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A Hollow Enterprise: International Criminal Justice and Public Relations.

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Abstract:	Utilising a framework inspired by Edward Bernays, this article critiques public relations in international criminal justice. The article exposes public relations as, in reality, a hollow one-way enterprise comprised of mere publicity and legitimisation. Concentrating on efforts such as outreach and public information campaigns, it argues current attempts at public relations are reliant on top-down standard messaging tactics that treat audiences as uncritical and homogenous consumers. Tribunals such as the International Criminal Court pay far too little attention to genuine relations, developed by dialogue, listening and a commitment to mutual co-learning that enable audiences, including the wider public, to become critically informed and, in turn, drive organisational improvements. Such a re-orientation is required if public relations is going to address the wider challenges created by the contemporary information landscape such as misinformation and a febrile economy for attention on social and digital media.
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1 Introduction

Public relations has been an ever-present accompaniment to international criminal justice. Albeit nascent, the public communications apparatus that accompanied the Nuremberg Trials helped to promote global awareness about the seminal establishment of individual criminal responsibility of high-ranking officials for serious atrocities.¹ Indeed, public relations at Nuremberg was a story-telling tool to convey how the Allies were magnanimously establishing the trials in pursuit of wider transitional justice goals. Relying on varied activities from speeches, press briefings, films, and media management practices, leading American Prosecutors promoted denazification, democratization and espoused global rule of law norms across various constituencies: the German population but also Governments, the media, and the public at large.² In what is an understated and overlooked element of its legacy, Nuremberg left a template for future tribunals to conduct public relations through activities that have since become embedded: public information campaigns and outreach programmes.³

Today, public relations is less bound up in romanticism but instead is wedded to defend the legitimacy of international criminal tribunals. Zooming out, this realignment reflects the wider trend across international organisations to self-legitimize by centralising and professionalising their public communication functions, particularly in the face of increased levels of societal awareness, access to decision-making, activism, and wider contestation about their work.⁴ Inevitably, then, such public relations endeavours rest on a foundation of Weberian

¹ G. Gordon, 'The Nuremberg Trials Public Communications Apparatus: Propaganda for WWII Healing and cold War Positioning at the Dawn of PR in ICL', 20(1) *Journal of International Criminal Justice* (2022) 11-53 <doi.org/10.1093/jicj/mqac026>.

² *Ibid.*

³ *Ibid.*

⁴ M. Ecker-Erhardt, 'Self-legitimation in the face of politicization: Why international organisations centralised public communications', 13(1) *The Review of International Organisations* (2018) 518-546 <DOI:10.1007/s11558-017-9287-y>.

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legitimation, in other words, to persistently make a ‘claim of validity’⁵ by publicly justifying actions in order to cultivate acceptance and popular approval of organisational behaviour.⁶ This observation is hardly controversial because international criminal justice — often described as being in a state of perpetual crisis⁷ — is the frequent target of elite attacks, and organisations such as the International Criminal Court contest a political struggle to defend their independence.⁸ This struggle stems from a range of concerns and chief among them include the patterns of selectivity at the centre of international criminal justice, i.e., prosecutorial discretion; what situation is chosen, which case is investigated; against whom and for what set of charges, and the uneven distribution that is said result.⁹ While there has been considerable conversation about whether such critiques of tribunals are valid and justified, less scrutinised is the role and potential of public relations activities in countering them.

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Modern-day public relations operate in, arguably, a unique information landscape. Characterised by the rise of social media, this landscape includes a decline of public trust in institutional expertise set against an increasing citizen-led demand for ‘freedom of information’ or the ‘right to know’.¹⁰ Due to a range of reasons, this combination has led to a unique set of threats posed by ‘misinformation’, — the rapid spread of false information, often with the intent to deceive.¹¹ To illustrate, in recent times, Israel has been accused of launching a

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⁵ On legitimation, see R. Cipriani, ‘The Sociology of Legitimation: An Introduction,’ 35(2) *Current Sociology* (1987) 1-20, p. 1 <doi.org/10.1177/001139287035002003>; T. Van Leeuwen, ‘Legitimation in Discourse and Communication’, 1(1) *Discourse and Communication* (2007) 91-112 <doi.org/10.1177/1750481307071986>.

⁶ J. Tallberg and M. Zürn, ‘The Legitimacy and Legitimation of international organisations: introduction and framework’, 14(4) *Review of International Organisations* (2019) 581-606, pp. 581, pp. 585 <DOI: 10.1007/s11558-018-9330-7>.

⁷ J. Powderly, ‘International Criminal Justice in an Age of Perpetual Crisis’, 32(1) *Leiden Journal of International Law* (2019) 1-11 <doi.org/10.1017/S0922156518000675>.

⁸ On the notion of political struggle and practices See E. Adler and V. Pouliot (eds.), *International Practices* (Cambridge: Cambridge University Press, 2012), pp. 20-21 <doi.org/10.1017/CBO9780511862373>.

⁹ See, indicatively, J. Goldston, ‘More Candour about Criteria: The Exercise of Discretion by the Prosecutor of the International Criminal Court’, 8(2) *Journal of International Criminal Justice* (2010) 383–406, p.383 <doi.org/10.1093/jicj/mqq019>.

¹⁰ T. Nicholls, *The Death of Expertise: The Campaign Against Established Knowledge and Why it Matters* (Oxford: Oxford University Press, 2019).

¹¹ C. O’Connor and J. Weatherall, *The Misinformation Age: How False Beliefs Spread* (Yale University Press, 2019).

1 misinformation campaign against the International Criminal Court.¹² Malaysia’s decision to
2 withdraw from the Rome Statute was, in part, attributed to ‘fake news.’¹³ In addition, social
3 media echo-chambers can distort public debate by amplifying a narrower set of (hyper-)critical
4 voices and thereby ‘crowding out’ the views of insiders who are effectively muzzled due to
5 institutional constraints.¹⁴ One thing is clear; the present landscape — marked by an angry
6 marketplace of ideas and a sense that the notion of ‘truth’ has become decayed¹⁵ — presents a
7 considerable challenge to international criminal tribunals and how they should execute their
8 public relations function(s).
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19 Against this background, this article critically explores public relations within
20 international criminal justice. Dominated by *public information* and *outreach*, these activities
21 are understood as processes, with the former described as delivering timely and accurate
22 information about the principles, objectives and activities of tribunals, using various
23 communication channels, to the world at large and target audiences.¹⁶ The latter involves
24 establishing two-way communication platforms between tribunals such as the International
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41 ¹² O. Al-Sharif, ‘Israel in the firing line as ICC war crimes probe nears’, *Arab News*, February 9 2021
42 <www.arabnews.com/node/1806591/%7B%7B>; ‘Netanyahu: ICC probe into ‘fake’ Israel army crimes ‘pure
43 anti-Semitism’’, *Middle East Monitor*, February 8 2021 <[www.middleeastmonitor.com/20210208-netanyahu-icc-
44 probe-into-fake-israel-army-crimes-pure-anti-semitism/](http://www.middleeastmonitor.com/20210208-netanyahu-icc-probe-into-fake-israel-army-crimes-pure-anti-semitism/)>.

45 ¹³ D. Stothard and A. Khoo, ‘How a perfect storm of fake news and political intrigues are pulling Malaysia out of
46 the ICC’, *Justice Hub* (2019); A. Aiman, ‘‘Fake news people’ scuttled Rome Statute ratification, says AG’, *Free
47 Malaysia Today*, 27 April 2019, <[freemalaysiatoday.com/category/nation/2019/04/27/fake-news-people-scuttled-
48 rome-statute-ratification-says-ag/](http://freemalaysiatoday.com/category/nation/2019/04/27/fake-news-people-scuttled-rome-statute-ratification-says-ag/)>, accessed 7 December 2022.

49 ¹⁴ K. Hale, ‘Are We a Bigger Problem Than We Realize? International Criminal Justice and the Need for Self-
50 scrutiny among Online Commentators’, 20(1) *Journal of International Criminal Justice* (2022) 293-312 <
51 doi.org/10.1093/jicj/mqac022>.

52 ¹⁵ See J. Kavanagh and M. Rich, *Truth Decay: An Initial Exploration of the Diminishing Role of Facts and
53 Analysis in American Public Life* (RAND Corporation, 2018) pp. 1- 324 < doi.org/10.7249/RR2314> ; M.
54 D’Ancona, *Post Truth: The New War on Truth and How to Fight Back* (London, Ebury Press, 2017) pp. 1-176,
55 pp. 23-34.

