stage if they prefer. A summary of the interview schedule is below in Table 1.

Three interviewees preferred to be anonymous, one of whom also declined to be quoted or recorded. Otherwise, all the interviews were recorded and transcribed; and handwritten notes were taken during all the interviews. The software Descript was used to automatically transcribe the audio recordings. The transcriptions were compared against the audio recordings and the relevant portions of the transcriptions that were used in the project were fixed to resolve mistakes generated by the automated software.

Table 1: Interview schedule

Interviewee Name/Alias	Relevant expertise	Date	Platform
Justice Richard Goldstone	Former chief prosecutor of the United Nations' International Criminal Tribunals for the former Yugoslavia and Rwanda.	02 July 2021	Zoom
Prof. Suzanne Graham	Foreign policy, the United Nations and other IOs, and international conflict.	05 July 2021	Zoom
Dr. Mark Kersten	The impacts of the ICC's interventions.	15 July 2021	Zoom
South African Government Official	Familiarity with South Africa's international affairs.	20 July 2021	Face-to-face interview
Prof. Phil Clark	Conflict and post-conflict issues in Africa and the law and politics of the International Criminal Court.	20 July 2021	Zoom
Mr. Andre Stemmet	Senior state law adviser (international law).	28 July 2021	Zoom
Dr. Bertha Osei-Hwedie	International relations of Botswana.	29 July 2021	Email
Prof. Tim Murithi	Peace and security in Africa and Africa's international relations.	29 July 2021	Zoom
ICC-Africa Academic	International relations expert.	02 August 2021	Zoom
Former Government Official	Formerly Department of Foreign Affairs' Legal Section.	05 August 2021	Zoom
Prof. Dire Tladi	Former Principal State Law Advisor for International Law for South Africa's then Department of Foreign Affairs and former legal advisor to the South African Permanent Mission to the UN.	31 August 2021	Zoom
Dr. Marco Bocchese	International law and ICC expert.	23 September 2021	Zoom
International Law Expert	International law and Africa	30 September 2021	Zoom

Interview quotes were cleaned to remove hesitancies to facilitate fluidity and clarity. This was requested by one of the interviewees and applied to all of them for consistency. The integrity of the quotes was retained bearing in mind the context of the discussion that it was from which it was extracted. Unedited versions of the quotes can be found in Appendix 4.

4.4. Explanatory Factors: Africa's International Relations

The EVL model is used to help guide the discussion about the behaviour evidence. Five explanatory factors are used to supplement the EVL model to explain the behaviour. These factors are derived from prevalent academic literature that explained African states' international relations behaviour. Five explanatory factors are identified, which are head of

state interest, regional politics, domestic politics, reputational factors, and economic factors.

These factors are used in Chapter 9 to explore causal relations between the explanatory factors and the behaviours, exit, voice and loyalty. Process-tracing of the different states' behaviour helps explain how state behaviour changed (or not) over the withdrawal debate. Alternative explanations to the factors discussed below are also considered where relevant. This is exploratory, which means that the potential outcomes of such an analysis are tentative and intended as a starting point for future research that could build on to advance Africa's IR scholarship.

4.4.1. Head of State Interests

A dominant argument within Africa's IR literature is that Africa's international relations are determined by the interests of political elite – principally the chief executives and/or so-called big men. Utas argues that networks (informal and formal) emerge as a major form of governance in countries where there is weak and/or fractured formal state.[255] These networks are controlled by "…informal political and/or economic actors situated in social space", or big men.[256]

The need to study non-state actors that carry out state-like services and functions (such as warlords) has been identified as important for a more comprehensive understanding of the decision-makers in Africa's international relations.[257] While this is a valid point, this dissertation's focus on IOs means that the actors studied are states as they are represented by their designated officials. Consequently, this variable is refined to focus on the heads of states' interests, rather than broadly those of Africa's political elite. Additionally, heads of states' interests is expected to incorporate other political elite's interests insofar as they affect the head of state's calculation of interests.

[255] Utas 2012, 1.
[256] Ibid.
[257] Lemke 2003, 125.

Head of state interest centres upon the idea that African states' international relations are determined chiefly by what the head of state (i.e. the chief executive) deems to be in his/her best interest for self-survival in political leadership.[258] The centrality of heads of state and government is clearly illustrated by the fact that the only structures within the AU (and historically the OAU) that has decision-making powers are those with heads of state and government representation.[259] This variable posits that the head of state is going to act in a way that ensures his or her security in power. It seems apparent that realist assumptions underpin this variable where heads of state's foreign policy decisions are seen as the outcome of factor seen to benefit their access to and maintenance of power.

Many factors might affect this equation. With regards to the ICC, the obvious factor affecting security of power for a head of state is when the ICC investigates or indicts a leader. Another way that the ICC can negatively impact upon a head of state's interests is if the ICC's actions undermine another policy decision or course of action that the head of state deems important for their power security. This might overlap with the interests of other heads of states. Hypothetically, the ICC's investigating or arresting a rival head of state would work in the interests of an opponent if that head of state was seen as a threat to one's ability to hold onto power. Contrarily, and related to the solidarity norm, the ICC's threat to a head of state could be seen as a collective threat to all heads of state since the ICC is exercising its power to override sovereignty to some extent. This might, in turn, reinforce collective head of states interests to resist the ICC – or at least heads of states that see themselves as at risk of ICC investigation.

A difficulty that arises with the head of state interest variable is that it may be unfalsifiable. Similar to issues measuring self-interest, measuring head of state interest risks circular arguments. It is difficult to discern with confidence when an action was a calculated decision to further one's political objectives as opposed to, for example, being out of compassion or genuine belief in a principle. There is a high risk of retrospectively imposing a logic of self-interest on a case when one knows the outcome – any decision can be argued to have been

[258] Clapham 1996, 23.
[259] Clapham 1996, 111.

made in self-interest and often it is not possible to prove otherwise. The use of secondary evidence to assess this variable will decrease some of these concerns raised with this variable.

4.4.1.1. Measuring Head of State Interest

Having acknowledged the limitations and scepticism with this variable, it is possible to identify two ways from the literature review that heads of states' interests were directly affected by the ICC: (1) they were undermined by an ICC investigation, summons, and/or arrest warrant since this threatened their position of power, and (2) the ICC could be used to advance head of state interests by implications their political opponents in ICC investigations and trials.

The interests that a head of state might have in another's being immune from ICC investigations could be because of political alliances with the leader in question. Another factor might be regional stability – a head of state might prefer that their neighbour remains stable to avoid spill over effects of political uncertainty affecting their own territory – either through inspiring local disruptions and/or through displaced persons seeking refuge in their state. Vested interest in the removal of (or reputational damage to) a head of state by another head of state might be the result of political rivalry between states. One head of state might reap political gains from the removal of another. As noted in the literature review, African leaders have made use of the ICC to address local political opponents and thereby enhance their hold on power. However, a challenge with this indicator is that it overlaps with domestic factors. Insurgents (regardless of the legitimacy of their agenda) are an obvious obstacle to heads of state but also are a domestic factor affecting the decision-making of a state. It is difficult to separate these variables.

4.4.2. Regional politics

Regional politics is a factor employed to investigate the ways that inter-African politics affects behaviour toward the ICC. Tieku makes the important observation that "…no theoretical account of Africa's international relations will be complete without taking into

serious consideration a regional African norm called the pan-African solidarity norm."[260] The solidary norm is a popular belief among the African political leadership that – at least publicly – unity and support should be demonstrated for one another.[261] Mills and Bloomfield treat the "solidarity norm" as synonymous with pan-Africanism.[262] Arguably, it would be more accurate to understand the solidarity norm as informed by and linked to pan-Africanism.[263] In essence, the solidarity norm espouses a diplomacy of "sticking together" and reserving criticism for private debates out of the public eye.[264] This norm encourages public displays of loyalty as well as discourages African political leaders from deviating from positions with continental consensus.

Dirar explains that the solidarity norm is rooted in the idea of a common "African-ness" – emphasising unity on this shared identity basis. It condemns the involvement of states in the internal affairs of African states. The fact that the solidarity norm dates to the first meeting held by the AU's predecessor, the Organisation of African Unity, in 1963 is very telling. The norm cannot be separated from the context in which it emerged, where African states were beginning to gain political autonomy from colonial regimes and entering global politics as weaker political actors. The norm's emphasis on harmony, unity, and cooperation was and remains strategically important for Africa's international relations since it draws upon the principle of power in numbers and encourages common positions be established among African states. This is seen by the tendency to vote as a bloc in multilateral organisations.[265]

Thomas Tieku argues that this is rooted in collectivist cultural priorities within many African societies. While some have warned against speaking about Africa as having a shared cultural position as it risks essentialising the continent,[266] Tieku's argument is useful when considering the difficulties that mainstream IR theories encounter when attempting to comprehensively explain Africa's IR. Tieku argues the limitation with such approaches is, at

[260] Tieku 2014, 15. See also: Dirar 2015; Ndlovu-Gatsheni 2014.
[261] Tieku 2014, 15.
[262] Mills and Bloomfield 2018, 106.
[263] For a definition of "pan-Africanism" see Ndlovu-Gatsheni 2014, 22.
[264] Smith 2009, 280.
[265] Tieku 2014, 16.
[266] For example, W. Brown and Harman 2013, 3.

least partly, due to their tendency to focus on individualism.[267] This argument certainly holds merit within the AU where appeals to African traditional approaches are frequently cited, at least, in relation to justice matters. However, it is difficult to confidently categorise the solidarity norm because of collectivist culture. It is evident that the solidarity norm is political. Its emergence during the OAU Heads of States meeting suggests this. Furthermore, the priorities emphasised by the norm are often foremost those of African leaders.

An advantage with the solidarity norm is that decision-making is often quick, and compromise relatively easily achieved within the AU – with little contestation and debate that is expected to occur within a multilateral organisation.[268] However, this also means that often decisions are not binding, which may explain why the AU's normative frameworks are progressive yet seldom are incorporated into national legislation. While the conception of these frameworks and policies might emanate from a collectivist process, the lack of uptake when it comes to implementation suggests that the collectivism does not necessarily result in a collective stance being sustained after the policy-making process.

Clearly embracing a constructivist approach, Mills and Bloomfield characterise the withdrawal debate as a contestation between two norms – the anti-impunity norm (pro-ICC) versus the solidarity norm (anti-ICC). These authors recognise the important role that the solidarity norm plays in Africa's IR. The fact that the relationship between the ICC and some of its dissenting African states became strained once there was a positive obligation to act openly against al-Bashir is no coincidence. It is difficult to adequately understand the tension without an understanding of the solidarity norm's emphasis on loyalty among African leaders.

Furthermore, understanding the solidarity norm is integral to understanding why the AU's strategy for peace-making in Sudan required the inclusion of al-Bashir as well as why so many African States Parties violated their obligations to the ICC and did not arrest al-Bashir when he came to visit their countries.[269] It is therefore reasonable to expect that the

[267] Tieku 2014, 16.
[268] Ibid., 17.
[269] For example, Nigeria, Kenya, CAR (twice), Malawi, and South Africa.

solidarity norm is important and necessary to include as an explanatory variable since it has been identified as a general factor affecting Africa's IR and has potential explanatory merit in the withdrawal debate.

4.4.2.1. Measuring Regional Politics

Statements of support for indicted African leaders is a clear demonstration of public unity among Africa's political elite. Furthermore, it asserts that condemnation of African leadership is not on the purview of external actors, but a matter internal to the continent (if at all). Similarly, the failure to arrest African leaders with a warrant for their arrest issued by the ICC demonstrates allegiance with the leader and/or African Union (since the AU has instructed its member states not to cooperate with the arrest of, for example, al-Bashir). Condemnation of the ICC as inappropriately intervening in African affairs would indicate the solidarity norm since it is an example of asserting the principle of sovereignty. Similarly, proclamations of self-determination for African states regarding peace and justice matters is another assertion of the sovereignty principles. Lastly, the public alliance with the collective African Group statement in relation to the ICC by individual African States Parties is an example of public unity.

This variable also includes other regional political factors that are not covered by the solidarity norm. For example, inter-African politics and the regional policy agenda of African states could shape behaviour regarding the withdrawal debate.

4.4.3. Domestic Factors

This variable focuses on domestic factors that shape foreign policy decisions.

Conventional IR approaches hold the state as the organising unit/concept through which one should analyse international relations. However, this is less obvious with weaker states because the state itself is less stable.[270] Clapham argues that, given these circumstances, the

[270] Clapham 1996, 6.

state should be treated as divisible to understand its international relations and foreign policy might not be the best means through which to understand this.[271] The dismal performance of many African economies as well as the general failure to develop popularly supported domestic political institutions are important factors affecting Africa's international relations.[272] The foreign policy of African (and many other) states has primarily been about managing their external and internal relationships effectively in order to survive.

This overlaps with the "heads of state interests" variable. It was noted that Clapham argues that state heads may have had other (legitimate) goals, but self-survival has been identified the foremost goal as a means to promote/achieve others.[273] This variable therefore excludes head of state interests since it is separately measured in this study.

Essentially, the domestic factors variable favours what Kenneth Waltz calls the "second image" in its explanation of factors that determine Africa's IR.[274] It understands African States Parties' position toward the ICC as a function of domestic politics. This means that the stance taken toward the ICC has been determined by what state leaders believe would appeal to a domestic audience or relevant domestic stakeholders.

4.4.3.1. Measuring Domestic Factors

The ICC might be a popular issue among voters in one country or a matter concerning a vocal and powerful interest group. If the ICC is on the agenda of the general public or an influential cohort of the domestic population (such as human rights civil society actors), then it might be a factor that has influenced a state's response to the withdrawal debate. The state might take a clear position for or against the ICC – depending on the domestic conditions – to secure voters, secure political support from domestic stakeholders, and/or distance itself from "undesirable" domestic groups.

[271] Ibid.
[272] Ibid., 7.
[273] Ibid., 23.
[274] Waltz 2001, 79–123.

Furthermore, states' behaviour toward the ICC might be conditioned by a desire to target or marginalise domestic threats. In this situation, the ICC is seen as a helpful tool to minimise such threats. This has been argued by Clark and Bâ as a relevant factor shaping the behaviour of self-referring states.[275]

4.4.4. Reputational factors

Reputational factors refer to behaviour by States Parties to improve and promote their positive international image.[276] This was typically done through being associated with the ICC due to its affiliation with anti-impunity, rule of law, and accountability – all norms that are associated with liberal peace.[277]

Finnemore and Sikkink argue that once a norm is considered mainstream, states are motivated by legitimacy, reputation, and esteem.[278] Arguably, the passage of the Rome Statute marked the point when the ICC was considered a mainstream institution promoting international justice norms. Thereafter, the Rome Statute is a normative standard that had been set. States' behaviour in relation to the ICC consequently are motivated legitimacy and reputational factors. Arguably, this is because the ICC is imbued with the judicial and moral authority to set norms related to international justice. It emerged from the objective to create an institution to promote this objective, and in turn establishes the standards for the related principles.[279] Thus, joining the ICC was an act of creating an organisation to set these international justice norms and standards and remaining a member of the ICC is an endorsement of the ICC's function as an international justice norm-setter. This suggests that there are reputational factors at stake with being an ICC member and supporter.

However, there is more than one type of reputation at stake in the withdrawal debate. For example, African States Parties' reputation as a pan-Africanist. Thus, reputational factors

[275] P. Clark 2018; Bâ 2020
[276] Gray and Hicks, 2014; Finnemore and Sikkink, 1998: 898.
[277] Mills and Bloomfield, 2018.
[278] Finnemore and Sikkink 1998, 898.
[279] Finnemore 1993.

overlap with the regional politics factor. For the sake of clarity and delineation, this explanatory factor explores the extent to which a State Party's behaviour in relation to the ICC is a function of its reputational objectives vis-à-vis international justice norms compliance.

4.4.4.1. Measuring Reputational Factors

Reputations of states in international politics is an area of research interest, but it is difficult to test.[280] Measuring a reputation is difficult since it has many variables. For example, reputation in which regard, according to whom, and in which context? Furthermore, it is difficult to establish the causal factors underlying reputational objectives. It is difficult to determine confidently if a state is motivated by norms (ideationally) or by the objective to be seen as promoting these norms (reputationally). 'Reputational' is preferred over ideational as the label for this explanatory factor since reputation is a consequence of ideational factors and can be an autotelic objective. The empirical study of the States Parties enables an open-ended exploration of whether it is possible to understand this reputational factor as a manifestation of ideational motivations or as a desired identity outcome.

Reputational factors are at play when a state's behaviour seems to be directed, foremost, toward promoting a positive global image. This image is related to ideas of associated with rule of law, accountability, and justice i.e. normative areas associated with the ICC.

4.4.5. Economic Factors

Arguments about economic factors as a causal factor in Africa's IR is influenced by the dependency and structuralist schools of thought. Essentially, this factor suggests that Africa's IR is determined or influenced by the fact that it is highly financially dependent upon external actors and partners. Thus, the economic factors consider the role of trade and aid in shaping African states' relations with the ICC. The importance of economic variables is underscored by political economy scholars.

[280] Gray and Hicks 2014.

The EU is a major economic partner of African states.[281] The EU is a major proponent of the ICC and Chapter 2 noted that the ICC's creation was driven primarily by EU powers.[282] The significance of the EU within the ICC is apparent from the role these states played in its establishment to their financial contributions to the Court. Notably, the EU's main trade agreement with Africa, the Cotonou Agreement, requires that signatories promote and support the ICC.[283] This suggests the importance of considering if economic relationships shaped Africa's ICC behaviour.

4.4.5.1. Measuring Economic Factors

Understanding a state's main trade and aid partners could indicate if they need to maintain favourable political relations with the EU. The position taken regarding the ICC might be affected by how significant the EU (or an EU member state) is as a trade partner for a state. The EU has a united position in favour of the ICC and has clear expectations that their African trade partners support the ICC – as illustrated by the provisions in the Cotonou Agreement.

As noted in the introduction, quantitative evidence was used to help measure the economic dimensions factor. The World Bank's World Integrated Trade Solution data was used to determine the major import and export partners of the African States Parties when relevant. The OECD's interactive summary charts of OFA by recipient country was used together with the OECD's biennial *Aid for Trade at a Glance* reports to determine African States Parties' major aid partners where relevant.

4.5. Limitations

[281] China, the US, and Japan are also powers notable for Africa in terms of trade and aid.
[282] See: Eikel 2018.
[283] Article 11, European Commission 2006.

The introductory chapter identified several limitations with the project and its design. This section does not repeat these but adds to them in light of the above methodological discussion.

A limitation with case studies noted by George and Bennett is that they can capture complexity but often are then limited to middle-range theories.[284] In other words, their generalisability is limited. This, as well as selection bias concerns, have been mitigated using a large-N case study. This project's research design maximises the benefits of a large-N study while retaining a high degree of rich contextual information, it remains a trade-off with a research design that could have focused on a few states that fall into each EVL category and compared them. The reason this was not preferred, in addition to the importance of establishing a comprehensive overview of all African States Parties responses to the withdrawal debate, is that there are practical difficulties that arise selecting these cases before having a good overview of the full range of responses. As noted earlier, the literature on the withdrawal debate offers scant information about states that have supported the ICC during the withdrawal debate and no information was found about the states that did not take an overt position for or against the withdrawal debate. Thus, the loyalty category would have been exceptionally difficult to operationalise prior to a project such as this one. A large-N study therefore is preferred to increase generalisability as well as to ensure the best test of the EVL model is conducted.

The explanations of behaviour analysis could be enhanced by an additional variable: the role of progressive epistemic communities. Foreign policies and international treaties are influenced by non-state actors. Professionals, such as academics, human rights leaders, and lawyers, play active roles, formally and informally, in shaping state's law-making decisions. Often, this network is international and mobilised through a shared epistemological subscription to (progressive) ideas and norms.[285] They influence policy by identifying which norms and evidence should be used as the basis of policy. Members of this epistemic

[284] George and Bennett 2005, 29.
[285] Seegers 2018.

community influence policies from within the state – as policy and state advisers – and from outside the state through campaigns and policy inputs.

Thus, it is plausible that technocrats, such as international African lawyers working on behalf of states, influenced international relations behaviour regarding the ICC. Their belief in international law might have influenced the high accession rates to the Rome Statute among African states in the first place and may have influenced policies as the withdrawal debate unfolded.

There was not sufficient time and data to reliably test this explanatory factor in this project. The challenges that limit the application of this factor are similar to those noted in the introduction related to measuring the influence of individuals over state behaviour. Efforts to operationalise this variable through interviews with AU legal advisors (past and present) were unsuccessful, and time prohibited additional interviews with academics to systematically reflect on this variable. Thus, it is an area for future research and Chapter 9's explanation of behaviour notes where empirical evidence suggests this variable could be relevant.

4.6. Conclusion

This project seeks to address the research question "what are the main factors influencing African States Parties' behaviour in relation to the ICC?" This chapter has detailed the research design and evidence employed to answer these questions.

A theory-confirming case study research design was selected because it tests the EVL model proposed in the next chapter to be tested. Furthermore, the case study method allows for the analysis of the withdrawal debate without abstracting it from its context. The contextual factors are necessary for understanding why there are differences among the States Parties and over time in response to the withdrawal debate. Abstraction from the context would lose these nuances, which are already very difficult to ascertain.

All the African States Parties to the Rome Statute (past and present) are the units of analysis in this qualitative large-N study. Their official responses to the withdrawal debate (or their "behaviour") as communicated via country statements delivered at three IOs forums serve as the data used to inform their categorisation into the EVL behavioural groups.

Five explanatory factors were identified from the mainstream literature of Africa's IR: head of state interests, regional politics, domestic politics, reputational factors, and economic factors. These explanatory factors are used to tentatively explore pathways causing exit, voice, and loyalty behaviour. Thus, the EVL model guides the examination of the motivations behind behaviour and the African States Parties' behaviour in response to the withdrawal debate is the case used to test the EVL model and to demonstrate that it can be applied to the international level of analysis to explain state-IO behaviour. The way that the EVL model will be applied for this study is discussed in the next chapter.

5. EXIT, VOICE, AND LOYALTY AND THE WITHDRAWAL DEBATE

This chapter proposes that Hirschman's EVL model is appropriate to categorise African States Parties into different categories of behaviour based on their country statements. The EVL model provides a conceptual typology of behaviour that can be used to classify African States Parties' responses to the withdrawal debate into three categories: exit, voice, or loyalty. This addresses the gap in the literature since it moves beyond withdrawal and threats thereof to include other types of responses. This enables a holistic and more accurate reflection of how African states responded to the withdrawal debate. This chapter identifies three issues that arise when attempting to adapt the EVL model to study the withdrawal debate: (1) the shift in the unit of analysis from the individual to the state; (2) changing the level of analysis from the domestic to the international level; and (3) Hirschman's market-based (rationalist) assumptions about behaviour.

This chapter begins with an overview of Hirschman's model. Second, the existing adaptations of the EVL to the international level are reviewed. These adaptations fail to address the aforementioned three analytical issues and the chapter resolves these issues. Following this discussion, the chapter presents the adapted EVL model that will used for this dissertation. In conclusion, it will be clear that this project contributes theoretically to the field of IR by proposing an amended EVL model suitable for the field of IR and, specifically, state-IO relations.

5.1. Overview of Hirschman's Exit, Voice, and Loyalty Model

Albert O. Hirschman's Exit, Voice, and Loyalty (EVL) model was developed to study individuals' behaviour in relation to organisations (be they political or commercial).[286] The basic tenet of the model is that in the context of discontent, due to the perceived decline of an organisation, individuals will exit the relationship with the organisation – which might mean moving countries, changing to a new school, cancelling a subscription and so on – or

[286] Hirschman 1970.

voice their concerns or criticisms to the organisations – which could entail letters, emails, protests, and so on.

Hirschman notes that people do not necessarily choose only one response. They might first be quiet and wait to see if the organisation will self-correct. Then they might try voicing their concerns to the organisation. Finally, they might exit if the organisation has not sufficiently attended to their concerns. Some individuals might immediately exit, while some might always be vocal about their dissatisfaction but never exit. Hirschman's model does not claim any sequencing of responses aside from theorising that it could be possible. Thus, the EVL model recognises that behaviour is not a linear relationship and that the interplay of behaviour is important for analysis since it reveals why one behaviour is chosen over another.

Hirschman adds that exit and voice are each moderated by a third variable: loyalty. Loyalty is obscurely written about by Hirschman. In some instances, in his book, he treats loyalty as a moderating variable but in other instances he treats it as an autotelic behaviour (i.e., a behaviour in and of itself). This category is contested[287] – as will be demonstrated – the loyalty behavioural category has merit for capturing supportive behaviour. It is thus treated as a behavioural category and its moderating effect is understood as a function of the interplay between the behavioural categories, which is consistent with many applications of the EVL model.[288]

The EVL model focuses on individual's behaviour at the domestic level and assumes market-based rationalism underscores the relationships studied, even when they are not between individuals and commercial firms. These are components of the model that need to be adjusted when applied to the withdrawal debate case because the unit of analysis changes from individuals to states, the level of analysis shifts from the domestic to the international level, and States Parties' relationships with the ICC are not necessarily market-based. The next section takes stock of how existing applications of the EVL model to the study of

[287] J. W. Graham and Keeley 1992; Leck and Saunders 1992.
[288] This is a popular way that the model has been applied. See, for example, Saunders 1992; J. W. Graham and Keeley 1992; Leck and Saunders 1992; Withey and Cooper 1992; Farrell and Rusbult 1992.

international relations has accounted for these issues, and the other areas of adjustment that they made.

5.2. EVL and the ICC

When applying EVL to the ICC, it is instructive to consider previous studies that have applied the EVL model to study IOs. Only four academic texts that applied the EVL model to state behaviour in IOs were identified at the time of writing: Kathryn Lavelle's article "Exit, Voice, and Loyalty in International Organizations: US Involvement in the League of Nations",[289] Joost Pauwelyn and Rebecca Hamilton's article "Exit from International Tribunals",[290] Alexander Kentikelenis and Erik Voeten's journal article entitled "Legitimacy challenges to the liberal world order: Evidence from United Nations speeches, 1970–2018",[291] and Franziska Boehme article "Exit, Voice and Loyalty: State Rhetoric about the International Criminal Court".[292] The latter is of obvious significance for this project given the shared case study of the ICC.

This section presents brief overviews of each text by considering their purpose, how the EVL model was applied, what evidence was use, and how the evidence was treated. Following the overviews, four factors for applying the EVL model to the withdrawal debate are considered based on these texts: the context of IOs; the costs of exit and voice; the competition environment in which the ICC operates; and if the ICC is an organisation in decline.

5.2.1. Critical Assessment of Existing IR adaptations of the EVL Model

Lavelle's article looks at the "…nature of participation in IOs…" using a case study of American non-state actors' involvement in the economic activities of the League of

[289] Lavelle 2007.
[290] Pauwelyn and Hamilton 2018.
[291] Kentikelenis and Voeten 2020. This journal article is based on a conference paper they authored entitled "Exit Voice, and Loyalty toward Liberal International Institutions."
[292] Boehme 2018.

Nations.[293] Lavelle uses Hirschman to show how IOs change in response to combinations of exit, voice, and loyalty by state and non-state actors. Lavelle's article is useful for setting out the context of IOs and the implications thereof for the use of the EVL model. However, she does not provide an in-depth articulation of the adapted EVL model itself. This means that the conceptual limits of the EVL model for IR in her article are somewhat underdeveloped and it is taken for granted that the exit, voice, and loyalty concepts are self-evident categories.

Pauwelyn and Hamilton use two of Hirschman's behavioural categories – exit and voice – to study the driving factors that affect the decision to leave international tribunals. They argue that there are state-centred as well as tribunal-centred factors that affect exit decisions: how interrelated the tribunal is with other IOs, who is appointed as adjudicators to these bodies and how this is done, and the tribunal's ability to mobilise support among state and non-state actors.[294] The authors support their argument using empirical examples of exit patterns from international and regional tribunals. The evidence used for these examples were academic articles, news articles, and institutional websites. This study focuses on exit behaviour, which means that the voice and loyalty categories are not adequately developed for future uses of the model that seek to explain a broader set of behaviour. As noted, this is an omission within the withdrawal debate literature, and this partial application of the EVL model has limited value for the aims of this project. However, it is worthwhile noting that the authors operationalised exit as the submission of notifications of withdrawal by states in accordance with Article 127, which supports the definition adopted in this study.[295]

Kentikelenis and Voeten use the EVL model to study state behaviour in relation to core liberal international institutions. They argue that exit from critical international economic and human rights institutions has rarely been exercised despite rhetoric that the liberal institutional order is under threat. The authors coded speeches made by state leaders in the UNGA's GDs between 1970 and 2017 influenced by the EVL model. They used two sub-types of voice and to sub-types of loyalty. Voice was delineated into (1) 'exit' statements which

[293] Lavelle 2007, 372.
[294] Pauwelyn and Hamilton 2018.
[295] Ibid., 681-82.

indicate the intent to withdraw from an institution and (2) 'challenge/reform' which question the norms and practices of global economic institutions. The incorporated exit into the voice category because "…so few actual exits have occurred…"[296] The two types of loyalty codes were (1) supportive statements, or 'endorsements' and (2) 'cooperation', which are neutral statements suggesting compliance with the institutions.

Kentikelenis and Voeten's operationalisation of the EVL model demonstrates its adaptability in application to international institutions. However, their decision to define statements of withdrawal intent as 'exit' and subsume this within voice muddies the behavioural categories of the model. It would be best to state there was no exit behaviour and then delineate voice as 'threats of withdrawal' and 'challenges/reform'. Hirschman specifies that threats of exit is a type of voice behaviour, and Kentikelenis and Voeten's operationalisation obscures this unnecessarily. Their study does, however, show that exit is an unusual event in international organisations, which is a relevant consideration for the withdrawal debate case study. Additionally, the recognition of neutral statements as a type of loyalty is also helpful. It suggests that states that do not take an overt stance for or against the ICC should be considered as neutral due to their retaining the status quo of their membership.

Boehme uses the EVL model to gauge patterns and levels of global support for the ICC generally – she does not use it to classify states into exclusive categories of behaviour or reflect on IR behaviour. Her empirical study uses a dataset of country statements made regarding the ICC within the UNGA between 2002 (the Court's inception) to 2016 (the height of the withdrawal debate tension).[297] She identified 605 rhetorical statements made within the UNGA and coded them into statements of "exit", "voice" and "loyalty".[298] Boehme found that there was an overall trend of support (or loyalty) for the ICC among UNGA member states. Relevant for this research, she found that the African bloc within the UNGA was the most vocal region with country statements split between those of criticism and

[296] Kentikelenis and Voeten 2018.
[297] Boehme 2018, 426.
[298] Boehme's method could be described as quantitative content analysis, although she does not say this herself.

support (erring slightly more on the critical side).[299] Boehme charted the rhetoric patterns made by African states from 2007 to 2016, which revealed that loyalty statements initially clearly dominated, but after 2007 (i.e. the OTP's application for an arrest warrant for al-Bashir in 2008) there was a trend of critical statements surpassing loyalty and the introduction of exit statements.[300]

Boehme's operationalisation of the EVL model makes the most effort to adjust it for the purposes of studying state-IO relations, which is discussed below. She explains that any given country's statement might include a combination of exit, voice, or loyalty statements, which captures the interplay of the behaviour types. She identified sentences or paragraphs within a given statement and coded them using the EVL categories – thus, a single statement could have multiple codes. Messages of support were coded "loyalty", criticisms were coded "voice", and threats of withdrawal were coded "exit".

However, there are three issues with her operationalisation of the model. First, the decision to code threats of withdrawal as exit is contentious. Hirschman conceives of voice as a potential alternative to exit (or as delaying the turn toward exit) if actors believe that voice could be effective and/or in situations where exit is not possible.[301] When exit is possible, actors can use the threat of exit as a means to improve the efficacy of voice. Threatening to exit suggests that the actors still see potential for effecting desired changes by an organisation by remaining within it. Furthermore, Hirschman sees threating exit as an act of voice, as indicated by: "…one important way of bringing influence to bear on an organisation is to threaten exit to the rival organisation. But this threat cannot be made when there is no rival, so that voice is not only handicapped when exit is possible, but also, though in quite a different way, when it is not."[302]

From this extract, it is evident that Hirschman conceives of threatening exit as an act of voice. This is evidenced by his example's focusing on two ways that voice is affected by exit

[299] Boehme 2018, 428.
[300] Ibid., 429.
[301] Hirschman 1970, 36–43.
[302] Ibid., 55.

– when exit is possible and when it is not – with the latter undercutting the voiced threat to exit. Furthermore, Hirschman specifies that exit is "…an act of withdrawal…"[303] Thus, it is inappropriate to classify threats of exit as exit. Threats of exit are evidence of voice behaviour.

Second, Boehme states that she is studying state rhetoric as an indication of state support for the ICC. However, she takes the rhetoric at face value. She does not control for state's using discursive devices that obscure the intended message of a statement. She also does not control for the conventional jargon and structure of country statements delivered at the UNGA, which typically include declarations of support for international norms. Coding these as loyalty statements abstracts these utterances from their broader context and risks over-counting the number of loyalty statements since these will be almost unanimously stated in the country statements. For example, the main type of loyalty statement that emerged in Boehme's study were calls upon other states to comply with and, where applicable, join the ICC.[304] However, discontent with the fact that major powers have not joined the ICC has been part of many African states' critiques of the ICC. Thus, it is not clear that calls for compliance and ratifications is necessarily loyalty – it could be understood as dissatisfaction with the fact that the ICC does not hold universal jurisdiction and thus could be an instance of voice.

Ultimately, discourse analysis seems a more appropriate method for analysing the country statements than content analysis because discourse analysis accounts for the politics underscoring how statements are delivered and the linguistic devices used to send messages to IOs.

5.2.2. Applying EVL Model to the Withdrawal Debate

[303] Ibid., 125.
[304] Boehme 2018, 430.

As noted earlier, the application of the EVL model to the IR phenomena – more specifically, the withdrawal debate – requires several adjustments to Hirschman's version of the model. This section builds on the existing literature to adapt the model.

5.2.2.1. States as the Unit of Analysis

There are implications when changing the unit of analysis from individuals to states. There is a clear difference between these units. Individuals are indivisible actors whereas states are divisible actors. Although one can choose to treat states as indivisible, the fact remains that they comprise many sub-components. The issue of concern is what the implication is for studying behaviour when the unit of analysis changes from an individual to a state.

There are some important similarities. Individuals have free will and states have legal sovereignty, but the decisions and actions of both actors are shaped by rules, norms, and laws. Deviating from these rules, norms, and laws have penalties and repercussions, although the severity might change. However, a clear difference is that states could be held accountable for deviation internally (by citizens, domestic institutions, and domestic legal mechanisms) and externally (by other states, IOs, and international legal mechanisms).

The relevance of this difference as well as the matter of in/divisibility relates to what shapes behaviour. Hypothetically, researchers can directly ask individuals what motivated their exit, voice, or loyalty behaviour. When the same question is asked of a state, a researcher must decide which of the sub-components that constitute the state is the appropriate proxy for measuring a state's behaviour. For example, is the head of state or government the best representative, or should it be representatives from all three branches of government, or should it be the foreign minister? In other words, there is a less direct channel to establishing a definitive answer for a state's motivations.

This said, there are comparable difficulties that are encountered when studying individuals and states. The presumption of the above is that self-reporting by individuals is prima facie reliable. However, it is evident that many factors affect self-reporting and there can be omissions from the account that individuals provide. For example, an individual might be

embarrassed that their loyalty is a result of apathy and report their motivation as brand loyalty. Furthermore, they might not account for sub-conscious motivating factors.

Arguably, the challenge when studying exit, voice, or loyalty behaviour is principally with how behaviour is operationalised rather than the unit of analysis per se. Evidently, an open-ended and exploratory approach to causal explanations is preferable if research seeks to account for the causes of behaviour given that there are many possible influencing factors for exit, voice, or loyalty behaviour. The EVL model does not propose predetermined causes of behaviour. It offers categories of behavioural responses to an organisation and assists analysts with determining the causes and effects of the behaviour.

Thus, recognising and accounting for the divisibility of a state is necessary when moving from the individual to the state as the unit of analysis. However, this is not prohibitive or an obstruction to the EVL model's applicability for IR studies. Regardless of the unit of analysis, there is a need to account for the challenges that underscore studies of behaviour. This was addressed in the previous chapter by specifying the type of behaviour that would be studied and why this was appropriate for the project at hand.

In short, the challenge is not the unit of analysis, per se, but how behaviour is operationalised.

5.2.2.2. Context of IOs

The change in levels of analysis from the domestic (individual-organisation) to international (state-organisation) requires careful consideration of how the IO context might affect the EVL model. For instance, it is difficult to discern the reasons for why a state joins an IO in the first place. It might be because they believe in the normative purpose of the IO and/or because they feel pressured to by trade partners.

Relatedly, Lavelle notes that participation within IOs can serve to legitimise that institution.[305] This note is pertinent when considering the ICC. The ICC is not a compulsory court and the refusal of major powers like the US, China, India, and Russia to join the ICC arguably has knocked the confidence in the Court and raised questions about its legitimacy – supporting Lavelle's point. The calls for collective withdrawal from the ICC within its largest regional bloc (Africa) did not materialise, but they have contributed toward a discourse of discontent about the ICC's conduct and questions about its legitimacy. The fact that the withdrawals of Burundi and the Philippines took place after the withdrawal debate came to a head is not coincidental. The debate enabled an environment where readymade moralistic rhetoric existed to justify withdrawal from the Court (and a distraction from the possible self-interested causes underlying withdrawal).

Boehme proposes three amendments to Hirschman's EVL model that are necessary when studying IOs. She notes that the expected turnaround time for IOs to respond to signals of dissatisfaction by states will take longer than would be the case for businesses. This protracted response time is often a result of the internal bureaucratic processes of the institution as well as internal politics. Boehme concludes that it is consequently likely that critiques will have to be repeated over a long period – and that this is likely expected by states.[306]

Secondly, particular to judicial IOs like the ICC, Boehme notes that the normative principles of neutrality and impartiality must be maintained. This could also contribute toward slow responses to critiques since these IOs would make every effort to ensure that they are not perceived to be subject to politics.[307] This suggests that the use of the EVL model for studying behaviour in the IO context should predict sustained voice behaviour due to the slow nature of response times from such institutions. Specific to judicial IOs, the efforts to appear apolitical and impartial might hamper reforms. [308]

[305] Lavelle 2007, 373.
[306] Boehme 2018, 423–24
[307] Ibid., 424.
[308] As noted in the literature review chapter, the ICC's strictly legalistic understanding of impartiality has been detrimental to its performance and contributed toward dissatisfaction with the Court because the ICC cannot avoid affecting politics. It needs to distinguish between being politicised and politically astute.

5.2.2.3. Costs of Exit and Voice

Boehme argues that exit is unlikely even when it is formally an option because of the costs of withdrawal. She envisions these costs as the monetary costs associated with ratification as well as the possible political costs domestically if there was resistance against joining the IO in the first place. She adds that in the case of the ICC, exit is also less likely because there are not comparable alternatives to switch to from the ICC.[309] Boehme argues that voice, in contrast to what Hirschman believes, is costless.[310]

Boehme's assessments of the costs of exit and voice warrant consideration. She assumes that actors adopt a rational cost-benefit analysis when deciding how to act. Assuming but not conceding that this is the case, Boehme's argument is flawed.

First, being a member of the ICC is not costless. States Parties are expected to pay annual contributions to the ICC. Their withdrawal could mean that they would save on membership fees (so long as they are up to date with their contribution payments). The ICC determines the amount each State Party must contribute toward the annual budget using the UN's scales of assessment.[311] While the ICC's scales of assessment formula apparently try to distribute the costs of membership according to financial capacity, the fact remains that

[309] Boehme 2018, 425.

[310] For example, "[h]ence, in comparison to the exit option, voice is costly and conditioned on the influence and bargaining power customers and members can bring to bear within the firm…" (Hirschman, 1970: 40).

[311] The UN's scale of assessment is a complicated formula that divides the projected UN budget among member states according to their financial ability to pay. The average Gross National Income (GNI) of a member state over a base period of three and six years is used to indicate the approximate capacity that they have to contribute toward the budget. A debt-burden adjustment is applied to indebted states, which reduces their GNI estimates for each base period. Furthermore, a low-income per capita adjustment is applied to states with average GNIs below a given threshold (e.g. $10,511 and $9,861 for the three-year and six-year base periods respectively for 2019 to 2021). The low-income per capita adjustment calculated the percentage by which the low-income state's contribution should be reduced by and this is reallocated to states with GNIs above the thresholds. The methodology for calculating the scales of assessment is re-examined by the UN Committee on Contributions annually and slightly altered when deemed necessary. United Nations General Assembly n.d., 56–60 For an ICC example, see Resolution ICC-ASP/5/Res.4, available at https://asp.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-ASP5-Res-04-ENG.pdf.

there is a cost to remaining within the ICC. Thus, it is not accurate to argue that voice is costless since there are annual contributions expected from each ICC State Party.[312]

In addition to the annual contributions required to remain a member of the ICC, there are costs associated with deploying representatives to the ICC's ASP and other ICC events that require state representatives.[313]

Boehme's claim that exit is costly is not self-evident and needs expansion. First, it seems important to distinguish between monetary and reputational costs since both were flagged in some way by Boehme. Monetarily, the costs of ratification would likely be offset by no longer having to pay annual contributions. The (potential) reputational costs associated with exit from the ICC could be argued in two ways: remaining in the ICC could come at the cost of other African states' dismay with a lack of solidarity displayed by their colleagues. On the other hand, withdrawal could be received as a derogation of anti-impunity norms and/or antagonise major ICC supporters.

Boehme suggests that the likelihood that there is high loyalty to the ICC, which in turn would moderate exit, means that "…the ICC appears to be what Hirschman calls an organisation with 'severe initiation' from which exit is particularly unlikely because loyalty is high."[314] It seems that Boehme has misunderstood what Hirschman meant by "severe initiation," which he expands upon in Appendix E of *Exit, Voice, and Loyalty*. Severity of initiation refers to the extent to which it is difficult (or expensive) to join an organisation or group.[315] It is predicted that the more one has struggled to gain access or membership to an organisation, business, or group, they will find it "…more attractive (or as less unattractive) than one who has not."[316] In other words, severe initiation is potentially positively

[312] One could debate the relative expense of the membership fees – whether they are considered expensive or inexpensive – and this could have an impact on theorisations about exit or voice behaviour. However, it is difficult to determine a comparative base that would be used to inform the qualitative claim about expense - by what standards?
[313] Although it should be noted that some low-income states' costs of attendance for ICC meetings and events are funded by other States Parties.
[314] Boehme 2018, 426.
[315] Hirschman 1970, 146
[316] Ibid.

correlated with loyalty: "[i]n organisations entry into which is expensive or requires severe initiation, recognition by members of any deterioration will therefore be delayed and so will be the onset of voice."[317]

Boehme does not elaborate on what she considers severe initiation to be with regards to joining the ICC. One can speculate as to what this could be: the difficulty of securing enough ratifications for the Rome Statute or membership fees. However, the former would not apply universally to ICC members – only to some states that were involved in the drafting and popularisation of the Rome Statute. As noted earlier, it is difficult to establish if one should consider the ICC's contribution costs as high or low since this depends upon the comparison base – is it compared to other IOs like the UN; is it based on the relative percentage it takes from States Parties' overall IO payments; is it dependent upon the size of the ICC's budget compared to other international courts or IOs? Boehme did not establish the basis for why joining the ICC should be considered difficult or costly, thus it is not evident that it could be described as severe initiation. While loyalty might be high, it does not seem to fit that the ICC members experienced severity of initiation when joining and it seems unlikely that this is a causal factor for loyalty.

5.2.2.4. Competition

Boehme and Lavelle flag an important point of consideration regarding the competition environment in which the ICC operates. Lavelle argues that the EVL model is applicable to IOs despite its not being perfectly analogous to markets since membership to an IO is voluntary and IOs compete against alternative forums to deliver similar outcomes (for example, the International Monetary Fund and the United Nations Development Programme). Lavelle's observation raises important considerations about the relative competition within the IO sector, and what this could imply for applying the EVL model to the ICC.

[317] Ibid., 93.

Formally, states are free to choose which IOs to join. However, it is necessary to consider that not all states enjoy the same level of power within the global system.[318] Consequently, it is plausible that stronger states might influence the IOs that weaker states join – be it through trade conditions or political pressure. The question of why states join an IO could be a significant factor when assessing their discontent with that IO: has the IO failed to deliver on its objectives? Have its services deteriorated? Have global power politics shifted to enable weaker powers to vocalise their discontent without significant negative repercussions?

Hirschman predicts higher rates of exit or voice behaviour depending on how much competition an organisation confronts: a lot of alternatives sees exit as more likely and few or no alternatives sees more voice. This is slightly complicated to assess in terms of IOs rather than businesses. States join IOs for many reasons. For example, states might join the ICC because they wish to promote anti-impunity norms, because they were encouraged/pressured to by trade partners and/or domestic actors like civil society; because they or their neighbours have internal conflicts that they envisioned the ICC could respond to; because other states were doing it; and so on. As noted in Chapter 2, the reasons for African states' ratification of the Rome Statute needs systematic investigation. It consequently is difficult to make presumptions about viable alternatives to the ICC since it is not necessarily clear what the motivations were for joining in the first instance. One can attempt to assess the landscape of alternatives to the ICC based on two factors: its jurisdiction and the norms associated with it (accountability and anti-impunity through punitive justice).

The ICC is the only permanent international court with jurisdiction over the core crimes of genocide, crimes against humanity, and war crimes. In these terms, there is no alternative. The closest alternative would be the International Court of Justice (ICJ), whereby states can instigate proceedings against another state. The Gambia's submission of Myanmar to the ICJ

[318] Kentikelenis and Voeten 2018, 4.

in December 2019 for alleged genocide is a case in point of how the ICJ could be used as an alternative forum to the ICC.[319]

It is important to note that while the ICC could at face value appear to be a monopoly, if one adopts this strict understanding of competition (i.e., there must be at least one alternative permanent international criminal court). However, even if one accepts this as the appropriate interpretation of competition, the analogy to market competition encounters some shortcomings. The ICC relies on state membership to increase its jurisdictional reach since it does not have universal jurisdiction. This creates a dynamic that differs somewhat from monopolistic conditions since the ICC arguably needs states more than states need the ICC. While states might not be able to get access to another court exactly like the ICC, states still have access to judicial entities to try achieving their justice goals.

If the alternative is principle or norm based, then prospective alternatives for delivering similar outcomes to the ICC (accountability) could be in the form of ad hoc courts (like the ICTR), hybrid courts (like the Special Court for Sierra Leone), other transitional justice mechanisms (like truth commissions or traditional justice mechanisms), and regional courts (like the proposed amendment to the African Court).[320] There could also be an argument that promoting accountability and anti-impunity does not require belonging to a court-like body, and states could satisfy their obligations to these norms through domestic policies and participation in other human rights forums. However, this argument seems to be somewhat of a stretch, and it is more convincing that the ICC does not have an obvious alternative. This is not to imply it is analogous with monopolistic conditions since states are not obliged to be part of the ICC and do not depend upon it exclusively to attain the services it offers (i.e., external investigations in core crimes committed).

[319] Bowcott 2019.

[320] In 2014, the AU adopted the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (the Malabo Protocol). The purpose of the Malabo Protocol is to expand the (proposed) African Court of Justice and Human Rights (African Court)'s jurisdiction to include the core crimes over which the ICC presides. However, the Malabo Protocol has not come into force. At the time of writing, it has only been signed by 15 states and ratified by none. Fifteen ratifications are needed for the Malabo Protocol to come into effect.

5.2.2.5. Is the ICC in decline?

The EVL model looks at exit, voice, and loyalty as behaviours in reaction to perceived organisational decline. Arguably, the immediate cause of the behaviour is the perception of decline. The ICC, however, is not a commercial institution and although Hirschman intended his model to be applied beyond economic relationships, he did not address how 'decline' is measured in non-commercial institutions.

Boehme argues that the submission of withdrawal notifications by three African states, the various complaints raised about the ICC by African states (generally, within the ICC, and within the AU), and other complaints that have been noted since the ICC's inception in 2002 suggest that the ICC is in decline.[321]

Arguably, this should be modified slightly. The EVL model should be foremost concerned with how discontent is signalled to organisations. It is not primarily concerned if the organisation is objectively in decline. This is a significant distinction since it would be extremely difficult to establish an objective measure for decline when such a judgment is subjective. Hirschman recognises this dynamic in his theorisation – hence his provisions for and consideration of what he sees as irrational behaviour. Instead, it is necessary to establish if an organisation is *perceived* to be in decline. In other words, is there evidence of discontent with the organisation? Boehme's justification for the use of the EVL model based on the threats of withdrawal, complaints about the ICC, and so on all serve as evidence of states' discontent with the ICC.

That said, it is not clear that African States Parties behaviours were immediately driven by this perceived decline. The obscurity about the explanations of their behaviour is the purpose of this study. Does this prohibit the application of the EVL model to the study of the withdrawal debate? Arguably, no. The EVL model still guides the examination of behaviour in response to the withdrawal debate. The behaviour is said to be due to this decline, which is likely a rhetorical justification that distracts from other motivating factors. The EVL model

[321] Boehme 2018, 423.

helps reveal the other motivating factors and confirms the extent to which perceived decline is a rhetorical device. Furthermore, it is questionable that it is possible to robustly state that individuals' behaviour is driven by perceived decline. Their behaviour might be shaped by other factors beyond perceptions of decline and the EVL model could guide insight into this with an open-ended analysis of the motivating factors.

5.3. The EVL Model and the Withdrawal Debate

The withdrawal debate serves as a case study to test the application of the EVL model to study African States Parties' behaviour in relation to the ICC. This case suggests the use of the model more broadly for studying state-IO relations. The previous chapter discussed that the individual behaviour of African States Parties to the ICC will be examined over a ten-year period. This will identify cross-state and cross-temporal trends and improve the understanding of how exit, voice, and loyalty behaviour were performed. Considering the preceding discussion in chapter, as well as the methods discussed in Chapter 4, this section explains how each behavioural category in the EVL model will be measured for the purposes of this study.

5.3.1. Exit

Exit is measured in two ways. The most self-evident measurement of exit is the submission of a notification of withdrawal by the State Party in terms of Article 127 of the Rome Statute.

The States Parties' delivery of a country statement after their withdrawal that aims to justify their withdrawal is another measure of exit. Withdrawal is finalised one year after the submission of the notification of withdrawal, and so States Parties can address these forums after the notification has been submitted but before their withdrawal comes into effect.

5.3.2. Voice

Voice – or the communication of discontent to the ICC – can be measured through statements expressing dissatisfaction with the ICC as pertains to the withdrawal debate. The identifying factor of what makes it "voice" is that dissatisfaction with the ICC's performance regarding a withdrawal debate theme is communicated to the Court. Statements that predominantly focused on conveying discontent to the ICC were considered voice behaviour.

5.3.3. Loyalty

Loyalty is measured as the support of or satisfaction with the ICC that is communicated in country statements. States that did not take an overt position toward the withdrawal debate are considered to exhibit loyalty behaviour on the assumption that their decision not to use voice or exit is because they wish to retain their membership (i.e., loyalty) to the ICC.

Another way that loyalty might be indicated is through reservations entered by African states to AU decision and declarations on withdrawal debate related matters. Entering a reservation on an AU decision that expresses discontent with the ICC suggests that the state in question seeks to distance itself from this position. Reservations, therefore, are a measure of loyalty that is used to supplement the speech data.

5.4. Conclusion

Hirschman's EVL model is appropriate to categorise African States Parties (based on their country statements) into different categories of behaviour since it aims to explain behaviour in response to discontent with an organisation. This chapter explains the EVL model and how it can be adapted to study African States Parties-ICC relations.

The application of the EVL model to an IR phenomenon requires the recalibration of the model in important ways. It is necessary to consider the divisibility of state actors when operationalising and analysing state behaviour. The shift to the international level of analysis requires the recognition that decision-making in IOs usually is a protracted process. It also requires the research design of the project to identify and control for the different

types of actors and variables that affect IO memberships, some of which are not material or market-based. Last, it was argued that it is the perception that an IO is in decline that is relevant when operationalising the EVL model, rather than an 'objective' measure of decline. This is because perception is what would shape behaviour. It was noted that African states' behaviour was not necessarily driven by the perceived decline of the ICC. Rather, the rhetoric about the ICC's decline created an enabling environment for other types of discontent to be communicated and other agenda to be pursued for some states. Nonetheless, the perceived decline – even if rhetorical – was the proximate cause of the withdrawal debate.

Exit is defined as the submission of a notification of withdrawal from the ICC. Voice is defined as any communications of discontent with an IO. Loyalty is defined as support for the ICC. The EVL model is used to categorise the African States Parties' country statements into nominal categories – exit, voice, or loyalty – for each year and discourse analysis is the method adopted to interpret the country statements.

The EVL model serves as a guide to analyse and interpret the case material. The following three chapters use discourse analysis to interpret the country statements to classify them into the EVL categories.

6. EXIT

Exit, in the context of the withdrawal debate, is defined as a State Party rescinding its membership to the ICC. This can be measured by the submission by a State Party of their notification of withdrawal to the UN Secretary-General. This is an unambiguous indication by a state of their intent to end their relationship with the ICC. Three states submitted such notifications: South Africa, Burundi, and The Gambia. These are the three states analysed as examples of exit behaviour.

Their exit behaviour is operationalised by two sources of evidence: the notifications of withdrawal and country statements. Furthermore, country statements in the period following the submission of the notifications of withdrawal also serve as evidence for this chapter. This is because withdrawal only comes into effect one calendar year after the submission of the notification, which means that the withdrawing states are still members of the ASP during that period and can participate in the General Debate. Additionally, their withdrawal does not preclude them from participating in the UNGA ICC RP, which is open to statements from all UNGA members.

The small number of states that initiated withdrawal proceedings from the ICC lends itself to a different analytical structure than the voice and loyalty chapters that follow. The data pool is smaller and the overlap in thematic areas also fewer due to the small case size. This restricts generalisability. Consequently, the chapter is organised by case, whereas the voice and loyalty chapters that follow are organised thematically.

Furthermore, the fact that only one state withdrew and two states initiated these proceedings calls for an in-depth analysis of the factors that contributed to the severity of these decisions bearing in mind that the EVL model suggests exit occurs when a state determines that its relationship with the ICC has irredeemably deteriorated.[322] Yet, despite the significance of these cases, only South Africa's withdrawal has received in-depth analysis

[322] Alternatively, the model allows for exit as a response to discontentment when there is an easy alternative. However, it was discussed in Chapter 5 that there are no easy alternatives to the ICC with the closest option being the ICJ and the African Court on Human and Peoples' Rights.

within the withdrawal debate literature. Burundi and The Gambia's withdrawals have not received the same level of analysis and single case studies of the reasons for their withdrawals have not been conducted, as of November 2021.

The chapter begins with an overview of the exit data. Next, each of the three exit cases are studied in turn to analyse their exit behaviour. Where relevant, speech data is analysed using the three dimensions of discourse analysis: description, interpretation, and analysis. Then, explanations for the exit behaviour are discussed. In conclusion, this chapter demonstrates what data were available to categorise states as demonstrating exit behaviour and how these data can be complemented to proffer explanations of the behaviour.

6.1. The Exit Data

In Chapter 5, it was argued that exit is most appropriately, and unambiguously, measured by a state's submission of a notification of withdrawal.[323] This is consistent with the exit clause in the Rome Statute, as provided for in Article 127 entitled "Withdrawal", which provides:

> 1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, withdraw from this Statute. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.
>
> 2. A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Statute while it was a Party to the Statute, including any financial obligations which may have accrued. Its withdrawal shall not affect any cooperation with the Court in connection with criminal investigations and proceedings in relation to which the withdrawing State had a duty to cooperate and which were commenced prior to the date on which the withdrawal became effective, nor shall it prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective.

[323] Furthermore, this position is sustained by Helfer's argument in favour of distinguishing between breaches of treaties and exits therefrom (Helfer, 'Exiting Treaties', 1582).

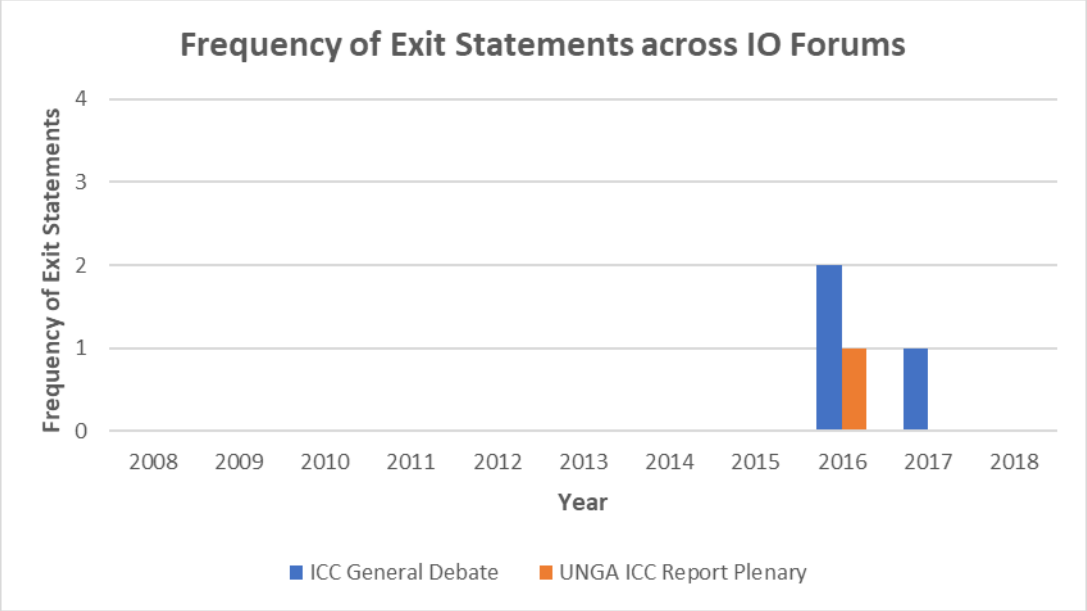
Thus, according to the Rome Statute, the requirements for withdrawal from the treaty is a written notification of withdrawal that is deposited with the UN Secretary-General. Conventionally, withdrawal is concluded one year after the notification was deposited. The State Party is required to uphold its obligations to the ICC for the year until its submission of the notification comes into effect. Any matters under consideration by the ICC are unaffected by the withdrawal and the ICC can investigate crimes up until the day before the withdrawal came into effect. These provisions were included to mitigate States Parties from reactively withdrawal to evade investigations once they are initiated.[324]

In 2016, South Africa,[325] Burundi,[326] and The Gambia[327] – on 19 October, 28 October, and 10 November 2016 respectively – submitted notifications of withdrawal from the ICC to the UN Secretary-General. Burundi remains the only African state to have withdrawn from the ICC since South Africa and The Gambia each retracted their withdrawal notifications – for reasons discussed below – before they came into effect.

A total of four country statements were delivered following the submission of the withdrawal notifications, as summarised in Figure 9 below. Burundi delivered two speeches in 2016 that were classified as exit – one at the ICC General Debate and one at the UNGA ICC Report Plenary. The other two exit speeches were delivered by South Africa at the 2016 and 2017 ICC General Debates respectively. The Gambia did not deliver a speech classified as exit. The exit speeches delivered by South Africa and Burundi are illustrations of when exit and voice "…come into play jointly"[328] and the absence of the use of voice to accompany The Gambia's withdrawal is an illustration of a 'pure' exit. All three cases are examples of a time when exit prevailed over voice[329] in the withdrawal debate.

[324] As noted in the literature review in Chapter 2, the ICC's ability to prevent States Parties from evading their obligations and investigations is hindered by non-legal constraints in practice. This is merely a legal provision to ensure that the treaty's framework safeguards the ICC's investigations on legal grounds.
[325] 'Reference: C.N.786.2016.TREATIES-XVIII.10 (Depositary Notification)' 2016.
[326] Republic of Burundi 2016a.
[327] Republic of The Gambia 2016.
[328] Hirschman 1970, 5.
[329] Which was one of Hirschman's research questions in his *Exit, Voice, and Loyalty* treatise (see Hirschman, 1989: 5).

Figure 9: Use of Exit Behaviour in Country Statement Data



6.2. Exit Country Statements

Burundi and South Africa both delivered country statements that constituted exit behaviour in the aftermath of their withdrawal notifications. The primary reasons given for withdrawal by each state differed, however, both states questioned the credibility of the ICC. Additionally, both states asserted their commitment to international norms in their exit speeches as well as. These mutual themes are discussed before a case-by-case analysis of Burundi, South Africa, and The Gambia's exit behaviour. The three dimensions of discourse analysis are used to discuss these themes to ascertain if they suggest motivations for the exit behaviour.

6.2.1. Questionable Credibility of the ICC

Both Burundi and South Africa questioned the ICC's credibility in slightly differing ways, but toward the same end of justifying their withdrawals from the Court. Both states referred to the ICC's allegedly anti-African disposition and Burundi questioned the Court's independence.

South Africa directly called into question the ICC's credibility because of its relations with Africa: "The credibility and acceptability of the ICC to become the universally accepted institution of justice will be questioned for as long as the concerns of Africa specifically and member states more generally are not addressed."[330] South Africa uses definitive language to present this as a fact, rather than as an opinion, about the ICC. This assertion acts as a rhetorical device that conveys conviction.

South Africa premised its concern about the ICC credibility as regarding the Court's troubled relationship with African states. Consequently, South Africa asserts that its withdrawal was informed by its concern that the African bloc's issues with the ICC were not being appropriately attended to by the Court. In other words, South Africa infers that its withdrawal is, partly, to due to the ICC's inaction.

Burundi demonstrated its position that the ICC was biased against Africa when it said: "It is clear that the ICC is focusing all of its attention on Africa, while unacceptable situations in other parts of the world go unacknowledged."[331] The note that other potential situations for ICC investigations exist outside of Africa suggests Burundi's view of the ICC as inappropriately focused on Africa. In the same speech, Burundi unambiguously stated: "In the interests of its survival and of international justice, the Court should acknowledge its shortcomings and agree to a comprehensive reform, to meet the legitimate concerns of various developing countries with regard to its functioning and **its current policy of double standards, which has affected several African leaders** [emphasis added]."[332] This clearly indicates that Burundi sees the ICC as biased against African heads of states.

Burundi took this accusation further in its UNGA ICC RP speech by recommending mass withdrawal from the ICC by African states due to its questionable impartiality:

> …it is not surprising to see that the impartiality and objectivity of the Court is being called into question by a growing number of States. Public opinion in Africa has begun to see the Court as

[330] Republic of South Africa 2016b.
[331] United Nations General Assembly 2016.
[332] Ibid. Burundi also suggested this in its ICC General Debate speech in 2016.

> the juridical realm of certain so-called powerful countries. We believe that African countries should reconsider their accessions to the Rome Statute because the International Criminal Court has recently become a biased instrument at the service of a category of countries, a tool with which to exercise political pressure and, in some cases, to effect regime change in developing countries, in general, and African countries, in particular.[333]

Burundi's questioning the ICC's impartiality was shaped by the fact that the ICC and UNGA sessions comprised state officials that were aware that the norm for credible judicial institutions is impartiality. Thus, Burundi did not need to explain the link between the ICC's alleged impartiality and its subsequent credibility or incompetence – this was assumed as knowledge that Burundi shared between with the audience. Burundi's speech was shaped by the allegations made by other African states that the ICC was anti-African. This is suggested when Burundi highlighted the ICC's caseload as predominantly African situations as well as Burundi's withdrawal recommendation.

Burundi indirectly appeals to the sovereignty principle in its recommendation for mass withdrawal from the ICC. This is evidenced by its accusations of how some countries are using the ICC "to effect regime change." Burundi does not need to directly say the word 'sovereignty' because it is implied by the imagery it produced when speaking about the ICC's being a tool of certain (former colonial) powers. Similarly, references to the ICC's double standards serve as illustrations of its partiality toward powerful states.

South Africa refers to such accusations but does not make them against the Court: "There are perceptions of unfairness in the practice of the ICC… by the perceived focus of the ICC on African states, notwithstanding clear evidence of violations by others."[334] South Africa's use of "perceptions" and "perceived" suggests that it does not necessarily wish to present this view as its own position. South Africa avoids accusing the ICC of being anti-African, which helps it enter this debate, avoid defending this position, and enjoy the legitimising effects that accompany a position of solidarity with other African states. Mentioning the

[333] United Nations General Assembly 2016.
[334] Republic of Burundi 2016c.

anti-African argument asserts the image of South Africa as a representative of the continent, which is a part of its soft power objectives in regional and international politics.

The mention of "clear evidence of violations by others" also helps with the image of South Africa as a human rights defender, which is a major foreign policy objective of the country. Given the audience comprises ICC States Parties, South Africa can safely assume that they are aware of the criticisms against the ICC for its lack of progress regarding the Afghan and Palestinian situations, as well as the criticism of the UNSC for not referring the Syrian situation to the ICC.

A recurrent theme in Burundi's exit speeches was the notion that the ICC is not independent. The unsaid link between the ICC's independence and credibility is that judicial independence is a norm for a credible judicial body. Thus, Burundi's efforts to demonstrate that the ICC is biased is a way to question its credibility. One way that Burundi sought to demonstrate the questionable independence of the ICC was to suggest that the OTP was influenced by certain powers:

> Burundi expressed outrage over the blatant influence exerted by Belgium the former colonial power of Burundi, the European Union, and some international organizations including the Office of the High Commissioner for Human Rights of the United Nations in the decision taken by the Prosecutor to open a preliminary examination on the situation in Burundi.[335]

Burundi uses evocative language to convey that injustice has been committed by the ICC due to its compromised independence. Burundi's comment about the "blatant influence exerted" is an instance where extreme case formulation – which is the use of superlative descriptors to legitimise a claim[336] – was used to reinforce the message of injustice. Reminding the ICC General Debate audience of Belgium's colonial history in Burundi covertly insinuates that Belgium's exertion of influence on the ICC is neo-colonial or a residual colonial-era attitude of intervening in Burundi. Furthermore, it echoes the AU's critique of the ICC as neo-colonial.

[335] Ibid.
[336] Pomerantz 1986; Edwards 2000, 347.

Burundi's noting that Belgium was its former colonial power is an emotive device. It relies on the likelihood that it would evoke sentiments of injustice and suspicion of neo-colonialism, which might resonate with other former colonies. Furthermore, it echoes the AU's critique of the ICC as neo-colonial.

Burundi also referred to financial factors as compromising the ICC's independence: "This lack of a proper budget seriously calls the Court's independence into question, and it sometime finds itself overwhelmed by political pressure exerted by those most responsible for its financial straits."[337]

Burundi stated that its withdrawal was caused by the OTP's alleged lack of independence: "The systematic violation of the Rome Statute and a number of actions which called into question the independence of the Office of the Prosecutor in relation to its actions towards Burundi, led Burundi to withdraw from the Rome statute [sic]."[338] This is a rhetorical tool to self-legitimise Burundi's withdrawal. It suggests that the fault lies with the ICC's violation of a cardinal judicial objective (impartiality). Burundi also implies that its withdrawal is driven by the need to preserve national sovereignty and stability by avoiding the Court's attempts to enable illegitimate regime change. These characterisations of the ICC as partial and neo-colonial validate Burundi's withdrawal as a reasonable response to protect national sovereignty from an aggressive external force.

Burundi indirectly appeals to the sovereignty principle in its recommendation for mass withdrawal from the ICC. This is evidenced by its accusations of how some countries are using the ICC "to effect regime change." Burundi does not need to directly say the word 'sovereignty' because it is implied by the imagery it produced when speaking about the ICC's being a tool of certain powers (including former colonial powers). Similarly, references to the ICC's double standards serve as illustrations of its partiality toward powerful states.

[337] United Nations General Assembly 2016.
[338] Republic of Burundi 2016c.

Burundi situates its withdrawal within broader debates through references to critiques of the ICC that are shared, and have been vocalised, by other states, which infers a sense of legitimacy since the criticisms Burundi notes are shared by others. Additionally, Burundi's reference to external instigators of regime change is a fear-mongering tactic that seeks support by from states that see themselves as comparably vulnerable. It sends the message that Burundi is avoiding being a cautionary tale and the recommendation for others to withdraw implies that they, too, should avoid this fate. Burundi, therefore, relies on shared fears of regime fragility and usurping forces for this effect.

6.2.2. Commitment to International Norms

Burundi and South Africa each emphasised their commitment to international norms in their speeches. This section describes such references and uses quotes to show the different ways that each state sought to demonstrate their commitment.

South Africa made several references to norms. It directly referred to them when reiterating "South Africa's commitment to the protection of human rights all over the world and the fight against impunity remains unwavering despite its decision to withdraw."[339] Similarly, it asserted that "[d]espite the intended withdrawal, South Africa shall remain on the side of victims at all times."[340] Both these statements attempt to reassure the ASP that South Africa is not becoming a "rogue state" simply because it has withdrawn. South Africa is likely protecting its reputation as a human rights promoting state by saying this and, concurrently, asserting this reputation. This is further suggested by South Africa's stating: "It is necessary to state unambiguously that South Africa will not became a safe haven for fugitives… Draft amendments have already been prepared for submission to the Cabinet for approval and for tabling in Parliament for consideration. The draft legislation will facilitate continued cooperation with international bodies like the ICC."[341]

[339] Republic of South Africa 2016c.
[340] Republic of South Africa 2017b. South Africa made a similar reference to its commitment to victims and human rights at the 2016 ICC GD.
[341] Republic of South Africa 2016c. Similar remarks were made by South Africa at the 2016 ICC GD.

South Africa emphasis on its continued commitment to human rights is likely due its desire to protect/preserve its soft power status as a peace promoting actor. South Africa's speeches were given at the ICC. The intended audience of this message was likely the non-African States Parties since its reputation within African politics was unlikely weakened by its withdrawal from the ICC. South Africa's reiteration of its being on the side of victims is a discursive device that moralises South Africa's withdrawal. South Africa is covertly asserting that its actions are informed by its commitment to victims, and that this is best served by its withdrawing from the ICC because of the consequences of remaining a member on its ability to protect their interests.

Notifications of withdrawal are publicly accessible. South Africa would likely have wanted to minimise the negative effects of withdrawal on its reputation, to legitimise its withdrawal, and to have this rationale officially recorded. This probably drove South Africa to include a declaratory statement alongside its withdrawal notification. South Africa has deliberately cultivated an international and regional reputation as a middle power, like the Scandinavian countries, that has the moral capital to mediate peace processes – especially in Africa.[342]

Relatedly, South Africa asserted its moral capital within international politics to justify its pursuit of mechanisms outside of the ICC to address peace and security issues:

> As South Africa we have learned from our own history of crimes against humanity and still draw inspiration from the father of our democracy, Nelson Mandela, in promoting reconciliation and avoiding conflict, which in some instances may require action outside of judicial processes. The ICC cannot be the only platform through which we resolve all matters.[343]

Recalling South Africa's post-apartheid transition simultaneously recalls its role in international politics as a peace mediator and human rights promoter. The indirect reference to South Africa's Truth and Reconciliation Commission (TRC) also encourages the idea of South Africa's commitment to victims because the TRC was promoted and known as a victim-centred mechanism. Thus, the reference to Mandela could be seen as a discursive

[342] Seegers 2019.
[343] Republic of South Africa 2017b.

technique that reinforces imagery of South Africa's commitment to human rights, victims, and peace. South Africa is using its reputation vis-à-vis Mandela as a peacemaker to self-legitimise its decision to withdraw from the ICC.

South Africa insinuates its authority in matters of peacemaking with this reference and can do so due to its international reputation. South Africa uses this international image to self-justify but also defends this image by moralising its withdrawal (i.e., by asserting that it is acting in the interests of victims).

A less direct assertion of its commitment to international norms is seen by South Africa's stating: "South Africa found itself in the unenviable position where it was faced with conflicting obligations: obligations contained in the Rome Statute which are in conflict with customary international law pertaining to immunity for sitting heads of state and government."[344] South Africa's presentation of its perceived conflict of international obligations indirectly asserts its commitment to international norms. This is because if South Africa was not committed to the conflicting obligations, then there would not be a dilemma for South Africa.

South Africa's defending its reputation allows it to control the narrative that emerges about its withdrawal and acts as a counter-narrative to allegations that South Africa has lost its moral compass.[345] There are several credible individuals from South Africa that have independent participate in international politics and justice, such as Justices Richard Goldstone and Navi Pillay, who publicly disagreed with South Africa's withdrawal. Similarly, civil society actors (local, regional, and international) publicly disparaged South Africa's withdrawal as a smear upon South Africa's reputation as a human rights defender as did the official opposition party.[346] South Africa's withdrawal from the ICC being described as deviating from its moral compass should also be considered within the context that over a

[344] Republic of South Africa 2016c.
[345] McKaiser 2016; Tabane 2016.
[346] 'South Africa: Continent Wide Outcry at ICC Withdrawal' 2016; eNCA 2017.

number of years, various other events had also contributed toward a growing sentiment that South Africa was losing its moral orientation.[347]

The desire to protect this reputation explains South Africa's reiterations of its commitment to various international human rights, peace, and justice norms in its declaratory statement. It was in South Africa's interests to frame its situation regarding ICC membership as a dilemma wherein it was forced to choose between either the ICC or the AU when it allowed al-Bashir to enter the country.

At the UNGA ICC RP in 2016, Burundi stated its commitments to anti-impunity and to various principles of international justice:

> Before entering into detailed remarks, my delegation wishes to reiterate Burundi's commitment to the principle shared by many — to fight against impunity in all of its forms and manifestations. Burundi also supports the principle that impartial and equitable justice contributes greatly to the consolidation of peace and reconciliation within communities emerging from conflict. Moreover, we are firmly committed to the principles of non-selectivity, objectivity and non-politicization of international justice.[348]

Burundi's emphasis on its commitment to various international justice principles was undoubtedly shaped by the fact that it was delivering the speech at the UNGA and because its withdrawal from an institution lauded as one of the main mechanisms of achieving these principles. Burundi sought to defend its reputation at the international level by asserting an image of itself as a norm promoter and adherer. This image of Burundi is an important part of is justificatory discourse for why it withdrew from the ICC. Burundi presents itself as a state invested in promoting norms to establish a framework that can be used to justify its withdrawal: that the ICC is not a suitable mechanism for promoting these norms. As will be discussed below, the presentation of the ICC as a compromised institution was an important part of Burundi's justifications for withdrawing.

---

[347] For example, denying the Dalai Lama entrance to South Africa; allegations against then-President Jacob Zuma of corruption and rape; and the Marikana massacre.
[348] United Nations General Assembly 2016, 71.

Burundi proceeded to defend the declaration that Nkurunziza had won the April 2015 elections. Reference was made to the participation of opposition parties in the elections, which implies that Burundi's elections were free and fair. Burundi then referred to the groups that challenged the election outcomes:

> Regrettably, a fringe component of the radical opposition that boycotted the elections also rejected the path of legality and the decision of the Constitutional Court and the Court of justice of the East African community; preferring the recourse to violence as a means of political expression… what commenced as a non-violent protest turned extremely violent, leading to the death of civilians and the destruction of private and public property… These criminal acts are punishable by the laws of Burundi. Unfortunately, some of the citizens of Burundi who had publicly claimed responsibility for these criminal acts, had repeatedly been granted audience by the ICC during which they have propagated their campaigns [sic] incitement to violence, peddling of lies, blackmail, calumny and falsehood against Burundi in the absence of its duly accredited representatives.[349]

The point of departure assumed by Burundi in its description of the opposition groups is that the elections were democratic processes. With this assumption in mind, it is then clear that Burundi utilises discursive devices that call upon, at best, imagery of undemocratic or illiberal actors or, at worst, imagery of villains. Burundi's intent seems to be to discredit their nationals that opposed the 2015 elections and its outcomes. This is seen by Burundi's deliberate use of active language when referring to the opposition groups to convey the agency behind their allegedly malicious attacks on the Burundian government. Additionally, Burundi's descriptions of the opposition group and their behaviour relies on extreme case formulations to legitimise its accusations. This formulation is further reflected in Burundi's dualization of itself (democratic) and the opposing groups (radical). This is further suggested by Burundi's noting that the alleged violent crimes committed by these groups are "punishable by the laws of Burundi." This clearly asserts that the self-admitted perpetrators of these acts are considered criminals under Burundian law and infers that the international community should receive them as such – not give them platforms to speak against the elected government.

[349] Republic of Burundi 2016b.

6.3. Burundi:

The next subsections consider exit themes that emerged within Burundi's 2016 and 2017 country statements, which indicated exit behaviour. The dominant reasons within these statements provided for Burundi's exit behaviour are that the ICC acted disrespectfully toward Burundi, issues of complementarity, and that there was popular support within Burundi for withdrawal.

6.3.1. Disrespectful Procedural Conduct by the Court

Burundi expressed that the procedure followed by the Court with regards to its investigations into Burundi were disrespectful and undiplomatic. Burundi's speeches each reiterated this grievance several times and in two ways: (1) the OTP's public engagements with the groups that opposed Nkurunziza's election and (2) the OTP's public, rather than private, communications about its investigations into the Burundian situation.

One of the ways that Burundi accused the ICC of acting improperly was regarding its public consultations with the Burundian opposing groups that it had described as "fringe" and "radical" actors. Burundi specifically noted that it was concerned "…by the lack of sensitivity and cooperation on the part of the office of the Prosecutor to the information provided by Burundi on some Burundian citizens who are wanted by Burundi's judiciary for their active participation in serious crimes…"[350] Burundi added that the OTP ignored that Burundi sent notification that there were pending international warrants of arrests for these individuals. Burundi then expressed that it was "surprised and scandalized" that the ICC, nonetheless, allowed them to attend ICC events and gave them a platform to talk.[351] Referring to photographs posted by these individuals with the Prosecutor and her staff, Burundi went on

[350] Republic of Burundi 2016c.

[351] In the same speech, Burundi also said: "Burundi strongly protested recourse by the Prosecutor to fabricated reports prepared and presented by fugitives facing charges for serious crimes before the judicial system of Burundi to justify her decision to begin a preliminary examination on the situation in Burundi… With this apparent support of the ICC, these fugitives are transformed into victims to the surprise and indignation of the people of Burundi who were plunged into mourning by their barbaric conduct."

to say that: “Following these acts of provocation and contempt, Burundi has decided not to submit to this gross violation of the Rome Statute, for doing so would [be] tantamount to a betrayal of the sovereignty of Burundi, its people, and National Institutions [sic].”[352]

Burundi’s discontent with the OTP’s meeting with the opposing groups is intrinsically connected with Burundi’s presentation of these groups as undemocratic pariahs. Burundi’s dissatisfaction with the OTP’s meeting with these groups is, at least in part, due to its view that these groups are criminal. Burundi saw these OTP consultations as having a legitimising effect for the groups, which was a threat to the Nkurunziza regime. Burundi assessed that the ASP members might be sympathetic to these groups if they are not aware of negative views of these groups. By criticising the OTP’s fraternisation with the opposing groups, Burundi simultaneously asserted that the ICC and the opposing groups are not credible. This promotes the image of Burundi as the victim of hijacked ICC proceedings.

Beyond the context of the ASP session in which Burundi spoke, Burundi also likely sought to counter positive narratives about the opposing groups to minimise the support that this groups had from the international community as well as domestic population. If Burundi feared that these groups were seeking to destabilise Nkurunziza’s regime, it would want to ensure that the groups are not seen as credible or deserving of support. Burundi would take advantage of a platform that would enable it to promote its narrative about these groups especially if that platform is related to judicial processes regarding Burundi.

Another grievance noted by Burundi was that the OTP had not communicated directly with it through diplomatic channels. Burundi noted its discontent that “[t]he Prosecutor did not deem it necessary to acknowledge receipt of...”[353] the reports Burundi had submitted, which detailed its domestic efforts to investigate and prosecute crimes. Burundi resented that the OTP publicised its investigations through media before and/or rather than using official channels: “Despite all its efforts to have the cooperation [sic] and effective communication with the Prosecutor of the ICC, the Prosecutor chose the public media and distributed [a]

[352] Republic of Burundi 2016c.
[353] Ibid.

press statement to notify Burundi [of] decisions taken on the situation in Burundi. Not a single official correspondence informing Burundi as diplomatic practice requires [was sent]."[354]

Evidently, Burundi saw this as disrespectful and improper, as evidenced by its statement: "This manner of addressing the President in the discharge of his constitutional mandate to fight impunity, criminality within his national territory and the people of a sovereign nation, [and] State party [sic] to the Rome Statute was considered patronizing and unacceptable by the Burundian people."[355] Additionally, Burundi noted: "The sovereign people of Burundi deserve to be treated with dignity and respect. Burundi expects to be addressed through a communication policy that represents the face of international justice and the original spirit of the Treaty of Rome."[356] The mention of the "people of a sovereign nation" and the "sovereign people of Burundi" shows that Burundi sees itself as representing its nationals – it collapses the state and the people as one entity by virtue of suggesting that how the ICC communicates with the Burundian state can be considered as a way it communicates with the Burundian people. Stating that Burundians should be "treated with dignity and respect" accuses the Court of failing to do this vis-à-vis its communication policy with Burundi officials. This rhetoric serves to moralise Burundi's actions by implying that it is defending the dignity of its people against a disrespectful ICC.

Burundi's emphasis on the way that the OTP communicated as being undiplomatic was likely shaped by the fact that it was addressing a diplomatic audience that would place importance on following diplomatic communication protocols. Thus, Burundi might have seen it as strategically valuable to emphasise the offense it felt as a result of undiplomatic behaviour by the OTP as a way to justify its withdrawal as well as discredit the ICC's conduct.

6.3.2. Complementarity

[354] Ibid.
[355] Ibid.
[356] Ibid.

Burundi's discussion about how the complementarity principle had not been upheld by the ICC was undoubtedly shaped by the fact that it addressed an audience that knew that the complementarity principle was one of the Rome Statute's foundational principles and values. Thus, Burundi would have assessed that it would garner support if it could prove that the ICC had not upheld this principle, and thus violated its founding Statute. Burundi depicted itself as compliant, cooperative, and as capable of conducting their own investigations, which asserts that the ICC should not be involved.

Burundi indirectly invoked the complementarity principle when it argued that it has appropriate national institutions to respond to "past and ongoing violations", including "…the Truth and Reconciliation Commission, the Land and other Property Commission, the Commission on human rights…", which were developed with the input of the international community. Burundi likely mentioned this input from the international community to assert that the institutions were legitimate and that it had already submitted its justice processes to the international community. The fact that it was addressing an international audience likely influenced mentioning the international community's role in Burundi's domestic processes.

Burundi stated that "[t]he crisis of April 2015 did not make these institutions less effective, less independent, or unable to investigate and to prosecute all the perpetrators of the crimes in the territory of Burundi."[357] Thus, Burundi was asserting its capability to conduct domestic investigations into the April 2015 crisis. Furthermore, Burundi asserted that the ICC's overstepping the complementarity principle was not particular to the Burundian situation: "Moreover, we note — in what is an unfortunate observation — that the principle of the primacy of national jurisdiction, enshrined in the Rome Statute, is not being applied as it should be in certain situations referred to the Court."[358]

Burundi added that it could have self-referred but had decided that the situation had not justified such action. It stated:

[357] Ibid.
[358] United Nations General Assembly 2016.

> Meanwhile Burundi continued to cooperate with the ICC in order to demonstrate the manner in which it was exercising its rights of complementarity even though the Office of the Prosecutor was not demonstrating the required cooperating [sic]. Accordingly, that left Burundi with the only reasonable option which was to withdraw from the Rome Statute. Membership under these circumstances became a serious affront to peace and national cohesion, national sovereignty, its national dignity and the dignity of African victims of selective and discrimination justice peoples [sic].[359]

Thus, Burundi argued that its withdrawal was influenced by the ICC's failure to adhere to the complementarity principle. It also stated this at the 2016 UNGA ICC RP: "This decision was also motivated by the fact that all reasonable efforts, by the Government of Burundi to assert its complementarity rights guaranteed by the Rome Statute were irreparably compromised."[360]

The assertion of the complementarity principle also appeals to the sovereignty principle. It asserts Burundi's right to determine its own affairs. Indeed, it framed its withdrawal as necessary to, inter alia, protect its national sovereignty.

6.3.3. Acting on Behalf of the People

Burundi repeatedly framed its withdrawal actions as being conducted on behalf of its domestic population: "You have no doubt been notified [of] the instrument of withdrawal of the Republic of Burundi from the Rome Statute. The decision emanated from popular request by the Burundian people and reflects their sovereign will…"[361]

At the UNGA ICC RP in 2016, Burundi added that the decision had been reached via its parliament: "The substance of my comments, which are by no means exhaustive, has recently compelled Burundi to withdraw from the list of States parties [sic] to the Rome Statute of the International Criminal Court at the explicit request of the people of Burundi

[359] Republic of Burundi 2016c.
[360] United Nations General Assembly 2016.
[361] Republic of Burundi 2016c.

through a joint session of the two Houses of their Parliament."[362] The reference to parliamentary processes to arrive at this decision is likely an attempt to reiterate the legitimacy of the withdrawal.

Burundi's emphasis on its acting in accordance with the wishes of its population conveys the sense that the state had little choice but to withdraw from the ICC. Failing to do so would have meant that the state was failing to represent its people's demands. This is a rhetorical device to legitimise its actions by portraying them as the outcome of a democratic mandate. Burundi's use of this rhetorical device suggests that it sees it as strategic to appeal to democratic principles to justify its withdrawal. The audiences that Burundi addressed at the ICC and UNGA are not all technically democracies. This means that Burundi's appeal to democratic values sought to endear it to particular states within the audience. More specifically, it was likely directing its messages to powerful states that had ingrained democratic discourses in its diplomacy.

6.4. South Africa:

Unlike Burundi and The Gambia, South Africa submitted a declaratory statement along with its notification of withdrawal from the Rome Statute. This serves as an additional documentary source to analyse the exit behaviour of South Africa. Thus, the discourse analysis method is used to study the reasons put forward for South Africa's exit in this document as well as in the country statements it made at the ICC GDs in 2016 and 2017, which indicated exit behaviour.

Three justifications of South Africa's exit behaviour were provided for in the country statements delivered by South Africa as well as in its declaratory statement: that it confronted a dilemma in obligations, that parts of the Rome Statute were unclear, and as a response to dissatisfaction with the UNSC.

[362] United Nations General Assembly 2016.

6.4.1. Dilemma

The main justification South Africa has given for its withdrawal is that it was caught between two international obligations and had to make a choice. The choice made was determined by its role as a peace mediator on the continent. South Africa, therefore, presented its withdrawal from the ICC as the outcome of a dilemma. South Africa described the dilemma it faced in June 2015 in its declaratory statement that accompanied its withdrawal notification:

> South Africa was faced with the conflicting obligation to arrest President Al Bashir under the Rome Statute, the obligation to the AU to grant immunity in terms of the Host Agreement, and the General Convention on the Privileges and Immunities of the Organization of African Unity of 1965 as well as the obligation under customary international law which recognises the immunity of sitting heads of state…The relationship between State Parties and non-State Parties continue to be governed by customary international law that bestows on a Head of State immunity *ratione personae*. Arrest of such a person by a State Party pursuant to its Rome Statute obligations, may therefore result in a violation of its customary international law obligations.[363]

South Africa presented the dilemma as one based in a conflict between customary international law and the Rome Statute thereby making it as universally applicable to the ASP audience as possible. If South Africa had restricted its framing of the dilemma in terms of AU/ICC obligations, then it would have restricted the audience to which its dilemma could hypothetically apply to African States Parties only. South Africa also drew attention to the fact that it was part of the process of negotiating the Rome Statute. South Africa likely relied on the institutional memory that it had been a member of the Like-Minded Group, which comprised other significant ICC powers, like Germany. This prompts the question of whether South Africa raised the issue of the tension between Articles 27 and 98 at the Rome Conference. No evidence was found to indicates that this was the case. It is plausible that South Africa did not anticipate that the ICC would interpret Article 27(2) as applying to non-States Parties officials.[364]

---

[363] Republic of South Africa 2016a.

[364] South Africa would not be alone in this regard. Schabas expressed scepticism about the ability of Article 27(2) to waiver the immunity enjoyed by state officials that were not party to the Rome Statute by virtue of a collective of some states acceding to this waiver. See: Schabas 2011, 80.

South Africa also noted that remaining a member of the Rome Statute "…will compromise its efforts to promote peace and security on the African Continent."[365] Similar remarks were made at the ICC General Debate in 2016: "South Africa found itself in the unenviable position where it was faced with conflicting obligations: obligations contained in the Rome Statute which are in conflict with customary international law pertaining to immunity for sitting heads of state and government."[366]

South Africa continued:

> The decision to withdraw was not taken lightly. South Africa played a significant role in the negotiations for the Rome Statute, and was one of the first States to adopt implementation legislation. The decision was made after very careful consideration of all relevant issues, including South Africa's obligations to the ICC, its recent interaction with the Court, its obligations toward the African Union and the role that South Africa plays to resolve conflicts and make peace on the African continent and elsewhere.[367]

Additionally, in 2017, South Africa defended its decision to invite al-Bashir to attend the AU Summit as being consistent with its AU obligations:

> When South Africa agreed to host the AU Summit in 2015 to which President Al Bashir was invited on behalf of Sudan as a full and legitimate member of the AU, it was guided primarily by a commitment to the advancement of the African Union's vision of Agenda 2063 which promotes the notion of the creation of "An integrated, prosperous and peaceful Africa, driven by its own citizens, representing a dynamic force in the international arena."[368]

This presentation of affairs is a false dilemma as South Africa had more than two options. For example, they could have unofficially deterred al-Bashir from attending or declined to have hosted the Summit. South Africa likely saw it as more compelling to present its situation as one where it was caught between two binding obligations since it would likely

[365] Ibid.
[366] Republic of South Africa 2016c.
[367] Ibid.
[368] Republic of South Africa 2017b.

predispose other states to being sympathetic to the difficult situation South Africa was in. Moreover, linking this dilemma to its role as a peace promoting actor on the continent (as discussed earlier) was another way to induce a sense of urgency for South Africa to resolve the dilemma.

It seems that the rhetorical device of presenting its withdrawal as the outcome of a dilemma was a distraction from other reasons underlying its withdrawal.

6.4.2. The Rome Statute is Unclear

South Africa conveyed its discontent with its engagements with the ICC over the need for some provisions in the Rome Statute to be clarified. The issues related to clarifying the Statute were used by South Africa, in part, to explain its withdrawal – often in relation to the dilemma of obligations it perceived itself as confronting. In its declaratory statement, South Africa provided the circumstances causing its withdrawal: "There are no procedures to guide Article 97 consultations, and South Africa is disappointed that the process, that in our view should clearly have been a diplomatic process was turned into a judicial process."[369]

South Africa then noted its request that the ASP:

> …develop Rules and Procedures relating to Article 97 consultations in order for Parties that find themselves in a similar position in future, to have the confidence that they can do so on the basis of agreed procedures. South Africa also requested that Assembly of State Parties to clarify the nature and scope of the provisions of Article 98 of the Rome Statue and its relationship with Article 27. It is disconcerting that there was opposition to this proposal as there are fundamental differences on the issue of immunities of Heads of State.[370]

South Africa reiterated concerns regarding Article 97 at the 2016 ICC GD:

[369] Republic of South Africa 2016a.
[370] Ibid.

> When confronted with this dilemma last year [2015], South Africa accepted an invitation to invoke the Article 97 procedure to consult with the Court if experiencing challenges with honouring a warrant of arrest. South Africa regarded these consultations as diplomatic and not judicial in nature and wanted to share its challenges with the Court. The valid concerns raised in respect of Article 97 by South Africa at the previous ASP have now been recognised through a decision of the ASP to mandate the Bureau to remain seized with this matter.[371]

At the next ICC GD, in 2017, South Africa elaborated on its experience using ICC procedures and its reason for withdrawing:

> Needless to say that the Pre-Trial Chamber ruling raised new issues and further clouded, rather than provided clarity on, South Africa's concerns regarding its obligations vis-a-vis the Court, specifically in respect of the relationship between Articles 27 and 98 of the Rome Statute. South Africa is therefore still left in an invidious position of needing to abide competing obligations as a State Party to the Rome Statute and having to fulfil its role as a mediator for peace especially in conflict situations on the African continent. Whilst the Pre-Trial Chamber of the ICC insists that States Parties have an obligation to arrest President Al Bashir implicit in United Nations Security Council Resolution 1593, the Court has not, to our knowledge, offered consistent or convincing reasons in arriving at such a conclusion in the face of legal provisions that appear to suggest the opposite in our estimation.[372]

South Africa's mentioning the procedures it followed to seek clarification about its competing international obligations (i.e., the Article 97 consultation) likely is shaped by the intent to demonstrate to the ASP members that it had followed the Rome Statute procedures for resolving uncertainty. South Africa argued that it, nonetheless, remained in a predicament despite its adherence to the conflict resolution mechanisms provided by the Rome Statute. This suggests that the process itself was flawed and distances South Africa from fault. This suggests that the audience being ICC member states shaped its justification of its withdrawal as being influenced by procedural issues.

South Africa asserts that the Pre-Trial Chamber has been inconsistent in its position regarding the obligation that States Parties hold to arrest al-Bashir as a way to defend itself

[371] Republic of South Africa 2016c.
[372] Republic of South Africa 2017b.

to the ASP. The lack of consistency (if accepted) would suggest that South Africa was justified in its confusion. South Africa acknowledged that the ICC had tried to respond to its concerned regarding the consultation process but noted this had not been completed satisfactorily: "Whilst the concerns relating to Article 97 have to some extent been addressed, there remain some grave concerns."[373]

It is interesting that South Africa chose not to argue against the legality of the application of Article 27 to a non-State Party. Instead of entering a legal debate, South Africa defends itself by highlighting that the Pre-Trial Chamber has vacillated in how it has expected States Parties to uphold the arrest warrant. This is strategy enables South Africa to assign blame on to the Pre-Trial Chamber (and, thereby, the ICC) for its procedural behaviour being inconsistent. The importance of consistency in legal application and interpretation is an international judicial value that the ASP would be familiar with. Thus, South Africa's awareness that its audience would be familiar with international judicial norms and values likely indirectly influenced this strategy.

Significantly, when explaining the circumstances that surrounded its withdrawal in its declaratory statement, South Africa said that "the experience with the ICC left South Africa with the sense that a violation of its fundamental right to be heard was violated."[374] This might be a revealing sentence. It suggests that South Africa was offended by the way that the ICC had responded to its consultation request.

6.4.3. Inaction by the UNSC

South Africa referred to the UNSC's failure to respond to requests from African states for it invoke its deferral powers in its discussions about its withdrawal. It did not provide this as a reason for its withdrawal but insinuated that this was a conditioning factor that caused the tension between its international obligations.

[373] Republic of South Africa 2017b.
[374] Republic of South Africa 2016a.

In the declaratory statement, South Africa stated that it sees the ICC as a component within a broader international law and governance system, which needs reform. South Africa linked negative views of the ICC with the call for UNSC reform and the uneven application of prosecutions:

> Questions on the credibility of the ICC will persist so long as three of the five permanent members of the Security Council are not State Parties to the Statute. The Security Council has also not played its part in terms of Article 16 of the Rome Statute where the involvement of the ICC will pose a threat to peace and security on the African continent. There is [sic] also perceptions of inequality and unfairness in the practice of the ICC that do not only emanate from the Court's relationship with the Security Council, but also by the perceived focus of the ICC on African states, notwithstanding clear evidence of violations by others.[375]

South Africa mentioned the need to balance peace and justice in both of its exit addresses. On both occasions it linked this with the UNSC deferral issue. In 2016, South Africa stated:

> …peace and justice must be viewed as complementary and not mutually exclusive… The drafters of the Rome Statute were keenly aware of this peace/justice dichotomy and purposefully build [sic] mechanisms into the Rome Statute to address it. Regrettably, the Article 16 deferral power was never exercised by the Security Council, despite several African requests.[376]

This statement is self-contradictory. It begins by saying that peace and justice can be simultaneously pursued (i.e., they are complementary). Then, later in the speech, it refers to the "peace/justice dichotomy", which implies that they cannot be pursued together. This contradiction likely arose because South Africa initially sought to defend its promotion of peace as something that should not be seen as detracting from the pursuit of justice. However, it then sought to argue that mechanisms to resolving the choice that must be made between peace and justice (due to its dichotomous relationship) was foreseen and built into the Rome Statute. This serves as an important premise for South Africa's conclusion, which was that the UNSC failed to resolve this situation by its refusal to invoke its deferral powers.

---

[375] Ibid.
[376] Republic of South Africa 2016c.

South Africa repeated these sentiments the next year and refers to its involvement in the drafting of the Rome Statute to assert that its view is authoritative:

> It is our firm view that the drafters of the Rome Statute, of which South Africa was part, were keenly aware of the peace and justice dichotomy and purposefully built some mechanisms into the Rome Statute to address it, including the deferral process under Article 16. Regrettably, despite several requests from the African continent, the United Nations Security Council has never exercised this power of deferral.[377]

By referring to the UNSC's failure to exercise its deferral powers, South Africa suggests that the UNSC could have averted the crisis of obligations that African states confronted. This diverts blame from South Africa for how it handled the al-Bashir situation and implies a counter-factual: the situation would not have arisen in the first instance if the UNSC had acted as it was requested.

Yet, South Africa's references to the UNSC's refusal to use its deferral powers is not a reflection on the ICC itself. It is a critique of the UNSC. Thus, South Africa refers to matters that are not the result of the ICC's actions nor within its control in the ways that it questions the ICC's credibility.

The imagery of an inert UNSC that neglected the requests for deferrals is shaped by South Africa's knowledge that the ASP audience would be familiar with the frustration that some African States Parties, other African states, and the AU have levelled against the UNSC in this regard. The ASP audience would be aware of the greater dissatisfaction that the African Group within the UN has with the structure of the UNSC and its position that the unequal distribution of power within the UNSC had led to its disadvantaging and overlooking Africa's international peace and security concerns.[378] Drawing attention to unequal utilisation of power by some UNSC P5 members indirectly draws on the history of UNSC reform demands.

---

[377] Republic of South Africa 2017b.

[378] Africa reform demands of the UNSC are comprehensive captured in the Ezulwini Consensus. See: African Union 2015 South Africa has been supportive of this agenda.

South Africa's addition of a comment about the ICC's "perceived focus" on Africa despite violations committed by and in other geographic regions serves as a way to legitimise its previous comments and questioning the ICC's credibility. South Africa's use of "perceived" suggests its awareness of counterarguments to claims that the ICC has been anti-African.

6.5. The Gambia

On 10 November 2016, The Gambia submitted its notification of withdrawal, which was set to come into effect on 10 November 2017. As noted earlier, no declaratory statement accompanied the withdrawal notification and there were no country statements delivered by The Gambia that indicated exit behaviour.

The Gambia rescinded its notification of withdrawal on 10 February 2017, with the explanation:

> After a thorough review of the circumstances surrounding that decision, the new Government of the Republic of The Gambia hereby notifies you of its decision to rescind that notification of withdrawal with immediate effect.
>
> The Republic of The Gambia still considers itself as a state party and will continue to honour its obligations under the Rome Statute.[379]

In terms of official communications, The Gambia's reasons for exit were not indicated in the forums studied. This shows the need to draw other material – such as academic literature, news articles, and interview data – to try to explain The Gambia's exit behaviour. This is done in Chapter 9, which focuses on explanations of African ICC States Parties' behaviour.

6.6. Conclusion

This chapter focused on exit behaviour in relation to the ICC by its African States Parties. It argued that a clear-cut indication of exit is the initiation of withdrawal procedures from the

[379] Republic of The Gambia 2017.

Rome Statute, as provided for in Article 127. Withdrawal from the ICC is triggered by the submission of the notification of withdrawal to the UN Secretary-General. In 2016, three African States Parties initiated such proceedings: Burundi, South Africa, and The Gambia.[380]

However, since withdrawal only comes into effect one calendar year after depositing the notification of withdrawal, states' behaviour can change and withdrawal can be rescinded before it comes into effect, despite the initiation of the procedure. This was the case for South Africa and The Gambia, which both retracted their withdrawals. Nonetheless, they are considered exit cases from the point that they submitted their withdrawal notifications until their retraction thereof.

This non-linear exit behaviour prompts pause for reflection on the theoretical comparability of the EVL model at the IR level and its domestic-level iteration. Is the non-linearity of exit unique to the configuration of IO withdrawal clauses if they are not immediately effective? This is not evident. While Hirschman does not overtly discuss that individuals might return to an organisation after exiting them, it remains plausible within the model's logic. Furthermore, Hirschman explicitly states that he does not envision the model as linear, which suggests the dynamic nature of behaviour is predicted and can be encompassed within the EVL model.

Moreover, there are legal arrangements at the individual-organisational level that prohibit the immediate effect of exit, such as, contracts with notice periods specified before services can be terminated. it is plausible that an individual might nullify their decision to withdraw within the window before the notice comes into effect. Thus, there are comparable legal institutional arrangements at the domestic level, in terms of the EVL model, to that of the exit clause in the Rome Statute and the potential for an exit behaviour to be rescinded or changed is not unique to the state-IO relationship. Nonetheless, the retracted withdrawals by South Africa and The Gambia illustrate the complexity of state behaviour and the need to understand what drives this behaviour. Furthermore, these two cases show the usefulness

[380] The only other state to have withdrawn from the ICC is The Philippines. It deposited its withdrawal notification on 17 March 2018 and it came into effect on 17 March 2019.

of a broad temporal scope when studying state behaviour (at least regarding the withdrawal debate) as well as using a flexible approach to the typology of this behaviour so that variance can be captured and explained.

The variance and vacillation of behaviour suggests the importance of developing explanations of behaviour. The exit data discussed for the Burundi and South African cases suggest that, officially, multiple causes are offered by states to justify their exit behaviour. Furthermore, the discourse analysis method reveals how the broader withdrawal debate influenced how South Africa and Burundi explained their exits – this is especially apparent from the convergences in explanations between these very dissimilar cases. Additionally, each state also framed their withdrawal, at least in part, in terms of broader criticisms of the ICC's operations in and relationship with Africa. For example, Burundi's references to complementarity and South Africa's references to the UNSC's role were both themes that were discussed in the literature review in Chapter 3.

The lack of exit data for The Gambia means that an official record of the reasons for The Gambia's withdrawal was not lodged with the relevant IOs (the UN or ICC). Consequently, there is no record of the official reasons for The Gambia's withdrawal. This adds impetus to the need for further research that seeks to explain The Gambia's behaviour with the ICC, as well as African states' behaviour with the ICC generally. Chapter 9 analyses the available secondary literature to answer this question and complements this with interview data The next chapter focuses on the voice behaviour of African States Parties to the ICC.

7. VOICE

Hirschman defines voice as the articulation, by individuals, of dissatisfaction to an organisation to initiate changes.[381] It is anticipated that voice will frequent multilateral bodies such as the ICC's ASP or the UN because it is highly unlikely that political bodies such as these, with state members, will satisfy every state's preference. Voicing areas of dissatisfaction to an IO enables the organisation to address the areas of discontent identified, but time needs to be given to organisations by voice actors to allow them to make changes.[382]

Voice, in the context of the withdrawal debate, was defined as any communication of discontent about the ICC. For the purposes of this study, country statements at the ICC GDs, UNGA ICC RPs, and UNGA GDs between 2008 and 2018 were used as evidence of voice behaviour by states.

The chapter begins with an overview of the voice data collected from across the IO forums studied. Next, the country statements delivered by African States Parties are analysed using the three dimensions of the discourse analysis method. The chapter is organised thematically to consider the areas of convergence in the voice behaviour among the African States Parties, although, it bears repeating, the statements themselves were considered in their entirety when they were classified as voice. The prevalent voice themes are threats of exit; expressions of solidarity; concerns about the waiver of head of state immunity or Article 16; complementarity issues; selectivity matters; procedural concerns; and UNSC-related apprehensions. This is followed by the conclusion.

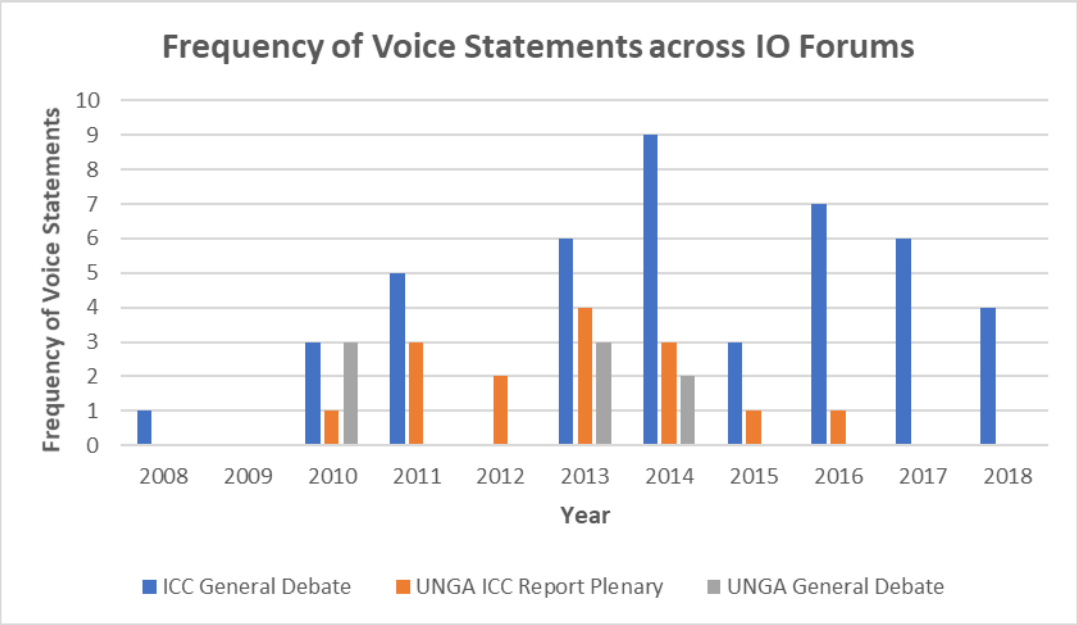
7.1. The Voice Data

This section summarises the country statement data related to voice that were gathered from the ICC GDs, UNGA ICC RPs, UNGA GDs for the period of 2008 to 2018. Sixty-seven of

[381] Hirschman 1970, 30.
[382] Ibid., 32.

the 208 country statements related to the withdrawal debate were examples of voice behaviour. There were 44 voice statements at the ICC GDs, 15 at the UNGA ICC RPs, and eight at the UNGA GDs. Voice was most frequently used in 2014 and then in 2013, where voice was exercised 14 and 13 times respectively. See Figure 10 for a summary of the voice behaviour across the forums.

Figure 10: Use of Voice Behaviour in Country Statement Data



Section 7.2. focuses on the country statements that were classified as voice. It uses discourse analysis to justify this classification.

7.2. Voice and the International Criminal Court

The country statement data by individual African States Parties are discussed using the three dimensions of discourse analysis: description, interpretation, and explanation. Since States Parties often expressed similar sentiments to one another and across time, illustrative examples have been used to show trends in country statements. The themes that emerged were threats of exit; expressions of solidarity; sitting state officials' immunity; complementarity; selectivity; procedural concerns; and the UNSC's influence.

7.2.1. Threats of Exit

Threats of exit refer to comments made by States Parties in their speeches that suggest that they will withdraw from the ICC. This sub-type of voice behaviour is important since the withdrawal debate centres on the threat of mass withdrawal from the ICC by African states. Although the issue of withdrawal was an overstatement insofar as there was no evidence of a real risk of mass withdrawal by African States Parties,[383] it certainly posed (inter alia) discursive and normative challenges for the ICC. The perception of withdrawal was affected by comments made by the AU and some African states (including non-States Parties to the ICC). Importantly, some African States Parties were inconsistent in their position toward the ICC. This inconsistency occurred over time as political circumstances around the ICC changed, but also depending on the forum, circumstances, and audience.[384]

Arguably, communicating the intention to withdraw from the ICC within an international multilateral setting has higher stakes than a similar communication at the national level. Given African states' relative power within global politics, their declaring the intent to rescind their support of an international legal instrument might have negative consequences.[385] It is interesting to note that none of the three states that initiated withdrawal proceedings (i.e. South Africa, Burundi, and The Gambia) vocalised their intent to withdraw in the IO forums studied before they submitted their withdrawal notifications.[386]

[383] For example, the number of states that supported withdrawal were a minority of the African States Parties to the Rome Statute; the AU's Withdrawal Strategy draft document did not actually call for mass withdrawal; and (in hindsight) only three states initiated withdrawal processes, two of which retracted.
[384] See, for example, Kersten 2017c .
[385] Whereas it seems like African leaders have more power at a national level to leverage their authority to rebrand their membership to the ICC depending on what is politically expedient. Leaders have more power to shape the domestic audience's political conscience than they have over other states or an international agenda (given Africa's relative power).
[386] This might be simply because the meetings studied are annual but relations between the ICC and its members are ongoing.

The African states that threatened to exit from the ICC were Kenya,[387] Namibia,[388] and Uganda.[389]

In its 2014 speech at the UNGA ICC RP, Uganda detailed that its head of state, Museveni, raised concern with the ICC in October that year:

> [Museveni] said 'My view is that at the next African Union summit, African countries should review their membership to the ICC treaty. The ICC is turning out not to be value addition product that we had expected it to be. It is instead a biased instrument of post-colonial hegemony.'[390]

The reference to Museveni's statement indicates that Museveni encouraged the collective withdrawal by African states from the ICC. However, it is not clear why Uganda did not repeat this encouragement within the ICC GD one month later and restricted itself to referring to collective withdrawal within the UNGA only.

At the ICC GD in November 2016, Namibia stated: "Therefore, in the fullness of time, Government will engage the National Assembly on its preferred position, to withdraw or to stay. Whether we leave the ICC is therefore not a foregone conclusion and the discussion is ahead of us, not behind us."[391] This shows that Namibia is domestically considering withdrawal, although it has not been decided whether it will conclude to withdraw. Nonetheless, noting that withdrawal is on the cards constitutes a threat of exit.

At the same ICC GD in 2016, after noting discontent with how African States Parties were being treated within the ASP, Kenya also threatened withdrawal: "Kenya has always and will always act in good faith, whether inside or outside of this Assembly."[392] The latter part of the statement – "whether inside of outside of this Assembly" – is a veiled threat that Kenya does not need to remain within the ICC to carry out its normative commitment. It subtly

[387] Republic of Kenya 2016.
[388] Republic of Namibia 2016.
[389] United Nations General Assembly 2014c, 3.
[390] Ibid.
[391] Republic of Namibia 2016.
[392] Republic of Kenya 2016.

reminds the Court that membership is voluntary and Kenya's remaining a State Party is by choice. This was the first and only vocal threat made by Kenya within this forum, which is interesting given that Kenya's Parliament passed a vote in favour of withdrawal from the Court in 2013.

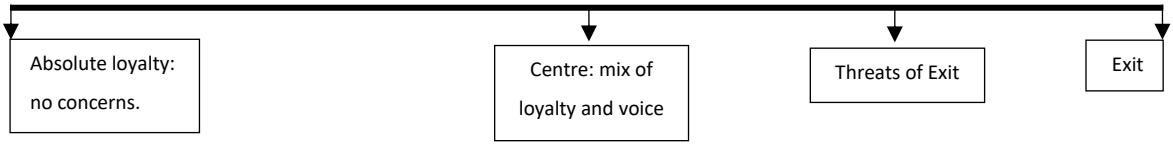
There are three major distinctions between the withdrawal threat made by Uganda and those made by Namibia and Kenya. First, Uganda's threat of withdrawal is distinct from Namibia and Kenya's because it calls for collective action whereas the other two states expressed their threats in their own capacity. Second, Namibia and Kenya's threats were made in 2016 – after South Africa, Burundi, and The Gambia all submitted their withdrawals from the Court. Meanwhile, Uganda's withdrawal threat was made two years prior to the instigation of any withdrawal proceedings by a State Party. Third, Uganda's threat was made at the UNGA, which includes states that are not ICC members. Contrarily, Namibia and Kenya addressed an ICC State Party audience.

The fact that South Africa, Burundi, and The Gambia had submitted their withdrawals from the Court might have bolstered Namibia and Kenya to express their threats of exit. Exit was no longer a hypothetical threat after the three states submitted their withdrawal notifications. Thus, states might anticipate that the Court would be more responsive to concerns when threatened with exit. Additionally, the threat of exit itself was no longer the most extreme behavioural response to the ICC-African relationship; withdrawal was. Figure 11 below depicts a continuum of behavioural responses to the withdrawal debate based on the EVL model. The most conservative[393] behaviour is a form of loyalty that is absolute and does not see the need for the ICC to undertake any changes. The opposite is exit, where so much change is desired that the state no longer sees membership of the ICC as viable. The centrist behaviour would be some mix of loyalty and voice, where a state expressed a mix of its content and discontent with the Court. If the most radical form of behaviour expressed by states about the withdrawal debate is between the centre and threats of exit, then threatening exit appears to be extremely radical. However, if states exit, then threatening exit no longer seems as extreme – it becomes a more moderate response within the context

[393] Not in terms of political ideology but in terms of seeking change from the ICC.

of the range of actual behaviour performed. Thus, once other states had initiated exit proceedings, Namibia and Kenya made the most of this exit capital by galvanising the momentum of the exiting states and threatening to withdraw when it was (1) less extreme as a response and (2) was possibly more impactful than before. This logic is analogous to that of the norm cascade.

