


RESEARCH ARTICLE

Creating loyalty: Communication practices in the European and Inter-American human rights regimes

Silvia Steininger 

Max Planck Institute for Comparative Public Law and International Law, Im Neuenheimer Feld 535, 69120, Heidelberg, Germany
Email: steininger@mpil.de

Abstract

This article investigates how the European and Inter-American human rights regimes have developed communication practices to create loyalty. It argues that communication departments exercise essential functions, in particular by creating diffuse support for international courts. By relying on theoretical analyses developed by Albert O. Hirschman and David Easton, it identifies how international courts can create loyalty through, first, fostering awareness about the existence of the court among the general public, and, second, the establishment of supportive communities around the court through shared practices. By drawing on semi-structured interviews, the comparative analysis of the European and Inter-American human rights regime illustrates both the professionalization of communication actors and the evolution of specific communication strategies in times of backlash. The empirical insights derived from semi-structured interviews with communication officials highlight how they have succeeded in expanding their audiences, but struggle with activating communities of practice. Ultimately, the rise of visual media formats and story-telling narratives might be the most promising tool to portray a more positive and engaging image of the institution.

Keywords: loyalty; legitimacy; human rights; courts; communication

I. Introduction: More than press releases – a peek behind the curtains of court communication

In times of backlash, the creation of loyalty becomes paramount to any international institution. Loyal state parties remain supportive of an institution even when it comes with financial and reputational costs. They continue to implement judgements and contribute to the budget – or, in the most extreme cases, fend off attacks to delegitimize or curb the authority of a court together with loyal non-state actors.¹ According to Albert

¹This is generally what is considered backlash: see also Karen J Alter, James T Gathii and Laurence R Helfer, 'Backlash Against International Courts in West, East and Southern Africa: Causes and Consequences'

O. Hirschman's classic theory, it is particularly the factor of loyalty that affects whether a state chooses between voicing its criticism or exiting the institution altogether. In his words, 'loyalty holds exit at bay and activates voice'.²

Loyalty represents the continued commitment to an institution even in the face of challenges.³ It is a form of diffuse support,⁴ which contains a 'reservoir of favorable attitudes or good will that helps members to accept or tolerate outputs to which they are opposed or the effects of which they see as damaging to their wants'.⁵ Loyalty, in this sense, is an indispensable resource for an institution at any time. However, in times of open contestation and during reform processes, a high degree of loyalty by core constituents is crucial for the mere survival of an institution. Against this background, the crucial question remains: How does an institution create loyalty?

This article investigates how the European and the Inter-American human rights regimes have developed communication practices to create loyalty over the last decade. In recent years, both regimes have undergone significant reform processes prompted by outspoken state criticism.⁶ This criticism concerned, on the one hand, the massive backlog in cases and individual applications pending before the European and Inter-American human rights organs, and, on the other, the level of domestic interference of human rights bodies. The proposed changes were thus aimed at strengthening institutional efficiency and increasing elements of subsidiarity. Yet, in the shadow of official reforms – such as the Interlaken Process of the European Court of Human Rights (ECtHR)⁷ and the 'Strengthening Process' of the Inter-American Commission on Human Rights (IACHR)⁸ – the reform of communication and outreach practices has been subtler but no less transformative. In the midst of this reform, new institutional actors have risen to prominence: communication departments and communication professionals.

Their ascent signifies a transformation in how international courts relate to the public, thereby squashing the traditional conceptualization of judgments and judges as the exclusive vehicle of court communication.⁹ Today, communication departments exercise essential institutional functions on a daily basis: they inform the public about judgments

(2016) 27 *European Journal of International Law* 293; Mikael Rask Madsen, Pola Cebulak and Micha Wiebusch, 'Backlash against International Courts: Explaining the Forms and Patterns of Resistance to International Courts' (2018) 14 *International Journal of Law in Context* 197; Ximena Soley and Silvia Steininger, 'Parting Ways or Lashing Back? Withdrawals, Backlash and the Inter-American Court of Human Rights' (2018) 14 *International Journal of Law in Context* 237.

²Albert O Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Harvard University Press, Cambridge, MA, 1970) 78.

³For a recent analysis of the various conceptualization of loyalty in international politics, see also Lauge N Skovgaard Poulsen, 'Loyalty in World Politics' (2020) 26 *European Journal of International Relations* 1156.

⁴David Easton, 'A Re-assessment of the Concept of Political Support' (1975) 5 *British Journal of Political Science* 435.

⁵David Easton, *A Systems Analysis of Political Life* (Wiley, Chichester, 1965) 273.

⁶See also Isabela Garbin Ramanzini and Ezgi Yildiz, 'Revamping to Remain Relevant: How Do European and Inter-American Human Rights Systems Adapt to Challenges?' (2020) 12(3) *Journal of Human Rights Practice* 768.

⁷ECtHR, Interlaken Process, available at: <<https://www.echr.coe.int/Pages/home.aspx?p=basictexts/reform&c=>>>.

⁸IACHR, Strengthening Process, available at: <<https://www.oas.org/en/iachr/mandate/strengthening.asp>>.

