Organizational sense-making in international institutions: the International Criminal Court's response to contestation by African states parties

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Abstract

In its short history, the International Criminal Court (ICC) has repeatedly faced contestation by states, which reached a first peak in 2016 with the threat of mass withdrawal by its African members. While the reasons for the contestation and the court's judicial responses to it have been widely studied, this article analyses the internal dynamics that shape the ICC's contestation management. Relying on the concept of organisational sense-making from crisis research, I argue that contestation management is crucially determined by the ICC's crisis perception and interpretation. Drawing on primary documents and interviews with ICC staff and state representatives, I demonstrate how the ICC's collective crisis perception and interpretation shaped its responses to contestation by African states parties. Whereas, initially, contestation was understood primarily in relation to individual cases with little impact on the court's overall relationship with African states, a potential African mass withdrawal was perceived as a fundamental threat to the ICC's existence. Understanding this change in crisis perception and interpretation is crucial to explaining why contestation management shifted from a legalistic, case-based approach to a comprehensive and coordinated response that has continued to impact its institutional and operational structures.

Keywords: contestation, crisis management, international organisations, International Criminal Court, organizational sense-making

Introduction

In its short history, the International Criminal Court (ICC) has repeatedly been confronted by states openly refusing to cooperate with it when implementing arrest warrants (Boehme 2022; Hillebrecht and Straus 2017; ICC 2012a).[1] For the past 15 years, numerous states parties, in particular from Africa, have allowed individuals under arrest warrants to visit their territories without arresting them, thus openly contesting Art. 98(1) of the Rome Statute.[2] States' contestation of the ICC peaked in 2016 when South Africa, alongside other African states and the African Union, advocated that African states should withdraw from the Rome Statute in order not to implement the ICC's request to arrest the former Sudanese President Omar Al Bashir (Peter 2016; Kersten 2018). Ultimately, only Burundi implemented its withdrawal, but this threat of a mass exodus by African states parties constituted an unprecedented crisis in the court's history.

Yet we know little about the court's handling of such contestation. The scholarship in international law has provided a detailed account of how the ICC's *judicial* responses to contestation evolved, in particular by the Pre-Trial and the Appeals Chambers (e.g. Makaza-Goede 2021; Giannini and Yamato 2021). However, the ICC is not simply a forum for legal reasoning. It is also an international organisation whose various bodies interact with member states and civil society organisations. Indeed, contestation may require international courts to adopt 'extrajudicial resilience techniques' (Caserta and Cebulak 2021). In fact, courts often engage in "judicial diplomacy" to gather support for their legitimacy (Squatrito 2021). While some acknowledge that courts are 'no passive actors' (Hillebrecht 2021: 24), the majority of the literature has disregarded what I call contestation management, i.e. the ICC's diplomatic and political responses to contestation. In most legal literature, the role of the Assembly of States Parties (ASP) as a 'frontstage for power and politics', for example, has been largely neglected (De Hoon and Lohne

2019: 63). Moreover, the ICC's Registry, Presidency and Office of the Prosecutor (OTP) all shape the court's relations with member states; yet, we know little about their responses to contestation as the court's core 'norm defenders' (Simmons and Jo 2019: 31).

Consequently, this article analyses how the ICC responded to contestation by African states parties by focusing on its internal organisational dynamics. Relying on the concept of organisational sense-making from crisis research (Sarkar and Osiyevskyy 2018: 51), I argue that contestation management by international institutions is crucially determined by an organization's perception and interpretation of a crisis. I conceptualise the threat of an African mass withdrawal as the tipping point of a 'creeping crisis' that the ICC had been confronted with for a while. Creeping crises are slow-burning states of tension that erupt at specific points in time and expand their spatial reach (Boin et al., 2020). The recognition and interpretation of the nature of a crisis is crucial not only at the inception but throughout the whole crisis management process (Boin et al. 2018: 30; Boin and Lodge 2016). On this basis, I argue that the process of organizational sense-making explains the shift in the ICC's contestation management from being primarily legalistic and self-assertive to the comprehensive and coordinated strategy of diplomatic engagement that continues to impact the court's institutional and operational structures even today.

The article makes three contributions. Empirically, it provides an in-depth study of the ICC's diplomatic responses to the threat of a mass withdrawal by African states. Drawing on 18 semi-structured interviews with current and former staff from the ICC as well as member states representatives, the analysis provides unique insights in the ICC's internal dynamics of contestation management. Theoretically, the article advances research on IO responses to contestation (Dijkstra et al. 2024; Heinkelmann-Wild and Jankauskas 2022). Most of these works adopt a rather static perspective and examine IO responses at a specific moment in time (for an

exception, see Hirschmann 2021). By contrast, this article advocates for a dynamic perspective to better understand how IO's contestation management evolves over time. Finally, it contributes to an emerging interdisciplinary discussion linking crisis management research with IO studies (Olsson and Verbeek 2018; Eckhard et al. 2019; Hirschmann 2024; Kreuder-Sonnen 2019). By adopting the concept of organizational sense-making, this article calls attention to processes of crisis perception and interpretation that have often been overlooked in current IO research.

The article is structured as follows. The next section reviews the existing literature on IOs' responses to contestation, specifically relating to international courts and the ICC. The section thereafter introduces the theoretical argument, building on crisis management research and IO research on contestation. I then analyse the ICC's responses to contestation by African states and investigate how the ICC's recognition and interpretation of this creeping crisis shaped its contestation management. The conclusion summarises the findings and discusses the implications for existing and future research in light of the ongoing contestation of the ICC.

International Organizations' Responses to Contestation

The African withdrawal crisis took place in the context of a widespread backlash against international courts (Alter 2022; Alter et al. 2016; Pauwelyn and Hamilton 2018; Voeten 2020). Specifically courts dealing with matters of international criminal and human rights law were confronted by member states obstructing juridical processes or announcing their withdrawal (Helfer 2018; Madsen 2018; Soley and Steininger 2018). Such 'extraordinary contestation' of international institutions has drawn significant interest (Alter and Zürn 2020).

To date, the scholarship on states' contestation of IOs has focused primarily on non-judicial institutions, as in the United States' withdrawal from the World Health Organisation and other multilateral treaties as well as the United Kingdom's exit from the European Union (Dassler et al. 2024; de Vries et al. 2021). This research has led to a general understanding that IOs – their intergovernmental bodies, but in particular their bureaucratic administrations – can play an active role in managing contestation by their member states. Institutional conditions, such as leadership and decision-making autonomy, are important factors in determining the extent to which IOs handle contestation from powerful member states successfully (Dijkstra et al. 2024; Schuette 2021). Most importantly, these works reveal large variations in how IOs respond to member state withdrawals and other forms of contestation (Dijkstra et al. 2024; Hirschmann 2021; Zangl et al. 2016). To explain any such variation across IOs, scholars mostly focus on external or structural conditions that determine the extent and the intensity of their contestation management. Some IOs, for example, are more assertive in their communicative responses to states that challenge them than others, depending on their dependence on the challenging state and their broader vulnerability (Heinkelmann-Wild and Jankauskas 2022).