Figure 11: Continuum of Behaviour



Kenya and Namibia's threats of exit seem well explained by the precedence of the withdrawals by South Africa, Burundi, and The Gambia. Another consideration is that in July 2016, the AU charged the Open-Ended Ministerial Committee with drafting a collective withdrawal from the ICC strategy document.[394] This suggests that there was an environment within the AU that encouraged withdrawal, or at the very least, deradicalized the idea of collective withdrawal. This may have encouraged Namibia and Kenya's threats to withdraw.

The question remains as to why Uganda's threat took place when and where it did: on 31 October 2014 at the UNGA ICC RP. Uganda notes in its speech that it: "…fully identifies with the concerns raised by the African Union's extraordinary summit that was held specifically to discuss the politicization and selectivity of the ICC, on 12 October 2013 in Addis Ababa."[395] The UNGA ICC RP in October 2014 was the earliest multilateral ICC-related forum that happened after this since the ICC GD only occurred in December 2014. This suggests that the politics within the AU may have influenced Uganda's behaviour. The AU held an extraordinary session on 12 October 2013 and reached a decision at this session regarding Africa's relationship with the ICC.[396] This decision centred around the Kenyan situation and the concern about wavering immunity for sitting state officials.

[394] Assembly of the African Union 2016b, para. 5(iii)(b).
[395] United Nations General Assembly 2014c, 36.
[396] Assembly of the African Union 2013.

It is also possible that Museveni was practising a form of solidarity politics with Kenyatta and Ruto. This is suggested by a statement he delivered two months after the UNGA ICC RP, in December 2014, at an event commemorating Kenya's independence from Britain. In his address, Museveni criticised the ICC's case against Ruto. He stated that he would "…bring a motion to the African Union's next session. I want all of us to get out of that court of the West. Let them (Westerners) stay with their court" and "[w]ith connivance, they are putting Deputy President Ruto, someone who has been elected by Kenyans, in front of the court there in Europe."[397] Kenyatta and Ruto each stated their confidence that charges would be dropped in their addresses at the same event. This suggests that Museveni's call for collective withdrawal at the 2014 UNGA ICC RP may have been an act of solidarity with Kenya's leaders.

Additionally, there may have been domestic factors driving Museveni's support for Kenya against the ICC. Uganda had passed an anti-homosexuality law in February 2014. Museveni depicted the passage of this law as an act of defying western intervention in Uganda and as a matter of Ugandan sovereignty.[398] Thus, supporting messages about the ICC as being neo-colonial and western – as promoted by Kenya – complemented Uganda's anti-western politics. The financial consequences of Uganda's anti-homosexuality act might also have been a factor driving its support for Kenya. Many so-called western states, such as the US, Denmark, Norway, and the UK, cut, reviewed, redirected, and suspended their (millions of US dollars' worth of) aid to the Ugandan government.[399] While Uganda had generally become less dependent on foreign aid, it may have seen its regional politico-economic partnerships as especially important given the aid cuts.

Ultimately, it seems that Uganda's voice behaviour was indirectly shaped by domestic politics is the underlying factor that triggered unfavourable relations with western states (due to its anti-homosexuality bill). However, the immediate reason for the threat of withdrawal seems to most likely be solidarity with Kenya.

[397] Staff 2014; *The Namibian* 2015.
[398] *The Mail & Guardian* 2014; Karimi and Thompson 2014; *Al Jazeera* 2014.
[399] Plaut 2014.

7.2.2. Solidarity with Other African States

Individual African States Parties also made other gestures toward solidarity with African states and/or the AU in their country statements. Statements of allegiance were considered an act of voice when they suggested support for an African state and/or the AU rather than the ICC. Additionally, voice behaviour was indicated when the communication of this support concomitantly signalled criticism against the ICC. States that mentioned solidarity with an African state and/or the AU were Burundi,[400] Kenya,[401] Malawi,[402] Namibia,[403] Nigeria,[404] Seychelles,[405] Uganda,[406] and Tanzania.[407]

At the ICC GD, Namibia (in 2011) and Uganda (in 2017) both made it clear that they would prioritise their AU responsibilities over their ICC ones if they were forced to choose. For example, Namibia stated: "Namibia takes her political and legal responsibilities towards the AU seriously and would factor the decisions of its organs in our assessment of relations with the ICC."[408]

Malawi noted concern shared across the African continent that the pursuit of peace and stability in Sudan is being undermined by the ICC, when it said that the ICC was pushing "…for a 'pound of flesh' by insisting on arresting President Omar Hassan El-Bashir [sic]."[409] This suggests Malawi's solidarity with al-Bashir.

An example of solidarity being expressed for a situation state and, simultaneously, the AU was when South Africa expressed its concerns about the indictments of Kenya's leadership: "As members of the international community concerned about peace and justice, we are concerned about indictments that may derail peace processes. For that reason, we support

[400] Republic of Burundi 2013.
[401] Republic of Kenya 2017.
[402] Republic of Malawi 2010.
[403] Republic of Namibia 2011.
[404] Federal Republic of Nigeria 2014.
[405] Republic of Seychelles 2013.
[406] Republic of Uganda 2016; 2017; United Nations General Assembly 2014c.
[407] United Republic of Tanzania 2013.
[408] ICC GD 2011.
[409] Republic of Malawi 2010.

the call made by the African Union for the Security Council to adopt an article 16 resolution in the context of Kenya."[410] Nigeria noted similar concern with the Court's continued investigations into Kenya: "we wish to express our concern that the ICC did not dismiss the case against President Kenyatta despite having failed to establish a case against him."[411] Seychelles and Burundi also each lent their support to Kenya in 2013.[412]

Namibia's address in 2011 was the first one that it delivered at the ICC GD in the period studied. The decision to speak in 2011 was likely prompted by the fact that the UNSC had referred the Libyan situation to the ICC in February that year and the ICC instigated its Libya investigations in March. Furthermore, the ICC had also issued summonses to the six suspects in the Kenyan situation, which saw Kenya request the deferral of the ICC's investigations. Thus, these developments within the ICC probably contributed to Namibia's 2011 speech. Additionally, in July 2011, the AU noted deep concern about the arrest warrant issued for Libya's Gaddafi, stating that it "…seriously complicates the efforts aimed at finding a negotiated political solution to the crisis in Libya…"[413] This may have contributed to Namibia's decision to make a speech at the 2011 ICC GD.

Namibia clearly aligned itself with areas of concern that had been raised by the AU (including the matter of deferral for the Darfur and Libya situations). The African Group would have understood this as Namibia's expressing its solidarity with the AU. The ASP would have received Namibia's concerns as echoing the AU and as using the ICC GD platform to formally state, on the record, messages intended for the UNSC – for example, about its non-response to deferral requests.

Uganda expressed different types of solidarity: at the ICC GD in 2016, Uganda supported South Africa's request for clarification on article 98 and expressed solidarity with al-Bashir; Uganda defended its non-arrest of al-Bashir at the ICC GD in 2017; and Uganda expressed

[410] UNGA ICC RP 2013, A/68/PV.42.
[411] Federal Republic of Nigeria 2014.
[412] Republic of Seychelles 2013; Republic of Burundi 2013.
[413] Seventeenth Ordinary Session 30 June - 1 July 2011 Assembly/AU/Dec.366(XVII) Decision on the Implementation of the Assembly Decisions on the International Criminal Court – Doc. EX.CL/670(XIX).

solidarity with the AU at the UNGA ICC RP in 2014. Uganda's support for South Africa's request that article 98 to be clarified was likely because of its relevance for the al-Bashir arrest warrant. This is consistent in the same speech, and across other speeches, where Uganda expressed support for al-Bashir. Uganda's solidarity with al-Bashir also seems to be explained by domestic factors. For example, Uganda defended its non-arrest of al-Bashir, during his visit to Uganda between 13 and 15 November 2017, on the grounds of national security. Uganda noted that the LRA had attacked Uganda while Ongwen was on trial by the ICC, and that "…it was through engagement with the Sudan and other regional partners that the terror was abated."[414] Given South Sudan's proximity to Uganda's northern border and that the LRA has support there, Uganda stated:

> …President Bashir remains the recognized Head of State of the Sudan, he remains an important player in any realistic efforts towards peace and stability in South Sudan and it is us who face the immediate brunt of non-engagement. Uganda, accordingly, fully subscribes to the position held by the African Union, in terms of its communique of 29th August 2010 that regional peace and security are a priority and, therefore, maintains that all avenues for conflict resolution must be explored.[415]

Thus, it seems that Uganda's support for al-Bashir was primarily driven by domestic political factors in Uganda with regards to the conflict with the LRA. Notably, Uganda elected to use the ICC GD as an opportunity to justify its non-arrest, which suggests that to some extent it cared about how its inaction would be perceived.

Nigeria, Burundi, and Seychelles each indicated solidarity with Kenyatta and Ruto in 2013 by emphasising the need to protect the sovereign will of Kenya's people who elected Kenyatta and Ruto into office.[416] The focus on the fact that Kenyatta and Ruto were elected officials is likely an important factor for these states' showing their support for Kenya. It challenges the ICC's immunity waiver for sitting officials by showing how it is in tension with domestic democratic principles. In other words, these three states articulated their discontent with the ICC's proceedings against Kenyatta and Ruto by highlighting democratic ideals – such as

[414] Republic of Uganda 2017.
[415] Republic of Uganda 2017, 201.
[416] Federal Republic of Nigeria 2013, 20; Republic of Burundi 2013; Republic of Seychelles 2013.

the will of the people – as being supreme to the ICC's jurisdiction. This could be seen as another challenge to the ICC's immunity waiver particular to the context of elected officials.

South Africa raised its concern with the Kenyan investigations in a different way. It articulated its support as lying with "…the call made by the African Union for the Security Council to adopt an article 16 resolution in the context of Kenya."[417] South Africa presented its concerns as being related to the practicalities of promoting peace and stability in Kenya and argued in favour of pursuing peace "through political means."[418] This is consistent with South Africa's efforts to present itself as the primary peace mediating state in Africa and is an assertion of its expertise in this area.

7.2.3. Improve relations with Africa/the AU

A consistent sentiment expressed by African States Parties was the need for the ICC to take the concerns raised by African states and/or the AU seriously. Calls for the ICC to improve its relationship with African states were made by the DRC,[419] The Gambia,[420] Kenya,[421] Lesotho,[422] Namibia,[423] Nigeria,[424] Seychelles,[425] Uganda,[426] and Tanzania.[427]

The most frequent lament from African States Parties, within this thematic area, was for the ICC to take Africa's concerns as genuine and serious. For example, the DRC called upon the ICC to heed the calls from its supportive members for reform in the ASP: "the Court and its authorities should pay a little more attention to the reality of the change in the perception of states towards it, particularly those which have always given great support to its work."[428]

[417] UNGA ICC RP 2013, A/68/PV.42.
[418] Ibid.
[419] Democratic Republic of Congo 2014; 2016.
[420] Republic of the Gambia 2018.
[421] Republic of Kenya 2011, 201; 2016.
[422] Kingdom of Lesotho 2014; 2017; 2018.
[423] Republic of Namibia 2013; United Nations General Assembly 2013, 42.
[424] Federal Republic of Nigeria 2013; 2014.
[425] Republic of Seychelles 2013.
[426] Republic of Uganda 2014; 2016, 20; 2017.
[427] United Nations General Assembly 2011a; United Republic of Tanzania 2011; 2016; 2016, 20.
[428] Democratic Republic of Congo 2014.

The DRC's comments highlight that the shift in attitudes toward the ICC (from supportive toward concerned/dissatisfied) to assert that these negative perceptions of the Court are underscored by truth. The DRC's logic is that if states that have historically been supportive of the ICC are noting concerns with it, then it should be taken seriously since it indicates that there are genuine issue areas for the Court to address.

The need to improve relations with Africa and/or the AU was also presented as a matter of importance for cooperation. For example, Lesotho stated that it saw the relationship between the African Group and the ICC as symbiotic: "The ICC needs Africa in the same way that Africa needs the ICC to ensure criminal accountability and enhance the fight against impunity on the Continent."[429] Related to the idea of cooperation, Tanzania called upon the ICC to fix its relationship with Africa as a matter of importance for its own success: "It is therefore important for you Mr. President, to prioritize the improvement of relations between the Court and the African Union by engaging African leaders. The future success of the Court will depend on improved relations with its supporters across Africa."[430]

The significance of Africa's numbers within the ASP was also noted as a reason for the ICC to improve relations. This is well illustrated by Kenya's warning: "The ICC will have to come good on their relationship with Africa; because inevitably Africa is destined to get strong and better institutions and African will rise. So it is not a question of whether Africa will survive the ICC, but rather whether the ICC will survive Africa."[431]

Kenya framed its grievance with the ICC in collective terms whereas in its past country statements Kenya had emphasised that the points it was making came from its experience as a situation country (i.e. its individual experience).[432] The insinuation by the UN High Commissioner for Human Rights that states that threatened withdrawal were disingenuous

[429] Kingdom of Lesotho 2014.
[430] United Republic of Tanzania 2014.
[431] Republic of Kenya 2011, 201.
[432] For example, its ICC General Debate statements in 2011, 2013, and 2014 – and its UNGA ICC Report Plenary contribution in 2014 – specifically noted that they were from the perspective of a situation country. Other years simply spoke from the singular/Kenyan experience without positioning it as criticisms or insights from a situation state.

about their dedication to fighting impunity implicated Kenya directly, since it was a state that was known for threatening withdrawal (seen by its Parliamentary decision to this effect) and for its campaign against the ICC. The shift to expressing the grievance with the ICC in collective terms in this country statement serves to bolster the regionalisation of the anti-ICC movement by highlighting how the accusations as well as the ICC's inactions are directed toward Africa as a whole and that, consequently, the issues with the ICC were shared among African states. The main audience for this message would have been the African bloc within the ASP. Furthermore, emphasising/depicting the African States Parties as a collective or unified bloc helps to assert its power in numbers within the ASP, which is an assertion of soft power by Kenya aimed at the broader ASP audience.

It seems that Kenya, therefore, had two intended audiences when it said this part of its speech: the African bloc, in particular, and the ASP, in general. Kenya likely directed this message toward the African bloc to help boost its general campaign against the ICC to rally support among African states for a collective position regarding the Court. Kenya's discursive techniques illustrates the interconnection between the context in which a speech act is made and external power structures, as Fairclough argues when he highlights that discourse influences external politics and vice versa. This mutually reinforcing relationship is well illustrated by Kenya: it used the ICC platform to garner support for its regional political aims, which sought to promote its relative power in relation to the ICC.

States that emphasised the need for the ICC to respond to its relationship with Africa as a matter affecting the Court's success relates to the ICC's lack of enforcement powers and its reliance on States Parties for the effective execution of many of its decisions – such as arrests and witness protection. The states that adopted this framing in their statements were aware of this reliance and its identification as a structural challenge for the Court. Thus, their framing of African-ICC relations as having a bearing on cooperation subtly reminds the Court of the extent to which is depends on cooperation from African States Parties – especially considering that most of its investigations are on the continent.

Furthermore, the states that used this framing would also know that their audience, the ASP, is aware of the AU's call for non-cooperation with some of the ICC's warrants.

Therefore, referring to cooperation would subtly recall this pressure not to cooperate with the ICC. It might even imply this as a cautionary tale: dissatisfaction with the ICC by African states has previously led to non-cooperation, but this might be avoided if the ICC is perceived to be attending to the concerns of African states.

7.2.4. Sitting State Officials' Immunity

Comments that defended the immunity norm for state officials (especially heads of state) were considered an act of voice. They challenged the ICC's Article 27, which waives this immunity, and such a challenge seeks to weaken the Court's powers. Efforts to diminish the Court's powers and jurisdiction are understood as voice acts because they are inherently unsupportive acts. Such statements were made by Burundi,[433] Congo-Brazzaville,[434] The Gambia,[435] Kenya,[436] Namibia,[437] Nigeria,[438] Sierra Leone,[439] and Uganda.[440]

The most references to support for upholding the sitting head of state immunities were delivered in 2013 – which is unsurprising given that the AU and the ASP each held dedicated segments to discussing the topic of head of state immunity. Many states[441] framed their support for head of state immunity as their support for the AU decision from the Extraordinary Session on 12 October 2013. The AU decision stated, among other items, "…to safeguard the constitutional order, stability and, integrity of Member States, no charges shall be commenced or continued before any International Court or Tribunal against any serving AU Head of State or Government or anybody acting or entitled to act in such capacity during their term of office" and supported the suspension of proceedings against

[433] Republic of Burundi 2015.
[434] Republic of the Congo 2013.
[435] Republic of The Gambia 2013.
[436] Republic of Kenya 2018.
[437] Republic of Namibia 2011; 2013; United Nations General Assembly 2013.
[438] Federal Republic of Nigeria 2013.
[439] Republic of Sierra Leone 2014b.
[440] Republic of Uganda 2014.
[441] The Gambia (ICC GD 2013); Kenya (ICC GD 2018); Namibia (ICC GD and UNGA ICC RP 2013); Nigeria (ICC GD 2013).

Kenyatta and Ruto.[442] For example, Burundi expressed its support for this AU decision when it said:

> Before I close I should like to put on the record our unwavering support to the AU call for the respect of immunities in favor of acting Heads of State and Government, as is accepted in the International Law. Some of the provisions of the Rome Statute have to suffer a bit for the sake of the stability of our nations. We believe that it is also one of the goals of Justice. It is in line with the foregoing that we recommend deferral for charges against African heads of State and Government.[443]

Burundi articulated its support for upholding the head of state immunity by presenting its position as consistent with international law and with the AU's stance.

Namibia raised concern with indicting sitting heads of state and, like Burundi, linked immunity with state stability: "Developments in Darfur and Libya confirm that the prospect of holding a head of state liable for crimes under the Rome Statute might justify concerns about its implications for the stability of the State and possible threats to international peace and security."[444] Namibia noted that the Council had Article 16 (i.e. deferral) as a tool to "…mitigate the impact of its action in referring a situation to the ICC."[445] This criticism notes a concern with the Court's operations but is directed toward the UNSC.

Namibia and Burundi's support for upholding state stability by retaining head of state immunity is consistent with the AU decision, which also framed immunity as linked to safeguarding "the constitutional order, stability and, integrity of Member State."[446] This alludes to the peace-versus-justice debate. Essentially, it uses the logic that the foremost aim should be to ensure state stability. A similar logic underlies the argument of prioritising measures that enable the peaceful settlement of conflicts i.e. sometimes it is necessary to forestall judicial proceedings in order to enable the conclusion of violence (negative peace),

[442] Assembly of the African Union 2013.
[443] Republic of Burundi 2015.
[444] Republic of Namibia 2011.
[445] Ibid.
[446] Assembly of the African Union 2013.

which is a prerequisite for enabling lasting peace.[447] This framing is therefore, arguably, influenced by the broader withdrawal debate.

Furthermore, this framing is likely intended to resonate with other states' representatives on the presumption that they, too, would prioritise their state's stability if they had to choose. Likewise, Namibia's comments about the potential repercussions of state instability for international peace and security was also probably shaped by the fact that it was addressing diplomats who vote in, and attend, other international peace and security forums. The aim in this framing, therefore, might have been to influence the audience to insist that the UNSC make use of its deferral powers. Thus, the role that the audience plays in other international peace and security forums likely shaped how Namibia and Burundi framed their points in this regard.

Relatedly, Congo-Brazzaville indicated its support for head of state immunity by appealing to customary international law: "The immunity of a contemporary Head of State must therefore be understood as part of the system of State immunities and not of the system of diplomatic immunities."[448] The distinction is made because state immunity derives from customary international law (codified in the Convention on Jurisdictional Immunities of States and their Property – adopted by the UNGA in 2004) whereas diplomatic immunities derive from Article 31(1) of the Vienna Convention on Diplomatic Relations 1961. State immunity is based in the sovereignty principle and is designed to enable effective and proper conduct of international relations by limiting the jurisdiction one state's courts have over another state and its officials. To this end, sitting heads of state are granted immunity during their term in office to enable them to carry out their role as the primary sovereign representative of the state in question. Diplomatic immunity extends to a greater pool i.e., diplomats representing their state while abroad.[449]

Congo-Brazzaville entered a legal debate about how to interpret the Article 27 provisions, which other African states did not do within the ICC General Debate. The decision to present

[447] Galtung and Fischer 2013.
[448] Republic of the Congo 2013.
[449] Sethi and Braganza 2013.

its support for retaining head of state immunity in terms of its legal interpretation might have been a way to legitimise its position and not be seen as taking sides with the AU over the ICC. Given that Congo-Brazzaville was addressing the ASP, it might have sought to ensure that its criticism did not jeopardise its desire to remain an ICC member. In turn, this may have been affected by the broader context of the withdrawal debate wherein discussions have taken place about mass African withdrawal. Congo-Brazzaville might have assumed that the ASP would have been aware to these discussions and, therefore, sought to frame its criticism in a non-threatening way. The positivist framing implies neutrality but also allows Congo-Brazzaville to support the AU's stance regarding immunity without alienating itself from ASP members.

Nigeria recommended that an amendment be introduced to Article 27's waiver of serving official's immunities:

> The unprecedented wordings of the Rome Statute rejecting such official capacities and immunities has created hardships for State Parties in their external relations with non-State Parties who continue to assert respect for customary international law immunities for their Heads of State and Government and other senior officials. it is therefore recommended that Article 27 be amended to include a proviso exempting democratically elected serving Heads of State and Government from the application of the Article.[450]

Nigeria's suggested amendment implies that Nigeria supported Kenya's call for the charges against its heads of state to be dropped since they were democratically elected. It suggests that Nigeria is not in favour of a universal application of the waiver. The reference to democratic elections legitimises Nigeria's position as consistent with democratic principles that the people's elected official should represent them. This achieves a similar effect to Congo-Brazzaville's positivist framing: Nigeria's position does not overtly take the AU's side over the ICC's. It tacitly supports the call for charges against Kenya's leadership to be dropped but does not call for Article 27 to be summarily dismissed as inapplicable to all heads of state. Whether intentionally or not, it implies that leaders of undemocratic regimes should be liable to prosecution. Given that the OTP was conducting preliminary

[450] Federal Republic of Nigeria 2013.

investigations into the Nigerian situation, this proposed amendment also was self-serving as it aims to protect Nigerian government officials from ICC investigations.

Uganda expressed its support for head of state immunity in a less direct manner:

> Uganda joins others around the world in congratulating Kenya upon the ICC dropping of charges against President Uhuru Kenyatta. As you will recall, Uganda was in the lead along with the African Union in calling for the charges to be dropped so that the challenging situation in Kenya is comprehensively addressed under the domestic justice system of other appropriate fora. This enhances the principle of complementarity.[451]

Uganda, on the other hand, overtly framed its challenge to the immunity waiver in terms of the Kenyan situation. Its primary audience for its speech was likely the Kenyan delegation, and, perhaps, the African bloc. Museveni demonstrated his support for Kenyatta and Ruto's regime in public forums and Uganda's statement of support for dropping the Kenyatta charges could be seen as an example of this diplomatic support.

7.2.5. Complementarity

This section considers the references made to the complementarity principle as an articulation of voice behaviour. It shows that the complementarity principle is emphasised by African states as part of their assertion of sovereignty. Sovereignty was expressed in individual terms – as the primacy of a state's sovereign right to prosecute crimes. Another way that complementarity was expressed was in terms of the ICC having a positive duty to help improve domestic capacity to address core crimes (or, positive complementarity). The states[452] that referred to the complementarity principle were Burkina Faso,[453] Congo-

[451] Republic of Uganda 2014.
[452] Uganda's 2014 ICC General Debate statement included congratulations to Kenya about the ICC's dropping charges against President Kenyatta, which it said enables that the "…challenging situation in Kenya is comprehensively addressed under the domestic justice system or other appropriate forums. This enhances the principle of complementarity." It seems that complementarity was not Uganda's principal concern in this matter and was not included in this section as it was discussed in the previous section. Nonetheless, it is worthwhile noting that the intent behind referring to the complementarity principle in this speech seems to a device deployed to assert that the ICC had been violating this principle in the Kenyan situation until this point.
[453] Republic of Burkina Faso 2014.

Brazzaville,[454] the DRC,[455] The Gambia,[456] Kenya,[457] Lesotho,[458] Malawi,[459] Namibia,[460] Seychelles,[461] and Tanzania.[462]

Burkina Faso noted the need for the ICC to adhere to the complementarity principle by recognising that national courts hold the primary duty to prosecute:

> In our collective fight against impunity, we must not lose sight of the fact that it is the principle of complementarity which should govern the relationships between national courts and the ICC in criminal matters. This means that it is primarily the responsibility of national courts to initiate prosecutions for the most serious crimes and that it is only in the event of incapacity or lack of political will that the ICC could see his mandate exercised.[463]

Malawi suggested that the OTP should first ensure that there is "…mutual understanding between the office of the prosecutor and state parties so that before matters are executed by the prosecutor, the two sides work together. We believe that this will cement the principle of complementarity."[464] Malawi's conceives of complementarity, in this statement, as intrinsically linked to cooperation between the OTP and States Parties. Underlying this conception of cooperation and complementarity is coordination, where complementarity is achieved if States Parties and the OTP coordinate their activities. Coordination would mean that complementarity is upheld because the OTP and States Parties would avoid overstepping their respective jurisdictions.

Some states emphasised the need for the ICC to improve its positive complementarity activities.[465] For example, The Gambia recommended that the ICC improve its

---

[454] Republic of the Congo 2013.
[455] Democratic Republic of Congo 2017; United Nations General Assembly 2013.
[456] Republic of the Gambia 2017.
[457] Republic of Kenya 2011; 2015; 2018; United Nations General Assembly 2011a, 2011.
[458] Kingdom of Lesotho 2014; 2017; 2018.
[459] Republic of Malawi 2014.
[460] Republic of Namibia 2013; 2016.
[461] Republic of Seychelles 2013.
[462] United Republic of Tanzania 2013; 2016.
[463] Republic of Burkina Faso 2014.
[464] ICC GD 2014.
[465] The Gambia (ICC GD 2017); Lesotho (ICC GD 2014; ICC GD 2017; and ICC GD 2018); and Tanzania (ICC GD 2016).

complementarity functions by strengthening national court systems, stating that overlooking "…the role of domestic courts, where these courts are genuinely willing and able to prosecute" would render the complementarity principle "irrelevant."[466] Lesotho expanded on why positive complementarity was important: "…we would like to highlight domestic capacity-building in developing States, as crucial to implementing complementarity. Strengthening national criminal justice systems will enable developing States to better deal with the most serious international crimes."[467]

The prominence of the complementarity principle within the voice statements is unsurprising due to its centrality as a trigger for the ICC's jurisdiction. States that criticised the Court for not implementing this principle adequately were aware that their audiences at the ASP and UNGA were aware this principle's importance. The Rome Statute provides that the ICC "…shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions."[468]

However, the term complementarity has not been used to mean the same thing. Clark argues that there are four ways that the term "complementarity" has been conceptualised and used within the ICC. [469] This delineation is useful for the analysis of the discourse used in the country statements. Legal complementarity refers to the legal requirements for admitting cases to the ICC. Political complementarity prioritises national sovereignty and domestic jurisdiction. Relational complementary refers to cooperation between the ICC and domestic institutions. An example of an interpretation of the complementarity principle in this sense was evidenced by Malawi when it emphasised coordination between domestic institutions and the ICC. Lastly, developmental (or, positive) complementarity refers to the belief that the ICC should promote domestic judicial proceedings.[470] These conceptual

[466] Republic of the Gambia 2017.
[467] Kingdom of Lesotho 2014.
[468] Article 1 of the Rome Statute.
[469] P. Clark 2018, 26.
[470] Rubin 2020, n. 11; P. Clark 2018, 26–31.

distinctions help reveal the values favoured by a state when referring to complementarity in its voice statements.

The statements that reiterated that the ICC must act as a court of last resort favoured a political conception of complementarity. This conception was seen in statements that argued that the ICC had not adhered to complementarity adequately with respect to the primary jurisdiction of domestic courts over core crimes. Implicitly, this asserts that the ICC had infringed on state sovereignty. The rhetorical power of this assertion is that it discredits the ICC as negating its obligation to complement national jurisdictions. However, these criticisms did not demonstrate how the ICC's investigations violated the legal criteria of admissibility (which would suggest the legal complementarity). The ambiguity of the term "complementarity" allows states to use it without recognising its conceptual variants and their concomitant implications for criteria of evaluation for the Court's conduct. In other words, the different conceptions of complementarity include different criteria of assessment for the ICC's successful conduct.

Internal and external factors interplay to enable this ambiguity and the effects that it produces. The states' references to complementarity are shaped by the audience's familiarity with its relevance for the ICC's jurisdiction (internal factor); but the political conception of the complementarity principle is influenced by international norms regarding sovereignty (external factor). This produces ambiguity that enables the states to assert that the ICC is failing to uphold complementarity by failing to prioritise/promote domestic proceedings without proving how the ICC failed the admissibility test.

The emphasis on developmental complementarity, similarly, indicates a preference held for domestic jurisdiction over core crimes but is slightly less critical in its implications for the ICC. The states encouraged the ICC to build the capacity of domestic institutions to address core crimes as a component that would promote complementarity. This draws on notions of cooperation. This differs slightly from the political use of the term discussed in the preceding paragraph because it does not imply that the ICC has overstepped its mandate. Instead, it inadvertently admits that there are gaps in national systems and their ability to

address core crimes whereas the political sense of complementarity was used with the assumption that domestic capability existed and had been overlooked by the ICC.

The formulation of the comments regarding complementarity were generalised – the states did not mention specific examples of the ICC's overlooking domestic processes or failing to build domestic capacity. Consequently, the comments paint the ICC with broad strokes and the conception of complementarity used has implications for how seriously the state infers that the Court had deviated from the principle. The political conception infers that the ICC has severely deviated from the principle since it implies that the ICC has overstepped its jurisdiction. The positive/developmental conception is less severe and has a more encouraging tone. It comes across as a recommended area for improvement rather than as a rebuke.

7.2.6. Selectivity

This section considers references to matters of selectivity. Voice statements that included references to the ICC's biased case selection, its alleged targeting of Africa, its alleged neo-colonialism, and general statements about its being biased against Africa. Voice was used to communicate discontent regarding selectivity by Burkina Faso,[471] Burundi,[472] Congo-Brazzaville,[473] Chad,[474] the DRC,[475] The Gambia,[476] Kenya,[477][478] Lesotho,[479] Mali,[480] Namibia,[481] Nigeria,[482] Senegal,[483] South Africa,[484] Uganda,[485] and Tanzania.[486]

[471] Republic of Burkina Faso 2014; 2017.
[472] Republic of Burundi 2015.
[473] Republic of the Congo 2013.
[474] Republic of Chad 2014.
[475] United Nations General Assembly 2013; Democratic Republic of Congo 2016; 2017
[476] Republic of The Gambia 2013.
[477] Republic of Kenya 2015; United Nations General Assembly 2011b; 2014a.
[478] UNGA ICC RP 2011; UNGA ICC RP 2014; ICC GD 2015.
[479] Kingdom of Lesotho 2017; United Nations General Assembly 2012.
[480] Republic of Mali 2016; 2017.
[481] Republic of Namibia 2011; 2016.
[482] United Nations General Assembly 2012.
[483] Republic of Senegal 2010b.
[484] Republic of South Africa 2011; 2018.
[485] Republic of Uganda 2013.
[486] United Republic of Tanzania 2014; 2016.

This subsection did not consider concerns with or criticisms about how African States Parties or the AU have been treated administratively by the ICC as this theme is reserved for the next subsection about procedural concerns.

The grievance regarding the ICC's case selection is succinctly summarised by Tanzania, which noted that the Court's credibility was undermined by the "…recent widespread perception of [the ICC] dispensing selective justice…"[487] Congo-Brazzaville similarly stated that "[t]here is a feeling that the ICC's investigations and prosecutions mainly concern only Africans and in particular their leaders. The other states of the world where heinous crimes are perpetrated seem to be almost spared"[488] and Chad stated that the ICC "…instead of being neutral, impartial and independent, seems to devote rather the practice of double standards, two measures by prosecuting only the weak."[489] These statements show that the concern with the ICC's case selection is that (1) African (or 'weak') states are primarily investigated and (2) other conflicts that could be pursued by the ICC are not.

Related to the second point, the DRC stated:

> …it is not without regret that the DRC, like many States Parties, notes that the hope aroused in our States by the advent of the ICC and the confidence placed in it, is crumbling day by day, to the point of seriously undermining its credibility and integrity, when the Court assists helplessly, leaves unpunished far more heinous and far more serious war crimes, crimes against humanity and genocide which are committed daily and on a large scale, whose authors, however well known, are in no way worried, by the mere fact of their protection by great powers and recourse, wrongly and abusively to the right of veto of the Security Council of the United Nations.[490]

Similarly, The Gambia raised the issue of non-States Parties being able to refer cases to the ICC (i.e., UNSC referral powers) and that "[s]uch a status quo undermines the perception of

[487] United Republic of Tanzania 2016.
[488] Republic of the Congo 2013.
[489] Republic of Chad 2014.
[490] Democratic Republic of Congo 2016.

the ICC as an independent body and therefore the sooner we move towards universality of the Rome Statute, the better this would be for the ICC's image."[491] The Gambia and the DRC's comments highlight the relationship between the UNSC and ICC as related to the case selection issue. This sentiment is shared by Kenya, which commented that the Court needed to

> …unshackle itself from a pernicious group of countries that have hijacked its operational mandate and created a distorted institution that now represents the moral, ethical and, most disturbingly, political values of a group of countries. The agenda of that group of countries seems to us to represent a very shameless, disruptive and unrelenting pursuit.[492]

The accusation that the ICC was practicing selective justice is one of the main criticisms of the Court in the withdrawal debate. The main counterargument to the accusation of the ICC's bias being reflected by its African case selection has been that most African situations were not initiated by the ICC itself – they were self-referrals and UNSC referrals. This counterargument – which has been made by States Parties[493] and academics[494] alike – likely shaped the guarded language used by some states who said that there was a "perception" or a "feeling" of, or there "seems" to be, selective justice. Thus, the cautious language used to express the accusation of selectivity by some states was arguably shaped by the broader withdrawal debate. Additionally, this prudent phrasing might have been shaped by the fact that they were addressing the ASP. The states might have wanted to safeguard their perceived neutrality on the matter by avoiding strongly framing the ICC as selective. This more careful framing of the matter allows the states to raise their concern to the ICC without alienating itself from the institution as well as signal solidarity with other African States Parties.

The concerns raised about the UNSC's role in setting the ICC's agenda referred to two matters: (1) how the UNSC exercised its referral powers and (2) how the P5 used their veto power to prevent certain cases being referred. Framing the selection issue as related to the

[491] Republic of The Gambia 2013.
[492] United Nations General Assembly 2014a.
[493] See Chapter 8.2.5.
[494] See Chapter 3.1.1.1.

UNSC assigned blame for the ICC's case selection, in part, to the UNSC. It enabled the states to note another grievance that they hold – the distribution of powers within the UNSC – as well as assert that this distribution of powers had negative effects for international justice. It used the controversy around the ICC's case selection to state this dissatisfaction with external power structures. This shows how the internal politics of the ICC are inextricably linked with the external politics of power within, at least, the UNSC. The insistence on understanding discursive matters as an interplay of power relations within and outside the structure studied within the discourse analysis method helps demonstrate how this interplay empirically occurs.

Related to the selectivity issue, Namibia acknowledged progress that the OTP had been making in its efforts to broaden the geographical locations of its investigations:

> We are pleased to note the fact that the Office of the Prosecutor has over the last years been reporting on the status of its work on preliminary examinations carried out in countries on different continents. It will greatly allay perceptions of bias in the choices of the cases by the Prosecutor if these investigations could be finalized so that we start seeing cases from other jurisdictions also being handled by the ICC…[495]

At the time of Namibia's comments, the ICC had launched its investigations into its first non-African situation, Georgia, earlier that year. This quote shows an instance of loyalty within a statement that in its entirety demonstrates voice behaviour. This reaffirms that importance of considering statements as a whole when categorising them into the EVL typology but also that behaviour is complex and dynamic.

Namibia's acknowledgement of the ICC's preliminary investigations serves two purposes. It presents Namibia as an informed and reasonable State Party and worked as a segue to mention the selectivity issue. Namibia to implied that the selectivity matter was a factor that would inform its withdrawal decision. Thus, Namibia inferred that the selectivity issue justified its potential withdrawal due to the importance of the ICC's being an independent and impartial institution for its credibility.

[495] Republic of Namibia 2016.

7.2.7. Concerns with ICC Conduct and Procedure

This section considers voice statements that raised dissatisfaction with the procedures and/or conduct of the ICC with regards to African states. Concerns of this nature were raised by Burundi,[496] the DRC,[497] Kenya,[498] Namibia,[499] Nigeria,[500] Sierra Leone,[501] and South Africa.[502]

The criticisms about how the ICC has operated vary. On one hand, concerns were delivered by some states as constructive criticisms for a more effective ICC. For example, after the DRC stated its support for a strong ICC and noted that it would not support amendments that would weaken the Court, it noted that:

> My delegation would like to take this opportunity to renew its interest in seeing concretize the idea of organizing "in situ" trials. She sees this formula as an opportunity so dreamed of bringing some moral satisfaction to the victims of the crimes targeted and of deter potential repeat offenders. These advances in the international criminal justice process are part of a context of strong campaign of hostility to the Court. Court needs to put mechanisms in place capable of stemming this type of campaign which risks undermining the reputation of the Court and jeopardize its success…[503]

The DRC relied on the fact that the ASP understood its comments as informed by its experience as a situation country. This implies first-hand experience and familiarity with the ICC's conduct, which infuses the DRC's comments with authority. The DRC's justification for in-country trials was that the ICC's visibility is important for victims to feel justice and to

[496] Republic of Burundi 2013.
[497] Democratic Republic of Congo 2010; 2011; United Nations General Assembly 2011a.
[498] Republic of Kenya 2011; 2013; 2014; 2018; United Nations General Assembly 2013; 2014a; 2015a.
[499] Republic of Namibia 2014.
[500] Federal Republic of Nigeria 2013.
[501] Republic of Sierra Leone 2008.
[502] Republic of South Africa 2010c; 2018.
[503] Democratic Republic of Congo 2010.

deter future offences. This indicates that the DRC is influenced by normative assumptions that justice should be "seen" to be done to be effective.[504]

Similarly, Sierra Leone called upon the Court to improve its visibility on-the-ground through outreach when it noted:

> We are, however, deeply concerned about the minimal amounts of outreach done in Central African Republic and in Sudan. Nature abhors a vacuum, and the vacuum created by the lack of engagement and dissemination of correct information by the Court in those two countries is being filled by misinformation. This will not only make the Court's work harder in the future, it will also have financial implications due to the greater amount of outreach that will be required.[505]

Sierra Leone used the Sudan and CAR situations to ground its comments. Sierra Leone forewarned the ICC that the failure to improve its outreach work in these situations would result in future costs and reputational damages. Sierra Leone, thus, appealed to the ASP by noting the financial costs of inaction knowing that the ASP members provide and allocate the budget. It highlighted the ICC's reputation on-the-ground in these two countries as an external factor of concern to the ASP given their financial (and other, non-material) investment in the ICC's success.

In a similarly constructive vein, Tanzania called for the ICC and the UNSC to establish a standard of best practice regarding non-States Parties:

> It is equally important, for the Office of the President to find ways to engage the Security Council to see how best the two can work together on crimes that are being committed by Non States Parties. We note with dissatisfaction that, most of [the] crimes that the public is blaming the ICC for not taking action, are in fact under the mandate of the Security Council. Unfortunately, failure

[504] This corresponds with observations made by Clark when he discusses the shortcomings with "distant" justice (i.e., ICC proceedings that take place outside of the context where the crimes were committed) and his recommendation that the ICC should increase its physical presence in the situations that it investigates (Clark, 2018: 102-182; 312).
[505] Republic of Sierra Leone 2008.

> to take action of an organ not part of the ICC boomerang to the ICC and sends a wrong signal that there are double standards in the operations of the ICC.[506]

Its expression of "dissatisfaction" that the ICC was being criticised for matters that fell beyond its jurisdiction indicates that Tanzania wished for the ICC to be judged fairly. It suggests Tanzania's frustration with the UNSC as causing issues for the ICC. However, Tanzania's recommendation that the OTP actively address the issue implies that Tanzania does not think that enough has been done to respond to this situation. Tanzania's concern about the ICC's reputation being harmed because of the UNSC's inaction is likely influenced by the negative perceptions about the ICC's case selection that have been highlighted by the withdrawal debate. Tanzania's audience, the ASP, was aware of this blemish on the ICC's reputation and how it has been used politically outside of the ICC setting, which meant that Tanzania did not need to explicitly elaborate on this context.

The criticism delivered by the DRC, Sierra Leone, and Tanzania come across as constructive, as opposed to disparaging, because they each indicate concern about how the ICC's reputation is affected if those areas are unaddressed. The comments do not insinuate that the ICC is failing. Rather, they identify areas for improvement that they argue would help promote a positive image of the ICC and protect it against negative perceptions.

In subsequent years, the DRC adopted a more critical tone. For example, the DRC called on the Court to self-reflect and move toward becoming "more professional and less political..."[507] Kenya similarly criticised the ICC of being politicised:

> The current superficial, and in our understanding, wrong interpretation and implementation of the Rome Statute in relation to Kenya shows little or no accommodation to the concerns of an active, cooperating State party with a rich history of local jurisprudence. The Statute is clearly being applied in a manner that is highly prejudicial to a Member State's national, regional and international interests. In fact, we believe it is an interpretation consistent with a political agenda rather than a quest for fighting impunity or a search for lasting peace or justice.[508]

---

[506] United Republic of Tanzania 2014.
[507] Democratic Republic of Congo 2011.
[508] United Nations General Assembly 2013, 2013.

The states that criticised the ICC's conduct as being politicised did so knowing the gravity this accusation would hold within the ASP. Kenya was under investigation at the time and benefited from depicting the ICC as procedurally flawed. This had informed their broader strategy of delaying and resisting ICC investigations.

After stating its commitment to cooperating with the ICC, South Africa called for the legal sense of cooperation to be delineated and clarified from non-legally binding senses of the term:

> We are mindful that differentiated interpretations are given to the cooperation obligations, which serves to emphasise the necessity for a cooperation regime that is predictable and certain, and for a clear distinction to be drawn between legal obligations that are contained in the Statute, and other forms of cooperation. We therefore welcome a continued discussion of this issue.[509]

South Africa's concern was raised before it had experienced direct tension with the Court. Thus, it is likely that South Africa was raising its concerns about the need for procedural clarity as constructive criticism. This is suggested by the non-combative tone.

7.2.8. UNSC Influence

This section considers the voice statements that drew attention to the UNSC's relationship with the ICC in a way that was distinct from the selectivity theme discussed above in section 7.2.6. The African states that noted concerns with the UNSC in their voice statements were Malawi,[510] Namibia,[511] South Africa,[512] Uganda,[513] and Tanzania.[514]

[509] Republic of South Africa 2010c.
[510] Republic of Malawi 2010.
[511] Republic of Namibia 2011; 2014; 2016; United Nations General Assembly 2013.
[512] Republic of South Africa 2018.
[513] Republic of Uganda 2014.
[514] United Republic of Tanzania 2016.

Some states impressed on the ASP that there was a need for the UNSC's referral powers to be clarified. For example, South Africa stated: "…referral resolutions rather represent muddy water than a sparkling mountain fountain. There is a clear need for a process to guide the adoption of Article 13(b) resolutions in order to ensure more clarity as to their scope and effect."[515] Similarly, Tanzania proposed that the ICC clarify its relationship with the UNSC: "Understanding the difference between the Court's mandate and that of the Security Council *vis-à-vis* the ICC, which more than often tends to be mixed or misconstrued. The role of the Security Council in referring cases or situations concerning non-States Parties to the Court needs to be reexamined [sic] to ensure legitimacy".[516]

Both sets of comments about clarifying Article 13(b) (i.e. the article granting referral power to the UNSC) relied on the ASP's familiarity with past concerns raised regarding this article due, in no small part, to its centrality in the al-Bashir matter. Accordingly, South Africa and Tanzania assumed the audience knew that the main area of contention was whether the immunity waiver applied to non-States Parties' sitting officials. Their discussing this as an issue of clarification also implies that there is an onus on the ICC's members to address the issue, thus it is a discontent with the ICC.

Attention was drawn to the effects of the UNSC's composition as negative for the ICC, as indicated by Uganda:

> I would now like to address the relationship between the Security Council and the ICC. In Rome where the Statute was drafted in 1998, it was the intention of the framers that the Security Council ought to cover situations which require involvement of this very Organ to ensure that justice would be done. However, as long as its composition remains unrepresentative, and undemocratic, Security Council decisions will fail to live up to the expectations and will continue to negatively affect the ICC. For instance, how can the Security Council on the one hand claim to be supportive of the ICC, while on the other hand it is unwilling to fund the Court's activities arising from its very own referrals to the Court? In addition, subjecting members to the duty to

[515] Republic of South Africa 2018.
[516] United Republic of Tanzania 2016.

> cooperate and to act when there is none [sic] cooperation will be best fulfilled when we all advocate and achieve universal ratification of the Rome Statute.[517]

Uganda essentially argues that the UNSC's powers to partly determine the ICC's operations is negatively affected by the fact that it is an unrepresentative and undemocratic structure. Consequently, Uganda implies that the UNSC's composition taints the decisions it issues regarding the ICC.

Namibia reiterated concerns with the political choices that inform UNSC referrals and "…the prospect of veto-carrying States preventing referral of certain situations" and recommended that the "…Assembly might wish to consider amendments which will remove the exercise of veto in cases of referrals to the ICC."[518] Namibia also noted discontent with how the UNSC exercised its referral power at the UNGA ICC Report Plenary in 2013: "The referral of situations to the ICC by the Security Council has proved to be highly political and controversial, and those situations enjoy the lowest degree of State cooperation in the enforcement of court orders."[519]

Uganda and Namibia's comments that the UNSC's referral powers were politicised served an ulterior purpose. Both comments communicated broader dissatisfaction with the UNSC's power structures and veto power. This resonates with debates about UNSC reform that occurred outside of the ICC. The ASP would have been aware of the broader UNSC reform debate as well as the demands of the African group, which focused on equalising the veto power and improving geographical representation. Drawing attention to harmful effects of the UNSC's structure on the ICC advances a reform agenda. The comments about the UNSC's power structure are directly shaped by external power politics. The dissatisfaction is expressed in terms that have internal relevance for the ICC – such as its funding for investigations and its reputation.

[517] Republic of Uganda 2014.
[518] Republic of Namibia 2016.
[519] United Nations General Assembly 2013.

7.3. Conclusion

This chapter focused on the voice behaviour of African States Parties. This was operationalised by applying the three dimensions of discourse analysis to country statements that were delivered by African States Parties at the ICC GDs, UNGA ICC RPs, and UNGA GDs between 2008 and 2018. Discourse analysis was used to examine statements that predominantly expressed dissatisfaction with the Court. Sixty-seven voice statements across the forums studied were examined and eight themes were identified across these statements.

Discourse analysis was a useful method for determining the various factors that shaped the statements. It integrates the power relations and context within and beyond the forums where the statements were delivered into the analysis by questioning how and why something was said. Significantly, discourse analysis places importance on how power relations interplay and are reflected in discourse, which helps to empirically ground the effects of power relations on states within and between IOs. The application of discourse analysis to the eight thematic areas recognised the similarities and variance among the states regarding the same themes. Discourse analysis served as a useful tool for refining the thematic areas that emerged in the voice statements.

The analysis of the voice statements also indicated that different ways of expressing voice occurred. Some states vocalised their discontent in a constructive way and deliberately presented their criticism as an effort to help the ICC. This contrasts with the states that threatened to withdraw from the ICC as an accompaniment to their criticism. Discourse analysis emphasises that how something is said matters, which suggests the need to recognise the complexity of voice behaviour. States that adopt more constructive forms of voice behaviour might see room for improvement but harbour no desire to withdraw from the Court. Meanwhile, more critical voice behaviour might have more severe repercussions for the Court. For example, the ICC credibility and reputation might be damaged even without states withdrawing. In other words, while voice is overall the expression of dissatisfaction with the ICC, the way that this discontentment is expressed suggests

different consequences for the ICC. States' behaviour might be shaped by the estimate that these different ways of articulating dissatisfaction achieve certain outcomes.

Thus, the question about which factors shape states' decisions to articulate their dissatisfaction in a particular way remains. Discourse analysis helped to demonstrate nuances within how voice behaviour was expressed and indicate areas where different drivers might lie. It also helped to identify immediate and contextual factors that might have informed the discourse. However, there remains the need to identify the factors that shaped the decision to express voice behaviour in these nuanced ways. First, however, loyalty behaviour is analysed in the following chapter, before answering this question.

8. LOYALTY

African States Parties that demonstrated support for the ICC and the reasons for this were not explored in the literature. This is a significant oversight as it fails to theorise about why states remain members of the ICC – even when they sometimes were non-compliant. One of the advantages of the EVL model is that it can capture this category of behaviour. Loyalty behaviour refers to support for the ICC. This support can be active or passive. Active support is measured through country statements delivered at the ICC GDs, UNGA ICC RPs, and UNGA GDs that communicated an overall position of loyalty to the ICC. It is also measured by reservations entered on AU decisions that concerned non-cooperation with the ICC. This chapter analyses these sources for active loyalty. The absence of action is understood to indicate 'passive loyalty' and is explained in Chapter 9 as it draws on additional sources for explanation.

This chapter first provides an overview of the loyalty data across the three international forums studied. Then the chapter considers the different thematic areas that emerged from the loyalty country statements and discusses them in turn using discourse analysis. The themes that emerged were expanding the ICC's powers, promoting cooperation with the ICC, defending the ICC's credibility, defence of the ICC's case selection, and responses to withdrawal themes. This is followed by the conclusion.

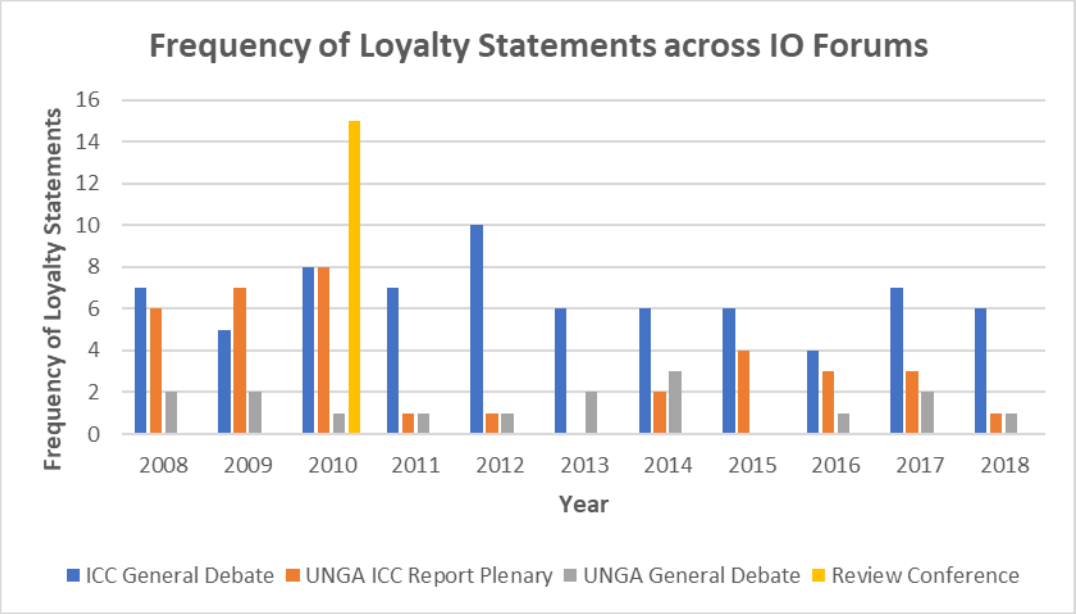
8.1. The Loyalty Data

This section summarises the data related to loyalty that were gathered from the ICC GDs, UNGA ICC RPs, UNGA GDs, and the AU Decisions for the period 2008 to 2018.

Loyalty was the most prevalent behaviour. Of the 208 total country statements studied, 137 were examples of loyalty being exercised by the States Parties – compared to 67 voice statements and four exit statements. There were 87 loyalty statements at the ICC GDs, 35 at the UNGA ICC RPs and 15 at the UNGA GDs. Loyalty statements were expressed most frequently in 2010, with a total of 32 instances. This number was especially high in this year because 2010 was the year that the ICC held its first Review Conference. All 15 of the

African States Parties that delivered country statements at the General Debate at the Review Conference indicated loyalty behaviour. See Figure 12 below for a summary. The Review Conference's statements are separated out in the chart in the interest of comparing trends across the years and institutions while controlling for this exceptional event.

Figure 12: Use of Loyalty Behaviour in Country Statement Data



8.1.1. Reservations on AU Decisions

Reservations entered on various AU decisions that calls for antithetical positions to the ICC, such as non-cooperation, to be held were considered an indication of active loyalty. This was interpreted as such since it is a deliberate action to distance a state from the position held in the decision.

Table 2: Reservations entered on AU decisions by African States Parties

Year	Decision description	African States Parties that entered a reservation

2009	AU decision on non-cooperation with the arrest of al-Bashir.[520]	Chad
2013	AU decision supporting Kenya's bid to dismiss the ICC's investigations into its case.[521]	Botswana
2016	AU decision to develop a collective withdrawal strategy.[522]	Burkina Faso, Cabo Verde, the DRC, and Senegal
2017	AU's draft withdrawal strategy document. [523]	Benin, Botswana, Burkina Faso, Cabo Verde, Côte d'Ivoire, The Gambia, Lesotho, Liberia, Madagascar, Malawi, Nigeria, Senegal, Tunisia, and Zambia

Entering a reservation on the decision calling for AU member states to refuse to assist the ICC with al-Bashir's arrest and the decision supporting Kenya's efforts to prevent the ICC's investigations into its post-election violence suggests that a state does not agree with the obstruction to the ICC's work. Similarly, the reservations on the decisions related to collective withdrawal suggest, prima facie, that the states do not support an African-wide withdrawal from the Court. Considering the emphasis within the AU on solidarity, such reservations are important sources of data indicating loyalty behaviour. However, the reasons behind these reservations are not self-evident or accompanied with explanations. The next chapter attempts to interpret the factors shaping the decisions to enter reservations the AU decisions.

8.2. Loyalty and the International Criminal Court

This section analyses the country statements that suggest loyalty to the ICC by the African states who expressed them. The analysis of the country statements is structured by the

[520] Assembly of the African Union 2009, para. 10.
[521] Decision on International Jurisdiction, Justice and The International Criminal Court (ICC)1 - Doc. Assembly/AU/13(XXI), Assembly/AU/Dec.482(XXI), Twenty-First Ordinary Session, 26 - 27 May 2013.
[522] Decision on the International Criminal Court – Doc. EX.CL/987(XXIX), Assembly/AU/Dec.616(XXVII), Twenty-Seventh Ordinary Session 17 – 18 July 2016, para. 5(iii)(b).
[523] African Union 2017.

three dimensions of discourse analysis. Since the same sentiments were often expressed by states across the period and IO forums studied, these are grouped together.

8.2.1. Withdrawal Debate-related Matters

African States Parties that addressed withdrawal debate themes in a way that demonstrated support for the ICC were considered to be performing an act of loyalty. Their indication of support for the ICC would be understood by ASP and UNGA members within the withdrawal context. Their indication of support for the ICC despite the pressure to lend support to the criticisms levelled against the ICC by some African states is evidence of loyalty. The themes identified were references to the peace versus justice debate; the matter of ICC membership and withdrawal; ICC-African relations; immunity for senior government officials; and amending the Rome Statute. The states that made references to one or more of these themes were Botswana,[524] Burkina Faso,[525] Côte d'Ivoire,[526] the DRC,[527] The Gambia,[528] Ghana,[529] Kenya,[530] Madagascar,[531] Nigeria,[532] Senegal,[533] Sierra Leone,[534] South Africa,[535] and Tunisia.[536]

8.2.1.1. Peace versus Justice

The peace versus justice debate has dualized how to respond to core crimes by asserting that ultimately one must be compromised or foregone in favour of the other. Voice

[524] United Nations General Assembly 2010; Republic of Botswana 2013.
[525] Republic of Burkina Faso 2010b.
[526] Republic of Côte d'Ivoire 2014; 2013.
[527] Democratic Republic of Congo 2013.
[528] Republic of the Gambia 2014.
[529] United Nations General Assembly 2008; Republic of Ghana 2011; 2013; 2016; 2017.
[530] Republic of Kenya 2009.
[531] United Nations General Assembly 2015b; Republic of Madagascar 2015.
[532] Federal Republic of Nigeria 2011; 'Statement by the Leader of Nigeria's Delegation Mr. Abubakar Malami, San. Honourable Attorney General of the Federation and Minister of Justice, Federal Republic of Nigeria at the Fifiteeth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC), The Hague, Netherlands' 2016; United Nations General Assembly 2008; 2017.
[533] United Nations General Assembly 2016; 2017.
[534] Republic of Sierra Leone 2012; 2014b.
[535] Republic of South Africa 2008; 2012; 2013; 2014; United Nations General Assembly 2009a; 2014c.
[536] Tunisian Republic 2013; 2014.

statements by states that referred to this dualism argued that peace should be preferred over justice (i.e., the ICC). Thus, African States Parties that made statements that defended a place for the ICC in responses to core crimes indicated loyalty to the Court. These statements might overtly argue that justice is a prerequisite to peace and, thus, should be prioritised. The peace versus justice debate was referred to in six loyalty statements.

Sierra Leone unambiguously stated its preference to prioritise justice:

> Justice must be protected, as justice is a critical component of peace: without justice, there can be no peace. And without peace, the lives of several thousands of people are put in jeopardy, right now and for future generations. We must not allow a weakening of international criminal justice processes; instead, we must support them, promote them, protect them and defend them. This is the only way forward to lasting peace and [a] prosperous future for all.[537]

Sierra Leone's comments unambiguously state that justice is a precondition for peace. After asserting that justice was needed to obtain peace, Sierra Leone asserted that present support for international criminal justice was important for ensuring sustainable peace and positive impacting on future generations. Sierra Leone used emotive framing to encourage support for the ICC by asserting that states that want to promote peace must necessarily support justice. The implication is that the ICC is a mechanism that promotes justice, which means it positively contributes toward sustainable peace and, therefore, ought to be supported. Sierra Leone's loyalty is demonstrated by its encouragement of other States Parties to commit to the ICC as well as by the implied belief that it has in the Court's capabilities as promoting justice.

The DRC presented a more neutral position that saw the two as coexisting:

> As we can clearly see, the DRC is convinced that peace and justice are complementary. It has experienced the irreplaceable role of justice as a factor of social harmony, national reconciliation, peace, security and stability. We have understood that respect for the rule of law

[537] Republic of Sierra Leone 2012.

> and human rights cannot prevail in a society when the perpetrators of the crimes committed are not worried. Likewise, peacebuilding is not an option in a society plagued with impunity.[538]

The DRC directly declares that peace and justice are complementary. However, its comment that "peacebuilding is not an option in a society plagued with impunity" implies sequencing – that justice (as a way to fight impunity) is a prerequisite for peace. This was likely emphasised because the DRC was speaking at the ASP. While it saw the two values as compatible, it likely focused on the justice component of the relationship because it was addressing ICC States Parties.

South Africa shared the same view as the DRC regarding the peace versus justice issue. South Africa emphasised that peace and justice were complementary processes and political organs should continue to pursue peace while the ICC pursued justice. For example:

> For South Africa, therefore, peace and justice must necessarily go together. We cannot pursue one without regard to the other, and we certainly cannot pursue one at the expense of the other. They are two sides of the same coin. While the Court continues to pursue justice, the political organs of the system we have created, including the African Union Peace and Security Council and the United Nations Security Council, must use all means available to them to ensure the attainment and maintenance of peace and security.[539]

South Africa consistently argued that peace and justice are compatible in its various country statements. It said that a trade-off should not be pursued. South Africa, instead, argues that judicial organs should pursue justice while political organs pursue peace. South Africa's promotion of peace and justice as mutually reinforcing likely was shaped by its ICC membership and its role in peace processes on the continent. In other words, it was self-justifying to defend the two as compatible as this framing enabled South Africa to maintain its roles in the ICC as well as continental peace processes. South Africa's comments also could be read as suggesting that the UNSC should heed the calls for deferral. This is

[538] Democratic Republic of Congo 2013.
[539] United Nations General Assembly 2014c.

suggested by its noting that the AU and UNSC should "use all means available" to promote peace and security.

Burkina Faso, likewise, saw peace and justice as compatible: "We are convinced that peace and justice are complementary. However, the viability of their interrelation constitutes a great challenge which it is advisable to work to take up as best as possible, in order to avoid establishing a standard double justice."[540]

Burkina Faso saw the two objectives as complementary but cautioned that balancing them is a difficult task, which could lead to a double standard in the justice pursued. This could be seen as a cautionary message to the ASP that there was a need to strategize about how to promote the compatibility of these goals. Burkina Faso's speech was delivered in the year that al-Bashir's second arrest warrant was issued, which might have influenced its comments since there was resistance from the AU to the arrest on the grounds of it undermining peace negotiations in Sudan and the region.

Similarly, Nigeria adopted a somewhat neutral position toward the peace-justice debate. Rather than proposing that they are complementary, Nigeria suggested that prioritisation should be based on a case-by-case basis:

> Nigeria recognizes the need for a balanced approach in the activities of the Court geared towards achieving peace and justice. Nigeria is still of the view that in the pursuit of international peace and justice "there cannot be a one size fits all" approach. There is need to consider and continually review cases individually. While Nigeria accepts the general view that there can be no sustainable peace without Justice[sic], the paramount consideration in weighing the necessity for instituting prosecution should be sustainable peace and the impact of such decisions on the lives of innocent civilians.[541]

Like Sierra Leone, Nigeria holds that sustainable peace is not possible without justice. However, Nigeria's position diverges from Sierra Leone in how it sees this translating into

[540] Republic of Burkina Faso 2010b.
[541] Federal Republic of Nigeria 2011. Similar comments were delivered in 2010 at the Review Conference.

practice. Nigeria argued in favour of a case-by-case assessment of which mechanisms to prioritise, whereas Sierra Leone's comments were generalised.

The small sample suggests that there is a trend among states, when demonstrating loyalty behaviour, to view peace and justice as complementary.

8.2.1.2. ICC Withdrawal/Membership

States that encouraged other states to remain members of the ICC demonstrated loyalty behaviour because these states overtly challenge the idea of withdrawal. Only three states made such direct comments. These states were Côte d'Ivoire,[542] Ghana,[543] and Nigeria.[544] Only Côte d'Ivoire's comments preceded the withdrawal of South Africa, The Gambia, and Burundi from the ICC.

Côte d'Ivoire's stated that the ICC relies on its States Parties to overcome its challenges. This suggests that it sees the best way about helping the ICC as remaining within it. Côte d'Ivoire's statement also contains a message directed toward the ICC. It reminds that ICC that it is reliant on good relations with its States Parties for its own progress.

Ghana directly responded to the withdrawals of Burundi, South Africa, and The Gambia at the 2016 ICC General Debate when it called upon them to "…to reconsider their decision. While acknowledging that withdrawing from the Rome Statute is their sovereign right…"[545] Thus, in 2017, Ghana celebrated the reversals of South Africa and The Gambia's withdrawals:

> It is refreshing to note that two of the three countries have since reversed their decision [to withdraw]. We commend them for the reversal since their return makes the Assembly stronger.

[542] Republic of Côte d'Ivoire 2013; 2014.
[543] Republic of Ghana 2016; 2017.
[544] 'Statement by the Leader of Nigeria's Delegation Mr. Abubakar Malami, San. Honourable Attorney General of the Federation and Minister of Justice, Federal Republic of Nigeria at the Fifiteeth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC), The Hague, Netherlands' 2016; United Nations General Assembly 2017.
[545] Republic of Ghana 2016.

> While acknowledging States Parties' sovereign rights to withdraw from the Rome Statute, my delegation wishes to take this opportunity to encourage the remaining State Party to reconsider its withdrawal and return to the fold of the Assembly.[546]

Ghana was emphatic that a state's withdrawal was its sovereign right, but it also clearly stated its encouragement for (and celebration of) the withdrawals to be rescinded. Ghana's recognition of withdrawal as a sovereign right suggests that Ghana's statement was influenced by African politics' emphasis on non-intervention in fellow African states' affairs. Yet, Ghana clearly wanted to communicate that it saw remaining within the ICC as the preferable choice. Ghana's reference to sovereignty likely was an effort to demonstrate its respect and awareness of a state's right to self-determination and the importance placed on this principle within regional politics. Consequently, the encouragement for states to reconsider their withdrawals was framed as a kind suggestion rather than a condemnation. Ghana's encouragement for the withdrawing states to reverse their decisions is indicative of its support for the ICC. Its careful effort to navigate how it framed this encouragement while acknowledging the sovereignty principle suggests Ghana's desire to vocally indicate its support for the ICC through encouraging states to return to being members. This is suggested because Ghana's concerns about how to frame its call for withdrawing states to reconsider their decision clearly presented a tension for Ghana, which it felt necessary to circumvent, with regards to the sovereignty principle.

Nigeria expressed similar sentiments at the 2017 UNGA ICC RP:

> Nigeria joins other Member States in commending the decisions of the Gambia and South Africa to return to the Court…Nigeria wishes to emphasize that it has no intention of pulling out of the ICC. However, we will continue to work in concert with States parties of the ICC towards improving the working methods of the Court for a fairer and more efficient delivery of its mandate in the service of humankind and equitable justice.[547]

[546] Republic of Ghana 2017.
[547] United Nations General Assembly 2017.

Nigeria's congratulation of The Gambia and South Africa's decisions to rescind their withdrawals included the proclamation that it (Nigeria) would not withdraw from the ICC. This is an overt message of support for the ICC and a clear signal of loyalty.

Interestingly, Nigeria expressed some discontent with the Court in its address at the ICC GD in 2016:

> No doubt this is a trying period for the Court with the spate of withdrawals and threatened withdrawals of membership of some States from the Court. Nigeria takes cognisance of the call by the African Bar Association for the reformation of the Court and that the Court should treat all continents equally and allow the rule of law to prevail in all circumstances… two major motivations were responsible for the signing up by Nigeria to the membership of the ICC namely; the universality of the application of its Statute arising from its international inclination and being an instrument of attack on worst criminals of the world through confrontational effrontery to impunity... Invasion of sovereign States in breach of United Nations Resolution resulting in genocide from States Parties is being allegedly overlooked by the international [sic] Criminal Court seemingly arising from the economic strength of the parties concerned and their influence, while States Parties of lesser economic strength and influence are being pursued with aggression. It is from these perspectives that the issue of confidence needs to be addressed. The policy must be universal and impunity must be challenged without discrimination.[548]

This speech excerpt suggests that Nigeria sees the Court as failing to universally apply the Rome Statute since it overlooks the crimes committed by economically strong States Parties. This seems to be a voice act because Nigeria insinuates that one of the two reasons that it joined the Court has not been upheld. Yet, Nigeria went on to praise the ICC's responses to the withdrawals of South Africa, The Gambia, and Burundi:

> Notwithstanding the above, Nigeria is impressed by the innovative manner and approach Mr. President and his team have adopted so far in handling the problem. I refer in particular to your Press Conference in Dakar, Senegal on 24th October 2016 on the issue. At this point in the

[548] 'Statement by the Leader of Nigeria's Delegation Mr. Abubakar Malami, San. Honourable Attorney General of the Federation and Minister of Justice, Federal Republic of Nigeria at the Fifiteeth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC), The Hague, Netherlands' 2016

> history of the Court, let me assure you that you and the Bureau of [sic] the continued unwavering and unflinching support and cooperation of Nigeria.[549]

This statement of support and pledge of membership makes it clear that there is no threat of withdrawal from the Court by Nigeria, despite its noting that a core reason for it joining the ICC has not been adequately upheld. Although Nigeria delivered what might be considered significant criticism of the ICC, when the criticism is considered within the context of the entire speech in which it was delivered, it seems that, overall, Nigeria was suggesting its loyalty to the Court rather than voice. Nigeria emphasised its commitment to the ICC, that it believed the Court was capable of reform, and that cognisance must be taken of the Court's novelty as an institution. Nonetheless, this might still be an act of voice.

However, Nigeria also went on to detail the ways that it has cooperated with the Court's investigations in its country and went on to say that "Nigeria will no doubt continue to engage in useful and constructive discussions with the ICC on matters falling within its mandate." Thus, on the whole, it seems that Nigeria's statements of its commitment to the Court, its belief in the Court's ability to change, and its cooperation with the Court's investigations in the Nigerian situation all suggest Nigeria's behaviour is better classified as loyalty rather than voice. This reiterates the importance of considering statements in their entirety to categorise them into behavioural types since abstractions from the context could suggest a more critical tone than the overall statement.

8.2.1.3. ICC-Africa Relations

Comments that positively reflected on the efforts made by the ICC to respond to the tension in its relationship with Africa and the AU were considered an indication of loyalty. This measure is the opposite to voice comments that expressed dissatisfaction with the Court's responses to these relations and it is within this context that positive comments are

[549] 'Statement by the Leader of Nigeria's Delegation Mr. Abubakar Malami, San. Honourable Attorney General of the Federation and Minister of Justice, Federal Republic of Nigeria at the Fifiteeth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC), The Hague, Netherlands' 2016.

meaningful. They act as a counter-narrative to the those of the ICC as not doing enough to remedy relations with Africa.

The African States Parties that positively reflected on ICC-African relations within statements that were classified as loyalty included Botswana,[550] Côte d'Ivoire,[551] the DRC,[552] The Gambia,[553] Ghana,[554] Kenya,[555] Madagascar,[556] Senegal,[557] South Africa,[558] and Tunisia.[559]

The establishment of an ICC Liaison Office at the AU was one way that some states expressed their satisfaction with the ICC's efforts to address relations with Africa.[560] For example, Botswana saw the creation of this office as important to counter the negative image about the ICC:

> We therefore believe that it is timely to invest our collective energy in consolidating and strengthening the role of the Court by building bridges between the Court and the countries in question in order to reduce the current negative perception about the work of the ICC. We do not believe that the establishment of the ICC Liaison Office at the African Union will be contrary to that spirit, but rather that it would go a long way in addressing the misconceptions about the role and function of the Court.[561]

Tunisia indicated its loyalty to the ICC when it declared its dedication to assisting the ICC and African states to make amends: "Anxious to reconcile the views between the Court and the African continent, Tunisia has organized throughout this year meetings within the framework of its chairmanship of the African group with a view to contributing to the establishment of a constructive dialogue between the members of the group and the main

[550] United Nations General Assembly 2010.
[551] Republic of Côte d'Ivoire 2013.
[552] Democratic Republic of Congo 2013.
[553] Republic of The Gambia 2013.
[554] Republic of Ghana 2011; 2013.
[555] Republic of Kenya 2009.
[556] Republic of Madagascar 2015; United Nations General Assembly 2015b.
[557] United Nations General Assembly 2016; 2018.
[558] Republic of South Africa 2012; 2014.
[559] Tunisian Republic 2013; 2014.
[560] Kenya (ICC GD 2009); South Africa (UNGA ICC RP 2009); and insinuated by Burkina Faso (ICC GD 2011).
[561] United Nations General Assembly 2010.

organs of the Court."[562] The preceding year, Tunisia reflected positively on the ICC's efforts to clarify areas of contention in its relationship with Africa.

Tunisia's comments assert that the best way to address the relationship issues is within the ASP's multilateral sessions, which suggests that it disagrees with the idea of withdrawal and with non-cooperation policies. Together with the commendation on the hosting of a session dedicated to addressing issues with the African bloc, it is evident that Tunisia was communicating its loyalty to the Court.

Related to this theme, the DRC reiterated its support for the Court but noted that the ICC needed to mend its relationship with the AU:

> For the Democratic Republic of the Congo, it should be noted that during the closing ceremony of the last extraordinary session of Parliament convened in congress, HE Mr. Joseph KABILA KABANGE, President of the Democratic Republic of the Congo, had confirmed the continuation of full cooperation with the International Criminal Court. However, as an African country, the Democratic Republic of the Congo invites the International Criminal Court to find a compromise in the management of the International Criminal Court-African Union relationship.[563]

While the tone of the comment is cordial, the DRC is clearly calling upon the ICC to improve its response to the ICC-AU relationship. This could, thus, be seen as a voice behaviour since the DRC is raising an area of discontent to the attention of the ICC. Nonetheless, the broader speech was one that communicated loyalty behaviour overall – as suggested by the moderate way that this comment was delivered. For example, the DRC noted that it delivered this message "as an African country", which could suggest that it was acting from a sense of collective duty rather than individual urgency or dissatisfaction. Furthermore, the DRC made sure to emphasise that its cooperation with the Court was not under threat before delivering this voice comment.

[562] Tunisian Republic 2015.
[563] Democratic Republic of Congo 2013.

The positive reflections on the ICC-African relations suggest loyalty because they demonstrate satisfaction with the ICC's efforts to address tensions with some African states and the AU and/or faith that this relationship can, and should, be recuperated. Botswana's commented that a liaison office at the AU would dispel "negative perception[s]" and "misconceptions" about the ICC clearly indicates that it holds the ICC in high regard. Additionally, it indicates that Botswana's suggestion was driven by the desire for the ICC to be viewed on the continent positively. Furthermore, the language used by Botswana positioned the responsibility of promoting a positive image of the ICC as resting with the ASP, and therefore, with States Parties. This is suggested by the phrase "it is timely to invest our collective energy." Cumulatively, Botswana sends a message that it supports the ICC and sees it as deserving of proactive campaigning by States Parties to promote its positive image. This infers Botswana's loyalty to the ICC.

Similarly, Tunisia's statement of its dedication to assisting in the reconciliation of the relationship between the ICC and Africa indicates that it sees the Court as deserving of support and membership. It also framed the strained relationship as one with "misunderstandings." With this, Tunisia suggests that the relationship can be salvaged and that the tension is, essentially, driven by misunderstanding rather than irreconcilable differences. Tunisia identified the ASP as the appropriate mechanisms for addressing the ICC-African relationship. This infers that Tunisia sees the best way for states to improve their relations with the ICC would be to remain in it.

8.2.1.4. UNSC/Non-States Parties

Notably, despite their overall statements indicating loyalty behaviour, four states used their platforms at the ICC and UNGA to communicate their dissatisfaction with the UNSC and non-States Parties to the ICC. Their dissatisfaction included expressions of discontent with the referral power held by non-States Parties to the Rome Statute on the UNSC as well as the UNSC's not responding to the various Article 16 deferral requests made by the AU. Other comments included concern that non-States Parties undermined the Rome Statute

system by not acceding to the Statute. The Gambia,[564] Nigeria,[565] Sierra Leone,[566] and South Africa[567] each made references to one or both of these matters in some of their loyalty statements.

For example, Sierra Leone noted with dismay that "[t]he refusal of some powerful states of the world to ratify the Rome Statute continues to be one of the most serious factors that tend to undermine the effectiveness of the Court. This refusal has the tendency to make other non-state parties to view the Court with suspicion and mistrust."[568] Sierra Leone's comment shows that it sees the (powerful) states that are not party to the Rome Statute as a challenge to the Court's efficacy.

On the other hand, The Gambia criticised non-States Parties for acting hypocritically when it said:

> Finally, The Gambia would want to call upon those States that have not accepted and ratified the Rome Statue to desist from dictating to others on alleged violations of human rights when they themselves have not accepted the mechanism of the United Nations representing humanity at large as a judicial pillar and last bastion of hope for human beings who have suffered the worst atrocities known to mankind. Is it not double standards for such States to criticise other States' human rights records and yet not submit themselves to scrutiny by the international community through mechanisms of none other than the United Nations?[569]

From the Speakers List for the relevant session (the 13th ASP Session), the observer states present, at least, included China, the US, Russia, and Israel.[570] The Gambia appears to be directing criticism toward some or all of these states at the ASP – implying that they ought to be subjecting themselves to the Court's authority too.

---

[564] Republic of the Gambia 2014.
[565] United Nations General Assembly 2008, 2008.
[566] Republic of Sierra Leone 2014a.
[567] Republic of South Africa 2008; 2013; 2014; United Nations General Assembly 2009a.
[568] Republic of Sierra Leone 2014a.
[569] Republic of the Gambia 2014.
[570] Assembly of States Parties, 'Thirteenth Session. General Debate. List of Speakers.', 16 December 2014, https://asp.icc-cpi.int/iccdocs/asp_docs/ASP13/ASP13-GDSpeakers-ChronologicalList-ENG.pdf.

Nigeria directed a message toward UNSC members when it encouraged them to consider the Darfur situation deferral request:

> The situation in the Darfur region of the Sudan has aroused a great deal of interest in the international community, especially since the ICC Prosecutor's initial report to the Security Council (see S/PV.5216). Since then, there has also been a request for deferral duly brought under article 16 of the Rome Statute of the ICC. We believe that the request — which is a legally backed process and which does not imply a conflict between peace and justice — should be allowed to run its course. We are also confident that the international community will not allow a politicization of the process.[571]

South Africa also referred to issues relating to UNSC deferrals.[572] Additionally, South Africa criticised the unequal powers embedded in the UNSC in its ICC GD speech in 2012: "We are convinced that as long as the structure of the Security Council remains unrepresentative and undemocratic, its decisions will impact negatively on the ICC. States Parties, individually and collectively, thus has the responsibility to support UN processes for early reform of the Security Council."[573]

The States Parties that registered their discontent with the effects of UNSC inaction on the ICC, arguably, displayed loyalty to the ICC. This was seen by their defence of the ICC against criticism that they saw as more appropriately directed against the UNSC. In this way, they were acting to protect the ICC's reputation and, thereby, demonstrating loyalty. This was most clearly seen by South Africa's comments about the negative effects of the UNSC's structure on the ICC. The statements by Sierra Leone and The Gambia, which argued that the ICC was undermined by the lack of universal jurisdiction, insinuated that blame for the ICC's shortcomings lies with non-States Parties.

8.2.2. Increasing the ICC's Powers

[571] United Nations General Assembly 2008, 2008.
[572] Regarding Darfur in its ICC General Debate speech in 2008 and its UNGA ICC Report Plenary address in 2009 and regarding Kenya in its ICC General Debate speech in 2013.
[573] Republic of South Africa 2012.

Direct and indirect calls made by African states to enhance the ICC's powers were considered an indication of loyalty. This is because, arguably, such calls implies that the ICC's credibility by proposing that that the Court should wield enhanced powers.

There were two main ways that the expansion of the Court's powers was advocated for by African States Parties.[574] These are calls for extending the Court's jurisdiction and calls for the Court to be granted more resources. Such sentiments express faith in the ICC, which can be interpreted as a signal of loyalty.

Statements that resisted amendments to the Rome Statute that undercut the ICC's powers were also considered an indication of loyalty. However, since it bore similar logic to the statements regarding the ICC's jurisdiction, the analysis of such statements was moved to Appendix 3 to avoid redundancy given space limits.

8.2.2.1. Expanding the Court's Jurisdiction

This section includes matters related to amending the Rome Statute if they pertain to expanding the Court's jurisdiction. Specifically, it includes the crime of aggression amendment (also known as the Kampala amendments). Other proposed amendments to the Rome Statute are discussed in Appendix 3. The States Parties that called for the ICC's

[574] Calls for non-States Parties to ratify the Rome Statute and for the universalisation of the Rome Statute were not considered as an indication of loyalty for the purposes of this study as they are ambiguous when considered within the history of the ICC's creation and broader global governance issues raised by African states. The issue of universality emerged after the Rome Conference where it became apparent that the Court would not be a compulsory court and that major powers, like the US and China, would not accede to the treaty. Subsequently, African states frequently encouraged universality of the Statute, which is linked to their historical expectation for a court that would be a means to hold all states powers accountable (see Gissel 2018) Calls for universality were made by many African States Parties regardless of whether their statement was generally indicative of exit, voice, or loyalty due to its political relevance for the broader agenda for promoting a more equitable global system. Consequently, it was difficult to interpret when the calls for universality should be considered a signifier for this agenda or a signal of inherent faith in the ICC. The analytical ambiguity was too great to make this a reliable indication of loyalty behaviour.

jurisdiction to be expanded were Botswana,[575] Côte d'Ivoire,[576] Ghana,[577] Kenya,[578] Madagascar,[579] Nigeria,[580] Senegal,[581] and South Africa.[582]

Botswana and Ghana each included calls for the ICC to be strengthened. Botswana asserted that the jurisdictional remit of the ICC should not be limited to States Parties and that "[j]ustice for victims of crime should be seen to be done irrespective of whether their countries choose to sign up to the Rome Statute."[583] Ghana pledged to support and strengthen the ICC: "We will remain actively engaged in efforts to strengthen the role of the Court as an integral part of the international legal system and to promote broad and strong support for its important work."[584]

Senegal overtly celebrated the broadening of the ICC's powers: "We should also welcome the widening of the Court's competencies with regard to war crimes resulting from certain acts committed in a non-international armed conflict… That is an additional step to strengthen international humanitarian law and should be welcomed appropriately."[585] Nigeria and Côte d'Ivoire similarly supported the strengthening of the Court's war crimes article.[586]

In the lead up to the 2010 Review Conference, some African States Parties suggested their support for expanding the Court's mandate to include crimes of aggression.[587] In 2008,

[575] Republic of Botswana 2011; 2010b.
[576] Republic of Côte d'Ivoire 2017.
[577] United Nations General Assembly 2017, 2017; Republic of Ghana 2010
[578] United Nations General Assembly 2008.
[579] Republic of Madagascar 2015.
[580] 'Statement by the Leader of Nigeria's Delegation Mr. Abubakar Malami, San. Honourable Attorney General of the Federation and Minister of Justice, Federal Republic of Nigeria at the Fifiteeth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC), The Hague, Netherlands' 2016.
[581] United Nations General Assembly 2010, 2010; Republic of Senegal 2010c; 2010a.
[582] Republic of South Africa 2008; United Nations General Assembly 2010; Republic of South Africa 2010b.
[583] Republic of Botswana 2011.
[584] United Nations General Assembly 2017, 16–17.
[585] United Nations General Assembly 2010, 14–15.
[586] 'Statement by the Leader of Nigeria's Delegation Mr. Abubakar Malami, San. Honourable Attorney General of the Federation and Minister of Justice, Federal Republic of Nigeria at the Fifiteeth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC), The Hague, Netherlands' 2016; Republic of Côte d'Ivoire 2017.
[587] The crimes of aggression definition and the Court's jurisdiction over this crime was a matter left unresolved after the Rome Conference. It was deferred to a later date, which finally took place at the 2010 Review

South Africa and Kenya each noted the need for the crimes of aggression to be defined.[588] South Africa explicitly indicated its support: "The crime of aggression must still be defined, and only once this has been done, will the Court be able to exercise jurisdiction over the ultimate international crime and will the Statute be complete."[589] South Africa's comments indicate the importance it places upon the crime of aggression being defined since it posits this definition as a prerequisite to completing the Rome Statute. South Africa's comments also indicate its loyalty to the Court because it takes for granted that the ICC should have "jurisdiction over the *ultimate* international crime" [emphasis added].

Several African States Parties registered their contentment once the crimes of aggression amendment had been adopted: Botswana,[590] Côte d'Ivoire,[591] Madagascar,[592] Senegal,[593] and South Africa.[594] Notably, few of the African States Parties that indicated their support for the Kampala Amendments proceeded to ratify them. Botswana was (and remains, to date) the only African State Party that ratified the amendments. This raises the question: Does the failure by these states to ratify the amendments mean that their statements do not indicate loyalty behaviour? Arguably not because states taking this public (even if just rhetorical) position of support want to be seen as loyal to the ICC. Ratification would constitute an additional indicator of loyalty.

The call for the ICC's powers to be strengthened is an indication of loyalty. By encouraging the strengthening of the Court, States Parties imply that the Court is an institution that is capable and deserving of more extensive powers. This implication includes an indication of satisfaction of the Court's performance, otherwise the states would not recommend that the ICC be granted more responsibilities and powers. Ghana overtly described the Court's

---

Conference in Kampala, Uganda. Thus, the amendment of the Rome Statute to include crimes of aggression – which was reached through consensus – is also referred to as the Kampala amendment.

[588] United Nations General Assembly 2008, 21–22.

[589] Republic of South Africa 2008.

[590] Republic of Botswana 2010b.

[591] Republic of Côte d'Ivoire 2017.

[592] Republic of Madagascar 2015; United Nations General Assembly 2015b, 3–4; 'Assembly of States Parties to the Rome Statute of the International Criminal Court. Sixteenth Session. Official Records, Volume I.' 2017, 85.

[593] Senegal added that the amendment positively contributed to the Rome Statute as well as international law generally. Republic of Senegal 2010c.

[594] South Africa also noted discontent with the relative weakness of the amendment, suggesting that it would have preferred stronger powers to be accorded to the Court. United Nations General Assembly 2010, 19–21

work as "important", which directly conveys its contentment with the ICC's work to the ASP. Botswana and Senegal's comments were less direct. Both of their statements presuppose that the ICC has made positive contributions to justice and international humanitarian law. Botswana infers that strengthening the ICC will lead to improved justice for victims while Senegal overly links the expansion war crimes jurisdiction held by the Court equates to strengthening international law. Similarly, the support for the ICC's jurisdiction over (and the definition of) the crime of aggression signals the faith held by those African States Parties[595] in the ICC's competence to preside over an extended set of core crimes.

The link between a stronger ICC and improved international justice/law made by these states asserts to fellow ASP members that commitment to international justice/law means supporting a stronger ICC. It seems, therefore, that these states not only convey their own loyalty to the ICC through their calls for its strengthening, but also tacitly call on other states to also support this call as a demonstration of their commitment to international justice/law. Concomitantly, the States Parties demonstrate their own commitment to international law and justice to the ASP. Thus, the calls for a stronger ICC might be motivated by reputational benefits of being seen as a state promoting international law and justice – and as one encouraging others to do the same. This reputational benefit is gained vis-à-vis a demonstration of loyalty to the ICC due to the link the institution has with justice values.

8.2.2.2. Mobilising Resources for the ICC

Several states called for the ICC's budget to be increased and States Parties to be up to date with their financial contributions for the Court to successfully fulfil its role. The states include Botswana,[596] Burkina Faso,[597] Nigeria,[598] Senegal,[599] and Tunisia.[600]

[595] Botswana, Côte d'Ivoire, Kenya, Madagascar, Senegal, and South Africa.
[596] Republic of Botswana 2017, 201.
[597] Republic of Burkina Faso 2011.
[598] United Nations General Assembly 2008.
[599] United Nations General Assembly 2014b; 2015b.
[600] Tunisian Republic 2012; 2013.

Concern regarding the ICC's resources and capacity were expressed by some states as the ICC's activities grew. For example, in 2012, Botswana called "…for the prudent management of the finite resources at our disposal."[601] Similarly, Burkina Faso recommended: "In order to adapt the missions of the Court to the resources available, my delegation supports the idea of creating sections of the Court in the regions affected by most situations."[602] This suggests that Burkina Faso supported the creation of a liaison office in Africa. The issue of a regional office was raised in voice statements as a criticism of the ICC's distance from the location in which the crimes over which it presides took place. However, Burkina Faso's loyalty is signalled by its framing of the issue as a concern regarding the ICC's resources, which centres a message of its concern in the matter being about the ICC.

Senegal noted concern that UNSC referrals to the ICC were not accompanied by financial assistance from the UNSC:

> The increase in the number of cases submitted to the Court, often without resources available, risks having a negative impact on the effectiveness of the Court's work. It is therefore necessary to strengthen United Nations financial support in order to enable the Court to appropriately discharge its mission in the best conditions.[603]

The fact that Senegal's comments were made at the UNGA ICC Report Plenary suggests that it used this as an opportunity to direct its concern toward UNSC member states and the UNGA generally. Senegal's use of this platform for such communications is significant. While the primary aim was to highlight the perceived unfairness of the UNSC's actions; the concern also assumes the importance of the ICC. The hidden assumption in the statement is that the ICC's work ought to be facilitated, which implies the credibility of the ICC. Thus, the call for financial support for the ICC suggests loyalty on two levels: first, the direct call for finances and second, the inference that the ICC is a legitimate institution deserving of financial support.

[601] Republic of Botswana 2012.
[602] Republic of Burkina Faso 2011.
[603] United Nations General Assembly 2014b.

The states that encouraged that the ICC's resources be secured and expanded imply that the ICC deserves these resources. The indirect message that is conveyed by the calls for resources is that the ICC should be given sufficient means to execute its work because this work is worth supporting. Thus, the call for more resources is an indirect endorsement of the ICC and an indication of satisfaction with its work given the means at its disposal. The states that expressed concern about the ICC's workload outstripping the resources that were available to it also indicated their investment in the Court's success. Their concern suggests that they believe the Court should succeed. Furthermore, the expression of concern about the ICC's resources and capacity could suggest that the states wish to be seen by their audience as loyal to the ICC.

8.2.3. Promoting Cooperation with the ICC

Different references to state cooperation with the ICC. These different types of cooperation were indications of loyalty behaviour. States Parties called on others to cooperate with the ICC and highlighted the ways that they were cooperative. This suggests loyalty because calls for cooperation endorses the ICC and reflections on upholding cooperation suggests that these states want to be seen as compliant with their cooperation obligations – they want to be seen as supporting the ICC.

Five different types of cooperation were found, which were labelled as: generic pledges of cooperation; cooperation as a situation country; calls for other states to cooperation; domestication of the Rome Statute; and complementarity. These different types of cooperation are not mutually exclusive and, at times, were spoken about within the same excerpt. Each of these types of cooperation are considered in turn by first defining what is meant by the label assigned, describing the dominant way that States Parties spoke about that type of cooperation, noting which States Parties did so. The interpretation and explanation of each type of cooperation follows their description. Exceptions and ambiguities are also noted where relevant.

8.2.3.1. Generic Pledges of and Calls for Cooperation

Generic pledges of, and calls for, cooperation with the Court were stated by many of the African States Parties. "Generic", in this respect, is used to mean instances where States Parties declared with cooperation with the ICC that were not attached to a specific occasion and did not go into details about the nature of the cooperation.[604] Similarly, statements including encouragement of other States Parties to cooperate with the ICC were common and often stated without substantiation. These types of cooperation statements are arguably superficial since they are rhetorical proclamations of support. Nonetheless, they indicate loyalty behaviour because they are a publicly communicated position of support for the ICC.

An example of a generic pledge of cooperation is illustrated by Tunisia when it stated: "…my country, since becoming a Member State of the ICC, has been strongly determined to strengthen its cooperation with the Court and has made a point of being actively involved in its work"[605] Ten different African States Parties included similar generic pledges to cooperate with the ICC and some repeated this sentiment on numerous occasions. These states were: Benin,[606] Botswana,[607] Burkina Faso,[608] Cabo Verde,[609] CAR,[610] Côte d'Ivoire,[611] Ghana,[612] Guinea,[613] Madagascar,[614] Mauritius,[615] Nigeria,[616] Senegal,[617] Sierra Leone,[618]

[604] Nigeria and Tunisia were exceptions. At the ICC General Debates in 2009 and 2011, Nigeria also detailed how it had assisted the Court with its investigations in Darfur. Tunisia emphasised its active involvement in promoting the ICC in its ICC General Debate addresses in 2012, 2013, and 2014."
[605] Tunisian Republic 2013.
[606] Republic of Benin 2017.
[607] Republic of Botswana 2010c; 2010a Notably, at the 2011 ICC General Debate, Botswana expressed is discontent with the AU's decisions of non-cooperation with the Court. This distanced Botswana from the AU – indicating that it would support the Court despite AU pressure to the contrary. Botswana's criticism of the AU's non-cooperation decision stands out at an unusually outspoken position against the AU and a clear signal of loyalty to the ICC.
[608] Republic of Burkina Faso 2011; 2010a
[609] Republic of Cabo Verde 2017.
[610] Central African Republic 2010b.
[611] Republic of Côte d'Ivoire 2013; 2017.
[612] Republic of Ghana 2010.
[613] Ibid.
[614] Republic of Guinea 2012.
[615] Republic of Mauritius 2010.
[616] Federal Republic of Nigeria 2008; 2009; 2011; United Nations General Assembly 2016.
[617] Republic of Senegal 2008; 2010a.
[618] Republic of Sierra Leone 2010.

Tanzania,[619] Tunisia,[620] Uganda,[621] and Zambia.[622] Usually, it was added that cooperation was important for the Court's successful execution of its mandate. South Africa illustrates the common way that African States Parties called on other states to cooperate with the ICC: "As we have said before, the Court will only be able to sustain its present momentum if it obtains the support from all States…"[623]

Declarations of cooperation are, prima facie, indications of support for the ICC. The ICC describes cooperation – alongside complementarity and universality – "as critical components for effective functioning of the Rome Statute legal system."[624] The importance placed on cooperation by the ICC supports the interpretation of declarations of cooperation as a sign of loyalty behaviour. This is because the States Parties that promoted cooperation would know that their fellow ICC States Parties would be aware of the centrality of cooperation for the ICC. This awareness would stem from the ICC's own emphasis on this but also from their awareness of the limited implementing powers at the ICC's disposal. Moreover, the promotion of cooperation by African States Parties is, arguably, more poignant within the context of AU calls for non-cooperation with the ICC with respect to some of its arrest warrants. Overt statements of, and calls for, cooperation within the context of the withdrawal debate or tense ICC-African relations seem to be a clear indication of loyalty to the ICC. The generic statements of cooperation with the ICC are indications of this loyalty and/or the intent to remain loyal.

Botswana and South Africa both expressed concern about the lack of cooperation with the ICC's arrest warrants: "Botswana therefore remains deeply concerned about 16 arrest warrants issued that remain outstanding to date"[625] and South Africa's statement: "…we remain concerned about the high incidence of non-cooperation relating not only to cases of non-execution of outstanding arrest warrants, but also to recent events surrounding the

[619] United Republic of Tanzania 2010.
[620] Tunisian Republic 2012; 2013; 2014.
[621] United Nations General Assembly 2008.
[622] Republic of Zambia 2010.
[623] ICC GD 2008.
[624] 'Fostering Cooperation, Complementarity and Universality' n.d.
[625] Republic of Botswana 2018b.

detention of ICC staff members."[626] These statements are notable because they contrast starkly with the AU's call for non-cooperation with the arrest warrant of al-Bashir, which was first issued in 2009. These comments suggest public departures from the collective position encouraged by the AU.

Lesotho and South Africa[627] both noted that, while cooperation with the ICC from all States Parties was important, the ICC also needed to clarify what cooperation entails. In 2010, Lesotho noted: "…we are acutely aware of the necessity for States to have a consistent, clear and unambiguous framework for cooperation under the Statute"[628] and in 2011 "[w]e are acutely aware of the differentiation in interpretation of cooperation."[629]

Comparable to the generic pledges of cooperation, the calls for other States Parties to cooperate with the ICC indicates loyalty behaviour. It asserts that the ICC ought to be granted a facilitative environment because its work is worthwhile. This implies satisfaction with (as well as faith in) the ICC, and thereby loyalty to it.

The calls by Lesotho and South Africa for the disambiguation of the term 'cooperation' indicates loyalty since they suggest that these states are concerned about upholding their obligations to the Court and, thus, need clarified definitions. Their drive to ensure their compliance with their ICC cooperation obligations might be driven by the broader desire to be law abiding (and, thus, influenced by a broader commitment to the rule of law norm).

It is worthwhile considering Cabo Verde's 2017 UNGA GD statement, which was the only statement for this State Party. The choice of the UNGA GD forum – the most general of the three IO forums considered in this study – suggests that Cabo Verde sought to signal a generally pro-ICC/rule of law position to an audience that was not specific to the ICC. The timing is also relevant. Cabo Verde stated its loyalty to the Court in the year that Burundi's

[626] United Nations General Assembly 2012.
[627] South Africa referred to this issue twice in 2009: once at the ICC General Debate and once at the UNGA ICC Report Plenary.
[628] United Nations General Assembly 2010.
[629] Republic of Botswana 2011.

withdrawal came into effect. Furthermore, this is the same year that the AU's draft withdrawal strategy was discussed. Cabo Verde probably sought to make its position regarding this matter clear to the international community vis-à-vis the UNGA.

8.2.3.2. Cooperation as a situation country

Another way that cooperation was expressed was from the point of view of being a situation country or a country under preliminary investigations. These States Parties emphasised that they were being cooperative with and facilitative of the ICC's investigations in their countries. For example, the DRC often went into painstaking detail about how its cooperation with the ICC was a model for state-ICC cooperation. The DRC stated: "As far as cooperation is concerned, we will not stop saying it, the Democratic Republic of Congo is the very first State Party to have developed significant cooperation with the ICC. The acts of cooperation carried out by my country certainly make it a model of cooperation with the ICC…"[630] The African States Parties that referred to their cooperation with the ICC in their capacity as situation countries were CAR,[631] Côte d'Ivoire,[632] the DRC,[633] Kenya,[634] Guinea (while under preliminary investigations),[635] Mali,[636] Nigeria (while under preliminary investigations),[637] and Uganda.[638]

A notable exception is Nigeria for two reasons. First, it was a preliminary investigation situation as opposed to the others, where full investigations were underway. Second, Nigeria stated its cooperation with the ICC's preliminary investigations, but it also emphasised its domestic capabilities to address the Boko Haram conflict. For example, "Nigeria has demonstrated beyond any iota of doubts that it is capable, willing and indeed is arresting, investigating, prosecuting and convicting, where the facts of the cases warrant,

[630] Democratic Republic of Congo 2013 The importance placed upon being seen as a "model for cooperation" with the ICC was a consistent thread across the DRC's addresses – including its voice statements.
[631] Central African Republic 2010a.
[632] Republic of Côte d'Ivoire 2014.
[633] Democratic Republic of Congo 2008; 2013; United Nations General Assembly 2009a.
[634] Republic of Kenya 2010b; 2012; 2010a.
[635] Republic of Guinea 2010.
[636] Republic of Mali 2015.
[637] Federal Republic of Nigeria 2014; 2016; 2018; United Nations General Assembly 2016.
[638] Republic of Uganda 2011; 2015; 2018.

perpetrators of heinous crimes in fulfillment [sic] of our primary national jurisdiction over Rome Statute crimes."[639] This statement indicates that Nigeria is asserting that the ICC's jurisdiction over the situation does not need to be triggered since it is responding appropriately domestically. Yet, the fact that it still emphasised its cooperation and support to the Court suggests its loyalty. This contrasts with voice speech acts that challenge the credibility of the Court in comparable situations.[640]

Emphasising cooperation sends the message that the situation country has complied with the norms and obligations set out in the Rome Statute. Furthermore, it suggests that issues with investigations are not due to a neglect of cooperation duties by the situation country, thereby pre-emptively disarming their audience. For example, it seems that cooperation and compliance was emphasised by Kenya as a tool to self-legitimise through indicating loyalty behaviour. Kenya concluded one of its statements with support and a request for assistance from the ICC:

> In conclusion, it is my pleasure to once again compliment the work of the International Criminal Court and reaffirm Kenya's commitment to our obligations under the Rome Statute. By the same token, Kenya would wish to appeal to all organs of the Court to extend the same cooperation and mutual regard to the bona fide requests for assistance in finding a just and lasting solution to the problems that triggered the Kenya cases.[641]

This suggests that there might have been another incentive at play for Kenya's wanting to be seen as cooperative with the Court: assistance. However, Kenya also implies that the ICC had not taken its requests seriously enough, suggest by its claim of sincerity and appeal for the ICC to reciprocally cooperate with Kenya. Therefore, it seems more likely that Kenya's emphasis on its own cooperation was motivated by the desire for it be seen as compliant and to lend gravity to its calls for more cooperation from the ICC, which simultaneously implies that the ICC has not been upholding its side of cooperation.

---

[639] Federal Republic of Nigeria 2018.
[640] For example, Kenya was emphatic that it was willing and able to conduct domestic proceedings in response to its 2007/08 post-election violence. This was after the fact that the ICC had initiated investigations when no domestic processes were underway. See, previous chapter on voice.
[641] Republic of Kenya 2012.

8.2.3.3. Domestication of the Rome Statute

The domestication of the Rome Statute refers to national-level initiatives to align their domestic legal frameworks with the Rome Statute. This could be through passing new laws that incorporate the Rome Statute or by adjusting existing legislation to incorporate the Rome Statute. African States Parties that referred to domestication of the Statute usually tied it to enhancing cooperation and/or complementarity. Benin's statement is an example of a detailed reference to domestication:

> Since then [ratification], the Benin Code of Criminal Procedure was amended in 2013 to allow full cooperation with the Court. The amended Code devotes a whole title to cooperation with the ICC. In addition, Benin is taking the appropriate steps to adopt a law to bring its national legislation into conformity with the Rome Statute and its effective implementation according to the principle of complementarity. The adoption of such a law will give the Republic of Benin the primacy of judgments for crimes under the jurisdiction of the ICC and will allow the definitive end to impunity for these crimes in our territory.[642]

The African States Parties that referred to their efforts to domesticate the Rome Statute included: Botswana,[643] Benin,[644] Burkina Faso,[645] CAR,[646] Congo-Brazzaville,[647] the DRC,[648] Ghana,[649] Kenya,[650] Mauritius,[651] Nigeria,[652] South Africa (specifically regarding domesticating the crimes of aggression amendment),[653] Sierra Leone,[654] and Uganda.[655]

---

[642] Republic of Benin 2017.
[643] Republic of Botswana 2016; 2017; 2010a; United Nations General Assembly 2010.
[644] Republic of Benin 2017.
[645] Republic of Burkina Faso 2010b; 2011; 2010a.
[646] Central African Republic 2010a.
[647] Republic of the Congo 2010.
[648] Democratic Republic of Congo 2008; 2013.
[649] Republic of Ghana 2012; 2013.
[650] United Nations General Assembly 2008.
[651] Republic of Mauritius 2010.
[652] Federal Republic of Nigeria 2008; 2009; 2010a.
[653] Republic of South Africa 2014.
[654] Republic of Sierra Leone 2010.
[655] Republic of Uganda 2008; 2009.

The States Parties that referred to their efforts to domesticate the Rome Statute shows their desire to be seen as proactively supporting the ICC through formalising their domestic cooperation and complementarity frameworks. However, there is another benefit to domestication. It establishes domesticate legislative capability to preside over core crimes, thus facilitating the primacy of national jurisdiction. This might bolster States Parties' images within the international community as adhering to the rule of law and of the competence their domestic governance.[656]

There are limited academic sources that have up-to-date information about which African States Parties have domesticated the Rome Statute.[657] A combination of note verbales submitted to the ICC, domestic legislation, and grey literature confirms that seven[658] of the nine African States Parties that referred to the importance of domesticating the Rome Statute eventually did so themselves.[659] Only two – Ghana and Nigeria – had not domesticated the Rome Statute at the time of writing.[660]

8.2.3.4. Complementarity

Complementarity emerged as a theme in both voice and loyalty statements. While complementarity is a shared signifier[661] across loyalty and voice statements, the actor who is identified as responsible for upholding the principle differed. States that referred to complementarity as the need for states to uphold their complementarity obligations and

[656] Of course, legislation alone is not a sufficient condition for domestic capability to preside over core crimes. For example, appropriately trained legal professionals and witness protection programmes would be needed in addition to infrastructure. Nonetheless, legislative measures are a prerequisite for domestic capability.
[657] The best source that was found was from 2013 wherein it was stated that 12 African States Parties (i.e. 35% of the African bloc) had domesticated the Rome Statute. See: Broache 2015, 4
[658] Namely, Benin (2018), Burkina Faso (2009), South Africa (2002), Botswana (2017), the DRC (2015), Kenya (2009), and Uganda (2010).
[659] Benin 2019a; Burkina Faso 2012; Republic of South Africa 2010a; Embassy of the Republic of Botswana 2011; Human Rights Council: Working Group on the Universal Periodic Review 2017; 'National Implementation of IHL - Law 15/022 Modifying the Penal Code; Law 15/023 Modifying the Military Penal Code; Law 15/024 Modifying the Penal Procedure Code' n.d.; The National Council for Law Reporting with the Authority of the Attorney-General n.d.; Republic of Uganda 2010.
[660] 'Nigeria and the Rome Statute' n.d.; 'Nigeria' n.d.; Emejo 2018; 'Report of the Public Hearing on the Bill for "An Act to Provide for the Enforcement and Punishment of Crimes Against Humanity, War Crimes, Genocide and for Other Related Offences"' 2018; Africa Center for International Law and Accountability, n.d.
[661] De Cleen et al. 2021, 27.

the need to develop domestic capacity were understood as statements that signified loyalty behaviour. This is because such statements placed the burden of responsibility of complementarity on states – not the ICC. African States Parties that referred to complementarity in this manner include Botswana,[662] Côte d'Ivoire,[663] Ghana,[664] Kenya,[665] Senegal,[666] Sierra Leone,[667] South Africa,[668] Tunisia,[669] and Uganda.[670]

For example, Ghana noted in its 2018 ICC GD contribution:

> Complementarity is a necessary tool for the full realization of the objectives" of the Statute. The need for building the domestic capacity of Judges, prosecutors and other key officials in the domestic judicial systems of States Parties becomes imperative if they are to effectively punish crimes of impunity. Ghana calls on States Parties with the required capacity to provide technical assistance to less endowed countries to enable them deal with these crimes in accordance with the tenets of the Statute.[671]

Kenya's allusion to complementarity in its ICC GD statement in 2010 shows a different way that a reference to complementarity can be seen as a signifier of loyalty:[672]

> As we go about facilitating the Prosecutor of the Court in his investigations, we are of course deeply aware that it is the primary responsibility of Kenya to exercise criminal jurisdiction over those responsible for international crimes. In this regard, we are undertaking far reaching reforms of our national institutions to reinforce their capacity to investigate and prosecute the most serious crimes of international concern.[673]

---

[662] United Nations General Assembly 2010.
[663] Republic of Côte d'Ivoire 2014.
[664] Republic of Ghana 2017; United Nations General Assembly 2017.
[665] Republic of Kenya 2009; 2012.
[666] United Nations General Assembly 2018.
[667] Republic of Sierra Leone 2012; United Nations General Assembly 2010; Republic of Sierra Leone 2010.
[668] Republic of South Africa 2009; United Nations General Assembly 2009a South Africa referred to complementarity in its 2014 UNGA ICC Report Plenary address, but it does not seem to be clearly a commendation of the Court or a criticism. Rather, it seems that it was noted as a way to demonstrate the multilateral work that South Africa was doing.
[669] Tunisian Republic 2013; 2014.
[670] Republic of Uganda 2012; 2018.
[671] Republic of Ghana 2018.
[672] Uganda also detailed the ways that it had upheld the complementarity principle in its ICC GD 2012 and ICC GD 2018 speeches.
[673] Republic of Kenya 2010b.

In its recognition of its responsibility to prosecute international crimes and the need for its national system to be reformed in order to be capable of doing so, Kenya inadvertently recognised the reason why the ICC's involvement in its situation was appropriate. It essentially admitted that there was need for domestic reforms to improve its capacity to tackle such crimes. Furthermore, Kenya did not suggest that it saw the ICC's involvement as no longer valid once these reforms were undertaken.

Complementarity is considered a sign of loyalty because it indirectly suggests support for the Court through the emphasis placed on States Parties' complementarity responsibilities and the desire to protect the Court from being overwhelmed. Ghana's call for States Parties to improve their own (and assist other states') domestic capability to prosecute core crimes situates the complementarity matter in the hands of States Parties – both to build their domestic capacity to tackle core crimes trials as well as to assist each other in this way. In fact, Ghana specifically refers to improving domestic capacity as a means toward promoting sovereignty. This contrasts with voice statements that referred to sovereignty as being undermined by the ICC's involvement in situations on the continent. The familiarity that the ASP has with the criticisms against the ICC that have emerged as tensions grew between the ICC and some African states seemingly shaped this statement. Ghana's commendation of the ICC for its positive complementarity endeavours reinforces the message that States Parties need to enforce their side of complementarity and signals satisfaction with the Court's conduct in this regard.

Kenya's implicit recognition that its domestic capability to preside over core crimes was insufficient as well as its not asserting that the ICC would not need to be involved in its case once reforms has been undertaken implies that Kenya was not asserting that the ICC was overstepping the complementarity principle. The timing of its comments is relevant. At this time, the ICC had not opened investigations into the Kenyan situation, nor had it issued summonses for any Kenyan state officials. The ICC had only launched preliminary investigations at this point. A desire to maintain good relations with the OTP and the ICC while under preliminary investigation might have influenced Kenya's statement.

8.2.4. The ICC is a Credible Institution

Defences of the ICC's reputation were considered a sign of loyalty. These defences often inferred that the ICC was a credible institution and noted its efficacy[674] – at times through drawing attention to specific accomplishments.[675] For example, Uganda clearly indicated its faith in the ICC as a credible institution when it said "Uganda supports the ICC as the world's principal partner in the fight against impunity for the most heinous crimes of concern to the international community."[676] The African States Parties that included statements defending the Court as reputable were: Benin,[677] Botswana,[678] Burkina Faso,[679] the DRC,[680] The Gambia,[681] Lesotho,[682] Mauritius,[683] Nigeria,[684] Senegal,[685] Sierra Leone,[686] South Africa,[687] Tunisia,[688] and Uganda.[689]

A notable statement that inferred the ICC's credibility is suggested by Benin's disagreement with accusations (from some African states) of the Court's being biased, selective, or unfair: "The Court should also increase its promotional activities in order to make itself better known and to dispel the false perception of its activities in certain parts of the world."[690]

---

[674] In fact, the DRC commended the ICC's progress despite the hostility it confronted in two of its addresses. For example, "As paradoxical as it may appear, the fact that such progress in the march of international criminal justice is taking place in the context of a robust campaign of hostility towards the Court serves as proof that the institution is, in fact, taking hold" (UNGA ICC RP 2009, A/64/PV.29).
[675] For example, South Africa: "On the judicial front, we note with appreciation the efforts of the Trial Chamber and the Appeals Chamber in the case of The Prosecutor v. Thomas Lubanga Dyilo, which relates to the situation in the Democratic Republic of the Congo, to ensure a fair trial by staying prosecution on account of its failure to disclose certain exculpatory evidence to the defence. Those efforts to ensure a fair trial by protecting the rights of the accused not only are in conformity with international human rights law, but will go a long way towards protecting the integrity of the Court as a fair and impartial institution" (UNGA ICC RP 2009, A/64/PV.29).
[676] UNGA ICC RP 2009.
[677] Republic of Benin 2017.
[678] Republic of Botswana 2016.
[679] Republic of Burkina Faso 2010b; 2011.
[680] Democratic Republic of Congo 2010; United Nations General Assembly 2009a.
[681] Republic of the Gambia 2010; 2014.
[682] Kingdom of Lesotho 2008; 2010.
[683] Republic of Mauritius 2010.
[684] Federal Republic of Nigeria 2010b; 2011; 2012; 2016; 2018; United Nations General Assembly 2017.
[685] Republic of Senegal 2008; United Nations General Assembly 2008; 2016; 2017; 2018.
[686] Republic of Sierra Leone 2014a.
[687] Republic of South Africa 2009; 2010b; United Nations General Assembly 2009a; 2010.
[688] Tunisian Republic 2011.
[689] Republic of Uganda 2008; United Nations General Assembly 2009b.
[690] Republic of Benin 2017.

Benin's reference to "the false perception" of the Court's conduct is the overtly rejects allegations that the Court is biased, unfair, or selective.

Similarly, Nigeria seems to be addressing African states that have criticised the ICC's investigations when it said:

> The expanding activities of the Court had [sic] evoked certain reactions among some stakeholders involved in various situations dealt with by the Court. My delegation would like to emphasise that the strong undercurrents underlying such reactions should be carefully addressed in order to build on the much-needed enabling consensus. The international community cannot afford to be interminably distracted from the common resolve to check crimes against humanity.[691]

Nigeria meant African states when it said "stakeholders" as all the ICC's situation countries at the time were in Africa. Nigeria seems to be taking a stance in favour of the ICC in the face of the resistance from these African states. Loyalty is demonstrated by how Nigeria spoke about this tension. While Nigeria does not specify the nature of the "undercurrents" that need to be "carefully addressed," the term is used pejoratively. This is suggested by the assertion that it undermines consensus.