56 ¹⁶ International Criminal Court, *Integrated Strategy for External Relations, Public Information and Outreach*,
57 Press Release, 18 April 2007, pp. 3 <[iccforum.com/media/background/outreach/2007-04-
58 18 Integrated Strategy for External Relations Public Information and Outreach.pdf](http://iccforum.com/media/background/outreach/2007-04-18%20Integrated%20Strategy%20for%20External%20Relations%20Public%20Information%20and%20Outreach.pdf)> date accessed 7
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Criminal Court (Court hereafter) and affected communities that can provide information and promote access and understanding of international criminal justice.¹⁷

Perhaps reflective of the wider attention such activities have received, the Court's issued reports and strategies on public information and outreach have been patchy, piecemeal and sparse.¹⁸ As objects of academic enquiry, public information and outreach are often assumed to be of virtue—desirable albeit perennially underfunded—and thus are given cursory attention as to how they are best conducted, their meaning and what they reveal about the project of international criminal justice. Hitherto, public information and outreach have attracted context-specific, empirical or regional analyses that adopt a domestic transitional justice perspective, rather than an approach that is focused on their operation within international institutions *per se*.¹⁹ This article fills an important gap by offering interdisciplinary treatment of these activities with perspectives from the field of communication and public relations.²⁰

¹⁷ *Ibid.*

¹⁸ At the level of the Assembly of States Parties, the only Report on Public Information Strategy is confined to the period of 2011-2013 and dates from November 2010. In terms of outreach, the Strategic Plan for Outreach dates from September 2006. At the level of the Court, the existence of dedicated communication strategies and reports are just as sparse. The Court's Integrated Strategy (encompassing external relations) still dates from 2007. Intriguingly, the Court was publishing annual Outreach Reports from 2007 to 2010 but no report has been published since. More recently, and under the umbrella of a 'Court-Wide' approach, three Strategic Plans were released in July 2019 that were intended to be complementary; one for the Court as a whole, and two other organ-specific plans for the Office of the Prosecutor (OTP) and the Registry respectively, with the Registry having the principal responsibility for these two activities. This trio of strategies highlights the importance of external communication strategies in the 'age of misinformation' but says very little about how public information and outreach is conducted or operationalised. Indeed, such is the lack of acknowledgment that neither the Court's nor the OTP's Strategic Plans contain a single instance of the term 'outreach', despite the frequent claims by the Prosecutor to ensure that justice is both done and seen by victims and those most affected. See International Criminal Court, *Strategic Plan for Outreach of the International Criminal Court*, (ICC-ASP/5/12), September 29 2006, pp. 3; *Ibid*; See ICC *Strategic Plan 2019-2021*; Office of the Prosecutor, *Strategic Plan 2019-2021, 17 July 2019*; Registry, *Strategic Plan 2019-2021*, 17 July 2019.

¹⁹ See for example, P. Vinck and P. Pham, 'Outreach Evaluation: The International Criminal Court in the Central African Republic', 4(3) *International Journal of Transitional Justice* (2010), pp. 421-442 <doi.org/10.1093/ijtj/ijq014>; M. Milanović, 'Courting Failure: When are International Criminal Courts likely to be Believed by Local Audiences?', in K. Heller and others (eds.), *The Oxford Handbook of International Criminal Law* (Oxford: Oxford University Press, 2020), pp. 289.

²⁰ There is little research on such themes, but for one exception see: B. Kotecha, 'The Art of Rhetoric: Perceptions of the International Criminal Court and Legalism', 31(4) *Leiden Journal of International Law* (2018), 939-962 <doi.org/10.1017/S0922156518000419>.

1 The need to fill this research gap is important for two reasons. First, public relations
2 help to reveal the organisational identity of the Court. As Bernays argued, public relations
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4 unveils not only a set of techniques but the ‘personality’ of an organisation and ‘its recognition
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6 of itself as a political identity.’²¹ However, its *true* identity is based on how it is *actually*
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8 perceived by its audiences distinct from how the organisation sees itself or how it desires to be
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10 seen.²² Communicative practices, thus, target the ‘gap’ and continually seek to orient true
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12 identity towards a new desired identity. Likewise, how communication practices fulfil this
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14 function to reorient organisational identity may cast ‘the public’ not in civic terms, but as the
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16 mere market comprised of consumers.²³ In this guise, public relations adopt corporate branding
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18 tactics that becomes exclusively focused on the promise of international criminal justice. These
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20 tactics emphasise the so-called ‘sizzle in the sausage’ whereby the product (e.g., arrests or
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22 convictions) is marginalised but the sizzle is continually sold by way of emotive appeals so
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24 that consumers ‘buy it’ or ‘buy into it’.²⁴ Hence, the current exploration provides insights into
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26 the implications for the Court’s identity and its underlying relationship with corporate
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28 marketing practices.²⁵

36 Second, public relations reveals the Court’s approach to boosting local support and
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38 promoting behavioural change; or, in the words of Bernays, its role in the ‘engineering of
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40 consent.’²⁶ This approach tends to acknowledge that individuals reject authoritarian
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42 instructions but respect an organisation’s educational function including its freedom to
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48 ²¹ E. Bernays, *Crystallising Public Opinion* (New York, Ig Publishing, 2011), pp. 1-220, pp.47-48.

49 ²² T. Kuhn, ‘The discourse of issues management: A genre of organizational communication’, 45(3)
50 *Communication Quarterly* (1997) 188-210, pp. 188, pp. 199 <doi.org/10.1080/01463379709370060>

51 ²³ Niklas Luhman. See S. Holmström, ‘On Luhmann: Reframing Public Relations as Part of Society’s
52 Evolutionary Learning Process’, in Ø. Ihlen and M. Fredriksson (eds.), *Public Relations and Social Theory: Key*
53 *Figures, Concepts and Developments*, (Oxfordshire, Routledge, 2018) pp. 1-466 pp. 44.

54 ²⁴ C. Schwöbel-Patel, ‘The Rule of Law as a Marketing Tool: The International Criminal Court and the Brand of
55 Global Justice’, in C. May and A. Winchester, ‘Research Handbook on the Rule of Law’, (Cheltenham UK,
56 Edward Elgar, 2018) <doi.org/10.4337/9781786432445.00007>.

57 ²⁵ On this see. C. Schwöbel, ‘The Market and Marketing Culture of International Criminal Law’, in C. Schwöbel
58 (ed.), *Critical Approaches to International Criminal Law: An Introduction*, (Oxfordshire, Routledge, 2014).

59 ²⁶ E. Bernays, *Public Relations* (Norman, University of Oklahoma Press, 1952), pp. 1-384, p. 157.

1 persuade, suggest or ‘nudge’ them.²⁷ In the field of international criminal justice, this resonates
2 with what is frequently described as its expressive function, namely the significance of
3 strategically or instrumentally broadcast messages and norms that help construct a
4 consensus across a given society.²⁸ It also chimes with Duff’s theory on the communicative
5 dimension of punishment and the emphasis on messaging and signaling that is at the heart
6 of the impact of a sentence upon conviction.²⁹ This article begins with a conceptual analysis
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56 ²⁷ *Ibid* p. 181-187; On ‘Nudge’ See R. Thaler and C. Sunstein, *Nudge: Improving Decisions about Health, Wealth*
57 *and Happiness* (USA, Penguin, 2009).

58 ²⁸ See B. Sander, ‘The Expressive Turn of International Criminal Justice: A field in search of meaning’, 32(4)
59 *Leiden Journal of International Law* (2019) 851-872.

60 ²⁹ A. Duff, *Punishment Communication and Community* (Oxford, Oxford University Press, 2001).
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2 Communication and Public Relations

Fundamental to human interaction, communication concerns the exchange of information. However, the concept of communication also denotes the success of that exchange, in that what is shared must also be understood.³⁰ For organisations, communication is understood in this second sense and tends to attract the prefix of ‘effective’. In these environments, communication is an activity targeted for continual improvement and relies on management and strategy. Indeed, ‘strategic communication’ is concerned with a set of purposeful activities that advances a mission or set of values and requires considering how best to present an organisation socially, through its leaders and employees.³¹ In this guise, communication is goal-oriented and encompasses almost *everything* that is said, done, written or performed, in any medium or situation. The common feature of such communication is the transmission of *messages* that seek to attract support from the world and so maintain organisational reputation.³² There is a collective term for these practices: public relations.

Defined as the ‘management of communication between an organisation and its publics’,³³ public relations is based on an established model of the communication process. Put concisely, this model comprises a two-way communication loop between the *sender* of a message (conveying information and often seeking to influence opinions and behaviours) and an *audience* (seeking to first understand the message before deciding what to think and what to do about it).³⁴ Public relations is about techniques that manage this loop; to not only manage

³⁰ C. Soane and A. Stevenson (ed.), *Oxford Dictionary of English* (Oxford, Oxford University Press, 2010), p. 1320. The Latin origin of the term communications, ‘communicare’, means to share or make ‘common or known’.

³¹ K Hallahan and others, ‘Defining Strategic Communication’, 1(1) *International Journal of Strategic Communication* (2007) 3-35, p. 3, p. 7 <<https://doi.org/10.1080/15531180701285244>>.

³² R. Craig, ‘Communication as a Practice’, in G. Shepherd and others (eds.), *Communication as...Perspectives on Theory* (London, Sage, 2006) 38-48, p. 39 <DOI:10.4135/9781483329055.n5>.

³³ J. Grunig and T. Hunt, *Managing Public Relations* (Holt, Reinhart & Wilson, 1984) pp.1-565 p. 6.

³⁴ See C. Shannon and W. Weaver, *The Mathematical Theory of Communication* (Urbana, University of Illinois Press, 1949) pp.1-144; W. Schramm, ‘How Communication Works’, in W. Schramm (ed.), *The Process and Effects of Mass Communication* (Urbana, University of Illinois Press, 1961), pp.1-1024, pp. 5-6. Wilbur Schramm

1 the movement of messages *out of* an organisation e.g. in the explanation of a policy or course
2 of action but also to manage the movement of messages *into* the organisation, e.g., to learn and
3 understand audience feedback and thereby optimise future policies or actions.³⁵ In this context,
4 public relations is concerned with utilizing dialogue to forge a ‘common meeting ground’
5 where private and public interests coincide and mutually beneficial relationships endure.³⁶
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12 Nevertheless, the notion of public relations has a pejorative association. Often the term
13 suggests, darkly, propaganda or the manipulation of public opinion.³⁷ Over recent decades
14 public relations has become associated with the use ‘spin’, i.e., an art of communication that
15 seeks to elevate a biased or preferred message so as to control a mainstream media narrative.
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21 ³⁸ Closely linked is the notion of *rhetoric*; understood as the use of persuasive language,
22 either verbal or written, directed towards given audiences.³⁹ Described as ‘cursed sisters’,
23 both public relations and rhetoric are mutually reinforcing; both recognise that persuasion
24 is crucial in influencing the public with the latter being the pragmatic tool that enables
25 organisations to communicate *well*.⁴⁰ Finally, public relations, for good or for ill, is
26 synonymous with brand promotion, marketing and managing ‘corporate reputation.’⁴¹ This
27 latter bundle of associations is concerned with an organisation’s market position judged in
28 terms of reliability and esteem, i.e., its competitive advantage ahead of other comparable
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45 later developed the linearity of Shannon and Weaver’s model and emphasised the importance of receiver (i.e.
46 audience) feedback. The model thus confirmed the active role that the receiver has in the communication process.