⁹In this development, international courts lag behind their domestic counterparts; see also Ruth Bader Ginsburg, 'Communicating and Commenting on the Court's Work' (1995) 83 *Georgetown Law Journal* 2119.

and decisions; they educate on the institution's mission; they tout the successes and create awareness of the challenges faced by the institution. They frame how the institution is portrayed, thus highlighting its value and importance to different stakeholders, but also strategically legitimize the institutional activities among the general public. By relying on interviews with communication officials of core departments of the European and the Inter-American human rights regime, this article traces the move from the traditional mode of one-way communication via press releases to the development of modern, multifaceted and interconnected two-way communication strategies. The latter goes hand in hand with the professionalization of communication officials, the enlargement of audiences and activation of communities of practice, and the development of new instruments – in particular, social media and visual formats.

The empirical analysis of the communication practices of the European and the Inter-American human rights regimes aims to contribute to the research in three respects. First, it analyses, for the first time, how the ECtHR and the Inter-American Human Rights Court (IACtHR) communicate, thereby complementing studies on the communication practices of domestic,¹⁰ regional¹¹ and international courts.¹² In contrast to most empirical studies on judicial communication, which have focused on single instruments such as press releases¹³ or social media,¹⁴ it analyses the development of communication instruments holistically. Second, it tests the theoretical framework of communication practices as tools for the strategic legitimation of international institutions¹⁵ by going above the micro-level of court communications. In both regimes, the life-cycle of human rights judgments extends beyond the press department of the courts. In the European system, judgments are also communicated by the Council of Europe (CoE) and their implementation is monitored by a special department to the Committee of Ministers (CM). The Inter-American system closely links the Court to the IACHR, which is monitoring situations, rendering individual decisions and funnelling cases to the Court. The insights of this article are based upon interviews conducted with experts from all aforementioned bodies to analyse those communication practices comprehensively. Third, by building on the insights of communication 'insiders', the

¹⁰Gregory A Caldeira and James L Gibson, 'The Etiology of Public Support for the Supreme Court' (1992) 36 *American Journal of Political Science* 635; Jane Johnston, 'Courts' Use of Social Media: A Community of Practice Model' (2017) 11 *International Journal of Communication* 669.

¹¹Julian Dederke, 'Contestation, Politicization, and the CJEU's Public Relations Toolbox: Judgments of the Court of Justice of the EU in Their Public and Political Context' (ETH Zürich 2020).

¹²Jillian Dobson and Sofia Stolk, 'The Prosecutor's Important Announcements; the Communication of Moral Authority at the International Criminal Court' (2020) 16 *Law, Culture and the Humanities* 391; Christine Schwöbel-Patel, *Marketing Global Justice: The Political Economy of International Criminal Law* (Cambridge University Press, Cambridge, 2021).

¹³Philipp Meyer, 'Judicial Public Relations: Determinants of Press Release Publication by Constitutional Courts' (2019) 44(4) *Politics* 477.

¹⁴Dederke (n 11) Ch 6.

¹⁵Klaus Dingwerth et al, 'Many Pipers, Many Tunes? Die Legitimationskommunikation Internationaler Organisationen in Komplexen Umwelten' (2014) 49 *Politische Vierteljahresschrift. Sonderheft* 49; Matthias Ecker-Ehrhardt, 'Self-Legitimation in the Face of Politicization: Why International Organizations Centralized Public Communication' (2018) 13 *Review of International Organizations* 519; Matthias Ecker-Ehrhardt, 'International Organizations "Going Public"? An Event History Analysis of Public Communication Reforms 1950–2015' (2018) 62 *International Studies Quarterly* 723; Jennifer Gronau and Henning Schmidtke, 'The Quest for Legitimacy in World Politics: International Institutions' Legitimation Strategies' (2015) 42 *Review of International Studies* 535.

article sheds light upon communication professionals as hidden or ‘unseen actors’ of international courts.¹⁶ Empirical studies of communication practices of courts have focused primarily on judges and their participation in public debate.¹⁷ The role, contribution and importance of communication professionals to the judicial and quasi-judicial bodies have so far been neglected in scholarship.¹⁸ In contrast to the media activities of judges,¹⁹ the strategies of communication officials have so far not triggered significant public or institutional scrutiny, even though they might frame the public image of an institution more permanently. This is surprising given that empirical studies have demonstrated the importance of institutional bureaucracies,²⁰ such as strong secretariats, for the survival of an institution.²¹

This article is divided into four sections. First, I will expound on the concept of institutional loyalty (section II). I will then illustrate the underlying mechanisms of institutional communication practices (section III) before comparatively analysing the practice of communication in the European and Inter-American human rights regimes over the last decade (section IV). Ultimately, I argue that communication practices are an essential instrument for ensuring the resilience of the European and Inter-American human rights regime, in particular in times of increasing contestation and state backlash (section V).²²

¹⁶Freya Baetens (ed), *Legitimacy of Unseen Actors in International Adjudication* (Cambridge University Press, Cambridge, 2019); Cosette D Creamer and Zuzanna Godzimirska, ‘Trust in the Court: The Role of the Registry of the European Court of Human Rights’ (2019) 30 *European Journal of International Law* 665.

¹⁷Jannika Jahn, ‘Die Medienöffentlichkeit Der Rechtsprechung Und Ihre Grenzen’ (Ruprecht-Karls Universität, Heidelberg, 2019).

¹⁸This is astonishing even in research on the sociology of international courts: see Antoine Vauchez and Bruno de Witte, *Lawyering Europe: European Law as a Transnational Social Field* (Hart, Oxford, 2013).