Defences of the ICC were, at times, delivered using indirect language. This was likely shaped by the solidarity norm within the AU and served as a diplomatic way to publicly disagree with the AU and African states that have spoken against the ICC – as suggested by Benin and Nigeria's speech excerpts.

Sierra Leone defended the ICC by stating that the ICC was born from its States Parties' "collective will and determination to end impunity."[692] In other words, criticisms of the Court are criticisms of the States Parties themselves. Botswana directly addressed its fellow African States Parties when it expressed disappointment that "…most African State Parties

[691] Federal Republic of Nigeria 2010b.
[692] Republic of Sierra Leone 2014a.

have tended to shy away from publicly defending the credibility and integrity of the Court."[693]

Botswana's decision to directly address African States Parties within the ASP and criticise their lack of public defence of the ICC is a stark departure solidarity diplomacy. Botswana delivered its comments in 2016, which was the year of the three withdrawals. Undoubtedly, Botswana was influenced by this and sought to assert its loyalty to the ICC clearly to ASP members. Furthermore, it sought to anchor this loyalty assertion by highlighting that fellow African States Parties were acting hypocritically by not taking a firmer public position in support of the Court. The inference is that the time of withdrawals is a test of loyalty and African States Parties are not adequately living up to their claims of support when confronted with a difficult decision. The act of criticising this hypocrisy, in turn, reinforces Botswana's message of its own loyalty through implicitly contrasting itself with these African States Parties.

The Court was also defended by Burkina Faso, Nigeria, and Senegal when they suggested that the Court's shortcomings should be expected since it is a young institution.[694] For example, Nigeria stated: "Nigeria's support for the Court has particularly taken into account the fact that the Court as an institution is still relatively young. It is thus to be expected that aspects of its activities/operations will require reform and improvements, as is the case with every justice system in the world."[695]

Burkina Faso, Nigeria, and Senegal's defence of the ICC as a new institution implies that some of the critiques of the Court's deficits are unduly harsh. Their statements reframe the context in which the ICC's operations should be assessed from being an established international judicial institution that ought to be exemplary to one that sees the Court as an institution in its infancy and as requiring patience and understanding from States Parties. In other words, these comments disarm criticisms of the ICC by essentially communicating that

[693] Republic of Botswana 2016.
[694] Republic of Burkina Faso 2010b; 2010a; Federal Republic of Nigeria 2016; United Nations General Assembly 2008.
[695] Federal Republic of Nigeria 2016.

these should be seen as teething problems or growing pains. Additionally, this imagery is particularly summoned by the characterisation of the ICC as "young" by all three states, which may stir associations among the audience with notions of innocence, naivety, and (appropriate) immaturity. The framing of the ICC as young adjusts the standard by which to measure the Court's performance to one that requires recognising that the ICC is in the process of development and growth, and that this is a predictable and appropriate the phase for it to be in. This framing was likely determined by the knowledge that the States Parties to the ICC are aware of its novelty and its relatively recent establishment.

8.2.4.1. ICC Promotes International Norms

Assertions that the ICC promotes international norms was a frequent way that the ICC's reputation was defended and/or favourably presented. The norms that were usually referenced were anti-impunity, accountability, deterrence, justice for victims, rule of law, and the Responsibility to Protect (R2P). The African States Parties that defended and/or reflected approvingly on the ICC's reputation were Botswana,[696] Burkina Faso,[697] CAR,[698] Ghana,[699] Kenya,[700] Lesotho,[701] Nigeria,[702] Senegal,[703] Seychelles,[704] Sierra Leone,[705] South Africa,[706] Tunisia,[707] and Uganda.[708]

[696] Republic of Botswana 2008b; 2011; 2015; 2010a; 2008a; 2018a.
[697] Republic of Burkina Faso 2010b; 2011; 2010a.
[698] Central African Republic 2014.
[699] Republic of Ghana 2011.
[700] Republic of Kenya 2012; 2010a.
[701] Kingdom of Lesotho 2011; United Nations General Assembly 2008; 2010.
[702] Federal Republic of Nigeria 2008; 2012; United Nations General Assembly 2015b; 2016; 2017; Federal Republic of Nigeria 2010a.
[703] Republic of Senegal 2008; United Nations General Assembly 2008; 2009a; 2016.
[704] Republic of Seychelles 2014.
[705] Republic of Sierra Leone 2018.
[706] Republic of South Africa 2012; United Nations General Assembly 2012; 2014b South Africa commended the ICC for its positive achievements in the *Lubanga Dyilo* and *Katanga and Chui* cases and its staff for its implementation of the ICC's mandate in its 2012 ICC General Debate address. This is indirectly a signal of the ICC's credibility and promoting international law because South Africa is recognising, on the record, that the ICC has made progress in these cases and, thus, positively contributed to international justice.
[707] Tunisian Republic 2011; 2012; 2013.
[708] United Nations General Assembly 2008; 2010.

The CAR linked the ICC with international norms in its 2014 UNGA GD statement, which was likely linked to the fact that it had initiated its second self-referral to the Court that year. Other times, more specific norms were focused upon, for example, Botswana asserted that the ICC acts as a deterrent against the commitment of core crimes.[709] There were also instances where some states saw the ICC as generally promoting the Universal Declaration of Human Rights and the UN Charter.[710]

Statements that associated the ICC positively with international norms are an indication of loyalty because they imply that supporting the ICC is consistent with supporting these norms, and vice versa. It implies that states that wish to promote international norms, such as justice and accountability, should support the ICC since it contributes positively toward these norms. Given the way that these statements construct the intimate connection between the ICC and these international norms, the States Parties that issued such remarks sought to demonstrate their own support for these norms vis-à-vis their loyalty to the ICC. This might be shaped by self-legitimising motives, which are linked to the importance placed on adherence to international norms within global governance as a model of "good" state behaviour. The CAR's comments suggest this. The speech was delivered in 2014 by the interim president of the CAR, Catherine Samba-Panza, at the UNGA General Debate. She likely sought to present herself before the UNGA as a judicious leader. This is indicated by her statement in the first person of her commitment to fighting impunity. Her speech then refers to its ICC membership as evidence of its commitment to fighting amnesty. It seems that the CAR used a loyalty speech as a means to demonstrate the transitional regime's dedication to fighting impunity and thereby bolster its reputation to its fellow UN member states. Thus, the main aim of this part of the speech seemed to be to construct an image of the CAR as committed to addressing impunity. This aim was fulfilled by CAR through stating its dedication to the ICC.

Burkina Faso linked Africa's ICC commitments and the AU Constitutive Act: "Africa, of which the Member States constitute almost a third of the States Parties to the Statute, clearly

[709] Republic of Botswana 2011.
[710] For example, for the former two: Botswana (UNGA GD 2008; UNGA ICC RP 2010, A/65/PV.41). For the latter: Burkina Faso (ICC GD 2010; ICC GD 2011).

shows its willingness to engage in the fight against impunity, in accordance with the principles of the Constitution of the African Union."[711] This excerpt assumes the link between the Rome Statute and fighting impunity.

Burkina Faso's emphasis on Africa's commitment to the Statute and the anti-impunity provisions within the AU's Constitutive Act seems to be a defence of Africa's commitment to the anti-impunity norm. The AU's 2009 call for non-cooperation with the arrest warrant for al-Bashir might be the impetus behind such defences. It might have been Burkina Faso's intention to illustrate that the disagreement over al-Bashir's arrest warrant does not detract from Africa's general support for the Court and its dedication to fighting impunity. The reference to the AU's Constitutive Act likely seeks to demonstrate how the commitment to fighting impunity is a part of the AU's normative history and foundation. This suggests that Burkina Faso's statement was shaped by its loyalty to the AU as well as its loyalty to the ICC. Perhaps it aimed to suggest that these institutions are not mutually incompatible and, ultimately, have overlapping normative agenda. Thus, Burkina Faso's utterance seems to have been equally influenced by its internal audience – as indicated by its desire to demonstrate its loyalty to the ICC – as well as its external institutional relations with the AU. Burkina Faso's comments suggest that it sought to protect its membership to both institutions and to send the message of its intent to support both.

Another link made between the ICC and international norms was explained by Ghana: "In our view, the Rome Statute and the Responsibility to Protect are complementary in nature, in preventing or deterring impunity, or in the worst case scenario, punishing perpetrators of impunity when prevention or deterrence fails."[712]

It is likely that Ghana referred to the R2P norm because it had been invoked by the UNSC with regards to the Libyan case, which was referred to the ICC by the Council earlier that year (2011) in February. Thus, Ghana may have been indirectly signalling its support for the UNSC referral of the Libyan case to the ICC. Arguably, this constitutes a symbol of loyalty to

[711] Republic of Burkina Faso 2011 Burkina Faso made similar remarks in its ICC General Debate speech in 2010.
[712] Republic of Ghana 2011.

the ICC since it, de facto, accepts the ICC's capability and appropriateness to have jurisdiction over the Libyan matter (vis-à-vis the UNSC).

Although its overall speech in the ICC General Debate in 2011 was demonstrative of loyalty behaviour, it is notable that Lesotho criticised the Court's lack of timeliness with trials:

> I wish to conclude by reiterating a well-known principle that "Justice delayed is justice denied". We note that there are numerous trials pending either investigations or prosecution while the Prosecutor must do her work with utmost care and diligence, we would caution, however, that time is of essence in dealing with crimes against impunity [sic].[713]

Yet, even in its critique, Lesotho was mindful of presenting a balanced consideration of the factors that might have produced lengthy trials – such as the need for nuance and diligence. The careful way that Lesotho communicated this criticism is demonstrative of its loyalty to the Court, which it reiterated with: "Lesotho stands ready to support the work of this important Institution in all possible ways."[714]

The defence of the ICC's reputation and assertions of its credibility are a sign of loyalty because they inherently demonstrate support for the ICC. Additionally, the context of the withdrawal debate, which has been predicated on questions related to this, further suggests that positive reflections on and defences of the ICC's reputation is a signal of loyalty to the Court. It is possible that comments to this end were driven to some extent by the withdrawal debate itself. The withdrawal debate meant that doubts were cast about the ICC's credibility within and outside of the ASP. African States Parties that wanted to demonstrate their loyalty to the ICC therefore might have included defences of its reputation in response to this internal and external environment.

8.2.5. Approval of the ICC's Case Selection

[713] Kingdom of Lesotho 2011.
[714] Ibid.

A major issue area within the withdrawal debate has been the case selection of the ICC, which has earned accusations of its being biased, selective, and anti-African. Conversely, some African States Parties have expressed their approval of the ICC's case selection and/or its involvement in particular cases – namely, the ones that were not self-referred and a source of controversy, such as Darfur, Kenya, and Libya. Such views regarding the ICC's case selection were considered an indicator of loyalty because they act as a counter-narrative to the accusations of the ICC's impartiality as being compromised. The counter-narrative serves as a defence of the ICC's reputation, at least with regards to its case selection, and possibly generally as a credible institution. African States that positively reflected on the ICC's case selection were Botswana,[715] Burkina Faso,[716] DRC,[717] Ghana,[718] Lesotho,[719] Madagascar,[720] Mali,[721] Nigeria,[722] South Africa,[723] and Uganda.[724]

Some defences of the ICC's case selection rested on the validity of the ICC's investigations due to the nature of the crimes committed and highlighted the fact that many of the investigations were not initiated by the ICC. This challenged the construction by critical states of the ICC as deliberately targeting Africa. For example, the DRC addressed negative perceptions in Africa about the Court:

> Of course, our continent does not have a monopoly on serious violations of human rights and international law. The recent and ancient history of our planet attests to this. The DRC also notes with happiness that, outside our continent, situations in Colombia and Afghanistan are also the subject of concerns and analysis by the ICC Prosecutor!
>
> We must, however, recognize that Africa unfortunately presents itself as "a gigantic scene of crimes under international law", reinforced by political contexts of violence, and often

[715] Republic of Botswana 2016; United Nations General Assembly 2015b.
[716] Republic of Burkina Faso 2010b.
[717] Democratic Republic of Congo 2008.
[718] Republic of Ghana 2012.
[719] Kingdom of Lesotho 2008.
[720] Republic of Madagascar 2015.
[721] Republic of Mali 2015.
[722] Federal Republic of Nigeria 2014; United Nations General Assembly 2015b.
[723] Republic of South Africa 2008.
[724] Uganda, like Mali, expressed satisfaction with the Court's activities in its country Federal Republic of Nigeria 2009.

> incapacitating judicial contexts. There are political responsibilities to assume; judicial responsibilities to be established and exercised; and above all citizen responsibilities to be taken. Each and every one of us, African leaders, judicial operators and citizen organizations of civil society, has a role to play, with a view to achieving the same objective: protecting the victims, ending crimes and ending impunity. This is the essential.[725]

The DRC overtly shows that it supports the ICC and does not support claims that the ICC is unfairly targeting Africa. It concedes that there are other regions that should be investigated and applauds preliminary investigations underway in Afghanistan and Colombia. However, the DRC defends the ICC's presence in Africa as appropriate for the prevalence of applicable crimes committed and the systemic weaknesses on the continent. The DRC argues that the ICC was created for the purpose of "protecting the victims, ending crimes and ending impunity." [726]

Similarly, Botswana defended the ICC's involvement in Africa and countered arguments that the ICC was unfairly targeting Africa: "I am mindful of the perception that the ICC unfairly targets African countries. The reality is that atrocious human rights abuses and other serious crimes that merit [the] ICC's attention have and continue to be committed in Africa. And in the majority of situations, it is Africans themselves who invite the intervention of the Court."[727] Like the DRC example, Botswana directly challenged criticisms of the ICC's case selection in Africa and concluded that the investigations were an appropriate response to the nature of the conflict-related crimes.

In a rather different type of positive reflection regarding the ICC's cases, Nigeria stated: "Nigeria welcomes the decision of the Court to drop the charges hitherto preferred against President Uhuru Kenyatta of Kenya. We believe this is a step in the right direction and hope that the resolution of this matter will open further channels for the resolution of associated matters still pending before the Court."[728] Unlike the other examples, this expression of satisfaction with the ICC's case selection is rooted in contentment with the discontinuation

[725] Democratic Republic of Congo 2008
[726] Ibid.
[727] Republic of Botswana 2016.
[728] Federal Republic of Nigeria 2014.

of a case that Nigeria had previously expressed dissatisfaction about. Nigeria overtly expressed its dissonance with the ICC's involvement in Kenya in its ICC GD statement in 2013 (see Chapter 7).

Both the DRC and Botswana pointed to the factual nature of the conflicts that the ICC was investigating as being appropriately selected. They defended the ICC's investigations on the continent as merited. This indicates loyalty to the ICC because it shows that these states – and the others that also indicated support for the ICC's case selection – were willing to directly challenge the narrative raised by fellow African States Parties that the ICC was biased. States that defended the ICC's case selection did so in the context of campaigns that sought to discredit the ICC as neo-colonial and anti-African. Their choosing to publicly defend the ICC within the ASP indicates their aligning themselves with the ICC over the states that criticised the ICC's case selection as maliciously targeting Africa or as evidence of the ICC's lack of credibility. The DRC, for example, recognised that there are other situations that the ICC could/should also investigate, but that this fact did not subtract from the appropriateness of the ICC's investigations on the continent. Botswana's highlighting that many of the African states were self-referred to the ICC not only challenges the anti-African narrative but also implicitly challenges a state like Uganda, which self-referred but has also accused the ICC of being anti-African. The DRC's defence of the Court's case selection was slightly more sympathetic to the criticisms of the ICC's caseload whereas Botswana's wholly defending the ICC.

Nigeria expressed satisfaction with the ICC's no longer investigating Kenyatta and alluded to its dissatisfaction that other investigations were still pending. Nigeria was not specific – presumably it meant against Ruto given it was referring to the Kenyan case at the time and had not previous indicated dissatisfaction with the ICC's other investigations. Additionally, its use of the phrase "step in the right direction" suggests its desire to see other changes within this case. Intertextuality assists with interpreting Nigeria's satisfaction with the ICC's ending its case against Kenyatta. This speech act is interesting because the satisfaction expressed seems to be a successful result of its voice speech whereby it criticised the ICC's investigations into Kenyatta.

This speech extract from Nigeria shows the interplay between exit, voice, and loyalty. Specifically, it illustrates how a state's behaviour can move from voice to loyalty once its discontent is seen to be addressed. The dynamism of States Parties' behaviour toward the ICC within the withdrawal debate is captured by the EVL framework, which avoids classifying a state as strictly for or against the ICC and allows the intricacies of support or discontent to be surfaced and understood.

8.3. Conclusion

This chapter focused on the loyalty behaviour of African States Parties. This was operationalised by applying the three dimensions of discourse analysis to country statements that were delivered by African States Parties at the ICC GDs, UNGA RPs, and UNGA GDs between 2008 and 2018. Discourse analysis was used to examine statements that predominantly expressed dissatisfaction with the Court. Discourse analysis was a useful tool for navigating the diplomatic conventions of speech-giving in IO forums such as the ICC and UN. Measuring loyalty in such statements is especially murky since these statements typically include platitudes about the norms associated with the ICC or the ICC itself regardless of an otherwise critical statement. Discourse analysis helps identify and analyse other markers of loyalty.

Five broad themes were identified across the 137 loyalty statements. These themes were a collection of withdrawal debate-related sub-themes, calls to increase the ICC's powers, the promotion of cooperation with the ICC, defences of the ICC's credibility, and approval of the ICC's case selection. Loyalty is demonstrated in several ways. Calls for an expanded ICC's judicial powers and more resources to be given to the Court indicates the states consider the ICC as capable of handling added resources and an expanded jurisdiction. Cooperation is expressed in different ways including encouraging cooperation with the ICC, content with the ICC's enactment of the complementarity principles, and efforts to domesticate the Rome Statute, which few African States Parties have done. Defences of the ICC's case selection and credible reputation are signs of loyalty because they rebut critiques of the Court that prevailed during the withdrawal debate period. Similarly, other rebuttals or defences of the ICC related to withdrawal debate themes such as ICC-African relations and

counter-arguments to exit behaviour. Notably, an area of discontent within loyalty statements by Sierra Leone, Nigeria, The Gambia, and repeatedly by South Africa regarded the UNSC's referral and deferral powers. Similar to the voice statements, this is evidence of these states using the ICC forums to air their grievances related to the UNSC structure.

Cumulatively, Chapters 6, 7, and 8 answer the first sub-question of the dissertation, what are the different types of behaviour that African States Parties have practiced in relation to the ICC regarding the withdrawal debate? The chapters show the applicability of the exit, voice, and loyalty categories to the African States Parties' behaviour based on their country statements. They demonstrate that the EVL model is a useful tool to guide the analysis of the country statement material to answer this sub-question. Having identified the types of behaviour demonstrated by African States Parties during the 2008 and 2018 period, it is possible to begin explaining the motivations for these differing types of behaviour. Chapter 9 explains that causes of the different types of behaviour.

9. THE MAIN FACTORS AFFECTING AFRICAN STATES' BEHAVIOUR REGARDING THE ICC

The preceding chapters – Exit, Voice, and Loyalty – each examined the country statements using the three dimensions of discourse analysis as a tool to determine if an African State Party was demonstrating exit, voice, or loyalty. The EVL model combined with discourse analysis enabled a robust method for classifying state behaviour. Having classified the country statements and analysed the discursive factors that shaped their articulation, this chapter addresses the central question of this dissertation: what are the main factors influencing African States Parties' behaviour in relation to the ICC with regards to the withdrawal debate?

To answer this question, the interplay of five causes of Africa's international relations behaviour is considered together with the behaviour evidence from the previous three chapters, interview data collected, available academic and grey literature, and news articles. The causal factors identified are derived from the existing academic literature that seeks to explain Africa's international relations. The factors are head of state interest, domestic factors, regional politics, reputational factors, and economic factors. This chapter organises the analysis by allocating states to the heading that predominantly explains their behaviour or a specific period of behaviour that defined the state in relation to the withdrawal debate.[729] This is for organisational purposes and does not imply that only one explanatory factor is relevant to explain a state's behaviour. Contrarily, one of the expected advantages of using the EVL model is that it allows for multifactorial explanations and that these factors interplay in complicated ways within and across states and time.

Additionally, there is the issue of how to treat states that were not proactively engaged in the IO forums that were studied to enable the EVL classification. In addition to considering the other explanatory factors, it is considered whether these states could be labelled 'zombie States Parties.' This term has been derived from Julia Gray's IO research, which proposes that some IOs exist in name alone. She argues that these are 'zombie'

[729] For example, South Africa's exit from the ICC defines its behaviour within the withdrawal debate although it exhibited other types of behaviour.

organisations since they are neither active nor disbanded. Gray notes that there might be some activities that indicate the IO is still active, but this is minimal, and the IO does not meaningfully contribute to advancing their normative agenda or cooperation.[730] Gray's terminology seems applicable to states in relation to their IO behaviour.

Thus, zombie States Parties refer to states that are dormant within an IO. They do not exit but do not actively partake in the IO's activities that promote its normative agenda. Thus, they are zombie member states. They may still send delegates to attend annual meetings and might remain up-to-date with their membership contributions, for example, which would constitute the minimum level of participation.

Due to space constraints, this chapter highlights convergences and divergences between the states studied and within their behaviour over time. Case studies of each African State Party is in Appendix 5. The proceeding sections explore the main explanatory variables for states' behaviours in relation to the ICC and the withdrawal debate.

9.1. Head of State Interest

The head of state interest factor is derived from the academic literature that has identified the influence that African chief executives often yield over foreign policies. However, it is more focused and considers where state behaviour in relation to the ICC can be seen as political decisions made with the objective of self-preservation by the head of state. This preservation might extent to other ruling elite that are identified as having utility for the chief executive. This factor has realist assumptions: it assumes that a head of state's relations with the ICC are determined by their interest to retain power.

Burundi, The Gambia, Kenya, and Liberia's behaviour is best explained, primarily, by the head of state interest factor. However, the behaviour this factor explains varied. For Burundi and The Gambia, it explains exit behaviour. However, it explains voice behaviour for Kenya and loyalty behaviour for Liberia.

[730] Gray 2018, 1.

9.1.1. Burundi and The Gambia

Burundi and The Gambia each had autocratic presidents in power at the time of their exit behaviour. Both leaders were accused of alleged human rights abuses during their regimes. The late Pierre Nkurunziza ruled Burundi as president from August 2005 until his death in June 2020. Nkurunziza's regime was accused of violent repression and committing crimes such as arbitrary arrests and detentions, torture, and extrajudicial killings.[731] The Gambia was ruled by Yahya Jammeh from 1994 until he lost an election in December 2016 and fled the country in January 2017 after refusing to accept this outcome.[732] Jammeh's regime was notorious for its oppressiveness and serious human rights violations – particularly after a failed coup in December 2014.[733] The existing literature as well as interview data agree that the exit behaviour for these states was driven by the interests of Nkurunziza and Jammeh to retain power and evade ICC prosecution.[734]

---

[731] Amnesty International 2020.
[732] Keppler 2017.
[733] Ssenyonjo 2018, 70; Woolaver 2019a, 25.
[734] As of November 2021, no single case studies of Burundi's withdrawal from the ICC were available with the exception of a research brief written by Stef Vandeginste, in which he aims to show that withdrawal was rational, rather than reactionary, behaviour by Burundi. The brief offers several rationalist reasons for Burundi's exit but does not assert any of these explanations are more or less convincing. The reasons given included that Burundi historically has not demonstrated substantive commitment to the Rome Statute, withdrawal was the "next step" in Burundi's international fallout over its 2015 election controversy, there are few costs to withdrawal, the context of other African states questioning the ICC's legitimacy, and self-legitimation strategy domestically. Single case studies of The Gambia's relationship with the ICC were not found at the time of writing, although many news articles have been written that documented The Gambia's withdrawal from the ICC – and its reversal of this decision. Academic reflections on The Gambia's withdrawal – in comparative studies – have concluded that The Gambia's withdrawal was driven by head of state interest where Jammeh sought to prevent investigations into his regime. Three interviews (the government official; Clark; and Tladi) agree that exit was caused by Jammeh's desire to avoid prosecution. Stef Vandeginste, 'The ICC Burexit: Free at Last?', Analysis and Policy Brief (Institute of Development Policy and Management, University of Antwerp, October 2016), accessed 31 July 2020, https://www.uantwerpen.be/images/uantwerpen/container2673/files/Publications/APB/20-Vandeginste.pdf; Ssenyonjo, 'State Withdrawal Notifications from the Rome Statute of the International Criminal Court', 68; Bâ, *States of Justice*, 149; Southern Africa Litigation Centre, 'ICC Withdrawals: Is Africa Running Away from Justice?', Seminar Report (World Forum, The Hague, 18 November 2016), 6, accessed 17 August 2020, https://www.africalegalaid.com/download/Conference-Reports/seminar-report-is-africa-running-away-from-justice.pdf; Goldstone, Key Informant Interview; Mark Kersten, Key Informant Interview, Zoom, 15 July 2021; South African Government Official, Key Informant Interview, Zoom, 20 July 2021; Dire Tladi, Key Informant Interview, Zoom, 31 August 2021; International Law Expert, Key Informant Interview, Zoom, 30 September 2021; Phil Clark, Key Informant Interview, Zoom, 20 July 2021; ICC Academic, Key Informant Interview, Zoom, 2 August 2021.

Burundi's exit behaviour in relation to the ICC should be understood within the context of the domestic violence that followed the announcement on 25 April 2015 Nkurunziza would be running for a third term in office.[735] The presidential elections were postponed twice due to violence and security concerns.[736] The violence in Burundi prompted a response from the ICC's OTP. Bensouda issues a statement on 6 November 2015 – four months after the disputed presidential elections of July 2015 – in response to the increased violence in Burundi:

> I recall that any person in Burundi who incites or engages in acts of mass violence including by ordering, requesting, encouraging or contributing in any other manner to the commission of crimes falling within the jurisdiction of the International Criminal Court ("ICC" or "Court") is liable to prosecution before this Court.[737]

Bensouda unambivalently and publicly announced her intent to investigate Burundi: "…any conduct in Burundi – whether by the Security Forces, militias or any armed group – amount to war crimes, crimes against humanity, or genocide, no-one should doubt my resolve to fulfil my mandate so that the perpetrators do not go unpunished."[738] This shows that the political elite were at risk of ICC investigations.

Burundi's first ICC General Debate statement, which was classified as voice, was issued ten days after Bensouda's announcement. This voice statement highlighted the Court's shortcomings, questioned its credibility, and stated support for the AU's call for head of state immunity. This suggests that Burundi's decision to address the General Debate forum was a response to the OTP's threat to investigation the Burundian situation. Furthermore, its public declaration of support for the head of state immunity position of the AU was evidently self-interested. This is suggested by the fact that it did not lend its support for the AU's position at the ICC GDs until its own officials were threatened.

[735] Vandeginste 2016, 2.
[736] Initially, they were scheduled for 26 June 2015, then rescheduled to 15 July but then postponed again to 21 July. Kushkush 2015; Stonestreet, Levine, and Tyburski n.d.
[737] International Criminal Court 2015b.
[738] International Criminal Court 2015b.

Preliminary investigations into Burundi were announced by the Bensouda on 25 April 2016.[739] The same year, withdrawal proceedings were initiated: on 12 October 2016, Burundi's parliament voted in favour of exit and the notification of withdrawal was deposited 11 days later. This suggests exit was a response to the preliminary investigations.[740] The OTP's threatened and actual preliminary investigations sparked Burundi's voice and exit behaviour in 2015 and 2016. Burundi's 2013 voice statement at the UNGA General Debate, which defended head of states, reinforces the understanding that Burundi's behaviour in relation to the ICC was because of Nkurunziza's interest to retain power and avoid prosecution. As noted earlier, interview data suggested this position, for example, "Burundi left because, because it knew… its leaders knew they would very soon be investigated by the, by the Prosecutor"[741] and "Nkurunziza's government [was] spooked by the possibility of serious investigations into ruling party behaviour. I think it is actually as simple as that."[742]

While the election crisis (i.e., a domestic factor) is an important contextual factor for Burundi's behaviour with the ICC, it is not an explanatory variable. It is implausible that Burundi would have withdrawn if the OTP had not threatened and launched preliminary investigations into the crisis. The OTP's investigations are a direct causal factor. However, regional factors also are relevant to some extent – they might explain why Burundi chose to exit rather than use sustained voice behaviour.

The reality of the ICC in The Gambian case is contested. There is scepticism that Jammeh would have feared ICC investigation. Kersten argues that the scale of the abuses committed under Jammeh's regime were unlikely to attract the ICC investigations and that in June 2016, Bensouda had decided against investigating The Gambia on the basis that the crimes

[739] "In the course of the on-going crisis, more than 430 persons were reportedly killed, at least 3,400 people have been arrested and over 230,000 Burundians forced to seek refuge in neighbouring countries. My Office has reviewed a number of communications and reports detailing acts of killing, imprisonment, torture, rape and other forms of sexual violence, as well as cases of enforced disappearances. All these acts appear to fall within the jurisdiction of the ICC. I have decided therefore to open a preliminary examination into the situation in Burundi since April 2015" (International Criminal Court 2016).
[740] Vilmer 2016, 1327; Vandeginste 2016.
[741] Goldstone 2021.
[742] P. Clark 2021.

committed did not fall under the ICC's mandate.[743] However, Sanchez[744] argues that circumstances changed when The Gambian Interior Minister Ousman Sonko sought asylum in Sweden in September 2016 after Jammeh fired him: "Sonko is an intelligence goldmine for the West. If quizzed, Sonko could reveal certain information that would warrant the ICC to take Gambia's case seriously."[745]

Jammeh's interests were evidently to retain power, as was soon demonstrated after The Gambia's withdrawal when he refused to accept electoral defeat.[746] While the electoral events do not explain the exit behaviour, they lend support to the interpretation that Jammeh was intent on retaining power. This is further supported by The Gambia's concluding voice statement at the 2013 ICC General Debate, which specifically supported head of state immunity: "The Gambia wishes to align itself with the AU resolution that no sitting African head of state should appear before an international court."[747] The Gambia's particular mention of support for the generalised immunity of heads of state – rather than the specific application of this to the Kenyan situation, which had been the focus of the statement that Uganda delivered on behalf of the AU at the same session – suggests that The Gambia's voice behaviour was also shaped by head of state interest. Cumulatively, this supports the interpretation that The Gambia's withdrawal was self-interested, even if it was a response to a perceived, rather than real, ICC threat.

Furthermore, regional politics were a secondary factor explaining Burundi and The Gambia's exit behaviour. The AU's narrative about the ICC's targeting of Africa as well as South Africa's deteriorating ICC relations were additional factors that shaped their exit behaviour.[748] The AU's narrative about the ICC gave them a readymade discourse that presents exit behaviour as part of a broader movement. Furthermore, South Africa's bad relations with the ICC (and withdrawal two days before Burundi's) might have emboldened

[743] Kersten 2017a.
[744] Who also argued that Jammeh may have simply withdrawn on a whim, as he did when he left the Commonwealth.
[745] Sanchez 2016.
[746] Park and Busari n.d.; Oduah n.d.; McAllister 2016; *BBC News* 2017.
[747] Republic of The Gambia 2013.
[748] International Law Expert 2021; Kersten 2021.

Burundi, and later The Gambia,[749] since were in good company (given South Africa's generally positive international and regional reputation). Clark reflects about the role of the AU's narrative about the ICC:

> …I think that part of the Burundian calculation would have been, that an anti-ICC stance was about protecting Nkurunziza or his government from ICC scrutiny, but there was also a hope that this might mesh with a broader anti-ICC dimension that was very strong in Rwanda that was growing in Uganda and Congo, and that was already pretty well entrenched at the AU level."[750]

Sprouse echoes this viewpoint, regarding The Gambia's justifying its withdrawal as an expression of collective action against a "racist" Court.

9.1.1.1. The Gambia's Loyalty Behaviour

Notably, The Gambia has also demonstrated loyalty behaviour toward the ICC under the Jammeh regime. At the ICC Review Conference in 2010, The Gambia declared its support for the ICC, mentioned ways that it had cooperated with it (e.g. up to date with financial contributions), and then stated: "The Gambia's democratic credentials are made manifest by the fact that it is hosting the headquarters of the African Commission of Human and Peoples' Rights, since the inception of that noble institution."[751] This suggests that The Gambia sought to demonstrate its commitment to democracy to the ICC audience and/or that The Gambia saw its association with the ICC as a demonstration of adherence to democratic principles. Thus, the loyalty behaviour seems caused by reputational factors.

The Gambia also demonstrated loyalty behaviour 2014, which demonstrated satisfaction with the ASP President's plan to address areas of concern raised with the ICC. Since this was the year that Sidiki Kaba was elected President of the ASP, it is possible that The Gambia was indicating its support for a fellow African national. Even the 2015 country statement delivered erred on the side of loyalty, even though it noted some areas of discontent. In

[749] Sprouse 2016.
[750] P. Clark 2021.
[751] ICC RC 2010.

both the 2014 and 2015 statements, it seems that The Gambia's interest to note areas for the ICC to improve but also to indicate its continued support for the Court and commitment to anti-impunity. The loyalty and voice statements, thus, seem shaped by reputational factors.

After the Jammeh regime was replaced by the Barrow regime, it seems that The Gambia, again, saw the ICC as a place to self-legitimise:

> Over the last decade, we lost many of our friends and development partners through wrong policy choices, but since the restoration of democracy and good governance, many of our longstanding partners are all coming back to work with us. We are in the process of rejoining the Commonwealth and the International Criminal Court. We are also committed to be part of the African Peer Review Mechanism.[752]

The clear intent of this speech extract is to prove to member states that The Gambia (under its new regime) is dedicated to upholding international norms and reintegrating into the international community. Its aim seems to be to identify actions by the previous regime that tarnished its reputation in this respect and to clearly redress them by re-joining institutions from which the Jammeh regime had withdrawn.

Additionally, The Gambia, under Barrow, entered a reservation on AU draft withdrawal strategy, which is an indicator of loyalty. The Gambia's behaviour toward the ICC following the change in regimes sought to do damage control and demonstrate that the new regime was, unlike its predecessor, a 'good global citizen'. The South African government official interviewed agrees with this interpretation: "…he was trying to show a new start, respect for international law – that kind of thing."[753]

9.1.2. Kenya

[752] UNGA GD 2016.
[753] South African Government Official 2021.

The main explanatory factor driving Kenya's behaviour (voice and loyalty alike) with the ICC since the 2010 investigations were launched was head of state interest. There is consensus within the literature that this was the foremost causal factor for Kenya's behaviour with the ICC, and this is supported by the country statement and interview data.

The existing withdrawal debate literature considering Kenya is primarily focused on Kenyan-ICC relations from 2013, once Kenyatta and Ruto became president and deputy president respectively. More research into Kibaki's regime's motivations for cooperating with the ICC is needed. Kenya demonstrated loyalty behaviour in the year that the OTP launched its investigations into Kenya. At the 2010 ICC General Debate, Kenya detailed the ways that the Kenyan government had helped the ICC to establish an in-country office and "…entered into an agreement with the ICC to extend such privileges and immunities as are necessary for the independent functioning of the Court in the territory of Kenya."[754]

However, Kenya's behaviour toward the ICC changed once the six suspects were publicly announced in December 2010.[755] This suggests that reputational factors were superseded by head of state interest factors. According to Mueller, the Kibaki government demonised the ICC and sought to resist the ICC's investigations into "…high level figures too close to President Kibaki for comfort."[756] She notes that in the same year, the Kenyan Parliament passed a motion to withdraw from the ICC, although this was not signed into law by Kibaki.

Kenya's behaviour had clearly shifted toward voice in 2011. Kenya worked on securing regional support for resistance against the ICC.[757] The AU declared its support for Kenya's deferral requests, although it instructed Kenya to initiate this request.[758] In March 2011, Kenya requested that the UNSC defer the investigations into the Kenyan case twice – first on 4 March, and then again on 23 March, after the ICC summonsed the Kenyan suspects to

[754] Kenya, ICC GD 2010.
[755] Murithi 2015b, 83.
[756] Mueller 2014.
[757] Helfer and Showalter 2017, 9; Mueller 2014, 31.
[758] Assembly of the African Union 2011.

appear before the Court.[759] Additionally, in 2011, Kenya made two voice statements,[760] which detailed both Kenya's efforts to respond to the PEV, asserted Kenya's national jurisdiction over the crimes under investigation, used collectivised language to question the Court's activities. Thus, in 2011, there was an evident effort by Kenya to demonstrate its discontent with the ICC. Its voice behaviour was demonstrated within the ICC's ASP as well as at the UN, AU, and domestically.

The 2013 elections in Kenya marked a critical juncture in Kenya's relationship with the ICC – and, in turn, Africa's relationship with the ICC. Kenya's deteriorating relations with the ICC is a major factor that shaped the withdrawal debate and the election of Kenyatta and Ruto into office elevated the withdrawal issue since the ICC's investigations were now against sitting state officials. Kenya's behaviour in relation to the ICC was decidedly voice since 2011 except for a statement delivered at the ICC General Debate in 2012, which signally strong loyalty behaviour. This is surprising – given Kenya's earlier efforts to protect their officials from the ICC's investigations – since the charges against four of the six suspects were confirmed by the ICC's Pre-Trial Chamber, including Kenyatta and Ruto.[761]

However, the domestic political situation in Kenya had changed in the latter half of 2012 ahead of the 2013 elections. It was apparent that Kenyatta and Ruto[762] intended to jointly contest the 2013 Kenyan presidential elections in a coalition. Kibaki was not eligible to contest in these elections, however, Odinga ran for presidency. This meant that Kenyatta and Ruto were the official political opponents of the incumbent vice presidents Odinga and Kalonzo Musyoka, who contested together in the joint-ticket system for president and vice

[759] United Nations Security Council 2011b.
[760] At the UNGA ICC Report Plenary in 2011: "Unfortunately, there is a growing perception that the Court is unfairly and selectively targeting certain countries, particularly in Africa. There is also a perception that ownership of the Rome Statute has been usurped, as if to suggest that the Statute and the Court are meant to serve some States and not others. Such perceptions undermine an institution that was created with very noble intentions, and threatens to erode all confidence in the Court"; and at the ICC General Debate, 2011: "On the ICC relations with Africa. 7 of Africa's 54 nations are "situation countries". This represents a small minority of African States of all the work of the ICC to date. The circumstantial complexities in these States that one might associate with the involvement of the ICC are not exclusive to these seven nations, not even to Africa."
[761] Charges against Henry Kosgey and Mohammed Ali – each one of the co-accused in the Ruto and Kenyatta cases respectively – were dropped on 23 January 2012, which retained the sense of an even prosecution since equal numbers of the two cases were pursued. Posner 2012; Maliti 2012; *Al Jazeera* 2012.
[762] Popularly known as "Uhuruto".

president respectively. The new political rivalries explain Kenya's 2012 loyalty behaviour at the ICC General Debate: Odinga and Musyoka were happy for the ICC to investigate and/or prosecute their main political opponents in the upcoming election. This suggests that the loyalty behaviour was driven mainly by head of state interest.

Thus, the elections presented the opportunity to determine the trajectory that the Kenyan cases before the ICC took: "Whoever won the election would have significant power over whether Kenya would cooperate with the ICC. If an indicted politician won the presidency, they would have powerful means to resist the ICC. The official opposition was the Coalition for Reforms and Democracy (CORD) – led by Odinga and Musyoka – campaigned that the Jubilee Alliance pair were unelectable due to the ICC investigations into them.[763] The Jubilee Alliance, in turn, built its electoral platform upon discrediting the ICC as a neo-colonial, anti-African, and biased institution. For example, "[t]he neocolonial narrative called upon the Kikuyu to resist the reincarnation of colonialism through the ICC – a *mzungu*[764] court – which was targeting Kenyatta's son in a new affront on Kenya's sovereignty."[765] Furthermore, Kenyatta and Ruto urged voters to think of the election as "a referendum on the ICC""[766] and "[w]inning the election was part of a key defense strategy to undercut the ICC by seizing political power, flexing it to deflect the ICC, and opening up the possibility of not showing up for trial if all else failed".[767] In the end, Kenyatta was elected president and Ruto was elected vice president.

Once in power, Kenyatta and Ruto used their political positions to pushback against the ICC, but this was limited to voice behaviour. Kenya demonstrated sustained voice behaviour within the official forums studied from 2013. As discussed in Chapter 7, Kenya's voice behaviour included threats of exit, calls for the ICC to repair its relations with the ICC, defence of sitting officials' immunities, assertions of the primacy of national jurisdiction, and that the ICC's case selections and procedural practices were biased and politicised.

[763] Lugano 2017b, 18.
[764] Slang meaning a white person.
[765] Lugano 2017b, 23.
[766] Chaudoin 2016, 564.
[767] Mueller 2014, 26.

However, ASPs could be used to signal behaviour in other ways beyond the discourse used in country statements: who a state sends as their delegate may indicate the importance that they give to the ICC, although this is also hindered by a state's capacity and resources. Mark Kersten notes that Kenya used the ASP forum, in one instance, to intimidate fellow States Parties:

> They also reacted very aggressively. I forget when it was… Maybe 2015? 2014? I don't know…. by sending like 85 MPs and senators to the Assembly of States Parties, which everybody at the ASP thought was so unnecessary and so disruptive – not to mention that the cost [it] would be [to] taxpayers […] It's in an attempt to really intimidate. Not the ICC, because the ASP is not an ICC conference. It's a diplomatic conference. […] I think there were probably some people at that kind of diplomatic level who are very frustrated by the way that the ICC was proceeding in Kenya.[768]

Regardless of whether this was an intimidation effort and who the intended audience was for it, it is apparent that Kenya's bloated delegation was an effort to exert power – to amplify Kenya's voice through making its presence felt within the ICC space.

Although Kenya threatened withdrawal and encouraged mass African withdrawal from the ICC, it did not exit the ICC. The use of voice behaviour to demonstrate dissatisfaction with the ICC was a strategic decision by the pair: withdrawal from the ICC was not a solution to their predicament since it would have no effect on their cases since they were already underway.[769] Several interviewees indicated that they believed Kenya never intended to exit the ICC: "…I think even Kenya didn't actually ever want to withdraw",[770] "I think the Kenyans never wanted to withdraw from the Court…",[771] and

> …what gets more interesting is why […] don't they withdraw? I think it's because of a kind of a calculation of different interests. I think that Kenya ultimately came to the conclusion that you could have it both ways – that you could both stay inside the fold of the ICC – which might give you some influence over how the ICC operates, it gets you a seat at the table at the ASP, it

[768] Kersten 2021.
[769] Lugano 2017b, 21; United Nations General Assembly 1998.
[770] South African Government Official 2021.
[771] Stemmet 2021.

> enables you to play the kinds of games that Kenyatta and Ruto were trying to play at successive ASPs in trying to build a kind of an African bloc to change the Rome Statute and that sort of stuff. And you could use other levers to protect yourself against ICC investigations. And I think by that stage, Kenya had already worked out that they could run rings around the ICC, and that Kenyatta and Ruto were never really going to be threatened.[772]

Furthermore, there were reputational costs to exit that were against the interests of the Kenyan leaders. Former senior government advisor Peter Kagwanja argued that compliance was deemed the best strategy because defiance (and withdrawal) "would have triggered an automatic warrant of arrest and possible sanctions against the country… [and] Kenyatta's hobbling as a fugitive president and Kenya would have almost certainly joined Zimbabwe in the West's list of 'rogue' states."[773] Goldstone also reflected on the compliance strategy undertaken by Kenyatta and Ruto:

> Kenyatta and Ruto made the most of it. I think they really were the leaders [of the withdrawal debate] without their push, I don't think the AU would have been nearly as strongly anti-ICC as it was. Kenya is an important country and an important economy, and I think they really drove that… and they were very shrewd because they didn't want to become 'al-Bashirs' and be outlaws, so they appeared voluntarily, and they simply sabotaged it quietly at home.[774]

Kagwanja and Goldstone's comments suggest that reputational concerns shaped how Kenyatta and Ruto pursued their interests (to avoid prosecution). Thus, during Kenyatta and Ruto's regime from 2013, head of state interest is the foremost explanation of Kenya's behaviour and reputational factors were secondary to this. The intersection between reputation, head of state interests, and power is illustrated by:

> Kenya saw itself as one of the African leaders within the ASP, in terms of putting forward amendments to the Statute trying to make political points through the ASP – and I think they ultimately didn't want to lose that influence and so better to stay within the ICC remit rather than trying to beat it from the outside. I think that's often been Kenya's game. I think that's where their interests eventually landed. […] could carry an AU message, which gave it a certain amount

[772] P. Clark 2021.
[773] Quoted in Lugano 2017b, 20.
[774] Goldstone 2021.

> of clout in Addis and it gave it a certain amount of clout in New York. I think that mattered to Kenyatta in particular. […] I think what a lot of this goes back to – with Kenyatta and Ruto – is a desire to be seen as internationally respectable whilst still running rings around the ICC [775]

Marcus Bocchese suggests that it was simple matter of legal pragmatism that would inform the decision not to withdraw:

> …the political costs that withdrawing from the ICC entails doesn't make much sense because the case collapsed. This is where this is where the law and the procedural law, criminal procedure kicks in in your understanding of the ICC and how the ICC operates and what are the limits of what they can accomplish the farther away from the courtroom in The Hague. I worked as a criminal lawyer and [it] doesn't take a genius, if you come from my background, [to] understand that you cannot build a case if you have no access to documents, no access to crime scenes, no access to witnesses, because they have been intimidated, threatened, bribed…[776]

This explanation is consistent with the EVL model's predictions around exit being a rationalist decision and is also consistent with the logic of the head of state explanatory factor. However, further research is required to verify if the legal counsel given to Kenyatta and Ruto included this calculation.

Kenya's internal critiques of the ICC were complemented by its campaign, domestically and regionally, to discredit the Court as neo-colonial. Jomo Kenyatta's affiliation with independence and pan-Africanism is an important emotive factor for Kenya's domestic and international politics, and shaped the discourse adopted in Kenya's anti-ICC narrative.[777] Clarke argues that Kenya was "renarrating culpability through reattribution" by using a neo-colonial discourse because this redirected public dialogue away from the ICC toward colonial legacies that caused inequality in Kenya.[778]

[775] P. Clark 2021.
[776] Bocchese 2021b.
[777] Clarke 2019, 92.
[778] Clarke 2019, 142.

The Jubilee Alliance's campaign reframed the ICC as reproducing patterns of colonial interference in African politics and as evading European responsibility for colonial legacies that continue to impact upon the present. They thus rebranded the "perpetrator" as the (anti-neo-colonial) "hero".[779] The neo-colonial narrative depicted Kenyatta and Ruto as standing

> …metonymically for a larger entity under threat – either their respective communities or Kenyan sovereignty. For ICC proponents, this is a manipulative category mistake – putting 'the entire Kenyan state in the dock' – whereas other African states and the African Union may regard the trials of Kenyan political leaders as representing a broader threat to African self-determination.[780]

The neo-colonial narrative has been used to promote and encourage regional solidarity for Kenya against the ICC, as observed by a Jubilee activist: "…the ICC is a big giant, and hence the need to Africanize the problem and get the help of African leaders."[781] Thus, at the domestic and regional levels, the narrative that the ICC was neo-colonial was a means to discredit the Court and enhance the image of the two leaders as martyrs fighting against it.

The Kenyan case poignantly illustrates the importance of using discourse analysis to deconstruct and interrogate the statements delivered by official representatives, since it shows how leaders can utilise a particular discourse to favour their interests. In this instance, an anti-neo-colonial discourse was strategically valuable for Kenyatta and Ruto in their efforts to garner support domestically and regionally to discredit the ICC and, therefore, undermine its investigations into them. The anti-neo-colonial discourse Kenyatta and Ruto used in their anti-ICC campaign is demonstrative of the power embedded with discourse within international relations. Furthermore, it illustrates how the anti-neo-colonial discourse has power within African international relations. Kenya's decision to regionalise the ICC issue and to do so using this discourse was deliberate because of the collective memory among African states of colonialism as well as the ongoing frustration and

[779] Clarke 2019, 143.
[780] Kendall 2014, 424.
[781] Quoted in Lugano 2017b, 27.

dissatisfaction with the contemporary distribution of power within the global system. The fact that most African states were not independent from colonial powers at the time that the UN was established is one that the AU's push for UN reform particularly identifies as an injustice that is reproduced by the current power distribution within the UN(SC).[782]

Kenya's ICC relations cannot be examined without considering its efforts to secure a deferral of its situation from the UNSC. As noted earlier, Kenya approached the UNSC in 2011 for a deferral.[783] In 2013, Kenya approach the UNSC to dismiss the cases against Kenyatta and Ruto.[784] A draft resolution[785] to this end was put to a vote at the 7060th meeting of the UNSC and did not pass.[786] It received seven votes in favour[787] and eight abstentions.[788]

> …they [Kenya] had an obvious case for the deferral and just got really pretty much nowhere, except they did manage, rather remarkably, to get a vote at the Security Council on it, again, maybe around 2015, 2016, which upset a lot of states that never wanted to vote on a deferral, but they did manage to get a vote. I think there were like nine abstentions or something like that, which is why it ultimately didn't pass. I think there are dynamics like that, that fuel things.[789]

Kenya has also sought various postponements to the proceedings and trials again Kenyatta and Ruto. On one hand, this could be viewed suspiciously as a delaying tactic, while on the other hand, it could be seen as inevitable considering the duties of sitting government officials.[790] Either way, this indicates a challenge to Article 27 in practice: is it feasible to waiver immunity for sitting officials? Moreover, as Kenya and Nigeria noted in their various

---

[782] African Union 2015.
[783] The UNSC rejected the request. Kenya challenged the admissibility of their situation within the ICC in March 2011 and the Pre-Trial Chamber II dismissed the admissibility case. Kenya lost the appeal of this decision (Lugano, 2017: 21).
[784] 'Identical Letters Dated 21 October 2013 from the Permanent Representative of Kenya to the United Nations Addressed to the Secretary-General and the President of the Security Council. S/2013/624.' 2013
[785] Drafted by Azerbaijan, Burundi, Ethiopia, Gabon, Ghana, Kenya, Mauritania, Mauritius, Morocco, Namibia, Rwanda, Senegal, Togo and Uganda. See: securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_660.pdf.
[786] United Nations Security Council 2013.
[787] Azerbaijan, China, Morocco, Pakistan, Russian Federation, Rwanda, and Togo.
[788] Argentina, Australia, France, Guatemala, Luxembourg, Republic of Korea, United Kingdom of Great Britain and Northern Ireland, and the United States of America.
[789] Kersten 2021.
[790] Mueller 2014, 26.

country statements, is it appropriate to waiver this immunity when these leaders are democratically elected?

The ICC's practices were challenged in other, less existential ways by Kenya. Kenya sought permission from the ICC to allow Kenyatta to appear virtually before the Court using a video conferencing tool. The ICC declined this, which saw Kenya use voice behaviour to motivate the amendment of the rules of procedure to allow for this: "…[Kenya] pushed very hard for, for amendment of rules of procedure to allow him [Kenyatta] to engage with the Court on a video link… they [Kenya] were very much vocal and critical of the Court at the time."[791] The motivations for Kenya's amendment efforts are unclear – they delayed the proceedings against Kenyatta and Ruto, which suggests that there may have been insidious and self-interested reasons for the amendments. Nonetheless, the amendment efforts demonstrate how voice was used to instigate change within the ICC – Rule 68,[792] 100, and 134 *bis, ter,* and *quarter* were all amendments (related to appearing in court, postponing trials, and the use of recorded evidence) to the ICC's Rules of Procedures and Evidence that were passed with consensus at the 2013 ASP session.[793] This illustrates how remaining within the ICC was a way for Kenya to influence the proceedings against its nationals.

Kenya's continued use of voice behaviour in relation to the ICC corresponds with the lifespan of the Kenyan cases before the (Pre-)Trial Chambers. The case against Kenyatta was withdrawn by the OTP on 5 December 2014 and formally terminated by Trial Chamber V(B) on 13 March 2015. However, Ruto's trial began on 10 September 2013, which meant that Kenya's vice president was involved in ICC proceedings. The proceedings against Ruto were fraught with appeals, which effectively delayed the case. The Ruto case informed the amendment efforts Kenya undertook, as noted above. Thus, Kenya's voice behaviour within the ASP was directly shaped by the proceedings against Ruto, which indicates that head of

[791] Stemmet 2021.
[792] Kenya did not advocate in favour of recordings of witnesses being permitted as evidence. For an overview of the reason for Kenya's concern with Rule 68, see: https://www.hrw.org/news/2016/01/27/recent-international-criminal-court-developments-kenya-south-africa. Kenya (suspected of intimidating witnesses) sought to ensure that the witnesses that were no longer available to give testimony would not be represented through prior recording of their testimonies.
[793] Assembly of States Parties 2013.

state interest shaped its behaviour in this regard. Ultimately, the case against Ruto and his co-accused, Sang, was terminated on 5 April 2016 by Trial Chamber V(A).[794] Thus, by the time the 2016 ICC GD and UNGA ICC RP sessions arrived, Kenya no longer had its president or deputy president under investigation. Nonetheless, Kenya's tone in its voice statement at the ICC GD that year was very defensive. This was in response to comments made by the UN High Commissioner for Human Rights, who stated that states that threatened to exit should exit and insinuated that their claimed devotion to criminal accountability was a masquerade. Kenya's voice statement was a direct response to this address and should be understood within the context of the withdrawal debate, which had come to a head with the withdrawals of South Africa, Burundi, and The Gambia at this point. Thus, it is important to understand that the UN High Commissioner's comments embodied the dissatisfaction that Kenya (and other African states) had raised about the UN power structure. In other words, it illustrates how the withdrawal debate is interconnected with broader discontent that some African states have with the status quo in global power relations. Kenya's frustrated voice statement would have been informed by this broader dissatisfaction and by its posturing around neo-colonialism. It is not clear that Kenya's behaviour was driven by head of state interests at this point, but more likely that it was a reputational matter where Kenya saw its image as a state committed to international justice norms being called into question and attacked.

Kenya's behaviour in relation to the ICC remained voice in 2017 and 2018, however, with a notable shift in its tone toward constructive criticism. When asked why the withdrawal debate had de-escalated, interviewees noted that, inter alia, the termination of the cases against Kenyatta and Ruto meant that there was no longer motivation for Kenya to fuel the withdrawal debate and receded from playing this role.[795]

[794] However, the termination was accompanied by the majority decision that Ruto and Sang could be re-prosecuted in the future by the ICC or a domestic court. 'Ruto and Sang Case: ICC Trial Chamber V(A) Terminates the Case without Prejudice to Re-Prosecution in Future' 2016.
[795] Kersten 2021; Stemmet 2021.

The Kenyan case demonstrates how head of state interest drove voice and loyalty behaviour in relation to the ICC but interplayed with reputational factors and domestic politics to safeguard other foreign policy goals once head of state interests were secured.

9.1.2.1. Kenya's Loyalty Behaviour

In the two years prior to the ICC's investigations, Kenya only demonstrated loyalty behaviour. The academic literature does not reflect on this period. Based on the country statement data, Kenya's behaviour during this time is best explained by reputational factors. Kenya has positioned itself as a peace and security leader within the Horn of Africa at the sub-regional, regional, and international levels – especially as a strategic partner in counter-terrorism. It has promoted an image of itself as a peace diplomat and "…as an anchor state and oasis of stability in the East Africa region…"[796] in a 'bad neighbourhood'. In addition to presenting itself as peace mediator and strategic partner, Kenya's foreign policy has historically been influenced by pan-Africanist principles since independence. This is, at least partially, attributable to the role that Jomo Kenyatta (independent Kenya's first president) at the 1945 Pan-Africanist conference.[797]

Kenya's loyalty behaviour before the OTP launched investigations into its situation seem driven by this foreign policy goal to be a well reputed strategic partner in East Africa. Related, Kenya's foreign policy strategy could be related to other policy goals – such as trade and security. Further in-depth research into these factors should be conducted to ascertain if they played a more significant and direct role in shaping Kenya's behaviour with the ICC. From the existing evidence and literature, it seems that reputational factors are the main explanatory variable shaping Kenya's loyalty behaviour in 2008 and 2009.

In 2008 and 2009, Kenya called on states to cooperate with the ICC to help it fulfil its mandate.[798] Its emphasis on cooperation suggests Kenya's desire to be seen as a supportive and active State Party, which promotes its image as a state adhering to rule of law and

[796] Mabera 2016, 367.
[797] Ibid., 372.
[798] UNGA ICC RP 2008 and ICC GD 2009.

accountability norms. Kenya's recent emergence from the 2007/2008 post-election violence might have additionally given impetus to Kenya to promote a positive international image in relation to the ICC. For example, Kenya recounted the "…progress in resolving the outstanding issues that surrounded the violence in the country last year…" at the 2009 ICC General Debate. Kenya did not refer to these processes the year before when it addressed the UNGA ICC Report Plenary despite that being the same year that the Commission of Inquiry into Post-Election Violence[799] was launched and published its final report (in the same month as the plenary session). This might suggest that Kenya deliberately sought to indicate to ICC States Parties that it was responding domestically to the situation.[800]

9.1.3. Liberia

There is little information about Liberia's behaviour with the ICC. Liberia did not give any speeches before the forums studied in this project. The only indication of its potential loyalty to the ICC – aside from its ratification of the Rome Statute and remaining a State Party – is that it entered a reservation on the AU's draft withdrawal strategy in 2017 so that it could study the Withdrawal Strategy.[801] Thus, Liberia could be considered a zombie State Party.

Nonetheless, it is plausible that Liberia's decision to practice passive loyalty and abstain from the withdrawal debate was driven by head of state interests. Liberia, under the Ellen Sirleaf regime, showed a lack of political will regarding addressing crimes that occurred during its civil war. Liberia's Truth and Reconciliation Commission Final Report found that Liberia's political elite were the most responsible for the civil war violence.[802] Additionally, one of the Report's recommendations was that a hybrid criminal court be established to try perpetrators of human rights violations committed during Liberia's civil wars. However,

[799] Also known as the "Waki Commission" after the body's chairperson.
[800] However, there are many factors that might account for this difference. For example, the delegates at each forum are different people and might have received different instructions about what to address or might have different strategic agenda. For example, Kenyan Ambassador to the UN in 2008 (Mr. Muburi-Muita) may have made use of other UN forums to recount Kenya's domestic response to the post-election violence.
[801] African Union 2017.
[802] Weah 2018, 30.

policy-makers are disincentivised from promote criminal accountability as it implicates them.[803]

Sirleaf faced twin pressures that influenced a neutral position toward the ICC. Withdrawal from the ICC in addition to perceptions that she instigated conflict and financed Charles Taylor would have damaged her domestic reputation. Her international relationships with so-called western powers – especially close ties with the US – also would risk damage from withdrawal. However, an overtly pro-ICC position would alienate her from (some) African leaders.[804] Weah notes that Sirleaf's government deliberately maintained a private position regarding the ICC, which is why no statements were submitted to the ICC.[805]

Economic factors might also interplay with head of state interests regarding international relationships. Liberia's foreign policy is guided by "…its political ideology of liberalism, democracy and capitalism" and:

> …the guiding principles of Liberia's foreign policy has been the maintenance of national security and the preservation of the territorial integrity and sovereignty of the country, the promotion of peace and harmony based on the principle of non-interference in the internal affairs of other states, and unity in the national community based on the virtue of liberal democracy.[806]

This suggests that a core attribute of Liberia's foreign policy approach is based on its reputation as a liberal democratic state, which ICC membership is seen as promoting. Furthermore, its non-interference principle might explain its neutrality toward the ICC withdrawal debate. Lastly, Liberia states that its foreign policy since the 1970s is devoted to "…to economic, social and political development" in addition to territorial integrity.[807] This might suggest that Liberia's foreign relations are focused on promoting a positive international image as a liberal democracy, in part, to promote its developmental agenda.

---

[803] Weah 2021.
[804] Sieh 2018; 'Liberia's Silence to AU Threat to Withdrawal From International Criminal Court' 2017.
[805] Weah 2021.
[806] 'Foreign Policy' n.d.
[807] 'Foreign Policy' n.d.

Liberia's GNI in 2008 to 2018 period was derived between 20% and 80% from net ODA.[808] Although, there are limits to the explanatory value that this offers. The EU was Liberia's top donor in 2010, which supports this correlation since 2010 was also one of Liberia's highest years of ODA contributions (77% of its GNI).[809] However, in 2017, the top donors to Liberia were the US, World Bank, and African Development Bank, which contributed 34%, 26%, and 11% of the ODA respectively. Sitting at 20% in 2017, net ODA was at one of its lowest levels of Liberia's GNI composition – and 2017 was the year that Liberia entered the reservation on the withdrawal strategy document.[810]

This problematises the extent to which economic factors were an explanatory factor for Liberia's active loyalty behaviour. It also suggests something else compelled Liberia to act – when it had been passive until then. Notably, Liberia's reservation was qualified insofar as it was specifically entered to allow more time for the strategy to be studied, which makes it less definitive that Liberia's reservation was necessarily in defence of the ICC, although it was also signal to the international community that it was not necessarily in favour of the strategy.

9.1.4. Conclusion

The Burundian, Gambian, Liberia, and Kenyan case studies all show how state behaviour in relation to the ICC was shaped by the interests of chief executives to retain power and protect themselves and their allies from prosecution. The case studies also reiterate that behaviour and motives are not static. Sometimes different behaviour is motivated by the same factor/s or sometimes the same behaviour results from differing explanatory factors.

[808] 'Net ODA Received (% of GNI) - Liberia' n.d.
[809] 'Aid, Trade and Development Indicators for Liberia' 2013.
[810] Liberia held elections in 2017 and George Weah was elected at the end of the year so the change in regimes does not explain the reservation. Notably, George Weah announced that he would instigate a domestic war crimes tribunal to investigate past crimes, which might suggest that the electoral campaigns included criminal accountability as an issue, which could have spurred Liberia to enter the reservation on the ICC Withdrawal Strategy.

All four cases suggested that the head of state interest factor extends beyond the interests of the head of state alone – the implication of their government officials in proceedings also shaped behaviour. In the Burundian and Gambian cases, this was less clear-cut since Nkurunziza and Jammeh had authoritarian governments with tendencies toward dictatorship. It is not clear without further primary research that their concern about their colleagues ICC proceedings was more than a concern about the security of their own power. However, the Kenyan case showed how alliances with the chief executive shaped resistance to the ICC – and how the deterioration of these alliances saw a shift in behaviour toward the ICC. This, arguably, is still a self-interested political strategy along the lines of protecting their own until it no longer serves their interests. The vested interest in Sirleaf's Liberia's political elite in side-lining criminal accountability also suggests this. Recognising how political alliances shaped state behaviour is an important complexity in the head of state interest explanatory factor to enable a more nuanced understanding of Kenya and Liberia's behaviour.

Interview data suggested that personality traits of Nkurunziza, Jammeh, and Kenyatta may have shaped the foreign policies of their countries with regards to the ICC. This suggests that the personalisation of chief executive power is a sub-category within the head of state interest factor.

Elections were a domestic factor relevant in three cases. Elections marked pivotal moments in relations with the ICC for three of the cases. Kenya and Burundi's situations before the ICC were each a response to core crimes committed during (post-) election violence. Kenya is an exceptional case study in that the ICC matter become a domestic electoral issue. The election of new leaders in Kenya and The Gambia were accompanied in a shift in relations with the ICC. Kenyatta and Ruto used their positions in office to resist the ICC. Contrarily, Barrow's assumption of the chief executive office saw a renewed commitment to the ICC by the new regime to mark a clean break with the Jammeh regime.

International reputation explained some of the loyalty behaviour for The Gambia, Kenya, and Liberia. The Gambia's Adama Barrow sought to signal a clean break between his regime and Jammeh's and demonstrated this by rescinding the notification of withdrawal.

Interestingly, reputation seemed to remain a shaping factor even at the height of Kenya's voice behaviour in relation to the ICC. Kenya's interest in retaining a position as a strategic trade partner and security ally in the Horn of Africa intersected with the head of state interest factor and shaped how voice statements were delivered within the ICC. Liberia's close relations with the so-called west seemed to affect its passive loyalty to the ICC despite its resistance to criminal accountability at the domestic level. The Gambia, Liberia, and Kenya suggest they expected reputational gains from remaining a member of the ICC, which further suggests that despite the withdrawal debate and the efforts to discredit the Court, its association with international justice norms remain an incentive for some states.

9.2. Regional Politics

Derived from regionalist explanations of IR behaviour, the regional politics explanatory variable seeks to investigate if and how regional politics affected African states' behaviour in relation to the ICC. This is exceptionally important given the role that the AU played in the withdrawal debate, the rhetorical importance placed upon a collective African position regarding the ICC (within the AU and media reports), and that the African bloc is the biggest regional group within the ICC.

9.2.1. South Africa

South Africa is one of the major cases studied regarding the withdrawal debate.[811] This is attributable to the important role it played in galvanising support for the creation of the ICC within (southern) Africa, its role as a regional power, its international reputation as a human rights defender, and the implications of its withdrawal on these attributes. Additionally, as noted by Goldstone, "South Africa is an outlier because we had no reason to be opposed to the ICC."[812] South Africa did not follow the mould of the other states that demonstrated exit behaviour since it was not at any perceivable risk of ICC investigations.

[811] For examples of the international relations literature, see: Boehme 2016; Tladi 2016; Grant and Hamilton 2016; Du Plessis and Gevers 2018; van der Vyver 2015; Isike and Ogunnubi 2017; Woolaver 2017a.
[812] Goldstone 2021.

South Africa signed the Rome Statute at the Rome Conference and ratified it on 27 November 2000. It delivered ten statements at the ICC GDs and six statements at the UNGA ICC RPs. South Africa delivered a loyalty statement at the Review Conference and made no references to the ICC at the UNGA GDs.

South Africa played a notable role in the 1990s in the process of establishing the ICC. It was a member of the UNGA's Ad Hoc Committee on the Establishment of an International Criminal Court, hosted the 1997 SADC meeting to decide upon the ten basic principles of consensus regarding the ICC, and was part of the Like-Minded Group driving the ICC's creation at the Rome Conference.[813] In 2002, South Africa passed legislation that domesticated the Rome Statute.[814] Additionally, South Africa rejected entering into a Bilateral Non Surrender Agreement with the US, which signalled support for the ICC.[815] Once the ICC was in operation, South Africa participated in all the General Debates in the period studied except for in 2015. Similarly, South Africa regularly participated in the discussions that followed the ICC Report delivered at the UNGA Sessions.

South Africa's history of strongly advocating in favour of the ICC stands in sharp contrast with its withdrawal in 2016. South Africa stated in the declaratory statement that accompanied its withdrawal notification that its withdrawal was due to (1) the failure of Russia, the US, and China to ratify the Rome Statute, (2) the UNSC's failure to defer situations, (3) South Africa's role in bilateral and multilateral peace efforts in Africa, (4) conflicting international obligation regarding the al-Bashir arrest warrant, and (5) procedural concerns with the Article 97 consultations.[816] Although South Africa harboured discontent with the ICC before, it did not result in exit (or voice, for the most part) behaviour before 2015:

> South Africa has been very supportive of the overall drive for a world court, criminal accountability, those kinds of issues… So that's been the main thing, the main motivating factor…

[813] See Chapter 2, section 2.1.2.
[814] The Implementation of the Rome Statute of the ICC Act 27 of 2002.
[815] 'Republic of South Africa - Campaign for the Rome Statute of the ICC' n.d.
[816] Republic of South Africa 2016a.

> I think the disappointment with the Court was that Russia and America never came on board. The Chinese never were going to. […] so, you've got this problematic setup…[817]

Using interview data as well as the country statements examined in the preceding three chapters, this section builds on the existing literature that analyses South Africa's withdrawal from the ICC to develop explanations for its behaviour throughout the 2008 and 2018 period. By doing so, the main factors at play that shaped South Africa's changing behaviour in relation to the ICC will be identified, which provides insight into the foreign policy priorities for South Africa and how they were weighted and changed over this period.

The main explanation for South Africa's exit behaviour in the relevant withdrawal debate literature is that South African sought to bolster its regional interests and reputation.[818] The literature, however, does not account for the motivations behind South Africa's general ICC policies. Before its 2016 exit behaviour, South Africa mainly demonstrated loyalty behaviour in its country statements delivered at the ICC GDs and the UNGA ICC RPs. Exceptions to this pattern occurred in 2010 and 2011 at the ICC GD, and 2013 at the UNGA ICC RP, when South Africa demonstrated voice behaviour. Additionally, Max du Plessis notes that South Africa's support for the AU's non-cooperation position on al-Bashir's arrest contradicts with its proclamations about being deeply committed to the Court and its practice of suggesting that al-Bashir not attend diplomatic events hosted in and by South Africa.[819]

Since transitioning to democracy in 1994, South Africa has promoted an international image of itself as a good global citizen committed to human rights.[820] This has been demonstrated through its prominence as a peacemaking actor in Africa and internationally. South Africa adopted an overt 'Africa first' approach to its international relations under the Mbeki regimes (1999 to 2008), which was reaffirmed under the Zuma regimes (2009 to 2018). Thus, another important component of South Africa's foreign policy agenda is its

[817] South African Government Official 2021.
[818] Isike and Ogunnubi, 'The Discordant Soft Power Tunes of South Africa's Withdrawal from the ICC'; Boehme, '"We Chose Africa"'; Bâ, *States of Justice*.
[819] Du Plessis 2009, 443–44.
[820] Seegers 2019; Nathan, n.d.; Du Plessis and Gevers 2018, 201–2; S. Graham 2016, 33; 2008; Borer and Mills 2011; Geldenhuys 2011; S. Graham 2021.

commitment to the African continent and to promoting an equitable international system. South Africa's regional and global soft power[821] relies on ideational factors and South Africa has intentionally presented itself as "an exceptional representative of the future prospects of the African continent."[822] In practice, South Africa has pursued this agenda through participating in multilateral forums and positioning itself as the African (and Global South) representative.[823] At the regional level, South Africa has framed its role on the continent as a state that provides developmental and peacebuilding assistance, which allows it to avoid a hegemonic or domineering posture while also securing prominence.[824]

Initially, South Africa's foreign policy goals to be seen as a good global citizen while representing the interests of the African group were not in conflict. South Africa's behaviour within the ICC reflects its agenda to act as the spokes-state for Africa. As Tladi points out, South Africa sought to act as the mediator of ICC-African relations before the 2015 al-Bashir visit:

> …it's quite clear that […] before 2015 […] we were a supporter of the ICC. And, in fact, when I would engage with people, I would always describe our position as one that's sort of an intermediate between the negative voices on the continent versus the ICC. We were, if you like, the bridge – the tool of communication between the two sides. I saw us as playing a constructive role.[825]

In two of the three instances when South Africa demonstrated voice behaviour to the ICC, before the al-Bashir incident, South Africa noted concern about the UNSC's use of its referral and deferral powers, and the impacts this had on the ICC's reputation. South Africa's inclusion of phrases "perceptions of its impartiality" conveys the message from dissenting states in Africa without compromising its position as a compliant and supportive State Party. The first use of voice behaviour by South Africa, which was in 2010, was to note the need for clarity around what cooperation entails. Thus, South Africa's pre-2015 voice

[821] 'Soft power' was a term coined by Joseph Nye to refer to non-material resources used by a state to change or affect the behaviour of other states. Nye 1990; 2011.
[822] Isike and Ogunnubi 2017, 2.
[823] Du Plessis and Gevers 2018, 203; Alden and Schoeman 2013; Nathan, n.d.
[824] Langa and Shai 2019, 113.
[825] Tladi 2021.

and loyalty behaviour alike, as per its country statements, are shaped by its twin goals to promote an international image of being a good citizen and its aims to be the point state on behalf of Africa – an observation also made by Boehme.[826]

The latter goal requires that South Africa be seen by non-African states and entities as the go-to state for diplomatic matters requiring African buy-in as well as for other African states to imbue South Africa with this responsibility. In other words, South Africa needs to be cognisant of its international reputation as well as its regional one to secure its foreign policy aims. Popular explanations of South Africa's behaviour suggest that the al-Bashir debacle was an indication of South Africa's prioritising its regional reputation and goals over its international ones. Yet, empirical and interview data suggests that this might not be a complete explanation.

As noted in Chapters 1 and 2, South Africa hosted the AU Summit between 7 and 15 June 2015, which marked the turning point in South Africa's relationship with the ICC. There is an important difference between the previous occasions where South Africa formally invited al-Bashir to attend events in South Africa (Zuma's inauguration in 2009, the FIFA World Cup in 2010, and Mandela's funeral in 2013) and the AU Summit hosted in 2015: "One must bear in mind that, that the AU summit was something totally different. This was an international meeting hosted by South Africa."[827] Tladi – who, at the time, was the Principal State Law Advisor for International Law for the South African Department of International Relations and Cooperation and the Legal Counsellor to the South Africa Mission to the United Nations – explains further:

> The main difference between those cases that people quote – the inauguration and the World Cup and then the funeral of President Mandela – the main difference was that in all of those instances we had the right to invite or not to invite. And so it's up to us. So, ultimately, we, as a country are in control of who comes. So, it's easy then to say to someone 'we're inviting you, but please don't come.' You can't do that when the invitation is coming from somewhere […] else. The meeting that was hosted in 2015 was not our meeting. It was a meeting of the African Union.

[826] Boehme 2016, 4.
[827] Stemmet 2021.

> It was not us who decided who comes and who doesn't come. It was the African Union. It was the African Union that sent out the invites. So that changes dynamics a lot.[828]

Despite concern being raised about the implications of the difference between a South African diplomatic event and its hosting of an AU diplomatic event, South Africa forged ahead:

> I was sitting in the office when I heard in February [2015] that we were going to host the African Union Summit and my first reaction [was], 'oh, dammit. That's a big problem,' and I can tell you no one else had thought about it. So, when I raised that issue with the foreign minister immediately on the same day that I heard […] she directed me to speak to the relevant desks and […] the response that they gave me […] was, 'don't worry, we'll take care of it in the same way that we've taken care of the others,' and I said to them, 'you won't be able to,' and they were confident that they would be able to take care of it in that way. […][829]

South Africa was notified by the ICC Registrar on 28 May 2015 of its obligation to arrest al-Bashir if he was to enter South African territory.[830] On 11 June 2015, the South African Embassy in the Netherlands requested that a meeting pursuant to Article 97 between the Registrar and the South African Government's Chief State Law Advisor (Tladi) be set for Friday 12 June 2015 at 5pm. South Africa was the first State Party to request such a consultation with regards to al-Bashir's visiting their territory.[831] The meeting also included the OTP. The Presiding Judge of the Chamber, Judge Cuno Tarfusser, decided that South Africa was obliged to arrest al-Bashir and the concerns raised by South Africa about its conflicting obligations had already been decided upon previously by the Court.[832] Stemmet reflects on this experience with the Pre-Trial Chamber:

> …on the Friday evening, before […] the ambassador and legal advisor in The Hague did make contact with the Court and they met with the Judge Tarfusser – the Italian judge – to present the matter of states and to say, 'look, we have a problem in this respect and [we are] initiating article

[828] Tladi 2021.
[829] Ibid.
[830] Pre-Trial Chamber II 2017, para. 6
[831] Ibid., para. 128.
[832] Ibid., para. 10.

> 97 proceeding, because we have obligations in terms of the AU immunities and privileges agreement or protocol, to accord immunities to heads of state visiting South Africa for attending the Summit.[833]

Al-Bashir entered South Africa on Saturday 13 June 2015 and an interim order was handed down by the North Gauteng High Court on 14 June 2015 requiring that he not be allowed to leave the country until the High Court reconvened on 15 June 2015.[834] The High Court ordered that al-Bashir be arrested and sent to The Hague.[835] However, it transpired that al-Bashir had already left the country. The High Court then compelled the state to explain, via affidavit, how this was permitted. The state filed for leave to appeal as the same time as it submitted this affidavit. After it lost its leave to appeal application (16 September 2015), the state elevated the case to the Supreme Court of Appeal. Their matter was heard on 12 February 2016, and, on 15 March 2016, the Supreme Court of Appeal found that the state had acted unlawfully when it failed to arrest al-Bashir.[836]

Meanwhile, South Africa also faced repercussions for its failure to arrest al-Bashir at the ICC. On 4 September 2015, the Pre-Trial Chamber requested that South Africa submit their reasoning for not arresting al-Bashir by 5 October 2015 as per Article 87(7).[837] The purpose of the Article 87(7) proceeding was to determine if South Africa had failed to comply with its Rome Statute obligations regarding the al-Bashir arrest warrant, if this was a formal non-compliance matter, and if South Africa should consequently be referred to the ASP and/or UNSC.[838] On 15 October 2015, South Africa requested an extension until after the domestic proceedings underway against the state, which was granted.

---

[833] Stemmet 2021.
[834] 'South Africa/Sudan: Case Challenging the State's Failure to Implement the ICC Arrest Warrant for Sudanese President Al Bashir' 2016.
[835] Southern Africa Litigation Centre v Minister of Justice and Constitutional Development and Others 2015.
[836] The Minister of Justice and Constitutional Development v The Southern African Litigation Centre 2016.
[837] Article 87(7) enables the Court to refer matters of non-cooperation and non-compliance by States Parties to the ASP and/or UNSC. Pre-Trial Chamber II 2017, para. 17.
[838] Pre-Trial Chamber II 2017, para. 21.

A public hearing was held on 7 April 2017 to determine South Africa's non-compliance decision.[839] South Africa argued that it was not obliged to arrest al-Bashir as he has immunity under customary international law that had not been waived by Sudan, that it was questionable that the UNSC had the power to waive such immunity, and that it was obliged under article VIII(1) of the Host Agreement with the AU to uphold al-Bashir's immunity.[840] Furthermore, South Africa argued that "if the Security Council made the Statute applicable to Sudan, that included article 98, and that article 27(2) applies only to immunity from the jurisdiction of the Court."[841]

Ultimately, in July 2017, the Pre-Trial Chamber II found that South Africa was obliged to arrest al-Bashir and that South Africa was not at liberty to unilaterally decide not to cooperate with the ICC's arrest warrant on the basis on disagreement with interpretation about the immunities extending to al-Bashir.[842]

Tladi argues that the turning point in South Africa's behaviour in relation to the ICC is triggered by this Article 87(7) procedure and that it is a popular misconception to see the shift as signalled by the al-Bashir visit. The Article 87(7) procedure saw South Africa move away from its role as an interlocutor between the African Group and the ICC:

> But that shifted not because of Bashir's invitation, that shifted because of the events afterwards. So obviously once the ICC starts its article 87(7) procedure, then of course, it becomes them against us – now it's no longer 'we're part of this together. We're trying to resolve issues together.' So that's, that's really where the shift happened.'[843]

Similarly, Stemmet suggests that South Africa was dissatisfied with how the Pre-Trial Chamber handled its case: "I think there was a bit of unhappiness about the way that the Court has addressed this – or the specific judges addressed it – because it basically turned

[839] After South Africa had lodged a note verbale to state the domestic proceedings on the al-Bashir matter had concluded.
[840] Pre-Trial Chamber II 2017, paras 32–33.
[841] Ibid., para. 38; Stemmet, Key Informant Interview.
[842] Although it found that South Africa was non-compliant, the Chamber decided against referring South Africa to the ASP or UNSC for formal proceedings. Pre-Trial Chamber II 2017, para. 97.
[843] Tladi 2021.

into a – or what the South African view was – it turned into a legal hearing."[844] Tladi noted "We [South Africa] had been throughout the difficult times at the ICC phase, we had played a really important role in trying to defend the ICC. The feeling was we took all of these risks. All that we're asking is that you understand our current situation,"[845] which suggests that South Africa was dissatisfied that its loyalty behaviour to the ICC, which had been prioritised above firmly aligning itself with the AU, have not been returned in kind.[846]

It seems that South Africa's dissatisfaction with the ICC's Article 87(7) procedures relates to its foreign policy goals:

> South Africa never likes to be caught short […] it's always, since 1994, tried to convey an image of being a good citizen of the world. […] It [South Africa] doesn't like to be told that it's wrong and it likes to be seen to be doing the right thing, especially in multilateral forums. So, of course the whole saga around Bashir and not being arrested when he was here in South Africa and the [domestic] court's ruling […] really did hit home. […] It was a huge embarrassment for the country. I think Zuma was basically using that embarrassment […] as a kind of cover – by saying, 'we've had enough of this now, the continent's not going to take this anymore. We have to withdraw. We won't be dictated to, we have our reasons why we do things' […].[847]

Graham's analysis suggests that reputational factors were a driving force behind South Africa's shift toward exit and that this interacted with regional politics. Similar to the Burundian and Gambian cases, the existence of this broader anti-ICC narrative and movement on the continent provided a template for legitimising withdrawal or ICC dissent.[848] The pressure for South Africa to be seen as representing and supporting regional

---

[844] Stemmet 2021.
[845] Tladi 2021.
[846] Tladi further recalls: "In fact, I was dispatched to go and meet with the Prosecutor. She wouldn't meet with me, but she sent me some of her officials, and I explained this position. I said, 'look, I fully understand, my suggestion is... The Prosecutor's Office – the Registrar issue a very stern condemnation of this and let that be the end, but don't do this article 87(7) thing, because once that starts, I don't know where it ends. I had a discussion with Phakiso Mochochoko and his response to me was – the message from the Prosecutor to me – was that while they're understanding of this, they are not positioned to do that simply because questions will be asked of them, 'well, why did you do it for Chad? Why did you do it for these other states and not for South Africa?' Which is a fair position."
[847] S. Graham 2021.
[848] Goldstone also suggests that South Africa joined this pre-existing movement: "A comradery obviously developed as it does, generally, between national leaders. But the AU was obviously driven by some leaders. I think a number of African leaders felt a little bit scared of the ICC –and some for good reason. There was this

politics is suggested by the comments made by a government official: "…issues of […] anti-imperialism […] was quite a popular drum to beat on the continent… […] we [South Africa] don't want to be seen to be lackeys of imperialism."[849] South Africa prioritised regional politics[850] over its ICC obligations and international reputation before the Article 87(7) procedure, but that its official behaviour in the ICC only shifted once the Article 87(7) procedure began.

This suggests that there is a need to distinguish between the drivers of South Africa's behaviour regarding the ICC in two matters: the al-Bashir visit and the exit from the ICC. Since these matters are so intertwined, they are collapsed together in analyses of South Africa's behaviour, but this obscures subtleties in the South African case. It overlooks that reputational factors underscored South Africa's dissatisfaction with the Article 87(7) process, as suggested by Graham, Stemmet, and Tladi in their interviews.

Additionally, the motivations behind not arresting or detaining al-Bashir should be interrogated. Three interviewees who were immediately involved in South Africa's ICC relations stated plainly that this was a matter of politics: "Would you arrest him [al-Bashir] if you were president? And that's a political matter – there's just no way that he would be arrested;"[851] "…how do you arrest him, particularly when you have […] peacekeeping troops in his country?"[852] and

ambivalence of so many African states joining up and ratifying the Rome Statute on the one hand. But some leaders – particularly first al-Bashir, but then I think more importantly were the Kenyan leaders – I think they particularly drove the AU anti-ICC development, and obviously that suited Bashir's books. And I think South Africa just joined up."

[849] South African Government Official 2021.

[850] A relevant contextual factor is that Dr Nkosazana Dlamini-Zuma was elected as the AU Commission's chair (2012 to 2017). There was discontent that South Africa had vied for the AU chair position, since it is conventional that stronger regional powers do not run for leadership positions within the AU (Tieku 2014, 13). Consequently, South Africa may have sought to demonstrate it support for regional positions to appease fellow African leaders who were disgruntled by Dlamini-Zuma's position in the AU Commission, and, in part, to reaffirm its position as the representative for the continent. However, this is not an explanatory factor since it does not account for the particularities of South Africa's shift from predominantly loyalty behaviour to exit in 2016.

[851] Tladi 2021.

[852] South African Government Official 2021.

> …a state like South Africa not inviting Bashir [to the AU Summit] – or arresting Bashir even – is just… that's just where law and political reality collides. It was not possible to do it. The eventual fallout – negative fallout – for South Africa in the continent would just have been too great – especially at the time. Bashir was firmly in charge of Sudan. Nobody expected him to lose power the way he did.[853]

Thus, South Africa's behaviour was shaped by its concerns about the diplomatic repercussions that would be experienced on the continent. However, this is distinct from a normative commitment to solidarity politics. South Africa's non-arrest of al-Bashir was not because of a commitment to solidarity among African heads of state – otherwise it would have allowed al-Bashir to visit on the occasions of the Zuma inauguration, the World Cup, and/or Mandela's funeral. South Africa's hesitancy on those occasions demonstrates that it did not hold a position that has been identified as 'big man syndrome' on the continent. It seems that South Africa's foreign policy objective to promote its position on the continent was the presiding regional political factor that shaped its behaviour not to comply with the ICC arrest warrant.

The first instance of this being demonstrated lies with the decision to host the AU Summit in the first place:

> …there's no reason why we had to host the AU Summit. We could have said, 'oh no, this is going to put us in trouble with the ICC so we're not hosting the Summit. But hosting the Summit is very important to us because of regional [politics]. […] South Africa wants to – and I think even now – continue to play an important role on the continent, and so it's probably true that if obligations for arrest is going to make that difficult in the future, then that certainly creates problems.[854]

> I think the Summit was meant to be somewhere else. […] South Africa volunteered quite at the last minute so it wasn't a long-term issue. The powers that be had got legal advice that al-Bashir could come because he wasn't coming to South Africa and he was coming to attend the AU Heads of State [Summit] and it was similar to everyone being allowed to go to UNGA at New York.[855]

[853] Stemmet 2021.
[854] Tladi 2021.
[855] South African Government Official 2021.

It seems that South Africa miscalculated the international costs of its hosting the AU Summit when it decided to prioritise its regional goals. There are two beliefs that seemed to shape officials' behaviour: (1) the legal advice that the nature of the AU Summit meant that South Africa did not have a legal obligation to arrest al-Bashir mitigated the difficulty of its not being able to use its usual course of action regarding al-Bashir's attendance to South African-based political events[856] and/or (2) that this course of action was still available.[857] Either way, it seems that South Africa believed that it could host the AU Summit and not confront the need to arrest al-Bashir, which informed its decision to prioritise its regional political interests over its international ones, since it did not foresee the latter being damaged by the former.

South Africa's withdrawal was motivated by more than tension regarding the arrest of al-Bashir. This is evidenced by Tladi's comments:

> I think if you asked me, 'are there other options for South Africa?' Absolutely, and I think many of us who were advising government were just as surprise to hear that we will withdraw. […] were actually quite surprised because the answer for South Africa's problems is actually quite easy. […] the Supreme Court of Appeal judgment was a win, from my perspective, because it gave you a simple way out. It said, 'as far as we are concerned under international law, you may have the duty to arrest, we don't care. The problem is your domestic legislation.'[858] And, ultimately, we are responsible for our domestic legislation, so we can just simply amend the domestic legislation to include Article 98 and that's it, and then all your problems are solved…[859]

[856] It is not clear why South African officials did not consider the requirements of domestic law regarding the obligation to arrest al-Bashir.
[857] This holds at least until Tladi advised DIRCO otherwise. It is plausible that the dissemination of this advice might restricted to the bureaucratic wings of DIRCO. Follow up research into such details is needed.
[858] In the interview, Tladi explained that South Africa had a domestic legal obligation to arrest al-Bashir: "…it's more difficult to explain why we didn't arrest him [al-Bashir] in terms of our domestic legislation than it is in terms of international law, and to buttress that point. By the way, […] the Supreme Court of Appeal judgment seems to take that position as well. It seems to say, 'we accept that, under international law, there may be a duty not to arrest them. But, ultimately, what matters is that our domestic law doesn't contain a kind of exception.' And I think that's a fair conclusion." South Africa's Constitution does not provide for the exception to the immunity waiver.
[859] Tladi 2021.

There were domestic factors at play. The anti-ICC discourse within the AU resonated with a faction within South Africa's ruling party, the African National Congress (ANC):

> Then I think it got a bit caught up in a sort of anti-imperialism perspective from sort of anti-European perspectives within the ANC. The decision was taken by Cabinet to withdraw. The withdrawal was overturned by the High Court. Government didn't appeal – so accepted it. The International Crimes Bill was introduced into Parliament to provide for the withdrawal…[860]

The international law expert interviewed stated that the there was a slow growing tension with the ICC's interventions in Africa and that SALC's application to arrest al-Bashir was a tipping point for South Africa. They argue that South Africa was embarrassed, and withdrawal was a knee-jerk reaction and a way to save face before African colleagues at the AU.[861] They note that South Africa wanted to be seen as acting consistently with the AU's non-cooperation position since Dlamini-Zuma was the AU Commission Chair at the time. The international law expert believes that South Africa's exit behaviour is best explained as a combination of domestic factors and regional factors. This position is shared, to an extent, by Clark:

> I always saw the threat of the South African withdrawal really as Zuma trying to play to two different constituencies. One was Zuma being worried about South Africa's influence at the AU and then I felt that, at that particular time, Zuma was tapping into that sort of – broadly – AU opposition to the Court around Bashir, around Kenyatta and Ruto. […] this also came at a time when I think Zuma was maybe worried that South Africa was losing some of its AU clout. […] I think that Zuma saw an anti-ICC stand as a way to try to curry a sense of favour at the AU level that he was scared South Africa was losing. But then I think it was also a part of his domestic agenda, which in my view was about, broadly, eroding the rule of law and the role of the courts and, and a sense that politics should not be overly regulated by legal institutions, whether those were domestic or international legal institutions. That, I think, really played out in the whole episode around Bashir coming to the AU Summit in Pretoria – that Zuma saw this as an opportunity to kind of play both levels to kind of send a message to the AU, but also to sort of

[860] South African Government Official 2021.
[861] International Law Expert 2021.

> send a domestic message about where law fits into politics. So, I really see it as kind of bound up in that one president – bound up in Zuma and his particular approach.[862]

Clark agrees that South Africa sought to improve its image within the AU, since South Africa's regional reputation is connected to its soft power on the continent.[863] Clark also notes domestic events but attributes them to Zuma's interests: Zuma wanted to discredit or subvert legal institutions since this served his interests. This would suggest head of state interests – but not because Zuma was threatened by the ICC. Rather, because of the domestic legal threats he confronted.

Furthermore, South Africa's retraction of its withdrawal notification was due to domestic factors. On 22 February 2017, the South African High Court found in *Democratic Alliance v Minister of International Relations and Cooperation and Others* that the withdrawal from the Rome Statute that was submitted in October 2016 was unconstitutional as it had not undergone a parliamentary process to receive approval.[864] This meant that South Africa was compelled to rescind its withdrawal notification, or risk being in violation of a domestic judicial order. South Africa submitted its withdrawal notification retraction on 7 March 2017.[865] As noted in the ICC General Debate in December that same year, South Africa's official intention communication to the ICC was to pursue withdrawal:

> Based on the afore-going, amongst others, I wish to reaffirm the statement read out by the Government of South Africa at the Fifteenth Session of the Assembly of States Parties, in which it announced its intention to withdraw from the Rome Statute. The Government's resolve in this regard remains unchanged because of the active role that South Africa continues to play in promoting dialogue and peaceful resolutions of conflicts in African and elsewhere. South Africa's continued membership to the Rome Statute, as it is currently interpreted and applied, carries

[862] P. Clark 2021.
[863] Clark used examples of South Africa's failed attempt to mediate the Côte d'Ivoire conflict, and how the response by some AU leaders suggested South Africa's reputation as a peace maker on the continent was threatened.
[864] Woolaver 2017b; Democratic Alliance v Minister of International Relations and Cooperation and Others 2017.
[865] Republic of South Africa 2017a.

> with it the potential risk of undermining its ability to carry out its peace-making mission efforts in Africa, and elsewhere.[866]

It seems that South Africa's explanation of its withdrawal as being motivated by its desire to protect its peacemaking role was a regional factor that was relevant, but one that was a rationalisation in hindsight. It seems that South Africa had already decided to exit and that it needed to do so in a way that moralised the withdrawal, therefore controlling the damage to its international reputation. Rather than adopting the AU's position on this, South Africa presented its withdrawal as a result of a unique position that South Africa occupies in the world: as being one of the major peacemaking states on – and from – the continent:

> South Africa's in a different position than, say for instance, Canada or the United States. It's an African state dealing with African problems, dealing with African countries, and sees itself to be a peacemaker and the state to which other states sometimes look to intervene when they get into an intractable situation. […] And the whole issue of 'African solutions to African problems' – we don't want to have African negotiations in Switzerland; we want to have it in Africa so that there's buy-in and that kind of thing. […][867]

Zuma resigned as President of South Africa on 14 February 2018, ahead of a scheduled no-confidence vote in Parliament and following the ANC recalling him.[868] Deputy President Cyril Ramaphosa was sworn in as the new president on 15 February 2018 and in May 2019, was re-elected as president vis-à-vis the ANC's election victory. Ramaphosa had a foreign policy vision that sought to repair South Africa's international reputation, which had suffered under Zuma's regime.[869] As explained by Graham:

> At the end of the day, Cyril Ramaphosa didn't automatically state that he would like to continue or follow through with Zuma's decision because he had a different plan for South Africa's image globally and it all ties in with his first […] speech at the UN when he became president, and that

[866] South Africa Country Statement, ICC GD 2017.
[867] Stemmet 2021.
[868] *BBC News* 2018a; *News24* 2018; Essa 2018.
[869] The ICC withdrawal is one instance that has been seen as symbolising South Africa's moral decline. Zuma's corruption and rape cases also discredited the country's reputation under his regime as well as international coverage of police brutality (e.g. Marikana and against #FeesMustFall protesters) and the rampantly high inequality and poverty rates. Otavio 2021.

> was basically harping on the whole image of Mandela and how he wanted it to take the Madiba magic forward, and that would mean, of course, that South Africa would be ethical and do everything right. And it would be norms based in its foreign policy and it would follow the law in all respects.[870]

Ramaphosa's speech encapsulates South Africa's decision to prioritise its international reputation as a good global citizen, which is closely tied to its image under the Mandela regime.[871] Graham notes that there are aspirational international political factors at play that shaped how the Ramaphosa regime remedied the situation:

> …It all boils down to consistency. […] if you do declare something publicly, you have to follow through, unless it's a major catastrophe of a decision, which I think this is - withdrawing from the ICC, I think it is a catastrophe… […] you have to think that everything not as isolated events, but everything plays on each other because perception in politics is everything. As Tom Wheeler always said – and I agree with him – the idea is that if South Africa ever, ever, down the line became a permanent member on a reformed Security Council and represented Africa […] It has to be consistent. The problem with that, though, you can't really enforce consistent decision-making if you fundamentally disagree with your previous ruler's rulings on something. Ramaphosa and Zuma have differences as we well know. And it would make sense to me that Cyril would want to do things very differently. The fact that Zuma left within a major cloud around corruption and disaster and fraud, and that's linked with South African government also helped make Cyril want to change tack and convey a sense of South Africa playing by the book and following the rules, and [that] ethics is enforced. […] So, he's trying to make sure that South Africa does what it's supposed to do in terms of the different conventions and forums it's signed up to and ratified. So that's why the ICC is such a big deal.[872]

This suggests international factors meant that South Africa could not approach the change in its position toward the ICC from the Zuma to the Ramaphosa regimes in the same way that, for example, Barrow did when he gained office from Jammeh, which was to declare a clean break and renounce the former regime's decisions. However, there were also

[870] S. Graham 2021.
[871] 'Address by the President of South Africa, H.E. Mr Cyril Ramaphosa, to the UN General Assembly, United Nations, New York, USA, 25 September 2018' n.d.
[872] S. Graham 2021.

domestic ones at play. Ramaphosa governed a divided ANC and Cabinet, which were both split between Zuma- and Ramaphosa-affiliated factions:

> …at the national general council at the ANC in 2015, or there about… the decision was taken that there should be a withdrawal and that got confirmed by conference in 2017. The NASREC conference was about elections, […] So I don't think any of those resolutions were particularly well thought through, but anyway, they've got a problem of there's a conference resolution on withdrawal. The current NEC […] you can find their statements from the last NEC Lekgotla, which was in July this year – which was basically that 'we're not withdrawing.' […] …but [the South African's 2019 ICC GD statement] reflected the position [that] we do think that [there] needs to be reform and we recognize the reforms or that the processes that are taking place – the Goldstone report and things like that. […] we're still debating the issue […] but we're still a member of the Assembly of State Parties and a member of the ICC.[873]

Ramaphosa's ascent to Presidency of the ANC and the of South Africa saw a shift in the ruling party's position toward the ICC.[874] Its 2019 ICC General Debate statement reflected the divisions with the ANC and the challenge of presenting South Africa's position as consistent and not self-contradictory. South Africa stated its continued support for the ICC but noted it remained concerns about the implications of membership for its regional and international peacemaking role, which meant withdrawal was still being debated. However, the matter has largely fallen silent within domestic, and ANC, politics.

The preceding analysis of the South African case demonstrates that South Africa's behaviour in relation to the ICC is more complicated than the existing literature suggests. Its behaviour prior to 2015 was predominantly loyalty, with three instances of voice behaviour. International reputational factors combined with regional politics explained its behaviour since South Africa sought to promote its international image as a good global citizen and leader of the African continent vis-à-vis its ICC engagements. However, to secure its position as the African representative, South Africa had to be seen to represent continental issues, hence regional politics also shaped its behaviour.

[873] South African Government Official 2021.
[874] Beresford and Wand 2020, 553; Goldstone 2021.

South Africa's exit behaviour is not explained by regional political factors alone. South Africa's exit is immediately explained by dissatisfaction with the ICC's Article 87(7) procedure and the related shame, which suggests reputational factors were the immediate cause of exit behaviour. South Africa's justification of its exit behaviour drew on regional factors – such as solidarity and its peacemaking role. But these explanations appear to be retroactive rationalisations rather than driving factors of the exit behaviour.

South Africa's shift away from exit toward voice (in 2018) is due to domestic factors. Its retracted withdrawal notification in 2017 was due to a domestic court order, however, South Africa still indicated exit behaviour through its country statement that year. Its shift to voice in 2018 (and the subsequent appearance that withdrawal is no longer being seriously considered) is due to the change in South Africa's regime from Zuma to Ramaphosa. The domestic political change in leadership saw a shift in foreign policy toward prioritising South Africa's reputation. Thus, South Africa's shift away from exit behaviour is due to an interplay between domestic and international reputational factors.

9.2.2. Djibouti and Tanzania

Regional politics best explains Djibouti[875] and Tanzania's voice behaviour. Like South Africa, the regional political factor at play is related to conflict meditation rather than the solidarity norm directly.

Djibouti allowed al-Bashir to visit on 8 May 2011,[876] which resulted in the ICC referring it to the UNSC and ASP for further action. At the Seventh ICC-ASP Bureau Meeting, on 7 June 2011, the Permanent Representative of Djibouti explained that permitting al-Bashir's visit had not been a haphazard decision. It noted that it was delegating police units to the Darfur

[875] Although there is no country statement data for Djibouti, an article that appeared in the Sudan Tribune on 8 June 2009 reported on deliberations among African states within the AU regarding how to respond to the ICC's arrest warrant for al-Bashir. Senegal, Djibouti, and Comoros are reported to have lobbied for collective withdrawal from the ICC ('African Countries Back Away from ICC Withdrawal Demand - Sudan Tribune: Plural News and Views on Sudan' 2009).
[876] 'Djibouti Will Not Honor Its Rome Statute Obligations, Invites Sudan's Bashir - Sudan Tribune: Plural News and Views on Sudan' 2009.

region and that there was AU and Arab League decisions that had to be considered by Djibouti. It declared its support for the Court and stated that it would not routinely violate its Rome Statute obligations.

Nonetheless, al-Bashir returned again in May 2016 and July 2018.[877] Djibouti submitted a note verbale to the Registrar on 24 June 2016 regarding the al-Bashir matter and defended its inaction on the grounds that it lacked capacity to arrest al-Bashir, that it was adhering to AU non-cooperation decisions, and that Djibouti was involved in peace processes between Sudan and South Sudan in its capacity on the Intergovernmental Authority on Development.[878] This clearly indicates that Djibouti was guided by regional politics in its decision to allow al-Bashir entry into its territory in 2011 and 2016. It is likely this was also the case in 2018. Interestingly, this suggests that Djibouti's regional politics were being practiced akin to South Africa's defence for its withdrawal: due to its peacemaking role. Djibouti did not take an overtly anti-ICC position and, as its 2011 address at the Bureau of the ASP suggests, it was concerned to some extent about being seen as committed to the ICC. Nevertheless, regarding the Sudan situation, Djibouti's regional political interests in peacemaking outweighed its obligations to the ICC.

Tanzania's voice statements all emphasised the need for the ICC to address its relationship with African states and the AU. However, Tanzania did not threaten to withdraw from the ICC, reassuring it of its continued support in its speeches. This suggests that the criticism raised was intended as constructive criticism. In fact, in June 2015, the President of Tanzania, Jakaya Mrisho Kikwete, visited the ICC and restated its support for the Court.[879]

Yet, under the Presidency of John Magufuli, Tanzania, alongside Uganda, criticised the ICC's investigations into Burundi.[880] Additionally, in April 2018, Tanzania's Minister for Justice and Constitutional Affairs stated that Tanzania had no intention of leaving the ICC but saw the

[877] Omorogbe 2019, 288.
[878] Decision on the non-compliance by the Republic of Djibouti with the request to arrest and surrender Omar Al-Bashir to the Court and referring the matter to the United Nations Security Council and the Assembly of the State Parties to the Rome Statute 2016, para. 6.
[879] 'President of United Republic of Tanzania Visits ICC' n.d.
[880] Yusuf 2017.

need for it to reform – and that this would be best achieved by remaining a State Party and advocating for change from within the institution.[881]

Tanzania has played a significant role in conflict resolution within its neighbouring states. Notably, it has been involved in conflict resolution processes in Mozambique, Rwanda, Burundi, and Kenya.[882] This explains its outspoken position regarding the ICC's involvement the latter two situations. Tanzania's politics toward the ICC were likely influenced by the role that it plays within the sub-region as a mediator. It might have seen the ICC's poor relationship with the AU and some African states as a challenge for the Court's credibility as well as for mediation in some conflicts.

It seems that Tanzania's voice behaviour was shaped by regional politics. However, Tanzania's voice behaviour seemed moderated by loyalty. Tanzania's decision to remain within the ICC to promote reform suggests that it sees the ICC as valuable, but that this was fettered by loyalty ideational factors, where Tanzania saw the ICC as an important institution but one that needed reform regarding its relationship with Africa.

9.2.3. Namibia

Namibia's voice behaviour is best explained as caused by solidarity politics. Overall, Namibia was critical of the ICC – drawing attention to frustrations with its case selection, its treatment of the AU, UNSC referral and deferral powers, and the ICC's adherence to complementarity.

Namibia's behaviour with the ICC seems to be influenced most strongly by the AU's politics with the ICC. Namibia overtly stated, at the AU Summit in 2009, its support for the dismissal of the ICC's arrest warrant for al-Bashir and stated that he would be welcome in Namibian territory.[883] This was met with domestic resistance when a human rights NGO director pointed out that this would be in violation of Namibia's Rome Statute obligations.

[881] *Xinhua* 2018.
[882] Minde 2019.
[883] Melber 2014, 443.

Nonetheless, remained resistant to the ICC's arrest warrant for al-Bashir and, later, Gaddafi.[884]

Namibia's president, Hage Geingob, explained Namibia's intention to withdraw from the ICC in a news interview:

> People are saying that it only targets African leaders. That seems to be true ... and that's a problem… But if you convince the United States to come, we will stay… Africa needs to develop its own processes, systems, courts and institutions… It would help us to be self sufficient. We must build lasting institutions ... not something imposed from foreign countries.[885]

This is evidence that Namibia's behaviour has been influenced by solidarity politics within the AU because the reasons given by Geingob are consistent with the grievances put forward by the AU. Interview data corroborate that regional politics – particularly the solidarity norm – best explains Namibia's voice behaviour with the ICC. Murithi argues that the solidarity norm within regional politics was the shaping factor:

> I think Namibia was simply just aligning itself with the policies of the African Union, which the AU countries had been pushing for countries to sign up to. […] But Namibia […] it wasn't really clear. It was surprising to see. There was a bit of a bandwagon at the time. Like 'we're pulling out, we're pulling out, we're pulling out.' There was a working group. There was even a report that was written. So I think there was a bandwagon that it jumped…[886]

Furthermore, in her chapter about Namibia's foreign relations and the AU, Bience Gawanas (then-Special Advisor on Social Issues to the Minister of Health and Social Services of Namibia) wrote: "In the final analysis, Namibia's foreign relations are guided by the principles underlying its relationship with the AU."[887] This interpretation is supported by the analysis of primary evidence (country statements and interview data), which also points to the solidarity norm as the principal explanatory factor for Namibia's voice behaviour.

---

[884] Ibid., 444.
[885] Milhench 2016.
[886] Murithi 2021.
[887] Gawanas 2014, 278.

9.2.4. Malawi

Al-Bashir attended a Common Market for Eastern and Southern Africa summit in October 2011 hosted by Malawi and he was not arrested. The ICC found Malawi guilty of breaching its Rome Statute obligations and referred it to the UNSC and ASP. This contrasts with Malawi's refusal to host an AU Summit in 2012 due to the AU's requiring that al-Bashir be permitted to attend without threat of arrest.[888]

Regional political factors explain why Malawi exercised voice regarding the ICC in 2010 and permitted al-Bashir to visit its territory. Then-President Bingu wa Mutharika was the AU Chairperson for 2010 to 2011, which were the years these two events took place. It seems like that Mutharika prioritised regional politics over the ICC, at least, during his tenure as AU Chairperson. In addition to his AU leadership role, Mutharika might have prioritised regional political relationships over (some) international ones after some states – such as the US and UK – suspended aid to Malawi in response to domestic unrest and protest related to fuel shortages, taxation, and political repression.[889]

Mutharika died unexpectedly in 2012 and was replaced by his vice president, Joyce Banda (an ally turned opponent), who focused on re-establishing positive relations with donors.[890] Under Banda, it seems that reputational factors toward economic ends guided Malawi's ICC behaviour.

However, Banda was replaced by Mutharika's brother, Peter Mutharika, in the 2014 elections. A statement regarding Malawi's undecidedness about withdrawing from the ICC, given by Malawi's Ministry of Justice and Constitutional Affairs, stated that it firmly believed that reform of the ICC was needed but that this would be achieved through African countries remaining States Parties.[891]

---

[888] N. Cook n.d., 7.
[889] Cammack 2012; Wroe 2012
[890] N. Cook n.d., 6
[891] Chiumia 2017.

Malawi's voice behaviour toward the ICC was primarily driven by regional politics. This is suggested by its president at the time's position at AU Chairperson as well as its decision to host the COMESA summit despite the conflict this presented for Malawi in terms of its Rome Statute obligations to arrest al-Bashir (comparable to South Africa's hosting the AU Summit for regional political gains).

9.2.5. Conclusion

The solidarity norm is seen as the bedrock of AU politics and inter-African heads of states relations. The norm expects that African leaders' public relations with fellow African heads of states should project an image of support and comradery. However, Namibia seemed to be the only case that was primarily driven by this explanatory factor in its behaviour regarding the withdrawal debate. Malawi was driven by its president's position as the AU chair, which suggests regional political priorities and overlap with head of state interests.

Regional politics were a relevant explanatory factor. However, rather than the solidarity norm, two other sub-components of regional politics emerge as more relevant. The role of conflict mediation seems to be an important sub-component of the regional politics explanatory factor across the cases with behaviour primarily shaped by regional politics. South Africa, Djibouti, and Tanzania all played conflict mediation roles on the continent – with the latter two states focused on their sub-regions. South Africa explicitly referenced its peacemaking role being undermined by poor ICC-African relations to justify its exit behaviour.

However, it was discussed that South Africa's exit behaviour was better explained by with reputational factors as the immediate explanatory variable. South Africa was dissatisfied with the ICC's decision to initiate Article 87(7) procedures, which was a reputational knock for South Africa's image as the good global citizen. However, regional factors are critical for understanding South Africa's exit behaviour. South Africa's frustration with the ICC was at home with anti-ICC sentiments on the continent and aligning itself with this narrative helped promote South Africa's regional political objectives to be considered a leader on the

continent. South Africa's behaviour in relation to the ICC is best understood as its attempts to balance its foreign policy objectives to be seen as a good global citizen as well as the primary African regional leader.

9.3. Domestic Politics

Much of the existing literature that explores self-referring African situation countries' relationship with the ICC notes two domestic factors as relevant factors shaping the decision to self-refer. First, the government is fragile or unconsolidated. Second, and relatedly, the government or head of state is facing an internal political threat and/or opponent.[892] Some have argued that some African states used the ICC to consolidate domestic power and/or as a tool to eliminate domestic political opponents.[893] This section considers the extent to which, and how, these two types of domestic factors explain African States Parties' relations with the ICC.

9.3.1. Domestic Political Opponents

The behaviour by Uganda, CAR, DRC, Côte d'Ivoire, Mali, Nigeria, Gabon, and Madagascar were all mainly motivated by the desire to target domestic political opponents.

9.3.1.1. Self-referrals

Uganda's cooperation with the ICC has been inconsistent and seems to be motivated, mainly, by what suits its domestic political aspirations. This is suggested by Uganda's initial support for the ICC's arrest warrants for the LRA leadership and its demand, in 2006, that these warrants be dropped once the LRA set that as the condition for it signing a peace deal

[892] Behaviour driven by heads of states' domestic political opponents overlaps with the heads of states interests variable, since eliminating domestic threats to a head of state's regime clearly is an action to secure and retain power. This explanatory factor is differentiated from the head of state interest factor because the latter, for this thesis, refers to external threats posed by the ICC to the head of state. The domestic factor variable considers how threats internal to a state might shape is ICC behaviour. This might or might not be fuelled by a head of state's perception that their reign is threatened. Where relevant, the overlap will be noted.

[893] Bâ, *States of Justice*, 141; Clark, *Distant Justice*, 113, 117.

with the Ugandan government.[894] There is consensus that Uganda instrumentalised the ICC as a way to target the LRA (i.e. a domestic opponent).[895] Uganda, generally, demonstrated loyalty behaviour toward the ICC in official forums before 2014, which is best explained by the domestic threat posed by the LRA. Brosig noted that "…Uganda invested money, time and resources, including human resources in its embassy in The Hague – an embassy that, throughout the decades now, has been quite collaborative."[896] This suggests that Uganda's loyalty surpassed statements and extended to the commitment of resources in The Hague to bolster its cooperation with the ICC.

However, in 2010, Uganda exercised voice at the ICC GD. Uganda expressed discontent with the lack of progress made by the ICC to arrest the suspects for whom warrants of arrest were issued. Uganda's discontent was translated into voice action because of the international and domestic attention that the LRA had received for its violence and mass killings in the DRC in 2010 – including the circulation of a Human Rights Watch report to this end.[897] Thus, Uganda's voice behaviour in 2010 is likely explained by its dismay with the threat posed by the LRA (a domestic factor) as well as the negative attention (a reputational factor) that its conflict received by media outlets, since Uganda has not defeated the LRA.

At the ICC GD in 2016 and 2017, Uganda defended its position regarding al-Bashir's arrest as justified by the role that Sudan[898] plays in tackling the LRA threat vis-à-vis its role in stabilising South Sudan – where LRA operations had been based at times.[899] This suggests that the cause for Uganda's choosing to support al-Bashir over honouring its ICC obligations was due to domestic factors related to its conflict with the LRA.

[894] Fisher 2006; Greenawalt 2009, 108; Keller 2007, 210.
[895] Branch 2007; P. Clark 2018; Bâ 2020; S. M. H. Nouwen and Werner 2010.
[896] Brosig 2021.
[897] 'Trail of Death: LRA Atrocities in Northeastern Congo' 2010; Wilkerson n.d.; Nyakairu 2010; Gettleman 2010; Reuters 2010.
[898] Interestingly, Sudan had previously (until 2006) been a supporter of the LRA in retaliation to the support Uganda gave to the secessionist group, Sudan People's Liberation Movement, which later became the ruling party of independent South Sudan. This illustrates how transient allegiances in the sub-region can be depending on the state of conflict in a given country.
[899] Fabricius 2016; Neiman 2020; Ahere and Maina 2013.

Uganda's loyalty behaviour in 2015 and 2018 are each explained by developments in the ICC's prosecution of LRA combatants. 2015's loyalty was motivated by Dominic Ongwen's surrender, which Uganda specifically noted in its ICC General Debate statement that year. 2018's loyalty is attributable to the prosecution of Thomas Kwoyello whose trial began that year, which was also specifically noted in Uganda's ICC GD address that year. Thus, loyalty behaviour was, once again, influenced by domestic political factors.