47 ³⁵ Grunig and Hunt, *supra* note 33, pp. 242-243.

48 ³⁶ Bernays, *supra* note 21, pp. 242-243

49 ³⁷ E. Bernays, *Propaganda* (New York, Liveright Publishing Corporation, 1928); See M. Olasky, ‘Roots of
50 Modern Public Relations: The Bernays Doctrine’, 29(4) *Public Relations Quarterly* (1984) 25-27.

51 ³⁸ D. Miller and W. Dinan, *A Century of Spin: How Public Relations became the Cutting Edge of Corporate Power*
52 (London, Pluto Press, 2007), pp. 1-248, pp. 2-3.

53 ³⁹ See Soanes and Stevenson (eds.), *supra* note 30, p. 1524. This accords with James Boyd White’s definition;
54 the art of ‘establishing the probable by arguing from our sense of the probable’; J. White, ‘Law as Rhetoric,
55 Rhetoric as Law: The Arts of Cultural and Communal Life’, 52(3) *University of Chicago Law Review* (1985) 684-
56 702, pp. 684, pp. 687.

57 ⁴⁰ Ø. Ihlen, ‘The Cursed Sisters: Public Relations and Rhetoric’, in R. Heath (ed.), *The SAGE Handbook of Public*
58 *Relations* (University of Houston, Sage, 2010), pp. 59-70.

59 ⁴¹ S. Oliver, *The Handbook of Corporate Communications and Public Relations* (Oxfordshire, Routledge, 2012).

1 organisations and, equally, rooted in the accumulated impression that stakeholders form of the
2 organisation.⁴²
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5 Turning to the Court, one can interpret public relations as meaning-making and identity-
6 forming thus warrants its own category of communication.⁴³ At its core, the field rests on a
7 premise that communication requires interpretation and that when people encounter messages
8 they will make or construct meaning from them; socially, culturally and psychologically.⁴⁴ In
9 respect of identity and by dint of socialisation of individuals, public relations shapes not only
10 organisational identity but also the *collective* identity of stakeholders (e.g., civil society, partner
11 agencies and States) including the use of a common vocabulary to sustain (or contest) the
12 Court.⁴⁵ In respect of order, public relations is ‘performed’ by agents — Court professionals
13 — engaged in a cause that asserts validity in the social world. In this latter sense, one is able to
14 ask questions about how key leaders are communicating with audiences and stakeholders.
15 Finally, public relations recognises that communication is pervasive no matter what discrete
16 form it may come in. Indeed, the audiences for public information and outreach critically
17 overlap and whilst the latter, has concrete, context-specific and geographically anchored
18 audience (affected communities within those situations in which the Court has intervened)
19 public information is targeted to a more disparate set of audiences that encompass such
20 communities and are comprised of ‘*the public*.’⁴⁶
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49 ⁴² A. Veh and others, ‘Corporate reputation in management research: a review of the literature and assessment of
50 the concept’, 12 *Business Research* (2019), pp. 315-353 <DOI:[10.1007/s40685-018-0080-4](https://doi.org/10.1007/s40685-018-0080-4)>.

51 ⁴³ J. Meierhenrich, ‘The Practice of International Law: A Theoretical Analysis’, 76 *Law and Contemporary*
52 *Problems* (2014) 1-83, p. 1, p. 20.

53 ⁴⁴ S. Littlejohn, *Theories of Human Communication*, (Belmont, Wadsworth, 1992) pp.1-396p. 378.

54 ⁴⁵ Meierhenrich, *supra* note 43, p. 1, p. 25-26; On shared vocabularies in international law see J. d’Aspremont,
55 ‘The Professionalization of International Law’, in J. d’Aspremont and others, (eds.), *International Law as a*
56 *Profession* (Cambridge, Cambridge University Press, 2017), pp. 30.

57 ⁴⁶ Specifically, the Court’s public encompasses a plurality of constituencies from abstract entities (such as the
58 ‘international community’) to constituencies with sectional interests (such as States Parties, donors, civil society
59 and including affected communities.
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Nonetheless, what is clear is that public relations is directed at a *strategic and imagined* entity that is bound up in the instrumental priorities of the Court. Inspired by Habermas’ account of the public sphere, this approach finds expression in notions of a ‘*universal audience*’ which is constructed in the minds of those engaged in communicating.⁴⁷ Likewise, it is also part of international criminal tribunals engaging in constitutive act to establish those which they purport to represent. As argued by Corrias and Gordon, paradoxically, tribunals claim to represent a global public but are simultaneously calling it into being when they do so.⁴⁸ Such an audience thus determines the starting point of both activities: what messages *need* to be sent.

An essential tool in the public relations toolbox is the use of synchronised messaging tactics. The emphasis is often on *key* messages, which are short, clear statements that are consistently reiterated. In branding terms these messages require concision and simplicity and hence, complexity and nuance is to be diminished so that messages are noticed, remembered, and accepted by all in today’s crowded attention economy.⁴⁹ Ultimately, these messages are developed on normative grounds based on their purported strategic effectiveness finding resonance by notions of ‘PR excellence’ including value-assessments of the quality (or ‘selling power’) of such messages.⁵⁰ This approach finds expression in the International Criminal Court’s Integrated Strategy and its stress on ‘core message themes’: accurate but simple messages that reach non-specialist audiences. In the Court’s

⁴⁷ See C. Perelman and L. Olbrechts-Tyteca, *The New Rhetoric: A Treatise on Argumentation* (Notre Dame, Notre Dame Press, 1969)pp.1-576, p. 19 < doi.org/10.2307/j.ctvpj74xx>; International Criminal Court, *Report of the Court on the public information strategy 2011–2013*, (ICC-ASP/9/29), p. 2, para. 3.

⁴⁸ L. Corrias and G. Gordon, ‘Judging in the Name of Humanity: International Criminal Tribunals and the Representation of a Global Public’ 13(1) *Journal of International Criminal Justice* (2015) 97-112 < doi.org/10.1093/jicj/mqu083>.

⁴⁹ L. Frederiksen, ‘Elements of a Successful Brand 8: Messaging’, *Hinge*, 8 August 2020, < hingemarketing.com/blog/story/elements-of-a-successful-brand-8-messaging> date accessed 7 December 2022.

⁵⁰ J. Grunig and L. Grunig, ‘Models of Public Relations and Communication’, in J. Grunig, (ed.), *Excellence in Public Relations and Communication Management* (Oxfordshire, Routledge, 1992); See also S. Cutlip and A. Center, *Effective Public Relations* (Hudson, Pearson, 2013) and the well-known ‘Seven C’s of Communication’: Completeness, Conciseness, Consideration, Concreteness, Clarity, Courtesy, Correctness.

1 own terms, these ‘messages must be responsive to the diversity of audiences and reflect an
2 inclusive international perspective; manage expectations and explain the need for support and
3 co-operation and situate the Court as a global institution as part of a broader international
4 justice movement.’⁵¹
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9 This being accurate, nevertheless, does not overlook the fact that every instance of
10 communication and the message contained therein, is shaped by several variables.⁵²
11 Messaging is always shaped by a specific time, location, medium, its precise context and for a
12 determined end. For instance, scholarship often highlights the importance of medium, pithily
13 captured by ‘the medium is the message.’⁵³ Furthermore, the precise context of the
14 communication shapes such messages, often to modify a set of exigencies produced by persons
15 and/or events.⁵⁴ Similarly, each message is revised by its arrangement, delivery and style,
16 including the particular argumentative scheme it is situated in, e.g., in terms of rhetoric this is
17 often referred to as a ‘*topoi*’,⁵⁵ alongside the use of particular prose and persuasive devices
18 such as analogy, metaphor or metonym.⁵⁶ However, public relations does not depend on these
19 peculiarities but rather understanding holistically how an organisation presents its messages
20 and their intended effects.
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39 For Bernays, public relations has three linked components; ‘a) *information* given to the
40 public, b) *persuasion* directed at the public to modify attitudes and actions, and c) efforts to
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47 ⁵¹ International Criminal Court, *supra* note 16.

48 ⁵² B. Van Ruler, ‘Communication Theory: An Underrated Pillar on Which Strategic Communication Rests’, 12(4)
49 *International Journal of Strategic Communication* (2018) 367-381 p. 367, pp. 368-372 <
50 doi.org/10.1080/1553118X.2018.1452240>.

51 ⁵³ This phrase is attributed to Marshall McLuhan and refers to how the precise medium of the message (rather
52 than its content) has a social effect that produces its own message. See M. McLuhan, *Understanding Media: The*
53 *Extensions of Man* (London and New York, MIT Press, 1964) pp.1-389.

54 ⁵⁴ L. Bitzer, ‘The Rhetorical Situation’, 1(1) *Philosophy and Rhetoric* (1968) pp. 1-14.

55 ⁵⁵ This translates to ‘place or location’ but in the context of Aristotle’s treatise tends to refer to a strategy for
56 argumentation. See Aristotle, *The Art of Rhetoric* (translated by H. Lawson-Tancred) (London, Penguin, 1991),
57 pp. 183–214, paras 1392a–403b.