While this has contributed to a better understanding of IOs' responses to contestation more generally, two important gaps remain. First, existing research conceptualises IOs' responses primarily in static terms. Yet, contestation itself is dynamic rather than an isolated event. Even exit, the most extreme form of contestation, does not happen from one day to the next but is a complicated and lengthy process extending from the formal announcement of withdrawal to its actual implementation (von Borzyskowski and Vabulas 2025). During this time an IO's contestation management will most certainly evolve (Hirschmann 2021), yet, this variability is seldom studied. Moreover, to explain such variability, intra-institutional dynamics need to be taken

into consideration. An IO's bureaucracy and its member state bodies, for example, have been found to respond in different ways (Eckhard et al. 2019). Without studying such internal dynamics, we cannot fully understand why IOs respond to contestation in specific ways.

Second, empirical analyses of contestation management by judicial institutions remain scarce (see Squatrito 2021 for an exception). This is surprising given the amount of attention that contestation by African states parties vis-à-vis the ICC has received. Most of the literature, however, focuses on the reasons that lie behind this backlash, sometimes with the aim of devising potential response strategies (e.g. Arcudi 2019; Ba 2020; Boehme 2018 and 2022; Clarke 2019; Hillebrecht 2021; Iommi 2021; Jalloh and Bantekas 2017; Ssenyonjo 2017; Vilmer 2016). In addition, researchers still disagree in their assessment of African contestation. Some argue that this backlash has contributed to an erosion of the ICC's anti-impunity norm (Deitelhoff 2020: 724). Others, however, argue that the African withdrawal crisis was a case of applicatory contestation, i.e. contestation about the implementation of a norm, rather than about the ICC as an institution or its core norms (Bower 2019; Simmons and Jo 2019: 31). Despite this widespread engagement in the literature with the reasons and consequences of contestation by African states, however, we still have limited empirical knowledge about the ICC's response, beyond its legal engagement with contestation (e.g. Makaza-Goede 2021). The present article intends to fill these gaps by redirecting the focus onto the ICC's responses to contestation. Through the case of the ICC, I aim not to only advance our understanding of judicial institutions' contestation management but to shed light on the internal dynamics that shape IO contestation management more broadly.

Organisational Sense-Making in IO Contestation Management

This article builds on existing works linking IO research with the literature on crisis management (e.g. Olsson and Verbeek 2018; Eckhard et al. 2019; Riddervold et al. 2020; Kreuder-Sonnen 2019). Specifically, I rely on the concept of organisational sense-making from crisis research to study IOs' responses to contestation (Sarkar and Osiyevskyy 2018: 51; Maitlis and Christianson 2014). Sense-making is an internal organisational process triggered by a crisis. Through the process of sense-making, the leadership's perception and interpretation of a crisis crucially determine the organization's response (Sarkar and Osiyevskyy 2018: 52). Organisational sense-making is therefore understood as a key driver for change in moments of crises (ibid.)

In addition, crisis researchers emphasise that an organization's framing of a crisis is a political process (Boin et al. 2020: 128). Consequently, I argue that we need to understand how different actors within an organisation frame contestation as a crisis for the organisation. Some actors may even refuse to recognise contestation as a problem. For example, an IO's internal assessment of a challenge as a legitimacy crisis is a crucial prerequisite for its self-legitimation activities (Bexell et al. 2021). Analysing when and how actors interpret and frame contestation as a crisis therefore is a crucial step in determining the organisation's response.

I further argue that the ICC's contestation management can be best understood by conceptualising contestation as a 'creeping crisis' (Boin et al., 2020). Coined by crisis research to describe challenges that slowly 'creep' over an organisation, these receive little attention unless the accumulated threat reaches a particular 'tipping point' (ibid.). Importantly, this conceptualisation integrates the objective and subjective components for the definition of such a crisis (ibid.). Objectively, a creeping crisis is characterised by a lurking threat potential that accumulates over time. I conceptualise acts of contestation by member states as an accumulating threat to an IO. Such threats can take various forms, from persistent non-compliance or a refusal to pay financial

contributions to verbal rejection or threats of withdrawal. Often, these challenges develop without receiving systematic attention as crises. The subjective component, namely the actual perception and framing of an event as a crisis, comes into play when creeping crises reach specific tipping points. Here, the way that an organisation perceives and interprets a challenge crucially determines how a creeping crisis is managed. Any actions that follow, whether decision-making, coordination or learning, are all determined by an organisation's reception of a challenge (Boin et al. 2018: 30; Boin and Lodge 2016).

The subjective perception of a crisis has largely been neglected in both IO research and the crisis management literature (except for Cross 2017; Sommerer et al. 2022). Instead, current IO research usually studies contestation as an objective moment of crisis to which the IO then responds (Dijkstra et al. 2024; Heinkelmann-Wild and Jankauskas 2022; Hirschmann 2021). This article therefore redirects the focus to the socially constructed elements in IOs' responses to contestation. I do not engage with discussions on how crises themselves are socially constructed (see Cross 2017), but focus on the role of threat perceptions, framing and interpretations in shaping IOs' responses to contestation.

The concept of a creeping crisis enables us to study variation in IOs' sense-making processes over time. Most importantly, there is a clear difference in how contestation is perceived, interpreted and framed during the lurking phase and at tipping points. During the lurking phase, not only is a clear threat perception missing, but the organisation interprets any contestation that is objectively present as unlikely to be harmful to the organisation. At tipping points, on the other hand, contestation not only receives significantly more attention but is perceived and framed as a fundamental challenge. In the specific context of creeping crises, recognition and interpretation of the crisis are therefore crucial not only at the outset but throughout the whole crisis management

process (Boin et al. 2018: 30; Boin and Lodge 2016). On the basis of these insights, I compare the intra-organisational processes of sense-making during the lurking phase with those at tipping points.

To start with, I evaluate the extent to which contestation is perceived and interpreted as a crisis. Early crisis research, for example, has argued that institutional changes can only be expected if a crisis is actually perceived as one by the relevant actors (Drazen and Grilli 1993). The focus in this case lies on the subjective perception of (1) when a challenge that is objectively present is perceived as a crisis by the organisation itself, and (2) how the organisation interprets the nature of the challenge. This interpretation can vary. The contestation may be perceived as not harmful to the daily operations and mandate of the organisation or as an existential threat to it and its overall mission. Lower levels of threat perception indicate the lurking phase of a creeping crisis; the interpretation as an existential crisis indicates a tipping point. On the assumption that an organisation's response to a challenge is determined by its interpretation of a challenge, I expect an IO's response to contestation to become more comprehensive after a tipping point has been reached.