An interviewee explains Uganda's behavioural arc regarding the ICC:

> Ever since the Kenya case is started, we saw Museveni and Uganda flip, basically, from being supporters and collaborators – and I didn't mean collaborators in a pejorative way, but working with the OTP, the Office of the Prosecutor, going after the LRA, but then later on, when the LRA were for all intents and purposes already defeated and no longer constitute a threat to the Museveni regime; we saw Museveni aligned with Kenya and with all the critics of the ICC and become one of the most vocal critics of the ICC.[900]

The interviewee's reflections support the interpretation that Uganda's loyalty behaviour with the ICC was foremost driven by its domestic situation regarding the LRA. Once that was less of a factor, then regional politics shaped Uganda's ICC voice behaviour. The Ugandan case shows how different types of behaviour toward the ICC were shaped by domestic factors related to the LRA.

The CAR self-referred to the ICC on two occasions.[901] ICC investigations in the first CAR situation resulted in the conviction of former DRC vice president Jean-Pierre Bemba. Bemba had led the Movement for the Liberation of the Congo to the CAR to assist Patassé, who had been trying to prevent a coup led by Bozizé.[902] Bozizé succeeded in overthrowing Patassé in 2003 and subsequently confronted conflict and political instability. Bâ observes that the

[900] ICC Academic 2021.
[901] The CAR I situation was referred to the ICC in 2004 while CAR was under then President François Bozizé's regime. However, the ICC only launched its investigations into the CAR I situation in 2007 to investigate the violence committed between 2002 and 2003. The second CAR self-referral was made in May 2014 under interim President Catherine Samba-Panza's reign. The CAR II situation was opened in September 2014 by the ICC to investigate the violence committed in 2012.
[902] Bâ 2020, 142–43.

ICC's case against Bemba was greatly assisted by two of his political enemies: Bozizé and the DRC's former president Joseph Kabila.[903] This shows that CAR's behaviour toward the ICC was shaped by the desire to target an opponent. Indeed, CAR's speech at the 2010 ICC General Debate, which took place one month after Bemba's trial for alleged crimes committed in CAR began, was highly praising of the Court.

The DRC emphasised its cooperation in almost every speech that it delivered – regardless of whether it was a loyalty or voice statement. Stemmet notes that the DRC had historically been supportive of the ICC and sent high level delegates to attend ICC sessions:

> …the DRC has always been very strongly supportive of the Court… […] so these states [Nigeria and the DRC] did openly, and without being contested, voice their support for the Court. While many other states in their interactions will also voice support for the Court, but not to that extent, but these two are specifically running ahead.[904]

Yet, Clark and Bâ each argue that the DRC's cooperation with the ICC was conditionally based on whether it strategically benefited the state.[905] This assessment is supported by the fact that the DRC did not arrest al-Bashir when he visited the country in 2014, which resulted in the ICC finding that the DRC was non-compliant with its Rome Statute duties.[906]

Additionally, the DRC's self-referral and cooperation with the ICC's investigations could be interpreted as the DRC's effort to target the Court's investigations in areas that have traditionally been out of the DRC's control. This is suggested by the regional focus of the ICC's investigations in the eastern provinces of the DRC (the Ituri region and the Kivu provinces) and the neglect of other areas affected by conflict, such as the Kasai region since 2016.[907] Further evidence of the DRC's manipulation of the ICC is suggested by the focus of the investigations on Ituri province where state complicity in crimes is less likely to be established, as opposed to the Kivu provinces where state actors would most likely be

[903] Ibid., 165.
[904] Stemmet 2021.
[905] P. Clark 2018, 80; Bâ 2020, 140.
[906] Boschiero 2015.
[907] Global Conflict Tracker 2021; *Voice of America* 2018.

established.[908] It is evident that the focus of the ICC investigations have been against rebels and political opponents, and that the DRC's state actors have been largely unaffected. Last, another indication of evidence for the argument that the DRC's cooperation was self-interested is suggested by the DRC's support for the ICC's investigations and prosecution of Bemba (as noted earlier). It seems that the DRC sought to present itself as a cooperative and loyal State Party to the ICC as part of a strategy to target domestic instability – politically (Bemba and Callixte Mbarushimana) and geographically (eastern provinces).

The academic literature about Côte d'Ivoire's relations with the ICC has focused on the prosecution of Laurent Gbagbo[909] by the ICC.[910] The notion of one-sided justice has been raised, where academics have argued that it seems that the ICC has been used by Ouattara against his opponent, Gbagbo.[911] The utilitarian approach used by Côte d'Ivoire is suggested by:

> Côte d'Ivoire is another instance w where the Ouattara regime worked very closely with the OTP, and then, later on, once Gbagbo no longer posed a threat […] to the survival of the Ouattara regime, well, Côte d'Ivoire changed its position to the extent that at some point Ouattara himself has said, 'we will not send any more Ivorians up to The Hague – end of discussion'.[912]

This highlights the idea of strategic cooperation with the ICC insofar as it serves the domestic political goals of the state: protection from a political enemy.[913]

Interestingly, this behaviour is not specific to Ouattara in the Côte d'Ivoire context. Gbagbo also attempted to use the ICC to target Guillaume Soro after he attempted to stage a coup. Thus, on 18 April 2003, Côte d'Ivoire submitted a declaration recognising the ICC's

---

[908] P. Clark 2018, 83.
[909] There is also mention of co-accused Blé Goudé and Laurent Gbagbo's wife, Simone Gbagbo, but to a lesser extent.
[910] Rosenberg 2017; Tiemessen 2014; Malu 2016; Bâ 2015.
[911] Bâ 2015; 2020, 22; Rosenberg 2017.
[912] ICC Academic 2021.
[913] Ba states that "…Ouattara's government was the first one to use the ICC to handle political opponents turned enemies rather than rebels or warlords" (Ba, 2020: 137). However, this is untrue simply on chronological grounds. CAR was the first situation country that did this, which was indicated by Bozizé's efforts to use the ICC to target Patassé.

jurisdiction backdating to September 2002.[914] The ICC did not opt to initiate investigations into the case.

Côte d'Ivoire's loyalty to the ICC seems to be driven by the desire to prosecute political opponents. This was suggested by Gbagbo's recognition of the ICC's jurisdiction in 2003 as well as Ouattara's reaffirmation of this recognition and cooperation with the ICC.

Mali's support for the ICC has been explained in the literature as evidence of a state using the self-referral mechanism to two ends: (1) to tackle a political opponent and (2) to self-legitimise a fragile government.[915] Mali self-referred on 13 July 2012 soon after it had experienced a military coup. The coup, which began in March 2012, eventually led to then President Amadou Toumani Touré resigning on 8 April 2012. An interim government was in place at the time of the self-referral to the ICC and the "…self-referral could thus be characterised as an attempt by the interim government – which is weak and in search of support and legitimacy both locally and abroad – to put down the rebellion in the north, and eliminate opposition from those who might seek to destabilise a new government."[916]

Initially, the OTP decided there were no core crimes to investigate in the Mali situation (2013) but then issued an arrest warrant in September 2015 for Ahmad Al Faqi Al Mahdi following the Timbuktu attacks, which the OTP stated had constituted war crimes.[917] The OTP's case selection in the Mali situation was determined by the readily available evidence against Al Mahdi, which left other crimes by other actors unaddressed.[918] Thus, Mali's loyalty behaviour to the ICC in 2015 is explained, for the most part, by the domestic factors related to the threat posed by rebel forces since 2012.

Mali's voice statements in 2016 and 2017 indicated discontent with aspects of the ICC's conduct but stated that Mali had no intent to withdraw from the Court and that it remained

[914] Republic of Côte d'Ivoire 2003.
[915] Bâ 2020, 144–45; Louw and Maunganidze 2012; P. Clark 2018, 294–97.
[916] Louw and Maunganidze 2012.
[917] Bâ 2020, 144–45.
[918] P. Clark 2018, 296; 'Mali: Al Mahdi Trial on Destruction of Cultural Heritage Opens at the ICC' 2016.

a cooperative State Party. Mali's voice behaviour seems best explained by a combination of domestic, regional, and reputational factors. Mali's protracted domestic threat from the Tuareg population might be a driving force behind its aims to concretise good relations with neighbouring states and within regional bodies such as the AU and ECOWAS.[919] However, the value that it saw the ICC as bringing regarding its investigations against domestic threats also meant that Mali modified its voice behaviour to communicate loyalty. This allows Mali to speak to a regional and international audience at the ICC by showing allegiance to African states but without jeopardising its position within the ICC.

Gabon experienced post-election violence in August 2016. Ali Bongo was announced the winner of the election, beating opposition Ping. However, the results were contested and accused of being rigged in Ali Bongo's favour.[920] Ping disputed the election results and the Gabonese court upheld Ali Bongo as the winner. Ping refused to accept this decision and declared himself the true winner of the election.[921] Gabon self-referred its situation to the ICC on 20 September 2016 and cited Ping's actions as cause for alarm – including that Ping had threatened to incite violence.[922] On 29 September 2016, the OTP opened preliminary examinations into the Gabon situation. Ping shortly thereafter welcomed the ICC to probe the Gabonese case.[923] Ultimately, the OTP decided that the legal standards for investigations had not been met and closed the preliminary investigations in 2018.[924]

Nonetheless, it is evident that Gabon's self-referral was motivated by the Ali Bongo regime's aim to marginalise the threat posed by Ping following the disputed elections. It is likely that the self-referral, which overtly implicated Ping, was seen as a strategy to help consolidate the Ali Bongo's claim to victory and to self-legitimise itself domestically.

[919] Solomon 2013.
[920] Maclean 2016.
[921] Shaban 2016.
[922] Bâ 2020, 146.
[923] Shaban 2016.
[924] 'International Criminal Court Prosecutor on Gabon: "The Legal Criteria for This Court to Investigate Have Not Been Met"' 2018.

Domestic factors might explain Madagascar's behaviour in relation with the ICC. Under Marc Ravalomanana's regime, Madagascar became a States Party to the ICC in March 2008 and civil society played a major role in the campaigning for ratification.[925] Thus, domestic politics was a significant factor behind the ratification of the Rome Statute in the first place. However, one year later, in 2009, Andry Rajoelina – with the military's support – led a coup whereby he assumed the presidency of the country from Ravalomanana.[926] Ravalomanana fled to South Africa. The coup led to Madagascar's suspension from the AU and SADC and was met with international sanctions and pressure to arrive at a power-sharing and democratic arrangement. Rajoelina's government sentenced Ravalomanana (*in absentia*) to five years imprisonment for power abuse and embezzlement.[927] Furthermore, Madagascar tried to refer its situation to the ICC in 2013, alleging that the Presidential guards of former President of Madagascar Marc Ravalomanana of perpetrated crimes against humanity on 7 February 2009.[928] The OTP did not open investigations into the Malagasy situation. Thus, it seems that Madagascar sought to use the ICC to target its political opponents.

9.3.1.2. Preliminary Investigations

Preliminary investigations[929] into Nigeria were publicly announced by the OTP on 18 November 2010. The investigations formally included alleged crimes committed by Boko Haram and Nigerian Security Forces,[930] but in practice, initially, focused on Boko Haram:

> …for Nigeria, the preliminary investigation lasted quite a very long time, right? And the focus of the investigation seemed, at first, to be on Boko Haram. […] it seems to me that, similar to Uganda and the LRA, Nigeria found out that, basically, if the ICC is investigating in Nigeria, and it seems to be obvious to everyone that Boko Haram is the bad guys then necessarily that would be in the interest of the Nigerian state to support the ICC.[931]

---

[925] 'Madagascar: Country Becomes 106th State to Join International Criminal Court' 2008.
[926] Mattis 2010, 6; 'U.S. Relations With Madagascar' n.d.
[927] Zondi and Khaba 2014, 13.
[928] Office of the Prosecutor 2020, 16.
[929] Although falling beyond the temporal scope of this study, the OTP announced on 11 December 2020 that it has found reasonable grounds to launch full investigations into the Nigerian situation.
[930] 'Preliminary Examination: Nigeria' n.d.
[931] ICC Academic 2021.

A state such as Nigeria, which places importance on its regional and international reputations, will calculate that it is probable that it can protect its officials from ICC investigations, which means that the costs of overtly resisting the ICC are avoidable. Thus, Nigeria can act compliantly with the ICC's preliminary investigations until the equation changes.[932] The ICC's preliminary investigations are a potential tool against a domestic threat (Boko Haram) at least until it becomes evident that state officials confront a genuine threat from the ICC, which experience on the continent suggests is unlikely.

Additionally, Nigeria loyalty behaviour to the ICC might have been strategic. Nigeria consistently noted its domestic ability to prosecute any core crimes committed and that the ICC does not need to trigger its jurisdiction over the Nigerian situation. Nigeria might have observed how a close working relationship between the OTP and a state safeguarded state actors from prosecution – as was the case in CAR, DRC, Uganda, and Côte d'Ivoire. This suggests Nigeria's loyalty behaviour with the ICC might have been influenced by a desire to protect state actors from ICC investigations.

Comparable to South Africa, Nigeria's regional and international relations have been shaped by its desire to be a regional hegemon and Africa's 'spokes-state.'[933] Nigeria has also sought international recognition as a significant global peace and security contributor.[934] The interplay between these aspirations at the regional and international level during the withdrawal debate may have resulted in tensions in Nigeria's foreign policy priorities since it would have had to – at times – juggle presenting itself as supporting the ICC (and, thus, supporting international justice values) but also not alienating other regional powers that were strongly opposed to the ICC (including Kenya). It seems that Nigeria's loyalty behaviour – like South Africa and Kenya's early loyalty behaviour – is explained by its foreign policy aims to promote an international image of itself as a peace and security actor in Africa and a spokes-state for African relations with the global community.

[932] ICC Academic 2021.
[933] Ogunnubi and Okeke-Uzodike 2016, 118–19; Idehen and Osaghae 2015, 85; Okwudili 2015.
[934] Ogunnubi and Okeke-Uzodike 2016, 120.

Thus, Nigeria's loyalty behaviour was driven by two domestic factors (fighting Boko Haram and protecting government security officials) and reputational factors (to be seen as a good global citizen and representative of Africa).

9.3.1.3. Loyalty and Self-Legitimation

CAR and Gabon both showed loyalty behaviour that is explained as efforts to self-legitimise fragile regimes. Thus, domestic factors interplay with reputational ones.

The second CAR self-referral by Catherine Samba-Panza of the Seleka and anti-Seleka forces. It seems that Samba-Panza used the referral for two ends. First, to target the risk posed by the Seleka and anti-Seleka militants. Second, to self-legitimise her transitional government in light of that fact that her predecessor, interim president Michel Djotodia, resigned in the face of criticism that he had failed to respond appropriately to the violence.[935] The attempt to self-legitimise by Samba-Panza is further suggested by her speech at the UNGA GD in 2014, when she asserted her country's ongoing support for the ICC and to fighting impunity. Her delivery of this declaration at a speech before the UNGA undoubtedly sought to legitimise her transitional government before the international community. Thus, reputational factors interplayed with domestic factors in CAR's behaviour toward the ICC under Samba-Panza.

Gabon had a new president inaugurated a few weeks before the 2009 UNGA ICC Report Plenary. Gabon's participation in the Plenary might have been part of the immediate efforts of the new President Ali Bongo Ondimba to self-legitimise his new regime and/or to demonstrate that Gabon's history of supporting France would continue.[936] Furthermore, the government had adopted an economic plan – the "Strategic Plan for an Emerging Gabon (*Plan stratégique Gabon émergent*) – in 2009.[937] Thus, Gabon might have seized the opportunity to present itself as loyal to the ICC to contribute to its image as a French ally

[935] BBC News 2018c.
[936] Ofoulhast-Othamot n.d.
[937] 'Program Information Document (PID) Concept Stage' 2017, 3.

given the history of allegiance between France and Gabon as well as the new regime's economic reform strategy.

Madagascar's country statements were all loyalty statements. In 2011, a unity government in Madagascar was announced and the following year, Madagascar made a loyalty statement at the ICC General Debate. In 2014, Hery Rajaonarimampianina was elected as president of Madagascar.[938] That same year, SADC lifted its suspension of Madagascar.

The following year, Madagascar delivered two speeches – both of which were loyalty –, one at the ICC GD as well as one at the UNGA ICC RP. This suggests that a domestic factor – i.e., state fragility and insecurity – might have driven Madagascar to use the ICC to promote itself (i.e., for reputational factors). This is suggested by Madagascar's complimentary disposition toward the Court, which might be self-interested:

> It [the General Debate] is also an opportunity for us to present to the international community the initiatives and efforts that have been made to restore peace and restore harmony to Madagascar.
>
> As you know, Madagascar, since 2009, has been plagued by the political crisis. The popular uprisings gave birth to the transitional regime which lasted more than three years. Currently, the implementation of the Roadmap is on track.[939]

This suggests that Madagascar used its ICC General Debate address to bolster its reputation to its fellow States Parties.

9.3.1.4. Voice and Regional Politics

Voice behaviour by Uganda and Nigeria were both explained best by regional politics.

[938] *BBC News* 2018d.
[939] ICC GD 2012.

Uganda expressed dissatisfaction with the ICC's summons against Kenyatta, which suggests either that Uganda demonstrated solidarity with Kenya or specifically with Kenyatta. If solidarity was specifically with Kenyatta, then it seems that Uganda's 2014 voice behaviour was mainly influenced by solidarity among heads of states. Uganda's voice behaviour in 2016 also seems driven by regional politics given the support that it lent for South Africa's withdrawal and the call for the ICC to address its relationship with Africa as a matter of necessity. Uganda's 2016 voice statement seems to align Uganda with the broader withdrawal debate.

On occasion, it seems that Nigeria prioritised its regional image to its international one. This is suggested by Nigeria's 2012 and 2013 voice statements drew attention to relations with Africa whereas the 2014 voice statement raised concern about the case against Kenyatta (although, it linked this to general relations with African leaders). It seems that Nigeria's voice statements were shaped by regional politics since Nigeria's comments were made on behalf of Africa. Nigeria was not elected to do so, but voluntarily raised these concerns in this capacity. This suggests that Nigeria's comments were the result of its acting in its capacity as a major African political power.[940]

Another instance where it seems that Nigeria's behaviour was driven primarily by regional politics was when it did not arrest al-Bashir when he attended an AU Summit on HIV/AIDS, Tuberculosis and Malaria in July 2013. Nigeria defended itself on the grounds that it had not issued an official invitation to al-Bashir to attend since invitations are implicit in AU summits. Furthermore, Nigeria stated that al-Bashir departed early from the Summit, which coincided with the timing of Nigeria "considering the necessary steps to be take in respect of his visit in line with Nigeria's international obligations".[941] The Court decided it was not necessary to refer Nigeria to the UNSC or the ASP.[942] However, Nigeria most consistently was emphatic of its commitment to and cooperation with the ICC. Even in its voice statements, Nigeria did not imply a threat of its withdrawing from the ICC.

[940] Ogunnubi and Okeke-Uzodike 2016, 118–19.
[941] Pre-Trial Chamber II 2013, paras 11–12.
[942] Ibid., para. 13.

9.3.2. Spill-over Conflict

Chad and Niger's ICC behaviour seem driven by domestic security threats caused by spill-over conflict from their neighbouring states.

Chad is a landlocked country that faces intractable internal insecurity, partly caused by socioeconomic challenges and politicised ethnic tension. France intervened in Chad to prevent coups in 2006, 2008, and 2019.[943] In addition to its domestic security threats, Chad is surrounded by states confronting domestic armed resistance. Consequently, spill-over conflicts from neighbouring states, such as Sudan, Libya, CAR, and Nigeria, have contributed toward domestic insecurity.

In particular, the Darfur conflict in Sudan resulted in people seeking refuge in Chad as well as the Janjaweed militia pursuing the refugees throughout the 2000s. Chad's relations with Sudan, therefore, were an important security concern. In 2007 and 2008, Chad and Sudan entered into agreements to stabilise their borders and reduce conflict – however, neither lasted. Chad's tense relations with Sudan explains why Chad was the only state that opposed the AU's call for non-cooperation with the ICC's arrest warrant for al-Bashir in 2009 when it entered a reservation on the decision.[944] Chad's position regarding Sudan changed in early 2010 once al-Bashir and Déby normalised diplomatic relations and reopened their mutual border, which explains Chad's non-compliant behaviour with the ICC when it allowed al-Bashir to visit its territory in 2010 and 2013 without being arrested. Thus, Chad's loyalty and non-compliant behaviour were driven by domestic interests that interplayed with regional politics (i.e., its relationship with Sudan).

Niger confronts security threats thanks to spill-over extremist groups from neighbouring states. Factions of Nigeria's Boko Haram operate in south-eastern Niger and the Islamic State in the Greater Sahara operates along its Mali and Burkina Faso borders.[945] The spill-over of conflict actors and refugees from Nigeria and Mali has resulted in growing internally

[943] Happi 2021.
[944] Henningsen and Gissel 2020, 2.
[945] E. Cole and Grossman 2020.

displaced persons and refugee populations in Niger, which was especially high in 2016.[946] The US and France have both entered into counter-terrorism initiatives in Niger (and the Sahel region), and the EU has consistently given aid to Niger to address migration issues in the country.[947]

This suggests that domestic security is an important policy area for the Nigerien government and that it has entered strategic relations with so-called Western powers to help address these security issues. For example, dating to 2013, Niger is one of the US' key geo-strategic partners in the 'war on terror' due to its position in the Sahel region.[948] Furthermore, since 2017, various individual European countries like France and Germany, the World Bank, the EU, the UN Development Programme, and the African Development Bank have been involved in the Sahel Alliance, which is a "…coordinated and tailored response to the challenges faced by the G5 Sahel member countries (Burkina Faso, Chad, Mali, Mauritania and Niger)."[949]

Niger's loyalty was passive until October 2017, when Niger hosted the ICC's high-level regional symposium on cooperation and complementarity. The symposium was attended by 13 Francophone states in the central and west African regions. The symposium resulted in all 13 states signing the Niamey Final Declaration on the International Criminal Court, which declared support for the ICC.[950] This is an indication of Niger's cooperation with the ICC and its support for the Court. Bensouda met with Niger's President Mahamadou Issoufou to discuss how to improve Niger's support to the Court. Issoufou stated: "Today, in the presence of Prosecutor Bensouda, I reaffirm Niger's strong commitment to the ICC and the fight against impunity for atrocity crimes… The Court deserves the political support of its States Parties, and the resources its needs to effectively fulfil its mandate."[951] Issoufou also

[946] 'Operation Niger 2018 Year-End Report' 2019.
[947] The EU's financial contributions to Niger to address migrancy is due to the EU's concern that transmigration through Niger will result in more (illegal) immigrants to Europe from the continent. Armstrong 2020; Gabriel and Rijks 2020.
[948] Karimi 2018.
[949] 'The World Bank in Niger: Overview' n.d.
[950] 'Déclaration Finale de Niamey Sur La Cour Pénale Internationale' 2017.
[951] 'The Prosecutor of the International Criminal Court, Fatou Bensouda, Visits Niger, Addresses National Assembly: We Must Never Forget the Victims' 2017.

noted the need to stabilise the Sahel region. This might suggest that Niger's loyalty behaviour with the ICC from 2017 was motivated, at least partially, by domestic security concerns related to conflict spill-over.

9.3.3. Popular Mandate

Zambia is an unusual case since its loyalty behaviour to the ICC was the result of a domestic referendum. Zambia only delivered one speech (in 2010) and entered a reservation on the ICC Withdrawal Strategy. This suggests that Zambia could be considered a zombie State Party.

Following the 28th AU Summit of January 2017, when the draft Withdrawal Strategy was proposed, Zambia conducted national consultations to determine the popular consensus regarding the withdrawal matter, which roused the participation of civil society organisations to ensure the process was as upstanding as possible.[952] The consensus was to remain in the ICC – with 90% of Zambians who were participated in the consultation process voting to stay. This suggests domestic factors – due to a popular mandate to remain an ICC State Party – shaped Zambia's behaviour in relation to the ICC at least in terms of the decision to stay.[953]

9.3.4. Conclusion

Clapham's drawing attention to the significance of domestic factors in shaping African states' international relations was a turning point in Africa's IR literature and remains relevant. Khadiagala and Lyons observe: "African foreign policy at the beginning of the twenty-first century is still dominated by overarching constraints on the survival of weak states."[954] The importance of this explanatory variable is affirmed by the behaviour of self-referring states who used the ICC to target their domestic political opponents, as illustrated

[952] Cheembe 2017.
[953] Another domestic factor that might be relevant and relates to the referendum is the role that civil society organisations played. More research is needed to understand if this role is significant.
[954] Khadiagala and Lyons 2001, 7.

by Uganda, CAR, DRC, Côte d'Ivoire, Mali, and Gabon. This explanation was relevant for the Nigerian case, which did not self-refer but was the subject of preliminary investigations by the ICC. Additionally, Madagascar self-referred, unsuccessfully, to the ICC also with the intent of targeting a domestic political opponent. A related domestic factor, which was not as common, was the use of the ICC to self-legitimise domestically, which is a reputational factor but aimed toward a domestic (rather than international) audience.

Niger and Chad both suggest another way that behaviour toward the ICC is explained best by domestic factors – particularly, by domestic security concerns caused by conflict spill-over from neighbouring states. Chad's behaviour toward the ICC changed between voice and loyalty depending on the state of its relationship with Sudan and the ICC was involved in two cases bordering Niger that caused displacement issues within the country. This suggests that these two states' behaviour with the ICC was determined primarily by domestic security concerns that were intimately tied to the political situation of their neighbouring states. Loyalty behaviour was demonstrated when the ICC posed a possible solution to these neighbouring conflicts and voice supplanted loyalty when the ICC was no longer geopolitically strategic. However, the data pool for these conclusions were small and further in-depth research is needed.

Zambia was an outlier to all the other states that were primarily driven by domestic factors in their relations with the ICC. All the other states' behaviour was related to domestic security concerns – either a threat to the regime or conflict spill-over. Zambia did not confront the same domestic security issues. Rather, its loyalty behaviour – at least in 2017 – was driven due to popular demands from its citizens who voted to stay a ICC State Party in a referendum.

9.4. Reputational and Economic Factors

This section explores the relevance of reputational and economic factors. As far as possible, these variables are separated but it was difficult to delineate them due to the overlap between the ICC's association with international norms that are desired by EU economic partners.

Reputational factors are indicated by states' behaviour that seeks to preserve a particular international or regional image. Namely, a state's reputation as subscribing to and being committed to international justice norms as promoted and established by the ICC. However, voice behaviour in the form of constructive criticism also might be related to this reputation if it seeks to improve the ICC's performance regarding norm-setting.

The economic factor considers the role of trade and aid in shaping African states' relations with the ICC as a starting point to test if economic dimensions have explanatory value.

9.4.1. 'Good Global Citizens' Status

Ghana, Botswana, Senegal, Mauritius, and Benin all promote an image of themselves internationally as democratic, stable, and reliable African states.[955] All these states' foreign policies include provisions that emphasise and prioritise their international reputation as norm-abiding and stable democracies. For example, Senegal's loyalty behaviour is explained by the currency Senegal derives from its positive international reputation:

> For a state, like Senegal, that's basically the main reason why they were early supporters of the ICC. Also, because at some point, the President of the Assembly of States Parties was the Senegalese Justice Minister. Senegal with the first state that ratified the Rome Statute. Visible diplomacy is all Senegal has on the international stage and that's what they try to bank on.[956]

This shows the link between reputation and soft power – and how foreign policies are shaped by the pursuit of this type of reputational soft power. During the temporal period of this study, Senegal had two presidents: Abdoulaye Wade (2000–2012) and Macky Sall (2012-present).[957] Macky Sall's regime emphasised human rights. Sall implemented prosecutorial plans that had stagnated under Wade to try Chadian politician Hissène Habré for human rights abuses. Prosecutions took place at the ad hoc Extraordinary African Chambers, which

[955] Osei-Hwedie 2021; ICC Academic 2021; Bodian and Kelly 2018; P. Clark 2021; 'Ghana's Foreign Policy Guideline' n.d.; 'Foreign Policy Objectives' n.d.; S. Graham 2017, 139; Sall 2013.
[956] ICC Academic 2021.
[957] Macky Sall was the prime minister between 2004 and 2007 during Wade's regime.

were hosted by the Senegalese courts, and marked the first-time universal jurisdiction had been implemented in Africa, the first time an African state prosecuted a former African head of state, and the first time the AU established a court.[958] Additionally, Senegal held a UNSC non-permanent seat for 2016 and 2017. As part of its campaign to win the non-permanent UNSC seat, Senegal highlighted its role in promoting peace and security – including its role as an ICC supporter.[959] This suggests that Senegal saw supporting the ICC as legitimising its position within international peace and security.

Although Senegal almost exclusively demonstrated loyalty behaviour to the ICC within the forums studied, in 2009, Senegal advocated in favour of mass withdrawal from the ICC. [960] This contrasts with its opposition to the AU's draft withdrawal strategy document in 2017. This is best explained by the head of state in power at the time. Senegal's foreign policy is said to have been shaped by Wade's political style and institutional preferences under his regime.[961]

Wade was involved in negotiations with al-Bashir that sought to enable UN intervention in Darfur[962] as well as other peace mediations between Sudan and Chad.[963] Additionally, Wade sought international positions that would help to assert Senegal's role as "an exemplar of peace, tolerance, and dialogue."[964] This included assuming significant leadership positions within the AU. Senegal's criticism of the ICC that emerged in response to the arrest warrants for al-Bashir thus might have been driven by the Wade regime's role in mediations with Sudan. This corresponds with motivating factors noted under the regional politics factor: the role of conflict mediation on the continent for shaping ICC behaviour.

Similarly, Benin is reputed for its steady democracy since the 1990s and acts as a mediator and contributes peacekeeping forces to missions on the continent [965] This suggests that

[958] Hicks 2018.
[959] Le Gouriellec 2018, 343.
[960] Mills 2012, 423.
[961] Sall 2013.
[962] *Reuters* 2006.
[963] *The New Humanitarian* 2008.
[964] Le Gouriellec 2018, 333.
[965] Amuwo 2003; 'U.S. Relations With Benin' n.d.; 'Benin' 2021.

Benin places importance upon its reputation at the international and regional levels as a peace actor that promotes democratic principles. Its support for the ICC might be driven by adherence to such norms and the potential reputational gains from ICC membership.

In 2005, as non-permanent UNSC members Benin and Tanzania (both ICC States Parties) supported the UNSC referral of the Darfur situation to the ICC – whereas Algeria abstained.[966] Voting in favour of the referral demonstrates in concrete terms that Benin (and Tanzania) saw the ICC as an appropriate institution that had the credibility to investigate the Darfur situation. If they did not wish to be seen as opposing the ICC, they could have abstained. This suggests loyalty behaviour toward the ICC. Benin elaborated on its reasons for voting in favour of referring the Darfur situation to the ICC at a UNSC meeting:

> However, Benin had four reasons for voting in favour of the resolution. First, Benin is party to the treaty establishing the International Criminal Court. Secondly, the ongoing deterioration of the situation in Darfur requires the Security Council to take urgent action to end violations against civilians there. One prerequisite of such action is to end the reign of impunity by providing impartial justice. Thirdly, referring the matter to the International Criminal Court ensures that credible and timely action will be taken against persons charged with atrocities and serious crimes. Fourthly, Benin voted in support of the resolution out of respect for human dignity and the right to life that has been denied to thousands of people in Darfur, to whom the international community owes protection in view of their vulnerability. That obligation has been recognized by the African Union in the Ezulwini Consensus adopted by its Executive Council…[967]

This suggests that Benin saw the ICC as a credible institution capable of addressing the Darfur matter. Furthermore, its reference to the Ezulwini Consensus suggests that Benin saw its action as consistent with AU positions. It seems that Benin's loyalty to the ICC is due to its subscription to the norms that the ICC stands for – or at least because it wants to be associated with these norms.

[966] Shilaho 2018.
[967] 'Security Council, Sixtieth Year, 5158th Meeting, S/PV.5158' 2005, 10.

However, it is difficult to separate the motivation for this as a priority area from economic factors. Botswana is a good illustration of this.

Botswana is celebrated as one of Africa's longest lasting democracies[968] and for its economic growth despite being a landlocked and relatively weak country.[969] At first glance, Botswana's loyalty behaviour to the ICC seems consistent with its normative commitment to democratic and rule of law ideals:

> The main reason it projects such an international image is to have a voice and impact on global, regional and continental agenda. Thus, its behaviour towards the ICC is not an exception but a continuation of its support for international law, organizations, and democratic values. Botswana believes in multilateralism, international cooperation, and friendly relations with all nations, especially, Western democratic ones. […] Botswana openly favours the ICC because it strongly believes in and it is committed to international law. Botswana believes that once a country signs any international law, regulation or treaty, it should adhere to it by all means regardless of other considerations. As a signatory to the Rome Statute of the ICC and among the first to ratify the Kampala Accords that increased the scope of operations of the ICC, Botswana has remained the biggest supporter in spite of it being a small country in Africa. This is primarily because Botswana regards law as supreme and believes in formality such that once it signs any treaty or law, it is compelled to uphold it without question.[970]

It is unclear if Botswana's emphasis on its positive international image is because it finds resonance with the so-called western states that it seeks to promote positive relations with or because it shapes its image to attract these partners. The government official that was interviewed suggests that Botswana's strong pro-ICC position was a combined of its president's personal prioritisation of the Court[971] and its desire for strong relations with Europe:

---

[968] Although, some scholars question the depth of the consolidation of the democracy. See, for example, Good and Taylor 2008.
[969] Good 1992; Acemoglu, Johnson, and Robinson 2012; Leith 2005; A. Cook and Sarkin 2010.
[970] Osei-Hwedie 2021.
[971] Former President Ian Khama was Botswana's president for the entire period under study (2008 – 2018). Stemmet also implied that Botswana's pro-ICC position was regime specific: "Botswana, of course, was a very strong supporter of the Court. Lately, they've been more quiet. I think there's also been a change of government so that maybe their foreign policy priorities have changed." Khama's personal interest in the ICC also needs further investigation to determine the extent and reason for Khama's positive disposition toward the Court. His political philosophy might be tied into a tradition of Botswana's image as a democratic nation

> …let me state from the onset, I don't really know. I think there may have been issues that they are a small country [and a] small economy. They want a closer relationship with Europe and [are] not wanting to endanger that. Then I think there would have been issues also as to the personality of the president at the time, President Khama. […] I think he personally thought it [the ICC] was important.[972]

Murithi explains that Botswana's international relations should not be divorced from its economic relations and activities:

> …in Botswana's case, because the majority of its produce is diamonds and I think that Debswana Diamond concerned… is majority owned externally by Anglo-American, De Beers, which set its base up in London – I think it's listed in London now – and that has an impact on the politics. So behind the scenes, one doesn't know – we don't have that information [about] the extent to which they've been cajoled to actually taking that position. I don't think these are paragons of virtue and judicial righteousness because within their own state, they have major issues of marginalization… alienation… particularly of the Khoisan people who they sometimes even don't recognize and the political system is not a beacon of rule of law. So the ideational and reputational could have an external influence dimension to it.[973]

Diamonds have been identified as a central determinant of Botswana's foreign policy.[974] Botswana's economy is reliant on its diamond trade, which it committed to De Beers for 25-years.[975] The state's relationship with the De Beers Corporation is an essential policy issue for the Botswanan state, with Debswana's shares being equally divided between the Botswanan state and De Beers.[976] The significance of this relationship needs further research to determine if Botswana's diamond trade was a factor that influenced its ICC behaviour. It is apparent that its diamond industry is significant for Botswana's policy-

---

and his father's legacy as the first democratic head of state of independent Botswana. This would be an interesting variant on the chief executive interest factor. It illustrates how the interests of the head of state directly shapes foreign policy, as was seen by other African states too, but with a case where the head of state's interests aligned with the norms that the ICC represents. More research is required to verify that Khama had this interest and why.

[972] South African Government Official 2021.

[973] Murithi 2021.

[974] Taylor and Mokhawa 2003; Niemann 1993.

[975] Good and Taylor 2008, 761.

[976] 'Debswana Diamond Company' n.d.

making, but it is not evident that there is a link between this and its ICC behaviour. For example, there is nothing to suggest that De Beers exerted influence on Botswana to be pro-ICC or that its being headquartered in the UK has a relationship with the EU or UK's ICC position. It might link with a general policy aim to be perceived as a reliable state that is pro-good governance, where ICC politics is a platform to reiterate this at a multilateral level.

Botswana illustrates the murkiness between reputational and economic factors. Similarly, Mauritius illustrates the close alignment between economic and reputational objectives in its foreign policy.

Mauritius embraces a non-aligned approach to its international relations – in part due to its small size as an island state.[977] Mauritius' foreign policy focuses on economic and commercial incentives as a way of galvanising support from other states.[978] Its position as a small island state that is geographically remote compels Mauritius to participate actively within international debates and organisations. Yet, this has not been the case regarding the ICC – as indicated by its lack of participation in ICC-related IO forums. In fact, Mauritius can be described as a zombie State Party.

It seems that Mauritius' membership is driven by the reputational gains it perceives the ICC as providing. For example, at the ICC Review Conference, Mauritius' loyalty statement notes:

> As a democratic State and as a State which upholds the protection and promotion of human rights, and which adheres to the core principles including the rule of law, peace and justice and human dignity, Mauritius shares the view that the international community has to put an end to impunity for serious crimes against humanity.[979]

Furthermore, one of Mauritius' top five foreign policy objectives is "…to promote democratic ideas internationally…"[980] This suggests the importance Mauritius has attached

[977] Pudaruth 2017.
[978] Pudaruth 2017.
[979] ICC RC 2010.
[980] S. Graham 2017, 139.

to its international reputation and association with democratic ideals. The reasons listed by Mauritius at the Review Conference for supporting the ICC suggests that it sees the Court as positively associated with these democratic values, which explains it loyalty behaviour. Its foreign policy aims are not hindered by remaining an ICC member, nor bolstered enough to warrant its undertaking a more proactive role, which is why it largely practices passive loyalty.

Ghana generally demonstrated loyalty behaviour. However, its 2010 voice statement was moderated by reputational factors and loyalty. Ghana noted that the ICC's annual report showed "…a variety of challenges that need to be addressed in order to ensure that the Court discharges its functions more effectively and efficiently with a view to strengthening the regime of international criminal justice…"[981] Ghana was emphatic that it supported the Court, which suggests that its voice statement was intended as constructive criticism and that loyalty also shaped the delivery of the statement. It seems Ghana wanted to be seen to engage with the ICC seriously, which would promote its international image as an international actor concerned with international justice.

Ghana's Ministry of Foreign Affairs' website refers to its history under Kwame Nkrumah as a proactive peacemaker and non-aligned state. Ghana's foreign policy principles emphasise international rule of law and peace norms, whereas its foreign policy objectives include more emphasis on regional political aims in addition to its international reputational goals.[982] The significance of reputational factors for Ghana's economic goals was highlighted by Clark:

> …in the Ghanaian case […] I think first and foremost, it's, it's about sort of good old fashioned neo-liberal international politics. But I think a state like Ghana in the last 20 years has gone through a political tradition trajectory of being seen to be a faithful international partner, that this is a country that had pretty volatile politics in the 80s and 90s [and] has kind of settled down into a model democracy. That persona has given it real purchase internationally, but international donors and international investors want to partner with a state like Ghana because

[981] ICC GD 2010.
[982] 'Ghana's Foreign Policy Guideline' n.d.; 'Foreign Policy Objectives' n.d.

> they think that it's a trustworthy…. democratic actor with a kind of neo-liberal economic outlook that is kind of consistent with the international orthodoxy. And I think, from Ghana's perspective, the ICC sort of fits that… you want to be seen as a good liberal democracy that adheres to the rule of law, and so therefore you want to not only practically, but rhetorically, support the Court, you think that it kind of carries favour with all the kind of international partners that matter to you.[983]

Thus, Ghana reiterates the difficulty in separating reputational and economic factors, but both are relevant for shaping behaviour toward the ICC.

Tunisia's support for the ICC is likely related to its transition to a democratic state following its 2011 uprising. The emphasis on legality and peace as principles is likely an effort to secure a new reputation for post-revolution Tunisia as a democratic and rule abiding state.[984] Tunisia's voice behaviour in 2018 raised concerns about the challenges that the ICC has had in executing its arrest warrants, but noted that:

> Inasmuch as political and diplomatic backing ought to be expressed when this institution is faced with external jolts, constructive criticism should not be withheld whenever oversight detects shortcomings and deviant practices. It is by being mindful of criticism can the ICC grow stronger and more resilient and live to its full potential in serving the cause of international criminal justice.[985]

This clearly demonstrates that Tunisia's voice behaviour was intended as constructive, which suggests loyalty moderated voice. Thus, it seems that reputational factors are both immediate and underlying factors driving its behaviour with the ICC, but that economic factors could be a contributing factor to the drive for a positive reputation.

[983] P. Clark 2021.
[984] Republic of Tunisia n.d.
[985] ICC GD 2018.

Lesotho,[986] Malawi,[987] Congo-Brazzaville's[988] ICC behaviour also was best explained by reputational factors. However, these are states with small economies, high rates of poverty, and dependency on external partners for their economic (and in Lesotho's case, security) well-being. Thus, the difficulty in separating the reputational and economic factors is related to the question of what drives the aspiration for a positive international reputation?

9.4.2. Other International Reputational Factors

Guinea and Sierra Leone's ICC behaviour is explained by reputational factors but distinctly from the preceding discussion.

The OTP launched preliminary examinations into the Guinean situation in October 2009 in response to the Presidential Guard's massacre and rape of people who had gathered at an opposition rally at a Conakry stadium in September 2009. After establishing that crimes against humanity had been committed, the OTP sent deputy-prosecutor Bensouda to

---

[986] The high level of international and regional involvement in response to the domestic instability of Lesotho might suggest its emphasis on demonstrating its support and commitment to the ICC. This would suggest that the loyalty behaviour of Lesotho – and its loyalty-infused voice statements – were influenced by a desire to present itself as anti-impunity and pro-accountability vis-à-vis its commitment to the ICC. Lesotho's Ministry of Foreign Affairs and International Relations states as its mission: "To establish, promote and maintain good relations between Lesotho and the International Community for the advancement and enhancement of Lesotho's prosperity and for the protection of her sovereignty, independence and territorial integrity." Thus, it seems that Lesotho used the ICC to legitimise itself to the international community in accordance with this mission. 'Ministry of Foreign Affairs and International Relations' 2018.

[987] Malawi's voice behaviour toward the ICC was primarily driven by regional politics. This is suggested by its president at the time's position at AU Chairperson as well as its decision to host the Common Market for Eastern and Southern Africa summit despite the conflict this presented for Malawi in terms of its Rome Statute obligations to arrest al-Bashir (comparable to South Africa's hosting the AU Summit for regional political gains). The ICC found Malawi guilty of breaching its Rome Statute obligations and referred it to the UNSC and ASP. This contrasts with Malawi's refusal to host an AU Summit in 2012 due to the AU's requiring that al-Bashir be permitted to attend without threat of arrest.

[988] The consistency in Congo-Brazzaville's behaviour to the ICC might be explained by the fact that only one president - Denis Sassou Nguesso – has been in power since 2002. Since 2009, Nguesso has focused on economic development and prioritised principles of good governance and transparency. The ICC is probably not a significant foreign relations and policy issue for Congo-Brazzaville. The ICC is/was involved in three of its neighbouring states – the DRC, CAR, and Gabon – but none of these situations posed a security risk for Congo-Brazzaville as the conflicts were not located near its shared borders with these countries. It seems that Congo-Brazzaville is a zombie State Party. It was most likely conforming with the behaviour of the other regional African Francophonie states when it signed the Niamey Declaration. Congo-Brazzaville's foreign policy is guided by good neighbourliness and development diplomacy, including the attainment of the Millennium Development Goals. This suggests that Congo-Brazzaville acceded to the Rome Statute for reputational factors, particularly because of the ICC's association with international justice and good governance norms.

Guinea, in February 2010, to explore if there was domestic capacity to prosecute the stadium crimes.[989]

Guinea was given the chance to respond domestically but with the clear warning that failure to do so would result in ICC proceedings.[990] Guinea used its platform at the ICC Review Conference in 2010 to detail its responses to the Conakry Stadium massacres. It indicated its support for and cooperation with the ICC, but also asserted its domestic competence to prosecute: "I wanted to give this information to reassure the international community of the Guinean government to make all the light on the bloody events of September 28, 2009 and to punish all the authors and accomplices."[991]

Guinea's compliance with pressure to respond to the stadium massacres was a result of intense international pressure.[992] Thus, Guinea's cooperation with the ICC might be a strategy to protect its international reputation and save itself from international sanctions. Thus, Guinea's loyalty behaviour is mainly explained by reputational factors and, pending further research, the intermediary role played by the international justice epistemic community vis-à-vis non-governmental organisations.

Sierra Leone is another unusual case. Reputational factors seem to explain is voice statement in 2008 delivered at the ICC GD. Sierra Leone raised concern about the lack of outreach from the ICC in situation countries.[993] Sierra Leone's concerns regarding the ICC's outreach programme were likely informed by the Special Court for Sierra Leone experience, which was known for its good outreach programme.[994] It seems that this voice statement was driven by a reputational factor whereby Sierra Leone was upholding its renown for the SCSL's good outreach programme.

---

[989] *Voice of America* 2010.
[990] 'Statement by Mrs Fatou Bensouda, Deputy Prosecutor of the International Criminal Court' 2010.
[991] ICC RC 2010.
[992] Nossiter 2010.
[993] ICC GD 2008.
[994] 'The Special Court for Sierra Leone, the Residual Special Court for Sierra Leone' n.d.

9.4.3. Economic Drivers

Burkina Faso, Seychelles, Comoros, and Cabo Verde's behaviour with the ICC seemed predominantly shaped by economic factors. The cases in this sample are all small states, and three of the four are small island states. This might suggest that territorial vulnerability also links with economic concerns and priorities.

In May 2013, the Comoran government referred the situation of Israel's raid of its humanitarian aid flotilla (particularly on the Comoran registered vessel named *Mavi Marmara*) on 31 May 2010, which was destined for Gaza Strip.[995] However, in November, the Prosecutor announced that the case did not meet the admissibility requirements and, therefore, investigations would not be opened. Comoros' request for the Prosecutor to reconsider her decision was upheld by Pre-Trial Chamber I and the ICC's Appeals Chamber. Nonetheless, in November 2017, the Prosecutor issued a final decision not to pursue the investigations.[996] Comoros' motivations for turning to the ICC regarding the Gaza flotilla attacks are not clear. However, there is reason to believe they might be economic.

Comoros is highly reliant on foreign direct investment and the Arab Bank for Development in Africa is one of Comoros' major donors (in addition to the EU, IMF, and African Development Bank).[997] Furthermore, it is a member of the Arab League and Organisation of Islamic Cooperation. This suggests that it might have referred the flotilla situation for the reputational gains it would derive in these bodies. Comoros is preoccupied with protecting its territory. France's administration of one of its islands, Mayotte, explains why it might prioritise its diplomatic relations in the Arab League, although France remains an important trade partner.[998]

It seems that Cabo Verde's loyalty behaviour to the ICC is explained by economic factors (i.e. its aid relations with the EU and other ICC supporting states). Cabo Verde and the EU are

[995] 'Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia' n.d.
[996] 'Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia' n.d.
[997] S. Graham 2017, 140.
[998] Ibid., 140, 143, and 148.

partners in several development programmes and it was allocated €55 million for the 2014-2020 period under one of them. Net ODA was a high percentage of Cabo Verde's GNI for most of the period studied. In 2010, net ODA was 20% of its GNI and it remained between 13 and 14% until 2015. The World Bank was the main ODA donor to Cabo Verde and the EU was second – with many of the other ODA donors being ICC supporters such as Japan, Portugal, and Luxembourg.[999]

Additionally, it is possible that President Jorge Carlos de Almeida Fonseca's professional background in criminal law were also a factor driving the ICC's behaviour and this is suggested by Cabo Verde's accession to the Rome Statute under his regime, which would suggest a different type of head of state interest similar to that of Botswana's Khama.

Burkina Faso is a landlocked country in the Sahel region and its northern borders are shared with Mali and Niger, which has posed a security risk from Al-Qaeda in the Islamic Maghreb.[1000] Furthermore, Burkina Faso is classified as a less developed country with an economy that relies on gold and cotton exports.[1001] European countries, Japan, and the EU have historically (and to date) has been the major source for ODA, alongside the World Bank, US, and African Development Bank.[1002] This could suggest that the significant role that ICC powers in the EU and Japan play in Burkina Faso's ODA is a factor shaping its loyalty to the ICC.[1003]

Burkina Faso also exercised voice behaviour, which seems driven by domestic factors due to a period of instability following mass protests as a result of efforts to extend his nearly three-decade long regime, President Blaise Compaore was forced to step down from office

[999] 'Cabo Verde' n.d.
[1000] 'Key Challenges, Opportunities and Risks in Burkina Faso' n.d.; Laub and Masters 2015.
[1001] Sawadogo 2007; 'Burkina Faso' n.d.; 'The World Bank in Burkina Faso' 2021.
[1002] 'Burkina Faso' n.d.; 'Aid, Trade and Development Indicators for Burkina Faso' 2017; 'Aid, Trade and Development Indicators for Burkina Faso' 2015; 'Aid, Trade and Development Indicators for Burkina Faso' 2013; 'Aid, Trade and Development Indicators for Burkina Faso' 2011; 'Aid, Trade and Development Indicators for Burkina Faso' 2009.
[1003] The African Development Bank is primarily funded by its non-regional members, which includes ICC members from Europe, Japan, and Korea. See 'Frequently Asked Questions: How Does the African Development Bank Group Get Its Resources?' 2019.

in November 2014.[1004] He was replaced by a transitional government. Michel Kafando was appointed the president and deputy commander of the elite presidential guard, Lieutenant Colonel Yacouba Isaac Zida, was appointed as prime minister.[1005] However, instability ensued in 2015 when former President Compaore's allies in the presidential guard (unsuccessfully) attempted to stage a coup against Kafando.[1006] Additionally, Burkina Faso faced an increasing domestic threat from Islamist militants. This could suggest that the new head of state was less inclined toward the ICC.

In a rather different way, Seychelles' behaviour with the ICC was driven by economic factors. Seychelles delivered one statement, which was a voice statement at the 2013 ICC General Debate wherein it focused on the case against Kenyatta and stated that preventing a head of state from carrying out their duties undermined democracy. Seychelles' foreign policy is driven by its aim to promote and strengthen its tourism sector.[1007] Seychelles' voice behaviour was possibly driven by bilateral foreign policy objectives with Kenya, which is suggested by their general cooperation agreement signed in June 2014 (a few months after the voice statement was delivered). The general cooperation agreement sought to promote blue economy and fishery objectives – areas in which Seychelles has internationally reputed[1008] – and it is plausible that the talks leading up to the final agreement preceded 2014.[1009] Additionally, Kenya and Seychelles shared an interest in addressing the piracy threats emanating from Somalia.

9.4.4. Conclusion

The reputational factor was closely correlated with loyalty behaviour. Reputation as a 'good global citizen' was a recurrent theme across many of the cases in this section, including

[1004] 'Transitional Government Appointed in Burkina Faso' 2014, 24.
[1005] The transitional government followed a brief period whereby Zida temporarily acted as president. Zida's presidency was unconstitutional since it amounted to military rule, which resulted in domestic protest as well as international pressure for civilian rule. See Salihu n.d.
[1006] *BBC News* 2020.
[1007] S. Graham 2017, 148.
[1008] Bueger and Wivel 2018, 170.
[1009] 'President Uhuru Kenyatta Underlines Kenya-Seychelles Relationship as One of "Natural Partnership"' n.d.; *Seychelles Nation* 2014.

Botswana, Benin, Senegal, Ghana, and Mauritius. This is tied to the notion of soft power where a positive international reputation as a law-abiding, democratic, liberal, and moral state gave states currency within international (and regional) politics – and with the idea that being seen to be an ICC State Party positively contributes to this image. Relatedly, some states, like Tunisia, Sierra Leone, Lesotho, and Guinea, saw their affiliation with the Court as promoting their positive international image and helping to legitimise their state's reputation internationally after a domestic crisis.

Furthermore, SADC countries have conventionally positioned themselves as norm entrepreneurs within the AU – particularly emphasising peace, stability, and collective security.[1010] This suggests that Lesotho, Malawi, and Botswana's loyalty behaviour was influenced by this tradition, although this is an observation that requires further research and testing.

However, the 'good global citizen' identity also revealed the difficulty in delineating purely reputational motivations from economic ones. For example, states such as Malawi and Congo-Brazzaville had development diplomacy as a foreign policy objective, which ties their international reputation to economic objectives. Additionally, it seemed that Botswana, Mauritius, and Ghana sought to preserve their good global citizen identity, at least partly, to attract and protect economic relations.

Another finding is that reputational factors seem to have moderated how voice behaviour was expressed. This was evidenced by Lesotho, Ghana, Tunisia, and Sierra Leone. In fact, Sierra Leone was the only instance where voice behaviour was driven by reputational factors related to its positive reputation regarding the SCSL's outreach programme. The moderating effect of reputational factors on voice behaviour illustrate the close relationship between loyalty behaviour and this explanatory factor since it is an example of loyalty to the ICC (for reputational reasons) interplaying with voice to shape its delivery.

[1010] Murithi 2018, 152–53.

Economic dimensions are a primary explanation of four states' behaviour with the ICC. Donors' relationships seemed significant for Cabo Verde, Burkina Faso, and Comoros' ICC behaviour. Seychelles stood out as an exception since its behaviour was not driven by ODA-related concerns but caused by Seychelles' economic and security interests with Kenya.

9.5. Conclusion

As the largest regional bloc in the ICC, the behaviour of African States Parties is important. Shared positions have the potential to send strong signals of dissatisfaction or satisfaction. Therefore, understanding these behaviours is important for improving policy responses as well as for understanding which parts of behaviour are driven by matters internal or external to the ICC. The main explanations of African States Parties behaviour with the ICC were head of state interest, regional politics, domestic political factors, reputational factors, and economic dimensions.

The preceding analysis of behaviour confirms the usefulness of the EVL model in aiding the explanation of behaviour. The model enables the behaviour to be placed into simple and discrete categories. Furthermore, the model emphasises that these behaviours are dynamic, non-linear, and encourages the examination of how they interplay. This proved apt given that most African States Parties demonstrated different behaviours during the 2008 to 2018 period. Thus, the model's emphasis on studying interplay helps with the theorisation and discussion of state ambivalence and vacillation regarding the ICC and the withdrawal debate.

The EVL categories facilitated the analysis of how different causal mechanisms interacted and interplayed to produce the behaviours. It allowed for trends to be identified without the costs of oversimplification and reductionism. For example, exit behaviour was correlated with head of state interest and loyalty behaviour was associated with reputational factors. However, these relationships were not exclusive. Other factors also were identified as contributing explanatory factors to the behaviour outcomes, such as Kenya's domestic elections and economic dimensions regarding diamonds in Botswana. Furthermore, exceptions to general correlational trends were also facilitated by the model.

For example, head of state interest also shaped loyalty behaviour in the case of Liberia – and possibly indirectly in Botswana and Cabo Verde. Thus, EVL enabled complicated explanations of behaviour to be discerned while remaining a simple model to utilise.

The analysis of the explanatory variables also suggested ways that the factors could be strengthened based on the empirical evidence. For example, the head of state variable suggested that the personalities of the heads of states in question might how they pursue their protection. This suggests the importance of considering how the personalisation of power through the executive affects foreign policy decisions and state behaviour. The Cabo Verde case suggests that it might be relevant to consider how personal/professional history of the head of state affects their pursuit of their interests. Fonseca's criminal law background may have contributed to his inclination toward the ICC. Evidence from The Gambian, Kenyan, and Burundian cases all suggested that head of state interests might include the interest of a head of state's political allies – such as their deputy or other ministerial allies. However, alliances shift and change too, as was seen in the Kenyan case, so is an extension of the self-preservation the head of state interest factor is intended to capture. Another finding from the study is that head of state interest does only result in exit behaviour. Kenya showed how loyalty and voice were both behaviours driven by this explanatory factor. Notably, Kenya also was compliant with Court proceedings despite their voice behaviour, which suggests the effect that context has for behaviour. For example, the ASP is a political space where voice statements that discredited the ICC complemented the compliant behaviour shown in the legal space.

Regional politics was not as prominent an explanation of behaviour as might be expected given the AU's antagonistic positions toward the ICC and the regionalisation of the withdrawal debate – two conditions that sought to activate the solidarity norm in response to dissatisfaction with the ICC. This was successful to an extent, which is evidenced by the number of States Parties that upheld the AU's decision on non-cooperation with al-Bashir's arrest – sometimes on more than one occasion – by allowing al-Bashir to visit their country without apprehension. However, these were typically isolated events rather than illustrations of consistent anti-ICC behaviour. Only four states' behaviour was mainly explained by regional factors and only Namibia's behaviour seemed mostly shaped by the

solidarity norm. South Africa, Djibouti, Tanzania all suggested that mediating regional efforts was a sub-type of regional factor that shaped their ICC behaviour. Pragmatically, they prioritised their regional reputation to preserve their role as peace actors. The South African case further complicated the regional politics factor by illustrating how regional hegemonic objectives shaped its behaviour with the ICC and decision to host the AU Summit.

Domestic factors predominantly explained the behaviour of 11 African States Parties. The empirical evidence supported the findings of other ICC-African politics scholars – that the behaviour of self-referring states was primarily driven by the desire to eliminate domestic political opponents and threats. Additionally, it was demonstrated that Madagascar followed this trend when it self-referred to the ICC, but the OTP did not open investigations. Niger and Chad suggest that domestic security issues related to spill-over conflict was a type of domestic factor that shaped ICC behaviour. Zambia was an outlier and illustrated how a domestic popular mandate in favour of the ICC, encompassed by a referendum, shaped the state's ICC behaviour.

Reputational factors often explained loyalty behaviour and a 'good global citizen' reputation was a common identity objective for states. This is tied to the notion of soft power where a positive international reputation as a law-abiding, democratic, liberal, and moral state gave states currency within international (and regional) politics – and with the idea that being seen to be an ICC State Party positively contributes to this image. However, it was noted that it was difficult to delineated reputational factors from economic factors since being perceived as a 'good global citizen' had economic incentives. Additionally, some states included development diplomacy as a foreign policy objective. This overlap notwithstanding, there were four cases where economic factors primarily explained behaviour – all of which were small states.

Another identity factor might play a role in ICC behaviour. Of the 20 African States Parties that are also members of the Francophonie organisation, 11 signed the Niamey Declaration,[1011] at the October 2017 the Regional Symposium on High Level Cooperation

[1011] Burkina Faso, CAR, Chad, Congo-Brazzaville, DRC, Côte d'Ivoire, Gabon, Guinea, Mali, Niger, and Senegal.

and Complementarity between States and the ICC. The symposium was held "…for senior political representatives and legal and judicial professionals and actors from French-speaking, Central and West African States…" and financed by the EU Commissions and Francophonie organisation. All in attendance signed the declaration, which might suggest a unified bloc approach to the ICC matter within this sub-region. Seven of the 20 Francophonie-ICC African States Parties were not invited to this meeting – consequently, not signatories – since they are not West or Central African states.[1012] Benin and (arguably) Cabo Verde stand out as states that did not sign the declaration despite being West African states and ECOWAS members and it is undisclosed why this is the case. Although, both made statements that same year indicating their loyalty to the ICC. Cabo Verde's statement at the UNGA GD came before the symposium was held and Benin's ICC GD statement came after. This suggests that research into the role that the Francophonie organisation, and powers like France within in, played in advocating for loyalty to the ICC from its member states. This might suggest a way that an international identity-based body influences individual state behaviour in relation to the ICC.

The role of the epistemic community in promoting the ICC as an institution the represents international justice norms and encouraging States Parties to maintain their affiliation with the Court for this association is an area for future research. The South African case suggested that legal advisers are a relevant actor shaping behaviour with the ICC but also showed how their advice is discarded or side-lined by bureaucratic and political leaders. The personal interest and professional background in criminal justice seen in Botswana's Khama and Cabo Verde's Fonseca suggest that the president might directly be a part of this epistemic community or influenced by it. The extent that individual members of the liberal international justice epistemic community influenced decision-makers requires in-depth empirical research with the, inter alia, relevant (former) government and AU representatives and advisers.

[1012] Burundi, Cabo Verde (it is unclear if Cabo Verde would have been invited – it is an ECOWAS member but not clearly a West African country).

Additionally, the South African, Zambian, Burundian, and Kenyan cases suggest the importance of civil society organisations as members of the epistemic community and the effect that they can have on a state's behaviour with the ICC. SALC's court case against South Africa for its failure to arrest al-Bashir created domestic accountability for reneging on Rome Statute obligations and Zambia's SACCORD helped popularise the ICC ahead of its domestic referendum on whether to withdraw. The Burundian and Kenyan states demonised their civil society organisations that proactively supported the ICC, which suggests that they posed a threat.

Another related area for further research is into the delegates sent to the IO forums on behalf of states. Their autonomy, expertise, preparedness, confidence, and partnerships could influence the positions – and the manner in which they are – expressed at these forums.[1013]

This chapter has demonstrated that based on the available empirical evidence, five variables were the main explanatory factors for African States' Parties behaviour in relation to the ICC. The EVL model facilitated this examination, and the exploration of the explanatory factors suggest areas where the EVL model could be refined, which is discussed in the concluding chapter.

[1013] International Law Expert 2021.

10. CONCLUSION

The withdrawal debate is a case study of African state behaviour that helpfully illustrates insights into Africa's international relations by teasing out various external and internal pressures that influence the agency and decision-making of African states. The withdrawal debate was used to refer to the period between 2008 and 2018 where recurring calls for mass African withdrawal from the ICC were presented as a response to the ICC's involvement on the continent.

African states responded differently to these calls. Burundi was the only African state that withdrew from the ICC, although South Africa and The Gambia initiated and rescinded withdrawal processes. Kenya, Uganda, and Namibia, for example, threatened to leave the ICC but did not initiate withdrawal processes in terms of the Rome Statute. Botswana vehemently defended the ICC where Nigeria indicated its commitment to the Court but also criticised aspects of its operations. Some states, like Niger, did not communicate formal stances toward the withdrawal debate. Furthermore, states demonstrated more than one behaviour. For example, South Africa withdrew, criticised, and vocally supported the ICC at different points in the decade-long withdrawal debate period. It is clear that the withdrawal debate refers to a period of heterogeneous and dynamic behaviour by African States Parties to the ICC.

10.1. The Question of African States' Behaviour in Relation to the ICC

Consequently, the primary research question of this study is: what are the main factors influencing African States Parties' behaviour in relation to the ICC? This question is important due to the significance of the ICC as an institution promoting a moral and just global order and the African bloc's forming the regional majority within the Court. Therefore, consensus among African states has substantial bearing for the ICC and its reputation. The existing literature focuses on withdrawal and threats of withdrawal, which leaves other types of behaviour unidentified and unexplained.

This question has two sub-questions: What are the different types of behaviour that African States Parties have practiced in relation to the ICC regarding the withdrawal debate? What caused these different types of behaviour? To answer these questions, the EVL model together with the three dimensions of discourse analysis guided the analysis of country statements delivered by African States Parties at the ICC GDs, UNGA ICC RPs, and UNGA GDs. Therefore, the dissertation is a type of theory-confirming large-N case study. The dissertation tested the applicability and utility of the EVL model to study an IR phenomenon, namely, African States Parties' behaviour in relation to the ICC regarding the withdrawal debate. As a result, the EVL model was adjusted and improved for IR studies based on its application to the withdrawal debate, and the withdrawal debate was better understood due to the EVL model.

There were two main objectives of the dissertation. The primary objective was to contribute to the small literature that applies the EVL model to study state-IO behaviour in the IR scholarly field. The second objective was to offer insight into African States Parties' behaviour in relation to the ICC during the withdrawal debate by explaining the main factors influencing this behaviour.

10.2. The Analysis of African States' behaviour in relation to the ICC

The dissertation began by providing an overview of Africa's relationship with the ICC generally and, more specifically, in terms of the withdrawal debate. It then reviewed the existing withdrawal debate literature to determine how behaviour was identified and explained. The review of the foundational withdrawal debate literature was organised into four themes: alleged ICC case selection bias; the competing international obligations faced by African states; the peace versus justice debate; and the role of the prosecutor. The second section of this chapter reviewed the main methodologies used to study the withdrawal debate, which were small-N qualitative case studies that assessed the merits of the themes raised in the withdrawal debate.

The strength of this literature is the comprehensive analysis of the issues in question within the withdrawal debate. These issues were assessed by political studies and international law

scholars, which allows transdisciplinary analyses of core withdrawal debate concerns. Furthermore, it allows instructive findings to be shared with policy-makers that considers political and legal matters. The case studies analysed allow in-depth and contextually rich understandings of the factors shaping the assessments of withdrawal debate issues and empirically support and test some of the issues debated.

Despite the importance of these contributions, the literature does not comprehensively analyse state behaviour in response to the withdrawal debate. The literature also does not account for the different types of behaviour demonstrated by states. Instead, it focuses on withdrawal-related behaviour, which overlooks other types of critical behaviour as well as supportive behaviour. Furthermore, it neglects the abstention of states from participating in debates related to the withdrawal matter. Additionally, the prevalence of small-N case studies limits the generalisability of behaviour patterns. There is an absence of comparative analyses of a large sample size of African States Parties and their behaviour over time (i.e. longitudinal studies).

Consequently, the main factors explaining African States Parties' behaviour in relation to the ICC is not satisfactorily addressed in the existing literature, which limits the understanding of the withdrawal debate issue.

To address this gap, a qualitative large-N theory-confirming case study research design was selected. The EVL model was used to classify the states into behavioural categories because the model was designed to help explain behaviour between individuals and organisations in the context of discontent. The thesis proves that the EVL model could be adapted and applied to study an international relations phenomenon regarding a state-IO relationship.

The case study method was preferred as it enabled the analysis of the withdrawal debate without abstracting it from its context. The contextual factors were necessary for understanding why there are differences among the States Parties and over time in response to the withdrawal debate. All the African States Parties to the Rome Statute were the units of analysis in this study. Operationalising behaviour was a significant challenge since the ASP uses a consensus-based decision-making process. This means that there were

no individual state vote results to use as evidence of an official position regarding ICC resolutions. However, a rich pool of country statement data was available across several institutions. This was used to measure African States Parties' official responses to the withdrawal debate.

The speeches delivered by these states' representatives at the ICC GD, UNGA ICC RPs, and UNGA GDs were the best source of comparative evidence available. Country statement data served as a useful type of evidence because it enabled a range of controls for comparative study between states as well as across years. The institutions, and associated protocols, where the annual addresses were delivered were constant, the capacity in which speeches were delivered by representatives was always official and formal, the direct audience for whom the speeches were intended was constant.

However, a challenge that emerges with country statement data is that speeches can be misleading. How things are said can obscure other intentions or meanings. Furthermore, the relative power of the states delivering their speech within global politics and the institutional space in which they speak might also affect how speeches are phrased. Thus, discourse analysis was identified as the appropriate method for analysing the country statements to determine if what was said should be classified as exit, voice, or loyalty. Discourse analysis encourages the deconstruction of speeches (and other discursive evidence) to determine factors affecting what is said, why, and how. Fairclough's three-dimensional framework was used to study the country statement data and to demonstrate the rationale behind their classification as either exit, voice, or loyalty. It has the added benefit of helping to untangle some of the dynamics that shape the speech data. Discourse analysis helped to identify and decipher the speeches in order to classify the statements as indicators of exit, voice, or loyalty behaviour.

Exit was defined as the submission of a notification of withdrawal from the ICC. Voice was defined as any communications of discontent with an IO. Loyalty was defined as support for the ICC. A total of 208 country statements were interpreted using discourse analysis and classified into exit, voice, or loyalty categories. Country statement data was triangulated with academic and grey literature, court cases, news articles, and key informant interviews

to inform the analysis of the main factors that shaped the EVL behaviour by the African States Parties.

Five explanatory factors were identified from the mainstream literature about Africa's IR: head of state interests, regional politics, domestic politics, reputational factors, and economic factors. These explanatory factors were used to identify and explain the main causes of exit, voice, and loyalty behaviour. Thus, the EVL model guided the examination of the motivations of the African States Parties' behaviour in response to the withdrawal debate. Furthermore, the withdrawal debate was a theory-confirming case study to test the EVL model's applicability for the analysis of state-IO behaviour.

The dissertation confirmed the usefulness of the EVL model in aiding the explanations of behaviour. The model enabled behaviour to be placed into simple and discrete categories while capturing that behaviour is dynamic, non-linear. Additionally, the EVL model encouraged the examination of how they interplay, which proved apt given that most African States Parties demonstrated different behaviours over the course of the 2008 to 2018 period. Thus, the model's emphasis on studying interplay helps with the theorisation and discussion of state ambivalence and vacillation regarding the ICC and the withdrawal debate.

The EVL categories facilitated the analysis of how different causal mechanisms interacted and interplayed to produce the behaviours. It allowed for trends to be identified without the costs of oversimplification and reductionism. For example, exit behaviour was correlated with head of state interest while loyalty behaviour was associated with reputational factors. However, these relationships were not exclusive. Other factors also were identified as contributing explanatory factors to the behaviour outcomes, such as Kenya's domestic elections and economic dimensions regarding diamonds in Botswana. Furthermore, exceptions to general correlational trends were also facilitated by the model. For example, head of state interest also shaped loyalty behaviour in the case of Liberia – and possibly indirectly in Botswana and Cabo Verde. Thus, EVL enabled complicated explanations of behaviour to be discerned while remaining a simple model to utilise.

The analysis of the explanatory variables also suggested ways that the factors could be strengthened based on the empirical evidence. For example, the head of state variable suggested that the personalities of the heads of states in question might affect how they pursue their protection.

Regional politics was not as prominent an explanation of behaviour as might be expected given the AU's antagonistic positions toward the ICC and the regionalisation of the withdrawal debate – two conditions that sought to activate the solidarity norm in response to dissatisfaction with the ICC. This was successful to an extent, which is evidenced by the number of States Parties that upheld the AU's decision on non-cooperation with al-Bashir's arrest – sometimes on more than one occasion – by allowing al-Bashir to visit their country without apprehension. However, these were typically isolated events rather than illustrations of consistent anti-ICC behaviour. The importance of regional reputation as related to conflict mediation emerged as a more significant regional factor. The South African case further complicated the regional politics factor by illustrating how regional hegemonic objectives shaped its behaviour with the ICC and decision to host the AU Summit.

Domestic factors were relevant explanations of behaviour, particularly loyalty. Self-referring states who used the ICC to target their domestic political opponents, as illustrated by Uganda, CAR, DRC, Côte d'Ivoire, Mali, and Gabon. Niger and Chad suggested another way that behaviour toward the ICC is explained best by domestic factors – particularly, by domestic security concerns caused by conflict spill-over from neighbouring states.

Reputational factors often explained loyalty behaviour and a 'good global citizen' reputation was a common identity objective for states. This is tied to the notion of soft power where a positive international reputation as a law-abiding, democratic, liberal, and moral state gave states currency within international (and regional) politics – and with the idea that being seen to be an ICC State Party positively contributes to this image. However, it was argued that it was difficult to delineate reputational factors from economic factors since being perceived as a 'good global citizen' had economic incentives. Additionally, some states included development diplomacy as a foreign policy objective. This overlap notwithstanding,

there were four cases where economic factors primarily explained behaviour – all of which were small states. Relationships with donors seemed to be particularly relevant.

The EVL model facilitated the explanation of the main factors influencing African States' behaviour in relation to the ICC. It enabled the comparison of behaviour across cases as well as time to highlight commonalities and differences. This enhances the understanding of the factors shaping the withdrawal debate as well as African states' international relations.

Important analytical implications are raised by the arguments in this dissertation, which are organised into four categories: (1) implications for the EVL model, (2) implications for the African states-ICC relationship, (3) implications for studying Africa's IR behaviour, and (4) implications for future research on this topic.

10.3. Implications for the EVL Model

The purpose of the EVL model is to conceptualise how actors respond when they are dissatisfied with the performance of an organisation to which they have an affiliation (for example, through membership or patronage). The EVL model was applied to explain the major influences of African States Parties' behaviour in response to the withdrawal debate, which was argued to mark a perceived decline in the ICC's relationship with its African members. The EVL model proved fitting for this purpose.

Significantly, the EVL model assisted with distinguishing between different types of behaviour adopted by African States Parties over the years of the withdrawal debate. This addressed the gap in the literature, which neglected to study support for the ICC and silence regarding the withdrawal debate. The EVL model sorted the empirical evidence into three discrete categories of behaviour that addressed this gap in the literature. Furthermore, the EVL model helpfully delineated withdrawal behaviour from threats of withdrawal with the exit and voice categories respectively. The tendency in the literature was to treat these without distinguishing them as separate types of behaviour.

Th EVL model also aided the analysis of the causes of the different types of behaviour. It was useful because it predicts that behaviour interplays and is not linear, which was true for the withdrawal debate case study. The EVL model balanced nuance and flexibility in a way that was conducive to producing analysis that could capture the complicated behaviour and motivations of African States Parties without being reductionist. The use of the three categories of behaviour allowed changes in behaviour within and across states to be overtly recognised and explained. This shows how states' behaviour toward the ICC changed over the course of the withdrawal debate and avoids an ahistorical or static account of behaviour.

The EVL model does not presume explanations of behaviour except that discontent is an influencing factor. This is a strength because it allows researchers to surface explanations based on their empirical evidence. However, a purely open-ended exploration of the causes of behaviour of 34 African States Parties would not have been feasible. The use of major explanations from the prevalent literature on the causes of Africa's IR was a helpful supplement to the EVL model. This suggests that future research using the EVL model for the study of large-N state-IO relationships would need to supplement it with predetermined explanatory factors to ensure that the research has established and justified parameters.

A few difficulties were noted when adapting the model for the study of international relation. These included changing the unit of analysis from an individual to a state, studying a relationship that is not market-based, moving from the domestic to the international level of analysis, and the nature of the perception of decline as a motivator of behaviour in the EVL model.

It was argued that a state as the unit of analysis is possible but that the divisibility of the actor should deliberately be considered when operationalising and analysing behaviour. This dissertation specified the type of behaviour studied (official behaviour as indicated by public country statements), sought to deconstruct factors immediately shaping the delivery of the speeches using discourse analysis, and adopted a multivariate explanation of the behaviour. Arguably, a similar approach should be adopted to study individuals as the unit of analysis.

Furthermore, it was demonstrated that the EVL model is applicable to relationships that are not market-based, even if analogies can be drawn. State-IO relationships are caused and shaped by non-material factors. Researchers studying state-IO relationships should draw on the prevalent literature about the relevant IOs to identify appropriate explanatory variables for the phenomena that they seek to explain. Furthermore, it should not be presumed that decision-making emanates from rationalism and self-interest. This should be overtly theorised and justified if it is the logic used to inform the analysis of the relationship.

The existing studies that applied the EVL model to study state-IO relations noted ways that the international level of analysis, particularly the IO setting, differed from the domestic level. Notably, in the ICC, change based on feedback from members can be anticipated to be a long process due to the infrequency of ASP meetings and that this is a political body, which tends to prolong decision-making.

Another specificity regarding the IO context is that the legitimacy of the IO itself can be affected by which states constitute its membership based, their proactivity within the IO, and how states respond to the IO. The withdrawal debate called the ICC's legitimacy into question and forced conversations by its members to consider (and, for some, defend) the ICC's legitimacy. This raises the question of where the ICC derives its legitimacy. It seems that its esteem among its member states is important, but it is unclear if the relative power of these states is a factor affecting legitimacy. For example, the fact that the ICC retained support from EU countries and Japan could be significant for its legitimacy. It is also unclear if its legitimacy would have damaged if there had been a unified antagonistic position toward the ICC by its African bloc. The withdrawal from this bloc surely would have been damaging for its reputation as well as its investigations. But this was no more than a hypothetical threat, with many African states throughout the withdrawal debate indicating their intent to remain in the ICC.

The shift in the level of analysis also requires considering how different actors and variables affect membership relationships but did not radically challenge the applicability of the model, which was developed with the intent that it could be broadly applied. The shift in the level of analysis made apparent areas of concern with operationalising the model that

would apply at the domestic level but were not overtly discussed by Hirschman. For example, how to measure 'behaviour' or a 'response' to decline needs to be determined at domestic and international levels based on the context of the relationship examined. Thus, the definition and operationalisation of this concept is an important task regardless of the level of analysis.

It was argued that the perception of decline did not necessarily need to be the immediate cause of behaviour for the EVL model to be applied and for it to be helpful. The perception of decline undoubtedly was an important context shaping African States Parties' behaviour. The perceived decline created an environment that moralised and justified dissent in a way that had not previously prevailed. However, as the findings suggest, the rhetoric that shaped this context also distracted from the motivations behind the behaviour. This suggests that, depending on the case study that the EVL model is applied to, it is necessary to critically assess the nature of the decline and its relevance for behaviour: is it a cause or is it a contextual factor?

The EVL model is not prescriptive in how it should be operationalised, which allows for such nuanced research design and is a benefit of the model. Furthermore, the EVL categories captured all the major types of behaviour demonstrated by African States Parties. The empirical evidence suggests this model could be refined to better capture trends across the states, while retaining the benefits of its simplicity, by added sub-types of voice and loyalty.

First, voice was communicated in two general ways: constructively and critically. Some states noted areas of concern with the ICC that they considered important for redress but also made it clear that their membership of the ICC was not at risk. This is a constructive way of communicating discontent. On the other hand, other states communicated discontent without reassurances or positive language to indicate that the nature of the feedback was intended to benefit the Court's development.

Accordingly, forms of voice that communicate discontent in a deliberate manner that conveys the intent of the feedback as a way for the organisation to improve should be labelled as constructive-voice. In such communications, the continued relationship between

the communicator and the organisation does not seem in jeopardy. Contrarily, forms of voice that communicate discontent without deliberately delivering it in a way that indicates the safety of the relationship – or even threatens to end this relationship – should be labelled as critical-voice. The intent of such communications seems to be to convey that the relationship between the communicator and the organisation is under threat as a result of the discontent.

Additionally, loyalty also presented in two forms: passive and active. Passive-loyalty was illustrated by states such as Niger, Comoros, Gabon, Chad, and Mauritius where they did what was minimally required after accession to remain a member of the ICC but were not compelled to proactively criticise or support the ICC in the face of the withdrawal debate threats. In other words, they were generally silent toward the ICC during the IO forums studied, which indicates tacit support. This suggests that these states might have calculated that there were gains to be had from joining the ICC and, to some extent, remaining one – but not enough to warrant actively positioning themselves against other African States Parties or the AU within the IO forums studied. It was suggested that these states might be referred to as zombie States Parties.

Active-loyalty, such as that shown by Botswana and Nigeria, suggests that these states saw the ICC as a matter of sufficient importance to publicly go against the AU and pressure from some African states (such as Kenya, Rwanda, and Sudan) to defend and support the Court. The ongoing motivation to take a position of active loyalty to the ICC is distinct from the passive loyalty category. At the very least, it suggests that these states see their affiliation with the Court as beneficial or positive.

Given that decision-making within multilateral IOs is anticipated to be a long process, these nuances between the sub-types of voice and loyalty are especially important when applying the EVL model to the IR level of analysis. A refined typology of state-IO behaviour that captures these distinctions while remaining simple is a useful adjustment to the EVL model in a context where alternative IOs to the one that states are dissatisfied with are not readily available.

Future research could shift the focus of this analysis from African States Parties to the ICC and analyse how the discontent raised by the African states affected the institutional response by the ICC. It could explore if particular types of behaviour were a more effective means to influencing the ICC's response. This would be another way that the EVL model could be used to study the withdrawal debate.

10.4. Implications for the African States-ICC Relationship

This dissertation's examination of the explanatory factors of African States Parties' behaviour suggests that while ICC-African relations were defined between 2008 and 2018 by the threat of withdrawal, the rhetorical reasons for withdrawal (i.e. the ICC's alleged anti-African bias) were not the most important issues driving behaviour. In fact, loyalty was the most frequent behaviour (with 137 statements classified as such). This suggests the importance of refining how the withdrawal debate is framed. Aside from states lacking a uniform position on the ICC (discussed in more detail below), the suggestion of "mass" withdrawal is inaccurate and serves a political agenda. Writing about the withdrawal debate should consciously avoid reproducing this inaccuracy given the prevalence of loyalty as a state behaviour.

Additionally, exit was explained in two of three cases by the interest of the head of state to protect themselves from prosecution and preserve their power.

This suggests the importance of who makes (foreign) policy and what causes them to act in a particular way. The evidence from this study corresponds with literature about the personalisation of power. This refers to the exercise of unconstrained authority at the discretion of an individual – in this instance, the head of state – usually at the expense of other decision-making political actors. In African Studies, personalistic perspectives focus on so-called big or strongmen and how they shape African state policies to safeguard and promote their own interests.

The findings from this study suggest that the personalistic perspective is important for studying African foreign relations and future research could test the applicability of this

variable by comparing these findings with other African foreign relations decisions. This would have an important bearing on international relations issues that presume that policy-making is a product of institutionalised power. Weak institutions and the concentration of power in the executive branch of the state is a common and enduring feature of African governments, which sits in tension with so-called 'good governance' assumptions that underpin international norms and interventions.

However, African states are not the only ones that experience the personalisation of power. Future research should also determine the extent to which this applies to other ICC States Parties and determine why. This would improve the understanding of state's policies toward the ICC, which is important for the ICC's approach to managing relations with states as well as for stakeholders interested in influencing state behaviour in relation to the Court.

It would also be worthwhile considering how the personalisation of power affected the behaviour of non-States Parties such as the US. The US' policy positions toward the ICC varied from the Clinton to the Bush to the Obama to the Trump regimes. This could suggest that personalisation of power is a relevant factor to study as an influence of the US' foreign policy in addition to party politics.

Furthermore, the topic of personalisation of power and how it affects state-ICC relations is of interest for the study of democratisation more generally.[1014] Considering the significance of personalisation of power on matters such as cooperation with the ICC could provide insight into some democratic practices related to an international criminal law institution.

Another finding from the study was that it is not possible to provide a straight-forward answer about what drives African state-ICC relations. The study demonstrates that causal relationships were multifactorial and changed over time. Additionally, behaviour was not

[1014] For example, democracy analysts have studied the consequences of the COVID-19 pandemic on democratic rollback. See the German Institute for Global and Area Studies' project on COVID-19 and Executive Personalization in Sub-Saharan Africa, Asia, Latin America and the MENA Region (https://www.giga-hamburg.de/en/research-and-transfer/projects/covid-19-executive-personalization-sub-saharan-africa-asia-latin-america-mena-region).

constant. These findings highlight the importance of recognising the heterogeneity in Africa's international relations. The case study shows that even when responding to the same subject, behaviour was diverse.

This point confirms research by other academics who have studied the withdrawal debate that also recognised heterogeneity of behaviour. For example, Boehme and Gissel's work, for example, recognise heterogeneity of behaviour among African states and also adopt large-N studies, which lends itself to eliciting such trends.[1015] Gissel's study also recognises how behaviour changes over time. Mills and Bloomfield used a small-N study of six states to illustrate the "antrepreneurial" behaviour they identified, but also recognised other types of behaviour and referred illustrations of this heterogeneity in a dedicated section illustrating "entrepreneurial" behaviour by African States Parties.[1016] However, these studies did not explicitly discuss the importance of this point.

This finding has implications for the usefulness of 'Africa' as a category in the analysis of African states' international relations. Africanist academics have protested the essentialisation and reductionism that often accompanies the study of Africa's international relations, where Africa is presumed to be a singular entity without explanation as to why. This was noted as a concern with the withdrawal debate literature. The heterogeneity of African States Parties' behaviour, and the explanations thereof, demonstrates that referring to a single 'African' response to the withdrawal debate is analytically flawed and misleading.

This likely holds for other international relations issues as the AU – as Africa's regional organisation – tends not to have binding collective policies. This was starkly evident with the AU's draft withdrawal strategy document, which was not binding nor collectively embraced. In this way, the AU differs from the EU, which often has such policies, which enables the discussion of a 'European position' toward a matter.

[1015] Boehme 2018; Gissel 2018
[1016] Mills and Bloomfield 2018

Future research into the withdrawal debate could benefit from widening the African actors studied. It would be useful to study the extent to which non-States Parties, like Rwanda, Egypt, and Ethiopia, influenced African States Parties' behaviour and/or the trajectory of the withdrawal debate. Similarly, a study of the AU as an actor could also provide different insight into how regional politics shaped behaviour and/or the withdrawal debate. Further research into how the internal politics of the AU affected different regional political pressures on African States Parties would help explain how and why this affected behaviour.

10.5. Implications for studying Africa's IR Behaviour

It was noted that one reason that studying the withdrawal debate is important is because the ICC is an institution that was created to bolster international morality, and that the size of the African bloc has important implications for the Court as well as assessments of its performance. The analysis of the withdrawal debate demonstrated how the Court's reputation was scrutinised partly as a result of the rhetoric that accompanied exit and voice behaviour. It also shows the importance of seeing past the rhetoric to establish more plausible causes of behaviour to determine if discontent is (1) genuine and (2) how it can be addressed. It seems that constructive-voice statements (and some instances of active loyalty statements) were the best sources to identify genuine areas of discontent with the ICC – often with suggested ways to improve on these issues.

It was found that delineating the causes of loyalty behaviour was difficult. There was a correlation with reputational factors, but it could not be determined from this study if African States Parties, like Botswana, were compelled to support the Court because they believed in the moral imperatives that the ICC represents or because the positive reputation gained from supporting the Court is a means to an end. This is a challenge characterised by the tension between idealist and realist explanations of state behaviour. Idealists (including constructivists) argue that states take ideas seriously and this shapes their behaviour.

An issue with this approach, when considering African states' international relations, is that African states were not participants in the creation and acceptance of the ideas that inform the foundations of the contemporary global governance. The global governance system has

been modelled on liberal peace values that were largely set by powerful states after World War II before most of Africa was independent. The status quo in global power politics after the end of the Cold War affirmed the liberal peace agenda of so-called Western states. While African states have played an important role in the passage of international norms and laws since their independence, it is necessary to consider the extent that their engagement with such ideas has been shaped – at different stages – by their relative positions of power within global politics.

The assertion is not that African states cannot exercise independent thinking regarding global ideas and norms. Rather, the point is that it is necessary to consider how Africa – and other Global South – states enter the global political arena on different historical footing and with less power compared to Global North states. This affects the terms of engagement with these ideas because other pressures enter the fold that could influence an African state's support for an idea.

This was suggested by the blurriness of the reputational and economic factors in this project. Additionally, it is suggested by the tendency of African states in the late 1990s and early 2000s to accede to international treaties and legislation. Global powers sought the African bloc's vote because of its size and the likelihood that the treaty would then be adopted. Furthermore, it suggests that the prominent ideas within global politics are often in the interests of global powers since they have the clout to secure the necessary support to mainstream an idea.

Relatedly, a bigger question prompted by this study is one about the nature of morality in world politics. This study shows that it is often in the interests of (African) states to be seen as conforming to the prominent ideas and norms within global politics. For example, Burundi justifies its exit from the ICC by appealing to other norms, like democracy and representation, commonly accepted within global politics as essential. By appealing to other liberal norms to legitimise its exit, Burundi seeks to present itself as conforming with other global norms and to show that its withdrawal was necessitated in order to be in line with these other norms.

The utility of being seen to conform with ideas and norms differs from being motivated by the inherent value of an idea or norm. Studies of Africa's international relations behaviour need to be cognisant of how high rates of accession to international treaties and the adoption of liberal peace discourse might obscure utilitarian motivations for their behaviour.

10.6. Implications for Future Research on this Topic

There are several methodological implications that emerge from this study and the limitations with its design that could inform future research into African states' relations with the ICC and the use of the EVL model to study their behaviour.

In-depth interviews, or open-ended surveys, with experts on each of the African States Parties would be an ideal way to build on the findings of this project. Such data would strengthen the analysis of the causes of behaviour as well as deepen the contextual information related to the behaviour. Country experts might also reflect on cultural specificities and idiosyncrasies that affect the state's international relations.

The findings from this study suggest that the role of the epistemic community in shaping state behaviour could be an important variable. Due to time and resource constraints, this study was unable to adequately operationalise this variable to determine its significance. Incorporating this variable in future research would require a mapping exercise of the relevant professionals and experts that advised African States Parties (and the ICC and AU) regarding withdrawal debate matters during the period under study. Interviews should be conducted with these actors to ascertain what their advice to States Parties was and if this was undertaken by States Parties. Additionally, these interview respondents could provide insight into the politics within the AU and thereby strengthen the regional politics factor.

Furthermore, the role of domestic and international civil society actors in shaping African states' behaviour could also be measured. This requires an understanding of the primary domestic civil society actors that managed activities that might have influenced state behaviour and interviewing their representatives.

These two actor variables are feasible additions but require time and contacts – resources that were not available during this project. For example, understanding the domestic civil society landscape first requires speaking to country experts to confirm which civil society groups are relevant. Additionally, making contact with the leaders of these groups is difficult as they are often inundated with work and their contact details are not publicly available. The CICC could be a starting point for this type of research, at least regarding civil society actors. The Pan-African Lawyers Union might be a resource for accessing AU advisors.

Similarly, there is scope for future research to consider the extent to which the delegates that delivered the country statements had the authority to influence the official position toward the ICC that was communicated. Such research could consider the qualification of these delegates and how supported they were to make informed statements about the withdrawal debate and ICC. Additionally, comparisons of the same country's behaviour year-to-year based on the changes in personnel could be illuminating.

The country statement evidence was a useful way to measure and compare state behaviour. Future research could treat this evidence differently, which could bear different results or answer different research questions about state behaviour related to the ICC. The country statements were analysed in their text form using discourse analysis. This decision was made because video and audio files were not available for all the different types of speech data across the three forums and the text format was sufficient for the purpose of this project. Future research could use more varied media as data as the discourse analysis method can be applied to any form of discursive evidence.

Additionally, the country statements could be compared in different ways to the approach adopted in this project, which highlighted common themes across the states throughout the period of study. Another project might compare speeches within the same year against one another to see trends per annum, rather than an aggregate of trends. Furthermore, other researchers might prefer to use a coding system that weights statements as more or less strongly displaying exit, voice, or loyalty behaviour. For example, a statement that only states its commitment to anti-impunity would indicate a lesser degree of loyalty behaviour

than one that states commitment to these norms, details its domestication of the Rome Statute, and berates other states for their non-cooperation with the ICC. However, careful justification of the weighting system would be necessary, and it risks complicating research that is already cumbersome. This type of approach would, perhaps, be more suited to a quantitative approach, which is another opportunity for future research.

Relatedly, a limitation with this study was that resources were not available to hire a research assistant/s. Ideally, the classification of the 208 country statements into the EVL categories would be cross-checked and corroborated by comparing results with another researcher who carried out the same exercise using the same dataset and definitions. This would enhance the robustness of the classification system.

A qualitative large-N theory-confirming case study to explain the main factors driving African State Parties' behaviour with the ICC was the best research design for addressing the dissertation's primary research question considering the available literature, data, and resources. The study enabled important theoretical, methodological, and empirical insights into Africa's IR and the withdrawal debate. It showed that the EVL model is useful for studying behaviour in the withdrawal debate and applicable to state-IO relations. Five explanatory factors were found to interplay and explain behaviour. This led to the important finding that referring to an 'African' response to the withdrawal debate is problematic due to the heterogeneity of behaviour and the causes thereof among African states. While an extensive research agenda has been proposed from this dissertation, this finding is, perhaps, the most significant guide for future research looking at African states' behaviour with the ICC, as well as African states' international relations.

11. BIBLIOGRAPHY

'11th European Development Fund National Indicative Programme (2014-2020) for Co-Operation between the Kingdom of Lesotho and the European Union'. n.d. Accessed 25 November 2021. https://ec.europa.eu/international-partnerships/system/files/nip-lesotho-edf11-2014_en.pdf.

Acemoglu, Daron, Simon Johnson, and James A. Robinson. 2012. 'An African Success Story: Botswana'. In *Chapter 4. An African Success Story: Botswana*, 80–120. Princeton University Press. https://doi.org/10.1515/9781400845897-006.

'Address by the President of South Africa, H.E. Mr Cyril Ramaphosa, to the UN General Assembly, United Nations, New York, USA, 25 September 2018'. n.d. Accessed 18 November 2021. http://www.dirco.gov.za/docs/speeches/2018/cram0925.htm.

'AFISMA Transfers Its Authority to MINUSMA-African Union - Peace and Security Department'. 2013. African Union, Peace and Security Department. 1 July 2013. https://www.peaceau.org:443/en/article/afisma-transfers-its-authority-to-minusma.

Africa Center for International Law and Accountability. n.d. 'United Nations Third Universal Periodic Review Ghana, March 2017 Submission'. https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=4423&file=EnglishTranslation#:~:text=However%2C%2014%20years%20after%20the,%2C%20genocide%2C%20and%20war%20crimes.

'African Countries Back Away from ICC Withdrawal Demand - Sudan Tribune: Plural News and Views on Sudan'. 2009. 8 June 2009. https://sudantribune.com/spip.php?article31443.

'African Crises Dominate Talks as Benin Takes AU Helm'. 2012. *The Mail & Guardian* (blog). 29 January 2012. https://mg.co.za/article/2012-01-29-african-crises-dominate-talks-as-benin-takes-au-helm/.

African Union. 2015. 'The Common African Position on the Proposed Reform of the United Nations: "The Ezulwini Consensus". Executive Council. 7th Extraordinary Session. Ext/EX.CL/2 (VII).' http://www.apaunr.org/AU_Ezulwini%20Consensus.pdf.

———. 2017. 'Withdrawal Strategy Document: Draft 2'. https://www.hrw.org/sites/default/files/supporting_resources/icc_withdrawal_strategy_jan._2017.pdf.

African Union Peace and Security Council. 2008. 'Communique of the 142nd Meeting of the Peace and Security Council PSC/MIN/Comm(CXLII)'. Addis Ababa, Ethiopia. http://www.iccnow.org/documents/AU_142-communique-eng.pdf.

Ahere, John, and Grace Maina. 2013. 'The Never-Ending Pursuit of the Lord's Resistance Army: An Analysis of the Regional Cooperative Initiative for the Elimination of the LRA'. ACCORD. https://www.accord.org.za/publication/the-never-ending-pursuit-of-the-lord-s-resistance-army/.

'Aid, Trade and Development Indicators for Burkina Faso'. 2009. Aid for Trade at a Glance. OECD. https://doi.org/10.1787/9789264069022-27-en.

'———'. 2011. Aid for Trade at a Glance. OECD. https://doi.org/10.1787/aid_glance-2011-22-en.

'———'. 2013. Aid for Trade at a Glance. OECD. https://doi.org/10.1787/aid_glance-2013-21-en.

‘———’. 2015. Aid for Trade at a Glance. OECD. https://doi.org/10.1787/aid_glance-2015-24-en.
‘———’. 2017. Aid for Trade at a Glance. OECD. https://doi.org/10.1787/aid_glance-2017-23-en.
‘Aid, Trade and Development Indicators for Congo’. 2011. Aid for Trade at a Glance. OECD. https://doi.org/10.1787/9789264117471-en.
‘———’. 2013. Aid for Trade at a Glance. OECD. https://doi.org/10.1787/aid_glance-2013-29-en.
‘———’. 2017. Aid for Trade at a Glance. OECD. https://doi.org/10.1787/aid_glance-2017-30-en.
‘Aid, Trade and Development Indicators for Liberia’. 2013. Aid for Trade at a Glance. https://doi.org/10.1787/aid_glance-2013-en.
Akande, Dapo. 2009. ‘The Legal Nature of Security Council Referrals to the ICC and Its Impact on Al Bashir’s Immunities’. *Journal of International Criminal Justice* 7 (2):333–52. https://academic.oup.com/jicj/article-lookup/doi/10.1093/jicj/mqp034.
Al Jazeera. 2008. ‘Comorans Protest after Bacar Flees’, 28 March 2008. https://www.aljazeera.com/news/2008/3/28/comorans-protest-after-bacar-flees.
———. 2012. ‘ICC Charges Four over Kenyan Vote Violence’, 14 March 2012. https://www.aljazeera.com/news/2012/3/14/icc-charges-four-over-kenyan-vote-violence.
———. 2014. ‘Uganda Hit with Foreign Aid Cuts over Anti-Gay Law’, 27 February 2014, sec. International. http://america.aljazeera.com/articles/2014/2/27/uganda-hit-with-foreignaidcutsoverantigaylaw.html.
Alden, Chris, and Maxi Schoeman. 2013. ‘South Africa in the Company of Giants: The Search for Leadership in a Transforming Global Order’. *International Affairs (Royal Institute of International Affairs 1944-)* 89 (1). Wiley:111–29. https://www.jstor.org/stable/23479336.
Allison, Simon. n.d. ‘The Great Escape: How Kenyatta and Ruto Beat the ICC’. Daily Maverick. Accessed 21 May 2019. https://www.dailymaverick.co.za/article/2016-04-07-the-great-escape-how-kenyatta-and-ruto-beat-the-icc/.
Amir, Ahmed Ali. 2008. ‘African-Backed Comoros Forces Take Rebel Island’. *Reuters*, 25 March 2008. https://www.reuters.com/article/us-comoros-island-idUSL257668720080325.
Amnesty International. 2016. ‘Dangerous to Dissent: Human Rights under Threat in Gambia’. London: Amnesty International. https://www.ecoi.net/en/file/local/1066761/1226_1465455365_afr2741382016english.PDF.
———. 2020. ‘Burundi’s Pierre Nkurunziza Death Ends Repressive Era’. 17 June 2020. https://www.amnesty.org/en/latest/news/2020/06/burundi-pierre-nkurunziza-death-marks-the-end-of-an-era/.
Amuwo, ’Kunle. 2003. ‘The State and the Politics of Democratic Consolidation in Benin, 1990-1999’. In *Political Liberalization and Democratization in Africa: Lessons from Country Experiences*, edited by Julius Omozuanvbo Ihonvbere and John Mukum Mbaku, 141–74. Greenwood Publishing Group.
Apiko, Philomena, and Faten Aggad-Clerx. 2016. ‘The International Criminal Court, Africa and the African Union: What Way Forward? Discussion Paper No. 201’. European

Centre for Development Policy Management. https://ecdpm.org/wp-content/uploads/DP201-ICC-Africa-AU-Apiko-Aggad-November-2016.pdf.
Armstrong, Hannah. 2020. 'In West Africa, Trafficking Brings Human Suffering. But Removing It Can Set off Instability.' *Washington Post*, 11 April 2020. https://www.washingtonpost.com/politics/2020/04/11/west-africa-trafficking-brings-human-suffering-removing-it-can-set-off-instability/.
Arsanjani, Mahnoush H. 1999. 'The Rome Statute of the International Criminal Court'. *The American Journal of International Law* 93 (1):22–43. http://www.jstor.org/stable/2997954.
'ASP President Welcomes Gambia's Decision Not to Withdraw from the Rome Statute'. 2017. International Criminal Court. 17 February 2017. https://www.icc-cpi.int/Pages/item.aspx?name=PR1274.
Assembly of States Parties. 2011. 'Report on the Working Group on Amendments. ICC-ASP/10/32.' International Criminal Court. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP10/ICC-ASP-10-32-ENG.pdf.
———. 2013. 'Amendments to the Rules of Procedure and Evidence. ICC-ASP/12/Res.7. ICC-ASP/12/20.' International Criminal Court. https://asp.icc-cpi.int/iccdocs/asp_docs/Resolutions/ASP12/ICC-ASP-12-Res7-ENG.pdf.
———. 2014. 'Thirteenth Session. General Debate.List of Speakers.' https://asp.icc-cpi.int/iccdocs/asp_docs/ASP13/ASP13-GDSpeakers-ChronologicalList-ENG.pdf.
'Assembly of States Parties to the Rome Statute of the International Criminal Court. Sixteenth Session. Official Records, Volume I.' 2017. New York. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ICC-ASP-16-20-vol-I-ENG.pdf.
Assembly of the African Union. 2009. 'Decision on the Meeting of African States Parties to the Rome Statute of the International Criminal Court (ICC), Doc. Assembly/AU/13(XIII), Thirteenth Ordinary Session'. https://au.int/sites/default/files/decisions/9560-assembly_en_1_3_july_2009_auc_thirteenth_ordinary_session_decisions_declarations_message_congratulations_motion_0.pdf.
———. 2011. 'Decision on the Implementation of the Decisions on the International Criminal Court, Doc. EX.CL/639(XVIII), Assembly/AU/ Dec.334(XVI), Sixteenth Ordinary Session'.
———. 2013. 'Decision on Africa's Relationship with the International Criminal Court (ICC). Ext/Assembly/AU/Dec.1(Oct.2013).' Extraordinary Session of the Assembly of the African Union.
———. 2016a. 'Decision on the International Criminal Court. Doc. EX.CL/952(XXVIII). Assembly/AU/Dec.590(XXVI)'. Twenty-Sixth Ordinary Session of the Assembly of the African Union.
———. 2016b. 'Decision on the International Criminal Court. Doc. EX.CL/987(XXIX). Assembly/AU/Dec.616 (XXVII).' Ordinary Session of the Assembly of the African Union.
Autesserre, Séverine. 2017. 'What the Uproar Over Congo's Elections Misses: The Local Roots of the Country's Problems'. *Foreign Affairs*, 1 March 2017. https://www.foreignaffairs.com/articles/democratic-republic-congo/2017-03-01/what-uproar-over-congos-elections-misses.

Bâ, Oumar. 2015. 'The Court Is the Political Arena: Performance and Political Narratives at the International Criminal Court'. *African Journal of International Criminal Justice* 2015 (2):174–89. https://heinonline.org/HOL/P?h=hein.journals/ajicj2015&i=180.
———. 2020. *States of Justice: The Politics of the International Criminal Court*. Cambridge University Press.
Bachmann, Sascha Dominik Dov, and Eda Luke Nwibo. n.d. 'Pull and Push - Implementing the Complementarity Principle of the Rome Statute of the ICC within the AU: Opportunities and Challenges' 43:88.
Baker, Bruce. 2009. 'Comoros: The Search for Viability'. *Civil Wars* 11 (3):215–33. http://www.tandfonline.com/doi/abs/10.1080/13698240903157495.
Baldry, Tony. 2013. 'Human Rights in Djibouti'. Commissioned by Friends of Djibouti. https://www.icnl.org/wp-content/uploads/Djibouti_hrdjib.pdf.
Barnes, Gwen P. 2011. 'The International Criminal Court's Ineffective Enforcement Mechanisms: The Indictment of President Omar Al Bashir' 34 (6):1585–1619.
Batohi, Shamila. 2014. 'Africa and the International Criminal Court: A Prosecutor's Perspective'. In *Africa and the International Criminal Court*, edited by Gerhard Werle, Lovell Fernandez, and Moritz Vormbaum, 1:49–57. The Hague: TMC Asser Press.
BBC News. 2015. 'Madagascar MPs Vote to Impeach President Rajaonarimampianina', 27 May 2015, sec. Africa. https://www.bbc.com/news/world-africa-32897313.
———. 2016. 'Gambia Joins African Queue to Leave ICC', 26 October 2016, sec. Africa. https://www.bbc.com/news/world-africa-37771592.
———. 2017. 'Gambia Dispute: African Union "will Not Recognise" President Jammeh', 13 January 2017, sec. Africa. https://www.bbc.com/news/world-africa-38614234.
———. 2018a. 'South Africa's Jacob Zuma Resigns after Pressure from Party', 15 February 2018, sec. Africa. https://www.bbc.com/news/world-africa-43066443.
———. 2018b. 'Comoros Profile', 20 July 2018, sec. Africa. https://www.bbc.com/news/world-africa-13231758.
———. 2018c. 'Central African Republic Profile - Timeline'. *BBC News*, 1 August 2018, sec. Africa. https://www.bbc.com/news/world-africa-13150044.
———. 2018d. 'Madagascar Profile - Timeline', 5 November 2018, sec. Africa. https://www.bbc.com/news/world-africa-13864364.
———. 2020. 'Burkina Faso Country Profile', 30 November 2020, sec. Africa. https://www.bbc.com/news/world-africa-13072774.
Benedetti, Fanny, and John L. Washburn. 1999. 'Drafting the International Criminal Court Treaty: Two Years to Rome and an Afterword on the Rome Diplomatic Conference'. *Global Governance* 5 (1):1–37. http://www.jstor.org/stable/27800218.
Benin. 2019a. 'NV N501 Réponse Du Bénin Au Question de La CPI Relatif à La Mise En Oeu', 16 October 2019. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP18/NV%20N501%20R%C3%A9ponse%20du%20B%C3%A9nin%20au%20question%20de%20la%20CPI%20relatif%20%C3%A0%20la%20mise%20en%20oeu%20ENG%20translation.pdf.
'———'. 2019b. France Diplomacy - Ministry for Europe and Foreign Affairs. November 2019. https://www.diplomatie.gouv.fr/en/country-files/benin/.
'———'. 2021. U.S. Agency for International Development. 20 May 2021. https://www.usaid.gov/benin.
Beresford, Alexander, and Daniel Wand. 2020. 'Understanding Bricolage in Norm Development: South Africa, the International Criminal Court, and the Contested

Politics of Transitional Justice'. *Review of International Studies* 46 (4):534–54. https://doi.org/10.1017/S0260210520000224.
Bergsmo, Morten, Olympia Bekou, and Annika Jones. 2010. 'Complementarity after Kampala: Capacity Building and the ICC's Legal Tools Gojil Focus: ICC Review Conference'. *Goettingen Journal of International Law* 2 (2):791–812. https://heinonline.org/HOL/P?h=hein.journals/gojil2&i=795.
Blomquist, William. 2007. 'The Policy Process and Large-N Comparative Studies'. In *Theories of the Policy Process*, edited by Paul A. Sabatier, 261–89. Westview Press.
Bocchese, Marco. 2020. 'Justice Denied: Making Sense of State Noncooperation with International Prosecutions'. *Georgetown Journal of International Affairs* 21:195–200. https://doi.org/doi:10.1353/gia.2020.0028.
———. 2021a. 'In the Eye of the Beholder: Elite Assessments of the ICC's Performance'. *Global Governance: A Review of Multilateralism and International Organizations* 27 (2):275–97. https://doi.org/10.1163/19426720-02702001.
———. 2021b. Key Informant InterviewZoom.
Bodian, Mamadou, and Catherine Lena Kelly. 2018. 'Senegalese Foreign Policy: Leadership Through Soft Power from Senghor to Sall'. In *African Foreign Policies in International Institutions*, edited by Jason Warner and Timothy M. Shaw, 327–51. Contemporary African Political Economy. New York: Palgrave Macmillan US. https://doi.org/10.1057/978-1-137-57574-6_21.
Boehme, Franziska. 2016. '"We Chose Africa": South Africa and the Regional Politics of Cooperation with the International Criminal Court'. *International Journal of Transitional Justice*, December, ijw024. https://academic.oup.com/ijtj/article-lookup/doi/10.1093/ijtj/ijw024.
———. 2018. 'Exit, Voice and Loyalty: State Rhetoric about the International Criminal Court'. *The International Journal of Human Rights* 22 (3):420–45.
Borer, Tristan Anne, and Kurt Mills. 2011. 'Explaining Postapartheid South African Human Rights Foreign Policy: Unsettled Identity and Unclear Interests'. *Journal of Human Rights* 10 (1):76–98. https://doi.org/10.1080/14754835.2011.546278.
Boschiero, Nerina. 2015. 'The ICC Judicial Finding on Non-Cooperation against the DRC and No Immunity for Al-Bashir Based on UNSC Resolution 1593 Cases before International Courts and Tribunals'. *Journal of International Criminal Justice* 13 (3):625–54. https://heinonline.org/HOL/P?h=hein.journals/jicj13&i=644.
Bosco, David. 2014. *Rough Justice: The International Criminal Court in a World of Power Politics*. Oxford University Press.
Boutreux, Laurence. 2008. 'Senegal Ferry Disaster Families Seek Justice'. *IOL*, 26 September 2008. https://www.iol.co.za/news/africa/senegal-ferry-disaster-families-seek-justice-417892.
Bowcott, Owen. 2019. 'Gambia Files Rohingya Genocide Case against Myanmar at UN Court'. *The Guardian*, 11 November 2019, sec. World news. https://www.theguardian.com/world/2019/nov/11/gambia-rohingya-genocide-myanmar-un-court.
Bower, Adam. 2019. 'Contesting the International Criminal Court: Bashir, Kenyatta, and the Status of the Nonimpunity Norm in World Politics'. *Journal of Global Security Studies* 4 (1):88–104.

Branch, Adam. 2007. ‘Uganda’s Civil War and the Politics of ICC Intervention’. *Ethics & International Affairs* 21 (2):179–98. https://doi.org/10.1111/j.1747-7093.2007.00069.x.
———. 2017. ‘Dominic Ongwen on Trial: The ICC’s African Dilemmas’. *International Journal of Transitional Justice*, January, ijw027. https://doi.org/10.1093/ijtj/ijw027.
Brett, Peter, and Line Engbo Gissel. 2018. ‘Explaining African Participation in International Courts’. *African Affairs* 117 (467):195–216. https://doi.org/10.1093/afraf/ady005.
———. 2020a. *Africa and the Backlash Against International Courts*. Bloomsbury Publishing.
———. 2020b. ‘Africa and the International Criminal Court’. In *Africa and the Backlash Against International Courts*, 34–55. Bloomsbury Publishing.
Broache, Michael. 2015. ‘Bringing Home Rome: Explaining the Domestication of the Rome Statute of the International Criminal Court (Working Paper)’. *SSRN Electronic Journal*. http://www.ssrn.com/abstract=2659195.
Brody, Reed. 2009. ‘Playing It Firm, Fair and Smart: The EU and the ICC’s Indictment of Bashir’. Human Rights Watch. 19 March 2009. https://www.hrw.org/news/2009/03/19/playing-it-firm-fair-and-smart-eu-and-iccs-indictment-bashir.
Brosig, Malte. 2021. Key Informant InterviewZoom.
Brown, Stephen, and Chandra Lekha Sriram. 2012. ‘The Big Fish Won’t Fry Themselves: Criminal Accountability for Post-Election Violence in Kenya’. *African Affairs* 111 (443):244–60. https://academic.oup.com/afraf/article-lookup/doi/10.1093/afraf/ads018.
Brown, William, and Sophie Harman. 2013. ‘African Agency in International Politics’. In *African Agency in International Politics*, edited by William Brown and Sophie Harman, 1st ed., 1–15. London: Routledge.
Bueger, Christian, and Anders Wivel. 2018. ‘How Do Small Island States Maximize Influence? Creole Diplomacy and the Smart State Foreign Policy of the Seychelles’. *Journal of the Indian Ocean Region* 14 (2). Routledge:170–88. https://doi.org/10.1080/19480881.2018.1471122.
Burkina Faso. 2012. ‘Re: Plan of Action on the Universality and Full Implementation of the Rome Statute of the International Criminal Court’, 2012. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP11/ICC-ASP11-POA-2012-BUR-ENG.pdf.
‘———’. n.d. Japan International Cooperation Agency. Accessed 28 November 2021a. https://www.jica.go.jp/burkinafaso/english/index.html.
‘———’. n.d. OECD DAC Aid at a Glance by Recipient. Accessed 28 November 2021b. https://public.tableau.com/views/OECDDACAidataglancebyrecipient_new/Recipients?:embed=y&:display_count=yes&:showTabs=y&:toolbar=no?&:showVizHome=no.
‘Cabo Verde’. n.d. OECD DAC Aid at a Glance by Recipient. Accessed 25 November 2021. https://public.tableau.com/views/OECDDACAidataglancebyrecipient_new/Recipients?:embed=y&:display_count=yes&:showTabs=y&:toolbar=no?&:showVizHome=no.
Cammack, Diana. 2012. ‘Malawi in Crisis, 2011–12’. *Review of African Political Economy* 39 (132):375–88. https://doi.org/10.1080/03056244.2012.688651.
Campbell, John. 2021. ‘Benin’s Democracy Continues Its Downward Spiral’. Council on Foreign Relations. 30 April 2021. https://www.cfr.org/blog/benins-democracy-continues-its-downward-spiral.
‘Cape Verde and the Rome Statute’. n.d. Parliamentarians for Global Action. Accessed 11 June 2021. https://www.pgaction.org/ilhr/rome-statute/cape-verde.html.

Carter, Linda E. 2013. 'The Future of the International Criminal Court: Complementarity as a Strength or a Weakness'. *Washington University Global Studies Law Review* 12 (3):451–74. https://heinonline.org/HOL/P?h=hein.journals/wasglo12&i=471.

Central African Republic. 2010a. 'Declaration de la Republique Centrafricaine a l'occasion de la Conference de Revision du Statut de Rome de la Cour Penale Internationale Par Son Excellence, Monsieur Laurent Ngon Baba, Ministre de la Justice, Garde des Sceaux'. https://asp.icc-cpi.int/iccdocs/asp_docs/RC2010/Statements/ICC-RC-gendeba-CAR-FRA.pdf.