58 ⁵⁶ For a range of persuasive techniques see W. Farnsworth, *Farnsworth’s Classical English Rhetoric* (Boston,
59 David R. Godine Publisher Incorporated, 2010).
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integrat[ion] of attitudes and actions of an institution with [that of] its publics, and of publics with those of the institution.⁵⁷ These three components reflect a model of two-way symmetry in the communication process, i.e., transmission of said information, interpretation and potential behavioural change by recipients and, finally, the result of dialogue (or the continuing feedback loop) that helps align organisational action with its public and vice versa.⁵⁸ Equally, these three components help us understand how public relations operates as a management function and is crucial to understanding organisational decision-making, policy development and relationships with key stakeholders.⁵⁹

By borrowing these components as a framework, this article explains why the current public relations endeavour is a reductive one-way model of ‘publicity’. This model relies on convenient top-down and standard messaging tactics that treats audiences as uncritical and homogenous consumers. Far too little attention is paid to genuine *relations*, developed by dialogue, listening and a commitment to mutual co-learning that enable audiences to become critically informed and, in turn, drive improvements at international criminal tribunals.

2.1 *Information*

Information is a social activity; it has to move, or it ceases to be of value and its meaning is always influenced by context.⁶⁰ However, at its core, information denotes the provision of facts.⁶¹ Much of the Court’s public information provision might be said to be about conveying detail about jurisdiction, internal operations, the trial process, personnel, procedures, and

⁵⁷ Bernays, *supra* note 26, p. 3.

⁵⁸ Cutlip and Broom, *supra* note 50; See also. J. Grunig, ‘Two-Way Symmetrical Public Relations-Past, Present and Future’, in R. Heath (ed.), *Handbook of Public Relations* (Houston, University of Houston, Sage, 2001), pp. 11-30 < [dx.doi.org/10.4135/9781452220727](https://doi.org/10.4135/9781452220727)>.

⁵⁹ D. Moss and G. Warnaby, ‘Strategy and Public Relations’, in D. Moss and others (eds.), *Perspectives on Public Relations Research* (Oxfordshire, Routledge, 2003).

⁶⁰ T. Pena, ‘Why Information Matters: A Foundation for resilience’, *Internews: Centre for Innovation & Learning*, May 2015, <internews.org/resource/why-information-matters-foundation-resilience/> date accessed 7 December 2022.

⁶¹ Soanes and Stevenson (eds.), *supra* note 30.

1 judgments. In terms of medium and delivery, public information is a broad church and relies
2 on varied mediums such as the Court’s website, video clips, mailing lists, social media, tours
3 of the Court for various groups (e.g., students), speeches, press releases and various forms of
4 media engagements such as TV/radio interviews and, when motivated by transparency,
5 published policies that seek to explain its activities, legal criteria, and decisions.
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12 Taken as a whole, however, public information is described as vital to the success of
13 the Court in ‘conducting investigations, delivering public and transparent justice, receiving
14 requisite cooperation and support for its activities, as well as contributing to the prevention of
15 future crimes and a lasting respect for international justice.’⁶² And it is in this instrumental
16 regard that one must consider that information is always arranged, organised, and presented in
17 particular ways. When choices are made about arrangement and presentation, one can readily
18 transform a set of facts into arguments and representations. This is known as framing; to
19 organise, select and target a salience that promotes a desirable understanding, interpretation, or
20 evaluation.⁶³
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34 International criminal tribunals, like other international organisations, choose to frame
35 their communication outputs to promote narratives. The framing of narrative is part of an
36 attempt to set the agenda, by containing and selecting a particular version of reality. Hence
37 these ‘framed narratives’ is a component of ‘digital diplomacy’ tactics, that is to say, the means
38 of using communication technology as a form of soft power to achieve political goals.⁶⁴
39 Although not without its flaws, *Twitter* is a useful site to analyse the Court’s attempts at such
40 digital diplomacy.
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56 ⁶² International Criminal Court, *supra* note 18, 2006.

57 ⁶³ See R. Entman, ‘Framing: Toward clarification of a fractured paradigm’, 43(4) *Journal of Communication*
58 (1993) 51-58 pp. 51, pp. 52 < doi.org/10.1111/j.1460-2466.1993.tb01304.x>.

59 ⁶⁴ C. Bjola and R. Zaiotti (eds.), *Digital Diplomacy and International Organisations: Autonomy, Legitimacy and*
60 *Contestation* (Oxfordshire, Routledge, 2021).
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1 The Court maintains an active presence on *Twitter*, with the account often tweeting
2 video and images alongside frequent hashtags such as *#JusticeMatters* and *#buildingsupport*.
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4 In this guise, public information encompasses the more ‘routine’ content of offering updates
5 on the latest activities, the progress of cases, visits by government delegations, diplomatic
6 handshakes and other ‘photo opportunities’, including celebrating notable anniversaries such
7 as International Criminal Justice Day (marking the date of the adoption of the Rome Statute).⁶⁵
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9 However, on closer analysis, such content is carefully curated to promote *particular* narratives
10 for particular audiences which reveal the Court’s priority audiences.
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14 A study by Eichert identifies eleven identifiable categories in the Court’s information
15 output on the site.⁶⁶ As he argues, such outputs are used to promote narratives that project a
16 stable image of the Court’s place in the world. These include *unity* (through tweets depicting
17 diplomatic hand-shakes and other general statements that appeal to ‘humanity’ in garnering
18 support for the Court); *justice* (through tweets depicting the Court as an exclusive actor in
19 pursuing a broad universal and victim-centric version of justice); and *accessibility* (through
20 tweets depicting the human side of the Court with ‘behind the scenes’ coverage of routine work
21 and outreach activities).⁶⁷ One might say that these narratives are an extension of ‘selfie
22 diplomacy’—an endeavour to glamorise its own work by use of audio-visual imagery.⁶⁸
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24 Crucially, the Court on Twitter assumes its audience is a Western English-speaking public and
25 a ‘donor class’ of supporters.
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48 ⁶⁵ D. Eichert, ‘Hashtagging Justice: Digital Diplomacy and the International Criminal Court on Twitter’, Reprint,
49 January 2021 <
50 https://www.researchgate.net/publication/342903270_Hashtagging_Justice_Digital_Diplomacy_and_the_International_Criminal_Court_on_Twitter
51 www.researchgate.net/publication/342903270_Hashtagging_Justice_Digital_Diplomacy_and_the_International_Criminal_Court_on_Twitter> date accessed 7 December 2022.
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53 ⁶⁶ These categories are: 1) Regular court operations and updates; 2) Job vacancies, 3) Staff activities, 4) Diplomatic
54 phot-ops & handshakes, 5) Member state support, 6) Outreach activities in situation countries, 7) Advocacy
55 campaigns, 8) Public opinion 9) Academic programs, 10) #onthisday i.e., recognising the anniversary of a
56 significant event 11) Artwork i.e., art project addressing Court themes/member state donation of art. *Ibid.*

57 ⁶⁷ *Ibid.*

58 ⁶⁸ See generally, I. Manor and E. Segev, ‘America’s selfie: How the US portrays itself on its social media
59 accounts’, in C. Bjola and M. Holmes, *Digital diplomacy: Theory and practice* (Oxfordshire, Routledge, 2015)
60 pp. 89-108.
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1 Likewise, Banks offers a similar critique with a study that analysed 1,712 tweets and
2 retweets between November 2017 and June 2019 from the Court’s official Twitter account.
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4 Her findings similarly reveal that there was a State-centred approach to its overall output
5 including a dominant trend in wanting to build political and diplomatic support among its
6 powerful stakeholders. The dominance of promotional and celebratory information is hardly
7 surprising given the nature of Twitter as a platform, but it underlines the point that there is little
8 desire to engage in any critical and/or informed dialogue (see below).
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17 At its core, public relations is concerned with ensuring information conveys particular
18 messages. Such messages can be conveyed explicitly or subtly but such messages are executed
19 with crafted techniques that aim to preserve reputation, e.g., to select only favourable examples,
20 to use distancing language when faced with criticism, to never publicly admit errors or
21 apologies (i.e., the ‘non-apology’ relying on words such as regret), to evade questions, etc.
22 Whatever set of techniques are being used, effective public relations is concerned with two
23 fundamental messages: ‘blame-avoidance’, i.e., to escape criticisms for discernible failures,
24 errors, or mistakes (or at least to diminish or mitigate such criticisms) and ‘credit-claiming’,
25 i.e., to seek to attach the organisation to successes whether deserved or not.⁶⁹ However, even
26 if one were cynical, the Court’s public relations faces dilemmas in an era of social media that
27 can readily amplify critical coverage.
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44 First, and a question that underlies the Court’s—or indeed other tribunals— attempts to
45 avoid blame, is whether (and, if so, to what extent) it should seek to counter criticism at all?
46 For some, there is a deep unease about international judicial institutions defending its
47 reputation in the public square with some arguing that it is undignified, may invite further
48 criticism, can interfere with judicial independence and, otherwise, makes little difference to the
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57 ⁶⁹ S. Hansson, ‘Discursive Strategies of Blame avoidance in Government: A Framework for Analysis’, 26(3)
58 *Discourse and Society* (2015) 297-322 < doi.org/10.1177/0957926514564736>; S. Hansson, ‘Anticipative
59 Strategies of Blame Avoidance in Government: The Case of Communication Guidelines’, 16(2) *Journal of*
60 *Language and Politics* (2017), 219-241.
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1 ordinary ebbs and flow of public debate. This does not stop (and nor should it stop) leading
2 figures from writing newspaper editorials, delivering speeches at conferences or participating
3 in documentaries that acknowledge and counter such criticism.⁷⁰ Nonetheless, one might ask
4 what are the proper boundaries of institutions publicly defending itself against criticism,
5 particularly on social media platforms?
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11 One might look, for example, at the appropriateness of the official Court Twitter
12 account posting a ‘#fake news’ hashtag accompanying a ‘direct to camera’ video clip in which
13 the Prosecutor defends her Office’s independent mandate from attacks of bias.⁷¹ Similarly, the
14 Court’s spokesperson replied to criticism of the Appeals Chamber’s judgment on Head of State
15 Immunities (the ‘Jordan’ decision) on an international law blog — *EJIL: Talk!*.⁷² Shortly after,
16 the Court released a ‘public Q&A’ in respect of the judgment which expressly stated that
17 lawyers, including academics, engaging in ‘hasty’ online debate may be acting unethically in
18 misrepresenting the Court’s decisions given the spread of such commentary on social media.⁷³
19 The very fact of these interventions by the Court both acknowledges that social media is a
20 critical communication platform and accepts that users of such sites facilitate and shape
21 information from and about the Court.⁷⁴ However, by strongly attacking such criticism by
22 commentators — in a way that seeks to define the limits of legitimate criticism — such
23 interventions risk betraying an institutional defensiveness or hubris that is itself counter-
24 productive to preserving its reputation.
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49 ⁷⁰ Most of the Court’s leading personnel from the President to the Prosecutor often engage publicly and in
50 academic conferences making public statements. For more see the News section of the ICC website, <[icc-
51 cpi.int/news](https://www.icc-cpi.int/news)> date accessed 7 December 2022.