Once contestation is interpreted as a crisis, I evaluate the extent to which this perception is shared across the different organs of an organisation. This is particularly relevant to IOs as they vary widely in terms of where decisions are taken, where the primary loci of authority are situated and which organisational unit is being targeted through contestation (Hooghe et al. 2017; Heinkelmann-Wild and Jankauskas 2022). Research on budgetary crises in IOs, for example, has demonstrated that such crises only lead to major institutional reforms if they are perceived in a similar way by both the IO's bureaucracy and its member states (Eckhard et al. 2019). Applying this to contestation, I expect the organisation's response to become more coordinated if the

interpretation of the challenge as a fundamental crisis is shared by the bureaucratic leadership as well as core intergovernmental bodies. Ultimately, the longitudinal perspective of a creeping crisis allows us to redirect the focus from isolated responses at specific moments in time towards a more dynamic understanding of IOs' contestation management.

Empirical Approach

This article serves as an explorative study for how International Relations and crisis research can combine for the purpose of theory-building (Fleischer and Reiners 2021). Using in-depth qualitative case analysis for theory-building is a strategy that has been undertaken successfully in earlier studies, in particular in research on IO self-legitimation (von Billerbeck 2022). The ICC is a particularly appropriate case for this study: it is still one of the youngest international institutions and has faced significant opposition since its inception not only from the United States as the remaining hegemonic power but also from rising powers like South Africa and Russia. Given that young IOs are particularly prone to succumb to crises (Eilstrup-Sangiovanni 2021), the case of the ICC can thus provide important insights into how processes of organizational sense-making shape IOs' responses to contestation.

It is important to note, however, that IOs like the ICC are not uniform actors but are composed of several bureaucratic and member state bodies. In the case of the ICC, several organs are involved in the court's diplomatic and political activities, in particular the Presidency, the Registry, the Office of the Prosecutor (OTP) and the Assembly of State Parties (ASP). The Presidency is responsible, among other things, for the 'negotiation and conclusion of agreements on behalf of the Court and the promotion of public awareness and understanding of the institution'

(ICC 2021a). The Registry, specifically its Division of External Operations, is the official diplomatic organ that ensures effective cooperation with states and other actors (ICC 2016a: 133). The OTP's external relations are guided, in particular, by the Prosecutor and the Jurisdiction, Complementarity and Cooperation Division (ICC 2021b). Finally, the ASP is the court's intergovernmental body where member states interact, either in annual meetings of the assembly in New York and The Hague or more regularly in the context of the bureau and its working groups (ICC n.d.).

How, therefore, should one analyse sense-making across the various ICC organs? Methodologically, several qualitative indicators for 'threat framing' guide the analysis (Eriksson 2020). I first assess actors' threat perceptions by investigating which actions or events are described as a challenge by the actors involved and when precisely these challenges were identified. I then determine the ICC's interpretations of the challenges by analysing the frames used to describe them and the reasons provided for how the way in which they are perceived. By systematically comparing the threat perceptions and interpretations across the various actors, I evaluate overlap and differences.

The empirical study is based on primary documents and 18 semi-structured interviews. The documentary material includes annual reports from the OTP, speeches and end-of-mandate reports from two prosecutors, Luis Moreno Ocampo and Fatou Bensouda, statements and end-of-mandate reports by the ICC Presidents, reports from the ASP Bureau on cooperation, ASP resolutions, and speeches by member states and civil society representatives during ASP meetings. Further sources include material shared with the author in written correspondence with two further ICC staff members and publicly available official communications by the OTP as well as media interviews or webinars with ICC officials.

The interviews were conducted with eight current or former high-ranking officials from the ICC's OTP, Registry and ASP, one civil society representative, one representative from the African Union, as well as nine representatives from European and African states parties. The interviewees were selected non-randomly with respect to their function and familiarity with the court's diplomatic activities in regard to contestation by African states parties. Three rounds of interviews were conducted: the first from March to June 2021 online, the second in April and May 2023 online and in person, and the third from November 2024 to March 2025 online and in person (see Appendix). Most of the interviews were recorded with the consent of the participants on the condition that they remain anonymous. Where recording was not possible or desirable, the interview transcript is based on the author's notes. Two participants chose to respond by sending a written account via email. The insights provided by the interviewees were corroborated through secondary literature and complemented by other sources as far as possible. Interviews were conducted mainly in English; when conducted in French or German, the quoted paragraphs were translated into English by the author. Prior ethics approval and approval of the data management plan were acquired from the author's institute ethics committee.

Analysis

African contestation in a nutshell

The establishment of the ICC was initially warmly welcomed by the majority of African states and civil society organisations (du Plessis, Maluwa and O'Reilly 2013: 3), although for differing reasons (Clarke 2018). States like Senegal consider themselves proud to have been the first to ratify the Rome Statute, describing the ICC as an 'African baby' (interview 16). A few years into its existence, however, the ICC faced significant contestation from several African states parties

and the African Union (AU). During this lurking phase, contestation peaked in particular when the ICC issued arrest warrants against the President of Sudan, Omar Al-Bashir, in 2009 and 2010 (Peter 2016; Du Plessis 2016). Most African leaders refused to implement an arrest warrant against a sitting head of state. They especially took issue with the fact that the situation in Sudan had been referred to the ICC by the United Nations Security Council (UNSC) (Peter 2016: 18).[3] Contestation further intensified when the ICC prosecutor opened an investigation *proprio motu* in Kenya in March 2010, with Uhuru Kenyatta and William Ruto, who became President and Deputy President of Kenya in 2013, as the primary responsible suspects for crimes against humanity.[4] The AU issued a resolution asking African state leaders to not cooperate with the ICC's orders of arrest, thereby openly defying their obligations as stipulated by the Rome Statute (AU 2010). The AU also ended all ongoing consultations with regard to establishing an ICC liaison office in Addis Ababa (interview 4). Kenya's parliament voted to withdraw from the Rome Statute in 2011 and again in 2013 (Smith 2013). In addition, Kenya lobbied UN Security Council members to defer the court's investigations (Hillebrecht 2021: 102; UN Security Council 2013).[5] Kenya allegedly prepared for a mass withdrawal within the African Union (Akande 2011). Contestation culminated when a number of governments started to openly consider withdrawing from the Rome Statute. Within a few months in 2016, Burundi, the Gambia, South Africa and Namibia announced their intention to withdraw (Peter, 2016: 20). In 2017, the AU adopted a 'collective withdrawal' strategy, praising the first countries to withdraw as the strategy's 'pioneer implementers' (AU 2017: para. 6; Kersten 2018). While this decision was met with reservations from some AU members such as Nigeria, Senegal and Cap Verde who remained supportive of the ICC, this threat of a mass withdrawal constituted a peak in African contestation of the ICC (Keppler 2017; Kersten 2017).