———. 2010b. 'Declaration de La Republique Centrafricaine l'Occasion de La Neuvieme Session de l'Assemblee Des Etats Parties a La Cour Penale Internationale, New York'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP9/Statements/ICC-ASP9-GenDeba-CAR-FRA.pdf.

———. 2014. 'Allocution de Son Excellence Madame Catherine Samba Panza, Chef de l'Etat de La Transition de La Republique Centrafricsune a Poccasion de La 69eme Session de PAssemblee Generale Des Nations Unies, New York'. https://web.archive.org/web/20210713191920/https://gadebate.un.org/sites/default/files/gastatements/69/CF_fr.pdf.

'Central African Republic: Untangling the Political Dialogue'. 2008. Policy Briefing Africa Briefing N°55. Nairobi/Brussels: International Crisis Group. https://www.crisisgroup.org/africa/central-africa/central-african-republic/central-african-republic-untangling-political-dialogue.

Chaudoin, Stephen. 2016. 'How Contestation Moderates the Effects of International Institutions: The International Criminal Court and Kenya'. *The Journal of Politics* 78 (2):557–71. https://www.journals.uchicago.edu/doi/10.1086/684595.

Cheembe, Boniface. 2017. 'ICC and Africa: The Case of Zambia'. Coalition for the International Criminal Court. 6 June 2017. https://www.coalitionfortheicc.org/news/20170606/icc-and-africa-case-zambia.

Cheeseman, Nic, Gabrielle Lynch, and Justin Willis. 2014. 'Democracy and Its Discontents: Understanding Kenya's 2013 Elections'. *Journal of Eastern African Studies* 8 (1):2–24. http://www.tandfonline.com/doi/abs/10.1080/17531055.2013.874105.

Chiumia, Thom. 2017. 'Malawi Hesitates to Withdraw from International Criminal Court – Solicitor General'. *Nyasa Times*, 3 February 2017. https://www.nyasatimes.com/malawi-hesitates-withdraw-international-criminal-court-solicitor-general/.

Clapham, Christopher. 1996. *Africa and the International System: The Politics of State Survival*. Cambridge University Press.

Clark, Janine Natalya. 2010. 'The ICC, Uganda and the LRA: Re-Framing the Debate'. *African Studies* 69 (1):141–60. https://doi.org/10.1080/00020181003647256.

———. 2012. 'Peace, Justice and the International Criminal Court: Limitations and Possibilities'. In *Africa and the Future of International Criminal Justice*, by Vincent O. Nmehielle, 269–95. The Hague, Netherland : Sold and distributed in USA and Canada, International Specialized Book Serivices: Eleven International Pub.

Clark, Phil. 2008. 'Law, Politics and Pragmatism: The ICC and Case Selection in Uganda and the Democratic Republic of Congo'. In *Courting Conflict?: Justice, Peace and the ICC in Africa*, edited by Nicholas Waddell and Phil Clark, 29–36. Royal African Society.

———. 2018. *Distant Justice: The Impact of the International Criminal Court on African Politics*. United Kingdom: Cambridge University Press.

———. 2021. Key Informant InterviewZoom.
Clarke, Kamari Maxine. 2009. 'Multiple Spaces of Justice: Uganda, the International Criminal Court, and the Politics of Inequality'. In *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa*, 117–48. Cambridge University Press.
———. 2019. *Affective Justice: The International Criminal Court and the Pan-Africanist Pushback*. Durham and London: Duke University Press.
Cole, Emily, and Allison Grossman. 2020. 'In Niger, Foreign Security Interests Undermine Stability—What Can Be Done?' United States Institute of Peace. 4 November 2020. https://www.usip.org/publications/2020/11/niger-foreign-security-interests-undermine-stability-what-can-be-done.
Cole, Rowland J.V. 2013. 'Africa's Relationship with the International Criminal Court: More Political than Legal'. *Melbourne Journal of International Law* 14 (2):670–98.
Colish, Will. 2013. 'The International Criminal Court in Guinea: A Case Study of Complementarity'. *Quebec Journal of International Law* 26 (2):23–45. https://doi.org/10.7202/1068077ar.
'Complementarity, Catalysts, Compliance: The International Criminal Court in ... - Christian M. De Vos - Google Books'. n.d. Accessed 14 July 2022.
Cook, Amelia, and Jeremy Sarkin. 2010. 'Is Botswana the Miracle of Africa - Democracy, the Rule of Law, and Human Rights versus Economic Development'. *Transnational Law & Contemporary Problems* 19 (2):453–90. https://heinonline.org/HOL/P?h=hein.journals/tlcp19&i=457.
Cook, Nicolas. n.d. 'Malawi: Recent Developments and U.S. Relations'. Library of Congress, Congressional Research Service. Accessed 10 June 2021. https://academic.udayton.edu/richardghere/NGO%20Man/New%20NGO/Cook.pdf.
Cornelissen, Scarlett. 2009. 'Awkward Embraces: Emerging and Established Powers and the Shifting Fortunes of Africa's International Relations in the Twenty-First Century'. *Politikon* 36 (1):5–26. https://doi.org/10.1080/02589340903155377.
Creswell, John W, and J. David Creswell. 2018. *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*. 5th ed. Los Angeles: SAGE Publications.
'Crime of Aggression'. n.d. Coalition for the International Criminal Court. Accessed 10 May 2019. http://www.coalitionfortheicc.org/explore/icc-crimes/crime-aggression.
'Dakar Declaration for the Establishment of the International Criminal Court'. 1998. http://www.iccnow.org/documents/DakarDeclarationFeb98Eng.pdf.
Dancy, Geoff, Yvonne Marie Dutton, Tessa Alleblas, and Eamon Aloyo. 2020. 'What Determines Perceptions of Bias toward the International Criminal Court? Evidence from Kenya'. *Journal of Conflict Resolution* 64 (7–8). SAGE Publications Inc:1443–69. https://doi.org/10.1177/0022002719893740.
Davis, Laura. 2014. 'Discreet Effectiveness: The EU and the ICC'. In *The EU and Effective Multilateralism*, edited by Edith Drieskens and Louise G. van Schaik, 1st ed., 84–100. London: Routledge. https://uct.primo.exlibrisgroup.com.
De Cleen, Benjamin, Charles University, Nico Carpentier, Jason Glynos, and Yannis Stavrakakis. 2021. 'Moving Discourse Theory Forward: A Five-Track Proposal for Future Research'. *Journal of Language and Politics* 20 (1):22–46.
'Debswana Diamond Company'. n.d. Debswana. Accessed 25 November 2021. http://www.debswana.com/Pages/default.aspx.

Decision on the non-compliance by the Republic of Djibouti with the request to arrest and surrender Omar Al-Bashir to the Court and referring the matter to the United Nations Security Council and the Assembly of the State Parties to the Rome Statute. 2016. Pre-Trial Chamber II, International Criminal Court.

'Déclaration Finale de Niamey Sur La Cour Pénale Internationale'. 2017. https://www.icc-cpi.int/news/seminarsDocuments/Declaration_finale_de_Niamey_sur_la_Cour_Penale_Internationale.pdf.

Democratic Alliance v Minister of International Relations and Cooperation and Others. 2017. High Court of South Africa (Gauteng Division, Pretoria).

Democratic Republic of Congo. 2008. 'Allocution de Son Excellence Monsieur Emmanuel Luzolo Bambi Lessa, Ministre de La Justice de La Réoublique Démocratique Du Congo á La Septième Session de l'Assemblée Des Etats Parties Au Statut de La Cour Pénale Internationale, La Haye'. https://asp.icc-cpi.int/iccdocs/asp_docs/library/asp/ICC-ASP-ASP7-GenDebe-DRC-FRA.pdf.

———. 2010. 'Discours de Monsieur Le Garde Des Sceaux, Ministre de La Justice et Droits Humains de La République Démocratique Du Congo à La 9ème Session de l'Assemblée Des Etats Parties Au Statut de La Cour Pénale Internationale Son Excellence Luzolo Bambi Lessa'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP9/Statements/ICC-ASP9-GenDeba-DRC-FRA.pdf.

———. 2011. 'Statement by the DRC at the Tenth Assembly of States Parties'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ICC-ASP10-GenDeba-DemRepCongo-FRA.pdf.

———. 2013. 'Intervention de Monsieur Zenon Mukongo Ngay Ministre Conseiller et Conseiller Juridique Devant La 12eme Session de l'Assemblee Des Etats Parties Au Statut de La Cour Penale Internationale, La Haye'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP12/GenDeba/ICC-ASP12-GenDeba-DRC-FRA.pdf.

———. 2014. 'Statement by the Democratic Republic of Congo at the 13th Session of the Assembly of States Parties to the Rome Statute'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP13/GenDeba/ICC-ASP13-GenDeba-DRC-FRA.pdf.

———. 2016. 'Republique Democratique Du Congo, Ministere de La Justice et Droits Humains. Declaration de La Republique Democratique Du Congo a La 15eme Session Ordinaire de l'Assemblee Des Etats Parties Au Statut de Rome'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP15/GenDeba/ICC-ASP15-GenDeba-DemocraticRepublicOfCongo-FRA.pdf.

———. 2017. 'Intervention de Son Excellence Monsieur Alexis Thambwe-Mwamba Ministre d'Etat, Ministre de La Justice, Garde Des Sceaux, 16eme Session Des Etats Parties de La Cou Penale Internationale'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ASP-16-DRC.pdf.

Dersso, Solomon. 2013. 'The International Criminal Court's Africa Problem'. *Al Jazeera*, 11 June 2013, sec. Opinion. https://www.aljazeera.com/opinions/2013/6/11/the-international-criminal-courts-africa-problem.

Dirar, Luwam. 2015. 'Norms of Solidarity and Regionalism: Theorizing State Behavior among Southern African States'. *Michigan State International Law Review* 24 (3):667–724. https://heinonline.org/HOL/P?h=hein.journals/mistjintl24&i=667.

'Djibouti Will Not Honor Its Rome Statute Obligations, Invites Sudan's Bashir - Sudan Tribune: Plural News and Views on Sudan'. 2009. 5 April 2009. https://sudantribune.com/Djibouti-will-not-honor-its-Rome,30777.

Du Plessis, Max. 2008. 'The International Criminal Court and Its Work in Africa: Confronting the Myths'. ISS Paper 173. https://www.africaportal.org/documents/2919/PAPER173.pdf.
———. 2009. 'Recent Cases and Developments: South Africa and the International Criminal Court Comment'. *South African Journal of Criminal Justice* 22 (3):441–46. https://heinonline.org/HOL/P?h=hein.journals/soafcrimj22&i=447.
Du Plessis, Max, and Christopher Gevers. 2005. 'Darfur Goes to the International Criminal Court (Perhaps)'. *African Security Review* 14 (2):23–34. http://www.tandfonline.com/doi/abs/10.1080/10246029.2005.9627349.
———. 2018. 'South Africa's Foreign Policy and the International Criminal Court: Of African Lessons, Security Council Reform, and Possibilities for an Improved ICC'. In *African Foreign Policies in International Institutions*, edited by Jason Warner and Timothy M. Shaw, 199–214. Palgrave Macmillan.
Du Plessis, Max, Tiyanjana Maluwa, and Annie O'Reilly. 2013. 'Africa and the International Criminal Court'. International Law 2013/01. Chatham House.
Dugard, John. 2013. 'Palestine and the International Criminal Court: Institutional Failure or Bias?' *Journal of International Criminal Justice* 11 (3):563–70. https://academic.oup.com/jicj/article-lookup/doi/10.1093/jicj/mqt025.
Dutton, Yvonne M., and Tessa Alleblas. 2017. 'Unpacking the Deterrent Effect of the International Criminal Court: Lessons from Kenya'. *St. John's Law Review* 91 (1):105–76. https://heinonline.org/HOL/P?h=hein.journals/stjohn91&i=111.
Dyani, Ntombizozuko. 2012. 'Is the International Criminal Court Targeting Africa?: Reflections on the Enforcement of International Criminal Law in Africa'. In *Africa and the Future of International Criminal Justice*, by Vincent Obisienunwo Orlu Nmehielle, 185–220. The Hague, Netherland : Sold and distributed in USA and Canada, International Specialized Book Serivices: Eleven International Pub.
Edwards, Derek. 2000. 'Extreme Case Formulations: Softeners, Investment, and Doing Nonliteral'. *Research on Language and Social Interaction* 33 (4). Routledge:347–73.
Eikel, Markus. 2018. '"Germany's Global Responsibility" and the Creation of the International Criminal Court, 1993–1998'. *Journal of International Criminal Justice*.
El Zeidy, Mohamed M. 2001. 'The Principle of Complementarity: A New Machinery to Implement International Criminal Law'. *Michigan Journal of International Law* 23 (4):869–976. https://heinonline.org/HOL/P?h=hein.journals/mjil23&i=883.
Embassy of the Republic of Botswana. 2011. 'Note No. 118/11 EB 9/3/4 IX (13) B8', 14 September 2011. https://asp.icc-cpi.int/NR/rdonlyres/9A7562A4-9BB5-4ACA-92F2-FEB7BFE7FE3B/284031/ICCASP10POA2011BWENG.pdf.
Emejo, James. 2018. 'Dogara, Stakeholders Back Domestication of Stockholm Convention, Rome Statute'. *This Day*, 19 July 2018. https://www.pressreader.com/nigeria/thisday/20180719/282037622945279.
eNCA. 2017. 'Government Must Reconsider ICC Withdrawal: DA', 22 February 2017. https://www.enca.com/south-africa/government-must-reconsider-icc-withdrawal-da.
Essa, Azad. 2018. 'Jacob Zuma Resigns as South Africa's President'. *Al Jazeera*, 14 February 2018. https://www.aljazeera.com/news/2018/2/14/jacob-zuma-resigns-as-south-africas-president.
'Establishment of an International Criminal Court - Overview'. n.d. Accessed 9 May 2019. http://legal.un.org/icc/general/overview.htm.

European Commission, ed. 2006. ‘Partnership Agreement ACP-EC: Signed in Cotonou on 23 June 2000 ; Revised in Luxembourg on 25 June 2005’. Office for Official Publ. of the European Communities.

Fabricius, Peter. 2016. ‘The LRA Rising Again?’ *ISS Today*, 6 July 2016. https://issafrica.org/iss-today/the-lra-rising-again.

Fairclough, Norman. 1989. *Language and Power*. 1st ed. Routledge.

Farrell, Dan, and Caryl E. Rusbult. 1992. ‘Exploring the Exit, Voice, Loyalty, and Neglect Typology: The Influence of Job Satisfaction, Quality of Alternatives, and Investment Size’. *Employee Responsibilities and Rights Journal* 5 (3):201–18. http://link.springer.com/10.1007/BF01385048.

Federal Republic of Nigeria. 2008. ‘Statement by Dr. Nihinlola Nimota Akanbi Ambassador of the Federal Republic of Nigeria at the Seventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, The Netherlands’. https://asp.icc-cpi.int/iccdocs/asp_docs/library/asp/ICC-ASP-ASP7-GenDebe-Nigeria-ENG.pdf.

———. 2009. ‘Amb. Dr. (Mrs.) N. N. Akanbi, Nigerian Ambassador to the Royal Kingdom of the Netherlands, Nigerian Statement to the General Debate of the 8th Session of the Assembly of States Parties to the Rome Statute on the ICC, The Hague, The Netherlands’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP8/Statements/ICC-ASP-ASP8-GenDeba-Nigeria-ENG.pdf.

———. 2010a. ‘Nigeria’s Statement at the General Debate during the 1st Review Conference of the Rome Statute of International Criminal Court, Kampala-Uganda, Delivered by Mr. Mohmmed Bello Adoke, San, Honourable Attorney General and Minister of Justice of the Federal Republic of Nigeria’. https://asp.icc-cpi.int/iccdocs/asp_docs/RC2010/Statements/ICC-RC-gendeba-Nigeria-ENG.pdf.

———. 2010b. ‘Statement by Ambassador (Dr.) Nimota Akanbi at the 9th Session of the Assembly of State Parties to the Rome Statute of the International Criminal Court, New York’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP9/Statements/ICC-ASP9-GenDeba-Nigeria-ENG.pdf.

———. 2011. ‘Statement by Mr Abdullahi Ahmed Yola, Oon Solicitor-General and Permanent Secretary, Federal Ministry of Justice, Federal Republic of Nigeria at the Tenth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ICC-ASP10-GenDeba-Nigeria-ENG.pdf.

———. 2012. ‘Statement Byy the Leader of Nigeria’s Delegation, Mr. Mohammed Bello Adoke, San, CFR, Honourable Attorney General of the Federation and Minister of Justice, Federal Republic of Nigeria, at the Eleventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, Netherlands’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP11/GenDeba/ICC-ASP11-GenDeba-NIG-ENG.pdf.

———. 2013. ‘Statement by the Leader of the Delegation, Mr. Mohammed Bello Adoke, SN, CFR Honourable Attorney General of the Federation and Minister of Justice, Federal Republic of Nigeria at the Fourth Plenary of the Twelfth Session of the Assembly of State Parties, World Forum Theatre, The Hague’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP12/GenDeba/ICC-ASP12-GenDeba-Nigeria-ENG.pdf.

———. 2014. ‘Statement by the Delegation of the Federal Republic of Nigeria at the 13th Assembly Og State Parties to the Rome Statute of the International Criminal Court

(ICC)'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP13/GenDeba/ICC-ASP13-GenDeba-Nigeria-ENG.PDF.
———. 2016. 'Statement by the Leader of Nigeria's Delegation Mr Abubakar Malami, San. Honourable Attorney General of the Federation and Minister of Justice, Federal Republic of Nigeria at the Fifteenth Session of the Assembly of State Parties to the Rome Statute of the International Criminal Court (ICC), The Hague, The Netherlands'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP15/GenDeba/ICC-ASP15-GenDeba-Nigeria-ENG.pdf.
———. 2018. 'Delivered by H.E. Abubakar Malami, Honourable Attorney-General of the Federation and Minister of Justice, Federal Republic of Nigeria at the Occasion of the Seventeenth (17th) Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC), The Hague, The Netherlands'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP17/GD%20NIG%2006-12-2018.pdf.
Finnemore, Martha. 1993. 'International Organizations as Teachers of Norms: The United Nations Educational, Scientific, and Cutural Organization and Science Policy'. *International Organization* 47 (4):565–97. https://doi.org/10.1017/S0020818300028101.
Finnemore, Martha, and Kathryn Sikkink. 1998. 'International Norm Dynamics and Political Change'. *International Organization* 52 (4):887–917. https://doi.org/10.1162/002081898550789.
Fisher, Jonah. 2006. 'Uganda LRA Want Warrants Dropped'. *BBC News*, 9 October 2006. http://news.bbc.co.uk/2/hi/africa/6032453.stm.
'Foreign Policy'. n.d. The Ministry of Foreign Affairs, Government of the Republic of Liberia. Accessed 28 November 2021. https://www.mofa.gov.lr/public2/2content.php?main=2&related=2&pg=mp.
'Foreign Policy Objectives'. n.d. Ministry Of Foreign Affairs and Regional Integration, Republic of Ghana. Accessed 27 November 2021. https://mfa.gov.gh/index.php/foreign-policy/foreign-policy-objectives/.
Former Government Official. 2021. Key Informant Interview. Zoom.
'Fostering Cooperation, Complementarity and Universality'. n.d. International Criminal Court. Accessed 3 June 2021. https://www.icc-cpi.int/news/pages/events.aspx.
'Frequently Asked Questions: How Does the African Development Bank Group Get Its Resources?' 2019. Text. African Development Bank. African Development Bank Group. 7 March 2019. https://www.afdb.org/en/about-us/frequently-asked-questions.
Gabriel, Stijn, and Barbara Rijks. 2020. 'Niger — Migration Trends To, From and Within Niger (2016—2019)'. https://displacement.iom.int/reports/niger-%E2%80%94-migration-trends-and-within-niger-2016%E2%80%942019?close=true.
Gaeta, Paola. 2009. 'Does President Al Bashir Enjoy Immunity from Arrest Symposium: The Arrest Warrant against the President of Sudan: Reasoning and Implications of the ICC Decision'. *Journal of International Criminal Justice* 7 (2):315–32. https://heinonline.org/HOL/P?h=hein.journals/jicj7&i=319.
Galtung, Johan, and Dietrich Fischer. 2013. 'Positive and Negative Peace'. In *Johan Galtung: Pioneer of Peace Research*, edited by Johan Galtung and Dietrich Fischer, 173–78. SpringerBriefs on Pioneers in Science and Practice. Berlin, Heidelberg: Springer.
Gawanas, Bience. 2014. 'Namibia and the African Union'. In *Namibia's Foreign Relations: Historic Contexts, Current Dimensions, and Perspectives for the 21st Century*, edited

by Anton Bösl, André Du Pisani, and Dennis U. Zaire, 253–80. Windhoek, Namibia: Macmillan Education Namibia.
Geldenhuys, Deon. 2011. 'The Challenges of Good Global Citizenship: Ten Tenets of South Africa's Foreign Policy'. *Africa Review* 3 (2):179–99. https://doi.org/10.1080/09744053.2011.10597311.
George, Alexander L., and Andrew Bennett. 2005. *Case Studies and Theory Development in the Social Sciences*. MIT Press.
Gettleman, Jeffrey. 2010. 'U.N. Says Congo Rebels Killed Scores in Village'. *The New York Times*, 2 May 2010, sec. World. https://www.nytimes.com/2010/05/02/world/02congo.html.
'Ghana's Foreign Policy Guideline'. n.d. Ministry Of Foreign Affairs and Regional Integration, Republic of Ghana. Accessed 27 November 2021. https://mfa.gov.gh/index.php/foreign-policy/ghanas-foreign-policy-guideline/.
Gissel, Line Engbo. 2018. 'A Different Kind of Court: Africa's Support for the International Criminal Court, 1993–2003'. *European Journal of International Law* 29 (3):725–48. https://doi.org/10.1093/ejil/chy040.
Global Conflict Tracker. 2021. 'Violence in the Democratic Republic of Congo'. Council on Foreign Relations. 11 June 2021. https://cfr.org/global-conflict-tracker/conflict/violence-democratic-republic-congo.
Goldstone, Justice Richard J. 2021. Key Informant InterviewZoom.
Good, Kenneth. 1992. 'Interpreting the Exceptionality of Botswana'. *The Journal of Modern African Studies* 30 (1). Cambridge University Press:69–95. https://doi.org/10.1017/S0022278X00007734.
Good, Kenneth, and Ian Taylor. 2008. 'Botswana: A Minimalist Democracy'. *Democratization* 15 (4). Routledge:750–65. https://doi.org/10.1080/13510340802191086.
Graham, Jill W., and Michael Keeley. 1992. 'Hirschman's Loyalty Construct'. *Employee Responsibilities and Rights Journal* 5 (3):191–200. http://link.springer.com/10.1007/BF01385047.
Graham, Suzanne. 2008. 'Gold Star or Bottom of the Class: Is South Africa a Good International Citizen?' *South African Journal of International Affairs* 15 (1):87–97. https://doi.org/10.1080/10220460802217983.
———. 2016. 'Foreign Policy: Pinpointing Principles and Themes'. In *Democratic South Africa's Foreign Policy: Voting Behaviour in the United Nations*, 27–58. Springer.
———. 2017. 'Drivers of the Foreign Policies of Southern African Small States'. *Politikon* 44 (1):133–55. https://doi.org/10.1080/02589346.2017.1279802.
———. 2021. Key Informant InterviewZoom.
Grant, J. Andrew, and Spencer Hamilton. 2016. 'Norm Dynamics and International Organisations: South Africa in the African Union and International Criminal Court'. *Commonwealth & Comparative Politics* 54 (2):161–85. https://www.tandfonline.com/doi/full/10.1080/14662043.2016.1151166.
Gray, Julia. 2018. 'Life, Death, or Zombie? The Vitality of International Organizations'. *International Studies Quarterly* 62 (1). Oxford University Press / USA:1–13. https://doi.org/10.1093/isq/sqx086.
Gray, Julia, and Raymond P. Hicks. 2014. 'Reputations, Perceptions, and International Economic Agreements'. *International Interactions* 40 (3):325–49. https://doi.org/10.1080/03050629.2014.899227.

Greenawalt, Alexander K. A. 2009. 'Complementarity in Crisis: Uganda, Alternative Justice, and the International Criminal Court'. *Virginia Journal of International Law* 50 (1):107–62. https://heinonline.org/HOL/P?h=hein.journals/vajint50&i=109.

'Guinea Minister Visits the ICC - Prosecutor Requests Information on National Investigations into 28 September Violence'. 2009. International Criminal Court. 21 October 2009. https://www.icc-cpi.int/Pages/item.aspx?name=pr468.

Hansen, Thomas Obel. 2012a. 'A Critical Review of the ICC's Recent Practice Concerning Admissibility Challenges and Complementarity Focus: IHL and ICL: The Future, the Present and the Past: The Present: Case Note'. *Melbourne Journal of International Law* 13 (1):217–34. https://heinonline.org/HOL/P?h=hein.journals/meljil13&i=218.

———. 2012b. 'The International Criminal Court in Kenya: Three Defining Features of a Contested Accountability Process and Their Implications for the Future of International Justice'. *Australian Journal of Human Rights* 18 (2):187–217. https://www.tandfonline.com/doi/full/10.1080/1323-238X.2012.11882112.

———. 2014. 'Africa and the International Criminal Court'. In *Handbook of Africa's International Relations*, edited by Tim Murithi. New York: Routledge.

Happi, Cynthia. 2021. 'Chad Conflict Insights'. Peace and Security Report. Institute for Peace and Security Studies, Addis Ababa University. https://media.africaportal.org/documents/Chad-Conflict-Insights-vol-1-23042021.pdf.

Helfer, Laurence R. 2005. 'Exiting Treaties'. *Virginia Law Review* 91 (7):1579–1648.

Helfer, Laurence R, and Anne E. Showalter. 2017. 'Opposing International Justice: Kenya's Integrated Backlash Strategy against the ICC'. *International Criminal Law Review* 17 (1):1–46.

Heller, Kevin Jon. 2007. 'The Shadow Side of Complementarity: The Effect of Article 17 of the Rome Statute on National Due Process'. *Criminal Law Forum* 17 (3–4):255–80. https://doi.org/10.1007/s10609-006-9019-0.

Henningsen, Troels Burchall, and Line Engbo Gissel. 2020. 'Non-Cooperation with the International Criminal Court in Gatekeeper States: Regime Security in Deby's Chad'. *Cambridge Review of International Affairs*, October, 1–20. https://doi.org/10.1080/09557571.2020.1828281.

Hicks, Celeste. 2018. 'The Trial of Hissène Habré and What It Could Mean for Justice in Africa'. *Africa at LSE* (blog). 23 April 2018. https://blogs.lse.ac.uk/africaatlse/2018/04/23/the-trial-of-hissene-habre-and-what-it-could-mean-for-justice-in-africa/.

Hirschman, Albert O. 1970. *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States*. Harvard University Press.

Human Rights Council: Working Group on the Universal Periodic Review. 2017. 'National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Botswana. A/HRC/WG.6/29/BWA/1.' United Nations General Assembly. https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/333/71/PDF/G1733371.pdf?OpenElement.

Human Rights Watch. 2009. 'Central African Republic (CAR): Country Summary'. https://www.hrw.org/sites/default/files/related_material/car.pdf.

Hurt, Stephen R. 2004. 'The European Union's External Relations with Africa After the Cold War: Aspects of Continuity and Change'. In *Africa in International Politics: External Involvement on the Continent*, edited by Ian Taylor and Paul Williams, 155–73.

———. 2013. ‘African Agency in World Trade Undermined: The Case of Bilateral Relations with the European Union’. In *African Agency in International Politics*, edited by William Brown and Sophie Harman, 1st ed., 49–64. London: Routledge.
‘ICC - General Debate’. n.d. Accessed 9 April 2020. https://asp.icc-cpi.int/en_menus/asp/sessions/general%20debate/Pages/general%20debate.aspx.
ICC Academic. 2021. Key Informant InterviewZoom.
Idehen, Roosevelt O., and Felix S. O. Osaghae. 2015. ‘Xenophobia in South Africa: Re-Thinking the Nigeria Foreign Policy of Afrocentrism’. *African Research Review* 9 (4):78–91. https://doi.org/10.4314/afrrev.v9i4.
‘Identical Letters Dated 21 October 2013 from the Permanent Representative of Kenya to the United Nations Addressed to the Secretary-General and the President of the Security Council. S/2013/624.’ 2013, 22 October 2013. http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_624.pdf.
International Criminal Court. 2004. ‘Negotiated Relationship Agreement between the International Criminal Court and the United Nations’. ICC-ASP/3/Res.1. https://www.icc-cpi.int/pages/item.aspx?name=icc-un-rel-agr.
———. 2007. ‘Background: Situation in Central African Republic’. https://www.icc-cpi.int/NR/rdonlyres/B64950CF-8370-4438-AD7C-0905079D747A/144037/ICCOTPBN20070522220_A_EN.pdf.
———. 2010. ‘Review Conference to the Rome Statute: Provisional Agenda RC/1’. https://asp.icc-cpi.int/iccdocs/asp_docs/RC2010/RC-1-ENG.pdf.
———. 2015a. ‘Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, Regarding the Recent Pre-Election Violence in Burundi’. International Criminal Court. 8 May 2015. https://www.icc-cpi.int/Pages/item.aspx?name=OTP-STAT-150508.
———. 2015b. ‘Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, Regarding the Worsening Security Situation in Burundi’. International Criminal Court. 6 November 2015. https://www.icc-cpi.int/Pages/item.aspx?name=otp-stat-06-11-2015.
———. 2016. ‘Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on Opening a Preliminary Examination into the Situation in Burundi’. International Criminal Court. 25 April 2016. https://www.icc-cpi.int/Pages/item.aspx?name=otp-stat-25-04-2016.
———. n.d. ‘Situation in Côte d’Ivoire’. Accessed 31 May 2019. https://www.icc-cpi.int/cdi.
‘International Criminal Court Prosecutor on Gabon: “The Legal Criteria for This Court to Investigate Have Not Been Met”’. 2018. International Criminal Court. 21 September 2018. https://www.icc-cpi.int/Pages/item.aspx?name=180921-otp-stat-gabon.
International Law Expert. 2021. Key Informant InterviewZoom.
‘International Partnerships: Lesotho’. 2020. European Commission. 30 September 2020. https://www.usaid.gov/lesotho.
Invisible Children. 2012. *KONY 2012*. https://www.youtube.com/watch?v=Y4MnpzG5Sqc.
Isike, Christopher, and Olusola Ogunnubi. 2017. ‘The Discordant Soft Power Tunes of South Africa’s Withdrawal from the ICC’. *Politikon* 44 (1):173–79. https://www.tandfonline.com/doi/full/10.1080/02589346.2017.1274085.
Jalloh, Charles Chernor. 2009. ‘Regionalizing International Criminal Law’. *International Criminal Law Review* 9 (3):445–500.

———. 2011. ‘Situation in the Republic of Kenya’. *The American Journal of International Law* 105 (5):540–47.
———. 2012. ‘Africa and the International Criminal Court: Collision Course or Cooperation?’ *North Carolina Central University Law Review* 203:29.
Jalloh, Charles Chernor, Dapo Akande, and Max Du Plessis. 2011. ‘Assessing the African Union Concerns about Article 16 of the Rome State of the International Criminal Court’. *African Journal of Legal Studies* 4 (1):5–50.
Jalloh, Charles Chernor, and Ilias Bantekas. 2017. *The International Criminal Court and Africa*. Oxford University Press.
Jeßberger, Florian. 2014. ‘“On Behalf of Africa”: Toward the Regionalization of Universal Jurisdiction?’ In *Africa and the International Criminal Court*, edited by Gerhard Werle, Lovell Fernandez, and Moritz Vormbaum, 1:155–75. The Hague: TMC Asser Press.
‘Jorge Carlos de Almeida Fonseca’. n.d. Cabo Verde Info. Accessed 11 June 2021. http://www.caboverde-info.com/eng/Identity/Personalities/Jorge-Carlos-de-Almeida-Fonseca.
Juma, Laurence. 2014. ‘Unclogging the Wheels: How the Shift from Politics to Law Affects Africa’s Relationship with the International System’. *Transnational Law and Contemporary Problems* 23 (2):305–66. https://heinonline.org/HOL/P?h=hein.journals/tlcp23&i=323.
Karimi, Faith. 2018. ‘US Has Hundreds of Troops in Niger. Here’s Why’. CNN. 1 May 2018. https://www.cnn.com/2018/05/10/politics/niger-american-troops-presence/index.html.
Karimi, Faith, and Nick Thompson. 2014. ‘Uganda’s President Museveni Signs Controversial Anti-Gay Bill into Law’. *CNN*, 25 February 2014. https://www.cnn.com/2014/02/24/world/africa/uganda-anti-gay-bill/index.html.
Kaunda, Jonathan Mayuyuka. 2018. ‘Continuity and Change in Malawi’s Foreign Policy-Making’. In *Globalization and Emerging Trends in African States’ Foreign Policy-Making Process: A Comparative Perspective of Southern Africa*, edited by Korwa Gombe Adar and Rok Ajulu. Routledge.
Keller, Linda M. 2007. ‘Achieving Peace with Justice: The International Criminal Court and Ugandan Alternative Justice Mechanisms’. *Connecticut Journal of International Law* 23 (2):209–80. https://heinonline.org/HOL/P?h=hein.journals/conjil23&i=213.
Kemp, Gerhard. 2014. ‘The Implementation of the Rome Statute in Africa’. In *Africa and the International Criminal Court*, edited by Gerhard Werle, Lovell Fernandez, and Moritz Vormbaum, 1:61–77. The Hague: TMC Asser Press.
———. 2017. ‘South Africa’s (Possible) Withdrawal from the ICC and the Future of the Criminalization and Prosecution of Crimes against Humanity, War Crimes and Genocide under Domestic Law: A Submission Informed by Historical, Normative and Policy Considerations’. *Washington University Global Studies Law Review* 16 (3):411–38. https://heinonline.org/HOL/P?h=hein.journals/wasglo16&i=429.
———. 2019. ‘Immunity of High-Ranking Officials Before the International Criminal Court – Between International Law and Political Reality’. In *The International Criminal Court in Turbulent Times*, edited by Gerhard Werle and Andreas Zimmermann, 61–82. International Criminal Justice Series. The Hague: T.M.C. Asser Press. https://doi.org/10.1007/978-94-6265-303-0_5.

Kendall, Sara. 2014. '"UhuRuto" and Other Leviathans: The International Criminal Court and the Kenyan Political Order'. *African Journal of Legal Studies* 7 (3). Brill Nijhoff:399–427. https://brill.com/view/journals/ajls/7/3/article-p399_6.xml.

Kennedy, Merrit. 2017. 'Under New Leader, Gambia Cancels Withdrawal From International Criminal Court'. NPR.Org. 14 February 2017. https://www.npr.org/sections/thetwo-way/2017/02/14/515219467/under-new-leader-gambia-cancels-withdrawal-from-international-criminal-court.

Kentikelenis, Alexander, and Erik Voeten. 2018. 'Exit, Voice, and Loyalty towards Liberal International Institutions: Evidence from United Nations Speeches 1970-2017'. In .

———. 2020. 'Legitimacy Challenges to the Liberal World Order: Evidence from United Nations Speeches, 1970–2018'. *The Review of International Organizations*, October. https://doi.org/10.1007/s11558-020-09404-y.

'Kenya and Seychelles Ink Partnership Deal'. 2009. *ETurboNews* (blog). 14 September 2009. https://eturbonews.com/22711/kenya-and-seychelles-ink-partnership-deal/.

Keppler, Elise. 2012. 'Managing Setbacks for the International Criminal Court in Africa'. *Journal of African Law* 56 (1):1–14. https://www.cambridge.org/core/product/identifier/S0021855311000209/type/journal_article.

———. 2017. 'Gambia Rejoins ICC'. Human Rights Watch. 17 February 2017. https://www.hrw.org/news/2017/02/17/gambia-rejoins-icc.

Kersten, Mark. 2016. *Justice in Conflict: The Effects of the International Criminal Court's Interventions on Ending Wars and Building Peace*. Oxford University Press.

———. 2017a. 'Could Yahya Jammeh End Up at the International Criminal Court?' *Justice in Conflict* (blog). 23 January 2017. https://justiceinconflict.org/2017/01/23/could-yahya-jammeh-end-up-at-the-international-criminal-court/.

———. 2017b. 'Not All It's Cracked Up to Be – The African Union's "ICC Withdrawal Strategy"'. *Justice in Conflict* (blog). 6 February 2017. https://justiceinconflict.org/2017/02/06/not-all-its-cracked-up-to-be-the-african-unions-icc-withdrawal-strategy/.

———. 2017c. 'Between Disdain and Cooperation — Uganda's Controversial Place in the ICC-Africa Relationship'. Text. ISPI. 13 June 2017. https://www.ispionline.it/it/pubblicazione/between-disdain-and-cooperation-ugandas-controversial-place-icc-africa-relationship-16453.

———. 2021. Key Informant InterviewZoom.

'Key Challenges, Opportunities and Risks in Burkina Faso'. n.d. Ministry of Foreign Affairs of Denmark. Accessed 28 November 2021. https://um.dk/en/danida-en/strategies%20and%20priorities/country-policies/burkina-faso/key-challenges-opportunities-and-risks-in-burkina-faso/.

Khadiagala, Gilbert M. 2018. 'Europe-African Relations in the Era of Uncertainty'. In *Africa and the World: Bilateral and Multilateral International Diplomacy*, edited by Dawn Nagar and Charles Mutasa, 433–53. Palgrave Macmillan.

Khadiagala, Gilbert M., and Terrence Lyons. 2001. 'Introduction'. In *African Foreign Policies: Power and Process*, edited by Gilbert M. Khadiagala and Terrence Lyons, 1–13. Lynne Rienner Publishers.

Kimani, Mary. 2009. 'Pursuit of Justice or Western Plot? International Indictments Stir Angry Debate in Africa'. *Africa Renewal*, 15 October 2009.

https://www.un.org/africarenewal/magazine/october-2009/pursuit-justice-or-western-plot.
Kingdom of Lesotho. 2008. 'Statement of Lesotho to the Seventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC), The Hague, The Netherlands'. https://asp.icc-cpi.int/iccdocs/asp_docs/library/asp/ICC-ASP-ASP7-GenDebe-Lesotho-ENG.pdf.
———. 2010. 'Statement by Hon. Tsokolo Makhethe, Attorney General of the Kingdom of Lesotho, Review Conference of the Rome Statute of the International Criminal Court, Kampala, Republic of Uganda'. https://asp.icc-cpi.int/iccdocs/asp_docs/RC2010/Statements/ICC-RC-gendeba-Lesotho-ENG.pdf.
———. 2011. 'Statement by Mr. Kautu Moeletsi, Charge' D'Affaires of the Kingdom of Lesotho to the United Nations during the Teneth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, New York'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ICC-ASP10-GenDeba-Lesotho-ENG.pdf.
———. 2014. 'Statement by H.E. Mr. Kelebone A. Maope, Permanent Representative of the Kingdom of Lesotho to the United Nations at the Thirteenth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC), New York'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP13/GenDeba/ICC-ASP13-GenDeba-Lesotho-ENG.pdf.
———. 2017. 'Statement by The Honourable Mr. Lesego L.C. Makgothi Minister of Foreign Affairs and International Relations of the Kingdom of Lesotho During the Sixteenth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ASP-16-LES.pdf.
———. 2018. 'Statement by Lesotho at the 17th Session of the Assembly of States Parties of the ICC'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP17/GD%20LES%2006-12-2018.pdf.
Kirsch, Philippe, and John T. Holmes. 1999. 'The Rome Conference on an International Criminal Court: The Negotiating Process'. *The American Journal of International Law* 93 (1):2–12. http://www.jstor.org/stable/2997952.
Kress, Claus. 2004. 'Self-Referrals and Waivers of Complementarity - Some Considerations in Law and Policy Editorial Comments: The ICC Takes Off'. *Journal of International Criminal Justice* 2 (4):944–48. https://heinonline.org/HOL/P?h=hein.journals/jicj2&i=958.
Kushkush, Isma'il. 2015. 'Burundi: Legislative Elections Delayed'. *The New York Times*, 20 May 2015, sec. World. https://www.nytimes.com/2015/05/21/world/africa/burundi-legislative-elections-delayed.html.
Kuwali, Dan. 2018. 'Africa and the International Criminal Court'. In *Africa and the World: Bilateral and Multilateral International Diplomacy*, edited by Dawn Nagar and Charles Mutasa, 371–401. Palgrave Macmillan.
Langa, Nduduzo, and Kgothatso B. Shai. 2019. 'The Pillars of the Jacob Zuma-Led South Africa's Foreign Policy: An Afrocentric Review'. *African Renaissance (1744-2532)* 16 (3). Adonis & Abbey Publishers Ltd.:107–24. http://ezproxy.uct.ac.za/login?url=https://search.ebscohost.com/login.aspx?direct=true&db=sxi&AN=142134812&site=ehost-live.

Laub, Zachary, and Jonathan Masters. 2015. 'Al-Qaeda in the Islamic Maghreb'. Council on Foreign Relations. 27 March 2015. https://www.cfr.org/backgrounder/al-qaeda-islamic-maghreb.

Lavelle, Kathryn C. 2007. 'Exit, Voice, and Loyalty in International Organizations: US Involvement in the League of Nations'. *The Review of International Organizations* 2 (4):371–93. http://link.springer.com/10.1007/s11558-007-9015-0.

Le Gouriellec, Sonia. 2018. 'Djibouti's Foreign Policy in International Institutions: The Big Diplomacy of a Small State'. In *African Foreign Policies in International Institutions*, edited by Jason Warner and Timothy M. Shaw, 389–402. New York: Palgrave Macmillan US. https://doi.org/10.1057/978-1-137-57574-6.

Leck, Joanne D., and David M. Saunders. 1992. 'Hirschman's Loyalty: Attitude or Behavior?' *Employee Responsibilities and Rights Journal* 5 (3):219–30. http://link.springer.com/10.1007/BF01385049.

Leith, James Clark. 2005. *Why Botswana Prospered*. McGill-Queen's Press - MQUP.

Lekalake, Rorisang, and Stephen Buchanan-Clarke. 2015. 'Support for the International Criminal Court in Africa: Evidence from Kenya'. Afrobarometer Policy Paper No.23. Afrobarometer. https://afrobarometer.org/sites/default/files/publications/Policy%20papers/ab_r6_policypaperno23_kenya_anti_corruption.pdf.

Lemke, Douglas. 2003. 'African Lessons for International Relations Research'. *World Politics* 56 (1). [Cambridge University Press, Trustees of Princeton University]:114–38. https://www.jstor.org/stable/25054247.

'Lesotho Launches National Dialogue Project Funded by the UN Peacebuilding Fund | UNDP in Lesotho'. n.d. UNDP. Accessed 23 January 2019. http://www.ls.undp.org/content/lesotho/en/home/news-centre/articles/Lesotho-launches-national-dialogue-project-funded-by-the-UN-Peacebuilding-Fund.html.

Lesotho Times. 2017. 'Govt Adopts Reforms Roadmap', 16 December 2017. https://lestimes.com/govt-adopts-reforms-roadmap/.

'Liberia's Silence to AU Threat to Withdrawal From International Criminal Court'. 2017. *FrontPageAfrica* (blog). 13 February 2017. https://frontpageafricaonline.com/opinion/liberia-s-silence-to-au-threat-to-withdrawal-from-international-criminal-court/.

Lijphart, Arend. 1971. 'Comparative Politics and the Comparative Method'. *The American Political Science Review* 65 (3). [American Political Science Association, Cambridge University Press]:682–93. https://www.jstor.org/stable/1955513.

Lomøy, Jon. 2021. 'Chinese Aid – a Blessing for Africa and a Challenge to Western Donors'. CMI - Chr. Michelsen Institute. 2021. https://www.cmi.no/publications/7750-chinese-aid-a-blessing-for-africa-and-a-challenge-to-western-donors.

Louw, Antoinette, and Ottilia Anna Maunganidze. 2012. 'Implications of Another African Case as Mali Self-Refers to the ICC'. Institute for Security Studies. https://issafrica.org/iss-today/implications-of-another-african-case-as-mali-self-refers-to-the-icc.

Lugano, Geoffrey. 2017a. 'Assessing the Acceptance of International Criminal Justice in Kenya'. In *After Nuremberg. Exploring Multiple Dimensions of the Acceptance of International Criminal Justice, Nuremberg: International Nuremberg Principles Academy*.

———. 2017b. ‘Counter-Shaming the International Criminal Court’s Intervention as Neocolonial: Lessons from Kenya’. *International Journal of Transitional Justice* 11 (1):9–29. https://academic.oup.com/ijtj/article-lookup/doi/10.1093/ijtj/ijw026.
———. 2017c. ‘Counter-Shaming the International Criminal Court’s Intervention as Neocolonial: Lessons from Kenya’. *International Journal of Transitional Justice* 11 (1):9–29. https://academic.oup.com/ijtj/article-lookup/doi/10.1093/ijtj/ijw026.
Lynch, Gabrielle. 2014. ‘Electing the “Alliance of the Accused”: The Success of the Jubilee Alliance in Kenya’s Rift Valley’. *Journal of Eastern African Studies* 8 (1):93–114.
Mabera, Faith. 2016. ‘Kenya’s Foreign Policy in Context (1963–2015)’. *South African Journal of International Affairs* 23 (3):365–84. https://doi.org/10.1080/10220461.2016.1254677.
Maclean, Ruth. 2016. ‘Violence Erupts after Gabon Election as Incumbent Ali Bongo Named Victor’. *The Guardian*, 31 August 2016, sec. World news. http://www.theguardian.com/world/2016/aug/31/gabon-election-results-disputed-incumbent-ali-bongo-victor-jean-ping.
‘Madagascar: Country Becomes 106th State to Join International Criminal Court’. 2008. *Africa Liberal Network* (blog). 14 March 2008. http://africaliberalnetwork.org/madagascar-country-becomes-106th-state-join-international-criminal-court/.
‘Malawi Foreign Policy: A Catalyst for Sustainable Development’. n.d. Ministry of Foreign Affairs and International Cooperation, Republic of Malawi. http://www.foreignaffairs.gov.mw/images/Documents/MALAWI-FOREIGN-POLICY.pdf.
‘Mali: Al Mahdi Trial on Destruction of Cultural Heritage Opens at the ICC’. 2016. International Federation for Human Rights. 17 August 2016. https://www.fidh.org/en/region/Africa/mali/mali-al-mahdi-trial-on-destruction-of-cultural-heritage-opens-at-the.
Maliti, Tom. 2012. ‘ICC Confirms Charges against Four out of Six Kenyan Suspects’. International Justice Monitor. 23 January 2012. https://www.ijmonitor.org/2012/01/icc-confirms-charges-against-four-out-of-six-kenyan-suspects/.
Malu, Linus Nnabuike. 2016. ‘The International Criminal Court and the Complex Road to Peace in Cote d’Ivoire’. *International Criminal Law Review* 16 (5):826–55. https://heinonline.org/HOL/P?h=hein.journals/intcrimlrb16&i=842.
Mangala, Jack. 2010. ‘Introduction: Africa and the New World Era: Context and Stakes’. In *Africa and the New World Era: From Humanitarianism to a Strategic View*, edited by Jack Mangala, 1–17. United States: Palgrave Macmillan.
Materu, Sosteness Francis. 2014. ‘A Strained Relationship: Reflections on the African Union’s Stand Towards the International Criminal Court from the Kenyan Experience’. In *Africa and the International Criminal Court*, edited by Gerhard Werle, Lovell Fernandez, and Moritz Vormbaum, 1:211–28. The Hague: TMC Asser Press.
Mattis, Aaron. 2010. ‘No Man’s Island: Political Paralysis in Madagascar - ProQuest’. *Harvard International Review* 32 (3):6–7. https://www.proquest.com/openview/eb719132671c63506e5f4790698c9c46/1?pq-origsite=gscholar&cbl=32013.
Mazrui, Ali A. 1977. *Africa’s International Relations: The Diplomacy Of Dependency And Change*. Routledge.

McAllister, Edward. 2016. ‘Gambia’s President Jammeh to Challenge Election Loss at Top Court’. *Reuters*, 11 December 2016, sec. Emerging Markets. https://www.reuters.com/article/us-gambia-election-idUSKBN1400LN.

McConnell, Tristan. 2014. ‘How Kenya Took on the International Criminal Court’. The World. 25 March 2014. https://www.pri.org/stories/2014-03-25/how-kenya-took-international-criminal-court.

McKaiser, Eusebius. 2016. ‘Eusebius McKaiser: SA Withdrawal from ICC a Deep Moral Stain’. *IOL*, 23 October 2016. https://www.iol.co.za/news/opinion/eusebius-mckaiser-sa-withdrawal-from-icc-a-deep-moral-stain-2082765.

Melber, Henning. 2014. ‘Namibia: Global Governance Matters’. In *Namibia’s Foreign Relations: Historic Contexts, Current Dimensions, and Perspectives for the 21st Century*, edited by Anton Bösl, André Du Pisani, and Dennis U. Zaire, 435–49. Windhoek, Namibia: Macmillan Education Namibia.

Milhench, Claire. 2016. ‘Namibia Will Stay in ICC - If United States Joins, Says President’. *Reuters*, 1 December 2016. https://www.reuters.com/article/us-namibia-economy-president-idUSKBN13Q5L0.

Mills, Kurt. 2012. ‘“Bashir Is Dividing Us”: Africa and the International Criminal Court’. *Human Rights Quarterly* 34 (2):404–47. http://www.jstor.org/stable/23254731.

Mills, Kurt, and Alan Bloomfield. 2018. ‘African Resistance to the International Criminal Court: Halting the Advance of the Anti-Impunity Norm’. *Review of International Studies* 44 (1):101–27. https://www.cambridge.org/core/product/identifier/S0260210517000407/type/journal_article.

Minde, Nicodemus. 2019. ‘The Waning Foreign Policy Influence of Tanzania under President Magufuli’. *Kujenga Amani* (blog). 26 March 2019. https://kujenga-amani.ssrc.org/2019/03/26/the-waning-foreign-policy-influence-of-tanzania-under-president-magufuli/.

Minister of Foreign Affairs, Republic of Gabon, H.E. Noël Nelson Messone. 2017. ‘Gabon’s Foreign Policy: What Role in Regional Peace and Development?’ *Chatham House: Africa Programme Transcript*. https://www.chathamhouse.org/sites/default/files/events/Transcript-%20Gabon%27s%20Foreign%20Policy.pdf.

‘Ministry of Foreign Affairs and International Relations’. 2018. Government of Lesotho. 4 January 2018. https://www.gov.ls/ministry-of-foreign-affairs-and-international-relations/.

Monageng, Sanji Mmasenono. 2014. ‘Africa and the International Criminal Court: Then and Now’. In *Africa and the International Criminal Court*, edited by Gerhard Werle, Lovell Fernandez, and Moritz Vormbaum, 1:13–20. The Hague: TMC Asser Press.

Mueller, Susanne D. 2014. ‘Kenya and the International Criminal Court (ICC): Politics, the Election and the Law’. *Journal of Eastern African Studies* 8 (1):25–42. http://www.tandfonline.com/doi/abs/10.1080/17531055.2013.874142.

Murithi, Tim. 2014. ‘Between Political Justice and Judicial Politics: Charting a Way Forward for the African Union and the International Criminal Court’. In *Africa and the International Criminal Court*, edited by Gerhard Werle, Lovell Fernandez, and Moritz Vormbaum, 1:179–93. The Hague: TMC Asser Press.

———. 2015a. ‘Ensuring Peace and Reconciliation While Holding Leaders Accountable: The Politics of ICC Cases in Kenya and Sudan’. *Africa Development* 40 (2):73–97.

———. 2015b. ‘Ensuring Peace and Reconciliation While Holding Leaders Accountable: The Politics of ICC Cases in Kenya and Sudan’. *Africa Development* 40 (2):73–97.
———. 2018. ‘The Instrumentalisation of SADC to Achieve Foreign Policy Agendas’. In *African Foreign Policies in International Institutions*, edited by Jason Warner and Timothy M. Shaw, 149–62. Contemporary African Political Economy. Palgrave Macmillan US. https://doi.org/10.1057/978-1-137-57574-6.
———. 2019. *Judicial Imperialism: Politicisation of the International Criminal Justice in Africa*. United Kingdom: Zed Books Ltd.
———. 2021. Key Informant InterviewZoom.
Mutharika, A Peter. n.d. ‘Treaty Acceptance in the African States’. *Denver Journal of International Law and Policy* 3:13.
Mutua, Makau. 2015. ‘The International Criminal Court: Promise and Politics’. *Proceedings of the ASIL Annual Meeting* 109:269–72.
Nathan, Laurie. n.d. ‘African Solutions to African Problems South Africa’s Foreign Policy’, 6.
‘National Implementation of IHL - Law 15/022 Modifying the Penal Code; Law 15/023 Modifying the Military Penal Code; Law 15/024 Modifying the Penal Procedure Code’. n.d. International Committee of the Red Cross. Accessed 10 May 2021. https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=49C04B6F6300E1E2C1258043002924E5&action=openDocument&xp_countrySelected=CD&xp_topicSelected=GVAL-992BU6&from=state.
Ndlovu-Gatsheni, Sabelo J. 2014. ‘Pan-Africanism and the International System’. In *Handbook of Africa’s International Relations*, edited by Tim Murithi, 1st ed., 21–29. USA: Routledge.
Neiman, Sophie. 2020. ‘How Kony’s LRA Continues to Hurt Civilians’. *The New Humanitarian*, 11 August 2020. https://www.thenewhumanitarian.org/news-feature/2020/08/11/Kony-LRA-Uganda-Congo-CAR.
‘Net ODA Received (% of GNI) - Benin’. n.d. The World Bank. Accessed 25 November 2021. https://data.worldbank.org/indicator/DT.ODA.ODAT.GN.ZS?end=2018&locations=BJ&start=2008&view=chart.
‘Net ODA Received (% of GNI) - Liberia’. n.d. The World Bank. Accessed 28 November 2021. https://data.worldbank.org/indicator/DT.ODA.ODAT.GN.ZS?end=2018&locations=LR&start=2008.
‘Net ODA Received (% of GNI) - Malawi’. n.d. The World Bank. Accessed 27 November 2021. https://data.worldbank.org/indicator/DT.ODA.ODAT.GN.ZS?end=2018&locations=MW&start=2008.
‘Net ODA Received (% of GNI) - Tunisia’. n.d. The World Bank. Accessed 27 November 2021. https://data.worldbank.org/indicator/DT.ODA.ODAT.GN.ZS?end=2018&locations=TN&start=2008.
News24. 2018. ‘Jacob Zuma Resigns as President of South Africa’, 14 February 2018, sec. News24. https://www.news24.com/news24/SouthAfrica/News/jacob-zuma-resigns-as-president-of-south-africa-20180214.
Ngari, Allan. 2017. ‘The AU’s (Other) ICC Strategy’. ISS Africa. 14 February 2017. https://issafrica.org/iss-today/the-aus-other-icc-strategy.
Niemann, Michael. 1993. ‘Diamonds Are a State’s Best Friend: Botswana’s Foreign Policy in Southern Africa’. *Africa Today* 40 (1). Indiana University Press:27–47. https://www.jstor.org/stable/4186886.

'Nigeria'. n.d. Coalition for the International Criminal Court. Accessed 10 May 2021. https://www.coalitionfortheicc.org/country/nigeria.
'Nigeria and the Rome Statute'. n.d. Parliamentarians for Global Action. Accessed 10 May 2021. https://www.pgaction.org/ilhr/rome-statute/nigeria.html.
Nii Nortey Addo, Prosper. 2008. 'Ghana's Foreign Policy and Transnational Security Challenges in West Africa'. *Journal of Contemporary African Studies* 26 (2):197–211. https://doi.org/10.1080/02589000802124672.
Nossiter, Adam. 2010. 'After Massacre, Guinea Sees Hope of Lifted Chains'. *The New York Times*, 2 February 2010, sec. World. https://www.nytimes.com/2010/02/03/world/africa/03guinea.html.
Nouwen, S. M. H., and W. G. Werner. 2010. 'Doing Justice to the Political: The International Criminal Court in Uganda and Sudan'. *European Journal of International Law* 21 (4):941–65. https://academic.oup.com/ejil/article-lookup/doi/10.1093/ejil/chq064.
Nouwen, Sarah M. H. 2013. *Complementarity in the Line of Fire: The Catalysing Effect of the International Criminal Court in Uganda and Sudan*. Cambridge Studies in Law and Society. Cambridge: Cambridge University Press. https://doi.org/10.1017/CBO9780511863264.
Nwayo, James. 2019. 'Activation of the Crime of Aggression: African States the Missing Link! | Knowledge Platform Security & Rule of Law'. *Knowledge Management Fund. Knowledge Platform Security and Rule of Law* (blog). 14 August 2019. https://www.kpsrl.org/blog/activation-of-the-crime-of-aggression-african-states-the-missing-link.
Nyakairu, Frank. 2010. 'Uganda Rebels Deny Mass Killings in Northeast Congo'. *Reuters*, 29 March 2010, sec. World News. https://www.reuters.com/article/us-congo-democratic-lra-idUSTRE62S2PA20100329.
Nye, Joseph S. 1990. 'Soft Power'. *Foreign Policy*, no. 80. Washingtonpost.Newsweek Interactive, LLC:153–71. https://doi.org/10.2307/1148580.
———. 2011. 'The Future of Power'. Chatham House, May 10. https://www.chathamhouse.org/sites/default/files/public/Meetings/Meeting%20Transcripts/100511nye.pdf.
Oduah, Chika. n.d. 'West African Leaders Press Gambia's Jammeh to Accept Defeat'. VOA. Accessed 9 November 2021. https://www.voanews.com/a/west-african-leaders-press-gambia-jammeh-accept-defeat/3640765.html.
Office of the Prosecutor. 2020. 'Report on Preliminary Examination Activities (2020)'. International Criminal Court. https://www.icc-cpi.int/itemsDocuments/2020-PE/2020-pe-report-eng.pdf.
Ofoulhast-Othamot, Gyldas A. n.d. 'As Its Ruling Dynasty Withers, Gabon – a US Ally and Guardian of French Influence in Africa – Ponders Its Future'. The Conversation. Accessed 26 March 2021. http://theconversation.com/as-its-ruling-dynasty-withers-gabon-a-us-ally-and-guardian-of-french-influence-in-africa-ponders-its-future-110076.
Ogunnubi, Olusola, and Ufo Okeke-Uzodike. 2016. 'Can Nigeria Be Africa's Hegemon?' *African Security Review* 25 (2):110–28. https://doi.org/10.1080/10246029.2016.1147473.
Okoth, Juliet. 2014. 'Africa, United Nations Security Council, and the International Criminal Court: The Question of Deferrals'. In *Africa and the International Criminal Court*,

edited by Gerhard Werle, Lovell Fernandez, and Moritz Vormbaum, 1:195–209. The Hague: TMC Asser Press.
Okwudili, Peter. 2015. 'Nigeria's Foreign Policy: The Realities'. *Journal of Research in Arts and Social Sciences* 4 (1):8–22.
Olugbuo, Benson Chinedu. 2004. 'Implementation of the Rome Statute of the International Criminal Court in Africa: An Analysis of the South African Legislation'. *Eyes on the ICC* 1:191–202.
Omorogbe, Eki Yemisi. 2019. 'The Crisis of International Criminal Law in Africa: A Regional Regime in Response?' *Netherlands International Law Review* 66 (2):287–311. https://doi.org/10.1007/s40802-019-00143-5.
'Operation Niger 2018 Year-End Report'. 2019. Global Focus. Office of the United Nations High Commissioner for Refugees. https://reporting.unhcr.org/node/4637?y=2018#year.
Osei-Hwedie, Bertha. 2021. Key Informant Email InterviewEmail.
Otavio, Anselmo. 2021. 'The Ramaphosa Administration and the Return to South Africa's Protagonism: Trends and Challenges to Foreign Policy'. *Brazilian Journal of African Studies* 6 (11):87–107. https://www.seer.ufrgs.br/rbea/article/viewFile/117903/64199#page=87.
'Our Story'. n.d. Ministry of Foreign Affairs and International Cooperation, the Republic of Sierra L:Eone. Accessed 27 November 2021. https://mofaic.gov.sl/about-us/history/.
Park, Madison, and Stephanie Busari. n.d. 'Gambian President Yahya Jammeh Rejects Election Defeat'. CNN. Accessed 9 November 2021. https://www.cnn.com/2016/12/10/africa/gambia-yahya-jammeh-election/index.html.
Pauwelyn, Joost, and Rebecca J Hamilton. 2018. 'Exit from International Tribunals'. *Journal of International Dispute Settlement* 9 (4):679–90. https://academic.oup.com/jids/article/9/4/679/5076138.
Payton, Autumn Lockwood. 2014. 'Building a Consensus (Rule) for International Organizations'. The 7th Annual Conference, The Political Economy of International Organizations. https://www.peio.me/wp-content/uploads/2014/04/Conf4_Lockwood-Payton-01.10.2010.pdf.
Plaut, Martin. 2014. 'Uganda Donors Cut Aid after President Passes Anti-Gay Law'. *The Guardian*, 25 February 2014, sec. Global development. http://www.theguardian.com/global-development/2014/feb/25/uganda-donors-cut-aid-anti-gay-law.
Pomerantz, Anita. 1986. 'Extreme Case Formulations: A Way of Legitimizing Claims'. *Human Studies* 9 (2/3). Springer:219–29.
Posner, Sarah. 2012. 'ICC Confirms Charges against 4 Suspects for Kenya Post-Election Violence'. Jurist. 23 January 2012. https://www.jurist.org/news/2012/01/icc-confirms-charges-against-4-suspects-for-kenya-violence/.
Pratt, Marion, and Leah Werchick. 2004. 'Sexual Terrorism: Rape as a Weapon of War in Eastern Democratic Republic of Congo. An Assessment of Programmatic Responses to Sexual Violence in North Kivu, South Kivu, Maniema, and Orientale Provinces.' USAID/DCHA Assessment Report. https://pdf.usaid.gov/pdf_docs/PNADK346.pdf.
'Preliminary Examination: Nigeria'. n.d. International Criminal Court. Accessed 19 April 2021. https://www.icc-cpi.int/nigeria.

‘President of Cabo Verde Visits International Criminal Court’. n.d. International Criminal Court. Accessed 11 June 2021. https://www.icc-cpi.int/Pages/item.aspx?name=pr1424.

‘President of United Republic of Tanzania Visits ICC’. n.d. International Criminal Court. Accessed 16 June 2021. https://www.icc-cpi.int/Pages/item.aspx?name=pr1115.

‘President Uhuru Kenyatta Underlines Kenya-Seychelles Relationship as One of “Natural Partnership”’. n.d. Ministry of Foreign Affairs and Tourism - Foreign Affairs Department, Republic of Seychelles. Accessed 28 November 2021. https://mfa.gov.sc/news/735/president-uhuru-kenyatta-underlines-kenya-seychelles-relationship-as-one-of-?natural-partnership.

Pre-Trial Chamber I. 2010. ‘Decision Informing the United Nations Security Council and the Assembly of the States Parties to the Rome Statute about Omar Al-Bashir’s Recent Visit to the Republic of Chad’. International Criminal Court. 27 August 2010. https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-02/05-01/09-109&ln=en.

Pre-Trial Chamber II. 2013. ‘Decision on the Cooperation of the Federal Republic of Nigeria Regarding Omar Al-Bashir’s Arrest and Surrender to the Court, Situation in Darfur, Sudan, The Prosecutor v. Omar Hassan Almad Al Bashir, ICC-02/05-01/09’. https://www.icc-cpi.int/CourtRecords/CR2013_05860.PDF.

———. 2017. ‘Decision under Article 87(7) of the Rome Statute on the Non-Compliance by South Africa with the Request by the Court for the Arrest and Surrender of Omar Al-Bashir, Situation in Darfur, Sudan in the Case of The Prosecutor v. Omar Hassan Ahmad al-Bashir, ICC-02/05-01/09’. https://www.icc-cpi.int/CourtRecords/CR2017_04402.PDF.

‘Program Information Document (PID) Concept Stage’. 2017. AB7903. World Bank. http://documents1.worldbank.org/curated/en/520481504270198590/pdf/AB7903-PID-Concept-Stage-P159508-Box405298B-PUBLIC.pdf.

Pudaruth, Santosh Kumar. 2017. ‘Nation Rebranding Through a New Approach to Cultural Diplomacy: A Case Study of Mauritius’. *SAGE Open* 7 (2). SAGE Publications:1–13. https://doi.org/10.1177/2158244017704483.

‘Rebel leader in limbo’. 2008. The New Humanitarian. 15 May 2008. https://www.thenewhumanitarian.org/fr/node/241550.

‘Reference: C.N.786.2016.TREATIES-XVIII.10 (Depositary Notification)’. 2016. https://treaties.un.org/doc/publication/cn/2016/cn.786.2016-eng.pdf.

‘Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia’. n.d. International Criminal Court. Accessed 7 October 2020. https://www.icc-cpi.int/comoros.

Reid, Stuart A. 2018. ‘Congo’s Slide into Chaos: How a State Fails’. *Foreign Affairs* 97 (1):97–117. https://heinonline.org/HOL/P?h=hein.journals/fora97&i=129.

‘Report of the Public Hearing on the Bill for “An Act to Provide for the Enforcement and Punishment of Crimes Against Humanity, War Crimes, Genocide and for Other Related Offences”’. 2018. Nigerian Coalition for the International Criminal Court. 3 August 2018. http://ncicc.org.ng/2018/08/03/report-of-the-public-hearing-on-the-bill-for-an-act-to-provide-for-the-enforcement-and-punishment-of-crimes-against-humanitywar-crimes-genocide-and-for-other-related-offences/.

Republic of Benin. 2017. ‘Debat General de La 16eme Session de l’Assemblee Des Etats Parties Au Statut de Rome New York, Intervention de Monsieur Jean-Claude Do Rego

Ambassadeur, Representant Permanent Du Benin Aupres Des Nations Unies'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ASP-16-BEN.pdf.
Republic of Botswana. 2008a. 'Statement by Honourable Phandu T.C. Skelemani Minister Pof Foreign Affairs and International Cooperation of the Republic of Botswana at the 63rd Session of the United Nations General Assembly, New York'. https://www.un.org/en/ga/63/generaldebate/pdf/botswana_en.pdf.
———. 2008b. 'Botswana Statement at the 7th Session of the Assembly of the States Parties to the Rome Statute of the International Criminal Court (ICC), The Hague, The Netherlands'. https://asp.icc-cpi.int/iccdocs/asp_docs/library/asp/ICC-ASP-ASP7-GenDebe-Botswana-ENG.pdf.
———. 2010a. 'Remarks by the Botswana Minister of Defence Justice and Security Honourable Dikgakgamtso R. Seretse during the General Debate of the Review Conference of the Rome Statute of the International Criminal Court'. https://asp.icc-cpi.int/iccdocs/asp_docs/RC2010/Statements/ICC-RC-gendeba-Botswana-ENG.pdf.
———. 2010b. 'Statement by His Honour Lieutenant General Mompati S. Merafhe, MP. The Vice President of the Republic of Botswana during the Plenary of the 65th Session of the United Nations General Assembly, New York'. https://web.archive.org/web/20210927064250/https://gadebate.un.org/sites/default/files/gastatements/65/65%20BW_en.pdf.
———. 2010c. 'Intervention by the Acting Minister of Defence, Justice and Security of the Republic of Botswana, Honourable Lesego E. Motsumi, MP during the General Debate of the 9th Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, New York'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP9/Statements/ICC-ASP9-GenDeba-Botswana-ENG.pdf.
———. 2011. 'Keynote Address by His Excellency Lt. General Seretse Khama Ian Khama, The President of the Republic of Botswana during the Opening Plenary of the 10th Session of the Assembly of the States Parties to the Rome Statute of the International Criminal Court (ICC), New York'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ASP10-ST-Botswana-ENG.pdf.
———. 2012. 'Republic of Botswana, Statement by Hon. Dikgakgamatso Ramadeluka Seretse, Minister of Defence, Justice and Security of the Republic Botswana during the Eleventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC)'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP11/GenDeba/ICC-ASP11-GenDeba-BOT-ENG.pdf.
———. 2013. 'Statement by H.E. Mr. Phandu T. C. Skelemani, Minister for Foreign Affairs and International Cooperation of the Republic of Botswana during the General Debate of the 68th Session of the United Nations General Assembly, New York'. https://web.archive.org/web/20210927064217/https://gadebate.un.org/sites/default/files/gastatements/68/BW_en.pdf.
———. 2015. 'Statement by Dr. Athaliah L. Molokomme, Attorney-General of the Republic of Botswana during the General Debate of the 14th Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, The Netherlands'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP14/GenDeb/ASP14-GenDeb-Botswana-ENG.pdf.
———. 2016. 'Statement by Dr Athaliah Molokomme, Attorney General of the Republic of Botswana Leader of the Delegation at the 15th Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, THe Hague, The

Netherlands'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP15/GenDeba/ICC-ASP15-GenDeba-Botswana-ENG.pdf.
———. 2017. 'Statement by H.E. Mr. Charles T. Ntwaagae, Ambassador and Permanent Representative of the Republic of Botswana to the United Nations during the Plenary of the Sixteeth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC) Held in New York'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ASP-16-BOT.pdf.
———. 2018a. 'Statement by H.E. Mr. Mokgweetsi Eric Keabetswe Masisi, President of the Republic of Botswana during the General Debate of the 73rd Session of the United Nations General Assembly, New York'. https://gadebate.un.org/sites/default/files/gastatements/73/bw_en.pdf.
———. 2018b. 'Statement by Ms. Segakweng Tsiane Permanent Secretary Ministry of Defence, Justice and Security at the General Debate of the 17th Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, The Netherlands'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP17/GD%20BOT%2006-12-2018.pdf.
Republic of Burkina Faso. 2010a. 'Conférence de Révision Du Statut de Rome de La Cour Pénale Internationale Déclaration Prononcée Par Monsieur Zakalia Kote, Garde Des Sceaux, Ministre de La Justice, Chef de Délégation'. https://asp.icc-cpi.int/iccdocs/asp_docs/RC2010/Statements/ICC-RC-GenDeba-Burkina%20Faso-FRA.pdf.
———. 2010b. 'Neuvieme Session de l'Assemblee Des Etats Parties Au Statut de Rome de La Cour Penale Internationale Declaration Du Burkina Faso Par Son Excellence Monsieur Paul Robert Tiendrebeogo Ambassadeur Representant Permanent Adjoint, New York'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP9/Statements/ICC-ASP9-GenDeba-BurkinaFaso-FRA.pdf.
———. 2011. 'Dixieme (10eme) Session de l'Assemblee Des Etats Parties Au Statut de Rome, Delcaration Du Burkina Faso Prononcee Par Son Excellence Monsieur De Kogda, Ambassadeur, Representant Permanent'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ICC-ASP10-GenDeba-BurkinaFaso-FRA.pdf.
———. 2014. 'Treizieme Session de l'Assemblee Des Etats Parties Au Statut de Rome de La Cour Penale Internationale. Declaration Du Burkina Faso Prononcee Par Son Excellence Monsieur Simplice Honore Guibila Ambassadeur Representant Permanent Adjoint, New York'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP13/GenDeba/ICC-ASP13-GenDeba-BurkinaFaso-FRA.PDF.
———. 2017. '16eme Session de l'Assemblee Des Etats Parties a La Cour Penale Internationale Declaration Du Burkina Faso Prononcee Par Son Excellence Monsieur Eric Y. Tiare Ambassadeur Representant Permanent'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ASP-16-BFA.pdf.
Republic of Burundi. 2013. 'Allocution de Son Excellence Monsieur Laurent Kavakure, Ministre Des Relations Exterieures et de La Cooperation Internationale, a l'Occasion de La 68eme Session d l'Assemblee Generale de l'Organisation Des Nations Unies. New York.' https://gadebate.un.org/sites/default/files/gastatements/68/BI_fr.pdf.
———. 2015. 'Statement of Minister of External Relations and International Cooperation of the Republic of Burundi, at the 14th Session of the Assemblies of the States Parties

to the Rome Statute on the ICC'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP14/GenDeb/ASP14-GenDeb-Burundi-ENG.pdf.
———. 2016a. 'Burundi: Withdrawal. Reference: C.N.805.2016.TREATIES-XVIII.10 (Depositary Notification)'. https://treaties.un.org/doc/publication/cn/2016/cn.805.2016-eng.pdf.
———. 2016b. 'Republic of Burundi, Statement of H.E. Vestine Nahimana Ambassador of Burundi during the 15th Session of the Assembly of States Parties to the Rome Statute'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP15/GenDeba/ICC-ASP15-GenDeba-Burundi-ENG.pdf.
———. 2016c. 'Statement of H.E. Vestine Nahimana Ambassador of Burundi during the 15th Session of the Assembly of States Parties to the Rome Statute'. presented at the Assembly of States Parties General Debate, International Criminal Court, November 16. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP15/GenDeba/ICC-ASP15-GenDeba-Burundi-ENG.pdf.
Republic of Cabo Verde. 2017. 'Speech by His Excellency Jose Ulisses de Pina Correia e Silva Prime Minister, Head of Government and Head of Delegation of the Republic of Cabo Verde at the High Level Week of the 72nd Session of the UN General Assembly, New York'. https://web.archive.org/web/20210929044659/https://gadebate.un.org/sites/default/files/gastatements/72/cv_en.pdf.
Republic of Chad. 2014. 'Declaration de Sem Idriss Deby Itno, President de La Republique Du Tchad, Chef de i'etat a La 69eme Session Ordinaire de l'Assemblee Generale Des Nations Unies.' https://gadebate.un.org/sites/default/files/gastatements/69/TD_FR.pdf.
Republic of Côte d'Ivoire. 2003. 'Declaration Accepting the Jurisdiction of the International Criminal Court'. https://www.icc-cpi.int/NR/rdonlyres/C2A55C36-FD8C-4445-83E2-1E18FBA73743/279844/ICDEENG5.pdf.
Republic of Côte d'Ivoire. 2013. '12eme Session de l'Assemblee Des Etats Parties Au Statut de Rome de La Cour Penale Internationale Allocution Prononcee Par Monsieur Coulibaly Gnenema Garde Des Sceaux, Ministre de La Justice, Des Droits de l'Homme et Des Libertes Publiques de La Republique de Côte d'Ivoire'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP12/GenDeba/ICC-ASP12-GenDeba-CoteDIvoire-FRA.pdf.
———. 2014. '13eme Session de l'Asse,n;Ee Des Etats Parties Du Statut de Rome de La Cour Penale Internationale Project d'Allocution Prononcee Par Monsieur Gnenema Mamadou Coulibaly Garde Des Sceaux, Ministre de La Justice, Des Droits de l'homme et Des Libertes Publiques de La Republique de Côte d'Ivoire'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP13/GenDeba/ICC-ASP13-GenDeba-CoteD%27Ivoire-FRA.PDF.
———. 2017. '16eme Session de L'Assemblee Des Etats Parties Au Statut de Rome de La Cout Penale Internationale, Declaration de Monsieur Sansan Kambire, Minstre de La Justice et Des Droits de l'Homme de La Republique de Cote d'Ivoire, New York'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ASP-16-CIV.pdf.
Republic of Ghana. 2010. 'Statement Delivered by Her Excellency Mrs Betty Mould-Iddrisu, Attorney-General and Minister of Justice of the Republic of Ghana at the First Review Conference of State Parties to the Rome Statute of the International Criminal Court Held at the Munyonyo Commonwealth Resort, Kampala, 31 May - June 2010'.

https://asp.icc-cpi.int/iccdocs/asp_docs/RC2010/Statements/ICC-RC-GenDeba-Ghana-ENG.pdf.
———. 2011. ‘Statement by Hon. Martin A.B. Amidu, Attorney-General and Minister for Justice of the Republic of Ghana at the General Debate of the Tenth Session of the Assembly of States Parties to the Rome Statute Held in Th United Nations Headquarters’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ICC-ASP10-GenDeba-Ghana-ENG.pdf.
———. 2012. ‘Statement by Honourable Anthony Gyambiby, Deputy Attorney-General and Deputy Minister for Justice of the Republic of Ghana/Leader of the Ghana Delegation Delivered at the Eleventh Session of the Assembly of States Parties of the Rome Statute of the International Criminal Court (ICC) Held in The Hague, The Netherlands during the General Debate on the Theme 'Tenth Anniversary of the Entry into Force of the Rome Statute: The Challenges Ahead"’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP11/GenDeba/ICC-ASP11-GenDeba-GHA-ENG.pdf.
———. 2013. ‘Ghana’s Statement by Honourable Dr. Dominic Ayine Deputy Minister for Justice and Attorney-Gneral of the Republic of Ghana/Leader of the Ghana Delegation Deliverde at the Twelfth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court Held in The Hague’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP12/GenDeba/ICC-ASP12-GenDeba-Ghana-ENG.pdf.
———. 2016. ‘Statement by H.E. Dr. J. Tony Aidoo Ambassador and Permanent Representative of the Republic of Ghana and Leader of Ghana’s Delegation to the Fifteenth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP15/GenDeba/ICC-ASP15-GenDeba-Ghana-ENG.pdf.
———. 2017. ‘Statement by Honourable Gloria Afua Akuffo, Attorney-General and Minister for Justice of the Republic of Ghana and Leader of Ghana’s Delegation to the Sixteeth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, New York’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ASP-16-GHA.pdf.
———. 2018. ‘Statement by Miss Gloria Afua Akuffo, the Honourable Attorney General and Minister for Justice of the Republic of Ghana and Leader of Ghana’s Delegation to the Seventeenth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP17/GD%20GHA.pdf.
Republic of Guinea. 2010. ‘Republique de Guinee, Conference de Revision Du Statut de Rome de La Cour Penale Internationale, Kampala, Declaration de Monsieur Le Ministre de La Justice, Garde Des Sceaux’. https://asp.icc-cpi.int/iccdocs/asp_docs/RC2010/Statements/ICC-RC-gendeba-Guniea-FRA.pdf.
———. 2012. ‘Cour Penale Internationale, Assemblee Des Etats Parties Au Statut de Rome 11eme Session, Intervention de M. Jean Andrianasolonjanahary, Secretaire General Ministere de La Justice, La Haye’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP11/GenDeba/ICC-ASP11-GenDeba-MAD-FRA.pdf.
Republic of Kenya. 2009. ‘Statement by Prof. Ruthie C. Rono, Ambassador of the Republic of Kenya to the Kingdom of The Netherlands, General Debate of the Eighth Session of the Assembly of States Parties to the Rome Statuteof the International Criminal Court, The Hague’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP8/Statements/ICC-ASP-ASP8-GenDeba-Kenya-ENG.pdf.

———. 2010a. ‘Statement by Hon. S. Amos Wako, Attorney General of the Republic of Kenya to the Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda’. https://asp.icc-cpi.int/iccdocs/asp_docs/RC2010/Statements/ICC-RC-gendeba-Kenya-ENG.pdf.
———. 2010b. ‘Statement by Ambassador Dr. Josephine Ojiambo Deputy Permanent Representative Kenya Mission to the United Nations to the 9th Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court Plenary, New York’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP9/Statements/ICC-ASP9-GenDeba-Kenya-ENG.pdf.
———. 2011. ‘Statement by Mr. Wanjuki Muchemi Solicitor General during the 10th Session of the Assembly of States Parties to the Rome Statute. International Criminal Court.’ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ICC-ASP10-GenDeba-Kenya-ENG.pdf.
———. 2012. ‘The Government of Kenya Statement to the General Debate of the 11th Session of the Assembly of State Parties to the International Criminal Court’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP11/GenDeba/ICC-ASP11-GenDeba-KEN-ENG.pdf.
———. 2013. ‘Statement by the Hon. Amina Mohammed, CBS, CAV, Cabinet Secretary for Foreign Affairs and International Trade during the General Debate of the 12th Session of the Assembly of States Parties, The Netherlands’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP12/GenDeba/ICC-ASP12-GenDeba-Kenya-ENG.pdf.
———. 2014. ‘Statement by Amb. Macharia Kamau, Ambassador/Permanent Representative Permanent Mission of the Republic of Kenya to the United Nations Statement during the General Debate of the Assembly of States Parties of the International Criminal Court Thirteenth Session of the Assembly of States Parties to the Rome Statute, New York’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP13/GenDeba/ICC-ASP13-GenDeba-Kenya-ENG.PDF.
———. 2015. ‘Statement by Amb. (Dr.) Amina C. Mohamed, CBS, CAV, Cabinet Secretary, Minstry of Foreign Affairs and International Trade of the Republic of Kenya during the General Debate of the 14th Session of the Assembly of States Parties to the Rome Statute of the International Crimibal Court, The Hague, The Netherlands’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP14/GenDeb/ASP14-GenDeb-Kenya-ENG.pdf.
———. 2016. ‘Statement by Amb. Rose Makena Muchiri, Ambassador of the Republic of Kenya to the Kingdom of The Netherlands during the General Debate of the 15th Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, The Netherlands’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP15/GenDeba/ICC-ASP15-GenDeba-Kenya-ENG.pdf.
———. 2017. ‘Statement by the Republic of Kenya, Statement During the General Debate of the Assemly of States Parties. 16th Session of the Assembly of States Parties to the Rome Statute. New York’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ASP-16-KEN.pdf.
———. 2018. ‘Statement by the Republic of Kenya Statement During the General Debate of the Assembly of States Parties 17th Session of the Assembly of States Parties to the Rome Statute, The Hague’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP17/GD%20KEN%2006-12-2018.pdf.

Republic of Madagascar. 2015. ‘Statement Delivered by Madagascar at the 14th Session of the Assembly of States Parties General Debate’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP14/GenDeb/ASP14-GenDeb-Madagascar-FRA.pdf.
Republic of Malawi. 2010. ‘“Africa of the New Beginning”, Statement by His Excellency Professor Bingu Wa Mutharika President of the Republic of Malawi and Chairman of the African Union to the Sixty-Fifth Session of the United Nations General Assembly’. https://gadebate.un.org/sites/default/files/gastatements/65/MW_en.pdf.
———. 2014. ‘Statement by Honorable Samuel B. Tmbenu Minister of Justice and Constitutional Affairs of the Republic of Malawi at the Thirteeth Session of the Assembly of States Parties to Rome Statute of the International Criminal Court’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP13/GenDeba/ICC-ASP13-GenDeba-Malawi-ENG.pdf.
Republic of Mali. 2015. ‘Quartorzieme Session de l’Assemblee Des Etats Partues Au Statut de Rome de La COur Penalie Internaitonale Debat General Discourse de Madame Le Ministre de La Justice et Des Droits de l’Homme, Garde Des Sceaux, La Haye’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP14/GenDeb/ASP14-GenDeb-Mali-FRA.pdf.
———. 2016. ‘Discours de Maître Mamadou Ismaïla Konate, Ministre de La Justice et Des Droits de l’Homme, Garde Des Sceaux Du Mali 15ème Session de l’Assemblée Des Etats-Parties de La CPI. La Hagye’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP15/GenDeba/ICC-ASP15-GenDeba-Mali-FRA.pdf.
———. 2017. ‘Discours de SEM. Issa KONFOUROU, Ambassadeur, Representant Permanent Du Mali Aupres Des Nations Unies a Poccasiou Du Debar General de La 16e Session de l’Assemblee Des Etats Parties Au Statut de Rome de La Cour Penale Internationale’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ASP-16-MLI.pdf.
Republic of Mauritius. 2010. ‘Statement by Honourable Yatindra Nath Varma, Attorney General of the Republic of Mauritius to the Internaitonal Criminal Court Review Conference’. https://asp.icc-cpi.int/iccdocs/asp_docs/RC2010/Statements/ICC-RC-gendeba-Mauritius-ENG.pdf.
Republic of Namibia. 2011. ‘Statement by H.E. Mr. Wilfried I. Emvula. Ambassador and Permanent Representative of the Republic of Namibia to the United Nations at the General Debate of the 10th Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC).’ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ICC-ASP10-GenDeba-Namibia-ENG.pdf.
———. 2013. ‘Statement by Hon. Albert Kawana, Minister of Presidential Affairs and Attorney General of the Republic of Namibia, at the General Debate of the 12th Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP12/GenDeba/ICC-ASP12-GenDeba-Namibia-ENG.pdf.
———. 2014. ‘Statement by Honourable Utoni Nujoma Minister of Justice of the Republic of Namibia, at the General Debate of the 13th Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, New York’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP13/GenDeba/ICC-ASP13-GenDeba-Namibia-ENG.PDF.
———. 2016. ‘Statement by Mr. Issaskar Ndjoze, Permanent Secretary: Ministry of Justice, General Debate: Fifteeth [Sic] Meeting of the Assembly of States Parties of the International Criminal Court’. The Hague, The Netherlands, November 16.

https://asp.icc-cpi.int/iccdocs/asp_docs/ASP15/GenDeba/ICC-ASP15-GenDeba-Namibia-ENG.pdf.
Republic of Senegal. 2008. 'Intervention de M. Saliou Niang Dieng, Deuxieme Counseiller a La Mission Permanente Du Senegal Aupres Des Nations Unies, a La Septieme Assemblee Des Etats Parties Au Statut de Rome de La Cour Penale Internationale, La Haye, Pays-Bas'. https://asp.icc-cpi.int/iccdocs/asp_docs/library/asp/ICC-ASP-ASP7-GenDebe-Senegal-FRA.pdf.
———. 2010a. 'Senegal Statement at the ICC Review Conference'. https://asp.icc-cpi.int/iccdocs/asp_docs/RC2010/Statements/ICC-RC-gendeba-Senegal-FRA.pdf.
———. 2010b. 'Soixante Cinquième Session Ordinaire de l'Assemblée Générale Des Nations Unies, Allocaution de Son Excellence Maitre Abdoulae Wade, President de La Republique Du Senegal'. https://www.un.org/en/ga/65/meetings/generaldebate/Portals/1/statements/63420926726875000SN_fr.pdf.
———. 2010c. '9éme Session Assemblee Des Etats Parties Au Statut de Rome de La Cour Penale Internationale, Allocution Prononcee Par Monsieur Abdou Salam Diallo, Ambassadeur Representant Permanent Du Senegal Aupres Des Nations Unies, New York'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP9/Statements/ICC-ASP9-GenDeba-Senegal-FRA.pdf.
Republic of Seychelles. 2013. 'Intervention of the Republic of Seychelles by Ambassador J.A. Nourrice. The Twelfth Session of the Assembly of State Parties to the Rome Statute. The Hague.' https://asp.icc-cpi.int/iccdocs/asp_docs/ASP12/GenDeba/ICC-ASP12-GenDeba-Seychelles-ENG.pdf.
———. 2014. 'Statement by H.E. Mr. Jean-Paul Adam, Minister for Foreign Affairs of the Republic of Seychelles on Occasion of the General Debate of the 69th Session of the United Nations General Assembly, United Nations Headquarters, New York'. https://web.archive.org/web/20210710005647/https://gadebate.un.org/sites/default/files/gastatements/69/SC_en.pdf.
Republic of Sierra Leone. 2008. 'Statement by the Delegation of the Republic of Sierra Leone to the Seventh Session of the ICC Assembly of States Parties'. https://asp.icc-cpi.int/iccdocs/asp_docs/library/asp/ICC-ASP-ASP7-GenDebe-SierraLeone-ENG.pdf.
———. 2010. 'Statement by the Head of Delegation, Vandi Chidi Minah, Deputy Minister of Foreign Affairs and International Cooperation of the Republic of Sierra Leone to the Review Conference of the Rome Statute for the International Criminal Court'. https://asp.icc-cpi.int/iccdocs/asp_docs/RC2010/Statements/ICC-RC-gendeba-Sierra%20Leone-ENG.pdf.
———. 2012. 'Statement by Mr Osman Keh Kamara, Ambassador and Deputy Permanent Representative for Legal Affairs of the Permanent Mission of Sierra Leone to the United NAtions at the Eleventh Session of the Assembly of States Parties to the Rome Statutes of the International Criminal Court (ASP/ICC), The Hague, The Netherlands'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP11/GenDeba/ICC-ASP11-GenDeba-SLE-ENG.pdf.
———. 2014a. 'Statement by H.E. Dr. Samura M.W. Kamara, Minister of Foreign Affairs and International Cooperation at the General Debate of the Sixty-Ninth Session of the United Nations General Assembly'. New York, September 29. https://gadebate.un.org/sites/default/files/gastatements/69/SL_en_1.pdf.

———. 2014b. ‘Statement by H.E. Mr Amadu Koroma Deputy Permanent Representative Open Debate at the Thirteenth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP13/GenDeba/ICC-ASP13-GenDeba-SierraLeone-ENG.pdf.
———. 2018. ‘Statement by H.E. Dr. Michael Imran Kanu, Deputy Permanent Representative, Legal Affairs, Permanent Mission of Sierra Leone to the United Nations to the International Criminal Court, Seventeenth Session of the Assembly of States Parties, “General Debate”, The Hague, Netherlands’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP17/GD%20SLN%2006-12-2018.pdf.
Republic of South Africa. 2008. ‘Statement by Nkhulu Daniel Sebothoma Charge d’Affaires of the South African Embassy to The Netherlands. General Debate of the Seventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court. The Hague.’ https://asp.icc-cpi.int/iccdocs/asp_docs/library/asp/ICC-ASP-ASP7-GenDebe-SAfrica-ENG.pdf.
———. 2009. ‘General Debate of the Eighth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP8/Statements/ICC-ASP-ASP8-GenDeba-South%20Africa-ENG.pdf.
———. 2010a. *International Criminal Court Questionnaire/Annex - Implementing Legislation for States Parties (Reference ICC-ASP/S/PA/07)*. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP9/PoA/ICC-RC-POA2010-SAF-ENG.pdf.
———. 2010b. ‘General Debate: International Criminal Court, The Review Conference of the Rome Statute, Kampala, Uganda, Opening Statement by Deputy-Minister A.C. Nel, MP, Deputy-Minister of Justice and Constitutional Development, Republic of South Africa’. https://asp.icc-cpi.int/iccdocs/asp_docs/RC2010/Statements/ICC-RC-GenDeba-SouthAfrica-ENG.pdf.
———. 2010c. ‘Opening Statement by Mr A.C. Nel, MP, Deputy Minister of Justice and Constitutional Development, Republic of South Africa, General Debate: Ninth Meeting of the Assembly of States Parties of the International Criminal Court, New York’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP9/Statements/ICC-ASP9-GenDeba-SouthAfrica-ENG.pdf.
———. 2011. ‘Opening Statement by Mr AC Nel, MP, Deputy Minister of Justice and Constitutional Development of the Republic of South Africa during the General Debate at the Tenth Meeting of the Assembly of States Parties of the International Criminal Court, New York’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ICC-ASP10-GenDeba-SouthAfrica-ENG.pdf.
———. 2012. ‘Opening Statement by the Hon. Mr. A.C. Nel, MP, Deputy Minister of Justice and Constitutional Development, Republic of South Africa during the General Debate: Eleventh Meeting of the Assembly of States Parties of the International Criminal Court Held in The Hague’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP11/GenDeba/ICC-ASP11-GenDeba-SAF-ENG.pdf.
———. 2013. ‘Opening Statement by Mr J.H. Jeffery, MP. Deputy Minister of Justice and Constitutional Development, Republic of South Africa, General Debate: Twelfth Meeting of the Assembly of States Parties of the International Criminal Court, The

Hague'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP12/GenDeba/ICC-ASP12-GenDeba-SouthAfrika-ENG.pdf.
———. 2014. 'Opening Statement by Mr T.M. Masutha, MP. Minister of Justice and Correctional Services, Republic of South Africa. General Debate: Thirteenth Meeting of the Assembly of States Parties of the International Criminal Court, New York'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP13/GenDeba/ICC-ASP13-GenDeba-SouthAfrica-ENG.PDF.
———. 2016a. 'South Africa: Withdrawal. C.N.786.2016.TREATIES-XVIII.10 (Depositary Notification).' United Nations. https://treaties.un.org/doc/publication/cn/2016/cn.786.2016-eng.pdf.
———. 2016b. 'Opening Statement by Mr T.M. Masutha, MP. Minister of Justice and Correctional Services, Republic of South Africa, General Debate: Fifteenth Meeting of the Assembly of States Parties of the International Criminal Court.' The Hague, November 16. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP15/GenDeba/ICC-ASP15-GenDeba-SouthAfrica-ENG.pdf.
———. 2016c. 'Opening Statement by Mr T.M. Masutha, MP. Minister of Justice and Correctional Services, Republic of South Africa. General Debate: Fifteenth Meeting of the Assembly of States Parties of the International Criminal Court, The Hague.' https://asp.icc-cpi.int/iccdocs/asp_docs/ASP15/GenDeba/ICC-ASP15-GenDeba-SouthAfrica-ENG.pdf.
———. 2017a. 'South Africa: Withdrawal of Withdrawal Notification. Reference: C.N.121.2017.TREATIES-XVIII.10 (Depositary Notification)'. United Nations. https://treaties.un.org/doc/publication/CN/2017/CN.121.2017-Eng.pdf.
———. 2017b. 'Opening Statement by Adv. Tshililo Michael Masutha, MP. Minister of Justice and Correctional Services, Republic of South Africa. General Debate: Sixteeth Session of the Assembly of States Parties of the International Criminal Court. New York.' https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ASP-16-ZA.pdf.
———. 2018. 'Opening Statement by HE Ambassador VB Koloane, South African Ambassador to the Netherlands, General Debate: Seventeenth Session of the Assembly of States Parties of the International Criminal Court'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP17/GD%20SA%2005-12-2018.pdf.
'Republic of South Africa - Campaign for the Rome Statute of the ICC'. n.d. Parliamentarians for Global Action. Accessed 24 August 2020. https://www.pgaction.org/ilhr/rome-statute/africa/south-africa.html.
Republic of the Congo. 2010. 'Republique Du Congo, Delegation Ala Conference de Revision Du Statut de Rome, Allocution Prononcee Par Monsieur Le Ministre de La Communication Charge Des Relation Avec Le Parlement, Bienvenu Okiemy'. https://asp.icc-cpi.int/iccdocs/asp_docs/RC2010/Statements/ICC-RC-gendeba-Congo-FRA.pdf.
———. 2013. 'Declaration de La Republique Du Congo, Presentee Par Monsieur Laurent Tengo Conseiller Juridique, Administratif et a La Decentralisation Du President de La Republique, A La Douzieme Session de l'Assemblee Des Etats-Parties Au Statu de Rome de La Cour Penale Internationale'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP12/GenDeba/ICC-ASP12-GenDeba-Congo-FRA.pdf.
Republic of the Gambia. 2010. 'General Debate Review Conference of the International Criminal Court, Kampala, Uganda, Statement of the Republic of The Gambia by the Attorney General and Minister of Justice, Mr Edward Anthony Gomez'.

https://asp.icc-cpi.int/iccdocs/asp_docs/RC2010/Statements/ICC-RC-gendeba-Gambia-ENG.pdf.
Republic of The Gambia. 2013. 'Statement by Hon. Justice Mama Fatima Singhateh, Attorney General and Minister of Justice of the Republic of The Gambia at the Twelfth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court.' The Hague, The Netherlands, November 20. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP12/GenDeba/ICC-ASP12-GenDeba-Gambia-ENG.pdf.
Republic of the Gambia. 2014. 'Statement by Hon. Vaddili Basiru Potier Mahoney Attorney General and Minsiter of Justice of the Republic of the Gambia on the Occasion of the Thirteenth Session of the Assembly of States Parties "General Debate", New York'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP13/GenDeba/ICC-ASP13-GenDeba-Gambia-ENG.pdf.
Republic of The Gambia. 2016. 'The Gambia: Withdrawal. Reference: C.N.862.2016.TREATIES-XVIII.10 (Depositary Notification)'. https://treaties.un.org/doc/publication/cn/2016/cn.862.2016-eng.pdf.
———. 2017. 'Gambia: Withdrawal of Notification of Withdrawal, C.N.62.2017.TREATIES-XVIII.10 (Depositary Notification)'. https://treaties.un.org/doc/Publication/CN/2017/CN.62.2017-Eng.pdf.
Republic of the Gambia. 2017. 'Statement by Hon. Abubacarr M. Tambadou. Attorney General and Minister of Justice of the Republic of the Gambia at the 16th Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ASP-16-GAM.pdf.
———. 2018. 'Statement by Hon. Abubacarr M. Tambadou. Attorney General and Minister of Justice of the Republic of the Gambia at the 17th Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP17/GD%20GMB.pdf.
Republic of Tunisia. n.d. 'Foreign Policy of Tunisia'. Accessed 15 June 2021. https://www.diplomatie.gov.tn/en/foreign-policy/foreign-policy-of-tunisia/.
Republic of Uganda. 2008. 'Statement Made on Behalf of the Republic of Uganda by Ambassador Mirjam Blaak, Deputy Head of Mission, Uganda Embassy Brussels, International Criminal Court, Seventh Session of the Assembly of States Parties to the Rome Statute, The Hague'. https://asp.icc-cpi.int/iccdocs/asp_docs/library/asp/ICC-ASP-ASP7-GenDebe-Uganda-ENG.pdf.
———. 2009. 'Statement by Hon. Frederick Ruhindi, Deputy Attorney General and Minister of State for Justice and Constitutional Affairs to the 8th Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP8/Statements/ICC-ASP-ASP8-GenDeba-Uganda-ENG.pdf.
———. 2010. *The International Criminal Court Act, 2010*. https://www.law.berkeley.edu/wp-content/uploads/2015/10/Uganda_International-Criminal-Court-Act_2010.pdf.
———. 2011. 'Statement by Hon. Peter Nyombi, Attorney General of the Republic of Uganda at the 10th Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, United Nations Headquarters, New York'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ICC-ASP10-GenDeba-Uganda-ENG.pdf.

———. 2012. ‘The Republic of Uganda, Statement by Hon. Frederick Ruhindi, Deputy Attorney General/Minister of State for Justice and Constitutional Affairs of the Republic of Uganda at the 11th Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, The Netherlands’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP11/GenDeba/ICC-ASP11-GenDeba-UGA-ENG.pdf.
———. 2013. ‘Statement by H.E. Yoweri Kaguta Museveni President of the Republic of Uganda at the 68th United Nations General Assembly, New York’. https://web.archive.org/web/20210715212650/https://gadebate.un.org/sites/default/files/gastatements/68/UG_en.pdf.
———. 2014. ‘Republic of Uganda, Thirteenth Assembly of States Parties to the Rome Statute General Debate. Statement by Fredrick Ruhindi, MP, Deputy Attorney General and Minister of State for Justice and Constitutional Affairs’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP13/GenDeba/ICC-ASP13-GenDeba-Uganda-ENG.PDF.
———. 2015. ‘Statement by Hon. Frederick Ruhindi Attorney General at the 14th Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP14/GenDeb/ASP14-GenDeb-Uganda-ENG.pdf.
———. 2016. ‘Statement by Hon. William Byaruhanga, the Attorney General of the Republic of Uganda at the Fifteeth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, The Netherlands.’ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP15/GenDeba/ICC-ASP15-GenDeba-Uganda-ENG.pdf.
———. 2017. ‘Statement by Hon. William Byaruhanga, the Attorney General of the Republic of Uganda at the Sixteenth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ASP-16-UGA.pdf.
———. 2018. ‘Statement by Ambassador Mirjam Blaak Sow, Ambassador of Uganda to the Kingdom of Belgium, the Kingdom of the Netherlands and the Frand Duchy of Luxumbourg and Permanent Representative to the European Union at the 17th Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP17/GD%20UGA%2005-12-2018.pdf.
Republic of Zambia. 2010. ‘Statement by Mr. Muyambo Sipangule, Deputy Permanent Representative of the Republic of Zambia to the United Nations at the Ninth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC) Held at the United Nations Headquarters’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP9/Statements/ICC-ASP9-GenDeba-Zambia-ENG.pdf.
Reuters. 2006. ‘Senegal Says Sudan Proposing Solutions on Darfur - Sudan’, 13 November 2006. https://reliefweb.int/report/sudan/senegal-says-sudan-proposing-solutions-darfur.
———. 2010. ‘Almost 700 Kidnapped or Killed by LRA Rebels, Rights Group Says’. *France 24*, 12 August 2010, sec. africa. https://www.france24.com/en/20100812-human-rights-watch-hundreds-people-kidnapped-killed-lra-rebels-uganda-congo-central-africa-kony.

———. 2016. ‘Congo Republic Parties Petition Government to Withdraw from ICC’. *Reuters*, 4 November 2016. https://www.reuters.com/article/us-congorepublic-icc-idUSKBN12Z12C.
Reyntjens, Filip. 2009. *The Great African War: Congo and Regional Geopolitics, 1996-2006*. Cambridge University Press.
‘Rome Statute of the International Criminal Court. Kenya: Proposal of Amendment. C.N.1026.2013.TREATIES-XVIII.10 (Depositary Notification).’ 2014. United Nations. https://treaties.un.org/doc/Publication/CN/2013/CN.1026.2013-Eng.pdf.
‘Rome Statute of the International Criminal Court. South Africa: Proposal of Amendment. C.N.851.2009.TREATIES-10 (Depositary Notification).’ 2009. United Nations. https://treaties.un.org/doc/Publication/CN/2009/CN.851.2009-Eng.pdf.
Rosenberg, Sophie T. 2017. ‘The International Criminal Court in Côte d’Ivoire: Impartiality at Stake?’ *Ournal of International Criminal Justice* 15 (3):471–90.
Rosenthal, John. 2004. ‘A Lawless Global Court: How the ICC Undermines the U.N. System’. *Policy Review* 123:29–43.
Rubin, Maxine. 2020. ‘Politicized Justice: Africa and the International Criminal Court’. *International Journal of Transitional Justice* 14 (2):401–11.
‘Ruto and Sang Case: ICC Trial Chamber V(A) Terminates the Case without Prejudice to Re-Prosecution in Future’. 2016. International Criminal Court. 5 April 2016. https://www.icc-cpi.int/Pages/item.aspx?name=pr1205.
Sadat, Leila Nadya. 2010. ‘On the Shores of Lake Victoria: Africa and the Review Conference for the International Criminal Court’. 10-06–04. Washington University in St. Louis Legal Studies Research Paper.
Saine, Abdoulaye S. 2002. ‘The Military and Human Rigths in The Gambia: 1994-1999’. *Journal of Third World Studies* 19 (2). University Press of Florida:167–87. https://www.jstor.org/stable/45194061.
Saine, Pap, and Lamin Jahateh. 2017. ‘Gambia Announces Plans to Stay in International Criminal Court’. *Reuters*, 13 February 2017. https://www.reuters.com/article/us-gambia-justice-icc-idUSKBN15S2HF.
Salihu, Naila. n.d. ‘Burkina Faso: An Unforeseen Crisis?’ ACCORD. Accessed 11 June 2021. https://www.accord.org.za/conflict-trends/burkina-faso/.
Sall, Alioune. 2013. ‘The Foreign Policy of Senegal Since 2000’. 141. SAIIA Occasional Paper. South African Institute of International Affairs. https://saiia.org.za/research/the-foreign-policy-of-senegal-since-2000/.
Sanchez, Christopher. 2016. ‘Alternative Reasons for Gambia’s Withdrawal from the International Criminal Court’. *The International Criminal Court Forum*. https://iccforum.com/forum/withdrawal.
Saunders, David M. 1992. ‘Introduction to Research on Hirschman’s Exit, Voice, and Loyalty Model’. *Employee Responsibilities & Rights Journal* 5 (3):187–90. http://search.ebscohost.com/login.aspx?direct=true&db=sih&AN=18040882&site=ehost-live.
Sawadogo, Poussi. 2007. ‘Less Developed Countries in International System: Burkina Faso’s Experience Through the Diplomacy of Development - Diplo’. 2007. https://www.diplomacy.edu/resource/less-developed-countries-in-international-system/.
Schabas, William A. 2011. *An Introduction to the International Criminal Court*. Cambridge University Press.

Schuerch, Res. 2017. *The International Criminal Court at the Mercy of Powerful States: An Assessment of the Neo-Colonialism Claim Made by African Stakeholders*. International Criminal Justice Series. T.M.C. Asser Press. https://www.springer.com/gp/book/9789462651913.

'Security Council, Sixtieth Year, 5158th Meeting, S/PV.5158'. 2005. New York: United Nations Security Council. https://undocs.org/pdf?symbol=en/S/PV.5158.

Seegers, Annette. 2018. 'Implementing the Protection of Civilians Norm'. In *African Actors in International Security: Shaping Contemporary Norms*, edited by Katharina Pichler Coleman and Thomas Kwasi Tieku. Lynne Rienner Publishers.

———. 2019. 'Human Rights in South Africa's Identity: The Interplay of International and Domestic Mechanisms in South Africa's Identity in Global Politics'. In *Diplomacy and Borderlands*, edited by Katharina P. Coleman, Markus Kornprobst, and Annette Seegers. London: Routledge.

Sethi, Mohinderpal, and Christopher Braganza. 2013. 'State and Diplomatic Immunity'. *Employment Lawyers Association Briefing* 20 (9):16–18.

Seychelles Nation. 2014. 'Kenya and Seychelles Sign General Cooperation Agreement', 10 June 2014. https://www.nation.sc/archive/241955/kenya-and-seychelles-sign-general-cooperation-agreement.

'Seychelles Supports Cooperation with the International Criminal Court'. 2015. Ministry of Foreign Affairs and Tourism - Foreign Affairs Department. 30 October 2015. https://mfa.gov.sc/news/1166/seychelles-supports-cooperation-with-the-international-criminal-court.

Shaban, Abdur Rahman Alfa. 2016. 'Gabon: Bongo Invites ICC to Probe Post Election Violence'. *AfricaNews*, 29 September 2016. https://www.africanews.com/2016/09/29/gabon-bongo-invites-icc-to-probe-post-election-violence/.

Shilaho, Westen K. 2018. 'The International Criminal Court and the African Union'. *African Journal on Conflict Resolution* 18 (1). https://www.accord.org.za/ajcr-issues/the-international-criminal-court-and-the-african-union/.

Sieh, Rodney D. 2018. 'Liberia: What Do Tense Ties Between the US & The International Criminal Court Mean for Liberia's War Crimes Push?' *FrontPageAfrica* (blog). 3 October 2018. https://frontpageafricaonline.com/liberia-war-crimes-trial/liberia-what-do-tense-ties-between-the-us-the-international-criminal-court-mean-for-liberias-war-crimes-push/.

'"Sierra Leone Is a Success Story Built on Steady Progress," Security Council Told'. 2014. UN News. 26 March 2014. https://news.un.org/en/story/2014/03/464752.

Sipalla, Humphrey. 2017. 'State Defiance, Treaty Withdrawals and the Resurgence of African Sovereign Equality Claims: Historicising the 2016 AU-ICC Collective Withdrawal Strategy'. In *International Criminal Justice in Africa, 2016*, edited by H.J. van der Merwe and Gerhard Kemp. Nairobi: Strathmore University Press/KAS.

'Situation in Uganda'. n.d. International Criminal Court. Accessed 12 June 2021. https://www.icc-cpi.int/uganda.

Smith, Karen. 2009. 'Has Africa Got Anything to Say? African Contributions to the Theoretical Development of International Relations'. *The Round Table* 98 (402):269–84. http://www.tandfonline.com/doi/abs/10.1080/00358530902895378.

Solomon, Hussein. 2013. 'Mali: West Africa's Afghanistan'. *The RUSI Journal* 158 (1). Routledge:12–19. https://doi.org/10.1080/03071847.2013.774635.

‘South Africa: Continent Wide Outcry at ICC Withdrawal’. 2016. Human Rights Watch. 22 October 2016. https://www.hrw.org/news/2016/10/22/south-africa-continent-wide-outcry-icc-withdrawal.

South African Government Official. 2021. Key Informant InterviewZoom.

‘South Africa/Sudan: Case Challenging the State’s Failure to Implement the ICC Arrest Warrant for Sudanese President Al Bashir’. 2016. Southern Africa Litigation Centre. 18 November 2016. https://www.southernafricalitigationcentre.org/2016/11/18/south-africasudan-case-challenging-the-states-failure-to-implement-the-icc-arrest-warrant-for-sudanese-president-al-bashir/.

Southern Africa Litigation Centre. 2016. ‘ICC Withdrawals: Is Africa Running Away from Justice?’ Seminar Report. World Forum, The Hague. https://www.africalegalaid.com/download/Conference-Reports/seminar-report-is-africa-running-away-from-justice.pdf.

Southern Africa Litigation Centre v Minister of Justice and Constitutional Development and Others. 2015. High Court of South Africa, Gauteng Division, Pretoria.

Southern African Development Community. 2015. ‘Communiqué: Extraordinary Summit of the Double Troika’. https://www.sadc.int/files/8114/3598/7203/Draft_Communique_on_3_July__2135hrs_corrected.pdf.

Sprouse, Ian. 2016. ‘Africa at LSE – The Gambia’s Unsurprising Renunciation of the ICC, or the so-Called “International Caucasian Court”.Pdf’. *Africa at LSE* (blog). 10 November 2016. http://eprints.lse.ac.uk/76484/1/Africa%20at%20LSE%20%E2%80%93%20The%20Gambia%E2%80%99s%20unsurprising%20renunciation%20of%20the%20ICC,%20or%20the%20so-called%20%E2%80%9CInternational%20Caucasian%20Court%E2%80%9D.pdf.

Sriram, Chandra Lekha, and Stephen Brown. 2012. ‘Kenya in the Shadow of the ICC: Complementarity, Gravity and Impact’. *International Criminal Law Review* 12 (2):219–44. https://heinonline.org/HOL/P?h=hein.journals/intcrimlrb12&i=226.

Sriram, Chandra Lekha, and Suren Pillay, eds. 2010. *Peace versus Justice?: The Dilemma of Transitional Justice in Africa*. University of KwaZulu-Natal Press.

Ssenyonjo, Manisuli. 2018. ‘State Withdrawal Notifications from the Rome Statute of the International Criminal Court: South Africa, Burundi and the Gambia’. *Criminal Law Forum* 29 (1):63–119. http://link.springer.com/10.1007/s10609-017-9321-z.

Staff, Reuters. 2014. ‘Uganda’s Museveni Calls on African Nations to Quit the ICC’. *Reuters*, 12 December 2014. https://www.reuters.com/article/us-africa-icc-idUSKBN0JQ1DO20141212.

‘State of Fear’. 2015. Human Rights Watch. 16 September 2015. https://www.hrw.org/report/2015/09/16/state-fear/arbitrary-arrests-torture-and-killings.

Statement by H.E. Jorge Carlos de Almeida Fonseca, President of the Republic of Cabo Verde. 2018. International Criminal Court. https://www.dropbox.com/s/3rrshpq8twonm1n/Statement%20of%20Cape%20Verde%20President%20Fonseca%20111218.mp4?dl=0.

‘Statement by Mrs Fatou Bensouda, Deputy Prosecutor of the International Criminal Court’. 2010. https://www.icc-cpi.int/NR/rdonlyres/25184FEE-1BCF-48EF-B358-B7F9D3F5FCA9/281566/FatousstatementGuinesENG1.pdf.

‘Statement by the Leader of Nigeria’s Delegation Mr. Abubakar Malami, San. Honourable Attorney General of the Federation and Minister of Justice, Federal Republic of Nigeria at the Fifiteeth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC), The Hague, Netherlands’. 2016. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP15/GenDeba/ICC-ASP15-GenDeba-Nigeria-ENG.pdf.

‘Status of Ratification and Implementation’. 2019. The Global Campaign for the Prevention of Aggression. 27 November 2019. https://crimeofaggression.info/the-role-of-states/status-of-ratification-and-implementation/.

Stemmet, Andre. 2021. Key Informant InterviewZoom.

Stigen, Jo. 2008. *The Relationship between the International Criminal Court and National Jurisdictions: The Principle of Complementarity*. BRILL.

Stonestreet, Jonathan, Alden Mahler Levine, and Luke Tyburski. n.d. ‘Burundi Election Update’. ACE Project. Accessed 13 August 2020. http://aceproject.org/today/feature-articles/burundi-election-update.

Styan, David. 2013. ‘Djibouti: Changing Influence in the Horn’s Strategic Hub’. AFP BP 2013/01. Chatham House.

Sudan Tribute. 2009. ‘Benin President Expresses Skepticism over ICC’, 28 September 2009. https://sudantribune.com/spip.php?article28762.

Sunday Standard. 2009. ‘Khama Faces ICC Prosecution’, 19 November 2009, sec. News. https://www.sundaystandard.info/khama-faces-icc-prosecution/.

Tabane, Onkgopotse JJ. 2016. ‘Dear Minister Masutha, Let’s Talk Frankly about the ICC Pull-Out’. *Daily Maverick*, 6 November 2016. https://www.dailymaverick.co.za/opinionista/2016-11-07-dear-minister-masutha-lets-talk-frankly-about-the-icc-pull-out/.