¹⁹See, for instance, United Nations Office on Drugs and Crime, ‘Non-Binding Guidelines on the Use of Social Media by Judges’, available at: <https://www.unodc.org/res/ji/import/international_standards/social_media_guidelines/social_media_guidelines_final.pdf>.

²⁰Ingo Venzke, ‘International Bureaucracies from a Political Science Perspective: Agency, Authority and International Institutional Law’ (2008) 9 *German Law Journal* 1401; Jens Steffek, ‘Max Weber, Modernity and the Project of International Organization’ (2016) 29 *Cambridge Review of International Affairs* 1502; Jens Steffek, ‘International Organizations and Bureaucratic Modernity’, in Richard Ned Lebow (ed), *Max Weber and International Relations* (Cambridge University Press, Cambridge, 2017).

²¹Maria Josepha Debre and Hylke Dijkstra, ‘Institutional Design for a Post-Liberal Order: Why Some International Organizations Live Longer than Others’ (2020) 27(1) *European Journal of International Relations* 311; Creamer and Godzimirska (n 16).

²²For the emerging literature on the resilience strategies of international courts, see Basak Çali, ‘Coping with Crisis: Whither the Variable Geometry in the Jurisprudence of the European Court of Human Rights’ (2018) 35 *Wisconsin International Law Journal* 237; Salvatore Caserta and Pola Cebulak, ‘Resilience Techniques of International Courts in Times of Resistance to International Law’ (2021) 70 *International and Comparative Law Quarterly* 737; Elias Dinas and Ezequiel Gonzalez-Ocantos, ‘Defending the European Court of Human Rights: Experimental Evidence from Britain’ [2020] *European Journal of Political Research* 1475; Andreas Follesdal, ‘Independent Yet Accountable: Stress Test Lessons for the European Court of Human Rights’ (2017) 24 *Maastricht Journal of European and Comparative Law* 484; Ezequiel Gonzalez-Ocantos and Wayne Sandholtz, ‘International Courts and Their Sources of Resilience: The Case of the Inter-American System’ 47(1) *Law & Social Inquiry* 95; Larry Helfer, ‘Populism and International Human Rights Institutions: A Survival Guide’, in Gerald Neuman (ed), *Human Rights in a Time of Populism: Challenges and Responses* (Cambridge University Press, Cambridge, 2020); Madsen, Cebulak and Wiebusch (n 1); Soley and Steininger (n 1).

II. Loyalty

Loyalty matters. As state parties are increasingly re-evaluating their commitment to institutional membership, I argue that we should turn our attention to the concept of institutional loyalty. The concept of loyalty is a fuzzy one. Philosophers, psychologists, economists, sociologists and religious scholars have long disagreed on the nature and definition of loyalty,²³ but share the understanding that loyalty is an inherently natural element to human life. It can be defined as ‘a practical disposition to persist in an intrinsically valued (though not necessarily valuable) associational attachment, where that involves a potentially costly commitment to secure or at least not to jeopardize the interests or well-being of the object of loyalty’.²⁴ In legal-institutionalist scholarship, the dynamics of loyalty have often been overshadowed by the voice-exit equilibrium.²⁵ In the following section, I will first develop a definition of institutional loyalty and, in a second step, analyse how communication can act as an instrument for international courts to generate institutional loyalty.

Defining institutional loyalty

I posit that the concept of loyalty is the starting point for a deeper analysis of instruments, which an institution might deploy to counteract state backlash. Loyalty becomes apparent in a situation of institutional conflict or crisis when an institution faces heightened politicization and criticism in mass media. I argue that loyalty is a particularly helpful concept to understand why state parties, who are critical of an institution, not only refuse to leave the institution but might even be actively involved in its reform. Since the concept is under-developed in institutionalist scholarship, I will give it clearer contours by relying on a classic piece of scholarship: Albert O. Hirschman’s *Exit, Voice, Loyalty*.

According to Hirschman, *institutional loyalty* emerges out of the combination of exit and voice options. However, he does not offer a deeper analysis of loyalty’s underlying mechanisms. For him, loyalty remains primarily an intervening factor, which reduces the likelihood of exit and exacerbates the importance of voice. It is the main explanation of why critical state parties not only refuse to leave the institution, but might even become actively involved in reforming it. It can be defined as ‘a special attachment to an organization’,²⁶ which impedes members from leaving an institution so ‘they will stay on longer than they would ordinarily, in the hope, or rather, reasoned expectation that improvement or reform can be achieved “from within”’.²⁷

This special attachment to an institution can also be understood as a type of *diffuse support*, a concept that has a long pedigree in systems theory. While David Easton refrains from using the word ‘loyalty’, he characterizes diffuse support in similar terms as a ‘form of a generalized attachment’ to the idea or representation of what an institution is, not what it does.²⁸ Diffuse support derives from socialization or direct engagement with the

²³Josiah Royce, *The Philosophy of Loyalty* (Macmillan, London, 1908).

²⁴John Kleinig, ‘Loyalty’, in Edward N Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Winter 2017), available at: <<https://plato.stanford.edu/archives/win2017/entries/loyalty>>.

²⁵See, for instance, JHH Weiler, ‘The Transformation of Europe’ (1991) 100 *The Yale Law Journal* 2403.

²⁶Hirschman (n 2) 77.

²⁷Ibid 79.