Making sense of a creeping crisis: the ICC's perception and interpretation of contestation 2008-2015

During the initial phase of contestation, staff members of the court were still under the impression that they had been given a positive surprise: ratifications by member states had come in quicker than expected (interview 10). Soon after, African states like Uganda and the Democratic Republic of the Congo (DRC) were the first to refer cases to the court while the court was still settling into its existence, even though their governments were using the instrument of self-referral partly for the benefit of their own domestic agendas (Clarke 2018). Relations between the AU and the ICC were considered to be on a good track, with plans to establish a liaison office in Addis Abeba (interview 4). Interviewed staff members do not recall any attempts by African states to 'jeopardise' the court during the first years of its existence (interview 16).

In this context, the arrest warrant issued against Omar Al-Bashir came as a 'big bang' (interview 18). It was mainly interpreted as an 'awakening' (interview 17) for other heads of states in Africa who saw the ICC overstepping a 'red line' by targeting a head of state (interview 16). Within the ASP, the arrest warrant against Al-Bashir was considered a rather peculiar strategic choice by the then prosecutor Luis Moreno-Ocampo, who was alleged to be using it purposely to distract from growing criticism of his management (interview 10). Overall, the backlash was perceived as something predictable, as the first 'test of stamina' for the ICC at a very young age (interview 18). The threat potential was perceived as rather low: Sudan was considered a pariah state with which few other states were expected to be willing to openly associate themselves (interview 18).

The threat potential was perceived differently when contestation arose in the context of the court's investigations in Kenya. During a visit by the ASP President in 2010, the Kenyan government had already defended itself for not having arrested Al-Bashir during an earlier visit by referring to 'competing obligations' – which was to become the dominating narrative in contestation by African states (ICC 2010). After the prosecutor had opened an investigation in Kenya, contestation culminated in the Kenyan parliament voting in favour of withdrawal in 2013. This time, it was noted across various levels of the court that contestation did not come from a 'rogue state' like Sudan but instead from a large country that was considered very active and well respected and connected in Africa (interviews 5, 17, 18). Moreover, when Kenya successfully mobilised other African countries by accusing the ICC of an 'African bias', OTP staff and the ASP Presidency feared that this could be detrimental to the court in the long run (interviews 5, 15, 17). Despite growing awareness, however, contestation was not perceived as a crisis that would ultimately threaten the existence of the ICC. Instead, across the various levels of the organisation, it was primarily understood as a specific threat related to the OTP's targeting of the two sitting heads of state:

> We didn't necessarily see it as something more systemic that we needed to approach from more of an external relations perspective and less from a perspective of engaging with these two situations and their corollaries. (interview 4).

This interpretation was shared by the ASP and its bureau. At state level, the difficulties were understood as relating to specific disagreements between Kenya and the OTP regarding the court's rules of procedure for hearing witnesses in court proceedings (interview 10). As a result, the contestation was interpreted not as a fundamental crisis but as a challenge resulting from specific

misunderstandings within an environment that remained largely supportive of the ICC (interviews 11, 18).

This overall framing was supported by the OTP's recognition that at operational levels the court remained largely unaffected by contestation (Bensouda 2016: 4). In fact, its operational cooperation with African states on the ground was considered successful throughout this period (interview 16): 'we never had a door closed because of the overall climate. Even Kenya remained measured' (interview 17). As operational cooperation was not causing particular difficulties, contestation by Sudan and Kenya was not recognised as structural a structural that needed to be addressed systematically.

To sum up, the ICC's perception during this period was dominated by the memory of the widespread support it had enjoyed among African states at its inception and the impression that operational cooperation remained mostly unaffected. Moreover, a general understanding prevailed that backlash on individual cases was unavoidable given the court's mandate and the OTP's investigation strategy. Overall, contestation by Sudan and Kenya was primarily interpreted as being related to the Al-Bashir and Kenyatta/Ruto cases rather than fundamentally threatening the organisation's existence – an interpretation shared homogeneously throughout the bureaucratic and state-based levels of the court.

The ICC's initial response: search for compromise vs. guarding the temple

The court's initial responses to contestation were determined by the widely shared perception that contestation was mainly related to the court's investigations into specific cases rather than indicators of a structural crisis. The ICC's diplomatic activities, meanwhile, were largely focused

on achieving universal membership by facilitating and encouraging accession to the Rome Statute (interview 11).

The primary locus for contestation management remained initially within the confines of the ASP and its presidency (interviews 10, 11).[6] To prevent Kenya from leaving, the court relied on the ASP President's 'political capital' and diplomatic skills – he then argued that it would be more beneficial for the country to remain inside the system to change it (interview 10; ICC 2010). The ASP sent a mission to Kenya after its National Assembly had adopted a decision asking the government to withdraw from the ICC in 2013. In addition, the ASP President offered a change in the ICC's rules of procedure as a concession to the Kenyan government even though OTP staff and some member states had difficulties accepting these procedural changes (interviews 3, 4, 10, 11, 18). Since an immediate withdrawal by Kenya was avoided at that time, the ASP's efforts to engage in more dialogue with African states were considered successful and were supported by the ICC's overall membership (interview 10): 'there was a lot of talk, and everybody went home and somehow they were happier' (interview 11).

Within the court's bureaucracy, however, staff members recognised that more efforts were needed to increase understanding of the ICC's mandate in Africa. As others have noted, better communication and outreach was considered an important solution to address the backlash from African states at that time (Clement 2024: 237). Adopting a strategy of 'quiet diplomacy', the ICC President met with individual African heads of states in The Hague and on the margins of UN General Assembly (interview 9). In 2011, the OTP and Registry had revived an annual roundtable with the AU in Addis Ababa as a forum for dialogue between ICC staff members and representatives of African governments. Launched earlier when the ICC was striving to establish a liaison office at the AU, the roundtable had been suspended after the Al-Bashir arrest warrant

(interview 4; ICC 2014). In the initial years after its revival, roundtable meetings were kept low-profile and sparsely attended by working-level staff members of national ministries and civil society representatives (interview 4). The topics discussed were purposely kept uncontroversial (interview 4). African staff members of the court hesitated to confront the challenges publicly: 'nobody wanted to take a clear lead and … address these uncomfortable issues, […] they didn't feel like they wanted to go against their fellow Africans' (interview 11).