Taylor, Ian. 2004. ‘The “All-Weather” Friend? Sino-African Interaction in the Twenty-First Century’. In *Africa in International Politics: External Involvement on the Continent*, edited by Ian Taylor and Paul Williams, 83–101.

Taylor, Ian, and Gladys Mokhawa. 2003. ‘Not Forever: Botswana, Conflict Diamonds and the Bushmen’. *African Affairs* 102 (407):261–83. https://doi.org/10.1093/afraf/adg004.

The Mail & Guardian. 2014. ‘Uganda: Sovereignty Has Fallen to the Prejudices of Outsiders’, 13 March 2014. https://mg.co.za/article/2014-03-13-sovereignty-has-fallen-to-the-prejudices-of-outsiders/.

The Minister of Justice and Constitutional Development v The Southern African Litigation Centre. 2016. Supreme Court of Appeal of South Africa.

The Namibian. 2015. ‘Police Probe Witness Killing in Kenyan VP’s Trial’, 8 January 2015, sec. International. https://www.namibian.com.na/132146/archive-read/Police-probe-witness-killing-in-Kenyan-VP%E2%80%99s-trial.

The National Council for Law Reporting with the Authority of the Attorney-General. n.d. *International Crimes Act, No. 16 of 2008, Revised Edition 2012 [2008]*. Accessed 10 May 2021. https://www.legal-tools.org/doc/816990/pdf/.

The New Humanitarian. 2008. ‘Latest Peace Pact Tries to Revive Past Failures’, 14 March 2008. https://www.thenewhumanitarian.org/news/2008/03/14/latest-peace-pact-tries-revive-past-failures.

The Permanent Mission of South Africa to the United Nations. 1997. 'Statement by H.E. Ambassador Khiphusizi J. Jele Permanent Representative of South Africa on Behalf of Member States of the Southern African Development Community (SADC) Before the Sixth Committee of the 52nd General Assembly, Regarding Agenda Item 150: Establishment of an International Criminal Court'. New York, October 21. http://www.iccnow.org/documents/SouthAfricaSADC6Comm21Oct97.pdf.

'The Prosecutor of the International Criminal Court, Fatou Bensouda, Visits Niger, Addresses National Assembly: We Must Never Forget the Victims'. 2017. International Criminal Court. 28 April 2017. https://www.icc-cpi.int/Pages/item.aspx?name=PR1300.

'The Special Court for Sierra Leone, the Residual Special Court for Sierra Leone'. n.d. Accessed 15 June 2021. http://www.rscsl.org/index.html.

'The World Bank in Benin'. 2021. Text/HTML. World Bank. 2 November 2021. https://www.worldbank.org/en/country/benin/overview.

'The World Bank in Burkina Faso'. 2021. Text/HTML. The World Bank. 26 October 2021. https://www.worldbank.org/en/country/burkinafaso/overview.

'The World Bank in Niger: Overview'. n.d. Text/HTML. World Bank. Accessed 24 November 2021. https://www.worldbank.org/en/country/niger/overview.

Tieku, Thomas Kwasi. 2014. 'Theoretical Approaches to Africa's International Relations'. In *Handbook of Africa's International Relations*, 1st ed., 11–20. USA: Routledge.

Tiemessen, Alana. 2014. 'The International Criminal Court and the Politics of Prosecutions'. *The International Journal of Human Rights* 18 (4–5). Routledge:444–61. https://doi.org/10.1080/13642987.2014.901310.

Tladi, Dire. 2009. 'The African Union and the International Criminal Court: The Battle for the Soul of International Law', 13.

———. 2013. 'The ICC Decisions on Chad and Malawi: On Cooperation, Immunities, and Article 98 Cases before International Courts and Tribunals'. *Journal of International Criminal Justice* 11 (1):199–222. https://heinonline.org/HOL/P?h=hein.journals/jicj11&i=201.

———. 2015. 'The Duty on South Africa to Arrest and Surrender President Al-Bashir under South African and International Law Symposium: On President Al-Bashir's Presence at the African Union Summit in South Africa and the Non-Execution of the ICC Arrest Warrant'. *Journal of International Criminal Justice* 13 (5):1027–48. https://heinonline.org/HOL/P?h=hein.journals/jicj13&i=1054.

———. 2016. 'Interpretation and International Law in South African Courts: The Supreme Court of Appeal and the Al Bashir Saga'. *African Human Rights Law Journal* 16 (2):310–38. http://ref.scielo.org/yt2q95.

———. 2021. Key Informant InterviewZoom.

'Trail of Death: LRA Atrocities in Northeastern Congo'. 2010. Human Rights Watch. https://www.hrw.org/report/2010/03/28/trail-death/lra-atrocities-northeastern-congo.

'Transitional Government Appointed in Burkina Faso'. 2014. France 24. 23 November 2014. https://www.france24.com/en/20141123-burkina-faso-zida-kafando-transitional-government.

Trendafilova, Ekaterina. 2014. 'Africa and the International Criminal Court: A Judge's Perspective'. In *Africa and the International Criminal Court*, edited by Gerhard Werle, Lovell Fernandez, and Moritz Vormbaum, 1:21–33. The Hague: TMC Asser Press.

Trifiletti, L. B., A. C. Gielen, D. A. Sleet, and K. Hopkins. 2005. 'Behavioral and Social Sciences Theories and Models: Are They Used in Unintentional Injury Prevention Research?' *Health Education Research* 20 (3):298–307. http://academic.oup.com/her/article/20/3/298/854488/Behavioral-and-social-sciences-theories-and-models.

'Tunisia'. n.d. OECD DAC Aid at a Glance by Recipient. Accessed 27 November 2021. https://public.tableau.com/views/OECDDACAidataglancebyrecipient_new/Recipients?:embed=y&:display_count=yes&:showTabs=y&:toolbar=no?&:showVizHome=no.

'Tunisia Trade Summary 2014, 2015, 2016, 2017, and 2018'. n.d. World Integrated Trade Solution World Bank. Accessed 27 November 2021. https://wits.worldbank.org/CountryProfile/en/Country/TUN/Year/2018/Summary.

Tunisian Republic. 2011. 'Allocution de l'Ambassadeur, Representant Permanent de Le Republique Tunisienne Aupres de Organisations Des Nations Unies a La Dixieme Session de l'Assemblee Des Etats Partie Au Statut de Rome Regissant La Cour Penale Internationale, New York'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ICC-ASP10-GenDeba-Tunisia-FRA.pdf.

———. 2012. 'Allocution de Son Excellence Monsieur Karim ben Becher, Ambaasadeur de la Republique Tunisienne Aupres du Royaume des Pays-Bas a l'Occasion de la 11eme Session de l'Assemblee des Etats Parties au Statut de Rome, La Haye'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP11/GenDeba/ICC-ASP11-GenDeba-TUN-FRA.pdf.

———. 2013. 'Allocution de Son Excellence Monsieur Karim Ben Becher, Ambaasadeur de La Republique Tunisienne Aupres Du Royaume Des Pays-Bas a l'Occasion de La 12eme Session de l'Assemblee Des Etats Parties Au Statut de Rome, New York'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP12/GenDeba/ICC-ASP12-GenDeba-Tunisia-FRA.pdf.

———. 2014. 'Allocution de Son Excellence Monsieur Karim Ben Becher, Ambaasadeur de La Republique Tunisienne Aupres Du Royaume Des Pays-Bas a l'Occasion de La 13eme Session de l'Assemblee Des Etats Parties Au Statut de Rome, New York'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP13/GenDeba/ICC-ASP13-GenDeba-Tunisia-FRA.PDF.

———. 2015. 'Republique Tunisienne, Allocution de Son Excellence Monsieur Karim Ben Becher, Ambassadeur de la Republique Tunisienne Aupres du Royaume des Pays-Bas, a l'Occasion de la 14eme Session de l'Assemblee des Etats Parties au Statut de Rome, La Haye'. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP14/GenDeb/ASP14-GenDeb-Tunisia-FRA.pdf.

Udombana, Nsongurua J. 2005. 'Pay Back Time in Sudan - Darfur in the International Criminal Court'. *Tulsa Journal of Comparative and International Law* 13 (1):1–57.

UN General Assembly. 1948. 'Convention on the Prevention and Punishment of the Crime of Genocide'. 260. United Nations.

United Nations Development Programme. 2011. 'Official Development Assistance'. In *Towards Human Resilience: Sustaining MDG Progress in an Age of Economic Uncertainty*. https://www.undp.org/publications/towards-human-resilience-sustaining-mdg-progress-age-economic-uncertainty#modal-publication-download.

United Nations General Assembly. 1995. 'Membership of the Ad Hoc Committee on the Establishment of an International Criminal Court A/AC.244/INF/1'. United Nations. https://www.legal-tools.org/doc/faca76/pdf/.

———. 1998. *Rome Statute of the International Criminal Court (Last Amended 2010)*. https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf.
———. 2008. 'Report of the International Criminal Court, Sixty-Third Session, 35th Plenary Meeting, A/63/PV.35'. New York. https://digitallibrary.un.org/record/640482?ln=en.
———. 2009a. 'Report of the International Criminal Court, Sixty-Fourth Session, 29th Plenary Meeting, A/64/PV.29'. New York. https://undocs.org/A/64/PV.29.
———. 2009b. 'Report of the International Criminal Court, Sixty-Fourth Session, 32nd Plenary Meeting, A/64/PV.32'. New York. https://undocs.org/A/64/PV.32.
———. 2010. 'Report of the International Criminal Court, Sixty-Fifth Session, 41st Plenary Meeting, A/65/PV.41'. New York. https://digitallibrary.un.org/record/698787?ln=zh_CN.
———. 2011a. 'Report of the International Criminal Court, Sixty-Sixth Session, 44th Plenary Meeting, A/66/PV.44'. New York.
———. 2011b. 'Report of the International Criminal Court, Sixty-Sixth Session, 47th Plenary Meeting,A/66/PV.47'. New York. https://undocs.org/A/66/PV.47.
———. 2012. 'Report of the International Criminal Court, Sixty-Seventh Session, 32nd Plenary Meeting, A/67/PV.32'. New York. https://undocs.org/A/67/PV.32.
———. 2013. 'Report of the International Criminal Court, Sixty-Eighth Session, 42nd Plenary Meeting, A/68/PV.42'. New York. https://undocs.org/A/68/PV.42.
———. 2014a. 'Report of the International Criminal Court, Sixty-Ninth Session, 107th Plenary Meeting, A/68/PV.107'. New York. https://undocs.org/A/68/PV.107.
———. 2014b. 'Report of the International Criminal Court, Sixty-Ninth Session, 35th Plenary Meeting, A/69/PV.35'. New York. https://undocs.org/A/69/PV.35.
———. 2014c. 'Report of the International Criminal Court, Sixty-Ninth Session, 36th Plenary Meeting, A/69/PV.36'. New York. https://undocs.org/A/69/PV.36.
———. 2015a. 'Report of the International Criminal Court, Sixty-Ninth Session, 89th Plenary Meeting, A/69/PV.89'. https://undocs.org/A/69/PV.89.
———. 2015b. 'Report of the International Criminal Court, Seventieth Session, 49th Plenary Meeting, A/70/PV.49'. https://undocs.org/A/70/PV.49.
———. 2016. 'Report of the International Criminal Court, Seventy-First Session, 38th Plenary Meeting, A/71/PV.38'. https://undocs.org/A/71/PV.38.
———. 2017. 'Report of the International Criminal Court, Seventy-Second Session, 37th Plenary Meeting, A/72/PV.37'. New York. https://digitallibrary.un.org/record/1469379?ln=en.
———. 2018. 'Report of the International Criminal Court, Seventy-Third Session, 28th Plenary Meeting, A/73/PV.28'. New York. https://undocs.org/pdf?symbol=en/A/73/PV.28.
———. n.d. 'Report of the Committee on Contributions Seventy-Eighth Session (4–29 June 2018) A/73/11'. Accessed 23 January 2020. https://undocs.org/en/A/73/11.
United Nations Security Council. 2011a. 'Resolution 1970 (2011) Adopted by the Security Council at Its 6491st Meeting S/RES/1970 (2011)'. https://www.undocs.org/pdf?symbol=en/S/RES/1970%20(2011).
———. 2011b. 'Letter Dated 23 March 2011 from the Permanent Representative of Kenya to the United Nations Addressed to the President of the Security Council: Request of Kenya for Deferral under Article 16 of the Rome Statute of the International Criminal Court. S/2011/201.', 29 March 2011. https://undocs.org/pdf?symbol=en/S/2011/201.

———. 2013. ‘Identical Letters Dated 21 October 2013 from the Permanent Representative of Kenya to the United Nations Addressed to the Secretary-General and the President of the Security Council (S/2013/624). 7060th Meeting. S/PV.7060.’ http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7060.pdf.
United Republic of Tanzania. 2010. ‘Statement by H.E. Jakaya Mrisho Kikwete, President of the United Republic of Tanzania during the General Debate of the Review Conference of the Rome Statute at Kampala, Uganda’. https://asp.icc-cpi.int/iccdocs/asp_docs/RC2010/Statements/ICC-RC-gendeba-Tanzania-ENG.pdf.
———. 2011. ‘Statement by Ambassador Ombeni Sefue, Permanent Representative of the United Republic of Tanzania to the United Nations during the Tenth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ICC-ASP10-GenDeba-Tanzania-ENG.pdf.
———. 2013. ‘Statement by Hon. Mathias M. Chikawe (MP). Minister for Constitutional and Legal Affairs. The United Republic of Tanzania. During the General Debate of the Twelfth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court. The Hague.’ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP12/GenDeba/ICC-ASP12-GenDeba-Tanzania-ENG.pdf.
———. 2014. ‘Statement by Ambassador Irene F.M. Kasyanju, Director for Legal Affairs, Ministry of Foreign Affairs and International Cooperation of the United Republic of Tanzania during the General Debate of the Assembly of States Parties to the Rome Statute of the International Criminal Court’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP13/GenDeba/ICC-ASP13-GenDeba-Tanzania-ENG.PDF.
———. 2016. ‘Statement by H.E. Irene F.M. Kasyanju, Ambassafor of the United Republic of Tanzania to the Netherlands, during the General Debate of the 15th Session of the Assembly of States Parties of the Rome Statute of the International Criminal Court’. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP15/GenDeba/ICC-ASP15-GenDeba-Tanzania-ENG.pdf.
‘U.S. Relations With Benin’. n.d. *United States Department of State* (blog). Accessed 13 June 2021. https://www.state.gov/u-s-relations-with-benin/.
‘U.S. Relations With Madagascar’. n.d. *United States Department of State* (blog). Accessed 11 June 2021. https://www.state.gov/u-s-relations-with-madagascar/.
‘U.S. Relations With Sierra Leone’. n.d. *United States Department of State* (blog). Accessed 15 June 2021. https://www.state.gov/u-s-relations-with-sierra-leone/.
Utas, Mats. 2012. *African Conflicts and Informal Power: Big Men and Networks*. Zed Books.
Van der Vyver, Johan D. 2011. ‘Prosecuting the President of Sudan: A Dispute between the African Union and the International Criminal Court’. *African Human Rights Law Journal* 11 (2):683–98. https://uct.primo.exlibrisgroup.com/discovery/openurl?institution=27UCT_INST&vid=27UCT_INST:27UCT&sid=google&auinit=JD&aulast=Van%20der%20Vyver&atitle=Prosecuting%20the%20President%20of%20Sudan:%20a%20dispute%20between%20the%20African%20Union%20and%20the%20International%20Criminal%20Court&title=AHRLJ&volume=11&issue=2&date=2011&spage=683&issn=1609-073X.
Vandeginste, Stef. 2016. ‘The ICC Burexit: Free at Last?’ Analysis and Policy Brief 20. Institute of Development Policy and Management, University of Antwerp.

https://www.uantwerpen.be/images/uantwerpen/container2673/files/Publications/APB/20-Vandeginste.pdf.
Ventura, Manuel J. 2015. 'Escape from Johannesburg? Sudanese President Al-Bashir Visits South Africa, and the Implicit Removal of Head of State Immunity by the UN Security Council in Light of Al-Jedda'. *Journal of International Criminal Justice* 13 (5):995–1026. https://heinonline.org/HOL/P?h=hein.journals/jicj13&i=1022.
Vhumbunu, Clayton Hazvinei. 2015. 'Appraising the Efficacy of SADC in Resolving the 2014 Lesotho Conflict : Progress and Prospects'. *Conflict Trends* 2015 (3). ACCORD:3–11. https://doi.org/10.10520/EJC179369.
Vilmer, Jean-Baptiste Jeangène. 2016. 'The African Union and the International Criminal Court: Counteracting the Crisis'. *International Affairs* 92 (6):1319–42. https://academic.oup.com/ia/article-lookup/doi/10.1111/1468-2346.12747.
Voice of America. 2010. 'ICC Deputy Prosecutor in Guinea for September Killing Probe | Voice of America - English', 18 February 2010, sec. Africa. https://www.voanews.com/africa/icc-deputy-prosecutor-guinea-september-killing-probe.
———. 2018. 'UN: Expulsion of Congolese From Angola Could Trigger Renewed Violence in Kasai', 26 October 2018, sec. Africa. https://www.voanews.com/africa/un-expulsion-congolese-angola-could-trigger-renewed-violence-kasai.
Vyver, Johan D van der. 2015. 'The Al Bashir Debacle'. *African Human Rights Law Journal* 15 (2):559–79. http://ref.scielo.org/szbrw6.
Waal, Alex de. 2008. 'Darfur, the Court and Khartoum: The Politics of State Non-Cooperation Alex De'. In *Courting Conflict?: Justice, Peace and the ICC in Africa*, edited by Philip Clark, 21–28. Royal African Society.
Waddell, Nicholas, and Philip Clark. 2008. *Courting Conflict? Justice, Peace and the ICC in Africa*. London: Royal African Society.
Wainaina, Binyavanga. 2005. 'How to Write About Africa'. *Granta*, 2005. https://granta.com/how-to-write-about-africa/.
Waltz, Kenneth Neal. 2001. *Man, the State, and War: A Theoretical Analysis*. Columbia University Press.
Weah, Aaron. 2018. 'Liberia'. African Comparative Transitional Justice. Centre for the Study of Violence and Reconciliation. https://www.csvr.org.za/wp-content/uploads/2016/06/Liberian-Case-Aaron-Weah.pdf.
———. 2021. 'Liberia and the ICC', 1 December 2021.
Werle, Gerhard, Lovell Fernandez, and Moritz Vormbaum, eds. 2014. 'Introduction: Africa and the International Criminal Court'. In *Africa and the International Criminal Court*, 1:1–12. The Hague: TMC Asser Press.
Wet, Erika de. 2015. 'The Implications of President Al-Bashir's Visit to South Africa for International and Domestic Law Symposium: On President Al-Bashir's Presence at the African Union Summit in South Africa and the Non-Execution of the ICC Arrest Warrant'. *Journal of International Criminal Justice* 13 (5):1049–72. https://heinonline.org/HOL/P?h=hein.journals/jicj13&i=1076.
Wierda, Marieke, and Michael Otim. 2008. 'Justice at Juba: International Obligations and Local Demands in Northern Uganda'. In *Courting Conflict?: Justice, Peace and the ICC in Africa*, edited by Nicholas Waddell and Philip Clark, 21–28. Royal African Society.

Wilkerson, Michael. n.d. ‘Why Can’t Anyone Stop the LRA?’ *Foreign Policy*. Accessed 21 November 2021. https://foreignpolicy.com/2010/04/15/why-cant-anyone-stop-the-lra/.

Withey, Michael J., and William H. Cooper. 1992. ‘What’s Loyalty?’ *Employee Responsibilities and Rights Journal* 5 (3):231–40. https://content.ebscohost.com/ContentServer.asp?T=P&P=AN&K=18040911&S=R&D=sih&EbscoContent=dGJyMMTo50Sep644yNfsOLCmsEieprdSsqq4SK6WxWXS&ContentCustomer=dGJyMPPZ8oTn2LmF39%2FsU%2BDp7gAA.

Woolaver, Hannah. 2017a. ‘Domestic and International Limitations on Treaty Withdrawal: Lessons from South Africa’s Attempted Departure from the International Criminal Court’. *AJIL Unbound* 111:450–55. https://doi.org/10.1017/aju.2017.100.

———. 2017b. ‘Unconstitutional and Invalid: South Africa’s Withdrawal from the ICC Barred (For Now)’. *EJIL: Talk!* (blog). 27 February 2017. https://www.ejiltalk.org/unconstitutional-and-invalid-south-africas-withdrawal-from-the-icc-barred-for-now/.

———. 2019a. ‘Withdrawal from the International Criminal Court: International and Domestic Implications’. In *The International Criminal Court in Turbulent Times*, edited by Gerhard Werle and Andreas Zimmermann, 23–42. International Criminal Justice Series. The Hague: T.M.C. Asser Press. https://doi.org/10.1007/978-94-6265-303-0_3.

———. 2019b. ‘From Joining to Leaving: Domestic Law’s Role in the International Legal Validity of Treaty Withdrawal’. *European Journal of International Law* 30 (1):73–104. https://academic.oup.com/ejil/article/30/1/73/5498083.

World Integrated Trade Solution. n.d. ‘Sub-Saharan Africa Trade Summary 2019’. Accessed 19 July 2021. https://wits.worldbank.org/CountryProfile/en/Country/SSF/Year/2019/Summary.

Wormington, James, and Sabrina Mahtani. 2016. ‘African Commission Should Support Rights in Gambia’. Amnesty International. 28 October 2016. https://www.amnesty.org/en/latest/campaigns/2016/10/african-commission-should-support-rights-in-gambia/.

Wroe, Daniel. 2012. ‘Briefing: Donors, Dependency, and Political Crisis in Malawi’. *African Affairs* 111 (442). Oxford University Press:135–44. http://www.jstor.org/stable/41494469.

Xinhua. 2018. ‘Tanzania Has No Plans to Leave International Criminal Court: Minister’, 25 April 2018. http://www.xinhuanet.com/english/2018-04/25/c_137134215.htm.

Yigzaw, Destaw A. 2018. ‘The International Criminal Court: Biased against Africa or Weak towards the Powerful’. *North Carolina Journal of International Law and Commercial Regulation*, 204–39.

Yin, Robert K. 2009. *Case Study Research: Design and Methods*. 4th ed. California: SAGE Publications.

Yusuf, Mohammed. 2017. ‘Tanzania, Uganda Leaders Criticize ICC Probe of Burundi’. *Voice of America*, 11 November 2017, sec. Africa. https://www.voanews.com/africa/tanzania-uganda-leaders-criticize-icc-probe-burundi.

Zondi, Siphamandla, and Busisiwe Khaba. 2014. ‘The Madagascar Crisis, SADC Mediation and the Changing Indian Oceanic Order’. *Africa Insight* 43 (4). Human Sciences Research Council:1–17.

http://ezproxy.uct.ac.za/login?url=https://search.ebscohost.com/login.aspx?direct=true&db=sxi&AN=102963572&site=ehost-live.
Zoubir, Yahia H. n.d. 'The Democratic Transition In Tunisia: A Success Story in the Making'. *Conflict Trends 2015/1*. Accessed 15 June 2021. https://www.accord.org.za/conflict-trends/democratic-transition-tunisia/.

12. APPENDICES

12.1. Appendix 1

Chronology of Rome Statute Ratifications by African states.	
Senegal	02 February 1999
Ghana	20 December 1999
Mali	16 August 2000
Lesotho	06 September 2000
Botswana	08 September 2000
Sierra Leone	15 September 2000
Gabon	20 September 2000
South Africa	27 November 2000
Nigeria	27 September 2001
Central African Republic	03 October 2001
Benin	22 January 2002
Mauritius	05 March 2002
Democratic Republic of the Congo	11 April 2002
Niger	11 April 2002
Uganda	14 June 2002
Namibia	25 June 2002
Gambia	28 June 2002
United Republic of Tanzania	20 August 2002
Malawi	19 September 2002
Djibouti	05 November 2002
Zambia	13 November 2002
Guinea	14 July 2003
Burkina Faso	16 April 2004
Congo	03 May 2004
(Burundi)	(21 September 2004)
Liberia	22 September 2004
Kenya	15 March 2005
Comoros	01 November 2006
Chad	01 January 2007
Madagascar	14 March 2008
Seychelles	10 August 2010
Tunisia	24 June 2011
Cabo Verde	10 October 2011
Côte d'Ivoire	15 February 2013

12.2. Appendix 2

Timeline of major events within related to the withdrawal debate.

Date	Event
January 2004	Uganda self-referral to ICC
April 2004	DRC self-referral to ICC
June 2004	ICC investigations into DRC opened
July 2004	ICC investigations into Uganda opened
June 2005	Darfur UNSC referral to ICC
May 2007	CAR self-referral to ICC
August 2007 – Feb 2008	Kenya PEV
June 2008	AU concern raised about abuse of indictments against African leaders – brought up within universal jurisdiction debate (para. 5(iii) Doc. Assembly/AU/14 (XI))
14 July 2008	Prosecution's Application for the warrant of arrest for Omar Al Bashir[1017]
21 July 2008	AUPSC responds to OTP application for arrest warrant for al-Bashir
4 March 2009	Al-Bashir arrest warrant issued (Pre-trial I)
3 July 2009	AU decision of non-cooperation with al-Bashir arrest warrant[1018]
6 July 2009	OTP requests 2nd arrest warrant of al-Bashir (on charges of genocide)
July 2009	Kofi Annan handed over Waki envelope to OTP[1019]
31 March 2010	Kenya *proprio motu*
April 2010	Al-Bashir re-elected[1020]
12 July 2010	Al-Bashir 2nd arrest warrant granted for genocide (Pre-Trial Chamber I)
27 August 2010	UNSC informed of non-cooperation on arrest by Kenya, Chad, Djibouti, Malawi, Chad and Democratic Republic of Congo.
25 October 2010	Pre-Trial Judges request cooperation for arrest of al-Bashir by Kenya
29 October 2010	Kenya responds to the Registrar that it is not aware of any pending visit by al-Bashir
10 November 2010	Preliminary examination of the situation in Nigeria was made public.[1021]
30 November 2010	PTC1 requests cooperation from CAR to arrest al-Bashir

[1017] https://www.icc-cpi.int/pages/item.aspx?name=icc%20issues%20a%20warrant%20of%20arrest%20for%20omar%20al%20bashir_%20president%20of%20sudan.
[1018] Assembly/AU/Dec.245(XIII) Rev.1
[1019] https://academic.oup.com/afraf/article-pdf/111/443/244/42703/ads018.pdf.
[1020] Murithi, "Politics of ICC Cases in Kenya and Sudan," 82.
[1021] https://www.icc-cpi.int/Pages/item.aspx?name=201211-prosecutor-statement; https://www.icc-cpi.int/nigeria.

15 December 2010	Ocampo identifies six suspects[1022]
March 2011	Libya UNSC referral (Feb 2011)
8 March 2011	ICC issues summons to appear before the Court to the Six.[1023]
	Kenya sends identical letters requesting consideration of deferring ICC case against Kenya to the UN Secretary General and UNSC President.
18 March 2011	UNSC holds informal dialogue on Kenyan deferral request
23 March 2011	Kenya sends letter requesting an open meeting to consider deferral request.
7-8 April 2011	All six appear voluntarily.[1024]
October 2011	Côte d'Ivoire *proprio motu* (Côte d'Ivoire accepted jurisdiction in 2003 and ratified in Feb 2013)
19 October 2011	PTC1 requests observations about al-Bashir's visit to Malawi
12-21 December 2011	Fatou Bensouda appointed as Chief Prosecutor of ICC at 10th Session of ASP
23 January 2012	Evidentiary threshold for two (Henry Kosgey and Mohammed Ali) not met. Francis Muthaura's charges also dropped (unclear why).[1025]
29 March 2012	ICC ready to begin trial for the remaining three cases. Decided to postpone Kenyatta's trial to after the 2013 Elections[1026]
January 2013	Mali self-referral (July 2012)
4 March 2013	Kenyan General Election – Kenyatta and Ruto elected
26-27 May 2013	Complementarity principle means that Kenya has primary jurisdiction over 2007 PEV prosecutions (para.6). Eastern Africa Region requested that Kenya be allowed to develop a national mechanism 21st Ordinary Session (Assembly/AU/Dec.482(XXI))
5 August 2013	Situation report by OTP on Nigeria made public.[1027]
5 October 2013	Kenyan Parliament votes in favour of withdrawal from the ICC.
12 October 2013	Decided that no HoSG should have to be charged by an international court or tribunal in order to safeguard domestic political order – Trials of Kenyatta and Ruto should be suspended until their end of term (para10). Also decided Kenya should request UNSC to defer their case. Ext/Assembly/AU/Dec.1(Oct.2013)
15 November 2013	7060th meeting of UNSC, saw failed Resolution to defer Kenyatta and Ruto case.[1028]

[1022] Murithi, 83.
[1023] Ibid.
[1024] Ibid.
[1025] Ibid.
[1026] Ibid.
[1027] https://www.icc-cpi.int/iccdocs/PIDS/docs/SAS%20-%20NGA%20-%20Public%20version%20Article%205%20Report%20-%2005%20August%202013.PDF.
[1028] Murithi, 85.

1 November 2013	Bureau of ASP (12th Meeting) decided to include additional agenda item to the 12th session of the ASP under Rule 13: “Special Segment as requested by the African Union: "Indictment of sitting Heads of State and Government and its consequences on peace and stability and reconciliation."”
22 November 2013	12th Session of ASP to Rome Statute met to discuss matter of Articles 27 and 98.[1029] Found reasonable basis to believe that Boko Haram had been committing crimes against humanity since July 2009. Found no reasonable basis (at that stage) that crimes in the Delta Region or Central and Northern States constituted war crimes or crimes against humanity (respectively). Also found clashes between security forces and Boko Haram were did not amount to armed conflict. Advanced to admissibility test.
September 2014	CAR second self-referral (May 2014)
5 December 2014	Bensouda withdrew charges against Kenyatta on basis of insufficient evidence to prove culpability.
8 December 2014	Sidiki Kaba (Senegal) elected President of the ASP.
30-31 January 2015	24th Ordinary Session of AU. DRC commended for non-compliance with ICC arrest warrant of al-Bashir.
8 May 2015	OTP statement on pre-election violence in Burundi
28 May 2015	ICC Registrar reminds SA of obligation to arrest Bashir
11 June 2015	South African Embassy (Netherlands) requested meeting with Registrar
13 June 2015	Al-Bashir entered SA
15 June 2015	Al-Bashir exited SA
6 November 2015	OTP on worsening situation in Burundi
January 2016	Georgia *proprio motu.*
30-31 January 2016	26th Ordinary Session of AU. SA commended for non-compliance with ICC arrest warrant of al-Bashir.
April 2016	OTP opens preliminary examination into Burundi
17-18 July 2016	27th Ordinary Session of AU. Reservations entered by Burkina Faso, Cabo Verde, DRC, and Senegal regarding decision to implement Assembly/AU/Dec.580(XXVI) to develop a strategy including collective withdrawal from the ICC.
12 October 2016	Burundi’s Parliament votes to withdraw from the ICC
25 October 2016	SA deposits notification of withdrawal
27 October 2016	Burundi deposits notification of withdrawal
10 November 2016	The Gambia deposits notification of withdrawal
30-31 January 2017	28th Ordinary Session of AU. Cabo Verde, Nigeria, and Senegal enter reservations on entire decision. Malawi, Tanzania, Tunisia, and Zambia request more time to study the Withdrawal Strategy.

[1029] Ibid, 86.

	Liberia enters reservation on call for Rome Statute states to consider implementing its recommendations on withdrawal.
20 February 2017	The Gambia rescinds its notification of withdrawal.
7 March 2017	South Africa rescinds its notification of withdrawal.
26 October 2017	Burundi *proprio motu* investigation is launched.
27 October 2017	Burundi withdrawal from the ICC comes into effect.

12.3. Appendix 3

Statements about Rome Statute amendments as loyalty behaviour:

African States Parties that responded to proposed Rome Statute amendments in a way that sought to prevent the ICC's powers from being weakened were considered to demonstrate loyalty behaviour. The preservation of the ICC's power against reduction indicates support for the ICC and confidence in its capability to wield the powers assigned to it.

Botswana clearly stated that it would not support amendments to the Rome Statute that would diminish the ICC's existing powers:

> My delegation will also not be in a position to go along [with] proposals that are designed to weaken rather than strengthen the Statute. Our main preoccupation should thus be to promote, safeguard, and strengthen the Rome Statute.[1030]

At the 2013 UNGA General Debate, Botswana referred to proposed amendments to Article 63 of the Rome Statute, which provides that the accused must be present at trials:

> We States Parties should be mindful that the Rome Statute is our own creation. There, any imperfections in this instrument can only be addressed by none other than ourselves. It is in this spirit that Botswana has been working closely with like-minded States Parties delegations in initiating amendments to the Court's Rules of Procedure and Evidence in order to address the question of presence of an accused person at a trial. Through the proposed Amendments, we hope that greater flexibility can be applied in the interpretation and application of Article 63. We have been very encouraged by the positive spirit which delegations have exhibited in this effort.[1031]

This suggests that Botswana is in favour of some leniency with requiring the physical presence of accused persons at their trials. However, at the 2016 ICC General Debate, Botswana said:

[1030] ICC GD 2010.
[1031] UNGA ICC GD 2013.

> There are proposals from some of our sister State Parties for the ASP to urgently consider certain provisions of the organization's rules and procedures and to address their concerns. We believe that where there are legitimate concerns and expectations, it is the responsibility of this Assembly, and no one else, to engage in dialogue, within a spirit of mutual respect and due consideration, to iron out differences.[1032]

Botswana's use of the phrase "legitimate concerns" suggests that it might consider some calls for revisions illegitimate. Thus, it is worthwhile considering which amendment/s it might have considered illegitimate. The amendments under consideration included propositions from Belgium,[1033] Mexico,[1034] Trinidad and Tobago,[1035] South Africa, and Kenya. The non-African States' proposals all sought to expand the ICC's powers – it is improbable that Botswana considered such propositions as illegitimate given that it emphasised safeguarding the ICC's powers and enhancing them. In 2009, South Africa (on behalf of the African Group) submitted proposed amendments to Article 16 of the Rome Statute, which would enable the UNGA to assume the UNSC's deferral powers should the UNSC fail to respond to a deferral request submitted by a state "with jurisdiction over a situation before the Court".[1036] Botswana did not enter a reservation on the AU's 2009 decision for non-cooperation with the al-Bashir request, which suggests that Botswana did not oppose this amendment request. Furthermore, the suggested amendment did not weaken the ICC's powers.

In November 2013, Kenya proposed amending Article 63 (under exceptional circumstances, to grant that the accused need not be continuously present at the Court), Article 27

[1032] ICC GD 2016.

[1033] Belgium proposed amending Article 8 to extend the list of war crimes to include chemical and biological weapons, and to align the article's language with updates in relevant international treaties e.g. the Convention on Certain Conventional Weapons. See: Assembly of States Parties 2011, para. 8

[1034] Mexico sought to add "employing nuclear weapons" to article 8(2)(b) of the Rome Statute. See: Annex I (III) of Assembly of States Parties 2011.

[1035] Trinidad and Tobago's amendment proposition regarded extending the ICC's mandate to cover international drug-trafficking (see Annex I(IV) of Assembly of States Parties 2011). This, as noted in Chapter 2, was one of the driving factors behind Trinidad and Tobago's encouragement in 1989 for the establishment of an international criminal court.

[1036] 'Rome Statute of the International Criminal Court. South Africa: Proposal of Amendment. C.N.851.2009.TREATIES-10 (Depositary Notification).' 2009.

(inserting an exemption for serving Heads of State and other officials from prosecution during their term of office), Article 70 (to extend offences against the administration of justice to being committed by any party), Article 112 (extend the Independent Oversight Mechanism's mandate to include all organs of the Court), and to the Preamble (overtly recognise regional criminal jurisdiction within the complementarity principle).[1037] It seems likely that Kenya's proposals are the ones that Botswana is concerned about since they significantly limit the Court's jurisdiction – particularly the amendments to Articles 27 and 63. However, considering the comments about Article 63 amendments in the 2013 speech by Botswana, it seems that Botswana endorses Kenya's proposals (to some extent) for this Article to be amended. Considering Botswana's previous sentiments (as expressed in 2011 regarding the Côte d'Ivoire leader) that "no one, irrespective of their station in life" should be exempt from culpability for core crimes, it is most likely that Botswana does not endorse amending Article 27.

Similarly, Ghana suggested its position regarding the sitting heads of state immunity matter: "Ghana is also reflecting on various proposals to amend certain portions of the Rome Statute, especially those relating to the indictment of sitting Heads of States and Government, and wishes to underscore the potential risk this posed to peace, and stability."[1038] From this, it seems that Ghana's intent was to convey that it disagreed with amending the article, as proposed by Kenya, to suspend proceedings against sitting officials.

Significantly, Ghana made its position regarding head of state immunity clear at the 2008 UNGA ICC Report Plenary,[1039] when it pointed out that sovereignty is not considered a defence when it comes to international crimes within international norms, the UN, and the AU:

> The Rome Statute as properly understood… [ensures] that individuals who commit acts of genocide, war crimes, crimes against humanity and ethnic cleansing cannot justify such heinous acts by abusing the concept of State sovereignty by invoking it as sword of impunity, and then by

[1037] 'Rome Statute of the International Criminal Court. Kenya: Proposal of Amendment. C.N.1026.2013.TREATIES-XVIII.10 (Depositary Notification).' 2014.
[1038] ICC GD 2013.
[1039] A few months after the OTP applied for the (first) arrest warrant for al-Bashir from the Pre-Trial Chambers.

> turning around and trying to hide behind that same State sovereignty by invoking it as a shield of immunity.
>
> In keeping with that positive attitude, the African Union actually took the lead in some respects by enshrining in its Constitutive Act the right of member States to intervene in cases of genocide, crimes against humanity and war crimes.[1040]

While technically not an amendment, Ghana lent its support for South Africa's call for clarification regarding the applicability of Article 97:[1041] "My delegation also welcomes the decision to continue consultations on the application of Article 97, introduced by South Africa at the Fourteenth Session of the ASP. We believe that this issue is of concern to all State Parties and not only to South Africa."[1042] At the 2017 ICC General Debate, Ghana also noted that the "absence of guidelines for the application of article 97 has created an uncertainty that needs to be clarified."[1043] Thus, it seems that Ghana's interest was in the establishment of guidelines so that it was clear where Article 97 applied. Ghana's interest might be because the article implicates Ghana since it might be wary of finding itself in a situation like South Africa where it is torn between its obligations to the Court and the AU.

Ghana's comments appear intent to communicate that it believes the ICC's jurisdiction over core crimes unquestionably overrides any claims of sovereignty and non-interference. This position is consistent with the normative positions underpinning the R2P norm, which had grown in prominence since 2005.[1044] Ghana ratified the Rome Statute in 1999, so it is likely

---

[1040] UNGA ICC RP 2008.

[1041] Efforts to find more information about the nature of the inquest into the applicability of Article 97 were somewhat fruitless. The item was listed alongside Article 98 as Agenda Item 21 on the Provisional Agenda for the Fourteenth session (2015). It emerged as a matter when South Africa was condemned for non-compliance with its Rome Statute obligations when it did not arrest al-Bashir in June 2015. Part of South Africa's defence had been that it had invoked Article 97 consultations and that they had not yet taken place, which they argued meant it remained unclear if they were obliged to arrest al-Bashir.

[1042] ICC GD 2016.

[1043] ICC GD 2017.

[1044] In fact, Ghana goes on to mention this norm by name later in the speech: "However, both the principle of the responsibility to protect — on which African countries were instrumental in achieving a consensus on having it be included in paragraphs 138 and 139 of the 2005 Summit Outcome Document — and Africa's doctrine of non-indifference require further clarification to ensure certainty and predictability as to the circumstances under which they could be engaged with less controversy." This excerpt suggests that Ghana's support for the subordination of the principle of sovereignty in the case of international crimes is not without some caveats. In other words, it seems that Ghana is in favour of sovereignty being set aside in such

that Ghana's position regarding the prioritisation of the anti-impunity norm above the sovereignty principle predated the emergence of the R2P norm. Nonetheless, its comments might resonate with its audience at the UNGA because of the R2P norm's prominence. Ghana might have seen the utility in framing its beliefs by referring to the R2P since it had normative currency within the UN.

circumstances but recognises that there is need for the two relevant principles (R2P and the principle of non-indifference) to be clarified.

12.4. Appendix 4

The below interview data extracts have been grouped together in response to the interview prompts. Additional themes that emerged from the interviews are also included. The quotes are represented below in raw (i.e. uncleaned) form with the exception of one interview, where quotes were cleaned as a condition of the interview.

Where authors approved of their identity being disclosed, their names are written in full upon first reference and thereafter initials are used. Interviewees that preferred to be kept anonymous are referred to by the general capacity in which they were interviewed for the dissertation. One interviewee, the international law expert, preferred not to be quoted and all of the comments attributed to them below are the author's notes based on the interview.

Consolidated Interview Responses Grouped per Question or Theme

Why do you think African states joined the ICC in the first place? Do you think there was a common reason?

- "I think, I think, again, it was, it was the politics, I think. Uh, I think South Africa did it, obviously, for moral reasons. And led it. It was, it was very much in the Mandela ethos at the time. I mean, I know, I know personally how much international justice meant to President Mandela and that, that, that led to my being appointed, uh, uh, as, as, as the first prosecutor and, you know, w w without his interest that would never have happened. I would have… I had already made up my mind not to do it, but, but he really left me with no option, uh, because he was very keen in that South African should… should accept this invitation. So that South Africa is easy to understand in being, being pro-ICC, but for the other countries, I think it was different. I think, I think Uganda saw what it a useful tool, uh, to be used for, for, for, for the, uh, domestic purposes of Museveni. And, and, and, and obviously it helps smaller states because they didn't have the, the ability – often the financial and economic and judicial resources to, to, to go off to people who committed war

crimes in their country. Not by government… I'm talking about non, non-government actors, particularly, particularly in Uganda, but, but also in other countries, uh, and, and, and there was a general, uh, trend in, in, in, in, in the early 2000s, uh, where, where not only African countries, but many countries around the world, you know, there was really the surprising turn up of 180 something countries in Rome, 160 something. And 120 voting in favor of the Rome Statute, that, that, that, that, that took everybody by surprise. And, um, and, and, and, and, and what shocked people even more was that the 60 ratifications… the most optimistic supporters of the Court thought that would take at least a decade and more to get 60 ratifications, which is the highest threshold ever in an international treaty, and it took just under four years. So yeah, there was, then just a moment in history, I think, that that made it possible for the ICC to be established…" **Justice Richard Goldstone (RG)**

- "No, I think, I think some states, uh, uh, ratified the, the Statute for the same reason they ratify many, many others, many, many other international human rights treaties. They like to be ticked off. Some of them, I don't think ever have a strong intention of doing anything about implementing the Statutes. I think, I think there was, generally, in the early 2000s, there was this general trend in Africa, in particular, to join the ICC. And it was easy. It costs nothing, uh, for, uh, particularly for states that, uh, that, that have nothing to fear from, from the ICC. I, I, I think, I think generally there's, there's a tendency... And you can see that from, from this fairly small number of states that have implemented domestic legislation, which they are obliged to do under the Rome Statute. I think you'll find a similar tendency in relation to other international human rights conventions. Uh, so I think, I think it's a question of political will. Either this was important to them politically, or it wasn't, and, and, and, and, and most of these states, it was fairly low down, I would imagine, on the agenda of governments, I don't think it's more or less than that." **RG**
- "I don't know. Um, I suspect that at that stage, when the Rwanda experience yeah. Um, was the ICC seen as a benign organization, which could be good for Africa, but I mean, certainly the dictators would, would have been very wary of, of joining a thing. Like the ICC would come back to bite them. So it's a good question. That's – sorry – tat's what people say when they can't answer a question, but it's a really good question. I've never thought of it." **Former Government Official.**

- “I know at one stage, um – and I don't know if this was just kind of propaganda put out to generate a kind of, um, excitement or tension – but I think that… I remember being at the [former Yugoslav] Tribunal and kind of following, um, the, the ratifications of the, of the Statute. It was as if there was a kind of, uh, a race on to see who could be the 60th [ratification] because that then go down in history when you get some prestige. So I don't know if, if African countries were caught up in this…” **Former Government Official.**
- It is difficult to generalise the motivations for joining across African countries. There were powerful motivators for countries like South Africa to improve their international image to show that they had turned over a new leaf after apartheid. Other states saw it as a fashionable thing or a principled position to show that their were aligned with the international trend in favour of the ICC. There was also the element of there being buy-in or power emanating from the fact that there would be no ICC without African ratification – Africa was significant for the establishment of the ICC. They exercise this power by joining the masses. **International Law Expert**
- “…in Uganda and Congo […] they went to the Rome Conference in the genuine belief that there was going to be a global institution created that could help balance out some of the global inequalities that they were wrestling with. I think they genuinely thought… ‘we would want to be behind an institution that could finally hold some of the major powers accountable.’ […] You know, I think there was – at least for these two countries, but I think it was similar for it for other African states – was, you know, they believed the rhetoric of a global institution that would be empowered to go after the most powerful.” **Prof. Phil Clark (PC)**
- “…the nineties were really a golden moment for international law and new treaties and, uh, drafting new treaties. Uh, there was the hegemonic – the unipolar moment – so even the role of the US inspired much greater confidence in the ability and willingness of the lonely hegemon, on the lonely superpower to actually enforce the decisions.” **Prof. Malte Brosig (MB)**
- “…credible commitment – so the idea here is, uh, uh – especially if you look at the historical trajectories of African states – when they ratified in a number of keys, you said these were, uh, new regimes that had come into power shortly before ratifying their own status of the ICC, and they basically said ‘you can trust me.’ You know, it's

the ‘tying hands’ kind of logic: ‘I outsource monitoring over my compliance to a third independent international organisation’ that is the ICC, but the idea was to reassure. ex-ante, reassure the international community about better, uh, standards of democratic performance and human rights compliance. So we have international issues. Um, and then of course there is the Kathryn Sikkink – the justice cascade: the idea that at some point you basically see where history is going and you don't want to be on the wrong side of history… […] But the idea here is you want to be on the right side of history and you see that, uh, that, uh, you know, when you reach the justice cascade, it means that something that previously wasn't mainstream is becoming and has become as a matter of fact, mainstream, anyone to just joined, uh, some sort of like normative bandwagoning, you know, everybody's doing it, so all of a sudden you're into it just to be seen as that as a good citizen of the international community.” **MB**

Which states were the most vocal within AU meetings about the ICC matter?

For identifying active states the Independent Expert Review mechanism is a good place to look. **International Law Expert.**

  - Sierra Leone was appointed to organise the ‘African’ perspective for reviews.
  - Sierra Leone also represented in many ASP mechanism especially regarding the review issue.
- The ASP is a good indicator.
- Bureau: who sat on its leadership and when might indicate influence and participation to some extent.
- Uganda also very active with vocal representation → Miriam Black

Why were some states vocally supportive of the ICC?

- It was necessary for some states to come to the ICC’s defence in light of the criticism. It also was a result of targeted civil society advocacy on the issue. Hard to quantify but some states might feel that they garner more economically prosperous relations by being associated with the ICC and being seen to support it. This might be in kind

or just the perception that the association will positively affect their image. This point is risky without evidence, though, because some ICC detractors have argued that African states only joined the ICC out of (western) pressure, which removes African agency from the motivation. **International Law Expert.**

What are the main reasons that you think some states did not take an overt position about the ICC debate? If you know individual states' reasons, please explain.

- Many states recognised the issue for what it was – hot air. It had become an annual thing for an African state within the AU to call for mass African withdrawal from the ICC (even before the Bashir matter) and for the call to not go anywhere. Given the ringleaders of withdrawal (SA, The Gambia, Burundi), states may not have wanted to be associated as having them as bedfellows as it may negatively affect their domestic and international reputations Some states trying to constructively engage with the ICC and saw it as more likely that they would see results gained from this process. Might be worthwhile looking at the political dynamics at play at the sub-regional levels. **International Law Expert**
    - Eastern Africa = Rwanda (powerhouse; non-signatory); Kenya (powerhouse; State Party; implicated in ICC processes); Tanzania; Uganda
        - Uganda moves from being initially pro-ICC because it served their interests to aligning with Kenya (consistent with long-term political relations); Uganda actively defies the ICC e.g. says that Bashir is welcome into the country; but never actually withdraws
    - Southern Africa: Botswana is supportive; Zambia can be swayed either way; Zimbabwe isn't a member; Namibia's motivations for being in favour of withdrawal are not clear; no horse in the race
    - West Africa: Nigeria is a powerhouse and preliminary investigations underway

Why do you think that the withdrawal debate has de-escalated?

- "Also because both the leaders of Kenya is home and dry – they not… they not… case not being pursued. Although it can be reopened - it's, it's highly unlikely that it will be in and Bashir is out of power so the matter has lost its urgency." **Mr Andre Stemmet (AS)**
- OTP made a concerted effort to look elsewhere outside of Africa and this was reflected in investigations as well as preliminary investigations
    - There was an active shift by the OTP
    - The opening of the Afghanistan investigations, Palestine, and UK/Iraq investigations showed, symbolically, the OTP as willing to look outside of Africa and that it would attempt to hold big powers accountable. **International Law Expert.**
- Bensouda was also a good appointment for optics: she is an African women from The Gambia. **International Law Expert.**
    - She also was good at negotiating with states
    - Good at approaching states with respect that they otherwise might not have received.
    - ASP President - Sidiki Kaba, Senegal – was also African for a period, which was good for optics
    - At the AU level – there is a new legal advisor in the AU Office of Legal Counsel: Namire Negm
        - This office is very powerful within the AU and very important for the ICC relationship
        - The gap between Negm taking office and her predecessor leaving might also explain why the debate died down
            - Look at timelines to see if something is there with regards to sustaining withdrawal energy.
    - AU and African states had bigger fish to fry and the Review Mechanism was being discussed and promoted optimism among African States Parties that this would be a mechanism to air grievances
    - Bashir no longer being in power is also significant – no longer a matter of a head of state being arrested/prosecuted and this changes the political and legal discourse

- Kenya dies down with cases being dismissed – some see the OTP as showing its incompetence and powerlessness with this situation
    - A group of experts (including Brenda Hollace) criticised how the OTP handled the Kenyan cases and presented the OTP as incompetent, which could have created a discourse that made states feel that the OTP was less of a threat because it was less powerful than previously perceived
    - It was a wakeup call for ICC supporters but dissenters saw it as the OTP would be the cause of its own demise so they needn't proactively fight it
- Some African cases at a point where they were stagnant e.g. Libya, CAR, DRC, and Uganda, which meant it reaffirmed the sense of the ICC as incapable

What is the current state of relations between the African Group and the Court?

- "I, I certainly think it's turned for the better. Certainly… certainly… there's a great interest. I think the African states are calling for more, not less, engagement. I think the African states want to be involved. So, I mean, w w when it comes to meetings of the Assembly of States Parties, the African states are almost all there. They attend and participate and I think they want Africans to be occupying top positions, which they have. Um, and, and I, I, you know, I just hope it doesn't cool off with, with, uh, you've now got a UK registrar and prosecutor and a Polish president. Uh, I just hope, I hope that doesn't have a, have a boomerang effect when it comes to the African support. I don't think it will, because I think, I think now that the ICC is certainly involved in, in, in, in situations outside Africa." **RG**
- "…there might be lots of reasons, but the biggest reasons why it's kind of subsided is that the pressure points are no longer really pressure point. So if you think back at like the height of this and 20015, 16, 17, it was really, you know, led by, let's say a couple of states. Um, so, but you're, you know, it was really led by Kenya… Kenya's government, South Africa's government, um, to a certain degree by someone like Paul Kagame, who remains a kind of, I think a thorn in the side of international criminal law and, and the ICC in particular, um, and Bashir. And so, you know, if you

think of those, um, none of them, other than Kagame, who's really not threatened at whatsoever by the ICC and Rwanda remains outside of the Rome Statute system. Three of those are, are, are, you know, there. Issues are gone. I mean, Bashir's obviously in jail. And so it's what he thinks about the ICC. At this point, it's kind of moot. Zuma's is in jail amazingly. Um, so what he thinks about the ICC and all that stuff seems like a moot point. And both of those states have had their governments replaced by, um, in terms of Sudan, an openly pro-ICC, um, transitional council or committee or whatever. And in terms of, um, you know, South Africa at the, at the worst, the kind of soft support, but, you know, periodically you hear in diplomatic conferences that obvious, um, statements of support from, from South Africa, there just hasn't been anything from that kind of executive level, uh, from Ramaphosa himself, but still, so you kind of, there's just really no, um, You know, I, at best it's a positive relationship at worst it's they, it's just not an issue for South Africa. So, um, which makes sense. And then in Kenya, you know, you have the collapse of both the Kenyatta and Ruto cases so neither the deputy president or the president are threatened. Um, I would say that in a place like Kenya, we'll see how this proceeds there. Like what, what, what happens next? There's um, A lot of domestic politics, I think that isn't necessarily troubling, but could, could be troubling in the sense that their marriage of convenience over the ICC with the creation of the Jubilee Alliance, um, for the 2013 election looks like it's breaking up and, uh, domestically, at least Kenyatta is moving much closer to an Alliance with Raila Odinga and that Ruto might be left out. And then if that, you know, the theory has always been that, you know, um, the thing that precluded, you know, ICC justice in Kenya was really, um, this marriage of convenience and as Jubilee Alliance and the fact that they both won the presidency and the deputy presidency, um, and the idea there was that Kenyatta would have his presidency for two terms and then they'd switch and Ruto would get his two terms and that no longer looks possible at all, and it looks like Ruto will not get his two terms, at least not in this kind of arrangement between the two of them. So. Uh, what happens, you know, I think it's, anyone's guess as to what happens with respect to, you know, the ICC." **Dr Mark Kersten (MK)**

- **Regarding SA:** "I actually don't know. I suspect that it's good that the relationship is good, but I don't know because I'm not involved with government, um, much. Um,

so I actually don't know, but I think it's a good relationship. I think it's, yeah, I think it's a good relationship." **Prof Dire Tladi (DT)**

- "[At the AU]…there is still some degree of ICC skepticism that is still there at the AU level. But the other thing that I detected pretty strongly was that the sting had gone out of it…" **PC**

How relevant a factor is the power given to delegates representing a state at the ICC?

- Very relevant factor – who is sent to The Hague or New York matters. **International Law Expert.**
    - The knowledge and confidence of that individual matters – low confidence and knowledge will see delegates being less engaged and active.
    - A lot hinges on the individual who represents the state.
    - Confidence is a big factor because many are assigned/delegated without international criminal law expertise or knowledge.
        - Some delegates in this position are good at identifying strong civil society partners to help inform their strategy and position.

South Africa

- "South Africa is an outlier because we had no, really no reason to be opposed to the, to the ICC. In fact, on the contrary, we were one of the leading movers that, that, that led to the creation of the, of the ICC. And, uh, as you might know, as you might know, so South Africa played a leading role in, in, uh, in, uh, between 98 and 2000 and getting the SADC countries to come on board and ratify the Rome.**" RG**
- "Right. But you know, Zuma, I think was, was, uh, became involved in… he obviously met al-Bashir at AU meetings. And, and, I think, there, a comradery obviously developed as it does, generally, I think between, between national leaders. But, but the, AU was obviously driven, I think by, by, by, by some leaders. I think, I think a number of African leaders felt a little bit scared of the ICC – and some… and some for good reason. And so there was this ambivalence of so many African states joining up and, uh, ratifying, uh, the Rome Statute on the one hand. But some leaders –

particularly first al-Bashir, but then I think more importantly, uh, w w w were the Kenyan leaders. Uh, I, I think they, they, they particularly drove the, the, the AU anti-ICC, uh, development, and obviously that suited Bashir's books. And I think, I think South Africa just joined up." **RG**

- "I think that that's [resistance to state imposition on sovereignty] what features again with the ICC and the whole idea of Zuma, trying to withdraws some Africa and the 'whole solidarity with African brothers across the continent' and how 'the ICC is just picking on Africa'. Um, we know 'we should withdraw as a matter of principle' and, and all that kind of thing. But, um, at the end of the day, the, they had to stall that process, as you know, and Ramaphosa when he came in…" **Prof Suzanne Graham (SG)**
- "South Africa never likes to be caught short, so it, you know, it's, it's, it's always since 1994, tried to convey an image of being a good citizen of the world right. Now, it hasn't always matched up to that in various ways, for example, not supporting a resolution that would reduce human rights abuses in Myanmar and various other situations. And, um, continuing to stay friends, for example, with, um, Zimbabwe, under Mugabe, and Cuba, et cetera. All these rogue style nations. So that, that dented South Africa's, um, image somewhat – it's democratic status globally and it's as good international citizen status globally. So, when it… so it doesn't like to be told that it's wrong and it likes to be seen to be doing the right thing, especially in multilateral forums. So, so of course the whole saga around Bashir and not being arrested when he was here, in South Africa and, and the, you know, the court's ruling and all of that, our own domestic courts really did, did hit home. This idea that South Africa was definitely in the wrong and considering that we're supposed to, um, make international– the ICC's law – our law, because we ratified it, so technically we have to follow it and abide by that law. So, um, the, the whole thing was a huge embarrassment for the country, and I'm frankly, quite glad that that's critical observers didn't let it go. And that the ICC actually didn't let it go. Um, because other African states look up to South Africa and what it does in terms of its behaviour multilaterally and it's needed to be, seemed to be doing something. And at least our judiciary, we did follow through pretty well on that one. Um, and to prove that's South Africa should have done more to, it should had arrest him while he was here,

et cetera, on South African soil and not allowed him to have left. And he shouldn't have even been allowed to be here in the first place, um, under that ruling. So it was a huge embarrassment for the country. And then, I think, um, Zuma was basically using that embarrassment – or using it as a kind of cover – by saying, well, you know, 'we've had enough of this now, the continent's not going to take this anymore. We have to withdraw. We won't be dictated to, we have our reasons why we do things,' blah, blah, blah. And of course it doesn't seem that clear to any, you know, just the layman on the street or just even an interested observer. What it looks like is that South Africa didn't have the guts to follow through and it boils down to what some people might say is the big man syndrome on the continent, you know, looking out for each other and fellow leaders looking out for fellow leaders on the continent and what kind of thing. At the end of the day, Cyril Ramaphosa, um, didn't automatically state that he would like to continue or follow through with Zuma's decision because he had a different plan for South Africa's image globally and it all ties in with his first response, um, or speech at the UN. when he became president, um, and that was basically harping on the whole image of Mandela and how he wanted it to take the Madiba magic forward, and that would mean, of course, that South Africa would be ethical and do everything right. And it would be norms based in its foreign policy and it would, um, follow the law in all respects. Um, so it was completely different idea behind image that he wanted to convey, um, as opposed to this kind of 'naughty,' 'typical' African state, but didn't want to follow the rules, you know, from historical examples." **SG**

- "…It all boils down to consistency. So, you know, if you say, if you do declare something publicly, you, we have to follow through whatever. Um, unless it's a major catastrophe of a decision, which I think this is - withdrawing from the ICC, I think it is a catastrophe, I don't think it will do anything good for our image, um, going forward. And you know, when, when you, you have to think that everything, um, not as isolated events, but everything plays on each other because, you know, perception in politics is everything. You know, perception is reality, basically. So, you know, as Tom Wheeler always said, so, and I agree with him. So the idea is that if South Africa ever, ever, down the line and became a permanent member on a reformed Security Council and represented Africa, it would have to take into account

its history of consistency around trying to perform as an African member. In other words, what has it done to help benefit Africa? What has it done that has not benefited Africa? And because South Africa is a leader on the continent people associates South Africa's actions with the continent itself, even though that's unfair, it nevertheless it happens. So it's like South Africa speaks for the continent, whether the continent wants it to or not, in many forums, like the G20 and through BRICS and, and, and before through IPSA, not that that's really important anymore. Um, but, um, yeah, so basically whatever South Africa does is going to be judged and criticized down the line, upfront now, and down the line. So it has to be consistent. So the problem with that, though, you can't really enforce consistent decision-making if you fundamentally disagree with your previous, um, ruler's rulings on something. Ramphosa and Zuma have the differences as we well know. And, it would make sense to me that Cyril would want to do things very differently. Um, the fact that Zuma left within a major cloud around corruption and disaster and fraud, and that's linked with South African government and also helped make Cyril want to, um, change tack and convey a sense of South Africa playing by the book and following the rules, and, you know, ethics was, is, is enforced. And it's so important. And to actually convey that in public forums all the time, it's a, it's a big deal. It's a big statement. So he's trying to, um, make sure that South Africa does what it's supposed to do in terms of the different conventions and forums it's signed up to and ratified. So that's why the ICC is such a big deal." **SG**

- "Very, very strange, um, seemingly you know, like in terms of governance and extraordinarily stupid decision in the sense that, um, in the wake of that, then the government had to spend an extraordinary amount of, you know, tax-based resources on explaining why, right. Like governance was diverted to explaining why a day and a half trip was so necessary that for the forthcoming years, it would have to explain this to its public and to, you know, other states and to the International Criminal Court – just mind-blowingly unnecessary." **MK**
- **Re shaping SA's relationship with the ICC:** "South Africa has been very supportive of the overall drive for a world court, criminal accountability, those kinds of issues… So that's been the main thing, the main motivating factor… I think the disappointment with the Court was that Russia and America never came on board… the Chinese

never were going to; the Americans signed; and I think the Russians have also indicated that they were going to… So, you've got this problematic setup of three of the permanent members of the Security Council not being state parties to the ICC…" **South African Government Official.**

- "South Africa's problems… started a little bit before al-Bashir, with the Kenyan indictments… there was a big issue over Kenyatta and basically him wanting […] to appear virtually in the Court rather than in person in The Hague for his trial and the Court was not allowing that." **South African Government Official.**
- "…obviously a watershed for South Africa was the al-Bashir case and the mistake that South Africa made was to allow him to come here, in that – as you probably know – when Jacob Zuma was inaugurated as president in 2009, all the heads of state of Africa were invited to the inauguration, including the president of Sudan. There was a backdoor message sent to him saying 'don't come, you may be arrested.' Same thing for the World Cup 2010: everybody invited, including the president of Sudan, backdoor message saying, 'don't come we can't guarantee you won't be arrest or we might have to arrest you if you come.'" **South African Government Official.**
- "…how do you arrest him, particularly when you have […] peacekeeping troops in his country? But anyway, there was that whole issue. Then it got a bit caught up in a sort of anti-imperialism perspective from anti-Europe perspectives within the ANC. The decision was taken by Cabinet to withdraw. The withdrawal was overturned by the High Court. Government didn't appeal so accepted the High Court's decision. The International Crimes Bill was introduced into Parliament to provide for the withdrawal and provide for alternatives to dealing with the international crimes and extradition , which is actually currently still a problem in that we can't extradite to organisations… We can extradite to the ICC in terms of the domestication, but we're forever having problems with the Rwandan tribunal where […] we can't extradite to a body. We can extradite to the ICC or a country, and that [International Crimes Bill] was changing that as well. Anyway […] even with that position, even in the Zuma period, there was sort of opposition to it then. Obviously, Zuma gets removed – or leaves – and… the other problem was at the national general council at the ANC in 2015, the decision was taken that there should be a withdrawal and that got

confirmed by conference in 2017. […] the NASREC conference was about elections, so, the commissions… nobody was taking particularly seriously. I don't think any of those resolutions were particularly well thought through, but anyway, they've got a problem of there's a conference resolution on withdrawal. The current NEC [position] – you can find their statements from the last NEC Lekgotla which was in July this year – which was basically that we're not withdrawing at this stage." **South African Government Official.**

- "…but that [the 2019 South African country statement at the ICC ASP] reflected the position, 'we do think there needs to be reform and we recognise that reforms or that the processes that are taking place, the Goldstone report and things like that. We're still debating the issue, but we are evaluating the situation' or something vague like that, 'but we're still a member of the Assembly of State Parties and a member of the ICC'." **South African Government Official.**
- **Regarding the shift in SA's behaviour toward Bashir invitations:** "Because we didn't invite him, the AU did." **South African Government Official.**
- "…so we [South Africa] ended up being on our own, but, I think, still, that issues of the anti-imperialism drums was quite a popular drum on the continent… on the states beating the anti-imperialism drums, we don't want to be seen to be lackeys of imperialism." **South African Government Official.**
- "…the issue is that you have, we have troops, or had troops, in the Sudan – in Darfur. If al Bashir popped in for a visit to Darfur, would they be obliged to arrest him? In Darfur? Is that the issue? I mean, that could be a conflict. On the al Bashir arrest warrant, which started in Thabo Mbeki's time, and they basically applied – because of the Sudanese peace process with the north and south - they actually applied for the warrant to be stayed for a while, I think they did succeed in getting to enable those talks to go on. […] would we have had a negotiated settlement in South Africa… if we were subject to the Rome Statute, because part of that negotiated settlement was some kind of amnesty for perpetrators of violence, which you cannot do under the Rome Statute…" **South African Government Official.**
- "I've been involved as a representative from DIRCO in the court from about 2004. I think if I remember correctly, it's a long time ago. Um, no, I don't know if I can offer very much new, um, in this respect. Um, but, you know, South Africa was always a

strong supporter of the Court. It, um, um, in, in, in, in, in the negotiations, of course it was at a high level – the minister of justice. Um, as I understand, I wasn't there at the time, but, you know, South Africa also pushed for the inclusion of the crime of apartheid into, into the, um, um, uh, under the jurisdiction of the Court and there's always a strong support that off of the Court and that's, we've always, um, um, attended the ASPs also at deputy ministerial level since then, um, uh, which is, which is not, not all states do that. I mean, start some states, uh, um, uh, attend at ministerial level and depending on how important the ICC is for the specific situations like Nigeria and the DRC, um, um, often made a high level of, of, of, of participation, um, being, being such situation countries. Um, but then of course the, the, the issue arose around the, in 2016 around Bashir's visiting South Africa. Now that's old history – you will know about what happened: the court cases, al Bashir leaving South Africa while – on the Monday – while that the application was still before the high court in Pretoria. Um, the then government – if I may put it like that, because in South Africa it appears that we don't change governing parties, but we do, to within the governing party, change the government – then decided on, on withdrawing. Now…. And then of course there was the announcement in that respect. I don't have my files, my files are either on a ship somewhere between Rotterdam and Durban or, uh, um, still in the Hague. Um, and at then that was the whole story of, of, of withdrawal that was announced. I can't recall exactly how it was announced, but you also know that was taken to the High Court on the procedure of – I think it was – 31(2) versus 233 procedure at, and then after the court found on the, against the, um, Um, on the procedure and say to that, to be in terms of, uh, 231(2) parliamentary approval, um, then the announcement was again made at the 2017 ASP in New York. So that was basically, I think the high point of, of, of, of the whole withdrawal issue. So, so after that, you will recall that it Withdrawal Bill was introduced to Parliament, but it was again withdrawn, so, so that's basically, where the matters stands. So other interaction with the Court on this matter was the article 97 application that was done – and I don't have the detail of the, of the dates and so on. And I that was before I went to the Hague, my predecessor was still there. That was done very much, you know, in the application in the terms, Article 97c – that the state can, where state receives a request, um, in relation to which it

identifies problems, which may impede its… or prevents its… from executing that request, the state shall consult with the Court. And there paragraph c reads that the execution of the request in its current form would require the requests breach a preexisting treaty obligation undertaken with respect to another state. Now, South Africa initiated this, um, shortly before Bashir's expected arrival. Now I must also say from my side, I think, everybody hoped in government civil state that Bashir, as the previous two times when he was invited - for Zuma's inauguration and Mandela's funeral – that he would not personally attend, but, but the attended the, the Summit, um, I think around on the, I'm not sure if he arrived on the Saturday, the Sunday, I know that the application was launched on… in the High Court… to have him arrested… by SALC… was launched on – yes, I think it was the Saturday… he was due in court only on the Sunday and again on the Monday, but in any case, on the Friday evening, before that – that's now long story, but to get to the timeline –the ambassador and legal advisor in the Hague did make contact with the Court and, um, they met with the Judge Tarfusser – the Italian judge – and… to present the matter of states and to say, 'look, we have a problem in this respect and initiating an article 97 proceeding, because we have obligations in terms of the AU, um, um, uh, immunities and privileges agreement or protocol, um, to accord, immunities to heads of state visiting South Africa – for, for attending the, um, the, the, the Summit. So that was done. I think there was a bit of unhappiness about the way that the Court has addressed this – or the specific judges addressed it – because it basically turned into a – or what the South African view was – it turned into, uh, a legal hearing and that there was then the fight. I think [inaudible] that the argument, uh, doesn't hold water. So, so that was the Article 97 interaction. It was the first time that Article 97 was used and was used at a very late stage. In any case, then I think Article 97 – whilst overtaken by events in South Africa and events in the South African legal process here. Then there was also the case before the Trial Chamber, we, we, you know, we, we participated and, um, um, also it was found that South Africa was under an obligation. Now the arguments that we had, that we raised was that the obligation doesn't apply to, uh, head of… [inaudible] that doesn't apply to a head of state of a state that's not voluntarily acceded to the jurisdiction of the Court and the, the the, the, UN Security Council cannot basically bind a state to a treaty –

and some other arguments that we used as well. The argument about the, um, in customary international law that immunities of heads of states, heads of government, and the minster of the foreign affairs, which is an old, very old doctrine and some other, um, arguments that were raised. So. But, but, but beside that, and I think there's another, um, [inaudible], that was not, that's not well known. And that is that just after I arrived in, in The Hague in 2017, we approached the Assembly of States Parties to develop procedures around Article 97, because South Africa's argument was that we didn't know what to do, when to do it, how to do it, how to operationalize Article 97, um, and within the ASP that, that, uh, there was a lot of sympathy for that, um, for that approach. There was also another African approach and that is to have a kind of a declaration or interpretation of the relationship between, um, Article 98, the pre-existing agreement through visions… obligations… in terms of the pre-existing agreement and Article 27, lifting immunity. That didn't gain any traction because most states were of the view that 'we're not going to open the issue of immunity for heads of state – immunity of everybody, your immunity issues… because that's the basis or the bedrock of, of the Court – that nobody has, um, immunity, uh, in terms of modern, uh, international criminal law. But as regards, the, the procedures for 97, um, that must be somewhere on the Court's website and my files are in The Hague so I don't have access… direct access to it. But basically what happened is that, uh, a working group was appointed that lead by the Chilean Ambassador appointed to The Hague at the time. And quite soon, I mean, by the next ASP, we had this adopted, uh, without any, any, any problems. There was actually, went very quickly, uh, and came to a quick conclusion, um, uh, adopted, um, the, um, uh, procedure and that procedure was in, um, adopted by the ASP. So that, that kind of, I think in the, in the whole issue is a bit of a, something that's not always noted but it was quite a positive process out of it from the side of the embassy and from the side of negotiating this, and there was great willingness among all players to, from all over… from the North and the South to develop these, um, provisions. Um, so that was a positive outcome, at least I think from the, from, from the whole dilemma that we found ourselves in." **AS**

- "I do know that that was the case in the previous two, two occasions. In fact, um, at the time of the inauguration, I actually did a legal opinion on the… on the obligations

of South Africa in terms of in international law should he come to South Africa, and that, and that was used by the then DG at the press briefing where he actually cited the legal opinion, um, and said, 'this is the legal situation in South Africa and we would like Bashir not due to attend.' So that was a totally different, um, approach [….] one must bear in mind that, that the AU summit was something totally different. This was an international meeting hosted by South Africa. The others – the inauguration and the funeral was South African domestic issues. You know, we could invite whoever we want to, but in the case of the AU – a state like South Africa not inviting Bashir or arresting Bashir even, is just, I mean, that's just where law and political reality, um, collides, it was not possible to do it. The eventual fallout – negative fallout for South Africa in the continent would just have been too, too great – especially at the time, you know, Bashir was firmly in charge of Sudan. Nobody expected him to lose power the way he did. It was a different kind of reality." **AS**

- "I think the interpretation was that, sometimes in order to make peace, you have to speak to the warring parties. And that often includes, um, um, state leaders. So in order to, to be able to, to engage in the process, for instance, the DRC process that we had in Sun City in the late... when was it about 2008, 2009? It was still under Mbeki's time. I mean, you have all the leaders in the room to speak, to be able to speak to them, to, to, to, um, facilitate or to mediate in a, in a conflict… South Africa's in a different position, than, say for instance, Canada or other states. Um, it's an African state, um, dealing with African problems, dealing with African countries and sees itself to be a peacemaker and the state to which other states sometimes look to, to intervene when, when, when, when they, they get into an intractable situation, the, the, I mean, we've been involved in a number of peace negotiators, and then the thing that makes it becomes impossible to… 'You can invite anybody, but not the leader, maybe not the leader of this of the state in question.' So that will make it difficult. That was the argument in any case. The Appeal Court didn't have much, um, sympathy for that because… with the approach… it was basically, 'but South Africa you can do these kind of negotiation and play this role in Geneva or somewhere else. You don't have to." which is also difficult because a lot of the places where you probably I'm going to sit in and negotiate, the peace deal may also be members, states that are members of the, of the ICC and they'll face the same,

the same problem. So, so where do you then go to… it will have to be a state that's not a State Party to the Rome Statute and that may not be practical. And the whole issue of 'African solutions to African problems' – we don't want to have African negotiations in Switzerland; we want to have it in Africa, you know, so that there's buy-in and that kind of, kind of, kind of thing. The old though philosophy behind the AU is, is one of, um, 'African solutions to African problems' here on the continent. So there's that kind of, um, emotional attachment also, almost… to doing things an African way in Africa, but of course, legally… didn't didn't fly…" **AS**

- **Regarding shift in foreign policy toward al-Bashir:** "Yeah, that didn't change, actually. It's a common misconception that that changed. Um, it didn't change. Um, let me see. So, uh, the first time that this issue arose was in respect… was in respect of, um, the inauguration of President Zuma in 2009. In, in, um, in that situation, um, you will recall, um, that, uh, the, the, um, um, what do you call the, uh, the head of, uh, the foreign ministry, the administrative head of the foreign ministry, the, um, uh, the director general, um, so gave the position of, um, of the government and, and he made it clear that, uh, what was that issue there was not our obligations under the Rome Statute – and so people don't don't don't often get this – he made it clear that what was that issue there was our domestic law. The main difference, I think, between those cases that people quote – um, the arrival, uh, I mean the, uh, the inauguration and, um, the World Cup and then I think also, um, the, uh, I think also the, um, uh, the funeral of, uh, of President Mandela – the main difference was that in all of those instances, um, we had the right to invite or not to invite. And so it's up to us. So, uh, uh, I mean, so ultimately, we, as a country are in control of who comes. So it's easy then to say to someone 'we're inviting you, but please don't come.' You can't do that when the invitation is coming from somewhere, uh… Coming from someone else. The meeting that was hosted in 2015 was not our meeting. It was a meeting of the African Union. It was not us who decided who comes and who doesn't come. It was the African Union. It was the African union that sent out the invites. Right, so, um, so that changes dynamics a lot. Uh, I can let me see. So it's how many years ago, I'm just trying to think in terms of my, uh, my confidentiality. So it's six years ago. So I can share this with you when, um, uh, I was sitting in the office when I heard in February that we were going to host the African Union

Summit and my first reaction, ‘oh, dammit. That's a big problem,’ and I can tell you no one else had thought about it. Uh, so when I raised that issue, um, with, uh, with the foreign minister, uh, immediately on the same day that I heard – they were still in Addis, actually – um, she, she directed me to speak to the relevant desks and the relevant desks the, the, the response that they gave me was exactly what you're saying, was, ‘don't worry, we'll take care of it in the same way that we've taken care of the others,’ and I said to them, ‘you won't be able to,’ and they were confident that they would be able to take care of it in that way. Uh, but I knew from the beginning that there's absolutely no way because that's not your meeting, you're not in control of that meeting. Um, so that's a major misconception of this issue that there was, um, a shift as far as that's concerned. Shifts happened with respect to other things, but not as far as whether to invite or not to, in fact, there wasn't a shift, the position was exactly the same. Our interest was that, of course we have to invite, but we need to tell him not to come. Now, when you're hosting a meeting that isn't yours, that option isn’t there anymore and people, including people within the foreign ministry thought that option would be there so they left it too late and that's what happens.” **DT**

- “I mean, yeah, I mean, it's quite clear that that, uh, before then, before 2015, uh, you know, as you say we had, um, I think you call it here – I don't know if you call it voice or loyalty – but we were, you know, a supporter of the ICC. And, and in fact, um, um, when I would engage with people, I would always describe our position as, as one that's sort of an intermediate between the negative voices in, you know, on the continent versus the ICC. We were, we were, if you like, um, the bridge, um, the, uh, the tool of communication between the two sides, um, I saw us as play a constructive role. Obviously after that, we then shifted to another side. We had a clear side and then you didn't have any more somebody playing the intermediate role. So that, that shifted. Absolutely. But that shifted not because of Bashir's invitation, that shifted because of the events afterwards, right...that shift… that… you can't… So obviously once, once, um, once the ICC starts is, um, it's article 87(7) procedure, then of course, um, you know, it becomes them against us. Now. It's no longer we're part of this together. We're trying to resolve issues together. So that's, that's really where the shift happened. The shift wasn't., ‘well, now we want to invite

him. Now, we want them in our country all the time.' No, that was not, that was not the case." **DT**

- "Well, I mean, that's, that's easy. Um, we had been, um, we had, um, you know, throughout, throughout the difficult times at the ICC phase, we had played a really, um, important role in, sort of, trying to defend the ICC. Um, and, and I guess the feeling was we took all of these risks. Um, all that we're asking is that you understand our current situation. In fact, I was dispatched to go and meet with the Prosecutor. Um, she wouldn't meet with me, but she sent me some of her officials, um, you know, and I explained this position. I said, 'look, I fully understand, um, if, if my suggestion is... The Prosecutor's Office – the Registrar issue a very stern, uh, condemnation of, of this and, um, you know, um, uh, and let that be the end, but don't do this article 87(7) thing, because if once that starts, um, um, I don't know where it ends. Um, I had a discussion with, uh, with Phakiso Mochochoko and his response to me was – um, the message from the Prosecutor to me – um, was, um, that while they're understanding of this, um, they are not positioned to do that simply because questions will be asked of them, 'well, why did you do it for Chad? Why did you do it for these other states and not for South Africa?' Which is a fair position, and I must say that's a, that's a fair position. Um, incidentally, if I recall, um, the article 87(7) procedure did wasn't. In respect of South Africa was not initiated by the Office of the Prosecutor. It was actually initiated by, by the Chamber itself, and it was the first time that the Chamber itself initiated. So, so, um, so I suspect that, uh, that at least that reaching out had some effect, um, but obviously not on the Chamber, but I think it had some effect on the Prosecution…" **DT**
- "I think, there, it's hard to, it's hard to, to ignore the fact that South Africa's domestic legislation does not provide for the exception provided for in the Rome Statute. So, the Rome Statute provides an exception, our own domestic legislation does not provide the exception. So that's, that's a more difficult situation for the country and it's more difficult, yeah, it's more difficult to explain why we didn't arrest of him in terms of our domestic legislation than it is, um, in terms of the, um, um, in terms of international law, and to buttress that point, by the way, if you read, um, uh, so the Supreme Court of Appeal judgment seems to take that position as well. It seems to say, 'we accept that, under international law, there may be a duty not to arrest

them, but, ultimately, what matters is that our domestic law doesn't contain a kind of exception.' And I think that's, uh, that's, that's a fair conclusion." **DT**

- **Regarding why SA did not arrest Bashir as per domestic law:** "Would you arrest them if you were president? And that's a political matter. I mean, I mean a political matter – there's just no way that he would be arrested." **DT**
- **Regarding the peace mediation role SA plays in Africa:** "] I don't think we included that. That was probably in our introductory statement. I was very clear that we needed to stay away from policy and political posturing. One, because I, I think even if it's true, it's not going to convince the Court and it shouldn't convince the Court – the Court is not a Court of – it shouldn't be a Court of Politics. That should be a, um, so what the Court is interested in is your legal obligations, not your political or policy problems. Um, that issue, um, is an issue that, um, that is contained mainly in, um, the policy papers to Parliament on why we were withdrawing from the Statute. So why, yeah, uh, um, That's, yeah, so it was in the Cabinet's memorandum for why we're withdrawing: one of the things is, is, is, is, is, well, uh, we are going to be involved in these kinds of things, uh, in the future…" **DT**
    - Gave an example of how mediation would be compromised if SA could not host warring or conflict parties.
- "I think if you asked me, um, are there other options for South Africa? Absolutely, and I think, uh, many of us who were advising government with just a surprise to hear that we will withdraw. In fact, I'll tell you a story. Uh, I got on a plane and when I got on a plane to New York, incidentally, um, we were going to have discussions about withdrawal… or the, the Cabinet was going to have discussions about withdrawal and what the process would be, and if it's a good idea, et cetera, et cetera. I landed in New York and people asking me, 'why are you withdrawing? We've just received…' So, so a lot of people who were close to the process were actually quite surprised. Uh, because the, the answer for South Africa's problems is actually quite easy, for me, it was the, the Supreme Court of Appeal judgment was a win, from my perspective, because it gave you a simple way out. It said, 'as far as we are concerned, uh, under international law, you may have the duty to arrest, we don't care. The problem is your domestic legislation.' And, ultimately, we are responsible for our domestic legislation, so we can just simply amend the domestic

legislation to include Article 98 and that's it, and then all your problems are solved, all these future things that you asking me about – so, you know, when, uh, when you want to post a Sudan and Ethiopia and, uh, and, uh, Egypt, uh, you just say, yeah, we're hosting, you know, the domestic law legislation version of Article 98, whatever it is. That's, that's it. So the withdrawal wasn't necessary, um, you know, to achieve your objectives." **DT**

- "…there's no reason why we had to host the AU Summit, right. We could have said, 'oh no, this is going to put us in trouble with the, with the ICC. So we're not hosting the Summit. But, but hosting the Summit is very important to us because of regional, you know? So, so, no, I don't think you're wrong. I think that that's, that's, uh, you know, important driver. Um, I mean from political perspective, um, uh, it's true. That South Africa wants to wants to, and I think even now, wants to continue to play an important role on the continent, and, um, and so it's probably true that if, if, if obligations for arrest is going to make that difficult in the future, then that, that, that, that certainly creates problems." **DT**
- **Regarding motivations for withdrawal:** SALC tries to arrest al-Bashir – the feather that broke the camel's back. SA's withdrawal was not solely motivated by this – there was a slow and growing underlying tension with the ICC's alleged targeting of Africa. SA getting in trouble for not arresting Bashir was a tipping point – SA was embarrassed and withdrawal was a knee-jerk reaction; also a way to save face before African colleagues at the AU. AU politics is also relevant – SA and Nigeria both in a power struggle and SA was chair of the AU Commission; the anti-ICC sentiments/discourse/narrative within the AU was a shaping factor because SA would have wanted to be seen as consistent with this. Thus, domestic embarrassment together with regional politics explains SA's withdrawal.

International Law Expert.

- "I always saw the, the threat of the South African withdrawal really as Zuma, trying to play to two different constituencies. So one was Zuma being worried about South Africa's influence at the AU and then I felt that, at that particular time, Zuma was tapping into that sort of – broadly – AU opposition to the Court around Bashir, around Kenyatta and Ruto and, and those sorts of cases that, that this also came at a time when I think Zuma was maybe worried that South Africa was losing some of its

AU clout. Um, and that was kind of wrapped up in his, his kind of weird failed missions to Libya and Côte d'Ivoire, where he kind of almost turned up and said, 'look, South Africa is still the major military and diplomatic player here, you know, we can be part of these processes' and the AU looked at him, like, 'are you?' um, you know, and 'what are you doing here?' and, you know, 'we don't necessarily look to South Africa for that kind of role, um, you know, in, in, in these kinds of African conflict zones.' So, you know, so I think that Zuma saw an anti-ICC stands as a way to try to curry a sense of favour at the AU level that he was scared South Africa was losing. But then I think it was also a part of his domestic agenda, um, which in my view was about, um, you know, broadly, eroding the rule of law and the role of the courts and, and a sense that, um, that politics should not be overly regulated by legal institutions, whether those were domestic or international legal institutions. Um, and, and that I think really played out in the whole episode around Bashir coming to the AU Summit in Pretoria – that Zuma saw this as an opportunity to, you know, to, to kind of play both levels, to kind of send a message to the AU, but also to, to sort of send a domestic message about where law fits into politics. So I really see it as kind of bound up in that one president – bound up in Zuma and his particular approach."
PC

- **Regarding Malabo Protocol:** "From South Africa's side, there is clear, um, constitutional issues, for instance, the immunity that that's provided for. And it's a really wide immunity for senior state officials. I mean, why does that mean, where does it end? And our argument in the negotiations was, but this is too wide – I mean, if we restrict this to the customary, um, um, principle of the, of the big three, that's fine. That's, that's, that's a principle in international law – everybody recognizes it. But, but the idea of, uh, of senior state officials as I think it was, I mean, where does it begin? Where does the argument from the, from the AU, and the AU legal advisor, was that the [African] court will decide about it. And, besides some other problems for me, that was always a problem because how can you, how can you, in terms of the South African constitution, um, in any case, um, in accede to a treaty where, you've got immunity in terms of… that was in clear violation of the provision in the Constitution of equality before the law. I think that's also the problem that you're going to have if, if we go on with the, the, um, uh, um, Bill to withdraw from the ICC

but to provide for criminal jurisdiction over ICC crimes committed abroad that was introduced into Parliament and then subsequently, um, again withdrawn, um, does provide for immunity and – it's been a long time since I've read it – I think it is for the big three, but I must, I can't recall. But again, I mean, that can be changed in terms of the South African... in the South African court to say: 'Why do we have immunities for heads of state, while everybody else is equal before the law?' So, so, the main concern and that we had was with the constitutionality, and the official position that was expressed – and I can't remember where, and when and by whom it was expressed – was that we must look at the Protocol, uh, again – the Malabo Protocol – to see if, um, aligning with South Africa's constitution, but that won't happen. I mean… many states that were in – for instance, Botswana – who were in those negotiations, when I talked to them and said, 'look, you must help us, we've got a problem here, please support us on this', like Botswana for instance, would say, 'why? We're not taking this seriously. We're not going to ratify this thing so we're not interested in getting too much involved in the negotiations.'" **AS**

  - "I think it [The Malabo Protocol] was again, and I don't know the politics-politics, of the AU, but I think it was again a proposal – it was definitely a reaction on, on the, not on the ICC or on the Rome Statute as such, but on the indictment by the Court of, of African leaders. That was… while it was Aliyah [correction: Ahmad] Harun and these people in respect to Darfur, nobody really cares, but when it went to the head of state, the game changed. I mean, politicians are not going to subject themselves to the jurisdiction of, uh, of a foreign court. Um, they just not going to do it – it's power politics. So, that's, that's, that's the fact. So it was, it was a reaction to the, the, the, um, indictment of Bashir mainly and I think to an extent maybe also of the, the Kenyan leaders." **AS**

- **Regarding the establishment of the ICC**: "Now at that stage, um, I had, um, held two workshops in South Africa. One was for government departments and the mix where we discussed the, um, the ICC and should we support this whole notion? And, and so we had justice, we had the military there, um, um, um, a number of academics. […] it was pretty good workshop over two days. And the overwhelming feeling was, yeah, we should go ahead and support this thing. It sounds like a good idea. Um, but at

that stage, I was still the only delegate going to the meetings and I was badgering Dullah Omar. I was calling him regularly and I kind of met twice to get a meeting with him. And then eventually, um, Dullah Omar relented and I think in about '96, ja, '96, he started also sending people along as part of the delegation. So then our delegation started expanding and the military also came on board, um, guy by the name of general Piet de Klerk – I wonder if he's still alive – in any case, he was there for the military." **Former Government Official.**

- "Incidentally, um, the South African position… I told you about Dullah Omar… Dullah Omar – his concern, um, and reluctance to participate in the ICC process was that he feared retroactivity, and we had to convince him that the ICC has no retroactive, um, jurisdiction. And then he said, 'okay, so, so what the ANC and the National Party government did during the, that period, that's not subject to the jurisdiction.' That was the concern there, a political one." **Former Government Official.**

Burundi

- "…it's interesting how things change and how, really, only one African country has left and, and Burundi left because, because it knew… it's leaders knew they would very soon be investigated by the, by the Prosecutor." **RG**
- "…no one seems to know very much about Burundi's motivations. It's kind of a highly ignored state, uh, in this thing. And we just kind of all assume it, maybe that's correct. That's what I assume, but just that Burundi was just like I'm out of here because we're being targeted and I don't know, to what extent there is, you know, independent legal advice on the ICC being provided to someone like, uh, Nkurunziza, uh, at that time." **MK**
- "…Burundi then for its own reasons, in terms of not wanting international culpability for what they were doing in Burundi…" **South African Government Official.**
- "I mean, I guess it's um, when you're facing prosecu—yeah, so for those first two countries, Burundi and Gambia, when you yourself are in the firing line…" **DT**
- Didn't like the preliminary investigations into its situation because this involved looking at the powers that be therefore chose to withdraw. This was compounded

by the narrative within the AU that the ICC was targeting Africa. Emboldened by events in SA because it suggested Burundi wasn't in bad company by withdrawing. **International Law Expert.**

- "I think with the death of Nkrunziza, things are changing. I mean, that was really one of the stumbling blocks. I mean, um, that you wanted to stay in power no matter what. And he successfully, for instance, um, um, prevented an African Union mission to his country, uh, in and around the election violence, which at the time was, um, back then extremely violent and there was, you know, with a history also of the genocide in the region, everyone was an extremely high alert that, you know, this election violence could spiral out of control, or you have an ethnic, uh, conflict at some point. Um, but I think yeah, with his death then, the main problems basically also, uh, internationally, at least, um, um, then, um, then then disappeared." **MB**
- "I think it's, it is Nkurunziza's government being spooked by the possibility of, of serious investigations, um, into ruling party behaviour. I think it is actually as simple as that. […] [t]he irony for me being that Burundi could have looked at any of their neighbouring countries and seen that the incumbents had always managed to insulate themselves really well from international prosecutorial intervention. Um, and, and Burundi got spooked in a way that, you know, Rwanda, Uganda, and Congo didn't, in the face of international justice." **PC**
- "…I think that part of the Burundian calculation would have been, that an anti-ICC stance was about protecting Nkurunziza or his government from ICC scrutiny, but there was also a hope that this might mesh with a broader anti-ICC dimension that was very strong in Rwanda that was growing in Uganda and Congo, and that was already pretty well entrenched at the AU level." **PC**
- "…also probably a sense in Burundi too, that Nkurunziza never had complete control of the state in the way that Kagame does in Rwanda or Kabila, at that time, had in Congo. That, you know, Nkurunziza had a pretty fractured state apparatus at his disposal, um, incredibly factionalized, um, you know, there were armed groups kind of marshalled against him at that particular time, and, you know, maybe there was an anxiety there that he wouldn't be able to use the state machinery to protect himself against the ICC in a way that his neighbours had done so successfully." **PC**

The Gambia

- "And then obviously Gambia also a tricky one, right? Because you kind of have, you have a very dangerous, but unhinged man, um, kind of operating who's under literally zero, uh, of prosecution by the ICC. I do think he committed, you know, human rights violations and possibly even crimes against humanity, probably crimes against humanity too. Um, but not to the scale that would warrant intervention from the ICC. The ICC had never agitated towards The Gambia and he decides, you know, Jammeh decides, 'well, you know, why don't I join this caravan?' Um, so maybe, I don't know, maybe that was more about regional politics. Maybe it was more, um, just his whims. Um, I think at that point, the guy like his government had been eviscerated of any kind of reasonable independent, uh, voices. So it was really, you know, he was rubber stamping, everything." **MK**
- "Domestic political dynamics as opposed to foreign policy, um, you know, [00:44:00] initiatives or, or, or views. Um, and I think in all three of those. And in The Gambia to the, the ultimate reasons for, um, the softening of the approach, it's entirely entirely domestic. And then when there's no one, you know, when there's no reason to cry, foul or to express it, ICC opposition." **MK**
- "…The Gambia, because they had a particular leader who the moment he lost the election, that [the decision to withdraw] was done away with…" **South African Government Official.**
- "…but obviously the, the individual side aspect of, I mean, just using Gambia as an example, the former president wanted out of the ICC and the new president didn't – so, it was very much a personal issue, but I think it was also linked to – he was trying to show a new start, respect for international law – that kind of thing." **South African Government Official.**
- Jammeh not fond of justice and accountability. The withdrawal was bound to happen. Unclear what the motivation was beyond an 'allergy to justice'. Not sure that there was so much planning behind the decision. But regional politics would have been relevant because it gives a convenient political argument to justify withdrawal. **International Law Expert**

- “I had a pretty weak grasp on The Gambian dynamics, you know, exactly what was sort of driving that – other than again, a sort of Burundian-style concern that the ICC might be scrutinizing state behaviour too closely, and that this was an attempt to get the Court out, um, at a time when it was, it was threatening to get very involved and to, and to pay very close attention to state atrocities, um, particularly after the stadium massacre. […] I sort of see Gambia and Burundi. In very similar terms that this was about two African states wanting to get out of the Court in order to protect themselves.” **PC**

Kenya

- “Kenyatta and Ruto made the most of it. I think they really were the leaders, I think, without, without their push, I don't think the AU would have been nearly as strongly anti-ICC as it was. Kenya is an important country and an important economy, and I think they really drove that, that… and they were very shrewd because they didn't want to become ‘al-Bashirs’ and be, and be outlaws, so they appeared voluntarily and they, they simply sabotaged it quietly at home.” **RG**
- “They also, you know, reacted very, um, aggressively, I forget when it was maybe 2015, 2014, I don't know. But by sending, you know, like 85 MPs and senators to the Assembly of States Parties, which everybody at, uh, you know, at the ASP thought was so unnecessary and so disruptive not to mention that the cost would be taxpayers. They know that the government paid everyone to go and you would just see, you know, and it's in an attempt to really intimidate, um, not the ICC, right? Because the ASP is not an ICC conference. It's a state part, it's a diplomatic conference. So, um, they did that, but I think, you know, in part, yeah, um, there were probably some people at that kind of diplomatic level who are very frustrated by the way that the ICC was proceeding, uh, in Kenya. Um, but more so I would say they were frustrated, um – though, I think they should have been frustrated – with the way that the ICC issue is being dealt with at the UN Security Council in particular over whether a deferral would ultimately be granted, um, or not, and certainly felt, I think, like they had an obvious case for the deferral and just got really pretty much nowhere, except they did manage, rather remarkably, to get a vote at the Security Council on it, again, maybe around 2015, 2016, um, which, which upset a lot of, uh,

states that never wanted to vote on a deferral. Uh, but they did manage to get a vote. Um, and I think there were like nine abstentions or something like that, which is why it ultimately didn't pass. Um, but so I think there are dynamics like that, that fuel things. I mean, obviously in Kenya you do have a clear, I think you do have that dynamic, but you do have probably a clearer instance of what you were talking about, which is, um, you know, this it's, um, the head of state question just, um, you know, extrapolated or not extrapolated, but like projected onto a particularly uniquely Kenyan context of having had that election come together in 2013, that brought rivals, um, together and the Jubilee, um, Alliance. Right? So it's a little bit different than say Bashir, who is just kind of almost singularly opposed to the ICC. This was, in Kenya, it's like an organic growth of anti ICC, um, opposition that grows out of an opportunity to fend off, uh, the prosecution of two private citizens who ended up becoming deputy president and president." **MK**

- "… there was nowhere anything near mass withdrawal and I think even Kenya didn't actually ever want to withdraw. I think they were [inaudible] because they were annoyed with the way they were being treated. And, as I said, I don't know why it was such a big issue to let Kenyatta appear virtually – it's now happening with COVID…" **South African Government Official.**
- "…[Kenya] pushed very hard for, for amendment of rules of procedure to allow him [Kenyatta] to, to, to, um, engage with the court, uh, on a video link…they [Kenya] were very much, um, vocal and critical of the Court at the time. But since then, the issue has also gone away. They are re-engaging strongly with […] the Court again… they […] [were] elected to the Bureau." **AS**
- "I think the Kenyans never wanted to, um, withdraw from the Court or anything like that. They was just, they were just not happy with the fact that the leaders were, were now being, being investigated." **AS**
- "the initial threat again is a kind of, self-preservation one it's, uh, you know, w where, you know, were kind of, um, angry with the Court because of it's going after Kenyatta and Ruto, I mean, you know, even though that was a *proprio motu* case, I think that Kenya wanted to send the political message, initially, that, um, that the Court was an illegitimate actor and, and withdrawal would kind of symbolize that. So, so what gets more interesting is why, why don't they withdraw? And I think that,

I think it's because of a, a kind of a calculation of different interests. I think that Kenya ultimately came to, to the conclusion that you could have it both ways – that you could both, um, stay inside the fold of the ICC, which might give you some influence over how the ICC operates, it gets you a seat at the table at the ASP, it enables you to play the kinds of games that Kenyatta and Ruto were trying to play at successive ASPs in trying to build a kind of an African bloc, um, to change the Rome Statute and that sort of stuff. Um, and you could use other levers to protect yourself, um, against ICC investigations. And, you know, and I think by that stage, Kenya had already worked out that they could run rings around the ICC and the Kenyatta and Ruto were never really going to be threatened. […] they saw the ASP as a really useful diplomatic arena that Kenya, Kenya has, I think over time seen itself – and I'm not sure that all African states agree with Kenya on this – but Kenya saw itself as one of the, the African leaders within the ASP, in terms of, you know, putting forward amendments to the Statute, you know, trying to make political points through the ASP – and I think they ultimately didn't want to lose that influence and so better to stay within the ICC remit rather than trying to beat it from the outside. I think that's often been Kenya's game. I think that's where their interests eventually landed. […] could carry an AU message, which gave it a certain amount of clout in Addis and it gave it a certain amount of clout in New York. Um, and I think that mattered to Kenyatta in particular." **PC**

- "…the political costs that withdrawing from the ICC entails doesn't make much sense because the case collapsed, this is where this is where the law and the procedural law, criminal procedure kicks in, in, in your understanding of the ICC and how the ICC operates and what are the limits of what they can accomplish the farther away from the courtroom in The Hague. Uh, I worked as a criminal lawyer and doesn't take a genius, if you come from my background, understand that you cannot build a case if you have no access to documents, no access to crime scenes, no access to witnesses, because they have been intimidated, threatened, bribed…" **MB**

Botswana

- “You know, I, I really can't answer that one. I really don't know, but it's, again, it's a question of leadership obviously, to something that appealed strongly to the former presidents of Botswana. Um, uh, you know, their, their, their, their ambassadors, and their, their government have always been, uh, absolutely consistent in their support for their ICC.” **RG**
- “Botswana openly favours the ICC because it strongly believes in and it is committed to international law. Botswana believes that once a country signs any international law, regulation or treaty, it should adhere to it by all means regardless of other considerations. As a signatory to the Rome Statute of the ICC and among the first to ratify the Kampala Accords that increased the scope of operations of the ICC, Botswana has remained the biggest supporter in spite of it being a small country in Africa. . This is primarily because Botswana regards law as supreme and believes in formality such that once it signs any treaty or law, it is compelled to uphold it without question. For example, Botswana openly declared its willingness to arrest Bashir of Sudan and hand him over to the ICC for war crimes and crimes against humanity in the Darfur region, and has openly voiced staunch support for the ICC to the chagrin of other countries including allies, such as Kenya which voted to quit the ICC. These demonstrate its commitment to, and faith in, international law. Similarly, Botswana publicly differed and criticized South Africa, the regional hegemony, when it failed to arrest and hand over Bashir to the ICC during his visit there. Indeed, Botswana’s leaders had scruples unlike some of the leadership who were implicated in human rights violations and poor governance. As one of the longest democratic and most stable countries on the continent, Botswana has high regard for international law and its beneficial impacts in ensuring that African governments are responsible, accountable and transparent, especially, as many African countries’ democracy seem to be floundering. Democracy goes with the rule of law and it is part of its national values, hence its support for the ICC, and opposition to countries that violate democratic values including rule of law. It seems that Botswana does not have much faith in laws, treaties and regulations originating either at the continental or sub-regional level in having positive impact on Africa’s behaviour, actions or democratic credentials. This is why it places much faith on international law to hold Africa accountable and responsible.” **Dr Bertha Osei-Hwedie (BOH).**

- “Botswana seeks to project an international image of a country that is principled, independent, informed, promoter of democratic values, reliant on soft power (diplomacy), pragmatic and active in global affairs. This explains why it has taken positions that make it out on international issues. For example, Khama’s Botswana openly criticized lack of freeness and fairness of elections in Mugabe’s Zimbabwe in contrast to the rest of SADC countries. Similarly, Botswana emerged as the only country bold enough to criticize China for poor construction of social infrastructure and the electricity generating plants which faced delays and failed to function effectively upon completion. The main reason it projects such an international image is to have a voice and impact on global, regional and continental agenda. Thus, its behavior towards the ICC is not an exception but a continuation of its support for international law, organizations, and democratic values. Botswana believes in multilateralism, international cooperation, and friendly relations with all nations, especially, Western democratic ones.” **BOH**
- “…let me state from the onset, I don't really know. I think they've may have been issues that they were small country, small economy. They want a close relationship with Europe and not wanting to endanger that. Then, I think, there would have been issues also as to the personality of the president at the time, President Khama. I think he personally thought it [the ICC] was important.” **South African Government Official**
- “Botswana, of course, was a very strong support of the Court. Lately, they've been more quiet. Um, I think there's also been a change of government so that maybe their foreign policy, um, priorities have changed. I don't think that they are negative, or anything, against the Court… they just not focusing so much on the Court and they also don’t have the judge anymore, uh, on the, on the Court.” **AS**

Guinea

- “…there is the preliminary examination into the, the stadium massacre [in Guinea]. But along with that, there was, you know, I think there's some kind of commission or this group with French, maybe British and Guinean officials or something like that. That's been pushing to prepare for the trials, that's kind of helped out. So there's

been kind of, you know, more states, um, support for justice for this, um, for the massacre itself and state involvement directly on some of these issues and a government at least willing to, to see what this would look like now, I think it's a much more, um, Uh, well, they, I think there are a lot of political sensitivities as to how, how to bring some of these perpetrators to account and maintain, um, political stability in the country. But so I think there's a lot of things actually happening. It's more difficult to understand than if you just say it's the relationship between the ICC and Guinea, I think there's lots of other actors – in Nigeria, too – I know that because Wayamo Foundation where I work is one of them, that are kind of, almost intermediaries, um, acting to translate, uh, knowledge, translate law, like legal expectations, both ways up and down. Um, kind of, yeah. So, um, trying to encourage the path of least resistance towards meaningful justice and accountability and thinking of the ICC's activity as almost umbrella, which helps to push and pull actors towards actually addressing atrocities in a meaningful way" **MK**

Gabon

- "Uh, I mean, I, again, I don't, it's not a country that I've spent a lot of time reading about, but what's interesting there, I just think is that Jean Ping was the former chairperson of the African Union Commission, I think that's right, um, in like, the late 2000s, early 2010s, and was quite vociferously against what he saw as 'Ocampo justice', and you know, was very much involved in, uh, in the early pushes of kind of pan-African, um, anti-ICC, sentiments over Darfur, where I guess, Bashir and you know, the Security Council stuff. And then is, you know, now in recent years, um, since he left the African Union, you know, a, a senior politician in Gabon and he actually ended up asking the ICC to, um, open a preliminary examination or an investigation, I don't recall exactly, probably both, uh, um, into the situation there. I think the ICC ultimately decided no, but you know, that's interesting too, um, in this kind of narrative is how you, you know, how certain actors kind of, um, can act as almost chameleons depending on the situations that they find themselves in. And I'm sure there was something, uh, or my sense, and from what I remember was that I thought there was something self-interested in, uh, in Ping's, uh, request for ICC

intervention. Um, but it was just remarkable that within a span of sort of 10 years or less a person who had, you know, very strongly, um, you know, professed to be against the ICC was now requesting ICC intervention specifically into the country where he was a politician. So, um, you know, I do think there's a lot of – as there is outside of the African continent, of course – a lot of pretty severe self-interest, uh, that is motivated. And maybe that's one of the more. You know, clear ones are appears to be clearly motivated by his own self interests in terms of, you know, getting to the ICC, the targeted his opponents or whatever, which would then provide them with a clear route to power in Gabon. You'd have to double check that…" **MK**

Namibia

- "Probably Namibia being close to South Africa and SWAPO being close to the ANC. Yeah, probably that. And then, you know, once they thought about it, realising that this wasn't the best thing to do, so they quickly shut up about it." **South African Government Official.**
- "At one stage, Namibia also had this idea that they will withdraw, and, I think, they mentioned it in their statements, but they never really acted on, on this." **AS**
- "I don't know, but it was definitely not Namibian issues. It may have been other states that, that, that tried do, um, um, get them as an, as an ally in those, but it was… definitely Namibia doesn't have an issue with the ICC, so exactly what I don't know… It would be interesting… I don't know, I'm just speculating, Zimbabwe -they seems to be close to but I don't know if Zimbabwe ever spoke about the ICC, um, but maybe there was concern in Zimbabwean, um, circles that, that they can be a referral. And, but I never – that is speculation – I never got… never seen anything that I saw that Zimbabwe is active on the ICC issue. Egypt, for instance, I think is more concerned about the ICC – as a non-State Party about its jurisdiction." **AS**
- **Regarding relationship with SA:** "I don't think so. Not that I'm aware of." **AS**

Ghana

- "…in the Ghanaian case […] I would imagine in some of the other supportive cases, I think first and foremost, it's, it's about sort of good old fashioned neo-liberal international politics. But I think, you know, a state like Ghana in the last 20 years has gone through a political tradition trajectory of, you know, being seen to be a faithful international partner, that this is a country that had, you know, pretty volatile politics in the 80s and 90s has kind of settled down into a model democracy. Um, and that persona has given it real purchase internationally, but, but international owners and international investors, um, want to partner with a state like Ghana because they think that it's a trustworthy…. democratic actor with a kind of neo-liberal economic outlook that is kind of consistent with the international orthodoxy. And I think the, from Ghana's perspective, the ICC sort of fits that you want to be seen as a good liberal democracy that adheres to the rule of law. Um, and, and so therefore you wanted, you know, not only, um, practically, but rhetorically, uh, support the Court, um, you think that it, it kind of carries favour with all the kind of international partners that matter to you. And I think it's similar with the likes of Senegal and Botswana. These, what these states have in common is that they are talked about in international circles as the few predictable African liberal democracies that you can do business with. Um, and, and I think the ICC kind of fits within that. I don't really think it's necessarily got much to do with the ICC specific. I think it's, it's weird, those states think the ICC fits in sort of, kind of a bigger picture of sort of liberal democratic norms. Um, and there's a kind of neo-liberal economic outlook that's wrapped into that as well. Um, so these are like, these are like the good students." **PC**

Uganda

- "…nor do I believe that Uganda has that much greater interest in international justice altogether [the South Africa]. Uh, but Uganda invested money, time and resources, including human resources in its embassy in The Hague. Uh, an embassy that throughout the decades now has been quite collaborative." **MB**

Behaviour

- “You'll find African states ratifying a lot of treaties – human rights treaties – and I do sometimes wonder whether they're not being pushed and doing it in return for aid and things like that without actually being committed to what's actually in those instruments.” **South African Government Official.**
- “I love this whole discussion around abstentions because, um, you know, states, if we talk about the UN in general states used to just rely on the abstention because they didn't really have an opinion about something and they didn't want to commit to somethings o they just used it knowing it wasn't technically considered to be a vote and therefore they would have to stay out of it without actually revealing any real personal sense or bias in favour of, or not in favour of a certain topic. So it was, you know, almost like a get out of jail card where they could just throw that in if they didn’t really care enough or didn’t really have an opinion or didn’t want to upset anybody… what I've noticed is that it's become an, a very negative thing. So people no longer use the abstention as a legitimate, um, way out of a tight situation, but now it's become more of a negative thing… Generally, it means the state doesn't support resolution being voted on, but it doesn't oppose it enough to vote no. Or it's used as a way to at least avoid voting against a resolution which can still help resolution to pass. So it's, it's being viewed as a negative thing is not really fair. And so people are judging it and criticising it as – especially in, for example, the South African case – as, um, just another way South Africa is being inconsistent in terms of human rights situations… but I disagree with this negative judgmental overview of using the abstention because it can actually be a very strategic foreign policy choice. And states can use it knowing full well that a resolution will be able to pass, but they're not involving themselves in some kind of political fallout as a result because they're not making a very clear cut decisive foreign policy statement either way. So unless they offer a speech and explanation of the abstention, then basically what you have is states guessing why a state did what it did, why it's abstained.” **SG**
- “If you look at the public statements that are on record in, in the ICC and meetings, et cetera, and then you can take that as gospel that that does represent what the states. And means and attains and why it's motivated to do so etc etc , especially if there are any kinds of explanations or interpretations by the government itself that

declares them. And then it's publicly noted. Yeah. Cause you can take that as, as the law, essentially as it is what it is." **SG**

- Regarding abstention or reservations (e.g. Liberia's reservation to read the Withdrawal Strategy): "…or there are no resources or maybe there wasn't a human resource available to actually do the reading and make the decision. And it's also about, um, the link between who it is making the decision and the home government. So, who is the delegate that is tasked with this job and what level of authority do they possess and what kind of decision-making does the government have - is it centralized or the decentralized? So are people just allow to do what they like and it's, you know, the president or prime minister, whoever it is, trust that person that they send now to do this job, or do they have to wait for instructions because that would delay things. And then they make a decision that they may regret because they don't have proper input from their own government." **SG**
- **Regarding small states:** "And there's also this, this really interesting notion of small African states and like Burundi, The Gambia, et cetera, are small African states, and as opposed to Mauritius, which is also small, but far more democratic, um, uh, in terms of, you know, its, its reputation internationally. So, um, you know, would small states, Feel more protected or less protected, um, and who would be protecting them? So if Burundi, okay. Burundi withdraws from the ICC and it's, it's, it's got a very volatile neighbourhood anyway. Um, so what it's, how would it feel protected, um, by its regional partners or in an alliance with AU would protect it, or it's just interesting. It's interesting to see their own behaviours, small states and whether or not they rely on. Um, international forums or local regional forums or who it is that they are getting their support from their alliances from." **SG**
- "Um, no, but somewhere in there, I mean, I think that, that that's, uh, you know, when we're doing this type of work and creating these kinds of analytical categories, they end up being. You know, invariably, this has nothing to do with you, but I think always, um, in anybody's work, they end up being a little bit too neat. Um, and the reality is often like quite a lot messier with moving parts. And one thing, for example, that I noticed, excuse me, um, when, you know, states like South Africa were withdrawing, um, there was also like there was what was happening maybe at the highest political levels, but then underneath that there were other things happening.