52 ⁷¹ See Tweet Posted 1 March 2019 <: date accessed 7 December 2021.

53 ⁷² See comments section on the following blog post. D. Akande, ‘ICC Appeals Chamber Holds that Heads of State
54 Have No Immunity Under Customary International Law Before International Tribunals’, *Blog of the European
55 Journal of International Law*, 6 May 2019 < date access 7 December 2022.

56 ⁷³ International Criminal Court, *The Prosecutor v Omar Hassan Ahmad Al Bashir*, (ICC-02/05-01/09), May 2019,
57 <www.icc-cpi.int/itemsDocuments/190515-al-bashir-qa-eng.pdf>.

58 ⁷⁴ D. Jacobs and J. Powderly, ‘On the impact of online commentary in international criminal law: A vain pursuit
59 of a Socratic ideal?’, 32(4) *Leiden Journal of International Law* (2019) 615-623, pp. 615, pp. 621
60 <doi.org/10.1017/S0922156519000414>.
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Second, how does the Court's messaging avoid a binary either/or trap that can lead to credit-claiming and blame avoidance messaging undermining one another? Notions of credit and blame are in an equilibrium; when credit is claimed, you invite blame on the same terms in the future; when you avoid blame (e.g., by pointing to other causal actors or contributing factors), you cannot claim credit in future without it, too, being attributable to other actors or contributing factors. A notable example of this is the claim of having a deterrent effect, sometimes referred to its preventive impact.⁷⁵ Often leading figures of the Court claim credit in its contribution to the prevention and deterrence of crimes but whenever the Court is confronted with evidence of continuing conflict, the Court's response is that its impact cannot be measured in such ways, e.g., due to jurisdictional limitations, or that it is a shared global responsibility or that there is a preventive impact but in ways that is more nuanced.⁷⁶

Likewise, and deservedly or not, one public narrative frequently put to the Court is its 'value for money', i.e., the number of arrests or convictions measured against its overall budget and operating cost since it first opened.⁷⁷ On the one hand, the Court is keen to communicate that dispensing justice in The Hague holds perpetrators to account and ensures justice is both done and seen to be done.⁷⁸ On the other hand, these communications are accompanied by reminders that the Court exercises secondary jurisdiction and has a role in actively promoting

⁷⁵ See M. Damaška, 'What is the Point of International Criminal Justice', 83 Chi.-Kent L. Rev. (2008) p. 329, p. 343; M. Minow, Cora. True-Frost and A. Whiting (eds.), *The First Global Prosecutor: Promise and Constraints* (Michigan, University of Michigan Press 2015) pp.1-396 pp. 363 < DOI: 10.3998/mpub.6727764>. The Office of the Prosecutor is often said to have a didactic function and that includes maximising the impact of its activities (e.g. the preliminary examination, investigation and trial) as, in its own words, 'mere announcement of ICC activities can have a preventive impact' See Office of the Prosecutor, *Paper on some policy issues before the Office of the Prosecutor*, (2003) pp. 3; Office of the Prosecutor, *Prosecutorial Strategy 2009-2012: 1February 2010*, pp. 7.

⁷⁶ See DW Conflict Zone, 'Fatou Bensouda Interview with Tim Sebastian' 26 January 2016 < date accessed 7 December 2022; F. Bensouda, 'Looking Back, Looking Ahead-Reflections from the Office of the Prosecutor of the ICC', 11(2) *Washington University Global Studies Law Review* (2012) pp. 437.

⁷⁷ See for example C. Schmitt, '13 years, 1 billion dollars, 2 convictions: Is the International Criminal Court Worth it?' *DW: Made for minds*, 27 January 2016 <www.dw.com/en/13-years-1-billion-dollars-2-convictions-is-the-international-criminal-court-worth-it/a-19006069> dated accessed 7 December 2022.

⁷⁸ F. Bensouda, 'Fatou Bensouda: Prosecutor of the International Criminal Court', BBC HardTalk Interview with Zeinab Badawi , 3 July 2017, <www.bbc.co.uk/programmes/n3ct2kly> date accessed 7 December 2022.

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‘positive complementarity’, i.e., the policy by which the Court’s Prosecutor actively endorses and promote national criminal proceedings by either hoping to catalyse them or otherwise supporting domestic judicial capacity to undertake them at the national level — something that can inevitably take years.⁷⁹ Hence, the Court’s public relations strategy is stymied and unable to develop a coherent message that can adequately address or manage public narratives.

What, then, are underlying causes for these dilemmas? One such cause is the Court’s own lack of clarity as to its goals and the outcomes against which it wishes to be assessed.⁸⁰ The Preamble of the Rome Statute, rhetoric by official spokespersons, civil society demands and the very practical role of the Court in facilitating victim participation and reparations have led to it being closely associated it with a bundle of goals that often conflict with one another. From a more minimalistic set of criminal justice goals (retribution, deterrence) to those associated with transitional justice (peace, social solidarity, etc.) to restorative justice goals (victim participation, reconciliation, etc.) aggravates the limited consensus on determining the Court’s effectiveness.⁸¹

Public relations as an instrument for information-sharing is a defensive and reactive enterprise, prioritising a one-way model of *publicity* that is typical of institutions unable to rely on robust ‘performance capital’ with which to evidence an existing reputation for excellence.

⁷⁹ C. Sriram and S. Brown, ‘Kenya in the Shadow of the ICC: Complementarity, Gravity and Impact’, 12(2) *International Criminal Law Review* (2012), p. 44; W. Burke-White, ‘Implementing a Policy of Positive Complementarity in the Rome System of Justice’, 19 *Criminal Law Forum* (2008), 59-85 <doi.org/10.1007/s10609-007-9050-9>; O. Bekou, ‘The ICC and Capacity Building at the National Level’, in C. Stahn (ed.), *The Law and Practice of the International Criminal Court* (Oxford, Oxford University Press, 2015), pp. 1245–1258. Indeed, there is inconsistency when one considers former Prosecutor Luis Moreno-Ocampo’s now notorious declaration that the mere *absence* of cases would demonstrate the Court’s effectiveness, because it would imply national authorities were undertaking their own prosecutions. This assumption that entirely overlooks the complexities of determining causality and ignores the paradox that all courts, domestic or otherwise and requires cases and convictions to validate their very existence.

⁸⁰ M. DeGuzman, ‘The Global-Local Dilemma and the ICC’s Legitimacy,’ in N. Grossman et al. (eds.), *Legitimacy and International Courts* (Cambridge, Cambridge University Press, 2018) 62-82, p. 67.

⁸¹ C. Stahn, ‘Between ‘Faith’ and ‘Facts’: By What Standards Should We Assess International Criminal Justice?’, 25 *Leiden Journal of International Law* (2012) 251 - 282, p. 251, p. 279 <doi.org/10.1017/S0922156512000027>; R. Teitel, ‘Transitional Justice Genealogy’, 16 *Harvard Human Rights Journal* (2003), 75-78, p. 69; M. Aukerman, ‘Extraordinary Evil, Ordinary Crimes: A framework for Understanding Transitional Justice’, 15 *Harvard Human Rights Journal* (2002). 77-78, p. 39.

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Publicity by way of information-sharing is equally rooted in standard blame avoidance and credit-claiming messaging; inevitably it causes audience fatigue, and eventually invites cynicism. To the extent that this is true of attempts by tribunals such as the International Criminal Court, the act of ‘selling’ oneself is the type of public relations that, counter-intuitively, is less likely to boost public support.

2.2 *Persuasion*

Persuasion is a process of psychological change in recipients pertaining to their actions or beliefs, i.e., being persuaded to do, or to believe, something.⁸² The concept of rhetoric is integral to persuasion and is deployed by i) enhancing the credibility of the speaker (ethos), ii) maximizing the effect of the rhetoric on the emotional dispositions of its audience (pathos), and iii) using deductive arguments to demonstrate that a particular position is true.⁸³ It is important to acknowledge that in public relations terms, that which is demonstrably rational is not always persuasive. Rationalism does not have a monopoly on what someone believes to be true, and truth(s) can be contested and incommensurable; an individual may not believe a rational truth in favour of other ‘truths’ that subjectively conforms to one’s emotional disposition.⁸⁴ Hence, public relations and the desire to persuade may rely on non-rational devices, ploys and methods.

To best consider a range of persuasion attempts, one can look at arguably the notable, public and visible figure in the field of international criminal justice: the International Criminal Court’s Prosecutor. The ability to persuade is closely attached to the Prosecutor’s professional obligations, both within the courtroom and beyond. Such powers of

⁸² Soanes and Stevenson (eds.), *supra* note 30, p. 1327.