²⁸Easton (n 4) 444.

institution over a long period of time.²⁹ In contrast to specific support, diffuse support is unrelated to specific outputs or performances of the institution. 'Whereas specific support is extended only to the incumbent authorities, diffuse support is directed towards offices themselves as well as towards their individual occupants. More than that, diffuse support is support that underlies the regime as a whole and the political community.'³⁰ Like Hirschman's concept of loyalty, the existence of diffuse support explains the continued membership of a state in an institution despite difficult circumstances; it is a 'reservoir of favourable attitudes or good will that helps members to accept or tolerate outputs to which they are opposed or the effects of which they see as damaging to their wants'.³¹ While there is significant overlap of both concepts, diffuse support remains focused on broad, encompassing positive attitudes among the general population. The concept of loyalty as understood by Hirschman, however, focuses on the moment of crisis. It can also be applied only to particular segments of the political community. For instance, even when there is not sufficient diffuse support among the general public, the existence of loyalty towards the institution among a small number of stakeholders might prevent the exit of a state. Hence, the two concepts are not mutually contingent and loyalty holds more potential to uncover the multi-level and multi-stakeholder social environment of international institutions.

Compliance is not an essential factor to account for the existence of loyalty. While a positive belief system on the value of an institution certainly facilitates compliant behaviour, neither Hirschman nor Easton considers it relevant to account for the degree of loyalty as diffuse support. At least theoretically, the decision to obey an institution 'is conceptually independent of whether an institution is judged to have the authority to make a decision'.³² Compliant behaviour might be an indicator of loyalty, but in order to understand whether compliance, or non-compliance for that case, is motivated by loyalty, appropriate contextual information is required. According to Easton, 'not all compliance need reflect supportive sentiments; not all violations of rules need be non-supportive. A number of permutations and combinations is possible.'³³ Shifting the focus from the artificial binary distinction of compliance versus non-compliance to the dynamics of loyalty creation allows us to identify the critical junctures in the relationship between state parties and institutions.

For many institutionalist scholars, the concept of loyalty is heavily intertwined with the idea of legitimacy, in particular sociological legitimacy.³⁴ This source of legitimacy, also called popular or public legitimacy, differs from traditional normative accounts of legitimacy as its primary reference is the social group. While the former considers the exercise of authority legitimate as long it can be normatively justified, the latter argues that 'a court enjoys institutional legitimacy as long as the public awards it support over a

²⁹Ibid 446.

³⁰Ibid 445.

³¹Easton (n 5) 273. See also James L Gibson and Gregory A Caldeira, *Citizens, Courts, and Confirmations* (Princeton University Press, Princeton, NJ, 2009) 39.

³²James L Gibson and Gregory A. Caldeira, *Citizens, Courts, and Confirmations* (Princeton University Press, Princeton, NJ, 2009) 41.

³³Easton (n 4) 454.

³⁴Or Bassok, 'The Sociological-Legitimacy Difficulty' (2011) 26 *Journal of Law & Politics* 239; Gibson and Caldeira (n 31); Nienke Grossmann, 'Legitimacy and International Adjudicative Bodies' (2009) 41 *The George Washington International Law Review* 107; Erik Voeten, 'Public Opinion and the Legitimacy of International Courts' (2013) 14(2) *Theoretical Inquiries in Law* 411.

relatively long period of time'.³⁵ It describes 'the *beliefs* among the mass public that an international court has the right to exercise authority in a certain domain'.³⁶ This shift, from traditional forms of legitimacy to sociological legitimacy, was most prominently studied at the US Supreme Court,³⁷ but is increasingly also observed in studies of international courts.³⁸ Most importantly, the scholarship on sociological legitimacy has highlighted how strategies of legitimation are able to connect the institutions with those various audiences.³⁹ Legitimation practices are thus employed by an institution to reconstruct the purpose of the institution, to explain and justify its actions, and to emphasize its contribution.⁴⁰ Loyalty should thus not be understood in contrast to the study of legitimacy of international courts, but rather as an expansion of it.

The main merit of using the concept of loyalty for the study of international courts lies in its interrelational character. It builds on the insights derived from legitimacy research and takes loyalty as a starting point to shift the focus of investigation. Instead of asking unilateral questions such as 'Does this institution enjoy legitimacy?' or 'Do you consider judgment X legitimate?', loyalty poses reciprocal questions with at least two relevant actors, namely 'Who can be loyal, and to whom?'⁴¹ Loyalty, in this sense, helps to understand relationships between two actors. For the subject of loyalty, a variety of actors comes to mind. For international courts, one could consider state parties, but also domestic compliance partners such as bar associations, judges, and civil society. All those actors can be loyal to an international court and express this loyalty in a variety of ways: states can directly implement judgments, domestic judges can integrate the jurisprudence of international courts, while civil society, academics, journalists, human rights defenders and the general public can disseminate judgments in the national sphere, pressure state authorities to comply with them and defend the international courts against populist attacks.

This also means that, in contrast to legitimacy, the object of loyalty must be material. One can be loyal towards an individual, a community, a state or an organization, but not to ideas. Of course, the relational character of loyalty does not mean that those material objects are unconnected to underlying sentiments – or, as Lauge N. Skovgaard Poulsen highlights:

Loyalty to a state or an ally, for instance, will often be partially rooted in the ideas or principles that state or ally signify. Clearly, ideas and principles shape and interact with inter-relational loyalty, but the basic building block for loyalty ties remains two actors in a relationship with each other.⁴²

³⁵Or Bassok, 'The Changing Understanding of Judicial Legitimacy', in Martin Scheinin, Helle Krunke and Marina Aksenova (eds), *Judges as Guardians of Human Rights and Constitutionalism* (Edward Elgar, Cheltenham, 2016).