Like, you know, um, the state's most serious international lawyers being extraordinarily frustrated with them. How the ICC was actually responding to, um, issues like Bashir's visits or to how the UN Security Council's relationship, uh, was going with, um, the ICC. Expressed almost, I want to say that there's like, there's another level to it, which is almost, um, intellectual or like an intellectual legal frustration with the, with the actual happenings of the ICC on a more granular level. And I think some of that stuff also very much fed into, um, you know, the relationships, uh, you know, good and bad that the ICC had, um, with states it's just harder to measure those, especially in international relations because it's. This is happening again at a more granular, direct level than, you know, just state decision-making at the highest levels." **MK**

- "I do think on the other hand that like, you know, some states are just, and some governments in particular are just really, really immature in the sense of being overly sensitive to developments at international courts and maybe self-interested least so and so, you know, in my opinion, the Zuma government was very, you know, um, frenetic and anxious about these things and overreacted to these things with the withdrawal and, you know, and they may have realized that that would, you know, that would sell well with a certain constituency that they had, but they were also, you know, I think they were rather immature. Um, so that that'll that'll affect things, right? That like, you know, if you have a really, um, confident, uh, government, mature government, you know, you might have a scenario where you're more like the UK, uh, when it was under preliminary examination in Iraq, over its alleged atrocities and the, like, you just never saw it kind of throw a hissy fit or, you know, freak out or even say anything particularly aggressive or emotional about the situation and in the end, you know, it bode it's time. I'm sure it would have, you know, become more aggressive, had the examination proceeded to investigation, but it didn't. And in the end, like they, you know, they resolved the problem – an international relations problem that they had – rightly or wrongly, uh, without having to resort to dramatic action and lots of other states in the United States, Zuma's South Africa, the Philippines under Duterte, you know, they don't do that. They just, they just kind of, you know, they, they, they have hysterics, like, yeah. Like it's not dissimilar to yeah. Um, emotionally immature people." **MK**

- **Regarding preliminary investigations**: “I think that's the advice that states, um – and get an appropriately so – that if they find themselves, you know, if they find situations on their territories with, uh, you know, under preliminary examination, or even to a certain extent investigation, um, that the wisest course, um, and the most productive course is to cooperate to a certain degree and to find the means within, you know, complementarity writ large to preclude the type of ICC activity that the state wants to avoid in the first place.” **MK**
- “…some of the AU states would have been quite aggressive against the ICC. That was mainly coming from the states that were not signatories. [For example,] Mugabe’s Zimbabwe…” **South African Government Official.**
- “Within SADC, for example, you also got to look at the liberation movements… the former liberation movements… […] Namibia and South Africa’s struggle was very much interlinked because South Africa was occupying Namibia, so SWAPO and the ANC are very close. Namibia is quite small but the ANC was close to FRELIMO and to MPLA – sort of Marxist-/Soviet-supported liberation movements. They were not close to ZANU. That's, I think, the thing that's often overlooked[…] and then Botswana, historically, not too close to the ANC at all. The ANC was close to Tanzania, although Nyerere had an open policy to the PAC and so on. But anyway, all those historical issues need to also be taken into consideration.” **South African Government Official.**
- “Other states parties, especially Nigeria and the DRC has always been very strongly supportive of the Court… […] In 2018 there was the, um, um, celebration of that in The Hague and the, um, uh, uh, Nigerian president attended – I can’t recall, the, um – DRC attended at the level of minister of justice or minister of foreign affairs – I think minister of justice… so these states did openly, and without being contested, voice their support for the Court. So, so while many other states in the, um, in their interactions will also voice support for the Court, but not, not to, to that extent, but these two are specifically running ahead” **AS**
- **Related to IO behaviour:** “I mean the AU is a member driven organization and so the Commission cannot really enforce much that my mistakes don't really want to see. In the European Union case it's slightly different, but they also have, uh, limitations here. So most international organizations, um, you need to… the secretariat has to

carefully listen to what their stakeholders actually want. Um, yeah. Well, then there can be breaks in between, of course, the inner workings – and the question is what faction actually takes over. Or with the inner African culture, I mean, um, the, the assumption is always like, 'hey, decisions are taken by consensus' and that makes opposition, um, more difficult. So whoever actually, I think, um, comes up with a strong, uh, um, position first and then manages to rally some support behind whatever it is, and then attach a little bit of the usual rhetoric, um, uh, that comes up, then you do have a quite good chance that, you know, even those who are not necessarily a hundred percent in line with what you want to say or what you want to do, might still supports you because they feel like, 'okay, it is part of this organization that we should, uh, um, support, uh, this or this or that.' But, um, yeah, I mean the African Union does have all to a culture of taking common positions in many policy fields, so, um, that's not the first – it's not the first time or the first incident. But maintaining these positions, um, uh, overtime time, that's really a challenge." **MB**

- "Like a lot of the analysis of this kind of issue has often been very set piece at very particular moments. You know, often treating these states is very static and their interests vis-à-vis the ICC as being very static when, of course they not, you know, they're highly contingent, highly contextual. What a state prefers in one year can, can change by the next. And, you know, having a, like a really flexible methodology that can capture that I think is really important." **PC**
- "…complementarity informs the strategies of self-interested leaders to the point in which before complementarity kicks in and the, and the ICC steps in and takes over the investigation, uh, even, uh, uh, guilty leaders or leaders who have reason to believe they would be the target of an ICC indictment, uh, have an interest in cooperating with the Court, as opposed to just blatantly say, 'no, don't, don't poke into my own business, you know, stay away.'" **MB**

Withdrawal Debate

- "…there's no, I could never… experience that there is a kind of, uh, any kind of unity on the, on the ICC, in the, in Africa… they all very divided on this. And then by many other issues…" **AS**

- “So my impression always was that there is a bedrock of strong support for the Court in, in, in, in, uh, in Africa, and I think it was a 2016 Summit, where, at the level of foreign ministers, the issue of the withdrawal was discussed and where a number of states... kyk vir…. DRC Nigeria… ses, sewe, na eight… I spoke out strongly against any AU decision on a mass withdrawal – so-called mess withdrawal – also because states just simply identified, but the AU’s in no position to tell member states which international treaties, they can become party to or not – it doesn't have that power, it doesn't have that power –authority remains within the state's concerned. Um, so, so the only issue around the Malabo Protocol and the great push for, uh, for, uh, for the, uh, separate, uh, chamber… criminal chamber... And I was also involved in the Malabo Protocol negotiations – was for me, a real process. Even… there was strong action from certain African states, uh, against the court, but that mainly non-African states lead by – um, um, non-Rome Statute States – led by, um, um, Sudan of course, for this withdrawal and to have this special chamber established. But, as we know the Malabo Protocol has also died a silent death in the meantime… Nobody ever refers to it anymore. It’s not been acceded to by any state so its withering away there.” **AS**
- “Oh, and then you will also recall, that parallel to that was the initiative from the AU to, to have the question on the relationship between Article 27 and Article 98 put before the ICJ, because argument was that the ICC is a criminal court, and now it basically pronounces on, on pure international law issues in its treaty interpretation, and that, you know, uh, the final arbiter actually will be the ICJ. This situation that you have is you've got two different courts, two completely separate international courts that now has jurisdiction over the same international law question. And that was never foreseen when the ICJ was, was established. You know, this actually was kind of a consequence that I think nobody has foreseen, um, that gained some traction and I know Dire Tladi was involved as well in the, in the, in the… at the UN, there was, within the African Group, this process of formulating the question for an advisory opinion, which is almost the most important thing – an advisory opinion – because wha the Court then thing takes up. But I think what happened there, was that there was also a realization that, indeed, the ICJ may agree with the Jordan case in the… before the Appeals Chamber. But, it is not shut that, you know, they will

actually come to a different, um, uh, decision, uh, from that of the, uh, the, the ICC. And in any case, then, which the decision applies within the ICC? That is unchartered territory that that we don't know. For instance, if the advisory opinion goes against the ICC, which one then applies? An advisory opinion is just that – it's an advisory opinion. An Appeals decision is a binding decision, uh, within the context of the ICC. So, so, so, that um, initiative has also been, I think, totally abandoned. I haven't heard anything of that." **AS**

- "…those countries who are not members of the Rome Statute that can influence the, uh, the operation of the Court. I mean, this is also quite clear. I was thinking when we look at the case of Sudan…" **MB**
- **Believes there was convergence among African states** "…the motivation was very problematic here. It was just to, um, you know, prevent the, uh, potential prosecuting… prosecution of acting, uh, heads of state. But, uh, it was that one issue, uh, where African governments really almost on a single page, which doesn't happen that often… […] what you could see in the relations with the ICC is that I don't really think that Africa was acting out of a marginal position. Um, you know, you could actually see that, um, because there was so much unity, there was arm-twisting um, they put it on the agenda of the Security Council." **MB**
- "Well, the tactical goal was that no African acting head of state should be prosecuted. And then if we look at the list of prosecutions, what have we seen? No African, no acting had was ever prosecuted. And it doesn't look like this will change in the future. So they also reached their own, uh, tactical goals." **MB**
- "… it came to a head really with, um, al-Bashir in 2009. […] So, 2009, you can locate as ground zero for where this whole blew up into pieces, and it's never really recovered." **Prof. Tim Murithi (TM).**

Prosecutorial Strategy:

- "And, of course, now we all know that the first prosecutor was maybe sometimes too quick off the mark and maybe it should have been better to wait a bit before you take on political heads of state. It is, of course, going to be controversial and, of course, they going to, to push back against it. But that's a philosophical kind of

question. Um, but I, I think that his, um, that his, his, his actions against the heads of states were premature. I mean, when Richard Goldstone started the… was prosecutor for the ICTY, he was often criticized that they didn't go for the big fish, and his idea was build things up from the ground and we will eventually get to them. And when we eventually got to them, they were not, not heads of state anymore and it was much easier to have them sit in there." **AS**

- "Yes, because we certainly did have a few bad prosecutors. I mean, Moreno-Ocampo, man, yeah, he was bad for the ICC. And then we had lots of hope when, um, Bensouda, um, took over. But yeah, she turned out to be just too lightweight." **Former Government Official.**
- "d it seems that Ocampo, um, if I think back he was kind of a Playboy. I know that there was some scandals as well involving human and, um, and journalists, but it's as if he, he got the position, but he didn't really have the experience. If I'm, if I'm not mistaken, he, he came out of nowhere and he didn't have this passion for the ICC to, um, to make it work. If I compare him to [inaudible] who absolutely had a passion for the Yugoslav tribunal and fought to establish the tribunal, it, it was as if Ocampo – he was at the helm, but he wasn't working for the, for the, for the ICC. It was as if he was busy with other things. So I know that maybe it's just my own bias that, um, that I just, maybe didn't like the guy, I don't know." **Former Government Official.**

Formation of the ICC

- "…I think about the, the second session or so of the, of these Ad Hoc Committee meetings, Canada, New Zealand and Australia, they started to identify participants saying the same kinds of things they were there, um, in favour of the ICC and that was the nucleus of the Like-Minded Group…. We met every morning before, um, sessions to discuss ongoing things and to kind of determine strategy. Um, but at that stage, no other African countries were seen to be actually participating… it's sad to say, but the African bloc – where they really came into their own was, um, in those first Ad Hoc Committee meetings, the last two days was spent preparing a report for the General Assembly." **Former Government Official.**

- “Um, in the meantime, and there was another feeling and that was that South Africa were part of a bloc in Southern Africa and that was SADC. So the feeling was, we can't just go solo with all this thing, but we should perhaps try and get SADC activated. And I held a second workshop and that was, um, for the SADC countries and we invited SADC countries. Most of them came and it was also a two-day workshop. And from that workshop, Lesotho, um, emerged as country, which, which was, um, indeed interested and, and, and wanted to get this, uh, participate in a, in a more meaningful way. And then there was a particular participant from Malawi who was also very, um, um, positive towards this whole thing.” **Former Government Official.**
- “We try to get this SADC group to also meet in regular fashion, um, just like the Like-Minded Group did, but it just never really got off the ground. So we did the next best thing and then we involve some of the SADC countries in the Like-Minded Group. So Malawi joined, Lesotho joined, Namibia and Botswana – they joined.” **Former Government Official.**
- “Um, so the point of this being that African countries – they arrived at the Rome Conference, but due to a lack of funds, they couldn't bring huge delegations. They also lacked the, the expertise to field a number of people who would be able to negotiate in various of these, of these committees.” **Former Government Official.**
- “So Africa was left at a disadvantage of participation at the Rome Conference. And they weren’t on this whole thing that ‘this Court is going to be created, but it's going to target Africa,’ um, that, that wasn't the talking at that stage. Um, I think there was an awareness that, if we look at Rwanda and the Rwanda tribunal, then basically the ICC is probably a good idea, but it was lift more or less to the European bloc – the Like-Minded Group – to negotiate this and kind of in the trust that it will produce something good.” **Former Government Official.**
- “…the Yugoslav tribunal, um, under Goldstone… the enthusiastic guys who said, ‘we must go after Karadžić and Mladić now.’ And Goldstone said, ‘no, we can’t. We don't… we haven't developed our systems, we have no skill. And we first have to learn how to crawl before we can walk.’ And that's why they went after a low level camp guard at the beginning - Tihomir Blaškić, - and from Blaškić they moved up the ladder progressively to more senior guys until they eventually did get to Karadžić and

Mladić and they went after the leaders, but it was only after a period of learning the ropes. Now, the ICC, of course, [inaudible] people from the Rwanda and Yugoslav tribunals who have experience, um, and despite that the ICC works with different rules and there are different procedures that apply to it. Um, and you would have thought that they, they would first – to establish themselves – also go after the easier cases, more simple cases too. And the moment you do that, um, then you build a track record of success and people can get to see that, 'yes, you can do this. It is a fair procedure and process,' and then you can start making a case for going after more senior people. But yeah, if you want to go for the first price right at the start, and if you then fall flat on your face because of international protection or whatever, then yeah. Just set yourself up for failure." **Former Government Official.**

- "I remember the talking to a couple of senior people in Kampala, one of the things that they talked about was… they could see the ICC becoming a different institution, even in those weeks in Rome. You know that there was, they, I worked they'd cottoned onto it, but there were games being played. That they went there for one set of reasons and could see the negotiations going in very different directions, particularly because of the obsession with getting the US to sign up. Um, and, and, the kind of compromises in the construction of a Statute that would be required to, to get the US on side. So I think there was even a bit of disillusionment for some African states, even by the end of the Conference, even by the time the Statute had been formulated. But I think they still signed up to it in the hope that, that the Statute might still be used for the kinds of purposes that got them to Rome in the first place. Um, but I think what's important there is a sense that a little bit of disillusionment had started to kick in for some African states, even by the time the Statute was being signed. You know, it's not as – at least in my reading – it's not as though that happens post-2002. Um, it's there even in '98, um, just because of the way that Rome played out. And, and I think that that legacy then influenced some African states engagements with the Court, even by 2002, there was a sense that 'this is a different beast. This isn't necessarily what we thought we were signing up to.'" **PC**

12.5. Appendix 5

Explanation of Main Factors by Country

Burundi

Burundi signed the Rome Statute on 13 January 1999 and ratified the Statute on 21 September 2004. Burundi joined the ICC under his predecessor, Domitien Ndayizeye's regime. The late Pierre Nkurunziza ruled Burundi as president from August 2005 until his death in June 2020. Nkurunziza's regime has been accused of violent repression and committing crimes such as arbitrary arrests and detentions, torture, and extrajudicial killings.[1045] Burundi withdrew from the Court just over a decade later on 27 October 2016 – coming into effect one year later on 27 October 2017.

There is consensus in the existing literature[1046] and from interview data that Burundi withdrew from the ICC to avoid investigations and prosecutions.[1047] In fact, Bâ's analysis overtly challenges the discourse used by Burundi in the country statements analysed in Chapter 6, which had justified exit behaviour on the grounds of sovereignty (complementarity and the will of the people) and the ICC's 'disrespectful' behaviour: "Burundi's withdrawal has less to do with sovereignty and national pride, however, than an attempt by state officials to shield themselves from potential prosecution for war crimes and crimes against humanity."[1048] These reflections are consistent with the head of state

[1045] Amnesty International 2020.
[1046] As of November 2021, no single case studies of Burundi's withdrawal from the ICC were available with the exception of a research brief written by Stef Vandeginste, in which he aims to show that withdrawal was rational, rather than reactionary, behaviour by Burundi. The brief offers several rationalist reasons for Burundi's exit, but does not assert any of these explanations are more or less convincing. The reasons given included that Burundi historically has not demonstrated substantive commitment to the Rome Statute, withdrawal was the "next step" in Burundi's international fallout over its 2015 election controversy, there are few costs to withdrawal, the context of other African states questioning the ICC's legitimacy, and self-legitimation strategy domestically. (Vandeginste 2016).
[1047] Ssenyonjo, 'State Withdrawal Notifications from the Rome Statute of the International Criminal Court', 68; Bâ, *States of Justice*, 149; Southern Africa Litigation Centre, 'ICC Withdrawals: Is Africa Running Away from Justice?', 6; Goldstone, Key Informant Interview; Kersten, Key Informant Interview; South African Government Official, Key Informant Interview; Tladi, Key Informant Interview; International Law Expert, Key Informant Interview; Clark, Key Informant Interview; ICC Academic, Key Informant Interview.
[1048] Bâ, *States of Justice*, 149.

interest factor. Malte Brosig reflected that Nkurunziza "…wanted to stay in power no matter what…",[1049] which is also consistent with the head of state interest explanation for Burundi's exit behaviour.

As of November 2021, no single case studies of Burundi's withdrawal from the ICC were available except for a research brief written by Stef Vandeginste that was written shortly after Burundi deposited its notification of withdrawal.[1050] Vandeginste aimed to show that withdrawal was rational, rather than reactionary, behaviour by Burundi.[1051] The brief offers several rationalist reasons for Burundi's exit but does not assert any of these explanations are more or less convincing. The reasons given included that Burundi historically has not demonstrated substantive commitment to the Rome Statute, withdrawal was the "next step" in Burundi's international fallout over its 2015 election controversy, there are few costs to withdrawal, the context of other African states questioning the ICC's legitimacy, self-legitimation strategy domestically, and the speculation that the OTP might not receive authorisation to launch full investigations into Burundi. Vandeginste argues that it is not convincing that withdrawal is a strategy aimed at obstructing the ICC's work since, as shown by Kenya, obstruction is possible from within the ICC.[1052]

Burundi's behaviour in relation to the ICC is best explained by head of state interest, but domestic factors are a secondary causal factor. Burundi's practiced voice behaviour on two occasions before its exit behaviour: once in 2013 in its UNGA General Debate statement and once in 2015 at the ICC General Debate. The 2013 statement was an articulation of support for Kenya, which was a demonstration of "…total solidarity to the Kenyan people who have just democratically elected their leaders" and called for the ICC to review its operational approach.[1053] Burundi's declaration of solidarity with Kenya came after its 2013 elections, which suggests that this is not a demonstration of solidarity politics with a fellow state. Rather, it is solidarity with fellow head of state. This is suggested by the fact that Burundi

[1049] Brosig 2021.
[1050] Thus written before withdrawal have come into effect.
[1051] Vandeginste 2016, 1.
[1052] Vandeginste 2016, 4.
[1053] Burundi, UNGA GD 2013.

did not raise issue with the Kenyan investigations in any of the ICC-related forums prior to the election of Kenyatta and Ruto into office, which meant sitting officials were under investigation.

Burundi's consequent behaviour in relation to the ICC should be understood within the context of the domestic violence that followed the announcement on 25 April 2015 Nkurunziza would be running for a third term in office.[1054] The presidential elections were postponed twice due to violence and security concerns. Initially, they were scheduled for 26 June 2015, then rescheduled to 15 July but then postponed against to 21 July.[1055] The violence in Burundi prompted a response from the ICC's OTP. Before elections were first postponed, Bensouda issued an announcement on 8 May 2015 and stated: "I am concerned about the growing tensions in the country and reports that violence ahead of the elections may escalate which could lead to the commission of serious crimes falling within the jurisdiction of the International Criminal Court."[1056] She goes on to conclude:

> Electoral violence is by no means inevitable. […] Political leaders in Burundi are equally responsible for ensuring the peaceful conduct of elections and that their supporters refrain from violence - before, during and after the elections. My Office, in accordance with its mandate under the Rome Statute, will be closely following developments in Burundi in the weeks to come and record any instance of incitement or resort to violence.[1057]

Her statement clearly warns that the OTP is watching the situation in Burundi. Bensouda's second statement was delivered on 6 November 2015 – four months after the disputed presidential elections of July 2015. In response to the increased violence in Burundi, Bensouda stated:

> I recall that any person in Burundi who incites or engages in acts of mass violence including by ordering, requesting, encouraging or contributing in any other manner

[1054] Vandeginste 2016, 2.
[1055] Kushkush 2015; Stonestreet, Levine, and Tyburski n.d.
[1056] International Criminal Court 2015a.
[1057] International Criminal Court 2015a.

> to the commission of crimes falling within the jurisdiction of the International Criminal Court ("ICC" or "Court") is liable to prosecution before this Court.[1058]

Bensouda unambivalently and publicly announced her intent to investigate Burundi: "…any conduct in Burundi – whether by the Security Forces, militias or any armed group – amount to war crimes, crimes against humanity, or genocide, no-one should doubt my resolve to fulfil my mandate so that the perpetrators do not go unpunished."[1059]

Burundi's first ICC General Debate statement was issued 10 days after Bensouda's second announcement. This voice statement highlighted the Court's shortcomings, questioned its credibility, and stated support for the AU's call for head of state immunity. This suggests that Burundi's decision to address the General Debate forum was a response to the OTP's threat to investigation the Burundian situation. Furthermore, its public declaration of support for the head of state immunity position of the AU was evidently self-interested. This is suggested by the fact that it did not lend its support for the AU's position at the ICC General Debate until its officials were threatened.

Preliminary investigations into Burundi were announced by the Bensouda on 25 April 2016.[1060] The same year, withdrawal proceedings were initiated: on 12 October 2016, Burundi's parliament voted in favour of exit and the notification of withdrawal was deposited 11 days later. This suggests exit was a response to the preliminary investigations.[1061] The OTP's threatened and actual preliminary investigations sparked Burundi's voice and exit behaviour in 2015 and 2016. Burundi's 2013 voice statement at the UNGA General Debate, which defended head of states, reinforces the understanding that Burundi's behaviour in relation to the ICC was because of Nkurunziza's interest to retain

[1058] International Criminal Court 2015b.
[1059] International Criminal Court 2015b.
[1060] "In the course of the on-going crisis, more than 430 persons were reportedly killed, at least 3,400 people have been arrested and over 230,000 Burundians forced to seek refuge in neighbouring countries. My Office has reviewed a number of communications and reports detailing acts of killing, imprisonment, torture, rape and other forms of sexual violence, as well as cases of enforced disappearances. All these acts appear to fall within the jurisdiction of the ICC. I have decided therefore to open a preliminary examination into the situation in Burundi since April 2015" (International Criminal Court 2016).
[1061] Vilmer 2016, 1327; Vandeginste 2016.

power and avoid prosecution. As noted earlier, interview data suggested this position, for example, "Burundi left because, because it knew… it's leaders knew they would very soon be investigated by the, by the Prosecutor"[1062] and "Nkurunziza's government [was] spooked by the possibility of, of serious investigations, um, into ruling party behaviour. I think it is actually as simple as that."[1063]

While the election crisis is an important contextual factor for Burundi's behaviour with the ICC, it is not an explanatory variable. It is implausible that Burundi would have withdrawn if the OTP had not threatened and launched preliminary investigations into the crisis. The OTP's investigations are a direct causal factor. However, regional factors also are relevant to some extent – they might explain why Burundi chose exit over sustained voice.

The international law expert interviewed echoed other interviewees' position that Burundi's withdrawal was a response to the preliminary investigations and the threat that they posed for the ruling elite. However, the expert added that the AU's narrative about the ICC's targeting of Africa as well as South Africa's deteriorating ICC relations were additional factors that shaped Burundi's behaviour.[1064] The AU's narrative about the ICC gave Burundi a ready-made discourse that would present Burundi's behaviour as part of a broader movement. Furthermore, South Africa's bad relations with the ICC (and withdrawal two days before Burundi's) might have emboldened Burundi since it would have been seen to have been in good company (given South Africa's generally positive international and regional reputation). Phil Clark had similar reflections about the role of the AU's narrative about the ICC:

> …I think that part of the Burundian calculation would have been, that an anti-ICC stance was about protecting Nkurunziza or his government from ICC scrutiny, but there was also a hope that this might mesh with a broader anti-ICC dimension that was very strong in Rwanda that was growing in Uganda and Congo, and that was already pretty well entrenched at the AU level."[1065]

[1062] Goldstone 2021.
[1063] P. Clark 2021.
[1064] International Law Expert 2021.
[1065] P. Clark 2021.

The empirical evidence studied supports the interpretation that Burundi's behaviour with regards to the ICC was primarily driven by head of state interest, but that its decision to exit (rather than remain a vocally anti-ICC State Party like Kenya) was shaped by regional politics.

The Gambia

The Gambia signed the Rome Statute in 1998 and ratified the treaty on 28 June 2002.[1066] The Gambia delivered four country statements at the ICC General Debates. Its 2011 speech was not relevant for the withdrawal debate and was not classified into the EVL categories. The 2013 and 2015 statements were voice and its 2014 statement was loyalty. The Gambia delivered a loyalty statement at the Review Conference. Its 2010 UNGA General Debate address included voice behaviour toward the ICC.

The Gambia's behaviour with the ICC has vacillated between voice and loyalty for the most part. Its exit behaviour was followed by loyalty one year later in 2017. The Gambia was ruled by Yahya Jammeh from 1994 until he lost an election in December 2016 and fled the country in January 2017 after refusing to accept this outcome.[1067] Jammeh's regime was notorious for its oppressiveness and serious human rights violations – particularly after a failed coup in December 2014.[1068] The newly elected President Adama Barrow rescinded The Gambia's withdrawal from the ICC in February 2017 and reasserted its commitment to the Rome Statute and concomitant obligations.[1069]

Single case studies of The Gambia's relationship with the ICC were not found at the time of writing, although many news articles have been written that documented The Gambia's withdrawal from the ICC – and its reversal of this decision.[1070] Academic reflections on The Gambia's withdrawal – in comparative studies – have concluded that The Gambia's

[1066] The Gambia did not play a notable role in the development of the ICC. The Gambia ratified a Bilateral Non Surrender Agreement with the US in July 2003 and is a signatory to the revised Cotonou Agreement.
[1067] Keppler 2017.
[1068] Ssenyonjo 2018, 70; Woolaver 2019a, 25.
[1069] Republic of The Gambia 2017.
[1070] Kennedy 2017; Keppler 2017; P. Saine and Jahateh 2017; *BBC News* 2016; 'ASP President Welcomes Gambia's Decision Not to Withdraw from the Rome Statute' 2017.

withdrawal was driven by head of state interest where Jammeh sought to prevent investigations into his regime.[1071] Three interviews agree that exit was caused by Jammeh's desire to avoid prosecution.[1072]

The Jammeh regime is accused of consistently seriously violating human rights during his incumbency. Notably, Jammeh used repressive strategies to silence dissent, including arbitrarily arresting, torturing, and forcibly disappearing journalists, civil society members, and political opponents.[1073] He introduced laws that undermined freedom of expression and media, as well as strong penalties for those found to spread "false information" or news.[1074]

There is scepticism that Jammeh would have feared ICC investigation. Kersten argues that the scale of the abuses committed under Jammeh's regime were unlikely to attract the ICC investigations and that in June 2016, Bensouda had decided against investigating The Gambia on the basis that the crimes committed did not fall under the ICC's mandate.[1075] However, Sanchez[1076] has argued that circumstances changed when The Gambian Interior Minister Ousman Sonko sought asylum in Sweden in September 2016 after Jammeh fired him: "Sonko is an intelligence goldmine for the West. If quizzed, Sonko could reveal certain information that would warrant the ICC to take Gambia's case seriously."[1077]

Jammeh's interests appear to have been to retain power. This was clearly demonstrated in his refusal to accept his electoral defeat two months after The Gambia deposited its notification of withdrawal from the ICC.[1078] While the electoral events do not explain the exit behaviour, they lend support to the interpretation that Jammeh was intent on retaining power – which supports the analysis that The Gambia's exit was driven by head of state

[1071] Ssenyonjo, 'State Withdrawal Notifications from the Rome Statute of the International Criminal Court', 68; Bâ, *States of Justice*, 151–52.
[1072] South African Government Official 2021; P. Clark 2021; Tladi 2021.
[1073] Jammeh also outlawed and repressed homosexual and transgender people. Wormington and Mahtani 2016; Sprouse 2016; Amnesty International 2016; 'State of Fear' 2015.
[1074] 'State of Fear' 2015.
[1075] Kersten 2017a.
[1076] Who also argued that Jammeh may have simply withdrawn on a whim, as he did when he left the Commonwealth.
[1077] Sanchez 2016.
[1078] Park and Busari n.d.; Oduah n.d.; McAllister 2016; *BBC News* 2017.

interest. This is further supported by The Gambia's concluding statement at the 2013 ICC General Debate, which specifically supported head of state immunity: "The Gambia wishes to align itself with the AU resolution that no sitting African head of state should appear before an international court."[1079] The Gambia's particular mention of support for the generalised immunity of heads of state – rather than the specific application of this to the Kenyan situation, which had been the focus of the statement that Uganda delivered on behalf of the AU at the same session – suggests that The Gambia's voice behaviour was also shaped by head of state interest.

Two interviewees noted that regional politics were an important factor related to The Gambia's exit as it provided a convenient political justification for leaving.[1080] In addition to noting the direct authority that Jammeh had over approving The Gambia's policies and that Jammeh might have exited the ICC on a whim, Kersten stated: "I do think he [Jammeh] committed, you know, human rights violations and […] probably crimes against humanity too, um, but not to the scale that would warrant intervention from the ICC. The ICC had never agitated towards The Gambia, and […] Jammeh decides, 'well, you know, why don't I join this caravan?'"[1081] Sprouse echoes this viewpoint, arguing that the withdrawals by Burundi and South Africa created an environment that was favourable for The Gambia's justifying its withdrawal as an expression of collective action against a "racist" Court.[1082] Thus, it seems that regional politics played a causal factor in a similar way as in the Burundian situation. The context of the withdrawal debate, and the politics within the AU, acted as a catalyst for the actual act of exit and/or proffered a ready-made narrative to legitimise withdrawal.

It is evident is that Jammeh maintained direct decision-making over The Gambia's policies during his tenure[1083] and that The Gambia's 2013 voice behaviour suggests that Jammeh's interests lay with protecting head of state immunity, which suggests protection from

[1079] Republic of The Gambia 2013.
[1080] International Law Expert 2021; Kersten 2021.
[1081] Kersten 2021.
[1082] Sprouse 2016.
[1083] A. S. Saine 2002, 181.

prosecution was an area of concern for him. Thus, it seems the most convincing that The Gambia's exit was caused by head of state interest and that regional politics played a rhetorical role, as argued by Bâ:

> It is clear that The Gambia's decision to withdraw from the ICC was not really motivated by the fact that the Court hadn't prosecuted Westerners. The Gambian regime, because of its repressive nature and its human rights violations committed over many years, could potentially land on the ICC docket. Indeed, Jammeh and his regime became much more repressive during his attempt to secure a fifth presidential term.[1084]

Notably, The Gambia has also demonstrated loyalty behaviour toward the ICC under the Jammeh regime. At the ICC Review Conference in 2010, The Gambia declared its support for the ICC, mentioned ways that it had cooperated with it (e.g. up to date with financial contributions), and then stated: "The Gambia's democratic credentials are made manifest by the fact that it is hosting the headquarters of the African Commission of Human and Peoples' Rights, since the inception of that noble institution."[1085] This suggests that The Gambia sought to demonstrate its commitment to democracy to the ICC audience and/or that The Gambia saw its association with the ICC as a demonstration of adherence to democratic principles. Thus, the loyalty behaviour seems caused by reputational factors.

The Gambia also demonstrated loyalty behaviour 2014, which demonstrated satisfaction with the ASP President's plan to address areas of concern raised with the ICC. Since this was the year that Sidiki Kaba was elected President of the ASP, it is possible that The Gambia was indicating its support for a fellow African national. Even the 2015 country statement delivered erred on the side of loyalty, even though it noted some areas of discontent. In both the 2014 and 2015 statements, it seems that The Gambia's interest to note areas for the ICC to improve but also to indicate its continued support for the Court and commitment to anti-impunity. The loyalty and voice statements, thus, seem shaped by reputational factors.

[1084] Bâ, *States of Justice*, 151–52.
[1085] ICC RC 2010.

After the Jammeh regime was replaced by the Barrow regime, it seems that The Gambia, again, saw the ICC as a place to self-legitimise:

> Over the last decade, we lost many of our friends and development partners through wrong policy choices, but since the restoration of democracy and good governance, many of our longstanding partners are all coming back to work with us. We are in the process of rejoining the Commonwealth and the International Criminal Court. We are also committed to be part of the African Peer Review Mechanism.[1086]

The clear intent of this speech extract is to prove to member states that The Gambia (under its new regime) is dedicated to upholding international norms and reintegrating into the international community. Its aim seems to be to identify actions by the previous regime that tarnished its reputation in this respect and to clearly redress them by re-joining institutions from which the Jammeh regime had withdrawn.

Additionally, The Gambia, under Barrow, entered reservation on AU draft withdrawal strategy, which is an indicator of loyalty. The Gambia's behaviour toward the ICC following the change in regimes sought to do damage control and demonstrate that the new regime was, unlike its predecessor, a 'good global citizen'. The South African government official interviewed agrees with this interpretation: "…he was trying to show a new start, respect for international law – that kind of thing."[1087]

Overall, The Gambia's behaviour toward the ICC was caused by head of state interest and reputational factors. Exit behaviour was caused by head of state interest. Regional politics seem relevant but only insofar as the anti-ICC narrative promoted within and by the AU offered a rhetorical device to justify the withdrawal – as Mills and Bloomfield summarise: "Thus, while voicing broad normative themes – for example, discrimination against Africans – the main explanation for the withdrawal appears to be the government's naked self-

[1086] UNGA GD 2016.
[1087] South African Government Official 2021.

interest."[1088] The Gambia's loyalty and voice behaviour in 2014, 2015, and after Jammeh lost office in 2017 were driven by reputational factors.

Kenya

Kenya ratified the Rome Statute on 15 March 2005 and domesticated the Statute with its 2008 International Crimes Act. In March 2010, the OTP made use of its *proprio motu* power for the first time and initiated investigations focused on the alleged crimes against humanity committed in Kenya during the post-election violence in 2007/2008, which saw the election of Mwai Kibaki to presidency and Raila Odinga as prime minister.[1089] Kenya has demonstrated voice and loyalty behaviour in the country statements it delivered at the forums studied. Kenya was a regular participant at these forums in the period studied and there is a significant amount of academic literature that considers Kenya's relationship with the ICC while it was investigated, which allows for a rich pool of evidence to be examined.[1090] Kenya delivered statements at the ICC General Debates between 2009 and 2018. Its statements in 2009, 2010, and 2012 were loyalty statements and the rest were voice. Kenya delivered six statements at the UNGA ICC Report Plenaries, all of which were voice statements except its 2008 statement, which was loyalty. Kenya delivered a loyalty statement at the Review Conference and did not refer to the ICC at UNGA General Debates.

The main explanatory factor driving Kenya's behaviour (voice and loyalty alike) with the ICC since the 2010 investigations were launched was head of state interest. There is consensus within the literature that this was the foremost causal factor for Kenya's behaviour with the ICC, and this is supported by the country statement and interview data. In the two years prior to the ICC's investigations, Kenya only demonstrated loyalty behaviour. The academic literature does not reflect on this period. Based on the country statement data, Kenya's behaviour during this time is best explained by reputational factors.

[1088] Mills and Bloomfield 2018, 119.
[1089] The OTP was granted authorisation to investigate alleged crimes against humanity within the jurisdiction of the Court committed between 1 June 2005 and 26 November 2009.
[1090] Kendall 2014; Lugano 2017b; Lynch 2014; Chaudoin 2016; McConnell 2014; Mueller 2014; Sriram and Brown 2012; Helfer and Showalter 2017; S. Brown and Sriram 2012; Hansen 2012b; Dutton and Alleblas 2017; Dancy et al. 2020.

Kenya has positioned itself as a peace and security leader within the Horn of Africa at the sub-regional, regional, and international levels – especially as a strategic partner in counter-terrorism. It has promoted an image of itself as a peace diplomat and "…as an anchor state and oasis of stability in the East Africa region…"[1091] in a 'bad neighbourhood'. In addition to presenting itself as peace mediator and strategic partner, Kenya's foreign policy has historically been influenced by pan-Africanist principles since independence. This is, at least partially, attributable to the role that Jomo Kenyatta (independent Kenya's first president) at the 1945 Pan-Africanist conference.[1092]

Kenya's loyalty behaviour before the OTP launched investigations into its situation seem driven by this foreign policy goal to be a well reputed strategic partner in East Africa. In 2008 and 2009, Kenya called on states to cooperate with the ICC to help it fulfil its mandate.[1093] Its emphasis on cooperation suggests Kenya's desire to be seen as a supportive and active State Party, which promotes its image as a state adhering to rule of law and accountability norms. Kenya's recent emergence from the 2007/2008 post-election violence might have additionally given impetus to Kenya to promote a positive international image in relation to the ICC. For example, Kenya recounted the "…progress in resolving the outstanding issues that surrounded the violence in the country last year…" at the 2009 ICC General Debate. Kenya did not refer to these processes the year before when it addressed the UNGA ICC Report Plenary despite that being the same year that the Commission of Inquiry into Post-Election Violence[1094] (CIPEV) was launched and published its final report (in the same month as the plenary session). This might suggest that Kenya deliberately sought to indicate to ICC States Parties that it was responding domestically to the situation.[1095]

[1091] Mabera 2016, 367.
[1092] Mabera 2016, 372.
[1093] UNGA ICC RP 2008 and ICC GD 2009.
[1094] Also known as the "Waki Commission" after the body's chairperson.
[1095] However, there are many factors that might account for this difference. For example, the delegates at each forum are different people and might have received different instructions about what to address or might have different strategic agenda. For example, Kenyan Ambassador to the UN in 2008 (Mr. Muburi-Muita) may have made use of other UN forums to recount Kenya's domestic response to the post-election violence.

Furthermore, Kenya's foreign policy strategy to be seen as the ideal partner in the Horn of Africa, arguably, could be related to other policy goals – such as trade and security. The reputational factor, therefore, would be an intermediary factor to promote other domestic motivations underlying Kenya's behaviour. Further in-depth research into these factors should be conducted to ascertain if they played a more significant and direct role in shaping Kenya's behaviour with the ICC. From the existing evidence and literature, it seems that reputational factors are the main explanatory variable shaping Kenya's loyalty behaviour in 2008 and 2009. This is suggested by the fact that Kenya's foreign policy objectives for a sustained period before and during 2008 and 2009 included promoting the regional and international image of itself as a peace actor in the Horn of Africa. The post-election violence was a blow to this image and Kenya's subsequent loyalty behaviour likely sought to repair reputational damage incurred by demonstrating its support for anti-impunity norms vis-à-vis its loyalty to the ICC.

Among other recommendations, the CIPEV report (also known as the "Waki report") suggested that a special tribunal be established to prosecute individuals bearing the greatest responsibility for the post-election violence – particularly, for crimes against humanity. The names of the people that the Commission identified as the most responsible for these crimes was submitted alongside the Waki report to the Panel of Eminent African Personalities and recommended that the sealed envelope containing these names be sent to the ICC should there be no prosecutorial action at the national level. Ultimately, this transpired.[1096] The OTP, in March 2010, instigated *proprio motu* investigations into Kenya's post-election violence. The six suspects (who were initially not publicly disclosed) were all political elite: William Samoei Ruto (then Minister of Higher Education, Science and Technology); Henry Kiprono Kosgey (then Minister of Industrialization); Joshua Arap Sang (then Head of Operations, KASS FM Radio); Francis Kirimi Muthaura (then Head of the Public Service); Uhuru Muigai Kenyatta (then Deputy Prime Minister and Minister of Finance); and Mohamed Hussein Ali (then Chief Executive of the Postal Corporation of Kenya). The first three suspects were grouped together in the same prosecution case and allies of Kibaki and

[1096] For more information about the to-and-fro between Kofi Annan and the Government of Kenya regarding domestic prosecutions for the post-election violence, see Mueller 2014, 31.

the last three suspects were grouped together in a second prosecution case and allies of Odinga. Thus, the six suspects represented both sides of the political parties implicated in the post-election violence.

The existing withdrawal debate literature considering Kenya is primarily focused on Kenyan-ICC relations from 2013, once Kenyatta and Ruto are president and vice president respectively. More research into Kibaki's regime's motivations for cooperating with the ICC is needed. Kenya demonstrated loyalty behaviour in the year that the OTP launched its investigations into Kenya. At the 2010 ICC General Debate, Kenya detailed the ways that the Kenyan government had helped the ICC to establish an in-country office and "…entered into an agreement with the ICC to extend such privileges and immunities as are necessary for the independent functioning of the Court in the territory of Kenya.[1097]

However, Kenya's behaviour toward the ICC changed once the six suspects were publicly announced in December 2010.[1098] This suggests that reputational factors were superseded by head of state interest factors. According to Mueller, the Kibaki government demonised the ICC and sought to resist the ICC's investigations into "…high level figures too close to President Kibaki for comfort."[1099] She notes that in the same year, the Kenyan Parliament passed a motion to withdraw from the ICC, although this was not signed into law by Kibaki.

Kenya's behaviour had clearly shifted toward voice in 2011. Kenya worked on securing regional support for resistance against the ICC.[1100] The AU declared its support for Kenya's deferral requests, although it instructed Kenya to initiate this request.[1101] In March 2011, Kenya requested that the UNSC defer the investigations into the Kenyan case twice – first on 4 March, and then again on 23 March, after the ICC summonsed the Kenyan suspects to appear before the Court.[1102] Additionally, in 2011, Kenya made two voice statements,[1103]

[1097] Kenya, ICC GD 2010.
[1098] Murithi 2015b, 83.
[1099] Mueller 2014.
[1100] Helfer and Showalter 2017, 9; Mueller 2014, 31.
[1101] Assembly of the African Union 2011.
[1102] United Nations Security Council 2011b.
[1103] At the UNGA ICC Report Plenary in 2011: "Unfortunately, there is a growing perception that the Court is unfairly and selectively targeting certain countries, particularly in Africa. There is also a perception that

which detailed both Kenya's efforts to respond to the PEV, asserted Kenya's national jurisdiction over the crimes under investigation, used collectivised language to question the Court's activities. Thus, in 2011, there was an evident effort by Kenya to demonstrate its discontent with the ICC. Its voice behaviour was demonstrated within the ICC's ASP as well as at the UN, AU, and domestically.

The 2013 elections in Kenya marked a critical juncture in Kenya's relationship with the ICC – and, in turn, Africa's relationship with the ICC. Kenya's deteriorating relations with the ICC is a major factor that shaped the withdrawal debate and the election of Kenyatta and Ruto into office elevated the withdrawal issue since the ICC's investigations were now against sitting state officials. Kenya's behaviour in relation to the ICC was decidedly voice since 2011 with the exception of a statement delivered at the ICC General Debate in 2012, which signally strong loyalty behaviour. This is surprising – given Kenya's earlier efforts to protect their officials from the ICC's investigations – since the charges against four of the six suspects were confirmed by the ICC's Pre-Trial Chamber, including Kenyatta and Ruto.[1104] However, the domestic political situation in Kenya had changed in the latter half of 2012 ahead of the 2013 elections. It was apparent that Kenyatta and Ruto[1105] intended to jointly contest the 2013 Kenyan presidential elections in a coalition. Kibaki was not eligible to contest in these elections, however, Odinga ran for presidency. This meant that Kenyatta and Ruto were the official political opponents of the incumbent vice presidents Odinga and Kalonzo Musyoka, who contested together in the joint-ticket system for president and vice president respectively. The new political rivalries explain Kenya's 2012 loyalty behaviour at the ICC General Debate: Odinga and Musyoka were happy for the ICC to investigate and/or prosecute their main political opponents in the upcoming election. This suggests that the loyalty behaviour was driven mainly by head of state interest.

---

ownership of the Rome Statute has been usurped, as if to suggest that the Statute and the Court are meant to serve some States and not others. Such perceptions undermine an institution that was created with very noble intentions, and threatens to erode all confidence in the Court"; and at the ICC General Debate, 2011: "On the ICC relations with Africa. 7 of Africa's 54 nations are "situation countries". This represents a small minority of African States of all the work of the ICC to date. The circumstantial complexities in these States that one might associate with the involvement of the ICC are not exclusive to these seven nations, not even to Africa."

[1104] Charges against Henry Kosgey and Mohammed Ali – each one of the co-accused in the Ruto and Kenyatta cases respectively – were dropped on 23 January 2012, which retained the sense of an even prosecution since equal numbers of the two cases were pursued. Posner 2012; Maliti 2012; *Al Jazeera* 2012.

[1105] Popularly known as "Uhuruto".

Thus, the elections presented the opportunity to determine the trajectory that the Kenyan cases before the ICC took: "Whoever won the election would have significant power over whether Kenya would cooperate with the ICC. If an indicted politician won the presidency, they would have powerful means to resist compliance with any ICC actions and vice versa. The official opposition was the Coalition for Reforms and Democracy (CORD) – led by Odinga and Musyoka – campaigned that the Jubilee Alliance pair were unelectable due to the ICC investigations into them.[1106] The Jubilee Alliance, in turn, built its electoral platform upon discrediting the ICC as a neo-colonial, anti-African, and biased institution. For example, "[t]he neocolonial narrative called upon the Kikuyu to resist the reincarnation of colonialism through the ICC – a *mzungu*[1107] court – which was targeting Kenyatta's son in a new affront on Kenya's sovereignty."[1108] Furthermore, Kenyatta and Ruto urged voters to think of the election as "a referendum on the ICC""[1109] and "[w]inning the election was part of a key defense strategy to undercut the ICC by seizing political power, flexing it to deflect the ICC, and opening up the possibility of not showing up for trial if all else failed".[1110] In the end, Kenyatta was elected president and Ruto was elected vice president.

Once in power, Kenyatta and Ruto used their platform as the head and deputy head of state to advance their pushback against the ICC, but this was limited to voice behaviour. Kenya demonstrated sustained voice behaviour within the official forums studied from 2013. As discussed in Chapter 7, Kenya's voice behaviour included threats of exit, calls for the ICC to repair its relations with the ICC, defence of sitting officials' immunities, assertions of the primacy of national jurisdiction, and that the ICC's case selections and procedural practices were biased and politicised. However, ASPs could be used to signal behaviour in other ways beyond the discourse used in country statements: who a state sends as their delegate may indicate the importance that they give to the ICC, although this is also hindered by a state's

[1106] Lugano 2017b, 18.
[1107] Slang meaning a white person.
[1108] Lugano 2017b, 23.
[1109] Chaudoin 2016, 564.
[1110] Mueller 2014, 26.

capacity and resources. Mark Kersten notes that Kenya used the ASP forum, in one instance, to intimidate fellow States Parties:

> They also reacted very aggressively. I forget when it was… Maybe 2015? 2014? I don't know…. by sending like 85 MPs and senators to the Assembly of States Parties, which everybody at the ASP thought was so unnecessary and so disruptive – not to mention that the cost [it] would be [to] taxpayers […] It's in an attempt to really intimidate. Not the ICC, because the ASP is not an ICC conference. It's a diplomatic conference. […] I think there were probably some people at that kind of diplomatic level who are very frustrated by the way that the ICC was proceeding in Kenya.[1111]

Regardless of whether this was an intimidation effort and who the intended audience was for it, it is apparent that Kenya's bloated delegation was an effort to exert power – to amplify Kenya's voice through making its presence felt – within the ICC space.

Although Kenya threatened withdrawal and encouraged mass African withdrawal from the ICC, it did not commit exit the ICC. The use of voice behaviour to demonstrate dissatisfaction with the ICC was a strategic decision by the pair: withdrawal from the ICC was not a solution to their predicament since it would have no effect on their cases since they were already underway.[1112] Several interviewees indicated that they believed Kenya never intended to exit the ICC: "…I think even Kenya didn't actually ever want to withdraw",[1113] "I think the Kenyans never wanted to withdraw from the Court…",[1114] and

> …what gets more interesting is why […] don't they withdraw? I think it's because of a kind of a calculation of different interests. I think that Kenya ultimately came to the conclusion that you could have it both ways – that you could both stay inside the fold of the ICC – which might give you some influence over how the ICC operates, it gets you a seat at the table at the ASP, it enables you to play the kinds of games that Kenyatta and Ruto were trying to play at successive ASPs in trying to build a kind of an African bloc to change the Rome Statute and that sort of stuff. And you could use other levers to protect yourself against ICC investigations. And I think by that

[1111] Kersten 2021.
[1112] Lugano 2017b, 21; United Nations General Assembly 1998
[1113] South African Government Official 2021.
[1114] Stemmet 2021.

> stage, Kenya had already worked out that they could run rings around the ICC, and that Kenyatta and Ruto were never really going to be threatened.[1115]

Furthermore, there were reputational costs to exit that were against the interests of the Kenyan leaders. A former senior government advisor, Peter Kagwanja argued that compliance was deemed the best strategy because defiance (and withdrawal) "would have triggered an automatic warrant of arrest and possible sanctions against the country… [and] Kenyatta's hobbling as a fugitive president and Kenya would have almost certainly joined Zimbabwe in the West's list of 'rogue' states."[1116] Goldstone also reflected on the compliance strategy undertaken by Kenyatta and Ruto:

> Kenyatta and Ruto made the most of it. I think they really were the leaders [of the withdrawal debate] without their push, I don't think the AU would have been nearly as strongly anti-ICC as it was. Kenya is an important country and an important economy, and I think they really drove that… and they were very shrewd because they didn't want to become 'al-Bashirs' and be outlaws, so they appeared voluntarily, and they simply sabotaged it quietly at home.[1117]

Kagwanja and Goldstone's comments suggest that reputational concerns shaped how Kenyatta and Ruto pursued their interests (to avoid prosecution). Thus, during Kenyatta and Ruto's regime from 2013, head of state interest is the foremost explanation of Kenya's behaviour and reputational factors were secondary to this. The intersection between reputation, head of state interests, and power is illustrated by Clark's analysis:

> but Kenya saw itself as one of the, the African leaders within the ASP, in terms of, you know, putting forward amendments to the Statute, you know, trying to make political points through the ASP – and I think they ultimately didn't want to lose that influence and so better to stay within the ICC remit rather than trying to beat it from the outside. I think that's often been Kenya's game. I think that's where their interests eventually landed. […] could carry an AU message, which gave it a certain amount of clout in Addis and it gave it a certain amount of clout in New York. I think that mattered to Kenyatta in particular. […] I think what a lot of this goes

[1115] P. Clark 2021.
[1116] Quoted in Lugano 2017b, 20.
[1117] Goldstone 2021.

> back to – with Kenyatta and Ruto – is a desire to be seen as internationally respectable whilst still running rings around the ICC [1118]

Marcus Bocchese suggests that it was simple matter of legal pragmatism that would inform the decision not to withdraw:

> …the political costs that withdrawing from the ICC entails doesn't make much sense because the case collapsed. This is where this is where the law and the procedural law, criminal procedure kicks in in your understanding of the ICC and how the ICC operates and what are the limits of what they can accomplish the farther away from the courtroom in The Hague. I worked as a criminal lawyer and [it] doesn't take a genius, if you come from my background, [to] understand that you cannot build a case if you have no access to documents, no access to crime scenes, no access to witnesses, because they have been intimidated, threatened, bribed…[1119]

This explanation would be consistent with the EVL model's predictions around exit being a rationalist decision and is also consistent with the logic of the head of state explanatory factor. However, further research is required to verify if the legal counsel given to Kenyatta and Ruto included this calculation.

Kenya's internal critiques of the ICC were complemented by its campaign, domestically and regionally, to discredit the Court as neo-colonial. Jomo Kenyatta's affiliation with independence and pan-Africanism is an important emotive factor for Kenya's domestic and international politics, and shaped the discourse adopted in Kenya's anti-ICC narrative.[1120] Clarke argues that Kenya was "renarrating culpability through reattribution" by using a neo-colonial discourse because this redirected public dialogue away from the ICC toward colonial legacies that caused inequality in Kenya.[1121]

The Jubilee Alliance's campaign reframed the ICC as reproducing patterns of colonial interference in African politics and as evading European responsibility for colonial legacies

[1118] P. Clark 2021.
[1119] Bocchese 2021b.
[1120] Clarke 2019, 92.
[1121] Clarke 2019, 142.

that continue to impact upon the present. They thus rebranded the "perpetrator" as the (anti-neo-colonial) "hero".[1122] The neo-colonial narrative depicted Kenyatta and Ruto as standing

> …metonymically for a larger entity under threat – either their respective communities or Kenyan sovereignty. For ICC proponents, this is a manipulative category mistake – putting 'the entire Kenyan state in the dock' – whereas other African states and the African Union may regard the trials of Kenyan political leaders as representing a broader threat to African self-determination.[1123]

The neo-colonial narrative has been used to promote and encourage regional solidarity for Kenya against the ICC, as observed by a Jubilee activist: "…the ICC is a big giant, and hence the need to Africanize the problem and get the help of African leaders."[1124] Thus, at the domestic and regional levels, the narrative that the ICC was neo-colonial was a means to discredit the Court and enhance the image of the two leaders as martyrs fighting against it.

The Kenyan case poignantly illustrates the importance of using critical discourse analysis to deconstruct and interrogate the statements delivered by official representatives, since it shows how leaders can utilise a particular discourse to favour their interests. In this instance, an anti-neo-colonial discourse was strategically valuable for Kenyatta and Ruto in their efforts to garner support domestically and regionally to discredit the ICC and, therefore, undermine its investigations into them. The anti-neo-colonial discourse Kenyatta and Ruto used in their anti-ICC campaign is demonstrative of the power embedded with discourse within international relations. Furthermore, it illustrates how the anti-neo-colonial discourse has particular power within African international relations. Kenya's decision to regionalise the ICC issue and to do so using this discourse was deliberate because of the collective memory among African states of colonialism as well as the ongoing frustration and dissatisfaction with the contemporary distribution of power within the global system. The fact that most African states were not independent from colonial powers at the time

[1122] Clarke 2019, 143.
[1123] Kendall 2014, 424.
[1124] Quoted in Lugano 2017b, 27.

that the UN was established is one that the AU's push for UN reform particularly identifies as an injustice that is reproduced by the current power distribution within the UN(SC).[1125]

Kenya's ICC relations cannot be examined without considering its efforts to secure a deferral of its situation from the UNSC. As noted earlier, Kenya approached the UNSC in 2011 for a deferral.[1126] In 2013, Kenya approach the UNSC to dismiss the cases against Kenyatta and Ruto.[1127] A draft resolution[1128] to this end was put to a vote at the 7060th meeting of the UNSC and did not pass.[1129] It received seven votes in favour[1130] and eight abstentions.[1131]

> …they [Kenya] had an obvious case for the deferral and just got really pretty much nowhere, except they did manage, rather remarkably, to get a vote at the Security Council on it, again, maybe around 2015, 2016, which upset a lot of states that never wanted to vote on a deferral, but they did manage to get a vote. I think there were like nine abstentions or something like that, which is why it ultimately didn't pass. I think there are dynamics like that, that fuel things.[1132]

Kenya has also sought various postponements to the proceedings and trials again Kenyatta and Ruto. On one hand, this could be viewed suspiciously as a delaying tactic, while on the other hand, it could be seen as inevitable considering the duties of sitting government officials.[1133] Either way, this indicates that challenge to Article 27 in practice: is it feasible to waiver immunity for sitting officials? Moreover, as Kenya and Nigeria noted in their various country statements, is it appropriate to waiver this immunity when these leaders are democratically elected? The ICC's practices were challenged in other, less existential ways by Kenya. Kenya sought permission from the ICC to allow Kenyatta to appear virtually before

---

[1125] African Union 2015.
[1126] The UNSC rejected the request. Kenya challenged the admissibility of their situation within the ICC in March 2011 and the Pre-Trial Chamber II dismissed the admissibility case. Kenya lost the appeal of this decision (Lugano, 2017: 21).
[1127] 'Identical Letters Dated 21 October 2013 from the Permanent Representative of Kenya to the United Nations Addressed to the Secretary-General and the President of the Security Council. S/2013/624.' 2013.
[1128] Drafted by Azerbaijan, Burundi, Ethiopia, Gabon, Ghana, Kenya, Mauritania, Mauritius, Morocco, Namibia, Rwanda, Senegal, Togo and Uganda. See: securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_660.pdf.
[1129] United Nations Security Council 2013.
[1130] Azerbaijan, China, Morocco, Pakistan, Russian Federation, Rwanda, and Togo.
[1131] Argentina, Australia, France, Guatemala, Luxembourg, Republic of Korea, United Kingdom of Great Britain and Northern Ireland, and the United States of America.
[1132] Kersten 2021.
[1133] Mueller 2014, 26.

the Court using a video conferencing tool. The ICC declined this, which saw Kenya use voice behaviour to motivate the amendment of the rules of procedure to allow for this: "…[Kenya] pushed very hard for, for amendment of rules of procedure to allow him [Kenyatta] to engage with the Court on a video link… they [Kenya] were very much vocal and critical of the Court at the time."[1134] The motivations for Kenya's amendment efforts are unclear – they delayed the proceedings against Kenyatta and Ruto, which suggests that there may have been insidious and self-interested reasons for the amendments. Nonetheless, the amendment efforts demonstrate how voice was used to instigate change within the ICC – Rule 68,[1135] 100, and 134 *bis, ter,* and *quarter* were all amendments (related to appearing in court, postponing trials, and the use of recorded evidence) to the ICC's Rules of Procedures and Evidence that were passed with consensus at the 2013 ASP session.[1136] This illustrates how remaining within the ICC was a way for Kenya to influence the proceedings against its nationals.

Kenya's continued use of voice behaviour in relation to the ICC corresponds with the lifespan of the Kenyan cases before the (Pre-)Trial Chambers. The case against Kenyatta was withdrawn by the OTP on 5 December 2014 and formally terminated by Trial Chamber V(B) on 13 March 2015. However, Ruto's trial began on 10 September 2013, which meant that Kenya's vice president was involved in ICC proceedings. The proceedings against Ruto were fraught with appeals, which effectively delayed the case. The Ruto case informed the amendment efforts Kenya undertook, as noted above. Thus, Kenya's voice behaviour within the ASP was directly shaped by the proceedings against Ruto, which indicates that head of state interest shaped its behaviour in this regard. Ultimately, the case against Ruto and his co-accused, Sang, was terminated on 5 April 2016 by Trial Chamber V(A).[1137] Thus, by the time the 2016 ASP General Debate and UNGA ICC Report Plenary sessions arrived, Kenya no

[1134] Stemmet 2021.
[1135] Kenya did not advocate in favour of recordings of witnesses being permitted as evidence. For an overview of the reason for Kenya's concern with Rule 68, see: https://www.hrw.org/news/2016/01/27/recent-international-criminal-court-developments-kenya-south-africa. Kenya (suspected of intimidating witnesses) sought to ensure that the witnesses that were no longer available to give testimony would not be represented through prior recording of their testimonies.
[1136] Assembly of States Parties 2013.
[1137] However, the termination was accompanied by the majority decision that Ruto and Sang could be re-prosecuted in the future by the ICC or a domestic court. 'Ruto and Sang Case: ICC Trial Chamber V(A) Terminates the Case without Prejudice to Re-Prosecution in Future' 2016.

longer had its president or deputy president under investigation. Nonetheless, Kenya's tone in its voice statement at the ASP General Debate that year was very defensive. This was in response to comments made by the UN High Commissioner for Human Rights, who stated that states that threatened to exit should exit and insinuated that their claimed devotion to criminal accountability was a masquerade. Kenya's voice statement was a direct response to this address and should be understood within the context of the withdrawal debate, which had come to a head with the withdrawals of South Africa, Burundi, and The Gambia at this point. Thus, it is important to understand that the UN High Commissioner's comments embodied the dissatisfaction that Kenya (and other African states) had raised about the UN power structure. In other words, it illustrates how the withdrawal debate is interconnected with broader discontent that some African states have with the status quo in global power relations. Kenya's frustrated voice statement would have been informed by this broader dissatisfaction and by its posturing around neo-colonialism. It is not clear that Kenya's behaviour was driven by head of state interests at this point, but more likely that it was a reputational matter where Kenya saw its image as a state committed to international justice norms being called into question and attacked.

Kenya's behaviour in relation to the ICC remained voice in 2017 and 2018, however, with a notable shift in its tone toward constructive criticism. When asked why the withdrawal debate had de-escalated, interviewees noted that, inter alia, the termination of the cases against Kenyatta and Ruto meant that there was no longer motivation for Kenya to fuel the withdrawal debate and receded from playing this role. For example:" then in Kenya, you have the collapse of both the Kenyatta and Ruto cases so neither the deputy president or the president are threatened"[1138] and "But since then, the issue has also gone away. They are re-engaging strongly with […] the Court again… they […] [were] elected to the Bureau."[1139]

The Kenyan case demonstrates how head of state interest, reputational factors, and domestic politics interplay to shape behaviour in relation to the ICC. Kenya's loyalty

[1138] Kersten 2021.
[1139] Stemmet 2021.

behaviour demonstrated before the ICC's investigations into the situation suggest that Kenya saw the ICC as a credible institution that, considering its foreign policy behaviour generally, as one that would positively bolster its reputation within the international community. However, as domestic politics changed ahead of, during, and after the 2013 elections, Kenya's behaviour shifted to voice behaviour. This was the case under the Kibaki and Kenyatta regimes. The politicisation of the ICC investigations by the opposing coalitions in the 2013 elections showed how domestic politics shaped Kenya's behaviour toward the ICC depending on who was in power. At least during 2012, domestic politics was the foremost explanatory factor for Kenya's behaviour shifting toward loyalty at the ICC General Debate that year since it would favour the CORD coalition for Kenyatta and Ruto to be investigated/prosecuted. Once Kenyatta and Ruto were in power, the primary factor was head of state interest again, but reputational factors seemed to fetter how Kenya responded.

The Kenyan case shows how behaviour shifts and the various causes of this dynamic behaviour. Consensus has been that Kenya's behaviour in relation to the ICC has clearly been a result of head of state interests, but a closer examination over the course of the withdrawal debate shows the complexity of this behaviour and that, while head of state interest was a sustained factor of relevance, at times reputational and domestic factors were more immediately influencers.

Liberia

Liberia did not give any speeches before the forums studied in this project. The only indication of its potential loyalty to the ICC – aside from its ratification of the Rome Statute and remaining a State Party – is that it entered a reservation on the AU's draft withdrawal strategy in 2017 so that it could study the Withdrawal Strategy.[1140] Coupled with the lack of data, the lack of academic literature exploring Liberia's relationship with the ICC renders it difficult to determine which factors influence its behaviour.

[1140] African Union 2017.

Given the little data that there is to interpret the Liberian case in relation to the ICC, the most plausible explanation of its passive loyalty behaviour is economic factors. Liberia's GNI in 2008 to 2018 period was derived between 20% and 80% from net ODA.[1141] Although, there are limits to the explanatory value that this offers. The EU was Liberia's top donor in 2010, which supports this correlation since 2010 was also one of Liberia's highest years of ODA contributions (77% of its GNI).[1142] However, in 2017, the top donors to Liberia were the US, World Bank, and African Development Bank, which contributed 34%, 26%, and 11% of the ODA respectively. Sitting at 20% in 2017, net ODA was at one of its lowest levels of Liberia's GNI composition – and 2017 was the year that Liberia entered the reservation on the withdrawal strategy document. This problematises the extent to which economic factors were an explanatory factor for Liberia's active loyalty behaviour.

Liberia's foreign policy is guided by "…its political ideology of liberalism, democracy and capitalism" and:

> …the guiding principles of Liberia's foreign policy has been the maintenance of national security and the preservation of the territorial integrity and sovereignty of the country, the promotion of peace and harmony based on the principle of non-interference in the internal affairs of other states, and unity in the national community based on the virtue of liberal democracy.[1143]

This suggests that a core attribute of Liberia's foreign policy approach is based on its reputation as a liberal democratic state, which ICC membership is seen as promoting. Furthermore, its non-interference principle might explain its neutrality toward the ICC withdrawal debate. Lastly, Liberia states that its foreign policy since the 1970s is devoted to "…to economic, social and political development" in addition to territorial integrity.[1144] This might suggest that Liberia's foreign relations are focused on promoting a positive international image as a liberal democracy, in part, to promote its developmental agenda.

[1141] 'Net ODA Received (% of GNI) - Liberia' n.d.
[1142] 'Aid, Trade and Development Indicators for Liberia' 2013.
[1143] 'Foreign Policy' n.d.
[1144] 'Foreign Policy' n.d.

Cumulatively, it seems that Liberia's (generally passive loyalty) behaviour with the ICC is explained by its foreign policy objectives to secure its development goals and image as a liberal democratic state. This suggests that economic and reputational factors explain its behaviour. However, the passivity of the loyalty suggests that Liberia uses its ICC membership to indicate its liberal democratic values without channelling resources into the ICC beyond membership. It seems that Liberia is a zombie States Party, where it wants the reputational gains from being associated with the ICC but does not actively partake in the ICC's proceedings.[1145]

South Africa

South Africa is one of the major cases studied regarding the withdrawal debate.[1146] This is attributable to the important role it played in galvanising support for the creation of the ICC within (southern) Africa, its role as a regional power, its international reputation as a human rights defender, and the implications of its withdrawal on these attributes. Additionally, as noted by Goldstone, "South Africa is an outlier because we had no reason to be opposed to the ICC. In fact, on the contrary, we were one of the leading movers that led to the creation of the ICC."[1147] South Africa did not follow the mould of the other states that demonstrated exit behaviour since it was not at any perceivable risk of ICC investigations.

South Africa signed the Rome Statute at the Rome Conference and ratified it on 27 November 2000. It delivered ten statements at the ICC General Debate. The statements in 2008, 2009, 2012, 2013, and 2014 were loyalty; 2010, 2011, and 2018 were voice; and 2016 and 2017 were exit. South Africa delivered statements at the UNGA ICC Report Plenaries between 2009 and 2014, which were all loyalty except a voice statement in 2013. South

[1145] Gray 2018, 1.
[1146] For examples of the international relations literature, see: Boehme 2016; Tladi 2016; Grant and Hamilton 2016; Du Plessis and Gevers 2018; van der Vyver 2015; Isike and Ogunnubi 2017; Woolaver 2017a.
[1147] Goldstone 2021.

Africa delivered a loyalty statement at the Review Conference and made no references to the ICC at the UNGA General Debates.

South Africa played a notable role in the 1990s in the process of establishing the ICC. It was a member of the UNGA's Ad Hoc Committee on the Establishment of an International Criminal Court, hosted the 1997 SADC meeting to decide upon the ten basic principles of consensus regarding the ICC, and was part of the Like-Minded Group driving the ICC's creation at the Rome Conference.[1148] In 2002, South Africa passed legislation that domesticated the Rome Statute.[1149] Additionally, South Africa rejected entering into a Bilateral Non Surrender Agreement with the US, which signalled support for the ICC.[1150] Once the ICC was in operation, South Africa participated in all the General Debates in the period studied except for in 2015. Similarly, South Africa regularly participated in the discussions that followed the ICC Report delivered at the UNGA Sessions.

South Africa's history of strongly advocating in favour of the ICC stands in sharp contrast with its withdrawal in 2016. South Africa stated in the declaratory statement that accompanied its withdrawal notification that its withdrawal was due to (1) the failure of Russia, the US, and China to ratify the Rome Statute, (2) the UNSC's failure to defer situations, (3) South Africa's role in bilateral and multilateral peace efforts in Africa, (4) conflicting international obligation regarding the al-Bashir arrest warrant, and (5) procedural concerns with the Article 97 consultations.[1151] Although South Africa harboured discontent with the ICC before, it did not result in exit (or voice, for the most part) behaviour before 2015:

> South Africa has been very supportive of the overall drive for a world court, criminal accountability, those kinds of issues… So that's been the main thing, the main motivating factor… I think the disappointment with the Court was that Russia and America never came on board. The Chinese never were going to. […] so, you've got this problematic setup…[1152]

[1148] See Chapter 2, section 2.1.1.
[1149] The Implementation of the Rome Statute of the ICC Act 27 of 2002.
[1150] 'Republic of South Africa - Campaign for the Rome Statute of the ICC' n.d.
[1151] Republic of South Africa 2016a.
[1152] South African Government Official 2021.

Using interview data as well as the country statements examined in the preceding three chapters, this section builds on the existing literature that analyses South Africa's withdrawal from the ICC to develop explanations for its behaviour throughout the 2008 and 2018 period. By doing so, the main factors at play that shaped South Africa's changing behaviour in relation to the ICC will be identified, which provides insight into the foreign policy priorities for South Africa and how they were weighted and changed over this period.

The main explanation for South Africa's exit behaviour in the relevant withdrawal debate literature is that South African sought to bolster its regional interests and reputation.[1153] Does this explain South Africa's behaviour in relation to the ICC generally, or just regarding exit? The literature has not focused on accounting for motivations for South Africa's general ICC policies. Before its 2016 exit behaviour, South Africa mainly demonstrated loyalty behaviour in its country statements delivered at the ICC General Debates and the UNGA ICC Report Plenaries. Exceptions to this pattern occurred in 2010 and 2011 at the ICC General Debate, and 2013 at the UNGA ICC Report Plenary, when South Africa demonstrated voice behaviour. Additionally, Max du Plessis notes that South Africa's support for the AU's non-cooperation position on al-Bashir's arrest contradicts with its proclamations about being deeply committed to the Court and its practice of suggesting that al-Bashir not attend diplomatic events hosted in and by South Africa.[1154]

Since transitioning to democracy in 1994, South Africa has promoted an international image of itself as a good global citizen committed to human rights.[1155] This has been demonstrated through its prominence as a peacemaking actor in Africa and internationally. South Africa adopted an overt 'Africa first' approach to its international relations under the Mbeki regimes (1999 to 2008), which was reaffirmed under the Zuma regimes (2009 to 2018). Thus, another important component of South Africa's foreign policy agenda is its

[1153] Isike and Ogunnubi, 'The Discordant Soft Power Tunes of South Africa's Withdrawal from the ICC'; Boehme, '"We Chose Africa"'; Bâ, *States of Justice*.
[1154] Du Plessis 2009, 443–44.
[1155] Seegers 2019; Nathan, n.d.; Du Plessis and Gevers 2018, 201–2; S. Graham 2016, 33; 2008; Borer and Mills 2011; Geldenhuys 2011; S. Graham 2021.

commitment to the African continent and to promoting an equitable international system. South Africa's regional (and its global) soft power[1156] relies on ideational factors and South Africa has intentionally presented itself as "an exceptional representative of the future prospects of the African continent."[1157] In practice, South Africa has pursued this agenda through participating in multilateral forums and positioning itself as the African (and Global South) representative.[1158] At the regional level, South Africa has framed its role on the continent as a state that provides developmental and peacebuilding assistance, which allows it to avoid a hegemonic or domineering posture while also securing prominence.[1159]

Initially, South Africa's foreign policy goals to be seen as a good global citizen while representing the interests of the African group were not in conflict. South Africa's behaviour within the ICC was a reflection of its general agenda to act as the spokesperson for Africa. As Tladi points out, South Africa sought to act as the mediator of ICC-African relations before the 2015 al-Bashir visit:

> …it's quite clear that […] before 2015 […] we were a supporter of the ICC. And, in fact, when I would engage with people, I would always describe our position as one that's sort of an intermediate between the negative voices on the continent versus the ICC. We were, if you like, the bridge – the tool of communication between the two sides. I saw us as playing a constructive role.[1160]

Two of the three instances when South Africa demonstrated voice behaviour to the ICC, before the al-Bashir incident, South Africa noted concern about the UNSC's use of its referral and deferral powers, and the impacts this had on the ICC's reputation. South Africa's inclusion of phrases "perceptions of its impartiality" conveys the message from dissenting states in Africa without compromising its position as a compliant and supportive State Party. The first use of voice behaviour by South Africa, which was in 2010, was to note the need for clarity around what cooperation entails. Thus, South Africa's pre-2015 voice

[1156] 'Soft power' was a term coined by Joseph Nye to refer to non-material resources used by a state to change or affect the behaviour of other states. Nye 1990; 2011.
[1157] Isike and Ogunnubi 2017, 2.
[1158] Du Plessis and Gevers 2018, 203; Alden and Schoeman 2013; Nathan, n.d.
[1159] Langa and Shai 2019, 113.
[1160] Tladi 2021.

and loyalty behaviour alike, as per its country statements, are shaped by its twin goals to promote an international image of being a good citizen and its aims to be the point state on behalf of Africa – an observation also made by Boehme.[1161]

The latter goal requires that South Africa be seen by non-African states and entities as the go-to state for diplomacy matters requiring African buy-in as well as for other African states to imbue South Africa with this responsibility. In other words, South Africa needs to be cognisant of its international reputation as well as its regional one to secure its foreign policy aims. Popular explanations of South Africa's behaviour suggest that the al-Bashir debacle was an indication of South Africa's prioritising its regional reputation and goals over its international ones. Yet, empirical and interview data suggests that this might not be a complete explanation.

As noted in Chapter 2, South Africa hosted the AU Summit between 7 and 15 June 2015, which marked the turning point in South Africa's relationship with the ICC:

> …obviously a watershed for South Africa was the Al-Bashir case and the mistake that South Africa made was to allow him to come here, in that, as you probably know, when Jacob Zuma was inaugurated as president in 2009, all the heads of state of Africa were invited to the inauguration, including the president of Sudan. There was a backdoor message sent to him saying 'don't, you may be arrested.' Same thing for the World Cup 2010. Everybody [was] invited, including the president of Sudan, [who was sent a] backdoor message saying, 'don't come we can't guarantee you won't be arrest or we might have to arrest you if you come.'[1162]

There is an important difference between the previous occasions where South Africa formally invited al-Bashir to attend events in South Africa (Zuma's inauguration in 2009, the FIFA World Cup in 2010, and Mandela's funeral in 2013) and the AU Summit hosted in 2015: "One must bear in mind that, that the AU summit was something totally different. This was an international meeting hosted by South Africa."[1163] Tladi – who, at the time, was the Principal State Law Advisor for International Law for the South African Department of

[1161] Boehme 2016, 4.
[1162] South African Government Official 2021.
[1163] Stemmet 2021.

International Relations and Cooperation and the Legal Counsellor to the South Africa Mission to the United Nations – explains further:

> The main difference between those cases that people quote – the inauguration and the World Cup and then the funeral of President Mandela – the main difference was that in all of those instances we had the right to invite or not to invite. And so it's up to us. So, ultimately, we, as a country are in control of who comes. So, it's easy then to say to someone 'we're inviting you, but please don't come.' You can't do that when the invitation is coming from somewhere […] else. The meeting that was hosted in 2015 was not our meeting. It was a meeting of the African Union. It was not us who decided who comes and who doesn't come. It was the African Union. It was the African Union that sent out the invites. So that changes dynamics a lot.[1164]

Despite concern being raised about the implications of the difference between a South African diplomatic event and its hosting of an AU diplomatic event, South Africa forged ahead:

> I was sitting in the office when I heard in February [2015] that we were going to host the African Union Summit and my first reaction [was], 'oh, dammit. That's a big problem,' and I can tell you no one else had thought about it. So, when I raised that issue with the foreign minister immediately on the same day that I heard […] she directed me to speak to the relevant desks and […] the response that they gave me […] was, 'don't worry, we'll take care of it in the same way that we've taken care of the others,' and I said to them, 'you won't be able to,' and they were confident that they would be able to take care of it in that way. But I knew from the beginning that, 'there's absolutely no way because that's not your meeting, you're not in control of that meeting.' […] when you're hosting a meeting that isn't yours, that option [previous treatment of al-Bashir] isn't there anymore and people – including people within the foreign ministry – thought that option would be there, so they left it too late…[1165]

South Africa was notified by the ICC Registrar on 28 May 2015 of its obligation to arrest al-Bashir if he was to enter South African territory.[1166] On 11 June 2015, the South African Embassy in the Netherlands requested that a meeting pursuant to Article 97 between the

[1164] Tladi 2021.
[1165] Tladi 2021.
[1166] Pre-Trial Chamber II 2017, para. 6.

Registrar and the South African Government's Chief State Law Advisor (Tladi) be set for Friday 12 June 2015 at 5pm. South Africa was the first State Party to request such a consultation with regards to al-Bashir's visiting their territory.[1167] The meeting also included the OTP. The Presiding Judge of the Chamber, Judge Cuno Tarfusser, decided that South Africa was obliged to arrest al-Bashir and the concerns raised by South Africa about its conflicting obligations had already been decided upon previously by the Court.[1168] Stemmet reflects on this experience with the Pre-Trial Chamber:

> …on the Friday evening, before […] the ambassador and legal advisor in The Hague did make contact with the Court and they met with the Judge Tarfusser – the Italian judge – to present the matter of states and to say, 'look, we have a problem in this respect and [we are] initiating article 97 proceeding, because we have obligations in terms of the AU immunities and privileges agreement or protocol, to accord immunities to heads of state visiting South Africa for attending the Summit.[1169]

Al-Bashir entered South Africa on Saturday 13 June 2015 and an interim order was handed down by the North Gauteng High Court on 14 June 2015 requiring that he not be allowed to leave the country under the High Court reconvening on 15 June 2015.[1170] The High Court ordered that al-Bashir be arrested and sent to The Hague.[1171] However, it transpired that al-Bashir had already left the country. The High Court then compelled the state to explain, via affidavit, how this was permitted. The state filed for leave to appeal as the same time as it submitted this affidavit. After it lost its leave to appeal application (16 September 2015), the state elevated the case to the Supreme Court of Appeal. Their matter was heard on 12 February 2016, and, on 15 March 2016, the Supreme Court of Appeal found that the state had acted unlawfully when it failed to arrest al-Bashir.[1172]

[1167] Pre-Trial Chamber II 2017, para. 128.
[1168] Pre-Trial Chamber II 2017, para. 10.
[1169] Stemmet 2021.
[1170] 'South Africa/Sudan: Case Challenging the State's Failure to Implement the ICC Arrest Warrant for Sudanese President Al Bashir' 2016.
[1171] Southern Africa Litigation Centre v Minister of Justice and Constitutional Development and Others 2015.
[1172] The Minister of Justice and Constitutional Development v The Southern African Litigation Centre 2016.

Meanwhile, South Africa also faced repercussions for its failure to arrest al-Bashir at the ICC. On 4 September 2015, the Pre-Trial Chamber requested that South Africa submit their reasoning for not arresting al-Bashir by 5 October 2015 as per Article 87(7).[1173] The purpose of the Article 87(7) proceeding was to determine if South Africa had failed to comply with its Rome Statute obligations regarding the al-Bashir arrest warrant, if this was a formal non-compliance matter, and if South Africa should consequently be referred to the ASP and/or UNSC.[1174] On 15 October 2015, South Africa requested an extension until after the domestic proceedings underway against the state, which was granted.

A public hearing was held on 7 April 2017 to determine South Africa's non-compliance decision.[1175] South Africa argued that it was not obliged to arrest al-Bashir as he has immunity under customary international law that had not been waived by Sudan, that it was questionable that the UNSC had the power to waive such immunity, and that it was obliged under article VIII(1) of the Host Agreement with the AU to uphold al-Bashir's immunity.[1176] Furthermore, South Africa argued that "if the Security Council made the Statute applicable to Sudan, that included article 98, and that article 27(2) applies only to immunity from the jurisdiction of the Court."[1177]

Ultimately, in July 2017, the Pre-Trial Chamber II found that South Africa was obliged to arrest al-Bashir and that South Africa was not at liberty to unilaterally decide not to cooperate with the ICC's arrest warrant on the basis on disagreement with interpretation about the immunities extending to al-Bashir.[1178]

Tladi argues that the turning point in South Africa's behaviour in relation to the ICC is triggered by this Article 87(7) procedure and that it is a popular misconception to see the

[1173] Article 87(7) enables the Court to refer matters of non-cooperation and non-compliance by States Parties to the ASP and/or UNSC. Pre-Trial Chamber II 2017, para. 17.
[1174] Pre-Trial Chamber II 2017, para. 21.
[1175] After South Africa had lodged a note verbale to state the domestic proceedings on the al-Bashir matter had concluded.
[1176] Pre-Trial Chamber II 2017, paras 32–33.
[1177] Pre-Trial Chamber II 2017, para. 38; Stemmet 2021.
[1178] Although it found that South Africa was non-compliant, the Chamber decided against referring South Africa to the ASP or UNSC for formal proceedings. Pre-Trial Chamber II 2017, para. 97

shift as signalled by the al-Bashir visit. The Article 87(7) procedure saw South Africa move away from its role as an interlocutor between the African Group and the ICC:

> But that shifted not because of Bashir's invitation, that shifted because of the events afterwards. So obviously once the ICC starts its article 87(7) procedure, then of course, it becomes them against us – now it's no longer 'we're part of this together. We're trying to resolve issues together.' So that's, that's really where the shift happened.'[1179]

As suggested by Stemmet, it seems that South Africa was dissatisfied with how the Pre-Trial Chamber handled its case: "I think there was a bit of unhappiness about the way that the Court has addressed this – or the specific judges addressed it – because it basically turned into a – or what the South African view was – it turned into a legal hearing."[1180] Tladi noted "We [South Africa] had been throughout the difficult times at the ICC phase, we had played a really important role in trying to defend the ICC. The feeling was we took all of these risks. All that we're asking is that you understand our current situation,"[1181] which suggests that South Africa was dissatisfied that its loyalty behaviour to the ICC, which had been prioritised above firmly aligning itself with the AU, have not been returned in kind.[1182]

It seems that South Africa's dissatisfaction with the ICC's Article 87(7) procedures are connected with its foreign policy goals:

> South Africa never likes to be caught short […] it's always, since 1994, tried to convey an image of being a good citizen of the world. […] It [South Africa] doesn't like to be told that it's wrong and it likes to be seen to be doing the right thing, especially in multilateral forums. So, of course the whole saga around Bashir and not being arrested when he was here in South Africa and the

[1179] Tladi 2021.
[1180] Stemmet 2021.
[1181] Tladi 2021.
[1182] Tladi further recalls: "In fact, I was dispatched to go and meet with the Prosecutor. She wouldn't meet with me, but she sent me some of her officials, and I explained this position. I said, 'look, I fully understand, my suggestion is... The Prosecutor's Office – the Registrar issue a very stern condemnation of this and let that be the end, but don't do this article 87(7) thing, because once that starts, I don't know where it ends. I had a discussion with Phakiso Mochochoko and his response to me was – the message from the Prosecutor to me – was that while they're understanding of this, they are not positioned to do that simply because questions will be asked of them, 'well, why did you do it for Chad? Why did you do it for these other states and not for South Africa?' Which is a fair position."

> [domestic] court's ruling […] really did hit home. This idea that South Africa was definitely in the wrong and considering that we're supposed to make international – the ICC's law – our law, because we ratified it, so technically we have to follow it and abide by that law. […] It was a huge embarrassment for the country. I think Zuma was basically using that embarrassment […] as a kind of cover – by saying, 'we've had enough of this now, the continent's not going to take this anymore. We have to withdraw. We won't be dictated to, we have our reasons why we do things,' blah, blah, blah. […] it boils down to what some people might say is the 'big man syndrome' on the continent […] fellow leaders looking out for fellow leaders on the continent […].[1183]

Graham's analysis suggests that reputational factors were a driving force behind South Africa's shift toward exit and that this interacted with regional politics. Similar to the Burundian and Gambian cases, the existence of this broader anti-ICC narrative and movement on the continent provided a template for legitimising withdrawal or ICC dissent.[1184] The pressure for South Africa to be seen as representing and supporting regional politics is suggested by the comments made by a government official: "…issues of […] anti-imperialism […] was quite a popular drum on the continent… […] we [South Africa] don't want to be seen to be lackeys of imperialism."[1185] South Africa prioritised regional politics[1186] over its ICC obligations and international reputation before the Article 87(7) procedure, but that its official behaviour in the ICC only shifted once the Article 87(7) procedure began.

[1183] S. Graham 2021.

[1184] Goldstone also suggests that South Africa joined this pre-existing movement: "A comradery obviously developed as it does, generally, between national leaders. But the AU was obviously driven by some leaders. I think a number of African leaders felt a little bit scared of the ICC –and some for good reason. There was this ambivalence of so many African states joining up and ratifying the Rome Statute on the one hand. But some leaders – particularly first al-Bashir, but then I think more importantly were the Kenyan leaders – I think they particularly drove the AU anti-ICC development, and obviously that suited Bashir's books. And I think South Africa just joined up."

[1185] South African Government Official 2021.

[1186] A relevant contextual factor is that Dr Nkosazana Dlamini-Zuma was elected as the AU Commission's chair (2012 to 2017). There was discontent that South Africa had vied for the AU chair position, since it is conventional that stronger regional powers do not run for leadership positions within the AU (Tieku 2014, 13). Consequently, South Africa may have sought to demonstrate it support for regional positions to appease fellow African leaders who were disgruntled by Dlamini-Zuma's position in the AU Commission, and, in part, to reaffirm its position as the representative for the continent. However, this is not an explanatory factor since it does not account for the particularities of South Africa's shift from predominantly loyalty behaviour to exit in 2016.

This suggests that there is a need to distinguish between the drivers of South Africa's behaviour regarding the ICC in two matters: the al-Bashir visit and the exit from the ICC. Since these matters are so intertwined, they are collapsed together in analyses of South Africa's behaviour, but this obscures subtleties in the South African case. It overlooks that reputational factors underscored South Africa's dissatisfaction with the Article 87(7) process, as suggested by Graham, Stemmet, and Tladi in their interviews.

Additionally, the motivations behind not arresting or detaining al-Bashir should be interrogated. Three interviewees who were immediately involved in South Africa's ICC relations stated plainly that this was a matter of political convention: "Would you arrest him [al-Bashir] if you were president? And that's a political matter – there's just no way that he would be arrested;"[1187] "…how do you arrest him, particularly when you have […] peacekeeping troops in his country?"[1188] and

> …a state like South Africa not inviting Bashir [to the AU Summit] – or arresting Bashir even – is just… that's just where law and political reality collides. It was not possible to do it. The eventual fallout – negative fallout – for South Africa in the continent would just have been too great – especially at the time. Bashir was firmly in charge of Sudan. Nobody expected him to lose power the way he did.[1189]

Thus, South Africa's behaviour was shaped by its concerns about the diplomatic repercussions that would be experienced on the continent. However, this is distinct from a normative commitment to solidarity politics. South Africa's non-arrest of al-Bashir was not because of a commitment to solidarity among African heads of state – otherwise it would have allowed al-Bashir to visit on the occasions of the Zuma inauguration, the World Cup, and/or Mandela's funeral. South Africa's hesitancy on those occasions demonstrates that it did not hold a position that has been identified as 'big man syndrome' on the continent. It seems that South Africa's foreign policy objective to promote its position on the continent

[1187] Tladi 2021.
[1188] South African Government Official 2021.
[1189] Stemmet 2021.

was the presiding regional political factor that shaped its behaviour not to comply with the ICC arrest warrant.

The first instance of this being demonstrated lies with the decision to host the AU Summit in the first place:

> …there's no reason why we had to host the AU Summit. We could have said, 'oh no, this is going to put us in trouble with the ICC so we're not hosting the Summit. But hosting the Summit is very important to us because of regional [politics]. […] South Africa wants to – and I think even now – continue to play an important role on the continent, and so it's probably true that if obligations for arrest is going to make that difficult in the future, then that certainly creates problems.[1190]

> I think the Summit was meant to be somewhere else. […] South Africa volunteered quite at the last minute so it wasn't a long-term issue. The powers that be had got legal advice that al-Bashir could come because he wasn't coming to South Africa and he was coming to attend the AU Heads of State [Summit] and it was similar to everyone being allowed to go to UNGA at New York.[1191]

It seems that South Africa miscalculated the international costs of its hosting the AU Summit when it decided to prioritise its regional goals. There are two beliefs that seemed to shape officials' behaviour: (1) the legal advice that the nature of the AU Summit meant that South Africa did not have a legal obligation to arrest al-Bashir mitigated the difficulty of its not being able to use its usual course of action regarding al-Bashir's attendance to South African-based political events[1192] and/or (2) that this course of action was still available.[1193] Either way, it seems that South Africa believed that it could host the AU Summit and not confront the need to arrest al-Bashir, which informed its decision to prioritise its regional political interests over its international ones, since it did not foresee the latter being damaged by the former.

[1190] Tladi 2021.
[1191] South African Government Official 2021.
[1192] It is not clear why South African officials did not consider the requirements of domestic law regarding the obligation to arrest al-Bashir.
[1193] This holds at least until Tladi advised DIRCO otherwise. It is plausible that the dissemination of this advice might restricted to the bureaucratic wings of DIRCO. Follow up research into such details is needed.

South Africa's withdrawal was motivated by more than tension regarding the arrest of al-Bashir. This is evidenced by Tladi's comments:

> I think if you asked me, 'are there other options for South Africa?' Absolutely, and I think many of us who were advising government were just as surprise to hear that we will withdraw. […] were actually quite surprised because the answer for South Africa's problems is actually quite easy. […] the Supreme Court of Appeal judgment was a win, from my perspective, because it gave you a simple way out. It said, 'as far as we are concerned under international law, you may have the duty to arrest, we don't care. The problem is your domestic legislation.'[1194] And, ultimately, we are responsible for our domestic legislation, so we can just simply amend the domestic legislation to include Article 98 and that's it, and then all your problems are solved…[1195]

There were domestic factors at play. The anti-ICC discourse within the AU resonated with a faction within South Africa's ruling party, the African National Congress (ANC):

> Then I think it got a bit caught up in a sort of anti-imperialism perspective from sort of anti-European perspectives within the ANC. The decision was taken by Cabinet to withdraw. The withdrawal was overturned by the High Court. Government didn't appeal – so accepted it. The International Crimes Bill was introduced into Parliament to provide for the withdrawal…[1196]

The international law expert interviewed stated that the there was a slow growing tension with the ICC's interventions in Africa and that SALC's application to arrest al-Bashir was a tipping point for South Africa. They argue that South Africa was embarrassed, and withdrawal was a knee-jerk reaction and a way to save face before African colleagues at the AU.[1197] They note that South Africa wanted to be seen as acting consistently with the AU's non-cooperation position since Dlamini-Zuma was the AU Commission Chair at the time.

[1194] In the interview, Tladi explained that South Africa had a domestic legal obligation to arrest al-Bashir: "…it's more difficult to explain why we didn't arrest him [al-Bashir] in terms of our domestic legislation than it is in terms of international law, and to buttress that point. By the way, […] the Supreme Court of Appeal judgment seems to take that position as well. It seems to say, 'we accept that, under international law, there may be a duty not to arrest them. But, ultimately, what matters is that our domestic law doesn't contain a kind of exception.' And I think that's a fair conclusion." South Africa's Constitution does not provide for the exception to the immunity waiver.

[1195] Tladi 2021.

[1196] South African Government Official 2021.

[1197] International Law Expert 2021.

The international law expert believes that South Africa's exit behaviour is best explained as a combination of domestic factors and regional factors. This position is shared, to an extent, by Clark:

> I always saw the threat of the South African withdrawal really as Zuma trying to play to two different constituencies. One was Zuma being worried about South Africa's influence at the AU and then I felt that, at that particular time, Zuma was tapping into that sort of – broadly – AU opposition to the Court around Bashir, around Kenyatta and Ruto. […] this also came at a time when I think Zuma was maybe worried that South Africa was losing some of its AU clout. […] I think that Zuma saw an anti-ICC stand as a way to try to curry a sense of favour at the AU level that he was scared South Africa was losing. But then I think it was also a part of his domestic agenda, which in my view was about, broadly, eroding the rule of law and the role of the courts and, and a sense that politics should not be overly regulated by legal institutions, whether those were domestic or international legal institutions. That, I think, really played out in the whole episode around Bashir coming to the AU Summit in Pretoria – that Zuma saw this as an opportunity to kind of play both levels to kind of send a message to the AU, but also to sort of send a domestic message about where law fits into politics. So, I really see it as kind of bound up in that one president – bound up in Zuma and his particular approach.[1198]

Clark agrees that South Africa sought to improve its image within the AU, since South Africa's regional reputation is connected to its soft power on the continent.[1199] Clark also notes domestic events but attributes them to Zuma's interests: Zuma wanted to discredit or subvert legal institutions since this served his interests. This would suggest head of state interests – but not because Zuma was threatened by the ICC. Rather, because of the domestic legal threats he confronted.

Furthermore, South Africa's retraction of its withdrawal notification was due to domestic factors. On 22 February 2017, the South African High Court found in *Democratic Alliance v Minister of International Relations and Cooperation and Others* that the withdrawal from the Rome Statute that was submitted in October 2016 was unconstitutional as it had not

[1198] P. Clark 2021.
[1199] Clark used examples of South Africa's failed attempt to mediate the Côte d'Ivoire conflict, and how the response by some AU leaders suggested South Africa's reputation as a peace maker on the continent was threatened.

undergone a parliamentary process to receive approval.[1200] This meant that South Africa was compelled to rescind its withdrawal notification, or risk being in violation of a domestic judicial order. South Africa submitted its withdrawal notification retraction on 7 March 2017.[1201] As noted in the ICC General Debate in December that same year, South Africa's official intention communication to the ICC was to pursue withdrawal:

> Based on the afore-going, amongst others, I wish to reaffirm the statement read out by the Government of South Africa at the Fifteenth Session of the Assembly of States Parties, in which it announced its intention to withdraw from the Rome Statute. The Government's resolve in this regard remains unchanged because of the active role that South Africa continues to play in promoting dialogue and peaceful resolutions of conflicts in African and elsewhere. South Africa's continued membership to the Rome Statute, as it is currently interpreted and applied, carries with it the potential risk of undermining its ability to carry out its peace-making mission efforts in Africa, and elsewhere.[1202]

It seems that South Africa's explanation of its withdrawal as being motivated by its desire to protect its peacemaking role was a regional factor that was relevant, but one that was a rationalisation in hindsight. It seems that South Africa had already decided to exit and that it needed to do so in a way that moralised the withdrawal, therefore controlling the damage to its international reputation. Rather than adopting the AU's position on this, South Africa presented its withdrawal as a result of a unique position that South Africa occupies in the world: as being one of the major peacemaking states on – and from – the continent. This position is reflected in comments shared by two South African government officials: "…would we have had a negotiated settlement in South Africa if [South Africa] […] was subject to the Rome Statute [at the time]? Because part of that negotiated settlement was some kind of amnesty for perpetrators of violence, which you cannot do under the Rome Statute…"[1203]

[1200] Woolaver 2017b; Democratic Alliance v Minister of International Relations and Cooperation and Others 2017.
[1201] Republic of South Africa 2017a.
[1202] South Africa Country Statement, ICC GD 2017.
[1203] South African Government Official 2021.

> I think the interpretation was that, sometimes, in order to make peace, you have to speak to the warring parties, and that often includes state leaders. […] South Africa's in a different position than, say for instance, Canada or the United States. It's an African state dealing with African problems, dealing with African countries, and sees itself to be a peacemaker and the state to which other states sometimes look to to intervene when they get into an intractable situation. […] And the whole issue of 'African solutions to African problems' – we don't want to have African negotiations in Switzerland; we want to have it in Africa so that there's buy-in and that kind of thing. The old philosophy behind the AU is 'African solutions to African problems' here on the continent. So, there's that kind of emotional attachment also to doing things an African way in Africa…[1204]

Zuma resigned as President of South Africa on 14 February 2018, ahead of a scheduled no-confidence vote in Parliament and following the ANC recalling him.[1205] Deputy President Cyril Ramaphosa was sworn in as the new president on 15 February 2018 and in May 2019, was re-elected as president vis-à-vis the ANC's election victory. Ramaphosa had a foreign policy vision that sought to repair South Africa's international reputation, which had suffered under Zuma's regime.[1206] As explained by Graham:

> At the end of the day, Cyril Ramaphosa didn't automatically state that he would like to continue or follow through with Zuma's decision because he had a different plan for South Africa's image globally and it all ties in with his first […] speech at the UN when he became president, and that was basically harping on the whole image of Mandela and how he wanted it to take the Madiba magic forward, and that would mean, of course, that South Africa would be ethical and do everything right. And it would be norms based in its foreign policy and it would follow the law in all respects.[1207]

As Graham points out, Ramaphosa's speech encapsulates South Africa's decision to prioritise its international reputation as a good global citizen, which is closely tied to its

[1204] Stemmet 2021.
[1205] *BBC News* 2018a; *News24* 2018; Essa 2018.
[1206] The ICC withdrawal is one instance that has been seen as symbolising South Africa's moral decline. Zuma's corruption and rape cases also discredited the country's reputation under his regime as well as international coverage of police brutality (e.g. Marikana and against #FeesMustFall protesters) and the rampantly high inequality and poverty rates. Otavio 2021.
[1207] S. Graham 2021.

image under the Mandela regime.[1208] She notes that there are (aspirational) international political factors at play that shaped how the Ramaphosa regime remedied the situation:

> …It all boils down to consistency. […] if you do declare something publicly, you have to follow through, unless it's a major catastrophe of a decision, which I think this is - withdrawing from the ICC, I think it is a catastrophe… […] you have to think that everything not as isolated events, but everything plays on each other because perception in politics is everything. As Tom Wheeler always said – and I agree with him – the idea is that if South Africa ever, ever, down the line became a permanent member on a reformed Security Council and represented Africa, it would have to take into account its history of consistency around trying to perform as an African member. In other words, what has it done to help benefit Africa? What has it done that has not benefited Africa? And because South Africa is a leader on the continent, people associate South Africa's actions with the continent itself, even though that's unfair, it nevertheless happens. […] It has to be consistent. The problem with that, though, you can't really enforce consistent decision-making if you fundamentally disagree with your previous ruler's rulings on something. Ramaphosa and Zuma have differences as we well know. And it would make sense to me that Cyril would want to do things very differently. The fact that Zuma left within a major cloud around corruption and disaster and fraud, and that's linked with South African government also helped make Cyril want to change tack and convey a sense of South Africa playing by the book and following the rules, and [that] ethics is enforced. […] And to actually convey that in public forums all the time – it's a big deal. It's a big statement. So, he's trying to make sure that South Africa does what it's supposed to do in terms of the different conventions and forums it's signed up to and ratified. So that's why the ICC is such a big deal.[1209]

This suggests international factors meant that South Africa could not approach the change in its position toward the ICC from the Zuma to the Ramaphosa regimes in the same way that, for example, Barrow did when he gained office from Jammeh, which was to declare a clean break and renounce the former regime's decisions. However, there were also domestic ones at play. Ramaphosa governed a divided ANC and Cabinet, which were both split between Zuma- and Ramaphosa-affiliated factions:

[1208] 'Address by the President of South Africa, H.E. Mr Cyril Ramaphosa, to the UN General Assembly, United Nations, New York, USA, 25 September 2018' n.d.
[1209] S. Graham 2021.

> …then obviously Zuma gets removed, or leaves, and the other problem was at the national general council at the ANC in 2015, or there about… the decision was taken that there should be a withdrawal and that got confirmed by conference in 2017. The NASREC conference was about elections, […] So I don't think any of those resolutions were particularly well thought through, but anyway, they've got a problem of there's a conference resolution on withdrawal. The current NEC […] you can find their statements from the last NEC Lekgotla, which was in July this year – which was basically that 'we're not withdrawing.' […] …but [the 2019 South African country statement at the ICC ASP] reflected the position [that] we do think that [there] needs to be reform and we recognize the reforms or that the processes that are taking place – the Goldstone report and things like that. […] we're still debating the issue, but we are evaluating the situation or something vague like that, but we're still a member of the Assembly of State Parties and a member of the ICC.[1210]

Ramaphosa's ascent to Presidency of the ANC and the of South Africa saw a shift in the ruling party's position toward the ICC.[1211] Its 2019 ICC General Debate statement reflected the divisions with the ANC and the challenge of presenting South Africa's position as consistent and not self-contradictory. South Africa stated its continued support for the ICC but noted it remained concerns about the implications of membership for its regional and international peacemaking role, which meant withdrawal was still being debated. However, the matter has largely fallen silent within domestic, and ANC, politics. Kersten reflects on South Africa's position toward the ICC under Ramaphosa: "South Africa [has], at the worst, the kind of soft support, but, periodically you hear in diplomatic conferences that obvious statements of support from South Africa. There just hasn't been anything from that executive level – from Ramaphosa himself. But still, at best, it's a positive relationship; at worst it's just not an issue for South Africa."[1212]

The preceding analysis of the South African case demonstrates that South Africa's behaviour in relation to the ICC is more complicated than the existing literature suggests. Its behaviour prior to 2015 was predominantly loyalty, with three instances of voice behaviour. International reputational factors combined with regional politics explained its behaviour

[1210] South African Government Official 2021.
[1211] Beresford and Wand 2020, 553; Goldstone 2021.
[1212] Kersten 2021.

since South Africa sought to promote its international image as a good global citizen and leader of the African continent vis-à-vis its ICC engagements. However, in order to secure its position as the African representative, South Africa had to be seen to represent continental issues, hence regional politics also shaped its behaviour.

South Africa's exit behaviour is often explained as its choosing to prioritise its regional goals over its international image. It is inaccurate to treat regional political factors and the solidarity norm as synonymous. The South African case demonstrates this. While it used solidarity politics as part of its justificatory discourse in its voice and exit behaviour, South Africa's behaviour was shaped by its desire to consolidate its regional power and role as a peacemaker. South Africa's hosting of the AU Summit demonstrates its prioritisation of its regional political goals, although this was not a demonstration of solidarity.

However, its exit behaviour is not explained by regional political factors alone. South Africa's exit is immediately explained by dissatisfaction with the ICC's Article 87(7) procedure and the related shame, which suggests reputational factors were the immediate cause of exit behaviour. South Africa's justification of its exit behaviour drew on regional factors – such as solidarity and its peacemaking role. But these explanations appear to be retroactive rationalisations rather than driving factors of the exit behaviour.

South Africa's shift away from exit toward voice (in 2018) is due to domestic factors. Its retracted withdrawal notification in 2017 was due to a domestic court order, however, South Africa still indicated exit behaviour through its country statement that year. Its shift to voice in 2018 (and the subsequent appearance that withdrawal is no longer being seriously considered) is due to the change in South Africa's regime from Zuma to Ramaphosa. The domestic political change in leadership saw a shift in foreign policy toward prioritising South Africa's reputation. Thus, South Africa's shift away from exit behaviour is due to an interplay between domestic and international reputational factors.

Namibia

Namibia ratified the Rome Statute on 25 June 2002. Namibia delivered statements during five ICC General Debates, one of which was classified as loyalty (2012) and the rest were classified as voice. It participated once at the UNGA ICC Report Plenary (2013 – classified as voice). It delivered a loyalty statement at the Review Conference and it did not mention the ICC during its UNGA General Debate statements. Overall, Namibia was critical of the ICC – drawing attention to frustrations with its case selection, its treatment of the AU, UNSC referral and deferral powers, and the ICC's adherence to complementarity.

Namibia's behaviour is best explained by regional political factors – particularly the solidarity norm. Namibia's behaviour with the ICC seems to be influenced most strongly by the AU's politics with the ICC. Namibia overtly stated, at the AU Summit in 2009, its support for the dismissal of the ICC's arrest warrant for al-Bashir and stated that he would be welcome in Namibian territory.[1213] This was met with domestic resistance when a human rights NGO director pointed out that this would be in violation of Namibia's Rome Statute obligations. Nonetheless, remained resistant to the ICC's arrest warrant for al-Bashir and, later, Gaddafi.[1214]

Namibia is reliant on good political and economic relations with South Africa. Thus, it is possible that its vocal support for withdrawals from the Court was partly shaped by South Africa's soured relations with the ICC and its (rescinded) withdrawal. However, this is not a sufficient explanation alone since Namibia's voice behaviour with the ICC predates South Africa's.

Namibia's president, Hage Geingob, explained Namibia's intention to withdraw from the ICC in a news interview:

> People are saying that it only targets African leaders. That seems to be true ... and that's a problem… But if you convince the United States to come, we will stay… Africa needs to develop

[1213] Melber 2014, 443.
[1214] Melber 2014, 444.

> its own processes, systems, courts and institutions… It would help us to be self sufficient. We must build lasting institutions ... not something imposed from foreign countries.[1215]

This is evidence that Namibia's behaviour has been influenced by solidarity politics within the AU because the reasons given by Geingob are consistent with the grievances put forward by the AU. The first reason provided is self-evident: the ICC targets Africa and African heads of state, which is a position long held by the AU. The second reason requires interpretation. The specific reference to the US suggests Namibia (and the AU)'s dissatisfaction that the Rome Statute has not been ratified by major global powers (like the US). Yet, some of these powers have the power to influence the ICC's caseload via their UNSC seat. The last reason given – that regional processes should be developed – essentially amounts to the sentiment "African solutions for African problems", which is starkly a pan-Africanist position. Cumulatively, it seems that Namibia's behaviour with the ICC is primarily driven by AU politics with the ICC and is an example of the solidarity norm being practised by an AU Member State.

Interview data corroborate that regional politics – particularly the solidarity norm – best explains Namibia's voice behaviour with the ICC. The government official suggested that Namibia was showing solidarity with South Africa:

> "Probably Namibia being close to South Africa and SWAPO being close to the ANC. Yeah, probably that. […] within SADC, for example, you also got to look at the former liberation movements… Namibia and South Africa's struggle was very much interlinked because South Africa was occupying Namibia, so SWAPO and the ANC are very close. Namibia is quite small, but the ANC was close to FRELIMO and to MPLA – sort of Marxist, Soviet supported liberation movements. […] But anyway, all those, those historical issues need to also be taken into consideration."[1216]

However, Stemmet disagreed when he was asked if he saw the South Africa-Namibian relationship as relevant:

[1215] Milhench 2016.
[1216] South African Government Official 2021.

> I don't think so. Not that I'm aware of. […] At one stage, Namibia also had this idea that they will withdraw, and, I think, they mentioned it in their statements, but they never really acted on this …it was definitely not Namibian issues. It may have been other states that tried to get them as an ally […] definitely Namibia doesn't have an issue with the ICC."[1217]

Stemmet's comments show that, at least, domestic politics or head of state interests were not factors shaping its relations with the ICC. Murithi argues that the solidarity norm within regional politics was the shaping factor:

> I think Namibia was simply just aligning itself with the policies of the African Union, which the AU countries had been pushing for countries to sign up to. […] But Namibia […] it wasn't really clear. It was surprising to see. There was a bit of a bandwagon at the time. Like 'we're pulling out, we're pulling out, we're pulling out.' There was a working group. There was even a report that was written. So I think there was a bandwagon that it jumped…[1218]

Thus, the most plausible explanation of Namibia's voice behaviour is that it was driven by factors related to solidarity with the AU. In her chapter about Namibia's foreign relations and the AU, Bience Gawanas (then-Special Advisor on Social Issues to the Minister of Health and Social Services of Namibia) wrote: "In the final analysis, Namibia's foreign relations are guided by the principles underlying its relationship with the AU."[1219] This interpretation is supported by the analysis of primary evidence (country statements and interview data), which also points to the solidarity norm as the principal explanatory factor for Namibia's voice behaviour.

Djibouti

There is no speech data for Djibouti. It ratified the Rome Statute on 5 November 2002.

An article that appeared in the Sudan Tribune on 8 June 2009 reported on deliberations among African states within the AU regarding how to respond to the ICC's arrest warrant for

[1217] Stemmet 2021.
[1218] Murithi 2021.
[1219] Gawanas 2014, 278.

al-Bashir. The report noted that despite Sudan's lobbying for mass withdrawal as a symbol of solidarity with the country, African states did not commit to this. Instead, the majority of African states preferred to request that the UNSC defer the investigations against al-Bashir. The report notes that a diplomat stated that Senegal, Djibouti, and Comoros had lobbied for collective withdrawal from the ICC.[1220]

Djibouti allowed al-Bashir to visit on 8 May 2011,[1221] which resulted in the ICC referring it to the UNSC and ASP for further action. At the Seventh ICC-ASP Bureau Meeting, on 7 June 2011, the Permanent Representative of Djibouti explained that permitting al-Bashir's visit had not been a haphazard decision. It noted that it was delegating police units to the Darfur region and that there was AU and Arab League decisions that had to be considered by Djibouti. It declared its support for the Court and stated that it would not routinely violate its Rome Statute obligations.

Nonetheless, al-Bashir returned again in May 2016 and July 2018.[1222] Djibouti submitted a note verbale to the Registrar on 24 June 2016 regarding the al-Bashir matter and defended its inaction on the grounds that it lacked capacity to arrest al-Bashir, that it was adhering to AU non-cooperation decisions, and that Djibouti was involved in peace processes between Sudan and South Sudan in its capacity on the Intergovernmental Authority on Development.[1223] This clearly indicates that Djibouti was guided by regional politics in its decision to allow al-Bashir entry into its territory in 2011 and 2016. It is likely this was also the case in 2018. Interestingly, this suggests that Djibouti's regional politics were being practiced akin to South Africa's defence for its withdrawal: due to its peacemaking role. Djibouti did not take an overtly anti-ICC position and, as its 2011 address at the Bureau of the ASP suggests, it was concerned to some extent about being seen as committed to the

[1220] 'African Countries Back Away from ICC Withdrawal Demand - Sudan Tribune: Plural News and Views on Sudan' 2009.
[1221] 'Djibouti Will Not Honor Its Rome Statute Obligations, Invites Sudan's Bashir - Sudan Tribune: Plural News and Views on Sudan' 2009.
[1222] Omorogbe 2019, 288.
[1223] Decision on the non-compliance by the Republic of Djibouti with the request to arrest and surrender Omar Al-Bashir to the Court and referring the matter to the United Nations Security Council and the Assembly of the State Parties to the Rome Statute 2016, para. 6.

ICC. Nevertheless, regarding the Sudan situation, Djibouti's regional political interests in peacemaking outweighed its obligations to the ICC.

Another possibility is that Djibouti sought regional support following tension in 2008 with Eritrea over the Ras Doumeira border.[1224] Styan notes: "Eritrea's incursion prompted vigorous Djiboutian diplomatic efforts at the United Nations, the African Union and IGAD [Intergovernmental Authority on Development]." Given Sudan's high profile within the Intergovernmental Authority on Development and its prominence within the sub-region, Djibouti might have seen it to be in its own interests to offer support to al-Bashir. Djibouti's behaviour might have been driven by domestic factors related to its Eritrean border, which spurred it to secure regional allies.

A report prepared for "Friends of Djibouti",[1225] written in 2013 by UK Member of Parliament, Sir Tony Baldry, found that "…there is sufficient evidence to refer Djibouti's President, Ismail Omar Guelleh, to the International Criminal Court for undertaking, permitting, allowing or sanctioning crimes against international law."[1226] This report does not seem to have gained prominence or have reached the ICC, so it is unlikely that Guelleh's interests was a major factor shaping Djibouti's ICC behaviour.

Available evidence and information suggest that Djibouti's behaviour with the ICC was primarily driven by regional political factors. Particularly, its position regarding geo-politics with – particularly, its peacemaking role in – Sudan seemed to have been the causal factor for Djibouti's non-compliance with the al-Bashir arrest warrant and its support for the 2009 call for mass withdrawal from the ICC.

Tanzania

[1224] Styan 2013, 4.
[1225] There is not much information available about this group. On the "About" section of its Facebook page, it simply is listed as a religious organisation with no further information. It has no posts – only two updates of its cover photo, which is a map of Djibouti with the "Friends of Djibouti" logo.
[1226] Baldry 2013, 2.

Tanzania presented three statements at the ICC General Debate (2011, 2014, and 2016), the ICC Review Conference, two speeches at the UNGA ICC Report Plenary (2011 and 2016) and Tanzania mentioned the ICC in one of its UNGA General Debate speeches (2013). All of Tanzania's speeches were classified as voice statements. However, Tanzania entered a reservation on the AU's draft Withdrawal Strategy, which is considered as loyalty behaviour.

Minde argues that Tanzania's foreign policy is modelled on 'liberation diplomacy'[1227] – a historical factor that was flagged as important when considering the international relations of southern African states in the interview with the governmental official.[1228] Minde argues that Tanzania's foreign policy focused on promoting this conflict mediating role until (the late) President John Magufuli was elected in 2015. Magufuli's interests lay with domestic politics. However, Minde's assessment does not help to explain Tanzania's behaviour in relation to the ICC, which seems to be driven by regional politics under both leaders.

Tanzania's voice statements all emphasised the need for the ICC to address its relationship with African states and the AU. However, Tanzania did not threaten to withdraw from the ICC, reassuring it of its continued support in its speeches. This suggests that the criticism raised was intended as constructive criticism. In fact, in June 2015, the President of Tanzania, Jakaya Mrisho Kikwete, visited the ICC and restated its support for the Court.[1229]

Yet, under the Presidency of John Magufuli, Tanzania, alongside Uganda, criticised the ICC's investigations into Burundi.[1230] Additionally, in April 2018, Tanzania's Minister for Justice and Constitutional Affairs stated that Tanzania had no intention of leaving the ICC but saw the need for it to reform – and that this would be best achieved by remaining a State Party and advocating for change from within the institution.[1231]

[1227] Minde 2019.
[1228] South African Government Official 2021.
[1229] 'President of United Republic of Tanzania Visits ICC' n.d.
[1230] Yusuf 2017.
[1231] *Xinhua* 2018.

Tanzania has played a significant role in conflict resolution within its neighbouring states. Notably, it has been involved in conflict resolution processes in Mozambique, Rwanda, Burundi, and Kenya.[1232] This explains its outspoken position regarding the ICC's involvement the latter two situations. Tanzania's politics toward the ICC were likely influenced by the role that it plays within the sub-region as a mediator. It might have seen the ICC's poor relationship with the AU and some African states as a challenge for the Court's credibility as well as for mediation in some conflicts.

It seems that Tanzania's voice behaviour was shaped by regional politics. However, Tanzania's voice behaviour seemed moderated by loyalty. Tanzania's decision to remain within the ICC to promote reform suggests that it sees the ICC as valuable. but that this was fettered by loyalty ideational factors, where Tanzania saw the ICC as an important institution but one that needed reform regarding its relationship with Africa.