⁸³ Aristotle, *The Art of Rhetoric*, p. 74, para. 1356a.

⁸⁴ Mechanism for International Criminal Tribunals, *Address of Mr. Serge Brammertz, Prosecutor, Mechanism for International Criminal Tribunals and International Criminal Tribunal for the Former Yugoslavia to the United Nations Security Council*, UN Press Release, 7 March 2017< .> date accessed 7 December 2022.

1 persuasion, including the art of advocacy, are crucial to various roles and identities held by the
2 Prosecutor e.g., *courtroom advocate* in advancing a persuasive case that satisfies the standard
3 of proof, *social activist* in championing goals such as peace and reconciliation and *diplomat*
4 seeking to persuade donors and other political actors such as the United Nations Security
5 Council to co-operate with the Court.⁸⁵
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12 However, persuasion is equally central to an under-acknowledged face of the
13 Prosecutor: The Court's 'chief brand manager'.⁸⁶ This face reflects the Prosecutor's symbolic
14 and performative significance as well as the competing and conflicting demands places on them
15 from a range of audience.⁸⁷ In practice this requires skills of persuasion that are less concerned
16 with rationality and deduction but require a set of performative techniques that rely on
17 distraction, stigmatization, and the use of imagery. This includes the depiction of the
18 'spectacular' which has Schwobel-Patel has argued is strongly associated with conjuring up
19 the 'fundraising image of victimhood.'⁸⁸ At its worst, and even if unintended, such imagery
20 entrenches an aesthetic contrast that is self-serving: a Court depicted as a rational, organised
21 place of professional expertise, benevolence, and order overseen by white western lawyers,
22 while conflict zones are depicted as lawless, chaotic places inhabited by screaming black
23 children on parched lands and crowds filmed expectantly waiting to be informed by a Court
24 official.⁸⁹ Even if one were to look at more standard conventions of communication, then,
25 when faced with criticism, the Prosecutor's messaging is, to no great surprise, in the blame
26 avoidance.
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53 ⁸⁵ ICTY-IT-, *Prosecutor v Miroslav Deronjić*, Case No. ICTY-IT- 02-61-S, Trial Chamber II, Sentencing
54 Judgement , 30 March 2004, para. 10.

55 ⁸⁶ Schwöbel-Patel, *supra* note 24, pp. 12.

56 ⁸⁷ C. Stahn, *Justice as Message: The Expressivist Foundations of international Criminal Justice* (Oxford,
57 Oxford University Press, 2022).

58 ⁸⁸ Schwobel-Patel, *supra* note 24.

59 ⁸⁹ *Ibid.*
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Across various media, this message is often pursued via expressions of legalism, i.e., an ideological belief in law's separation to and from politics, and hence would be an attractive communication strategy to legitimate decisions, such as those that result from the exercise of prosecutorial discretion.⁹⁰ Legalism is a standard and uniform message relied on by lawyers for lawyers; wrapped in law's affinity to values such as certainty, objectivity, restraint, and rationality.⁹¹ As Stolk and Dolb have argued, such features of legalism are used to construct identity and bolster the Court's moral authority.⁹²

To briefly surmise the argument, the Prosecutor's use of legalism is, however, ineffective: it does not enhance her credibility or reputation because she is caught between two professional identities: a traditional client-based lawyer and a political cause lawyer (akin to a campaigner). These identities conflict with one another; the former based on a premise of political detachment and the latter based on a premise of political attachment.⁹³ Affected communities listening to the Prosecutor's legalist rhetoric are likely to be confused about her political positioning and vulnerability to bias given this dual identity (and the attendant cognitive dissonance).

Furthermore, legalism lacks appropriate pathos as its primary appeal is to notions of legality.⁹⁴ By contrast, it lacks a subjective emotional appeal to perceived legitimacy

⁹⁰ The use of legalism is related to demonstrating the Office's impartiality in its prosecution selections. Impartiality and independence are closely linked; the former denoting the equal and fair treatment of cases and the latter referring to freedom and the absence of external affiliation or interference. The lack of independence provides grounds to question the existence of impartiality, but the converse is true; the existence of impartiality supports a claim to independence. See Soanes and Stevenson (eds.), *supra* note 30, p. 888; L. Côte, 'Independence and Impartiality', in L. Reydam and others, (eds.), *International Prosecutors* (Oxford: Oxford University Press, 2012), 357-359.

⁹¹ Kotecha, *supra* note 20.

⁹² S. Stolk and J. Dolb, 'The Prosecutor's Important Announcements; the Communication of Moral Authority at the International Criminal Court', 16(3) *Law, Culture and the Humanities Journal* (2016), pp. 391-410 <doi.org/10.1177/1743872116666466 date accessed 7 December 2022.

⁹³ The literature on cause-lawyering is considerable, however for a concise overview see K. McEvoy, 'What Did the Lawyers Do During the 'War'? Neutrality, Conflict and the Culture of Quietism', 74(3) *Modern Law Review* (2011), p. 350, p. 354, <doi.org/10.1111/j.1468-2230.2011.00851.x>.

⁹⁴ M. Weber, 'Politics as a Vocation', in H. Gerth and C. Mills (eds.), *From Max Weber: Essays in Sociology* (Oxfordshire, Routledge, 1995), p. 79.

1 (i.e., a psychological acceptance or belief in an entity's authority and right to rule) which
2 is shaped by a range of social, ethnic, and religious affiliations that, in turn harden,
3 perceptions by triggering cognitive biases and emotive reasoning.⁹⁵ Instead, it is notion of
4 justice that has the appeal to pathos, but legalists articulate justice merely in terms of the
5 intensification of law and overlook the emotive and socially constructed dimensions of justice
6 capable of resonating with affected communities.⁹⁶

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14 Finally, the principle of logos pertains to the central principles of logic and reason.
15 requiring a valid syllogism and the demonstration of deductive arguments. The implicit starting
16 point is that the law is neutral and thus the logical conclusion flows: the law rejects the political.
17 However, to accept that the law is neutral ignores the extent to which law is a technique for
18 'ends prescribed by politics' or, simply, that law is politics transformed.⁹⁷ Individuals within
19 affected communities, or simply the 'man in the street', do not perceive the law in a vacuum
20 and tend to personify the law by questioning its inherent biases in the political order. If one is
21 critical of these biases and views them as part of the problem, then the only concern is whether
22 institutions are good and the decisions they make are the right ones.⁹⁸

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Taken together, whatever persuasion strategies are adopted, there is a hyper-rationalist
premise upon which international criminal tribunals pursue persuasion. This premise is that the
target audience will, first, believe that the institution has superior information about the concern
(even if those details cannot be disclosed) and, second, a belief that the institution is credible

⁹⁵ Kotecha, supra note 20. There is considerable literature on perceived legitimacy. Most definitions associate the concept with sociological (or Weberian) legitimacy. See S. Vasilev, 'Between International Criminal Justice and Injustice: Theorising Legitimacy', in N. Hayashi and C. Bailliet (eds.), *The Legitimacy of International Criminal Tribunals* (Cambridge, Cambridge University Press, 2017) 66-91, <doi.org/10.1017/9781316536469.004>;

⁹⁶ J. Shklar, *Legalism: Law, Morals and Political Trials* (Cambridge, Harvard University Press, 1986), pp. 117-119; K. McEvoy, 'Beyond Legalism: Towards a Thicker Understanding of Transitional Justice', 34(4) *Journal of Law and Society* (2007), p. 411, p. 426, <doi.org/10.1111/j.1467-6478.2007.00399.x>.

⁹⁷ Kotecha, supra, note 20. See also G. Simpson, *Law, War and Crime: War Crimes Trials and the Reinvention of International Law* (Cambridge, Polity Press, 2007), p 19-20.

⁹⁸ M. Koskenniemi, 'The Fate of Public International Law: Between Technique and Politics', 70(1) *Modern Law Review* (2007) 1-30, pp. 18-19, <doi.org/10.1111/j.1468-2230.2006.00624.x>.

1 as it has more incentives to convey information honestly and act in good faith.⁹⁹ However, it is
2 quite clear that international criminal tribunals—still in their relative infancy compared to
3 institutions such as the United Nations— cannot be confident about audiences, particularly
4 affected communities, having such passive presumptions about the work of such international
5 tribunals.
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11 Instead, what is missing is a socially constructivist approach to persuasion that is based
12 on a two-way institutionalised interaction with audiences, shared respect, and common values.
13 Achieving this requires specifically tailoring messaging so that it is shaped by a deep
14 understanding of the audience, which can be complemented by ‘rigorous, context-specific
15 psychological research that [can] provide evidence-based guidelines on optimal strategies for
16 pursuing attitude change [...]’.¹⁰⁰ Effective persuasive messages are those that are culturally
17 specific and context-sensitive or, in corporate-customer terms, messaging that understands the
18 needs of the ‘end-user’. In this respect and in today’s digital attention economy, audiences such
19 as affected communities require compelling forms of persuasion; accounts that empathise,
20 humanise and listen to and understand cognitive pre-dispositions. That does not mean that
21 tribunals must begin to pander to emotive sensibilities but, rather, simply place far more
22 emphasis on *relations* than publicity.
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41 2.3 *Integration*

42 For Bernays, public relations is a ‘two-way street in which leadership and the public
43 find integration with each other and in which objectives and goals are predicated on a
44 coincidence of public and private interest.’¹⁰¹ This component of integration is where emphasis
45 is placed most on *relations*, i.e., implying mutuality and reciprocity, and concerned with
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56 ⁹⁹ J. Walsh, ‘Persuasion in International Politics: A Rationalist Account’, 33(4) *Politics and Policy* (2005) 642-
57 670 <doi.org/10.1111/j.1747-1346.2005.tb00217.x> date accessed 7 December 2022.