³⁶Voeten (n 34) 414, author's italics.

³⁷Bassok (n 35); Gibson and Caldeira (n 31).

³⁸Harlan Grant Cohen and others, 'Legitimacy and International Courts – a Framework', in Nienke Grossman et al. (eds), *Legitimacy and International Courts* (Cambridge University Press, Cambridge, 2018).

³⁹Zuzanna Godzimirska, 'The Legitimation of Global Courts: An Empirical, Interdisciplinary Study of the Discursive Legitimation of the International Court of Justice and the World Trade Organization's Appellate Body in the Courts' Interface with States', PhD thesis, University of Copenhagen, 2018.

⁴⁰Theo Van Leeuwen, 'Legitimation in Discourse and Communication' (2007) 1 *Discourse & Communication* 91.

⁴¹Poulsen (n 3) 1158.

⁴²Ibid 1160.

The interrelational character also necessitates interactive practices. This means that legitimization practices from the institution *vis-à-vis* external actors depict only one side for the creation of loyalty, namely how the institution aims to create a positive image among its constituents. Practices for creating, maintaining or regaining of loyalty (*loyalitification*), on the other hand, also include how those constituents react to the institution, irrespective of whether those are state or non-state actors.⁴³ So how does an international court create loyalty?

Creating institutional loyalty

The mechanisms through which institutional loyalty is generated are complex and require further exploration. Most importantly, since Hirschman and Easton published their work, the public sphere in which international institutions are embedded has changed considerably. In the contemporary information age, media outlets and communication channels have multiplied and now dominate the public sphere.⁴⁴ Whereas the prestige of the institution and the state's length of membership might have been sufficient for loyalty previously, states are now more openly questioning their commitments. In this situation, it is paramount to shift away from solely attempting to generate loyalty at the state level and to create loyalty within society. A prerequisite condition to create this kind of loyalty and form a positive belief system is information about the court and its activities. A positive view of an institution in public opinion might deter state authorities from openly attacking the institution, but is of little use when the relevant domestic compliance partners are not actively pressuring state authorities to remain committed to the institution.⁴⁵ From the research on domestic and international courts, a two-step approach for the creation of institutional loyalty can be deduced: first, the generation of awareness about the existence of the court among the general public; and second, the establishment of communities of practice around the court through mutual, active engagement.

For a long time, international courts were far removed from the domestic public discourse. Like *Sleeping Beauty*,⁴⁶ they were based in faraway lands, guarded by procedural requirements, and showed almost no significant activity. Hence, as a first step to creating loyalty, a court needs to foster societal awareness about the institution by informing the general public about its mandate and relevance. The assumption is that a positive view about the court in domestic public opinion poses a major hurdle for delegitimation discourses by critical non-state actors or state authorities' attempts to withdraw from the institutions – that is, it ensures that states remain loyal. In contrast, if the public is unaware of the existence of the court, this facilitates governments leaving or undermining it. The knowledge about international courts has changed considerably over

⁴³I am grateful to Zuzanna Godzimirska for this point.

⁴⁴Robert O Keohane and Joseph S Nye, 'Power and Interdependence in the Information Age' (1998) 77 *Foreign Affairs* 81.

⁴⁵Erik Voeten, 'Populism and Backlashes Against International Courts' (2020) 18 *Perspectives on Politics* 407.

⁴⁶Jochen Abr Frowein, 'European Integration Through Fundamental Rights' (1984) 18 *University of Michigan Journal of Law Reform* 5. Cf. Ed Bates, *The Evolution of the European Convention on Human Rights: From Its Inception to the Creation of a Permanent Court of Human Rights* (Oxford University Press, Oxford, 2010).

the last two decades as the increasing proliferation of international courts⁴⁷ and the judicialization of mega-political issues⁴⁸ have put the activities of international courts on the front pages of mass media all over the world. While this has raised their profile among the general public, they only have limited capacity to actively influence public opinion.⁴⁹ Indeed, their counter-majoritarian nature makes them especially susceptible to populist mobilization narratives against them.⁵⁰

This is why, in a second step towards generating loyalty, international courts have turned toward their core constituents. Courts not only need the general public to be aware of their existence; they also require active supporters who bolster their activities and call for state parties to uphold their commitments such as domestic judges, human rights lawyers and civil society. Very often, those supporters can be found in the epistemic communities surrounding the court.⁵¹ Throughout the last decades, those communities have not only grown significantly in size, but have also become more diverse. They are embedded in complex informal institutional ecosystems, which are not necessarily unified in their approach towards the institution.⁵²

In particular for human rights courts, enjoying popular legitimacy among domestic political elites and legal actors such as judges, bar associations, human rights lawyers, journalists and civil society is crucial.⁵³ While scholars have usually studied the influence of those actors as compliance constituents,⁵⁴ their real impact goes far beyond the implementation of judgments. In the best case, they can form a community of practice⁵⁵ that is united through 'common practices as well as a shared understanding of the social meaning of those practices'.⁵⁶ Armin von Bogdandy and René Uruña have applied this concept to account for the strong Latin human rights community that was

⁴⁷Cesare PR Romano, 'The Proliferation of International Judicial Bodies: The Pieces of Puzzle' (1999) 31 *New York University Journal of International Law and Politics* 709; Karin Oellers-Frahm, 'Multiplication of International Courts and Tribunals and Conflicting Jurisdiction: Problems and Possible Solutions' (2001) 5 *Max Planck Yearbook of United Nations Law* 67.