In the direct interactions leading up to the compromise proposal on the rules of procedure, the OTP's predominant reaction was to firmly insist on the legal provisions outlined by the Rome Statute: 'We thought that this was something that we didn't need to address in a systemic way, in an institutional way. We really thought that it was a matter of: "No, these people are wrong, the law says this, and we need to hold on to that because we know what's right".' (interview 4). This interpretation was shared by the faction of states supporting the ICC in the ASP, also known as 'the guardians of the temple' (interview 10). The OTP's response was thus notably more assertive than the compromise-oriented, conciliatory approach of the ASP presidency. Nonetheless, both were strongly influenced by the interpretation that contestation was related to specific cases. Like the ASP, contestation management within the larger ICC bureaucracy focused particularly on Kenya. When Kenya – instead of withdrawing as previously threatened – intensified its contestation and significantly obstructed the investigation process, the Prosecutor eventually decided to withdraw all charges against the Kenyan president in 2014. ASP member states too saw the deferral of the investigations as crucial to limiting Kenya's contestation (interview 5). With the deferral, the court considered the issue of contestation as resolved because 'Kenya had won the battle' (interviews 5, 10; Bowcott 2014). The case-based interpretation of contestation

therefore enabled the ICC to develop a targeted response strategy that entailed a mix of asserting core legal principles on the one hand and making conciliatory concessions on the other.

At a tipping point: the ICC's crisis perception and interpretation in the face of the 2016 mass withdrawal

After the court's initial responses, many regarded the difficulties as having been resolved: 'it looked like it had a little bit died down' (interview 1). When contestation re-emerged and culminated in 2016 with the threat of a mass withdrawal by African states, the court first had to develop a new understanding of the matter. In this section, I show how the ICC started to perceive contestation by African states as a crisis with potentially devastating effects on its mandate and existence. I also demonstrate how this crisis perception was shared across the ICC's bureaucratic and state-based organs, leading to a change in the its interpretation of the implications of the crisis and what needed to be done about it.

Alarm bells went off within the ASP in November 2016, during a meeting that was described a 'true crisis session' (interview 10). At that time, staff members within the ASP did not suspect 'that there was so much animosity around the court by the African states' (interview 11). The perception rapidly emerged, however, that a mass withdrawal would be detrimental to the ICC's legitimacy and its efforts to achieve a universal ratification of the Rome Statute: 'the Africans are an important part of the Rome Statute system. Universality is already a problem, but without the Africans it would be really a big problem' (interview 1). In the ASP, the perception gained traction that an African mass withdrawal would constitute a significant impediment to the

court's ongoing efforts to acquire new members: 'What should we say to the Asians, if a chunk of African state parties leave the ICC?' (interview 10).

Yet, ASP members differed in their assessment of the extent of the threat. Some perceived it as a strategic move by specific states to influence court proceedings (interview 6) or to obtain concessions in return for not withdrawing (interview 7) or argued that this was not as a 'large movement' but rather the effort of a few states only (interview 18). Others perceived it as a more fundamental threat from 'a big block of' up to 20 countries and feared that the withdrawal of even one single country could have a domino effect and spill over to other countries (interviews 2, 3): 'once a few countries start leaving, everybody can'. In addition, there was a division between states who advocated for a more respectful understanding of the colonial heritage and that African states should be listened to better, especially in the context of the ASP Working Group on Art. 97 (interviews 5, 6), and states who held that contesting states must be strongly pushed back for their 'aggressive stand' to ensure that the court's investigations remained independent (interview 7). But all agreed that the withdrawal threat came at a 'very bad moment' for the Rome Statute and was 'very damaging' to the ICC's striving for universality (interview 6).

The change in threat perception was even more pronounced within the court's bureaucracy. At first, the renewed contestation took staff members by surprise: 'it really caught us on the back foot' (interview 15). Within the OTP, the initial understanding prevailed that the ICC could rely on the support of the majority of African countries: 'we probably took it [i.e. African support] for granted initially because we were saying how could we be against African states when they are the ones who are referring the cases to us?' (interview 15). In light of this understanding, the increased contestation did not 'make sense' (interview 15). Yet, the prospective of having a 'block' of African states leaving made OTP staff 'really worried' (interview 14). This was regarded as a

particular challenge at a time when 'everything started to unravel really in a way that was uncontrollable' (interview 4). Like ASP members, OTP staff also feared the contagious effects of a first withdrawal: 'We knew that the first withdrawal would set a precedent that would make it easy for the next one' (interview 4). In particular, the 2017 AU summit during which the strategy for mass withdrawal was adopted became a 'source of anxiety': 'we didn't want to see African states leaving […], it would have been a disaster […] from an operational angle [but] also from a global perspective, it would have impacted the court's global legitimacy' (interview 17). This perception was widely shared throughout the court's bureaucracy: 'I think any official in the court, all staff, the prosecutor herself and their deputies, realised that this [i.e. mass withdrawal by African states] would not be a good thing' (interview 16). This threat perception might have been particularly acute because high ranking staff came from Africa: 'It was a very tense moment for us. We thought that if the court should collapse, it really should not come from African countries' (interview 15). Contrary to some claims that contestation through membership withdrawals was not considered a legitimacy crisis by the court itself (Bexell et al., 2021: 501), my findings thus indicate that OTP staff did indeed recognised the crisis in a potential mass withdrawal by African states.

What is most notable when analysing the court's crisis sense-making is the process of threat differentiation that took place across all units of the court. ICC staff members as well as member states supporting the ICC began to diversify the various contestation processes across three levels: first, the power of the contesting country; second, the strategy of contestation; and third, the motivation underlaying contestation.

First, the court distinguished between withdrawals by 'rogue' states and withdrawals by countries with a high standing in the international community. Burundi, for example, was regarded

as a country that 'didn't have a strong stand in The Hague' (interview 6).[7] Contestation by South Africa, however, was seen differently: court staff recognised that this was 'a major state' (interview 8), a 'big fish' (interview 6). In this case, the court interpreted contestation as coming from 'a very important and key state party to the Rome Statute who wanted to be listened to' (interview 6). Among member states representatives, South Africa was seen as a country that 'sets an example' to others (interview 1). Given its important role in the negotiations for the Rome Statute, a withdrawal by South Africa was seen as a 'very bad signal' (interview 6). Although all potential withdrawals were regarded in principle as causes for concern, this differentiation thus indicates the court's main concern was with potential contagion, which it expected to be more likely if contestation came from well-respected rather than pariah states.