Uganda

Uganda ratified the Rome Statute on 14 June 2002. Uganda self-referred to the ICC (after then-Prosecutor Ocampo encouraged it to do so)[1233] in January 2004 and the ICC launched investigations in July 2004 focused on the war in norther Uganda between the government and the Lord's Resistance Army (LRA). The ICC issued arrest warrants for several leaders of the LRA, including for Joseph Kony, Vincent Otti,[1234] and Dominc Ongwen,[1235] in 2005.[1236]

Uganda's cooperation with the ICC has been inconsistent and seems to be motivated, mainly, by what suits its domestic political aspirations. This is suggested by Uganda's initial support for the ICC's arrest warrants for the LRA leadership and its demand, in 2006, that

[1232] Minde 2019.
[1233] Waddell and Clark 2008, 43 Clark adds that labelling the DRC and Uganda as "self-referrals" is questionable considering the fact that the OTP had negotiated with both their governments to encourage them to refer themselves to the ICC. P. Clark 2018, 55; 63 Nouwen argues that the meetings between Uganda and the OTP prior to the self-referral were instigated by Ugandan state officials – see: Sarah M. H. Nouwen 2013, 112–13.
[1234] Kony remains at large. At the 2008 ICC General Debate, Uganda confirmed that Otti (and Raska Lukwiya) was dead.
[1235] Ongwen, who surrendered himself in 2015, was found guilty for 61 crimes. Trial Chamber IX handed down the judgment on 4 February 2021.
[1236] 'Situation in Uganda' n.d.

these warrants be dropped once the LRA set that as the condition for it signing a peace deal with the Ugandan government.[1237] There is consensus that Uganda instrumentalised the ICC as a way to target the LRA (i.e. a domestic opponent).[1238]

Uganda spoke at ten ICC General Debates. Six of these statements were classified as loyalty (2008; 2009; 2011; 2012; 2015; and 2018), while the rest were voice. Uganda responded to four UNGA ICC Report Plenaries. Three (2008 to 2010) were loyalty and one was voice. Uganda mentioned the ICC once during a UNGA General Debate statement, which was a voice statement. Thus, the speech data reflect Uganda's erratic behaviour toward the ICC. It varied between loyalty and voice statements.

Nouwen and Werner suggest that Uganda's legal approach to the LRA issue was shaped by its military strategy. Relatedly, faltering military efforts resulted in reputational costs for Uganda internationally. Uganda's referral of the LRA situation was part of its military strategy and an effort to improve its international reputation (and, consequently, improve its military aid).[1239] This suggests that a domestic factor (i.e. military strategy regarding the LRA) is the primary factor that shaped Uganda's loyalty behaviour with the ICC. Furthermore, the internationalisation of the LRA issue could weaken the LRA by universalising it as a global enemy.[1240] The Kony 2012 short film that circulated online about Joseph Kony and the LRA is one example of how the conflict against the LRA had become globalised.[1241] Additionally, the depiction of the LRA as a terrorist threat allows Uganda to present itself as ally in the war on terror, which makes it favourable for international support.[1242]

Uganda, generally, demonstrated loyalty behaviour toward the ICC in official forums before 2014, which is best explained by the domestic threat posed by the LRA. Brosig noted that

[1237] Fisher 2006; Greenawalt 2009, 108; Keller 2007, 210.
[1238] Branch, 'Uganda's Civil War and the Politics of ICC Intervention'; Clark, *Distant Justice*; Bâ, *States of Justice*; Nouwen and Werner, 'Doing Justice to the Political'.
[1239] Nouwen and Werner, 'Doing Justice to the Political', 948; Bâ, *States of Justice*, 53.
[1240] Branch, 'Uganda's Civil War and the Politics of ICC Intervention', 183; Bâ, *States of Justice*, 54.
[1241] Invisible Children 2012.
[1242] Bâ, *States of Justice*, 54.

"…Uganda invested money, time and resources, including human resources in its embassy in The Hague – an embassy that, throughout the decades now, has been quite collaborative."[1243] This suggests that Uganda's loyalty surpassed statements and extended to the commitment of resources in The Hague to bolster its cooperation with the ICC.

However, in 2010, Uganda exercised voice at the ICC General Debate. Uganda expressed discontent with the lack of progress made by the ICC to arrest the suspects for whom warrants of arrest were issued. Uganda's discontent was translated into voice action because of the international and domestic attention that the LRA had received for its violence and mass killings in the DRC in 2010 – including the circulation of a Human Rights Watch report to this end.[1244] Thus, Uganda's voice behaviour in 2010 is likely explained by its dismay with the threat posed by the LRA (a domestic factor) as well as the negative attention (a reputational factor) that its conflict received by media outlets, since Uganda has not defeated the LRA.

Another factor that influenced Uganda's relations with the ICC is its relationship with Kenya, which is a type of regional solidarity politics. In section 7.2.2.2. of Chapter 7, it was noted that Uganda's threat to withdraw from the ICC was influenced by its close political relations with Kenya. Indeed, in its ICC Review Conference speech, Kenya reflected on its relationship with Uganda, stating: "Kenya and Uganda enjoy historic and close economic, social, cultural and political ties."[1245] This illustrates the positive diplomatic relations between these two states. Furthermore, Uganda and Kenya have a shared objective with respect to addressing the al-Shabaab threat.[1246]

Therefore, a type of solidarity politics influenced Uganda's behaviour with the ICC since it sought to protect its relationship with Kenya above its relationship with the ICC. Its solidarity with Kenya, however, was influenced, at least partially, by domestic factors such

[1243] Brosig 2021.
[1244] 'Trail of Death: LRA Atrocities in Northeastern Congo' 2010; Wilkerson n.d.; Nyakairu 2010; Gettleman 2010; Reuters 2010.
[1245] ICC RC 2010.
[1246] P. Clark 2018, 80.

as the desire to address the threat posed by al-Shabaab is a domestic security interest. However, it is not convincing that Uganda's relations with the ICC were primarily shaped by regional politics. Rather, Uganda's voice behaviour in 2014 at the ICC General Debate and the UNGA ICC Report Plenary was an act of solidarity politics. Uganda expressed dissatisfaction with the ICC's summons against Kenyatta, which suggests either that Uganda demonstrated solidarity with Kenya or specifically with Kenyatta. If solidarity was specifically with Kenyatta, then it seems that Uganda's 2014 voice behaviour was mainly influenced by solidarity among heads of states. Uganda's voice behaviour in 2016 also seems driven by regional politics given the support that it lent for South Africa's withdrawal and the call for the ICC to address its relationship with Africa as a matter of necessity. Uganda's 2016 voice statement seems to align Uganda with the broader withdrawal debate.

However, Uganda also mentioned that it has been criticised for allow al-Bashir to attend Museveni's inauguration in 2016, which suggests that its voice statement might have been retaliation for this reprimand. Additionally, Uganda's 2017 voice statement at the ICC General Debate also referred to its unwillingness to execute the arrest warrant for al-Bashir. In both years, Uganda defended its position regarding al-Bashir's arrest as justified by the role that Sudan[1247] plays in tackling the LRA threat vis-à-vis its role in stabilising South Sudan – where LRA operations had been based at times.[1248] This suggests that the cause for Uganda's choosing to support al-Bashir over honouring its ICC obligations was due to domestic factors related to its conflict with the LRA.

Uganda's loyalty behaviour in 2015 and 2018 are each explained by developments in the ICC's prosecution of LRA combatants. 2015's loyalty was motivated by Ongwen's surrender, which Uganda specifically noted in its ICC General Debate statement that year. 2018's loyalty is attributable to the prosecution of Thomas Kwoyello whose trial began that year,

[1247] Interestingly, Sudan had previously (until 2006) been a supporter of the LRA in retaliation to the support Uganda gave to the secessionist group, Sudan People's Liberation Movement, which later became the ruling party of independent South Sudan. This illustrates how transient allegiances in the sub-region can be depending on the state of conflict in a given country.
[1248] Fabricius 2016; Neiman 2020; Ahere and Maina 2013.

which was also specifically noted in Uganda's ICC General Debate address that year. Thus, loyalty behaviour was, once again, influenced by domestic political factors.

An interviewee explains Uganda's behavioural arc regarding the ICC:

> Ever since the Kenya case is started, we saw Museveni and Uganda flip, basically, from being supporters and collaborators – and I didn't mean collaborators in a pejorative way, but working with the OTP, the Office of the Prosecutor, going after the LRA, but then later on, when the LRA were for all intents and purposes already defeated and no longer constitute a threat to the Museveni regime; we saw Museveni aligned with Kenya and with all the critics of the ICC and become one of the most vocal critics of the ICC.[1249]

The interviewee's reflections support the interpretation that Uganda's loyalty behaviour with the ICC was foremost driven by its domestic situation regarding the LRA. Once that was less of a factor, then regional politics shaped Uganda's ICC voice behaviour.

Thus, it seems that the most convincing explanatory factors behind Uganda's relationship with the ICC is its domestic politics (especially for loyalty behaviour) and regional political factors (especially for voice behaviour). Regional politics took the form of solidarity politics with Kenya in 2014 and South Africa in 2016. Although, the 2016 solidarity politics were intertwined with domestic factors and might suggest that the broader withdrawal debate was used by opportunistically by Uganda to sanctify its behaviour when it did not arrest al-Bashir.

CAR

CAR joined the ICC in October 2001. The CAR made three statements before the IO forums studied: one at the ICC General Debate in 2010, one at the ICC Review Conference's General Debate, and one reference to the ICC in its UNGA General Debate statement in 2014. All were loyalty speech acts. Furthermore, the CAR signed the Niamey Declaration in October 2017, which indicated support for the ICC.

[1249] ICC Academic 2021.

The CAR self-referred to the ICC on two occasions. The CAR I situation was referred to the ICC in 2004 while CAR was under then President François Bozizé's regime.[1250] However, the ICC only launched its investigations into the CAR I situation in 2007 to investigate the violence committed between 2002 and 2003.[1251] The second CAR self-referral was made in May 2014 under interim President Catherine Samba-Panza's reign. The CAR II situation was opened in September 2014 by the ICC to investigate the violence committed in 2012. Thus, both CAR referrals were made by new governments against their military opponents during ongoing civil war and political instability.[1252]

It seems that Bozizé's intent was to use the ICC as a weapon against his predecessor, and political opponent, Ange-Félix Patassé.[1253] However, when the OTP launched its investigations in 2007, it stated that it would be investigating the "current" situation in CAR, which implicated Bozizé. Consequently, Bozizé requested that the UNSC use its deferral powers to halt the ICC's investigations into the CAR situation in August 2008.[1254] This never came into fruition and the CAR I situation went ahead. Nonetheless, Bozizé passed an amnesty law in a bid to protect himself and his allies from prosecution, and as a negotiation tool. Eventually, the ICC investigations resulted in the conviction of former DRC vice president Jean-Pierre Bemba. Bemba had led the Movement for the Liberation of the Congo to the CAR to assist Patassé, who had been trying to prevent a coup led by Bozizé.[1255] Bozizé succeeded in overthrowing Patassé in 2003 and subsequently confronted conflict and political instability. Bâ observes that the ICC's case against Bemba was greatly assisted by two of his political enemies: Bozizé and Kabila.[1256] This is consistent with the argument that CAR's behaviour toward the ICC was shaped by the desire to use it to target an opponent. Indeed, CAR's speech at the 2010 ICC General Debate, which took place one month after

[1250] Bozizé was in power from 15 March 2003 to 24 March 2013.
[1251] International Criminal Court 2007.
[1252] P. Clark 2018, 270.
[1253] 'Central African Republic: Untangling the Political Dialogue' 2008, 7.
[1254] Human Rights Watch 2009; 'Central African Republic: Untangling the Political Dialogue' 2008.
[1255] Bâ, *States of Justice*, 142–43.
[1256] Bâ, 165.

Bemba's trial for alleged crimes committed in CAR began, was highly praising of the Court. Additionally, at the Review Conference earlier in the same year, CAR stated:

> The Central African Republic has deliberately responded to all appeals from the International Criminal Court; because, landlocked country; large of 623,000 km2, populated by approximately 4,500,000 inhabitants, and enjoying strong economic potential, unfortunately still remains very fragile in the face of the attractions and greed aroused by its natural resources. Added to this is its geographical location which exposes it to collateral effects crises in neighbouring states.[1257]

This statement suggests that the CAR's cooperation with the ICC has been driven by these domestic considerations.

CAR II saw the referral of the Seleka and anti-Seleka forces by Samba-Panza. It seems that Samba-Panza used the referral for two ends. First, to target the risk posed by the Seleka and anti-Seleka militants. Second, to self-legitimise her transitional government in light of that fact that her predecessor, interim president Michel Djotodia, resigned in the face of criticism that he had failed to respond appropriately to the violence.[1258] The attempt to self-legitimise by Samba-Panza is further suggested by her speech at the UNGA General Debate in 2014, when she asserted her country's ongoing support for the ICC and to fighting impunity. Her delivery of this declaration at a speech before the UNGA undoubtedly sought to legitimise her transitional government before the international community.

Cumulatively, this suggests that both the CAR referrals were used to target domestic political opponents and, consequently, to help to consolidate fragile political regimes from these opponents. Additionally, it seems that Samba-Panza used the ICC referral as a way to self-legitimise domestically and internationally, which suggests that reputational factors were relevant for the CAR's behaviour under her (transitional) regime.

DRC

[1257] ICC RC 2010.
[1258] BBC News 2018c.

The DRC ratified the Rome Statute on 11 April 2002. The DRC self-referred its situation to the ICC in April 2004 (after being encouraged to do so by the OTP)[1259] and ICC investigations were opened in June 2004. The DRC delivered two loyalty statements before the ICC General Debate – one in 2008 and one in 2013 – and six voice statements. It also delivered two loyalty statements at the UNGA ICC Report Plenary – in 2009 and 2010 – and two voice statements. It made no references to the ICC in its UNGA General Debate contributions.

The DRC consistently emphasised its commitment to and cooperation with the ICC. This suggests that despite the numerous voice statements, which indicate that these statements were essentially critical of the ICC, the DRC reassured the ICC that its membership was not jeopardised by these areas of concern. This interpretation is further supported by the fact that the DRC entered a reservation on the AU's draft Withdrawal Strategy and that it signed the Niamey Declaration in 2017.

The DRC has a weak central state and has historically struggled to control its eastern provinces, which have been areas of protracted conflict, partly caused by spill over conflict from Rwanda.[1260] Consequently, the DRC hosts long-term UN and AU missions. Joseph Kabila was the president of the DRC for the entire period studied in this project.[1261] However, his regime was contested and threatened. Kabila came to power following the assassination of his father, Laurent Kabila, in 2001. Joseph Kabila's accession was met with rumours that he was not a Congolese citizen and that he had been born in exile.[1262] Jean-Pierre Bemba is one example of a political opponent who referred to these rumours when questioning Kabila's right to rule. Furthermore, Kabila's regime was reputed to be corrupt and nepotistic, in addition to being heavily indebted.[1263] This illustrates the context of the state and that it confronted some challenges despite the consistency of Kabila being in office during the period studied.

[1259] P. Clark 2018, 55.
[1260] Autesserre 2017; Pratt and Werchick 2004, 7.
[1261] The DRC was meant to hold presidential elections in 2016, but Kabila postponed these until December 2018.
[1262] Reyntjens 2009, 271.
[1263] Reid 2018, 102–3.

As noted above, the DRC emphasised that its cooperation in almost every speech that it delivered – regardless of whether it was a loyalty or voice statement. Stemmet notes that the DRC had historically been supportive of the ICC and sent high level delegates to attend ICC sessions:

> …the DRC has always been very strongly supportive of the Court… […] so these states [Nigeria and the DRC] did openly, and without being contested, voice their support for the Court. While many other states in their interactions will also voice support for the Court, but not to that extent, but these two are specifically running ahead.[1264]

Yet, Clark and Bâ each argue that the DRC's cooperation with the ICC was conditionally based on whether it strategically benefited the state.[1265] Indeed, this assessment is supported by the fact that the DRC did not arrest al-Bashir when he visited the country in 2014, which resulted in the ICC finding that the DRC has been non-compliant with its Rome Statute duties.[1266] Additionally, the DRC's self-referral and cooperation with the ICC's investigations could be interpreted as the DRC's effort to target the Court's investigations in areas that have traditionally been out of the DRC's control. This is suggested by the regional focus of the ICC's investigations in the eastern provinces of the DRC (the Ituri region and the Kivu provinces) and the neglect of other areas affected by conflict, such as the Kasai region since 2016.[1267] Clark argues that further evidence of the DRC's manipulation of the ICC is suggested by the focus of the investigations on Ituri province where state complicity in crimes is less likely to be established, as opposed to the Kivu provinces where state actors would most likely be established.[1268] It is evident that the focus of the ICC investigations have been against rebels and political opponents, and that the DRC(/Kabila regime)'s state actors have been largely unaffected. Last, another indication of evidence for the argument that the DRC's cooperation was self-interested is suggested by the DRC's support for the ICC's investigations and prosecution of Bemba (as noted earlier).

[1264] Stemmet 2021.
[1265] Clark, *Distant Justice*, 80; Bâ, *States of Justice*, 140.
[1266] Boschiero 2015.
[1267] Global Conflict Tracker 2021; *Voice of America* 2018.
[1268] P. Clark 2018, 83.

The DRC demonstrated predominantly voice behaviour in its country statements. However, it is notable that its 2010 voice statement was distinct. The 2010 voice behaviour was moderated by loyalty. It delivered a recommendation that in situ trials would be advisable, since it would close the distance between the trials and victims, in a constructive way. The other voice behaviour more closely aligned with withdrawal debate motifs around the need for the ICC to be more responsive to the concerns raised by African states. Notably, the DRC stated, in 2014, that "…the Court and its authorities should pay a little more attention to the reality of the change in the perception of States towards it, particularly those which have always given great support to its work."[1269] This insinuates that the DRC was dissatisfied with how the ICC had responded to concerns that it raised as a state that had historically been cooperative and loyal.

It seems that the DRC sought to present itself as a cooperative and loyal State Party to the ICC as part of a strategy to target domestic instability – politically (Bemba and Callixte Mbarushimana) and geographically (eastern provinces).

Côte d'Ivoire

Côte d'Ivoire ratified the Rome Statute on 15 February 2013, although it had accepted the ICC's jurisdiction on 18 April 2003 – and reaffirmed the acceptance on two occasions: in December 2010 and May 2011.[1270] The ICC initiated a *proprio motu* investigation into Côte d'Ivoire on 3 October 2011, which was solicited by Côte d'Ivoire and should be considered a de facto self-referral.[1271] The Côte d'Ivoire situation at the ICC focuses on the 2010/2011 post-electoral violence wherein alleged crimes against humanity were committed following a dispute about the presidential election results. Côte d'Ivoire signed the Niamey Declaration in October 2017, which indicated support for the ICC.

Côte d'Ivoire made four statements at the ICC General Debate (2013; 2014; 2016; and 2017) – all of which were examples of loyalty. It did not participate in the UNGA ICC Report

[1269] ICC GD 2014.
[1270] International Criminal Court n.d.
[1271] P. Clark 2018, 288.

Plenaries nor did it refer to the ICC in its UNGA General Debate statements. Furthermore, Côte d'Ivoire entered a reservation on the AU's draft Withdrawal Strategy, which is considered a demonstration of loyalty to the ICC.

The academic literature about Côte d'Ivoire's relations with the ICC has focused on the prosecution of Laurent Gbagbo[1272] by the ICC.[1273] The notion of one-sided justice has been raised, where academics have argued that it seems that the ICC has been used by Ouattara against his opponent, Gbagbo.[1274] Bâ stated: "Having outsourced justice to The Hague, the Ouattara administration ensured cooperation – selectively – to the ICC prosecutor, again in the pursuit of its own domestic political interests."[1275] Similarly:

> Côte d'Ivoire is another instance w where the Ouattara regime worked very closely with the OTP, and then, later on, once Gbagbo no longer posed a threat […] to the survival of the Ouattara regime, well, Côte d'Ivoire changed its position to the extent that at some point Ouattara himself has said, 'we will not send any more Ivorians up to The Hague – end of discussion'.[1276]

This highlights the idea of strategic cooperation with the ICC insofar as it serves the domestic political goals of the state: protection from a political enemy.[1277]

Interestingly, this behaviour is not specific to Ouattara in the Côte d'Ivoire context. Gbagbo himself attempted to use the ICC to target Soro after he attempted to stage a coup. Thus, on 18 April 2003, Côte d'Ivoire submitted a declaration recognising the ICC's jurisdiction backdating to September 2002.[1278] The ICC did not opt to initiate investigations into the

---

[1272] There is also mention of co-accused Blé Goudé and Laurent Gbagbo's wife, Simone Gbagbo, but to a lesser extent.
[1273] Rosenberg, 'The International Criminal Court in Côte d'Ivoire: Impartiality at Stake?'; Tiemessen, 'The International Criminal Court and the Politics of Prosecutions'; Malu, 'The International Criminal Court and the Complex Road to Peace in Cote d'Ivoire'; Bâ, 'The Court Is the Political Arena'.
[1274] Bâ, 'The Court Is the Political Arena'; Bâ, *States of Justice*, 22; Rosenberg, 'The International Criminal Court in Côte d'Ivoire: Impartiality at Stake?'
[1275] Bâ, *States of Justice*, 115.
[1276] ICC Academic 2021.
[1277] Bâ states that "…Ouattara's government was the first one to use the ICC to handle political opponents turned enemies rather than rebels or warlords" (Bâ, 2020: 137). However, this is untrue simply on chronological grounds. CAR was the first situation country that did this, which was indicated by Bozizé's efforts to use the ICC to target Patassé.
[1278] Republic of Côte d'Ivoire 2003.

case. However, the ICC responded when Ouattara sent a letter on 14 December 2010 that confirmed Côte d'Ivoire's 2003 declaration. Ouattara's letter came in the aftermath of post-election violence in 2010 when Gbagbo refused to step down. The ICC launched its investigations into Côte d'Ivoire in October 2011. In response to criticism that it has only focused on one side of conflicting actors from the electoral violence of 2010, the OTP has argued that it has adopted a sequential approach. Under this approach, the OTP claims that it is first investigating the alleged crimes committed by Gbagbo's side of the conflict and it will then move onto investigating Ouattara's side. It argued that more evidence is available for the Gbagbo investigations, but Bâ argues that the OTP also likely capitalised upon the knowledge that it would receive cooperation from the Ouattara regime to this end.[1279] This suggests that the Ouattara regime would be well aware of the rewards of cooperation: evading investigations so long as the ICC is preoccupied with the Gbagbo side.

This suggests that Côte d'Ivoire's loyalty behaviour regarding the ICC has been shaped by efforts by its governments to target their domestic political enemies. This was suggested by Gbabgo's recognition of the ICC's jurisdiction in 2003 as well as Ouattara's reaffirmation of this recognition and cooperation with the ICC. Thus, Côte d'Ivoire's loyalty to the ICC seems to be driven by the desire to prosecute political opponents.

Mali

Mali ratified the Rome Statute on 16 August 2000. Mali delivered three speeches at the ICC General Debates. The 2015 statement was classified as loyalty and the 2016 and 2017 statements were voice.[1280] Mali did not participate at the UNGA ICC Report Plenaries. However, it mentioned the ICC once in a statement at the 2012 UNGA General Debate and was classified as loyalty. Mali signed the Niamey Declaration in 2017, which indicated support for the ICC.

[1279] Bâ, *States of Justice*, 132.
[1280] The original documents were in French and were translated into English using Google Translate. This translation was used for the quotes and analysis.

Mali's support for the ICC has been explained in the literature as evidence of a state using the self-referral mechanism to two ends: (1) to tackle a political opponent and (2) to self-legitimise a fragile government.[1281] Mali self-referred on 13 July 2012 soon after it had experienced a military coup. The coup, which began in March 2012, eventually led to then President Amadou Toumani Touré resigning on 8 April 2012. An interim government was in place at the time of the self-referral to the ICC and the "…self-referral could thus be characterised as an attempt by the interim government – which is weak and in search of support and legitimacy both locally and abroad – to put down the rebellion in the north, and eliminate opposition from those who might seek to destabilise a new government."[1282]

Initially, the OTP decided there were no core crimes to investigate in the Mali situation (2013) but then issued an arrest warrant in September 2015 for Ahmad Al Faqi Al Mahdi following the Timbuktu attacks, which the OTP stated had constituted war crimes.[1283] Clark argues that the OTP's case selection in the Mali situation was determined by the readily available evidence against Al Mahdi, which left other crimes by other actors unaddressed.[1284] Thus, Mali's loyalty behaviour to the ICC in 2015 is explained, for the most part, by the domestic factors related to the threat posed by rebel forces since 2012. Furthermore, France, an ICC proponent, was an important troop contributing country to the United Nations Multidimensional Integrated Stabilization Mission in Mali, which had taken over conflict intervention efforts from ECOWAS' African-led International Support Mission in Mali in July 2013.[1285] The UN's mission in Mali might have influenced Mali's loyalty behaviour to the ICC because Mali might have wanted to promote a positive international image. However, this reputational factor is secondary to the domestic politics of Mali, which is the underlying factor causing the UN's presence in the first place.

Mali's voice statements in 2016 and 2017 indicated discontent with aspects of the ICC's conduct but stated that Mali had no intent to withdraw from the Court and that it remained

[1281] Bâ, *States of Justice*, 144–45; Louw and Maunganidze, 'Implications of Another African Case as Mali Self-Refers to the ICC'; Clark, *Distant Justice*, 294–97.
[1282] Louw and Maunganidze 2012.
[1283] Bâ, *States of Justice*, 144–45.
[1284] P. Clark 2018, 296; 'Mali: Al Mahdi Trial on Destruction of Cultural Heritage Opens at the ICC' 2016.
[1285] 'AFISMA Transfers Its Authority to MINUSMA-African Union - Peace and Security Department' 2013.

a cooperative State Party. Subject to further research, Mali's voice behaviour seems best explained by a combination of domestic, regional, and reputational factors. Mali's protracted domestic threat from the Tuareg population might be a driving force behind its aims to concretise good relations with neighbouring states and within regional bodies such as the AU and ECOWAS.[1286] However, the value that it saw the ICC as bringing regarding its investigations against domestic threats also meant that Mali modified its voice behaviour to communicate loyalty. This allows Mali to speak to a regional and international audience at the ICC by showing allegiance to African states but without jeopardising its position within the ICC.

Mali's behaviour seems mainly driven by domestic factors related to the insecurity to the government posed by rebel groups. Domestic factors explained loyalty and voice behaviour, but moderating factors were also regional and reputational factors.

Nigeria

Nigeria joined the ICC on 27 September 2001. Nigeria delivered statements at ten ICC General Debates – nine of these were classified as loyalty (2008 to 2012; 2014; and 2016 to 2018). It participated in seven UNGA ICC Report Plenaries, of which five statements were classified as loyalty (2008; 2009; and 2015 to 2017). The rest were classified as voice statements. It delivered a loyalty statement at the Review Conference. It did not reference the ICC during its UNGA General Debates. Additionally, Nigeria entered a reservation on the AU's draft Withdrawal Strategy. Thus, Nigeria predominantly demonstrated loyalty behaviour toward the ICC.

Comparable to South Africa, Nigeria's regional and international relations have been shaped by its desire to be a regional hegemon and Africa's "spokes-state".[1287] Nigeria has also sought international recognition as a significant global peace and security contributor.[1288] The interplay between these aspirations at the regional and international level during the

[1286] Solomon 2013.
[1287] Ogunnubi and Okeke-Uzodike 2016, 118–19; Idehen and Osaghae 2015, 85; Okwudili 2015.
[1288] Ogunnubi and Okeke-Uzodike 2016, 120.

withdrawal debate may have resulted in tensions in Nigeria's foreign policy priorities since it would have had to – at times – juggle presenting itself as supporting the ICC (and, thus, supporting international justice values) but also not alienating other regional powers that were strongly opposed to the ICC (including Kenya). It seems that Nigeria's loyalty behaviour – like South Africa and Kenya's early loyalty behaviour – is explained by its foreign policy aims to promote an international image of itself as a peace and security actor in Africa and a spokes-state for African relations with the global community.

Preliminary investigations[1289] into Nigeria were publicly announced by the OTP on 18 November 2010. The investigations were mainly focused on alleged crimes committed by Boko Haram and Nigerian Security Forces.[1290]

> …for Nigeria, the preliminary investigation lasted quite a very long time, right? And the focus of the investigation seemed, at first, to be on Boko Haram. […] it seems to me that, similar to Uganda and the LRA, Nigeria found out that, basically, if the ICC is investigating in Nigeria, and it seems to be obvious to everyone that Boko Haram is the bad guys then necessarily that would be in the interest of the Nigerian state to support the ICC. But, because one can never predict where investigations would lead, now that it does appear that the ICC would also be investigating the Nigerian government forces, then this support of the ICC would change, of course, because Nigeria then would try to resist its own forces being investigated. And in that instance, specifically, the history, or the short history of the ICC, tells us that the ICC is unable to successfully prosecute state forces or those who are in power. Why? Because of the state has enough tools in its toolbox to sabotage and to derail, to blackmail the ICC investigators, to threaten witnesses – so the state can protect itself. What does the Prosecutor do in that instance? Well, if the Prosecutor is concerned with its own track record and its successfully investigating and prosecuting people, and putting people in jail, then the easy route would be […] for the OTP to focus on the enemies of the state, Boko Haram, which is much easier to prosecute than Nigerian forces. And, history tells us, which is what did happen in Uganda, that's what happened in DRC, that's what did happen in Ivory Coast, then the Prosecutor would just focus on the rebels, and for Nigeria then that would be Boko Haram and the Nigerian state would still

[1289] Although falling beyond the temporal scope of this study, the OTP announced on 11 December 2020 that it has found reasonable grounds to launch full investigations into the Nigerian situation.
[1290] 'Preliminary Examination: Nigeria' n.d.

> benefit from such an investigation, which I think it would be one of the reasons why you would have Nigeria not being a vocal opponent of the ICC.[1291]

The above quote highlights an important pattern that shapes situation state relations with the ICC, which was evidenced by a few states during the withdrawal debate. Ultimately, the ICC is highly dependent on cooperation from the states that it investigates. A state has the advantage and is likely to succeed if it wants to resist ICC investigations. There might be international reputational costs, but the withdrawal debate acted as a counterweight, in a sense since it enabled regional reputational gains from ICC resistance. A state such as Nigeria, which places importance on its regional and international reputations, will calculate that it is probable that it can protect its officials from ICC investigations, which means that the costs of overtly resisting the ICC are avoidable. Thus, Nigeria can act compliantly with the ICC's preliminary investigations until the equation changes. The ICC's preliminary investigations are a potential tool against a domestic threat (Boko Haram) at least until it becomes evident that state officials confront a genuine threat from the ICC, which experience on the continent suggests is unlikely.

On occasion, it seems that Nigeria prioritised its regional image to its international one. This is suggested by Nigeria's 2012 and 2013 voice statements drew attention to relations with Africa whereas the 2014 voice statement raised concern about the case against Kenyatta (although, it linked this to general relations with African leaders). It seems that Nigeria's voice statements were shaped by regional politics since Nigeria's comments were made on behalf of Africa. Nigeria was not elected to do so, but voluntarily raised these concerns in this capacity. This suggests that Nigeria's comments were the result of its acting in its capacity as a major African political power.[1292]

Another instance where it seems that Nigeria's behaviour was driven primarily by regional politics was when it did not arrest al-Bashir when he attended an AU Summit on HIV/AIDS, Tuberculosis and Malaria in July 2013. Nigeria defended itself on the grounds that it had not

[1291] ICC Academic 2021.
[1292] Ogunnubi and Okeke-Uzodike 2016, 118–19.

issued an official invitation to al-Bashir to attend since invitations are implicit in AU summits. Furthermore, Nigeria stated that al-Bashir departed early from the Summit, which coincided with the timing of Nigeria "considering the necessary steps to be take in respect of his visit in line with Nigeria's international obligations".[1293] The Court decided it was not necessary to refer Nigeria to the UNSC or the ASP.[1294]

However, Nigeria most consistently was emphatic of its commitment to and cooperation with the ICC. Even in its voice statements, Nigeria did not imply a threat of its withdrawing from the ICC. The importance Nigeria places upon its international reputation as a peace and security actor could be suggested by the following excerpt:

> Finally, the election in December 2011 of Nigeria's candidate Chile Eboe-Osuji as a Judge of the ICC gives credence to our commitment to the pursuit of peace and respect for human rights and the rule of law, in Africa and around the world. **It is a testament to Nigeria's role in supporting global peace and stability in the comity of nations.** We therefore reaffirm our continued support and commitment to the objectives of the International Criminal Court.[1295] [Emphasis added].

Reputational factors are a relevant factor shaping Nigeria's behaviour with the ICC, whereby its international reputation seems to have generally been prioritised (which is further suggested by its reservation on the Withdrawal Strategy draft).

The domestic threat posed by Boko Haram shaped Nigeria's relations with the ICC. Hypothetically, the ICC's preliminary investigations were presented as investigations into the alleged crimes committed by Boko Haram and Nigeria Security Forces. In practice, however, the preliminary investigations initially seemed focused on Boko Haram.
The preliminary investigations into the Nigerian situation could embolden Nigeria's efforts to defeat Boko Haram and Nigeria's loyalty behaviour would follow the logic of that demonstrated in the DRC and Uganda where the ICC could help the state subvert its political opponents.

[1293] Pre-Trial Chamber II 2013, paras 11–12.
[1294] Pre-Trial Chamber II 2013, para. 13.
[1295] United Nations General Assembly 2012.

Additionally, Nigeria loyalty behaviour to the ICC might have been strategic. Nigeria consistently noted its domestic ability to prosecute any core crimes committed and that the ICC does not need to trigger its jurisdiction over the Nigerian situation. Nigeria might have observed how a close working relationship between the OTP and a state safeguarded state actors from prosecution – as was the case in CAR, DRC, Uganda, and Côte d'Ivoire. This suggests Nigeria's loyalty behaviour with the ICC might have been influenced by a desire to protect state actors from ICC investigations.

Thus, Nigeria's loyalty behaviour was driven by two domestic factors (fighting Boko Haram and protecting government security officials) and reputational factors (to be seen as a good global citizen and representative of Africa). Nigeria's voice behaviour was driven mainly by regional political factors. Similar to the South African case, Nigeria's foreign policy aims to be a peace and security actor as well as spokes-state for the continent saw it demonstrating voice behaviour in solidarity with concerns raised by the AU. However, Nigeria emphasised that its voice behaviour did not detract from its loyalty to the ICC. Therefore, Nigeria's voice behaviour was driven by regional factors but moderated by international reputational factors.

Gabon

Gabon joined the ICC on 20 September 2000. Gabon made one statement before the IO forums considered, which was delivered at the 2009 UNGA ICC Report Plenary and was classified as loyalty. Gabon signed the Niamey Declaration in October 2017, which indicated support for the ICC.

Gabon's foreign policy has historically been anchored in promoting peace and security in Africa. Gabon's Minister of Foreign Affairs explained the link between this regional goal and its domestic and international policies: "This policy trajectory is a result of Gabon's preventive inclination and its potential exposure to the negative consequences of regional

conflicts."[1296] However, when concluding the same speech, the minister stated that Gabon's foreign policy had shifted: "…while economic diplomacy is the dominant feature of its current foreign policy, Gabon will continue its efforts for a peaceful and stable African continent…"[1297]

Gabon had a new president inaugurated a few weeks before the 2009 UNGA ICC Report Plenary. Gabon's participation in the Plenary might have been part of the immediate efforts of the new President Ali Bongo Ondimba to self-legitimise his new regime and/or to demonstrate that Gabon's history of supporting France would continue.[1298] Furthermore, the government had adopted an economic plan – the "Strategic Plan for an Emerging Gabon (*Plan stratégique Gabon émergent*) – in 2009.[1299] Thus, Gabon might have seized the opportunity to present itself as loyal to the ICC to contribute to its image as a French ally given the history of allegiance between France and Gabon as well as the new regime's economic reform strategy.

Gabon might have seen the opportunity to address the UNGA as opportunistic to boost its image among powers that predominate global financial institutions, such as the International Monetary Fund (IMF). Some of the biggest financial contributors to the IMF for the 2009 financial year included France, Germany, Japan, the UK, and the US (which was the largest contributor). Excluding the US, the other major contributors are also strong supporters of the ICC. Thus, Gabon may have been signalling to them its support for the Court as part of a broader effort to promote its reputation ahead of its planned economic reforms. This could suggest that Gabon was motivated by the desire to self-legitimise itself before the UNGA vis-à-vis its support for the ICC for economic objectives.

Mark Kersten observes that Jean Ping, who has held various ministerial posts in the Gabonese government as well as prestigious international positions, had inconsistent positions toward the ICC:

[1296] Minister of Foreign Affairs, Republic of Gabon 2017.
[1297] Minister of Foreign Affairs, Republic of Gabon 2017.
[1298] Ofoulhast-Othamot n.d.
[1299] 'Program Information Document (PID) Concept Stage' 2017, 3.

> Jean Ping was the former chairperson of the African Union Commission, I think that's right, in the late 2000s, early 2010s, and was quite vociferously against what he saw as 'Ocampo justice' and was very much involved in the early pushes of pan-African anti-ICC sentiments over Darfur […] since he left the African Union, [as] a senior politician in Gabon and he actually ended up asking the ICC to open a preliminary examination or an investigation, I don't recall exactly, probably both into the situation there. I think the ICC ultimately decided no, but you know, that's interesting too in this narrative is how certain actors can act as almost chameleons depending on the situations that they find themselves in.[1300]

Ping commented to a French radio station that: "[the] ICC always targets … Africans. Does it mean that you have nothing on Gaza? Does it mean you have nothing [on the] Caucasus? Does it mean that you have nothing on the militants in Colombia? There is nothing on Iraq? We are raising this type of question because we don't want a double standard."[1301] Ping's comments were made during his tenure as the AU Commission president and Ping has never been the head of state for Gabon – although he ran for elections. Thus, Ping's comments were not representative of Gabon's behaviour to the ICC. Kersten's reflection shows how individual behaviour toward the ICC can change depending on their political circumstances.

Gabon experienced post-election violence in August 2016. Ali Bongo was announced the winner of the election, beating opposition Ping. However, the results were contested and accused of being rigged in Ali Bongo's favour.[1302] Ping disputed the election results and the Gabonese court upheld Ali Bongo as the winner. Ping refused to accept this decision and declared himself the true winner of the election.[1303] Gabon self-referred its situation to the ICC on 20 September 2016 and cited Ping's actions as cause for alarm – including that Ping had threatened to incite violence.[1304] On 29 September 2016, the OTP opened preliminary examinations into the Gabon situation. Ping shortly thereafter welcomed the ICC to probe the Gabonese case (which Kersten refers to in the quote above).[1305] Ultimately, the OTP

[1300] Kersten 2021.
[1301] Kimani 2009.
[1302] Maclean 2016.
[1303] Shaban 2016.
[1304] Bâ, *States of Justice*, 146.
[1305] Shaban 2016.

decided that the legal standards for investigations had not been met and closed the preliminary investigations in 2018.[1306]

Nonetheless, it is evident that Gabon's self-referral was motivated by the Ali Bongo regime's aim to marginalise the threat posed by Ping following the disputed elections. It is likely that the self-referral, which overtly implicated Ping, was seen as a strategy to help consolidate the Ali Bongo's claim to victory and to self-legitimise itself domestically.

Overall, Gabon's behaviour toward the ICC has either been overt loyalty (its 2009 statement and signature on the Niamey Declaration in 2017) or tacit loyalty through its abstention from the withdrawal debate. This loyalty behaviour is explained by its domestic political objectives (to manage political opponents) and for economic motivations, as suggested by its economic reform agenda.

Madagascar

Madagascar joined the ICC on 14 March 2008. No academic literature examining Madagascar's relations with the ICC was found at the time of writing. Madagascar made three speeches at the forums studied, all of which were loyalty. Two were delivered in 2012 and one was delivered in 2015. Furthermore, Madagascar entered a reservation on the AU's draft withdrawal strategy document in 2017.

Domestic factors might explain Madagascar's behaviour in relation with the ICC. Under Marc Ravalomanana's regime, Madagascar became a States Party to the ICC in March 2008 and civil society played a major role in the campaigning for ratification.[1307] Thus, domestic politics was a significant factor behind the ratification of the Rome Statute in the first place. However, one year later, in 2009, Andry Rajoelina – with the military's support – led a coup whereby he assumed the presidency of the country from Ravalomanana.[1308] Ravalomanana

[1306] 'International Criminal Court Prosecutor on Gabon: "The Legal Criteria for This Court to Investigate Have Not Been Met"' 2018.
[1307] 'Madagascar: Country Becomes 106th State to Join International Criminal Court' 2008
[1308] Mattis 2010, 6; 'U.S. Relations With Madagascar' n.d..

fled to South Africa. The coup led to Madagascar's suspension from the AU and SADC and was met with international sanctions and pressure to arrive at a power-sharing and democratic arrangement. Rajoelina's government sentenced Ravalomanana (in abstenia) to five years imprisonment for power abuse and embezzlement.[1309] Furthermore, Madagascar tried to refer its situation to the ICC in 2013, alleging that the Presidential guards of former President of Madagascar Marc Ravalomanana of perpetrated crimes against humanity on 7 February 2009.[1310] The OTP did not open investigations into the Malagasy situation. Thus, it seems that Madagascar sought to use the ICC to target its political opponents.

The speech data suggests that the ICC was used to self-legitimate new regimes in Madagascar, which is consistent with Bâ's thesis that self-referrals were used for this purpose. In 2011, a unity government in Madagascar was announced and the following year, Madagascar made a loyalty statement at the ICC General Debate. In 2014, Hery Rajaonarimampianina was elected as president of Madagascar.[1311] That same year, SADC lifted its suspension of Madagascar.

The following year, Madagascar delivered two speeches – both of which were loyalty –, one at the ICC General Debate as well as one at the UNGA ICC Report Plenary. This suggests that a domestic factor – i.e. state fragility and insecurity – might have driven Madagascar to use the ICC as a means to promote itself (i.e. for reputational factors). This is suggested by Madagascar's complimentary disposition toward the Court, which might be self-interested:

> It [the General Debate] is also an opportunity for us to present to the international community the initiatives and efforts that have been made to restore peace and restore harmony to Madagascar.
>
> As you know, Madagascar, since 2009, has been plagued by the political crisis. The popular uprisings gave birth to the transitional regime which lasted more than three years. Currently, the implementation of the Roadmap is on track.[1312]

[1309] Zondi and Khaba 2014, 13.
[1310] Office of the Prosecutor 2020, 16.
[1311] *BBC News* 2018d.
[1312] ICC GD 2012.

This suggests that Madagascar used its ICC General Debate address to bolster its reputation to its fellow States Parties. This presumes the normative values of the ICC – inter alia, anti-impunity, justice, rule of law, and accountability – and that a favourable disposition toward the ICC is symbolic of support for these values. Thus, domestic factors primarily drove this behaviour, but reputational factors were an intermediary variable since it was caused by the domestic factors related to political instability.

Interestingly, Madagascar commented favourably on the extended mandate of the Court to include the crime of aggression. Madagascar also added:

> In this context [impunity], Madagascar is committed to ratifying the Kampala Amendments on crimes of aggression, this was reaffirmed by our President of the National Assembly during his visit to New York in September 2015 to participate in the Meeting of Parliamentarians on the "Roles of Parliamentarians in the criminalization of illegal and aggressive acts of war".[1313]

However, Madagascar has not (yet) ratified this amendment.[1314] Madagascar expressed its happiness about the adoption of the amendment at the Sixteenth Session of the ASP, in 2017, but did not elaborate on why it had not yet ratified the amendment. Elsewhere, there are reports that Madagascar was "actively working" on ratification.[1315] This might suggest that Madagascar's motivations for its loyalty are not norm-driven, but reputational. Madagascar wants to be seen to be supporting the Court in the ASP sessions but does not necessarily see this reputation as diminished by not following through with action (in this regard). However, it is also possible that ratifying the amendments was not a priority due to the political fragility of the post-coup regime. For example, Parliament attempted to impeach Rajaonarimampianina in 2015,[1316] which suggests that conditions might not have been the most conducive for the passage of international law ratifications given that the country's priority was political stabilisation.

[1313] ICC GD 2015.
[1314] In fact, Madagascar has not ratified the amendment to date. See the list of ratifying states at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-b&chapter=18&clang=_en.
[1315] 'Status of Ratification and Implementation' 2019; Nwayo 2019.
[1316] *BBC News* 2015.

Thus, Madagascar's loyalty behaviour is foremost explained by domestic factors, with reputational factors as a secondary factor.

Chad

Chad ratified the Rome Statute in January 2007. Al-Bashir visited Chad in July 2010, which resulted in Chad's being referred by the ICC to the UNSC for possible measures to be taken for its non-compliance with the arrest warrant.[1317] Nonetheless, Chad allowed al-Bashir to visit again in February 2013 without being arrested. Chad delivered no country statements at the ICC General Debates nor at the UNGA ICC Report Plenaries. Its UNGA General Debate statement delivered in 2014 referred to the ICC and was a voice statement. Chad signed the Niamey Declaration in 2017.

Chad is a landlocked country that faces intractable internal insecurity, partly caused by socioeconomic challenges and politicised ethnic tension. France intervened in Chad to prevent coups in 2006, 2008, and 2019.[1318] In addition to its domestic security threats, Chad is surrounded by states confronting domestic armed resistance. Consequently, spill-over conflicts from neighbouring states, such as Sudan, Libya, CAR, and Nigeria, have contributed toward domestic insecurity. In particular, the Darfur conflict in Sudan resulted in people seeking refuge in Chad as well as the Janjaweed militia pursuing the refugees throughout the 2000s.

Chad's relations with Sudan, therefore, were an important security concern. In 2007 and 2008, Chad and Sudan entered into agreements to stabilise their borders and reduce conflict – however, neither lasted. Chad's tense relations with Sudan explains why Chad was the only state that opposed the AU's call for non-cooperation with the ICC's arrest warrant for al-Bashir in 2009 when it entered a reservation on the decision.[1319] Chad's position regarding Sudan changed in early 2010 once al-Bashir and Déby normalised diplomatic

[1317] Pre-Trial Chamber I 2010.
[1318] Happi 2021.
[1319] Henningsen and Gissel 2020, 2.

relations and reopened their mutual border, which explains Chad's non-compliant behaviour with the ICC when it allowed al-Bashir to visit its territory in 2010 and 2013 without being arrested. Thus, Chad's loyalty and non-compliant behaviour were both driven by domestic interests as well as its strained political relations with Sudan – a regional political factor.

The driving factors for Chad's voice statement delivered at the 2014 UNGA General Debate are unclear.[1320] It might have been a response to the ICC's referring Chad to the UNSC and ASP due to its non-compliance with arresting al-Bashir in 2013. Chad discredited the ICC as being biased: "…instead of being neutral, impartial and independent, seems to devote rather the practice of double standards, two measures by prosecuting only the weak."[1321] Chad's voice statement might have been an effort to self-legitimise its decision not to arrest al-Bashir, possibly through joining other dissenting African state voices that had emerged over the prior two years in response to the Kenyan case. Additionally, or alternatively, Chad might have been indicating its support for the AU and other African states that had opposed the ICC. Further research is needed to contextualise the 2014 voice behaviour.

Chad's signature on the Niamey Declaration might have been due to its strategic relations with France and Francophonie solidarity politics. However, further research is necessary to confirm this explanation of Chad's loyalty behaviour. Chad's non-compliance with the ICC, which is an indication of voice, was driven by domestic interests of Chad. This suggests that non-compliance does not neatly fit in the voice category – it signals dissatisfaction but in content, it is unrelated to evaluations of the ICC.

Niger

Niger ratified the Rome Statute on 11 April 2002. There is no speech data for Niger but it is a Niamey Declaration signatory, which indicates loyalty behaviour.

[1320] Interestingly, its statement was delivered at the UNGA General Debate and not at an ICC forum.
[1321] UNGA GD 2014.

Niger confronts security threats thanks to spill-over extremist groups from neighbouring states. Factions of Nigeria's Boko Haram operate in south-eastern Niger and the Islamic State in the Greater Sahara operates along its Mali and Burkina Faso borders.[1322] The spill-over of conflict actors and refugees from Nigeria and Mali has resulted in growing internally displaced persons and refugee populations in Niger, which was especially high in 2016.[1323] The US and France have both entered into counter-terrorism initiatives in Niger (and the Sahel region), and the EU has consistently given aid to Niger to address migration issues in the country.[1324] This suggests that domestic security is an important policy area for the Nigerien government and that it has entered into strategic relations with so-called Western powers to help address these security issues. For example, dating to 2013, Niger is one of the US' key geo-strategic partners in the 'war on terror' due to its position in the Sahel region.[1325] Furthermore, since 2017, various individual European countries like France and Germany, the World Bank, the EU, the UN Development Programme, and the African Development Bank have been involved in the Sahel Alliance, which is a "…coordinated and tailored response to the challenges faced by the G5 Sahel member countries (Burkina Faso, Chad, Mali, Mauritania and Niger)."[1326]

Niger's National Assembly President Ousseini Tinni extended an invitation to the Prosecutor to address Niger's parliament and respond to questions related to the ICC's jurisdiction and activities in April 2017.[1327] Bensouda also met with Niger's President, Mahamadou Issoufou, to discuss how to improve Niger's support to the Court. Issoufou stated: "Today, in the presence of Prosecutor Bensouda, I reaffirm Niger's strong commitment to the ICC and the fight against impunity for atrocity crimes… The Court deserves the political support of its States Parties, and the resources its needs to effectively fulfil its mandate."[1328] Issoufou also

[1322] E. Cole and Grossman 2020.
[1323] 'Operation Niger 2018 Year-End Report' 2019.
[1324] The EU's financial contributions to Niger to address migrancy is due to the EU's concern that transmigration through Niger will result in more (illegal) immigrants to Europe from the continent. Armstrong 2020; Gabriel and Rijks 2020.
[1325] Karimi 2018.
[1326] 'The World Bank in Niger: Overview' n.d.
[1327] 'The Prosecutor of the International Criminal Court, Fatou Bensouda, Visits Niger, Addresses National Assembly: We Must Never Forget the Victims' 2017.
[1328] 'The Prosecutor of the International Criminal Court, Fatou Bensouda, Visits Niger, Addresses National Assembly: We Must Never Forget the Victims' 2017.

noted the need to stabilise the Sahel region. This might suggest that Niger's loyalty behaviour with the ICC from 2017 was motivated, at least partially, by domestic security concerns.

In October 2017, Niger hosted the ICC's high-level regional symposium on cooperation and complementarity. The symposium was attended by 13 Francophone states in the central and west African regions. The symposium resulted in all 13 states signing a declaration of support for the ICC.[1329] This is an indication of Niger's cooperation with the ICC and its support for the Court.

In the absence of more data about Niger's direct behaviour in relation to the ICC, it seems that Niger's domestic security concerns are the best explanatory variable for its ICC relations. Niger's partnerships with Europe (and France) especially seem relevant for the loyalty behaviour it would demonstrate to the ICC in light of the support for the ICC that the EU has previously required of its aid recipients and trade partners. Niger's passive and active loyalty to the ICC, thus, is a way to appease its international security partners. Furthermore, the ICC is involved in Nigeria and Mali. Both these neighbouring states are home to the extremist groups and conflict that have spilled over into Niger and caused displacement issues. Thus, Niger might be loyalty to the ICC in the hope that the ICC's interventions in these two states would help stabilise them and reduce the influx of refugees to Niger.

Zambia

Zambia delivered one speech at the ICC General Debate (2010), which was loyalty. Zambia did not issue a statement at the UNGA ICC Report Plenaries except when it delivered the African Group statement in 2009. This was not a country statement therefore is not considered here. Zambia did not refer to the ICC during its UNGA General Debate statements. Zambia entered a reservation on the AU's draft Withdrawal Strategy, which is an indication of loyalty.

[1329] 'Déclaration Finale de Niamey Sur La Cour Pénale Internationale' 2017

Following the 28th AU Summit of January 2017, wherein the draft Withdrawal Strategy was proposed, Zambia conducted national consultations to determine the popular consensus regarding the withdrawal matter, which roused the participation of civil society organisations to ensure the process was as upstanding as possible.[1330] The consensus was to remain in the ICC – with 90% of Zambians who were participated in the consultation process voting to stay. This suggests domestic factors – due to a popular mandate to remain an ICC State Party – shaped Zambia's behaviour in relation to the ICC at least in terms of the decision to stay.[1331]

Zambia's relative silence within the ICC forums studied combined with the lack of literature examining Zambia's foreign policy after the 1990s and ICC relations renders it impossible to determine the main motivations for its ICC behaviour prior to this. It was tacit loyalty in the years

Botswana

Botswana ratified the Rome Statute on 8 September 2000 and has been a notably vocal supporter of the ICC: "their ambassadors and their government have always been absolutely consistent in their support for their ICC."[1332] In fact, it has openly declared that it would arrest al-Bashir and challenged anti-ICC sentiments expressed by the AU.[1333] It has been an adamant support of the Court in all the IO forums studied. Botswana indicated its departure from the AU's anti-ICC position in May 2013 when it entered a reservation on the entirety of the AU decision that supported Kenya's bid to defer or dismiss the ICC's investigations into its post-electoral violence. Additionally, Botswana (this time, joined by other states) entered a reservation on the AU's Withdrawal Strategy document ("Draft: Decision on the International Criminal Court) from January 2017. Thus, Botswana's use of reservations within the AU sent a very clear message of support for the ICC.

[1330] Cheembe 2017.
[1331] Another domestic factor that might be relevant and relates to the referendum is the role that civil society organisations played. More research is needed to understand if this role is significant.
[1332] Goldstone 2021.
[1333] Mills and Bloomfield 2018, 121.

Botswana delivered a total of 21 country statements before the forums studied[1334] – all of which were loyalty. Eight were at the ICC General Debate; three were at the UNGA ICC Report Plenary; one at the Review Conference; and eight were at the UNGA General Debate. The fact that Botswana elected to refer to the ICC favourably frequently in its UNGA General Debate suggests a strong message of loyalty was intended to be communicated. This is inferred from the fact that the UNGA General Debate is the only one of the three forums that was a not a dedicated ICC space and its being discussed was indicative of an area a state considered to be of priority to address before UNGA member states.

Botswana has promoted an international image of itself as a good global citizen:

> Botswana seeks to project an international image of a country that is principled, independent, informed, promoter of democratic values, reliant on soft power (diplomacy), pragmatic and active in global affairs. This explains why it has taken positions that make it out on international issues.[1335]

Afro-pessimism notwithstanding, Botswana is heralded as one of Africa's longest lasting democracies[1336] and its economic growth despite being a landlocked and relatively weak country.[1337] At first glance, Botswana's loyalty behaviour to the ICC seems consistent with its normative commitment to democratic and rule of law ideals:

> The main reason it projects such an international image is to have a voice and impact on global, regional and continental agenda. Thus, its behaviour towards the ICC is not an exception but a continuation of its support for international law, organizations, and democratic values. Botswana believes in multilateralism, international cooperation, and friendly relations with all nations, especially, Western democratic ones. […] Botswana openly favours the ICC because it strongly believes in and it is committed to international law. Botswana believes that once a country signs any international law, regulation or treaty, it should adhere to it by all means regardless of other

[1334] Eight were at the ICC General Debate; three were at the UNGA ICC Report Plenary; and eight were at the UNGA General Debate.
[1335] Osei-Hwedie 2021.
[1336] Although, some scholars question the depth of the consolidation of the democracy. See, for example, Good and Taylor 2008.
[1337] Good 1992; Acemoglu, Johnson, and Robinson 2012; Leith 2005; A. Cook and Sarkin 2010

> considerations. As a signatory to the Rome Statute of the ICC and among the first to ratify the Kampala Accords that increased the scope of operations of the ICC, Botswana has remained the biggest supporter in spite of it being a small country in Africa. This is primarily because Botswana regards law as supreme and believes in formality such that once it signs any treaty or law, it is compelled to uphold it without question.[1338]

The government official that was interviewed suggests that Botswana's strong pro-ICC position was a combined of its president's personal prioritisation of the Court and its desire for strong relations with Europe:

> …let me state from the onset, I don't really know. I think they've may have been issues that they are a small country [and a] small economy. They want a close relationship with Europe and [are] not wanting to endanger that. Then I think there would have been issues also as to the personality of the president at the time, President Khama. I think he personally thought it [the ICC] was important.[1339]

Former President Ian Khama was Botswana's president for the entire period under study (2008 – 2018). Stemmet also implied that Botswana's pro-ICC position was regime specific: "Botswana, of course, was a very strong supporter of the Court. Lately, they've been more quiet. I think there's also been a change of government so that maybe their foreign policy priorities have changed."[1340] Khama's personal interest in the ICC also needs further investigation to determine the extent and reason for Khama's positive disposition toward the Court.[1341] His political philosophy might be tied into a tradition of Botswana's image as a democratic nation and his father's legacy as the first democratic head of state of independent Botswana. This would be an interesting variant on the chief executive interest factor. It illustrates how the interests of the head of state directly shapes foreign policy, as was seen by other African states too, but with a case where the head of state's interests

[1338] Osei-Hwedie 2021.
[1339] South African Government Official 2021.
[1340] Stemmet 2021.
[1341] A news article suggests that a local law organisation threatened to refer Khama to the ICC in November. This did not change Khama or Botswana's position toward the ICC – possibly because it was not deemed a real threat. See *Sunday Standard* 2009.

aligned with the norms that the ICC represents. More research is required to verify that Khama had this interest and why.

Murithi proffers a more convincing explanation of why Botswana sought to secure positive trade relations with Europe and used the ICC as a way to promote a positive image of itself:

> …in Botswana's case, because the majority of its produce is diamonds and I think that Debswana Diamond concerned… is majority owned externally by Anglo-American, De Beers, which set its base up in London – I think it's listed in London now – and that has an impact on the politics. So behind the scenes, one doesn't know – we don't have that information [about] the extent to which they've been cajoled to actually taking that position. I don't think these are paragons of virtue and judicial righteousness because within their own state, they have major issues of marginalization… alienation… particularly of the Khoisan people who they sometimes even don't recognize and the political system is not a beacon of rule of law. So the ideational and reputational could have an external influence dimension to it.[1342]

Indeed, diamonds have been identified as a central determinant of Botswana's foreign policy.[1343] Botswana's economy is reliant on its diamond trade, which it committed to De Beers for 25-years.[1344] The state's relationship with the De Beers Corporation is an essential policy issue for the Botswanan state, with Debswana's shares being equally divided between the Botswanan state and De Beers.[1345] The significance of this relationship needs further research to determine if Botswana's diamond trade was a factor that influenced its ICC behaviour. It is apparent that its diamond industry is significant for Botswana's policy-making, but it is not evident that there is a link between this and its ICC behaviour. For example, there is nothing to suggest that De Beers exerted influence on Botswana to be pro-ICC or that its being headquartered in the UK has a relationship with the EU or UK's ICC position. It might link with a general policy aim to be perceived as a reliable state that is pro-good governance, where ICC politics is a platform to reiterate this at a multilateral level.

[1342] Murithi 2021.
[1343] Taylor and Mokhawa 2003; Niemann 1993.
[1344] Good and Taylor 2008, 761.
[1345] 'Debswana Diamond Company' n.d.

Three possible explanatory variables were discussed in the preceding paragraphs: reputational factors, economic factors, and head of state interests. Further research is needed to support the latter two explanations and whether it is possible to argue that they are among the main factors explaining Botswana's ICC behaviour. Based on the evidence studied, reputational factors are the best immediate factor explaining Botswana's loyalty behaviour to the ICC. The relationship between soft power and Botswana's economic interests are suggested in the existing literature about Botswana's diamond economy, which suggests that there is a political economic factor that influences Botswana's reputation aims. Thus, economic factors are a secondary explanatory variable insofar as it shapes Botswana's objectives regarding the cultivation of a positive international image.

Lesotho

Lesotho ratified the Rome Statute in September 2000. It delivered seven statements at the ICC General Debate – two of which were loyalty (2008 and 2011) and the other three were voice (2014, 2017, and 2018). The documents of Lesotho's speeches at the 2009 and 2010 were missing from the ASP database and so could not be analysed. Lesotho presented three statements at the UNGA ICC Report Plenary. Two were loyalty (2008 and 2010) and one was voice (2012). Lesotho delivered a loyalty statement at the Review Conference. Last, Lesotho referred to the ICC in two different UNGA General Debate statements (2008 and 2009), both of which were loyalty statements. Additionally, Lesotho entered a reservation on the AU draft Withdrawal Strategy decision.

Lesotho's behaviour toward the ICC had a pattern. The statements before 2012 were loyalty and thereafter were all voice. Notably, Lesotho stressed its commitment to the ICC in all its voice statements. It presented its recommended areas for change as constructive criticism. It seems that the main areas of concern that Lesotho held was regarding the ICC's relationship with the AU. This suggests that its voice behaviour was influenced by regional politics and could be seen as an enactment of the solidarity norm. Additionally, it suggests that Lesotho's voice behaviour was moderated by loyalty.

Lesotho experienced consistently unstable domestic politics where political changes were frequently caused by police and military interference.[1346] Subsequently, SADC deployed different types of missions to promote stability in Lesotho and the Lesotho government committed to multiple reforms.[1347] Additionally, the Lesotho National Dialogue and Stabilisation Project was launched in 2018 with support from the UN.[1348] The high level of international and regional involvement in response to the domestic instability of Lesotho might suggest its emphasis on demonstrating its support and commitment to the ICC. This would suggest that the loyalty behaviour of Lesotho – and its loyalty-infused voice statements – were influenced by a desire to present itself as anti-impunity and pro-accountability vis-à-vis its commitment to the ICC.

Lesotho's Ministry of Foreign Affairs and International Relations states as its mission: "To establish, promote and maintain good relations between Lesotho and the International Community for the advancement and enhancement of Lesotho's prosperity and for the protection of her sovereignty, independence and territorial integrity."[1349] Thus, it seems that Lesotho used the ICC to legitimise itself to the international community in accordance with this mission.

Lesotho is a lower-middle income landlocked country and its main trade partners are South Africa and the US.[1350] According to the European Commission, Lesotho is comparatively less reliant on development aid than other sub-Saharan African states, and in 2011 Net Official Development Assistance (ODA) was 9.1% of Lesotho's Gross National Income.[1351] However, in 2013, net ODA was at its highest point between 2008 and 2018 at 11.7% of GNI. This is indicative of some dependency given that states that "…in 2008, net ODA flows constituted

[1346] Vhumbunu 2015; Southern African Development Community 2015.
[1347] *Lesotho Times* 2017.
[1348] 'Lesotho Launches National Dialogue Project Funded by the UN Peacebuilding Fund | UNDP in Lesotho' n.d.
[1349] 'Ministry of Foreign Affairs and International Relations' 2018.
[1350] 'International Partnerships: Lesotho' 2020.
[1351] 'International Partnerships: Lesotho' 2020; '11th European Development Fund National Indicative Programme (2014-2020) for Co-Operation between the Kingdom of Lesotho and the European Union' n.d., 17

more than 10 percent of GNI in 26 developing countries. Most of these are either LDCs [least developed countries] or SIDS [small island developing states]."[1352] It is unclear that there were economic factors that could be considered immediate influences for Lesotho's ICC behaviour.

Following a SADC meeting called by South Africa about supporting the ICC, "…Lesotho emerged as country which was, indeed, interested and wanted to participate in a more meaningful way" and Lesotho joined the Like-Minded Group.[1353] This suggests that Lesotho's early support for the ICC was catalysed by South Africa's popularisation efforts within SADC in the 1990s.

Lesotho's emphasis on its dedication to the ICC despite its areas of concern across its speeches suggests that Lesotho's behaviour in relation to the ICC is primarily ideational. Its voice behaviour, however, seems to be primarily caused by regional politics, but moderated by ideational commitment.

Guinea

Guinea ratified the Rome Statute in 2003. It delivered one speech, which was classified as loyalty, at the ICC Review Conference in 2010. Guinea signed the Niamey Declaration.

The OTP launched preliminary examinations in October 2009 in response to the massacre and rape, by the Presidential Guard, of people who had gathered at an opposition rally at a Conakry stadium in September 2009. After establishing that crimes against humanity had been committed, the OTP sent deputy-prosecutor Bensouda to Guinea, in February 2010, to explore if there was domestic capacity to prosecute the stadium crimes.[1354] Bensouda stated unambiguously that either the ICC or Guinea must try these crimes. Thus, Guinea was

[1352] United Nations Development Programme 2011, 146.
[1353] Lesotho's Phakiso Mochochoko joined the ICC in 2002 and has held several positions within the Court. Prior to the ICC's establishment, Mochochoko had been involved in the process establishing the ICC. (Former Government Official, 2021).
[1354] *Voice of America* 2010.

given the chance to respond domestically but with the clear warning that failure to do so would result in ICC proceedings.[1355] Guinea used its platform at the ICC Review Conference in 2010 to detail its responses to the Conakry Stadium massacres. It indicated its support for and cooperation with the ICC, but also asserted its domestic competence to prosecute:

> I would add that the last mission, which was in Conakry from 18 to 21 May 20, expressed his satisfaction to see Guinean judges deal with these cases with courage and competence.
>
> The Secretary General, ladies and gentlemen,
> I wanted to give this information to reassure the international community of the Guinean government to make all the light on the bloody events of September 28, 2009 and to punish all the authors and accomplices.
>
> We are now fully aware of the need to break with impunity who eventually gangrene the whole apparatus of the State and mortgaging the future of our country.[1356]

Guinea's cooperation was first demonstrated by the visit by Guinea's Minister of Foreign Affairs to the ICC after it announced its preliminary examinations.[1357] The ICC has been praised for exercising a form of "hybrid complementarity" whereby it has invested in positive complementarity efforts to assist Guinea to build its domestic capabilities but not withstanding the threatened intervention should Guinea be unwilling or unable to prosecute.[1358]

Notably, Kersten reflects on the role of non-governmental actors in the pursuit of accountability for the stadium massacre in Guinea:

> I think there are a lot of political sensitivities as to how to bring some of these perpetrators to account and maintain political stability in the country. I think there's a lot of things actually happening. It's more difficult to understand than if you just say it's the relationship between the ICC and Guinea, I think there's lots of other actors – in Nigeria, too – I know that because

[1355] 'Statement by Mrs Fatou Bensouda, Deputy Prosecutor of the International Criminal Court' 2010
[1356] ICC RC 2010.
[1357] 'Guinea Minister Visits the ICC - Prosecutor Requests Information on National Investigations into 28 September Violence' 2009.
[1358] Colish 2013, 39.

> Wayamo Foundation, where I work, is one of them – that are kind of, almost intermediaries acting to translate knowledge, translate law, like legal expectations, both ways, up and down… trying to encourage the path of least resistance towards meaningful justice and accountability and thinking of the ICC's activity as almost an umbrella, which helps to push and pull actors towards actually addressing atrocities in a meaningful way.[1359]

Kersten's comments about the role of Wayamo Foundation suggests the role of the epistemic community in state relations and behaviour with the ICC. More comparative research into the role that intermediaries like non-governmental organisations play in shaping state-ICC relations is needed to test the influence of the epistemic community systematically and empirically. The Guinean case suggests that there is merit for such research.

Guinea's compliance with pressure to respond to the stadium massacres was a result of intense international pressure.[1360] Thus, Guinea's cooperation with the ICC might be a strategy to protect its international reputation and save itself from international sanctions. Thus, Guinea's loyalty behaviour is mainly explained by reputational factors and, pending further research, the intermediary role played by the international justice epistemic community vis-à-vis non-governmental organisations.

Benin

Benin joined the ICC on 22 January 2002. Benin only made one country statement before the ICC General Debate in the period studied, which was delivered on 14 December 2017 and classified as loyalty. It submitted no responses to the UNGA ICC Report Plenary, nor did it refer to the ICC in its UNGA General Debate addresses. Benin was among the states that entered a reservation on the AU's draft Withdrawal Strategy – an indicator of loyalty. Interestingly, Benin is a member of the *Organisation Internationale de la Francophonie* but it did not sign the Niamey Declaration like many of the other Francophone states did, particularly in West Africa.

[1359] Kersten 2021.
[1360] Nossiter 2010.

In 2005, as non-permanent UNSC members, Benin and Tanzania (both ICC States Parties) supported the UNSC referral of the Darfur situation to the ICC – whereas Algeria abstained.[1361] Voting in favour of the referral demonstrates in concrete terms that Benin (and Tanzania) saw the ICC as an appropriate institution that had the credibility to investigate the Darfur situation. If they did not wish to be seen as opposing the ICC, they could have abstained. This suggests loyalty behaviour toward the ICC. Benin elaborated on its reasons for voting in favour of referring the Darfur situation to the ICC at a UNSC meeting:

> However, Benin had four reasons for voting in favour of the resolution. First, Benin is party to the treaty establishing the International Criminal Court. Secondly, the ongoing deterioration of the situation in Darfur requires the Security Council to take urgent action to end violations against civilians there. One prerequisite of such action is to end the reign of impunity by providing impartial justice. Thirdly, referring the matter to the International Criminal Court ensures that credible and timely action will be taken against persons charged with atrocities and serious crimes. Fourthly, Benin voted in support of the resolution out of respect for human dignity and the right to life that has been denied to thousands of people in Darfur, to whom the international community owes protection in view of their vulnerability. That obligation has been recognized by the African Union in the Ezulwini Consensus adopted by its Executive Council…[1362]

This suggests that Benin saw the ICC as a credible institution capable of addressing the Darfur matter. Furthermore, its reference to the Ezulwini Consensus suggests that Benin saw its action as consistent with AU positions.

However, years later in 2008, Benin's former President Thomas Boni Yayi accused the Court of "…chasing Africa" during an interview with Radio France International.[1363] This comment was made in response to a question about Yayi's view on the al-Bashir matter before the ICC. At the time of the comment by Yayi, the OTP had applied for an arrest warrant for al-Bashir. This suggests a contradiction in Benin's behaviour regarding the Darfur situation.

[1361] Shilaho 2018.
[1362] 'Security Council, Sixtieth Year, 5158th Meeting, S/PV.5158' 2005, 10.
[1363] Dersso 2013; Jalloh 2012, 210–11; *Sudan Tribute* 2009.

This contradiction can be resolved if one separates the general investigations into Darfur from the arrest warrant for al-Bashir. Benin might have considered the case as appropriate for investigation but believed that head of state immunity (possibly just for a non-State Party) should be retained. If it is understood in this way, then Benin did not act contradictorily. When Yayi accepted his post as AU chair in 2012, he urged for peace in Sudan, South Sudan, the Sahel, and Nigeria and he stated that "[t]he development of our continent is in our hands my dear presidents… it is in unity and cohesion that our continent will ensure its development."[1364] This might suggest that Yayi sees heads of state as the primary agents for conflict resolution, which might be why he opposed the indictment of al-Bashir.

Benin has acted as a mediator and contributed peacekeeping forces to missions on the continent. It seems that Benin is reputed for its steady democracy since the 1990s.[1365] This might suggest that Benin places importance upon its reputation at the international and regional levels as a peace actor that promotes democratic principles. Its support for the ICC might be driven by adherence to such norms and the potential reputational gains from ICC membership.

Notably, the US and France are the two biggest providers of official development assistance (ODA) to Benin.[1366] The US' policy goals in Benin are suggestive of Benin's efforts to secure its image as a strong democratic state[1367]: "The United States' partnership with Benin is based on the goals of strengthening democratic institutions and respecting human rights, improving regional security and stability, and assisting Benin to expand opportunity and reduce poverty."[1368] Net total ODA received by Benin has been between 7% and 3% of its GNI in the period studied.[1369] This suggests that Benin is not highly dependent on ODA as a source of its GNI. France did not hold overwhelming power to influence Benin's policies toward the ICC based on its ODA contribution alone considering the percentage of the GNI

[1364] 'African Crises Dominate Talks as Benin Takes AU Helm' 2012.
[1365] Amuwo 2003; 'U.S. Relations With Benin' n.d.; 'Benin' 2021.
[1366] 'Benin' 2019b.
[1367] Although, this image has disintegrated since the 2016 election of Talon. See: Campbell 2021
[1368] 'U.S. Relations With Benin' n.d.
[1369] 'Net ODA Received (% of GNI) - Benin' n.d.

that ODA comprises in Benin and that the US is the main ODA donor. If France exerted influence over Benin's ICC policies, it would have been through softer forms of power, which requires a more in-depth study into the relationship between these states. Another consideration is Benin's trade reliance on Nigeria – approximately 20% of Benin's GDP is derived from informal export and transit trade with Nigeria.[1370] It is possible that Benin defaulted to loyalty to the ICC because Nigeria and France both supported the ICC (and the US was mostly indifferent) so there was no economic reason to question support for the ICC.

The question remains why Benin was not influenced by regional politics to criticise or withdraw from the ICC. It seems that Benin sees the Court as credible, which is suggested by its favourable vote for the Darfur referral, the fact that it has remained a member of the ICC, and its reservation on the Withdrawal Strategy. From the little evidence available, it seems that Benin's loyalty to the ICC might be explained by ideational factors (i.e. its commitment to the ICC and its related norms) and/or the reputational gains from being associated with it.

Senegal

Senegal was the first state to ratify the Rome Statute, which it did on 2 February 1999. Senegal participated in three ICC General Debates (2008; 2010; and 2017) as well as at the ICC Review Conference. Each time was classified as loyalty. Senegal addressed the UNGA ICC Report Plenary eight times – all of which were classified as loyalty (2008 to 2010 and 2014 to 2018). Senegal mentioned the ICC in one of its UNGA General Debates and this was classified as voice. Furthermore, Senegal entered a reservation on the AU's decision to develop a collective withdrawal strategy in 2016. Senegal also entered a reservation on the AU draft Withdrawal Strategy in 2017. Senegal signed the Niamey Declaration.

[1370] 'The World Bank in Benin' 2021.

Senegal is an active player in international diplomacy with a relatively neutral approach to its international relations.[1371] Although, pan-Africanism is also part of Senegal's foreign policy and diplomacy positions.[1372] Bodian and Kelly state that Senegal's post-independence foreign policy has aimed to "maintain a comparative advantage as a 'soft power' with normative authority in west Africa and across the continent",[1373] illustrated by Senegal's secular and stable democracy under civilian rule. Additionally, Senegal had retained close political relations with France and historically "was the cornerstone of colonial French west Africa".[1374] Bodian and Kelly argue that "continuities and changes in Senegalese foreign policy are more directly a function of presidential leadership", which suggests that the priorities set by the head of state influences foreign policy.

Although Senegal almost exclusively demonstrated loyalty behaviour to the ICC within the forums studied, in 2009, Senegal advocated in favour of mass withdrawal from the ICC. [1375] This contrasts with its opposition to the AU's draft withdrawal strategy document in 2017. This is best explained by the head of state in power at the time. During the temporal period of this study, Senegal had two presidents: Abdoulaye Wade (2000–2012) and Macky Sall (2012-present).[1376] The difference in behaviour toward the ICC coincides with these regimes.

Senegal's foreign policy is said to have been shaped by Wade's political style and institutional preferences under his regime.[1377] Wade was involved in negotiations with al-Bashir that sought to enable UN intervention in Darfur[1378] as well as other peace mediations between Sudan and Chad.[1379] Additionally, Wade sought international positions that would help to assert Senegal's role as "an exemplar of peace, tolerance, and dialogue."[1380] This included assuming significant leadership positions within the AU. Senegal was angered when arrest warrants were issued by a French court against nine Senegalese officials in 2008. In

[1371] Sall 2013, 5.
[1372] Sall 2013, 14.
[1373] Le Gouriellec 2018, 327.
[1374] Le Gouriellec 2018, 328.
[1375] Mills 2012, 423.
[1376] Macky Sall was the prime minister between 2004 and 2007 during Wade's regime.
[1377] Sall 2013.
[1378] *Reuters* 2006.
[1379] *The New Humanitarian* 2008.
[1380] Le Gouriellec 2018, 333.

2002, a ferry capsized and resulted in the death of 1 863 people, including 22 French nationals. Only 64 people survived.[1381] Brody suggests that this incident, among others, set the tone for frustration with the exercise of judicial power by external states in Africa.[1382] Senegal's criticism of the ICC that emerged in response to the arrest warrants for al-Bashir thus might have been driven by the Wade regime's role in mediations with Sudan as well as the regime's frustration with "western" prosecutions of Africans. This also might explain why the discontent with the ICC was noted at the UNGA General Debate – it was symbolic of broader grievances.

The return toward loyalty behaviour was due to reputational factors. Sall emphasised human rights as part of his regime's goals. Sall implemented prosecutorial plans that had stagnated under Wade to try Chadian politician Hissène Habré for human rights abuses. Prosecutions took place at the ad hoc Extraordinary African Chambers, which were hosted by the Senegalese courts, and marked the first-time universal jurisdiction had been implemented in Africa, the first time an African state prosecuted a former African head of state, and the first time the AU established a court.[1383] Additionally, Senegal held a UNSC non-permanent seat for 2016 and 2017. As part of its campaign to win the non-permanent UNSC seat, Senegal highlighted its role in promoting peace and security – including its role as an ICC supporter.[1384] This suggests that Senegal (at least, under the Sall regime) saw supporting the ICC as legitimising its position within international peace and security.

Senegal's statement at the ICC Review Conference also indicates the emphasis it has placed on its international reputation as a justice promoting state:

> In love with these fundamental values, which forged its unwavering faith in justice, that Senegal has always strived to play a leading role in almost all regional and international campaigns and

[1381] Boutreux 2008.
[1382] Brody 2009.
[1383] Hicks 2018.
[1384] Le Gouriellec 2018, 343.

> initiatives aimed at promoting the creation of an international criminal justice system capable of prosecuting the perpetrators of the most serious crimes.[1385]

Additionally, the ICC academic interview argued that Senegal's loyalty behaviour is explained by the currency Senegal derives from its positive international reputation:

> For a state, like Senegal, that's basically the main reason why they were early supporters of the ICC. Also, because at some point, the President of the Assembly of States Parties was the Senegalese Justice Minister. Senegal with the first state that ratified the Rome Statute. Visible diplomacy is all Senegal has on the international stage and that's what they try to bank on.[1386]

This shows the link between reputation and soft power – and how foreign policies are shaped by the pursuit of this type of reputational soft power. Reputational factors therefore explain Senegal's loyalty behaviour. Its voice behaviour in 2009 and 2010 seem best explained by the role that Senegal played in mediating the Sudan conflict and, possibly, by former-President Wade's personally attitude toward international justice at the time.

Malawi

Malawi had two country states, which were both classified as voice. It delivered a statement at the 2014 ICC General Debate, and it referred to the ICC in its 2010 UNGA General Debate. It is noteworthy that the UNGA General Debate speech was delivered by then President Bingu wa Mutharika in his capacity as president of Malawi as well as his capacity as the AU Chairman. The speech was articulated entirely from a collective African perspective. Additionally, Malawi entered a reservation on the AU draft Withdrawal Strategy, which is a sign of loyalty.

Al-Bashir attended a Common Market for Eastern and Southern Africa summit in October 2011 hosted by Malawi and he was not arrested. The ICC found Malawi guilty of breaching

[1385] ICC RC 2010. The original speech was in French and Google Translate might have mistranslated the "in love" phrase, but the sentiment is apparent nonetheless.
[1386] ICC Academic 2021.

its Rome Statute obligations and referred it to the UNSC and ASP. This contrasts with Malawi's refusal to host an AU Summit in 2012 due to the AU's requiring that al-Bashir be permitted to attend without threat of arrest.[1387]

Kaunda argues that Malawi's economic dependence on external aid and its low levels of economic development has undermined its ability to "determine autonomous foreign policies."[1388] This would presume that economic factors drive Malawi's foreign policies. Perhaps this is generally true, but it does not explain Malawi's changing behaviour toward the ICC from voice to loyalty.

Regional political factors explain why Malawi exercised voice regarding the ICC in 2010 and permitted al-Bashir to visit its territory. Then-President Bingu wa Mutharika was the AU Chairperson for 2010 to 2011, which were the years these two events took place. It seems like that Mutharika prioritised regional politics over the ICC, at least, during his tenure as AU Chairperson. In addition to his AU leadership role, Mutharika might have prioritised regional political relationships over (some) international ones after some states – such as the US and UK – suspended aid to Malawi in response to domestic unrest and protest related to fuel shortages, taxation, and political repression.[1389] Mutharika died unexpectedly in 2012 and was replaced by his vice president, Joyce Banda (an ally turned opponent), who focused on re-establishing positive relations with donors.[1390] However, Banda was replaced by Mutharika's brother, Peter Mutharika, in the 2014 elections. A statement regarding Malawi's undecidedness about withdrawing from the ICC, given by Malawi's Ministry of Justice and Constitutional Affairs, stated that it firmly believed that reform of the ICC was needed but that this would be achieved through African countries remaining States Parties.[1391] This is a voice position.

[1387] N. Cook n.d., 7.
[1388] Kaunda 2018.
[1389] Cammack 2012; Wroe 2012.
[1390] N. Cook n.d., 6
[1391] Chiumia 2017.

Malawi's voice behaviour toward the ICC was primarily driven by regional politics. This is suggested by its president at the time's position at AU Chairperson as well as its decision to host the COMESA summit despite the conflict this presented for Malawi in terms of its Rome Statute obligations to arrest al-Bashir (comparable to South Africa's hosting the AU Summit for regional political gains). Malawi's loyalty behaviour is possibly explained by economic factors. Malawi's foreign policy prioritises its sustainable development and Net ODA comprises a large percentage of Malawi's GNI.[1392] Aside from the years when Malawi was sanctioned, ODA was between 12% and 23% of its GNI between 2008 and 2018 – and was at its highest in the year preceding the loyalty behaviour (2016).[1393] The US, UK, and EU are all major donors to Malawi. The 2014 voice statement delivered by Malawi at the ICC General Debate was the first and only one made by Malawi and was timed with the new Peter Mutharika regime, which came into power earlier that year. The 2014 statement was very reassuring of Malawi's intention to cooperate with the ICC, although it noted the need for the ICC to improve on its complementarity work. It is possible that the new regime sought to signal its adherence to international norms vis-à-vis the ICC while balancing this against the AU's anti-ICC position by showing solidarity with some concerns that had been raised. In other words, Malawi sought to promote a 'good global citizen' image,[1394] without neglecting the solidarity norm, which is in line with its foreign policy priorities to promote its developmental diplomacy. Therefore, Malawi's loyalty behaviour seems driven by economic and reputational factors but moderated somewhat by regional politics.

Sierra Leone

Sierra Leone joined the ICC on 15 September 2000. Sierra Leone delivered four statements at the ICC General Debates, three of which were identified as loyalty (2012; 2014; and 2018) and one (2008) was classified as voice. It presented a statement in one ICC Report Plenary (2010), which was classified as loyalty. Sierra Leone mentioned the ICC once during a UNGA General Debate address, in 2014, which was classified as voice. It delivered a loyalty

[1392] 'Malawi Foreign Policy: A Catalyst for Sustainable Development', n.d.
[1393] 'Net ODA Received (% of GNI) - Malawi' n.d.
[1394] Interestingly, the Malawian foreign affairs objectives included the aim of being a peace and security actor, which suggests the salience on the continent of this as a soft power tool/indicator.

statement at the Review Conference. No literature exploring Sierra Leone's relationship with the ICC was found at the time of writing, and there was little literature available about Sierra Leone's contemporary foreign relations or policies.[1395]

Sierra Leone stressed its support for the ICC during its voice statement in 2008. It argued that the ICC should be considered to be "African justice just as much as it is European, Latin-American, or indeed any other kind of justice."[1396] The main concern that it raised was about outreach in situation countries like Sudan and CAR, where it said that the lack of outreach enabled a proliferation of misinformation in those countries that will undermine the ICC. Sierra Leone's judicial history is important context for understanding its concerns about outreach. In 2002 – the same year that the ICC was established – the Special Court for Sierra Leone (SCSL) was created to investigate crimes against humanity committed during its civil war. The SCSL the first time an international court tribunal was based in the country where the crimes were committed, and it was known for its good outreach programme.[1397] Sierra Leone's concerns regarding the ICC's outreach programme were likely provided from Sierra Leone's experience and the awareness that other States Parties had about the SCSL strengths in this regard. It seems that this voice statement was driven by a reputational factor whereby Sierra Leone was upholding its renown for the SCSL's good outreach programme. The SCSL successes formed part of Sierra Leone's international reputation.

The voice statement in 2014[1398] suggests that Sierra Leone believes that heads of state should be treated with some exception by the ICC: "We are seized of unfolding developments at the International Criminal Court (ICC) and, we are supportive of the efforts to ensure judicial accountability in ways that are respectful of Africa's concerns for the ability of its statesmen and women to steer the countries of the continent towards greater security, reconciliation, peace and development."[1399] Sierra Leone may have been referring

[1395] Much of this literature focused on bilateral relations (with the US and UK) or Sierra Leone's economic development.
[1396] ICC GD 2008.
[1397] 'The Special Court for Sierra Leone, the Residual Special Court for Sierra Leone' n.d.
[1398] Domestically, Sierra Leone had declared a state of emergency in July 2014 due to the Ebola outbreak, but that does not provide explanatory value for its ICC relations.
[1399] Republic of Sierra Leone 2014a.

to the Kenyan situation, which had occupied AU talks the previous year. Two issues regarding heads of states and the ICC were triggered by Kenya in 2013: allowing them to appear virtually for court proceedings and the issue of immunity. It is not clear which matter (if either) Sierra Leone was referring to, but it is indicative that regional politics drove Sierra Leone to mention the matter at the UNGA.

In the same year, at the ICC General Debate, Sierra Leone delivered a statement that was classified as loyalty. Within this statement, Sierra Leone raised that there "…is an urgent need to improve on the level of cooperation between the Tribunal and the African Union for two main reasons: firstly, almost all of the situations and cases that are being dealt with by the Court emanate from Africa and secondly, the group of African Member States Parties is the largest group to the Rome Statute."[1400] Interestingly, Sierra Leone did not note concerns regarding sitting officials and the ICC. Its comments were generally about the importance of cooperation between the AU and the ICC for addressing impunity on the continent.

Sierra Leone's stress on the importance of cooperation for this purpose indicates its loyalty behaviour was an effort to promote itself as preoccupied with peace and security issues. This is a reputational factor and is in line with their Ministry of Foreign Affairs and International Cooperation's third objective.[1401] The Ministry's website implies that Sierra Leone is seeking a more prominent international and regional leadership role, which is suggested by its reference to the various attempts and achievements it has had in securing leadership positions in international and regional organisations.

During the period studied, Sierra Leone's GNI comprised between 9% and 23% net ODA and peaked between 2014 and 2016 due to the Ebola outbreak. The main ODA donors for Sierra Leone are the UK, World Bank, and EU. This suggests that there are economic reasons that underly its aspiration to have a positive international image.

[1400] ICC GD 2014.
[1401] 'Our Story' n.d.

Sierra Leone's behaviour to the ICC has almost entirely been loyalty. It seems likely that Sierra Leone's international reputation as a successful post-conflict state[1402] – in part due to the SCSL – has shaped its international relations with the ICC. Sierra Leone sought to maintain its good reputation with regards to peace and justice through supporting the ICC. Its voice behaviour in 2014 was shaped by regional factors. The main explanatory factor for Sierra Leone's behaviour in relation to the ICC is reputational factors, which are – at least in part – related to economic factors.

Ghana

Ghana ratified the Rome Statute in December 1999. Ghana participated in the ICC General Debate nine times (2011 to 2018), all of which were classified as loyalty except its 2010 and 2015 addresses, which were voice. It delivered a loyalty statement at the Review Conference. Ghana delivered loyalty statements at the UNGA ICC Report Plenaries in 2008, 2010, and 2017. Ghana did not refer to the ICC during its UNGA General Debate statements.

Ghana's 2010 voice statement simply noted that that year's report showed "…a variety of challenges that need to be addressed in order to ensure that the Court discharges its functions more effectively and efficiently with a view to strengthening the regime of international criminal justice…"[1403] Ghana was emphatic that it supported the Court, which suggests that its voice statement was intended as constructive criticism and that loyalty also shaped the delivery of the statement. It's 2015 voice statement also emphasised its commitment to the ICC but noted that the decisions around rule 68 should not be retroactively applied – as Kenya had motivated. This interjection could be motivated by regional political factors but might also simply be a legal opinion.

Ghana is a notable sub-regional power in West Africa and it has a significant history regarding pan-Africanism due to Kwame Nkrumah's contributions in this area after Ghana gained independence in 1957. Addo notes that while the foreign policy values espoused by

[1402] '"Sierra Leone Is a Success Story Built on Steady Progress," Security Council Told' 2014; 'U.S. Relations With Sierra Leone' n.d.
[1403] ICC GD 2010.

Nkrumah have remained consistent in Ghana's foreign policy, their implementation has been shaped by the incumbent president.[1404] Indeed, Ghana's Ministry of Foreign Affairs' website refers to its history under Nkrumah as a proactive peacemaker and non-aligned state. Ghana's foreign policy principles emphasise international rule of law and peace norms, whereas its foreign policy objectives include more emphasis on regional political aims in addition to its international reputational goals.[1405]

The significance of reputational factors for Ghana's economic goals was highlighted by Clark:

> …in the Ghanaian case […] I think first and foremost, it's, it's about sort of good old fashioned neo-liberal international politics. But I think a state like Ghana in the last 20 years has gone through a political tradition trajectory of being seen to be a faithful international partner, that this is a country that had pretty volatile politics in the 80s and 90s [and] has kind of settled down into a model democracy. That persona has given it real purchase internationally, but international donors and international investors want to partner with a state like Ghana because they think that it's a trustworthy…. democratic actor with a kind of neo-liberal economic outlook that is kind of consistent with the international orthodoxy. And I think, from Ghana's perspective, the ICC sort of fits that… you want to be seen as a good liberal democracy that adheres to the rule of law, and so therefore you want to not only practically, but rhetorically, support the Court, you think that it kind of carries favour with all the kind of international partners that matter to you. And I think it's similar with the likes of Senegal and Botswana. What these states have in common is that they are talked about in international circles as the few predictable African liberal democracies that you can do business with. And I think the ICC kind of fits within that. I don't really think it's necessarily got much to do with the ICC specifically. I […] those states think the ICC fits in sort of, kind of a bigger picture of sort of liberal democratic norms. And there's a kind of neo-liberal economic outlook that's wrapped into that as well. So, these are like the good students.[1406]

Clark's interpretation is consistent with the discussions preceding the Ghanaian case, where states like Botswana, Lesotho, Senegal, and Sierra Leone appear to have associated their

[1404] Nii Nortey Addo 2008, 201.
[1405] 'Ghana's Foreign Policy Guideline' n.d.; 'Foreign Policy Objectives' n.d.
[1406] P. Clark 2021.

compliance and support with the ICC as an international symbol of their 'good state' status, which seems to have underlying economic motivations.

Tunisia

Tunisia became a State Party to the Rome Statute in June 2011. Tunisia delivered five statements that were classified as loyalty at this forum (2011 to 2015) and one statement that was classified as voice (2018). Tunisia did not participate in the UNGA ICC Report Plenaries and it referred to the ICC three times during its UNGA General Debate statements. The statements in 2012 and 2014 mentioned the ICC but did not present a position toward it. They are not relevant for the withdrawal debate and thus were not classified into the EVL categories. The 2013 reference to the ICC was classified as loyalty. Tunisia entered a reservation on the AU's draft Withdrawal Strategy.

Tunisia experienced a revolution in between in 2011, after protracted protests that began in 2010, sparking the Arab Spring, which resulted in its first democratic elections after decades of repressive autocratic rule under the Bourguiba and Ben Ali regimes. The Ennahda party won 41% of the seats in parliament but had to form a coalition government with two other parties since it had not won an absolute majority.[1407] A troika government was formed, wherein previously exiled human rights activist, Moncef Marzouki of the Congress for the Republic party, as president and Hamadi Jebali of Ennahda was the prime minister.

Tunisia's Ministry of Foreign Affairs' website lists five principles as the basis of its foreign policy:

- Clinging to international legality as well as to respect of its requirements and decisions;
- Clinging to peace by favouring the logic of dialogue, negotiation and peaceful ways for the settlement of disputes and conflicts;
- Developing international relations within the context of mutual respect and commitment in favour of non-interference in internal affairs of other States;
- Supporting just causes;

[1407] Zoubir n.d.

- Contributing to all efforts and actions in favour of peace, security and stability, human Rights promotion and fulfilment of well-being and progress for the benefit of humanity in its entirety.[1408]

The website states that the principles "…illustrate Tunisia's attachment, as a peace-loving country, to international legality…"[1409] This suggests that importance is attached to international law in Tunisia's foreign policy. This might explain its consistent support for the ICC. The attachment placed to international law by Tunisia is likely related to its transition to a democratic state following its 2011 uprising. The emphasis on legality and peace as principles is likely an effort to secure a new reputation for post-revolution Tunisia as a democratic and rule abiding state.

Net ODA makes up a small proportion of its GNI since Tunisia joined the ICC in 2014 until 2018.[1410] Nonetheless, it is worth noting that its main ODA donors are the EU, Germany, France, and Japan – all major supporters of the ICC.[1411] Furthermore, European markets are consistently its major export destination and trade partners.[1412] Economic factors, thus, could be an underlying factor contributing to its reputational objectives.

Thus, it seems that reputational factors are both immediate and underlying factors driving its behaviour with the ICC, but that economic factors could be a contributing factor to the drive for a positive reputation.

Congo-Brazzaville

Congo-Brazzaville ratified the Rome Statute on 3 May 2004. Congo-Brazzaville made a statement at the Review Conference, which was classified as loyalty. Congo-Brazzaville signed the Niamey Declaration in 2017, which is loyalty behaviour. Thus, Congo-Brazzaville's

[1408] Republic of Tunisia n.d.
[1409] Republic of Tunisia n.d.
[1410] 'Net ODA Received (% of GNI) - Tunisia' n.d.
[1411] 'Tunisia' n.d.
[1412] China, Turkey, and Algeria were also frequent trade partners. 'Tunisia Trade Summary 2014, 2015, 2016, 2017, and 2018' n.d.

behaviour has been passive loyalty through its sustained membership with two instances of overt/active loyalty behaviour.

The consistency in Congo-Brazzaville's behaviour to the ICC might be explained by the fact that only one president - Denis Sassou Nguesso – has been in power since 2002. Since 2009, Nguesso has focused on economic development and prioritised principles of good governance and transparency. In November 2016, two political parties within Congo-Brazzaville's ruling coalition campaigned for withdrawal from the ICC on the grounds that membership was inconsistent with Congo-Brazzaville's extradition laws.[1413] However, this campaign was apparently unsuccessful and it does not seem to have affected Congo-Brazzaville's international behaviour with the ICC.

Net ODA has not been a big component of Congo-Brazzaville's GNI during the period studied. It was 10% at its highest (in 2010) and consistently has been about 1% since 2012. The EU, World Bank, France, and Japan were its major aid-for-trade donors between 2008 and 2018.[1414] It seems unlikely that economic factors have explanatory value for Congo-Brazzaville's behaviour.

The ICC is probably not a significant foreign relations and policy issue for Congo-Brazzaville. The ICC is/was involved in three of its neighbouring states – the DRC, CAR, and Gabon – but none of these situations posed a security risk for Congo-Brazzaville as the conflicts were not located near its shared borders with these countries. It seems that Congo-Brazzaville is a zombie State Party. It was most likely conforming with the behaviour of the other regional African Francophonie states when it signed the Niamey Declaration. Congo-Brazzaville's foreign policy is guided by good neighbourliness and development diplomacy, including the attainment of the Millennium Development Goals. This suggests that Congo-Brazzaville acceded to the Rome Statute for reputational factors, particularly because of the ICC's association with international justice and good governance norms.

[1413] Reuters 2016.
[1414] 'Aid, Trade and Development Indicators for Congo' 2011; 'Aid, Trade and Development Indicators for Congo' 2013; 'Aid, Trade and Development Indicators for Congo' 2017.

Mauritius

Mauritius ratified the Rome Statute in March 2002. Mauritius made one statement, which was at the ICC Review Conference.

Mauritius has adopted a non-aligned approach to its international relations – in part due to its small size as an island state.[1415] Mauritius' foreign policy has focused on economic and commercial incentives as a way of galvanising support from other states.[1416] Its position as a small state that is geographically remote has compelled Mauritius to participate actively within international debates and organisations. Yet, this has not been the case regarding the ICC – as indicated by its lack of participation in ICC-related IO forums.

This could suggest that Mauritius' accession to the Rome Statute was driven by this diplomatic strategy of conformity and proactivity. It is possible that it has remained a member because it has not jeopardised its relations with other African states and within the AU.

It seems that Mauritius' membership is driven by the reputational gains it perceives the ICC as providing. For example, at the ICC Review Conference, Mauritius stated:

> As a democratic State and as a State which upholds the protection and promotion of human rights, and which adheres to the core principles including the rule of law, peace and justice and human dignity, Mauritius shares the view that the international community has to put an end to impunity for serious crimes against humanity.[1417]

Furthermore, one of Mauritius' top five foreign policy objectives is "…to promote democratic ideas internationally…"[1418] This suggests the importance Mauritius has attached to its international reputation and association with democratic ideals. The reasons listed by Mauritius at the Review Conference for supporting the ICC suggests that it sees the Court as

[1415] Pudaruth 2017.
[1416] Pudaruth 2017.
[1417] ICC RC 2010.
[1418] S. Graham 2017, 139.

positively associated with these democratic values. Like Congo-Brazzaville, Mauritius seems to be a zombie State Party, whereby its participation in the ICC has been minimal. This is because its foreign policy aims are not hindered by its remaining an ICC member, nor especially bolstered so as it warrant its undertaking a more proactive role.

Burkina Faso

Burkina Faso exercised loyalty twice (2010 and 2011) and voice three times (2014, 2016, and 2017) at the ICC General Debate; it delivered a loyalty statement at the Review Conference; it made no statements at the UNGA ICC Report Plenaries; and it made no reference to the ICC at the UNGA General Debates. Additionally, Burkina Faso entered a reservation on the AU's draft Withdrawal Strategy and signed the Niamey Declaration in 2017, which are both loyalty behaviour.

The initial loyalty behaviour by Burkina Faso demonstrated its commitment to the ICC in concrete terms by referring to its domestication of the Rome Statute. Burkina Faso's addresses in 2010 and 2011 suggest genuine engagement with the ICC rather than simply a series of generic statements about anti-impunity norms.

The shift in behaviour from loyalty to voice coincides with a shift in domestic politics. Following mass protests as a result of efforts to extend his nearly three-decade long regime, President Blaise Compaore was forced to step down from office in November 2014.[1419] He was replaced by a transitional government. Michel Kafando was appointed the president and deputy commander of the elite presidential guard, Lieutenant Colonel Yacouba Isaac Zida, was appointed as prime minister.[1420] However, instability ensued in 2015 when former President Compaore's allies in the presidential guard (unsuccessfully) attempted to stage a coup against Kafando.[1421] Additionally, Burkina Faso faced an increasing domestic threat

[1419] 'Transitional Government Appointed in Burkina Faso' 2014, 24.
[1420] The transitional government followed a brief period whereby Zida temporarily acted as president. Zida's presidency was unconstitutional since it amounted to military rule, which resulted in domestic protest as well as international pressure for civilian rule. See Salihu n.d.
[1421] *BBC News* 2020.

from Islamist militants. This could suggest that the new head of state was less inclined toward the ICC.

The voice statements indicate that Burkina Faso was adopted positions that resonated with African states and the AU that were discerning of the ICC. For example, it highlighted issues of selectivity and impartiality. Furthermore, it asserted that issues of cooperation resulted from the ICC's actions. Burkina Faso's shift came after the AU held its extraordinary session in October 2013 in response to Kenya's anti-ICC campaign. Indeed, Burkina Faso aligned itself with the African group statement from 2014.

However, Burkina Faso also entered a reservation on the AU's draft Withdrawal Strategy and signed the Niamey Declaration. Furthermore, Burkina Faso made it apparent that it did not support withdrawal from the ICC in 2016 and 2017 by stating that reform would be best achieved through remaining within the Court. Thus, it seems that Burkina Faso's relations with the ICC were influenced by regional politics to some extent, but not in a way that jeopardised its commitment to remaining an ICC State Party. In fact, its membership seemed so important that it entered the reservation.

The moderation of Burkina Faso's voice behaviour might be because of balancing regional politics (particularly, the solidarity norm) against reputational factors related to economic interests. Burkina Faso is a landlocked country in the Sahel region and its northern borders are shared with Mali and Niger, which has posed a security risk from Al-Qaeda in the Islamic Maghreb.[1422] Furthermore, Burkina Faso is classified as a less developed country with an economy that relies on gold and cotton exports.[1423] European countries, Japan, and the EU have historically (and to date) has been the major source for ODA, alongside the World Bank, US, and African Development Bank.[1424] This could suggest that the significant role that

[1422] 'Key Challenges, Opportunities and Risks in Burkina Faso' n.d.; Laub and Masters 2015.
[1423] Sawadogo 2007; 'Burkina Faso' n.d.; 'The World Bank in Burkina Faso' 2021.
[1424] 'Burkina Faso' n.d.; 'Aid, Trade and Development Indicators for Burkina Faso' 2017; 'Aid, Trade and Development Indicators for Burkina Faso' 2015; 'Aid, Trade and Development Indicators for Burkina Faso' 2013; 'Aid, Trade and Development Indicators for Burkina Faso' 2011; 'Aid, Trade and Development Indicators for Burkina Faso' 2009.

ICC powers in the EU and Japan play in Burkina Faso's ODA is a factor shaping its loyalty to the ICC and therefore moderating its voice behaviour.[1425]

Burkina Faso's loyalty behaviour to the ICC is likely best explained by the role that key ICC supporters (such as the EU and Japan) play in Burkina Faso's ODA receipts. This, in turn, might shape Burkina Faso's aspirations to promote a positive international reputation. Its voice behaviour is best explained by regional politics and a change in its regime (i.e. a domestic factor). However, voice behaviour seemed moderated by loyalty.

Seychelles

Seychelles joined the ICC in August 2010. Seychelles made one statement, which was a voice statement made at the 2013 ICC General Debate.

The critical element of this statement focused on the case against Kenyatta and stated that preventing a head of state from carrying out their duties undermined democracy. Seychelles' framing of the issue made it appear that its grievance was not particular to Kenyatta but, a matter of democratic principle. However, without further evidence, it is difficult to assess if its voice behaviour was primarily driven by regional or reputational factors.

Yet, a few years later, Seychelles demonstrated loyalty behaviour for the ICC at the High Level Seminar for Fostering Cooperation between the ICC and States Parties to the Rome Statute on 30 October 2015:

> Seychelles supports the Court, and welcomes the opportunity for dialogue on the ways and means to strengthen the relationship between the Court and its States Parties, as it is only with frank and open engagements, that we – as a region and a global community - can hope to move

[1425] The African Development Bank is primarily funded by its non-regional members, which includes ICC members from Europe, Japan, and Korea. See 'Frequently Asked Questions: How Does the African Development Bank Group Get Its Resources?' 2019.

> forward in the promotion and protection of human rights, and the ending of impunity for atrocious crimes.[1426]

Within international affairs, Seychelles has a reputation as a microstate norms entrepreneur for maritime security, oceanic sustainable development, and a blue economy.[1427] It has, thus, crafted a niche area of influence within international politics and policy. The prevailing literature on small states' diplomacy notes that it is strategically in their interests to be perceived as an honest agent and to capitulate on their being an unthreatening entity in global politics (due to their size restricting their relative power).[1428] Its location between Africa and India has allowed it membership of multiple regional and cross-continental associations. Seychelles has positioned itself as an important anti-piracy actor and as a neutral mediator.

Seychelles' voice behaviour was possibly driven by bilateral foreign policy objectives with Kenya. This is suggested by the states entering a general cooperation agreement in June 2014 (a few months after the voice statement was delivered). The general cooperation agreement sought to promote blue economy and fishery objectives and it is plausible that the talks leading up to the final agreement preceded 2014.[1429] Additionally, Kenya and Seychelles shared an interest in addressing the piracy threats emanating from Somalia. Furthermore, Seychelles was trying to promote tourism through entering travel agreements with relevant coastal states. it entered into such an agreement with Kenya in 2009.[1430] Seychelles' foreign policy is driven by its aim to promote and strengthen its tourism sector.[1431] This suggests that its policy-making with Kenya, and display of solidarity, were driven by underlying economic factors.

It seems that Seychelles' loyalty behaviour to the ICC is driven mainly by reputational factors. Its 2013 voice behaviour seems to be explained by its economic factors related to its

[1426] 'Seychelles Supports Cooperation with the International Criminal Court' 2015
[1427] Bueger and Wivel 2018, 170.
[1428] Bueger and Wivel 2018, 175.
[1429] 'President Uhuru Kenyatta Underlines Kenya-Seychelles Relationship as One of "Natural Partnership"' n.d.; *Seychelles Nation* 2014.
[1430] 'Kenya and Seychelles Ink Partnership Deal' 2009.
[1431] S. Graham 2017, 148.

cooperative agreements with Kenya. Both these behaviours are consistent with its foreign policy objective to promote a positive international image of Seychelles and boost its tourism sector.

Comoros

Comoros ratified the Rome Statute in August 2006, which entered into force in November 2006. It did not make any statements at the international forums studied. There are two events that are notable in Comoros' relationship with the ICC.

In June 2007, Mohamad Bacar refused to step down from his presidency of one of Comoros' islands, Anjouan. Later that same year, the AU imposed sanctions against Bacar as well as a naval blockade of the island.[1432] In 2008, the Government of the Union of Comoros together with the AU launched a combined intervention to recapture Anjouan, which resulted in Bacar fleeing to Mayotte – a French-controlled island.[1433] After being caught for illegally entering the territory and for being armed, Bacar was detained on Reunion Island (also French-run). Bacar requested asylum from France, which was denied.[1434] However, France also refused to extradite Bacar to Comoros, which has the death penalty.[1435] Comoros then requested that France send Bacar to the ICC for prosecution, which was also refused.[1436] In this instance, it seems that Comoros' motivation for turning to the ICC was to target a political opponent who had posed a threat of secessionism.

In May 2013, the Comoran government referred the situation of Israel's raid of its humanitarian aid flotilla (particularly on the Comoran registered vessel named *Mavi Marmara*) on 31 May 2010, which was destined for Gaza Strip.[1437] However, in November, the Prosecutor announced that the case did not meet the admissibility requirements and, therefore, investigations would not be opened. Comoros' request for the Prosecutor to

[1432] *BBC News* 2018b.
[1433] Amir 2008.
[1434] 'Rebel leader in limbo' 2008.
[1435] Baker 2009, n. 6.
[1436] Baker 2009, n. 6; *Al Jazeera* 2008.
[1437] 'Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia' n.d.

reconsider her decision was upheld by Pre-Trial Chamber I and the ICC's Appeals Chamber. Nonetheless, in November 2017, the Prosecutor issued a final decision not to pursue the investigations.[1438] Comoros' motivations for turning to the ICC regarding the Gaza flotilla attacks are not clear. Speculatively, Comoros might have seen the ICC as a viable way to hold Israel accountable for its raid and it likely wanted to see repercussions for Israel's actions.

Comoros is highly reliant on foreign direct investment and the Arab Bank for Development in Africa is one of Comoros' major donors (in addition to the EU, IMF, and African Development Bank).[1439] Furthermore, it is a member of the Arab League and Organisation of Islamic Cooperation. This suggests that it might have referred the flotilla situation for the reputational gains it would derive in these bodies. Comoros is preoccupied with protecting its territory. France's administration of one of its islands, Mayotte, explains why it might prioritise its diplomatic relations in the Arab League, although France remains an important trade partner.[1440]

Overall, Comoros' behaviour in relation to the ICC can be classified as loyalty. The behaviour related to the Bacar situation was driven by domestic political concerns. Its referral of the flotilla case seems explained by economic and reputational factors related to its ties to the Arab League and Arab Bank for Development in Africa.

Cabo Verde

Cabo Verde joined the ICC on 10 October 2011. Cabo Verde only had one speech act that was relevant for this study. In a speech delivered by Prime Minister Ulisses Correia e Silva, Cabo Verde indicated its loyalty to the ICC at the UNGA General Debate in 2017. Additionally, Cabo Verde's loyalty to the ICC was suggested within the AU when it entered a reservation on the AU's decision, in July 2016, to develop a collective withdrawal strategy and, again, when it entered a reservation on the AU's draft Withdrawal Strategy in 2017.

[1438] 'Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia' n.d.
[1439] S. Graham 2017, 140.
[1440] S. Graham 2017, 140, 143, and 148.

Unfortunately, much of the existing literature about Cabo Verde's foreign policy and relations was written in Portuguese.

The following year, Cabo Verde's president, Jorge Carlos de Almeida Fonseca, met with the leaders of the ICC's three organs – the Presidency, OTP, and Registry – at the Hague. The ICC President acknowledged this statement of loyalty in the address he delivered on the occasion of Fonseca's visit and stated that President Fonseca "…is a very staunch supporter of the ICC".[1441] The ICC President also noted Fonseca's legal background. Fonseca has a Masters in Law and, as an assistant professor, has lectured university courses on civil and criminal law at the University of Lisbon.[1442]

This suggests that a reason for the loyalty demonstrated toward the ICC might be related President Fonseca's commitment to international law and other international norms, such as democracy. In his statement delivered at his ICC visit, Fonseca reaffirmed Cabo Verde's commitment to the ICC because "…we are convinced of the relevant values of the struggle against serious crimes… Cabo Verde as a democracy and a state based on the rule of law is always with justice, respect of international law, democracy and liberties, so we support the Court."[1443] Fonseca came into power in September 2011 and a month later, the Rome Statute was ratified by Cabo Verde. Additionally, Fonseca was re-elected as president in 2016. Thus, Fonseca has been the head of state for the entire time that Cabo Verde has been a State Party to the ICC. His professional background is in criminal law, which is the subject that he has lectured and published in.[1444] However, it is difficult to distinguish between the head of state's commitment to international criminal law and the country's commitment. Indications of prior commitment to the ICC or Rome Statute would suggest that the support for the ICC is not particular to Fonseca's personality.

[1441] "At the UN General Assembly of 2017, the Prime Minister of Cabo Verde said that support for the ICC is an obligation that the present generation owes to future ones." See: 'President of Cabo Verde Visits International Criminal Court' n.d.
[1442] 'Jorge Carlos de Almeida Fonseca' n.d.
[1443] *Statement by H.E. Jorge Carlos de Almeida Fonseca, President of the Republic of Cabo Verde* 2018.
[1444] 'Jorge Carlos de Almeida Fonseca' n.d.

It is not clear why the previous regime, under Pedro Pires, did not ratify the Rome Statute. Legislation that facilitated the domestication of elements of the Rome Statute were implemented under Pires' regime. In 2003, the Penal Code was amended to include provisions that covered the elements of all four of the core crimes.[1445] Significantly, the Constitution was amended in 2010 to include two clauses related to the ICC.[1446] This suggests that support for the ICC predated Fonseca's regime, and that he merely consolidated this support during his regime.

Graham raises an important consideration regarding small states' international relations in terms of their security interests:

> And there's also this really interesting notion of small African states and like Burundi, The Gambia, et cetera, are small African states, and as opposed to Mauritius, which is also small but far more democratic in terms of its reputation internationally. Would small states feel more protected or less protected, and who would be protecting them? […] It's interesting to see their own behaviours, small states and whether or not they rely on international forums or local regional forums or who it is that they are getting their support from… their alliances from.[1447]

Cabo Verde and the EU are partners in several development programmes and it was allocated €55 million for the 2014-2020 period under one of them. Net ODA was a high percentage of Cabo Verde's GNI for most of the period studied. In 2010, net ODA was 20% of its GNI and it remained between 13 and 14% until 2015. The World Bank was the main ODA donor to Cabo Verde and the EU was second – with many of the other ODA donors being ICC supporters such as Japan, Portugal, and Luxembourg.[1448]

[1445] 'Cape Verde and the Rome Statute' n.d.
[1446] "Article 11(8) states that "with a view to achieving an international justice that promotes respect for the rights of both individual human persons and peoples, and subject to the provisions governing complementarity and the other terms laid down in the Rome Statute, Cape Verde may accept the jurisdiction of the International Criminal Court." Article 37(5) indicates that existing restrictions to extradition from Cape Verde do not prevent the exercise of the jurisdiction by the ICC, subject to the provisions governing complementarity and the other terms laid down in the Rome Statute." (Parliamentarians for Global Action, n.d.).
[1447] S. Graham 2021.
[1448] 'Cabo Verde' n.d.

It seems that Cabo Verde's loyalty behaviour to the ICC is explained by economic factors (i.e. its aid relations with the EU and other ICC supporting states). It is possible that Fonseca's own interests in criminal law were also a factor driving the ICC's behaviour and this is suggested by Cabo Verde's accession to the Rome Statute under his regime. Reputational factors might be an intermediary variable too given that it would be in Cabo Verde's interests to continue to be seen as a small island state promoting democracy and good governance since these are outcome areas that EU aid requires positive developments in.