⁴⁸Ran Hirschl, 'The Judicialization of Mega-Politics and the Rise of Political Courts' (2008) 11 *Annual Review of Political Science* 93.

⁴⁹Malcolm Langford, 'International Courts and Public Opinion' 28 February 2018, <http://doi.org/10.2139/ssrn.3131863>. Naturally, there is also the threat that courts take cues from public opinion and adapt their jurisprudence accordingly, see also Barry Friedman, *The Will of the People: How Public Opinion Has Influenced the Supreme Court and Shaped the Meaning of the Constitution* (Farrar, Straus and Giroux, New York, 2009).

⁵⁰Voeten (n 45).

⁵¹Peter M Haas, 'Introduction: Epistemic Communities and International Policy Coordination' (1992) 46 *International Organization* 1.

⁵²Kenneth W Abbott, Jessica F Green and Robert O Keohane, 'Organizational Ecology and Institutional Change in Global Governance' (2016) 70 *International Organization* 247.

⁵³Basak Cali, Anne Koch and Nicola Bruch, 'The Legitimacy of Human Rights Courts: A Grounded Interpretivist Analysis of the European Court of Human Rights' (2013) 35 *Human Rights Quarterly* 955; Ximena Soley, 'The Crucial Role of Human Rights NGOs in the Inter-American System' (2019) 113 *American Journal of International Law Unbound* 355.

⁵⁴Karen J Alter, *The New Terrain of International Law: Courts, Politics, Rights* (Princeton University Press, Princeton, NJ, 2014).

⁵⁵Etienne Wenger, *Communities of Practice: Learning, Meaning, and Identity* (Cambridge University Press, 1998).

⁵⁶Armin von Bogdandy and René Uruña, 'International Transformative Constitutionalism in Latin America' (2020) 114 *American Journal of International Law* 403. For an in-depth analysis of the emergence of the Latin American human rights community, see also Ximena Soley, 'The Transformation of the

formed around the Inter-American human rights regime.⁵⁷ This community then acts as a bulwark against backlash and defends the IACtHR against heavy criticism and any attempts to undermine it.⁵⁸ In the vocabulary of Hirschman, the loyalty exhibited by communities of practice can reduce state exit⁵⁹ as well as hinder attempts to curtail institutional competencies via reform processes.⁶⁰ This leaves the question of how to build such loyal communities. By putting shared practices at the centre of a community, von Bogdandy and Urueña shift the focus from a transactional concept of mutual influence of courts and public opinion to an interactional one involving a variety of core constituents. Shared practices require the active interaction of courts with state authorities and non-state actors.⁶¹ It requires courts to reach out and actively engage with their constituents.

This article investigates how communication practices can generate both awareness among the general public and interaction with communities of practice – and thus, ultimately, loyalty. But why did institutional communication practices become so important in recent decades?

III. Communication

The active employment of communication practices is key for the creation of loyalty. Throughout the last decade, international courts have developed a wide range of communication strategies and instruments, which will be traced in the following chapter. First, I will illustrate the shift in institutional communication by international courts from passive accessibility to active self-legitimation. Second, I will demonstrate how and why communication practices became an indispensable organizational resource in times of backlash, as they allow for mutual interaction.

Moving from accessibility to loyalty creation

International institutions have for a long time employed strategies of public diplomacy⁶² – that is, activities that aim at ‘promoting better understanding and sustainable relationship with target audiences’ both inside and outside the institution.⁶³ For international

Americas. The Rise of Human Rights and the Inter-American System’ (Johann Wolfgang Goethe-Universität, Frankfurt am Main, 2021).

⁵⁷Ibid.

⁵⁸Ibid; see also Soley and Steininger (n 1).

⁵⁹Joost Pauwelyn and Rebecca J Hamilton, ‘Exit from International Tribunals’ (2018) 9 *Journal of International Dispute Settlement* 679.

⁶⁰Alter, Gathii and Helfer (n 1).

⁶¹See also Theresa Squatrito, ‘International Courts and the Politics of Legitimation and De-Legitimation’ (2019) 33 *Temple International and Comparative Law Journal* 298.

⁶²Nicholas J Cull, ‘Public Diplomacy: Taxonomies and Histories’ (2008) 616 *The Annals of the American Academy of Political and Social Science* 31; Nicholas J Cull, ‘Public Diplomacy before Gullion: The Evolution of a Phrase’, in Nancy Snow and Philipp M Taylor (eds), *Routledge Handbook of Public Diplomacy* (Routledge, London, 2008), 13–18.