Second, the court also differentiated among the strategies of contestation employed by the various African countries. In the court's interpretation, these posed varying levels of threat. On the one hand, African withdrawals were perceived as a major threat. Although operational cooperation in most cases continued largely unaffected (interview 16), the OTP started to realise that Burundi's withdrawal affected the court's operational cooperation with the country (interviews 13, 15). Yet, withdrawals were regarded as the sovereign decision of a country that the court had little say on: 'you cannot condemn if a state party wants to withdraw, it is their sovereign right' (interview 11). On the other hand, the court's bureaucracy saw the ICC as under major threat from states who promoted a specific narrative to discredit the ICC, in particular Kenya (interview 15). Within the OTP, misinformation was considered a potential threat to operational cooperation: 'Of course, the court is there to prosecute. But it is also an entity with a delicate mandate. Leaving it to states parties to deal with this wouldn't be enough.' (interview 17). In addition to perceiving a potential

mass withdrawal as a serious threat, the court thus identified a communication problem that needed to be addressed more systematically.

Finally, regarding the underlying motivation, the court differentiated between political backlash and what has been termed 'pro-active contestation' (Makaza-Goede 2021). On the one hand, some withdrawals were attributed to a country's general foreign policy orientation. The case of Burundi was considered as 'just another withdrawal from an international organisation on the list of that administration' (interview 4). As in the cases of Sudan and Kenya before, withdrawals by Burundi and the Gambia (and, outside of Africa, the Philippines), were also framed as political contestation in light of the court's investigations within the country in question (interviews 6, 8, 16): 'That's when the court reaches too closely to the people in power. You would expect that to happen' (interview 8). By contrast, contestation in particular by South Africa was increasingly considered more 'legitimate contestation' that required some engagement on the side of the court (interview 4). South Africa and the African Union argued that their main problem with the ICC was related to the obligation to arrest sitting heads of states violating the principle of immunity (Kersten 2016a; Kersten 2016b). Although the court did not agree with this view, a growing understanding emerged regarding such 'pro-active' contestation (interview 6). Statements by the court's leadership in 2016 emphasise the need to 'listen to those who have concerns' (ICC 2016b). Slowly the interpretation of contestation changed from a framing as simple non-compliance to one of norm competition inherent in the Rome Statute:

> I think that dogmatism came from the fact that we were still testing the jurisdiction, the provisions of the Rome Statute. We're still trying to figure out how Article 27 goes with Article 98, because to this day, I haven't read one paragraph that explains to me clearly how the two of them articulate together. So, we're still extremely young in that sense because we're operating in a global framework that is completely a mess. How can we expect an international criminal court that is dealing with immunities of heads of state to have sorted that out in 20 years? It's ridiculous. We thought we had because it was written

> in the Rome Statute. And that's what I mean by saying that we were arrogant in that sense (interview 4).

In sum, the court's perception of the crisis during this phase strongly differed from its previous situation-specific approach, during which the main concern was the effect of a precedent. At this tipping point, all actors within the court perceived a mass withdrawal by African states as a fundamental threat to the its existence and legitimacy. As regards the its interpretation of the crisis, we see a threefold differentiation in the ways in which court staff and states representatives understand the various contestation processes connected with: first, the power of the contesting country; second, the strategy of contestation; and third, the motivation underlaying contestation. This differentiated sense-making shaped the court's response to contestation during this period.

The ICC's response to contestation after 2016: diplomatic engagement, communication and the geographic expansion of investigations

The change in the ICC's crisis perception and threat differentiation described above critically shaped its contestation management. The court's response included increasingly coordinated high-level diplomatic engagement, a notable transformation in its communication with African states, and a purposeful expansion of the geographic scope of its judicial activities. The latter two features in particular have had a long-term, systematic impact on the court's interactions with states parties and its operational activities. This section concludes by reflecting on how a changed crisis perception also shaped the court's judicial engagement with contestation.

To begin with, the court's high-level diplomatic engagement reflects the leadership's recognition that the threat of a mass withdrawal by African states constituted a fundamental crisis.

Diplomatic activities, however, clearly focused on what was considered proactive contestation and on influential actors, rather than on political contestation from isolated countries like Burundi. In the latter case, the court's response did not go beyond official declarations expressing concern over the withdrawal (interview 6).[8] By contrast, contestation from South Africa and other states with a higher standing in the international community was met with significant diplomatic engagement across the court. The ASP Bureau held an unprecedented open meeting on the ICC's relationship with Africa during the 15th ASP (ICC 2016d). Such meetings usually deal with technical and administrative matters regarding the annual assembly of member states; devoting a meeting of this kind to the withdrawal crisis was therefore exceptional (interviews 2, 10). ASP member states intended to signal that they considered it more important that South Africa remained inside the ICC than insisting that it should arrest Al-Bashir (interview 8).

Complementing the ASP's efforts, the court's leadership systematically reached out to various African states representatives as well as the AU leadership (interviews 4, 8, 13, 14). Starting in 2016, the ICC held a new format of annual retreats with African states parties in Addis Ababa, to which the AU agreed as long as the invitation came from the ICC itself (interview 14; ICC 2016e; ICC 2017). With the Prosecutor Bensouda being from the Gambia, the ASP President Kaba from Senegal and the Court President Eboe-Osuji from Nigeria, the senior leadership could draw on important networks in the region (interviews 1, 4). All three met the heads of states of various African states parties, including Kenya, as well as the AU's Legal Counsel. These meetings often took place informally in the context of other multilateral gatherings, such as ECOWAS or the UN General Assembly (interviews 4, 10, 14, 15).[9] The court's senior leadership considered it important to take the lead, even though support from like-minded states such as Liechtenstein was welcomed (interview 15): 'It was important to not let someone else convey the message. We

wanted to show to Africans that states have a say and they needed to hear this from the court directly and not from other actors' (interview 17). Little is known publicly about the content of these high-level meetings; yet, the interviews reveal a clear strategy: to rely on the support of like-minded states within the region. In their diplomatic encounters, ICC representatives asked states who were generally supportive of the ICC to bolster their support for the court within the African Union (interviews 3, 10). This regional coalition of the like-minded comprised states such as Botswana, Cap Verde, Ivory Coast, Liberia, Malawi, Mali, Nigeria, Senegal, Tanzania and Tunisia. They argued that withdrawal – like accession – was the individual right of a state instead of a collective endeavour and should thus be removed from the agenda of the African Union (Voice of Nigeria 2016). The interviews suggest that the ICC relied on one country in particular (interview 16): 'We needed a champion for the ICC on the African continent. And we found it in the person of President Sall of Senegal' (interview 15). The prosecutor furthermore met with former UN Secretary-General Kofi Annan and other highly respected African supporters of the ICC to see 'how they could be helpful' (interview 15). Engaging more actively with like-minded member states within the AU, therefore, became a core component of the ICC's contestation management.