58 ¹⁰⁰ M. Milanović, ‘Establishing the Facts about Mass Atrocities: Accounting for the Failure of the ICTY to
59 Persuade Target Audiences’, 47 *Georgetown Journal of International Law, Forthcoming* (2016), p. 1321, pp. 1369.

60 ¹⁰¹ E. Bernays, *Public Relations* (Texas, Snowball Publishing, 2012), p. 83.
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1 achieving mutually desired support; individuals deem the institution capable of generally
2 meeting their interests and the institution thus attracts ‘diffuse support’ — a long-term,
3 reasonable and stable recognition of an institution as legitimate with individual general
4 willingness to *accept* its decisions.¹⁰² Integration also finds expression in Hudson’s depiction
5 of ‘discursive justice’— insofar as justice is inherently relational, based on undominated
6 discourse i.e. allowing claims and counterclaims, and *plurivocal* i.e. permissible of the different
7 voices that emanate from all groups.¹⁰³ Turning back to Bernays, he further argued that public
8 relations had a deep significance because it ultimately helped citizens understand the society
9 of which they are a part, including an ability to suggest courses of actions that influence their
10 relationship with the individual organisation [and thus the organisation itself].¹⁰⁴
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24 Effective outreach in international criminal justice is based on the pursuit of integration
25 i.e., concerned with nurturing a sustainable two-way communication with affected
26 communities, including victims. This finds expression in Peskin’s ‘engagement model’ of
27 outreach describes a comprehensive facilitation of extensive interaction and dialogue.¹⁰⁵ Such
28 activities are generally understood to be in-person and in the field (traditionally in the form of
29 a town hall meeting), but also utilising local media to directly target those communities that
30 have experienced atrocities and to whom the Court is now intervening.¹⁰⁶
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41 Likewise, in the current information landscape one must also look at the use of ‘social
42 media outreach.’ The use of social media as a platform for outreach has been the subject of
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48 ¹⁰² Y. Lupu, ‘International Judicial Legitimacy: Lessons from National Courts’, 14 *Theoretical Inquiries in Law*
49 (2013), pp. 440-441; This type of support can be described as individuals having a ‘favourable affective
50 orientation’ towards the Court: see T. Tyler, *Why People Obey the Law* (Connecticut, Yale University Press,
51 1990), p. 28. Diffuse support can be distinguished from specific i.e., a positive attitude towards (and/or approval
52 of) particular institutional decisions or policies.

53 ¹⁰³ B. Hudson, *Justice in the Risk Society* (London, Sage Publishing Ltd, 2003), p. 206.

54 ¹⁰⁴ Bernays, *Public Relations*, p. 10.

55 ¹⁰⁵ Cited in I. Banks, ‘Facilitating #dialogue or #buildingsupport? An Exploration of the International Criminal
56 Court’s Use of 280 Characters’ 20(1) *Journal of International Criminal Justice* (2022) 55-80 <
57 doi.org/10.1093/jicj/mqac005>.

58 ¹⁰⁶ C. Werby and O. Werby, *Practical Strategies for ICC Outreach*, ICC Forum, April 2016,
59 <iccforum.com/outreach>.

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analysis.¹⁰⁷ Banks analyses the Court’s Twitter output and, using the Peskin model, critiques
the attempt to facilitate meaningful dialogue. However, one might be expecting too much if
social media is critiqued as a platform for outreach. Social media is designed, inherently, to be
a one-way promotional platform where the principal aim is competition for attention and thus
is hardly conducive to dialogue in any meaningful sense.¹⁰⁸

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Reduced to a minimum, outreach may simply be about ensuring that international
criminal justice does not operate in a distant vacuum and that affected communities are aware
of its existence, operations and work. However, mirroring the Court-wide problem, it is
abundantly clear that outreach is instrumentalised and confusingly over-laden with a myriad of
goals; from fostering realistic (i.e., reduced) expectations about the Court’s work (e.g., about
jurisdiction, number of prosecutions or reparations); boosting participation of local
communities in the activities of the Court; countering misinformation; sustaining a dialogue
based on trust; being well-recognised, supported and to promote a positive image of the Court;
making justice meaningful among key groups (especially women, children and youths);
establishing a historical narrative of accountability for situation countries; increasing the
broader impact of the Court, and contributing to the prevention of crimes, the fight against
impunity and even contributing to reconciliation.¹⁰⁹

A further foundational challenge facing the Court’s attempts to integrate affected
communities is the very fact of its distance. This finds straightforward expression in the
geographical remoteness of the Court, situated in The Hague, and standing in sharp contrast to

¹⁰⁷ I. Banks, ‘Facilitating #dialogue or #buildingsupport? An Exploration of the International Criminal Court’s
Use of 280 Characters’ 20(1) *Journal of International Criminal Justice* (2022) 55-80 <
doi.org/10.1093/jicj/mqac005>.

¹⁰⁸ Jaron Lanier, ‘Ten Arguments for Deleting Your Social Media Accounts Right Now’ (Vintage Publishing,
2019)

¹⁰⁹ For a discussion of the formidable aspirations placed on outreach and the original primary sources see C. Werby
and O. Werby, *supra* note 105.

1 domestic courts that may enjoy relatively greater legitimacy.¹¹⁰ It is not just this absence of
2 trials *in situ* but the spatio-temporal, methodological and imaginative distance of a Court that
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4 prefers to be insulated from the complex and fractured conflict environments in which atrocities
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6 have taken place.¹¹¹ Whilst for the Court there may be perceived advantages in being divorced
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8 from the local context — it interprets its own distance as a pre-requisite to offering a more
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10 superior apolitical form of justice than is possible at domestically — its outreach strategies are
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12 inevitably reduced to rudimentary assumptions about how to best communicate with affected
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14 people, rather than a precise and detailed understanding of the locality, including; particular
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16 narratives of victimhood, modalities of the alleged crimes, the precise information needs and
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18 existing access to communication technology, recent history, the present-day political climate
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20 and the emotional anchors of differing groups within affected communities (including
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22 those that originate in ethnicity, nationality, political preference etc.).¹¹² Extensive field
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24 research highlights the fundamental obstacle of distance currently preventing effective
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26 outreach:
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36 Community-level findings from northern Uganda and eastern DRC highlight the extent
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38 to which the ICC is interpreted through the lens of broader past and unfolding political
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40 and social dynamics, in particular the history of colonialism, the behaviour of successive
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42 domestic political regimes, intervention by other international actors, continuing
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44 widespread violence and local actors' perceptions of the conflicts they have experienced
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46 first-hand and their proposed remedies. Crucially, the ICC has not achieved its intended
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48 status as a neutral objective arbiter of the domestic terrain, viewed instead as deeply
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50 embedded in local political, social and cultural dynamics. Emphasizing distance from the
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56 ¹¹⁰ Milanović, *supra* note 19.

57 ¹¹¹ P. Clark, *Distant Justice: The Impact of the International Criminal Court on African Politics* (Cambridge,
58 Cambridge University Press, 2018), p. 300-304.

59 ¹¹² See for example, Vinck and Pham, *supra* note 19, pp. 421-442.
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1 domestic arena, the Court has rarely shown awareness to enable it to intervene effectively
2 in these two countries and to secure legitimacy among local populations.¹¹³
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7 If this challenge were not enough, then there is further evidence that current outreach
8 continues to exhibit one-way tendencies. Put another way, affected communities are spoken *to*
9 and *for* but lacking is meaningful interaction and responsiveness. As Clark considers, the
10 Registry's initial outreach programme in Uganda was widely perceived to be vague and of
11 limited value with one local resident expressing: 'We know the ICC has investigators here,
12 what it intends to do. We don't expect sensitive information about the nature of their
13 investigation but why can't they give us more general information about why they're here?'¹¹⁴
14 This criticism is entrenched by wider institutional limitations such as a lack of linguistic
15 expertise, the absence of embedded Court staff in local communities, a lack of co-ordination
16 with other aspects of the Court's work and even limited self-awareness on the correct tone and
17 vocabulary adopted in such activities.¹¹⁵ Likewise, as the experience of the ECCC suggests, at
18 its heart, outreach is a 'governance activity' that seeks to *manage* narrative and memory, and
19 which therefore entrenches a set of parameters for 'acceptable' dialogue premised on
20 legitimising the work of the Tribunal.¹¹⁶ By implication, outreach excludes more fundamental
21 dialogue with affected communities about the very desirability of tribunals and criminal justice;
22 its true limits and true potential.
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50 ¹¹³ Clark, *supra* note 109, p. 136.

51 ¹¹⁴ *Ibid.*, p. 139.

52 ¹¹⁵ See for instance recommendations in policy papers such as International Federation for Human Rights, '*The*
53 *Victims mandate of the International Criminal Court: disappointments, concerns and options for the way forward:*
54 *Observations and recommendations for the Independent Expert Review*', Kenya Human Rights Commission
55 (N°752a) 28-29; Open Society Justice Initiative, '*Improving the Operations of the ICC Office of the Prosecutor:*
56 *Reappraisal of Structures, Norms and Practices: Outcome Report and Recommendations*', . 15-17.