⁶³Zhikica Zach Pagovski, ‘Public Diplomacy of Multilateral Organizations: The Cases of NATO, EU, and ASEAN’ [2015] *CPD Perspectives on Public Diplomacy* 5.

courts, concerns of neutrality, impartiality and the authority of the office make them more sceptical towards openly embracing those instruments. Yet international courts have always engaged in outreach strategies, in particular the off-the-bench activities of international judges.⁶⁴ In both the European and Inter-American human rights regime, institutional actors engage in training and coordination programs with domestic partners from state authorities, legal practice, education and academia.⁶⁵ They also have long-standing internship and visiting programs, and facilitate a cross-regional human rights network – for instance, through the annual regional human rights courts meeting.⁶⁶ All these activities also serve to improve the sociological legitimacy of the court. This does not mean that they are always successful in doing so – on the contrary, those activities can be highly controversial, such as when ECtHR President Robert Spano visited Turkey in September 2020 and accepted an honorary degree from Istanbul University.⁶⁷

Among those manifold instruments of public diplomacy, the communication activities of international courts have not yet attracted much scholarly attention. In contrast to the public and media activity of international judges, the communication of international courts is usually neither regulated nor scrutinized. This can be explained by the traditional perception of communication as a mere instrument of accessibility to the public. For most scholars and practitioners of international courts, the communication of international courts is traditionally embedded in the idea of transparency and the open court principle.⁶⁸ Even though specific arbitration proceedings are infamously closed, most international courts feature public hearings that allow for either direct physical access or indirect mediated access through the invitation of the press, the hosting of live streams and so on.⁶⁹ However, this is only a fraction of the institutional communication in which international courts engage.

While strategies of public diplomacy have long been a staple of international institutions, the use of professional communication is a more recent phenomenon. It is in line with a general transformation of the public sphere, in which communication became an essential resource of power. The media democracy, which Jürgen Habermas had already described in the early 1960s, combined with the massive surge of digitalization, has accelerated the information flows to an unprecedented level in the last decade. Crucially, those information flows are not a one-way street but come from both directions. This emphasizes the essential need for mediated political information, and consequently institutions to adopt professional communication practices that can formulate targeted

⁶⁴Theresa Squatrito, 'Judicial Diplomacy: International Courts and Legitimation' (2021) 47 *Review of International Studies* 64.

⁶⁵See the HELP (Human Rights Education for Legal Professionals) programme at the Council of Europe and the various education activities of the IACtHR, available at: <https://www.corteidh.or.cr/fortalecimiento_institucional.cfm?lang=en>.

⁶⁶See also the declarations of San Jose (2018) and Kampala (2019), available at <<https://www.echr.coe.int/Pages/home.aspx?p=court/dialoguecourts/regionalcourts&c=>>>.

⁶⁷Dilek Kurban, 'Why Robert Spano Should Resign as President of the ECtHR', *Verfassungsblog*, 9 September 2020).

⁶⁸Andrea Bianchi and Anne Peters (eds), *Transparency in International Law* (Cambridge University Press, Cambridge, 2013).

⁶⁹Ana Koprivica Harvey, 'Public and Media Access to Courtrooms: International Courts and Tribunals', in H el ene Ruiz Fabri (ed), *Max Planck Encyclopedia of International Procedural Law* (Oxford University Press, Oxford, 2019), available at: <<https://ssrn.com/abstract=3376502>>.

information and remain responsive.⁷⁰ Only those are able to generate a feedback loop between an informed elite discourse and a responsive civil society. This signifies an evolution from public diplomacy as an instrument of strategic legitimation to the implementation of communication practices for loyalty creation.

Nowadays, international courts are employing multiple communication strategies to interact with the public.⁷¹ They have full-time press officers, who craft media statements, provide summaries, are active on social media and give interviews to the press. Similar to international institutions,⁷² they have slowly but significantly developed their communication capacities, thus shifting from a passive approach to accessibility to active management of communication instruments. This does not necessarily mean a quantitative increase in the output of court communication.⁷³ Political science research has demonstrated that institutions increasingly use communication as an instrument to strategically legitimize themselves. They thereby create an ‘interactive political process ... to establish and maintain a reliable basis of diffuse support for a political regime by its social constituencies’.⁷⁴ This development implies a shift from the relatively passive provision of transparency and public access to international decision-making to international institutions becoming active interlocutors in public debate. Interestingly, it is not the judges, or even the President, who officially represents the court in public,⁷⁵ but rather bureaucratic actors who have spearheaded and were empowered by this process.

Communication practices in times of backlash

Naturally, communication activities are not the only instrument available to human rights courts and commissions to generate loyalty in times of backlash. Scholars have highlighted, among other things, the importance of well-reasoned judgments,⁷⁶ transparency in the election of judges and commissioners⁷⁷ and the participation of non-state actors.⁷⁸ While those are valuable strategies, their implementation requires significant political commitment over a long period of time to change public opinion. Communication instruments, however, can quickly extinguish a (metaphorical) fire before it

⁷⁰See also the contributions in Corneliu Bjola and Ruben Zaiotti (eds), *Digital Diplomacy and International Organisations. Autonomy, Legitimacy and Contestation* (Routledge, London, 2021).

⁷¹See Jane Johnston, ‘Three Phases of Courts’ Publicity: Reconfiguring Bentham’s Open Justice in the Twenty-First Century’ (2018) 14 *International Journal of Law in Context* 525.

⁷²See Ecker-Ehrhardt, ‘International Organizations ‘Going Public’? An Event History Analysis of Public Communication Reforms 1950–2015’ (n 15).

⁷³Indeed, isolated instances such as the CJEU’s press release following the controversial SPSP judgment of the German Constitutional Court can also attract significant attention: see Court of Justice of the European Union, Press Release No. 58/20, Luxembourg, 8 May 2020, available at: <<https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-05/cp200058en.pdf>>. This was the CJEU’s first press release in response to a domestic court’s judgment in its history.