In addition, the ICC's contestation management entailed a transformation of its communications. Throughout the ICC, the African bias narrative was considered one of the main threats underlying the African withdrawal crisis that needed to be addressed: '[Some] people were bent on destroying the court' (interview 15). In light of this accusation, both the ASP leadership and the ICC bureaucracy adopted the view that the staff charged with correcting the African bias narrative could not be Western, in particular could not be from a former colonial power (interviews 5, 15). In addition, staff members within the various organs of the court realised that a more coordinated effort within the court and with coalitions outside of the court was needed (interview

4). As a consequence, the Prosecutor established a taskforce, subsequently expanded to include staff from the court's presidency and the registry to fundamentally transform the court's communication strategy (interview 16). In the interviews, ICC representatives reported that the taskforce's objective was twofold: to improve understanding of the ICC's mandate and judicial procedures among African politicians and civil society, and to build a strong counter narrative to the African bias rhetoric (interviews 16, 17). In their bilateral meetings with African heads of states, the ICC leadership focused on explaining the principle of complementarity and its judicial procedures, and emphasised the court's independence (interview 16). To communicate this information directly, members of the taskforce, especially those of African origin, were 'sent out' to organise a series of regional seminars with ministers of justice and other government representatives in Dakar, Abidjan, the Democratic Republic of the Congo, Nigeria, Niger and Yaoundé (interview 16). Other members of the taskforce expanded this communicative outreach strategy by organising specific trainings for African journalists and civil society representatives as well as members of parliaments from Niger, Mali and Mauretania (interview 17). By providing these actors with first-hand information, ICC representatives hoped that to help them 'push back against their governments and point out if something is not true [in what] was being said about the court' (interview 17).[1] Finally, ICC representatives put a strong emphasis on the role of victims when explaining the court's mandate (interviews 15, 16, 17). By highlighting that it was there 'first and foremost for the victims of grave crimes', the ICC wanted to counter the African bias rhetoric put forward by contesting states (interview 16). This emphasis on victims became the dominant narrative in the court's response to contestation (Bensouda 2021).

[1] Seeking support with domestic civil society has been identified as an important source for resilience also for international courts in Latin America (Gonzales-Ocantos and Sandholtz 2022).

Last but not least, the ICC's response resulted in a purposeful expansion of the geographic scope of the court's judicial activities. This, too, reflects the understanding that the African bias critique that motivated some of the states to join calls for a mass withdrawal constituted a fundamental threat to the ICC's legitimacy. In particular, the OTP realised that it needed to expand its focus of activities and become geographically more diverse (interview 3). To tackle the African bias rhetoric effectively, staff members were convinced they 'needed to demonstrate that the ICC is capable of doing something somewhere else' (interview 17). Despite limited resources and without relating this publicly to the African withdrawal issue, the prosecuting office tried to extend the area of ICC activities through proprio motu investigations (interview 9): 'That's how she [Fatou Bensouda] ended up working on Afghanistan, because it was saying, here is a message, we are not only going against the Africans' (interview 14). ICC officials hoped that in this way they would be able to overcome the African bias rhetoric in the long run: 'When they see that they are not the only ones targeted, then that will really make a change' (interview 14). In fact, the effects of diversifying the geographical scope of the ICC's judicial activities are still visible today. Striking the right geographical balance remains difficult for the ICC as some African representatives nowadays deplore the fact that the court has become rather hesitant to investigate situations affecting African countries for fear of reawakening the desire to withdraw (interview 13). This shows that the ICC's crisis perception has had a long-lasting impact on its relations with African states.

The differentiated threat perception ultimately seeped into the court's judicial organs as well. The appeal procedure launched by Jordan in 2019 exemplifies as much. Jordan took 'pro-active contestation' to a new level by appealing against the ICC's ruling on non-cooperation (interview 4). The Appeals Chamber confirmed that Jordan had violated the cooperation principle

by not arresting Al-Bashir when he was visiting the country, but at the same time reversed the Court's earlier decision to refer the case to the ASP and the UN Security Council (ICC 2019). While it became clear that the court 'didn't want to compromise at all on the issue of immunity' (interview 8), the appeal procedure provided a forum for dialogue to allow Jordan to 'save its face' (interview 1). In an unprecedented way, the appeal enabled an extensive judicial discussion of the issue of non-compliance under Art. 97 and allowed a number of contesting state parties and the African Union to participate (interview 14; ICC 2018). One crucial factor in creating this possibility for dialogue in the court's judicial proceedings was former ICC President Eboe-Osuji who had become a judge in the Appeals Chamber by this point. Having played an important role in the court's earlier diplomatic engagement, he was considered to have 'a more nuanced understanding of how the appeal could be organised so as to accommodate the various concerns, all the while sticking to the letter of the law' (interview 4). Even though the Appeals Chamber's decision was judicially highly contested (Galand 2019), its approach, allowing for wide participation in the judicial procedures, reflects the emphasis on dialogue that dominated the ICC's response to contestation.

To sum up, the understanding that the threat of a mass withdrawal by African states constituted a fundamental crisis for the ICC has crucially shaped the court's contestation management. The fact that this crisis perception was widely shared across the bureaucratic and state-based levels of the court has enabled a more coordinated response. Moreover, differentiating between the power of the contesting country, the strategy of contestation and the underlying motivation has led to a more comprehensive contestation management, which has ultimately led to the judicial proceedings regarding the matter becoming more participatory. Even without major changes in the institutional structure, the court's high-level diplomatic coalition-building, the

alteration in its communication strategy with African states parties as well as the deliberate geographic diversification of its investigations have had long-term effects for the ICC's interactions with states as well as the scope of its judicial activities.

Conclusion

This article has analysed the internal dynamics that shaped the ICC's responses to contestation by African states parties. Drawing on insights from crisis research, I have demonstrated how the concept of organizational sense-making helps explaining the ICC's contestation management. Based on primary documents as well as 18 semi-structured interviews with ICC staff and state representatives, the analysis has revealed that, at first, contestation was understood primarily in relation to individual cases and framed as being unavoidable, but having little impact on the court's overall relationship with African states. By contrast, when contestation peaked with the AU resolution in 2016, this was perceived as a fundamental crisis that threatened the organisation's existence. Moreover, the court differentiated between different contesting countries, their strategies of contestation and underlying motivations. Understanding this change in the ICC's crisis perception and interpretation is crucial to explaining how the court's contestation management shifted from a primarily legalistic case-based approach to a comprehensive and coordinated response, which has continued to impact its institutional and operational structures.

