

# **A Commitment is A Commitment is A Commitment? Why States Constrain and Customize their Commitments to the International Criminal Court**

eDiss Open Access

der Niedersächsischen Staats- und Universitätsbibliothek Göttingen (SUB), Göttingen

Julia Hagen

## **Content**

1. **Introduction**
2. **Universal Norms or Rational Decisions? States' Commitment to International Law in Research Literature**
  - 2.1. Commitment to International Law
  - 2.2. Delegation of Authority to the International Criminal Court
  - 2.3. Research Gaps and Contribution to the Literature
3. **Theory of States' Constraining and Customizing Commitments**
  - 3.1. Guardian of Humanitarian Law and Human Rights Law
  - 3.2. Why States Want the ICC – Incentives to Ratify the Rome Statute
  - 3.3. Why States Have to Fear the ICC
  - 3.4. States Constrain and Customize their Commitments
  - 3.5. Solving Cooperation Problems with the ICC
4. **An Index as Summary Measurement for Comprehensive Commitment**
  - 4.1. Modeling Ways of Constraining and Customizing Commitments
  - 4.2. Data and Methods I – Dimension Reduction and Index Building
  - 4.3. Results I – The Index of Commitment to the ICC
5. **The Explanatory Power of Solving Cooperation Problems with the ICC**
  - 5.1. Model and Operationalization
  - 5.2. Data and Methods II – Testing Hypotheses with Regression Analyses
  - 5.3. Results II – The Explanatory Power of Solving Cooperation Problems
6. **Conclusion and Outlook**
7. **Appendices**
8. **References**

## Summary

The study deals with states' power political behavior towards the International Criminal Court (ICC). It argues that states constrain and customize their commitment dependent on their possibilities to solve cooperation problems of international law.

From the view of political science, it is puzzling that so many states became a state party to the Rome Statute although this means a serious intrusion into their national sovereignty. However, as many states parties refuse cooperation (as e.g. in the case of Omar Al-Bashir who could travel unhindered through several states parties' territories, though there was an international arrest warrant) we have to scrutinize the credibility of those commitments. The questions arises as to how can we conceptualize and measure commitment to the ICC in a broader way, beyond ratification of the Rome Statute? And, how can we explain the extent of comprehensive commitment to the ICC?

Conceptually, the study draws on the delegation dilemma to the ICC. On one hand, states have strong incentives to become a state party. On the other, there is reason to fear that the court could become either too weak to cope with trials of politicization or too strong and exceed its own mandate. Ratification is a risk but meanwhile necessary. In order to solve the dilemma STATES CONSTRAIN AND CUSTOMIZE THEIR COMMITMENTS including not ratifying additional or amending agreements. Thus, they can become a state party and concurrently leave room for strategical behavior while being a state party to the ICC.

The states' extent of constraining and customizing depends upon their possibilities of solving cooperation problems of international law with the ICC. The states (in the absence of a strong enforcement mechanism) do not know which of the other states will comply with the law and which will not. Their own compliance can become a strategic disadvantage in relation to states that don't comply.

With the ICC a permanent international institution is provided that is able to investigate and prosecute genocide, crimes against humanity, war crimes and the crime of aggression. The creation of such a court reduces monitoring costs that would occur when those norms were otherwise monitored by many different monitoring agencies. Moreover, the self-binding to such a court increases the credibility of commitment already made to humanitarian law and human rights law.

Making those theoretical arguments testable in an empirical analysis, the present study uses a two-step y-centered research design to measure and explain the states' comprehensiveness of commitments to the ICC. In the first methodical step, the INDEX OF COMMITMENT TO THE ICC will be suggested as the measuring device for a comprehensive commitment to the court. In this way it becomes possible to open the black box of states parties and to show different levels of commitment to the court. In the second methodical step the explanatory power of the theoretical argument of solving cooperation problems with the ICC will be tested by means of regression analyses. Therefore, the hypotheses will be tested explaining the index positions compared to the mere ratification of the Rome Statute.

The central empirical finding is that there are only very few states that reach a high index value; thus, they commit themselves comprehensively, such as Germany, Belgium or Croatia. Most of the states parties have constrained and customized their commitments. Those are in part so strong that their commitment behavior is almost comparable to those of non-party states, such as Bangladesh, Burundi or Afghanistan. The regression analyses point out that those states constrain and customize the commitments the least that have a high level of democracy and ratified a high number of treaties of humanitarian law and human rights law.

This shows that states commitment to the court is not only related to the level of democracy but also to the states commitment to humanitarian law and human rights law, since the ICC is able to solve cooperation problems of international relations.

**Keywords:** legalization of international relations, international courts, International Criminal Court, transitional justice, humanitarian law, human rights law