57 ¹¹⁶ A. Kent, 'Outsourcing Outreach: 'Counter-translation' of Outreach Activities at the Extraordinary Chambers
58 in the Courts of Cambodia', 41(1) *Journal of Current Southeast Asian Affairs* (2021),
59 <doi.org/10.1177/18681034211058741>.
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Certainly, outreach is unlikely to meet expectations that ensure ‘people most affected by the crimes [...] have the right to understand, to participate in, but also to have a sense of ownership of the justice process’.¹¹⁷ The number of victims that are eligible and can participate is a fraction of those affected, with the Pre-Trial Chamber ruling in the *Situation in Palestine*, which ordered the Registry to establish a system of public communication and outreach and a continuous system of interaction among affected communities being a symptom that participation in the prosecutorial selection procedure, for instance, does not create an adequate sense of ownership in affected communities.¹¹⁸ The Court and its Prosecutor are inevitably rooted to representation, i.e., ‘speaking for others’, and hence affected communities’ voices need to be collated and homogenized, so as to make them easier to represent, i.e., act upon. Though it is not going to be possible to fully represent the interests of all those who constitute affected communities, the impression that is all too easily left is that only specific ‘convenient’ voices are re-presented to fit a pre-determined agenda (i.e., a pre-determined decision).¹¹⁹

It is against this background that outreach is devoid of the emancipatory potential it might otherwise possess; one where the exercise is perfunctory, performative and overlooks the opportunity for affected communities — critical stakeholders in the project of international criminal justice — to genuinely influence the course of decision-making, especially when such decisions are made in their name. Outreach, today, continues to be premised on communities as spectators — a symbolic constituency that is simply the ‘triggerer-off of the whole thing.’¹²⁰ Such a deficit is perhaps inevitable, but its effect is to merely hollow out any genuine development of public *relations* by the Court.

¹¹⁷ International Criminal Court, *Interacting with Communities Affected By Crimes* <www.icc-cpi.int/about/interacting-with-communities> date accessed 7 December 2022.

¹¹⁸ International Criminal Court, *Decision on Information and Outreach for the Victims of the Situation, Situation in the State of Palestine, Case No. ICC-01/18, Pre-Trial Chamber I, Judgement*, 13 July 2018, para. 14.

¹¹⁹ R. Killean and L. Moffett, ‘Victim Legal Representation before the ICC and ECCC,’ 15(4) *Journal of international Criminal Justice* (2017) 713-740, pp. 713, pp. 730–731 <doi.org/10.1093/jicj/mqx025>.

¹²⁰ N. Christie, ‘Conflicts as Property’, 17(1) *British Journal of Criminology* (1977) 1-15, pp. 1, pp. 3.

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3 Concluding Remarks

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4 Unsurprisingly, the art of public relations attracts cynicism from many quarters not least
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6 because it is synonymous with strategies that directly, or indirectly, resist accountability, reject
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8 criticism and manipulate public opinion. Equally, public relations relies on branding, marketing
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10 and other corporate techniques that concentrate on image rather than true identity. However,
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12 despite the attendant risks, it appears that the International Criminal Court will embrace
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14 ‘communicative capitalism’¹²¹ and make a more prominent turn to public relations in the
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16 foreseeable future with the Independent Expert Review of the Court in 2020 recommending
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18 strategies that promote the Court and its ‘image’ among audiences, including ‘stakeholders’
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20 such as governments, affected communities, and civil society, and even endorsing the
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22 appointment of an expert in ‘branding.’¹²²
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28 Utilising a framework inspired by Edward Bernays, this article offered a critique of
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30 public relations in international criminal justice and demonstrate why, in its current form, it is
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32 hollow one-way model of publicity. Such questions include: Is engagement on social media
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34 desirable and useful for self-promotion and to challenge misconceptions? Do the risks of public
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36 engagement and attempts at self-legitimation e.g., the risks to perceived interfering judicial
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38 independence, outweigh any potential benefits? Assuming for one moment that there are
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40 benefits to be gained, in today’s ‘attention economy’, are tribunals capable of constructing
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42 compelling public narratives that *engage* audiences? Or is it constrained by the technically
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44 complex strictures of procedure and unable to propound anything other than the seemingly the
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46 seductive rationalities of legalism?
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57 ¹²¹ J. Dean, *Democracy and Other Neoliberal Fantasies: Communicative Capitalism and Left Politics* (Durham,
58 Duke University Press, 2009) p. 1-232.

59 ¹²² International Criminal Court, *Independent Expert Review of the International Criminal Court and the Rome*
60 *Statute System Final Report* (September 2020), pp. 125-130.
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Outreach has long been assumed to be essential in international criminal justice; an assumption traceable to lessons from the past *ad hoc* tribunals, where a frequently cited refrain is of the ‘failure to engage [early] in effective outreach meant that the [ICTY and ICTR] lost the initiative in communicating its work and establishing [their] legitimacy.’^[OBJ] Since then, recommendations have often been reduced to simply ‘more and more’ outreach that is more accessible and better funded, so as to ‘bring the Court home’ to affected communities. However, in light of the fundamental challenges highlighted in this article, one might question whether it is more appropriate for tribunals to continue to conduct such public relations activities at all? Might or may it be preferable to outsource such function to local community-based civil society efforts that can better overcome cultural, linguistic and societal sensitivities and address the precise needs and expectations of local communities? Since then, recommendations have often been reduced to requiring ‘more and more’ outreach that is more accessible and better funded, so as to ‘bring the Court home’ to affected communities. However, in light of the fundamental challenges highlighted in this article, one might question whether it is more appropriate for tribunals to continue to conduct such public relations activities at all? Might it be preferable to outsource such functions to local community-based civil society efforts that can better overcome cultural, linguistic and societal sensitivities and address the precise needs and expectations of local communities?

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These questions require serious engagement but, in a way, they arise due to the structural uncertainties that shape international criminal tribunals. First, the fundamental tension that exists between the binary dimensions of such tribunals; on the one hand, a judicial institution that, for good reason, prioritises its impartiality and independence and, on the other, an international organisation that seeks to exercise political and diplomatic skill to foster governmental co-operation and local support on which it is entirely dependent. Second, and relatedly, the existence of multiple goals of international criminal justice which seeps into the

1 lack of clarity across its public relations work.¹²³ Organisations that lack clarity about mission
2 are significantly hampered in developing effective public relations.
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5 Of course, any public relations strategy needs to recognise that information does not
6 just flow from institutions outwards through official channels to the recipients. Instead,
7 information is filtered and shared through diverse channels and is repurposed for onward
8 transmission, with the role of the media (and the underlying process of mediatization in the
9 international legal system) increasingly casting information as an instrumental tool that can
10 assert hegemonic powers.¹²⁴ Coupled with a tendency of the International Criminal Court to
11 be obscure and opaque about its discretionary decisions,¹²⁵ public relations is currently fearful
12 of ‘informed publics’, i.e., a public constituency that is able to dismantle elite assumptions
13 about the passivity and apathy of the public about hierarchies of powers to which they are
14 subject.¹²⁶ Instead, the current model of public relations is based on imaginary collectives
15 where the very effort of communication creates a ‘public’ or ‘audience’, ascribes it with
16 qualities of cohesion and authority but then is assumed to legitimate institutional actions rather
17 than challenge them. Zooming out, what is clear is that international criminal justice is
18 embracing a wider turn to publicity in international law which leaves it ‘more rather than less
19 vulnerable to ongoing critiques regarding substance, process, legitimacy and participation.’¹²⁷
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41 What, then, is required to develop public relations in international criminal justice? One
42 might fundamentally question its viability. It is trite to observe the lack of resources and
43 structures in place to fully accommodate and listen to the concerns of audiences that are
44 geographically thousands of miles away from the corridors of influence in The Hague.
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52 ¹²³ M. DeGuzman, ‘Shocking the Conscience of Humanity: Gravity and the Legitimacy of International
53 Criminal Law’ 19(4) *Journal of International Criminal Justice* (2021) 1034–1038.

54 ¹²⁴ See generally D. Joyce, *Informed Publics, Media and International Law* (Oxfordshire, Hart Publishing, 2020)
55 pp. 1-160.

56 ¹²⁵ In particular the selection of situations and cases which has long been a source of controversy and debate. For
57 more recent coverage see KU Leuven University, *Roundtable on Prosecutorial Discretion at the International
58 Criminal Court* <.> [date accessed 7 December 2022](#).

59 ¹²⁶ Joyce, *supra* note 122, pp. 18-19.

60 ¹²⁷ *Ibid.*
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1 Acknowledging that there will always be a limit in the responsiveness of tribunals in relation
2 to the varied concerns that may be expressed by affected communities, the starting point must
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4 be a cultural shift in mentality that re-orientes the tribunals to harnessing the concerns of not
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6 only affected communities but the public at large. By seeking to ‘bring the public into the room’
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8 one would address institutional blind-spots and ensure there was deep critical self-evaluation
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10 about crucial decisions. This shift may be gradual and may now come about as part of set of
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12 reforms that better integrate and co-ordinate public information and outreach with investigative
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14 strategy including the timing of key decisions.¹²⁸
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19 However, long-term, tribunals need to commit to the development of an ‘architecture
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21 of listening—a set of institutional and normative principles, standards, and procedures for
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23 organisations to consider the view of and be responsive to their publics—not always agreeing,
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25 but being open, dialogic and at least prepared to adapt.’¹²⁹ Without such a structure, the public
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27 relations’ endeavour will be a fig leaf unable to inspire confidence nor assert any influence
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29 over the residual risks of misinformation at a time when diverse information filters such as
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31 social media are more effective in perception-formation. Given the very contestability of truth,
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33 facts, argument, interpretation, and falsehood in today’s febrile ‘marketplace of ideas’, whether
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35 such improved public relations can make a genuine impact, desirable or not, is an entirely
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37 different question.
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56 ¹²⁸ International Criminal Court, *supra* note 120.

57 ¹²⁹ J. McNamara, ‘The Work and Architecture of Listening: Addressing Gaps in Organisation-Public
58 Communication’, 10(2) *International Journal of Strategic Communication* (2016), 133-148
59 <doi.org/10.1080/1553118X.2016.1147043>.
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