From this, we can draw several important conclusions for the study of IO contestation management. First, IOs need to be considered as actors that operate in their own interests when responding to contestation. While this insight has been accepted for the study of IOs more generally (e.g. Heinkelmann-Wild and Jankauskas 2022), my analysis has shown that it holds

equally true for international courts and confirms that courts like the ICC are indeed 'no passive actors' (Hillebrecht 2021: 24). Studying the ICC's diplomatic and political responses to contestation has therefore revealed important insights into the role of the ICC's OTP, Presidency and Registry in shaping its long-term relations with member states. Obviously, the African withdrawal crisis has not remained the only instance of contestation; in recent years, the United States, a non-state party, has repeatedly issued sanctions against the OTP and, most recently, several judges (ICC 2025). This contestation will need to be understood as a fundamental crisis by the bureaucratic and state-based organs of the court, instead of being primarily related to case-specific investigations. While it is too early to draw conclusions about the ICC's response, the court may need to find a new 'champion' to build a strong coalition of support among Western states and carefully re-design its narrative to counter the current challenges to the anti-impunity norm globally.

Second, analysing contestation through the concept of a creeping crisis highlights how widely IOs' perceptions and interpretations of contestation can vary over time. Most importantly, the crisis potential of contestation is perceived at a much lower level during the lurking phase. By contrast, contestation not only receives significantly more attention but is perceived and framed as a fundamental challenge for the organisation at tipping points. This has important implications for the wider study of IOs' contestation management. While existing research conceptualises IOs' responses to contestation primarily in static terms as isolated instances, contestation management evolves and, as in the case of the ICC, will most certainly vary over time. To fully understand this variability, this article has shed light on the intra-institutional processes of organizational sense-making that take place inside of a contested IO.

Finally, the analysis emphasises the socially constructed elements in IOs' responses to contestation. In current IO research, contestation is primarily analysed as an objective moment of crisis to which IOs respond (Dijkstra et al. 2024; Heinkelmann-Wild and Jankauskas 2022; Hirschmann 2021). Crisis research, however, has argued that the subjective perception and interpretation of a crisis crucially determines how an organisation manages it (Boin et al. 2020). Taking organizational sense-making seriously therefore is important in understanding IOs' responses to contestation.

The findings of this article suggest several promising avenues for future research. In terms of theory, it has revealed the added value of organizational sense-making for the study of variations in contestation management over time. Further such studies across IOs – involving different methodological approaches such as staff-level surveys – will be necessary to explain why IOs vary in their responses to contestation. Empirically, the analysis has focused on contestation by African states. The most recent debates relating to the arrest warrants issued against the Russia's President Putin and Israel's Prime Minister Netanyahu, however, indicate that contestation relating to arrest warrants targeting sitting heads of state lingers on and could potentially erupt again. Further studies are therefore needed to investigate the factors which influence the ICC's ability to withstand contestation in the long run.

Notes

[1] See the recent announcement by the Hungarian government of its withdrawal from the Rome Statute during a visit by the Israeli Prime Minister Benjamin Netanyahu, against whom the ICC has issued an arrest warrant (Alipour 2025).
[2] Mongolia was the first state party to the Rome Statute to host an official visit by the Russian President Vladimir Putin after the ICC had issued an arrest warrant against him (Green 2024).

The South African government once again considered leaving the ICC when hosting the BRICS in 2023 so as to avoid having to arrest Putin during his visit (Borger 2023; Mfundisi 2023). Numerous countries hosted visits of the former President of Sudan, Omar Al Bashir, while he was under an ICC arrest warrant (White 2018).

[3] See also the AU's 2008 request to defer investigations in the Al-Bashir case submitted to the UN Security Council: communiqué of the 142nd Meeting of the Peace and Security Council, 21 July 2008, A.U. Peace & Sec. Council, 142d mtg., 19, A.U. Doc. PSC/MIN/Comm(CXLII)Rev.1.

[4] According to the Rome Statute, there are three ways for the ICC to open investigations: after a self-referral by a state party (Art. 14), after a referral from the UNSC (Art. 13(b)) or – as in the case of Kenya – on the prosecutor's own initiative, *proprio motu*, which requires authorization by the Pre-Trial Chamber (Art. 13(c)) (Meloni 2019).

[5] The Security Council's draft resolution on this was not adopted, with 7 Security Council members voting in favour, 8 abstaining, see https://press.un.org/en/2013/sc11176.doc.htm (6 July 2023).

[6] See the visit of the ASP President to the African Union in preparation for the ASP meeting in 2012 (ICC 2012b).

[7] Another member state representative described it as follows: 'Burundi is, of course, in a different category, in many aspects a state which chooses a different path than the majority of states. So it's more difficult to argue with them and in the end they just withdrew' (interview 1).

[8] After the Parliament of the Republic of Burundi voted to withdraw from the Rome Statute on 12 October 2016, the ASP President declared that 'the withdrawal from the Statute by a State Party would represent a setback in the fight against impunity and the efforts towards the objective of universality of the Statute. I remind that all States Parties have the opportunity to share their concerns before the Assembly of States Parties in accordance with the Statute and invite the Burundian authorities to engage in a dialogue' (ICC 2016c).

[9] Document on the ASP President's visit to ECOWAS in 2019 on file with the author.

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Appendix: List of interviews

Interview 1: Interview with state representative, online, 12 May 2021.

Interview 2: Interview with state representative, online, 28 May 2021.

Interview 3: Interview with state representative, online, 1 June 2021 (without recording).

Interview 4: Interview with two staff members from the ICC Registry and OTP, online, 2 June 2021.

Interview 5: Interview with state representative, online, 8 June 2021 (without recording).

Interview 6: Interview with state representative, online, 17 June 2021.

Interview 7: Interview with state representative, online, 23 June 2021 (without recording).

Interview 8: Interview with state representative, online, 23 July 2021.

Interview 9: Written email response from former staff member of the ICC Presidency, 11 May 2023.

Interview 10: Interview with staff member from the ICC ASP, The Hague, 31 May 2023.

Interview 11: Interview with former staff member from the ICC ASP, online, 27 November 2024.

Interview 12: Interview with state representative, online, 28 November 2024.

Interview 13: Interview with a former representative of a national Coalition for the ICC, online, 5 December 2024.

Interview 14: Interview with a representative from the African Union, The Hague, 5 December 2024.

Interview 15: Interview with a former staff member of the ICC OTP, online, 17 December 2024.

Interview 16: Interview with former staff member form the ICC OTP, The Hague, 10 February 2025.

Interview 17: Interview with staff member from the ICC OTP, The Hague, 19 February 2025.

Interview 18: Interview with state representative, New York, 7 March 2025.

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