⁷⁴Gronau and Schmidtke (n 13) 539–40.

⁷⁵See, for instance, ECtHR Rules of the Court, Rule 9; Rules of Procedure of the Inter-American Court of Human Rights, Article 4.

⁷⁶Calì, Koch and Bruch (n 53) 982.

⁷⁷Michal Bobek (ed), *Selecting Europe’s Judges: A Critical Review of the Appointment Procedures to the European Courts* (Oxford University Press, Oxford, 2015).

⁷⁸Elif Erken, NGO in the Implementation Process, ECHR Review (forthcoming); Ezgi Yildiz, ‘Enduring Practices in Changing Circumstances: A Comparison of the European Court of Human Rights and the Inter-American Court of Human Rights’ (2020) 34(2) *Temple International and Comparative Law Journal* 309.

triggers a full-blown backlash and neither require massive institutional changes nor treaty-based amendments. It is therefore not surprising that communication practices have been expanded.

The politicization of international institutions in recent years further fuelled the evolution and expansion of communication activities and the professionalization of communication departments.⁷⁹ In an empirical study of 48 international organizations from 1950 to 2015, Matthias Ecker-Erhardt found that rising scrutiny of international institutions by transnational civil society is the causal factor for the strengthening of capacities:⁸⁰

Legitimacy concerns helped drive IOs to develop their public-communication capacities. Growing politicization means that IOs face an increasing need to justify their behaviour, particularly in the face of protests or scandals. In response, IOs reformed their public communication as a means to more effectively manage their image with stakeholders and the general public.⁸¹

In a situation of backlash:

International institutions themselves are taking an increasing interest in the management of their legitimacy. They employ legitimation strategies, including communication and symbolic policies as well as institutional and organizational reforms, to convince different ‘social constituenc[ies] of legitimation’ of their right to rule.⁸²

International courts exhibit similar developments to those observed in international organizations. As they face a significant amount of politicization – even a full-blown backlash in some cases – their increasing need for self-legitimation is reflected in their communication practices. It is obvious, even for non-experts, that international courts today do more than issue press releases. They have opened up to the public by enabling live streams, publishing judgments instantly on an accessible online platform and even featuring various social media accounts, mainly on Twitter and Facebook.⁸³

Against this background, I argue that the function of international courts’ adoption of communication practices is not only self-legitimation but also loyalty creation. This explains their development from instruments of one-way communication to two-way communication that allows for mutual interaction. For instance, Jane Johnston’s research on domestic courts in the United States and Australia has demonstrated that two-way communication interfaces such as social media are particularly useful to engage with communities of practice.⁸⁴ As analysed by Pablo Barberá et al., the courts’ adoption of social media communication follows a double-pronged legitimation

⁷⁹Dederke (n 11); Matthias Ecker-Erhardt, ‘Wie und warum kommunizieren Internationale Organisationen? Zum problematischen Verhältnis von Politisierung und Öffentlichkeitsarbeit’ (2020) 27 *Zeitschrift für Internationale Beziehungen* 37.

⁸⁰Ecker-Erhardt, ‘Self-Legitimation in the Face of Politicization’ (n 15).

⁸¹Ecker-Erhardt, ‘International Organizations “Going Public”?’ (n 15) 733.

⁸²Gronau and Schmidtke (n 15) 536.

⁸³See, for instance, Pablo Barberá, Juan A Mayoral and Zuzanna Godzimirska, ‘Courting the Public? The Strategic Use of Social Media by International Courts’, presentation to ECPR General Conference, Hamburg, 2019, available at: <<https://ecpr.eu/Events/Event/PaperDetails/42593>>; Dederke (n 11).

⁸⁴Johnston (n 10).

strategy.⁸⁵ On the one hand, international courts attempt to gain more legitimacy by informing the general public about the work and mission of the courts, thus counteracting the lack of knowledge or general awareness of its existence or activities; on the other hand, international courts also strive to counteract the de-legitimation strategies and misinformation circulated by populist and other political actors.

By actively pursuing public communication, international institutions can thus take active charge of their public image and respond to their critics. This proactive communication policy empowers the institution to promote a carefully crafted public image even at the expense of silencing critical voices.⁸⁶ Communication practices must thus not be understood as purely informative messages; instead, they are instruments to monitor, reframe and influence the public debate to create loyalty among its constituents. By adopting a variety of media instruments, international institutions participate in the 'market for loyalty', which means they strategically create narratives of social cohesion and identity to attract potential 'buyers', namely 'the citizens, subjects, nationals, consumers- recipients of the packages of information, propaganda, advertisements, drama, and news propounded by the media'.⁸⁷ To stay with the market analogy of Monroe Price, the 'buyers' pay for this transaction with a variety of immaterial activities – for instance, being obedient *vis-à-vis* the institution or defending it against the pushback of others. Communication, in this sense, is an instrument to strengthen the ties between the institution and the respective audiences in the hope that those audiences will support the institution in conducting its mission, collaborating in its activities and rallying to its defence in times of backlash.

IV. The European and Inter-American human rights regimes

The European and the Inter-American human rights regime faced an unprecedented level of politicization in the last decade. Both regional human rights courts and the Inter-American Commission were targeted by these debates, which unsurprisingly led to a series of reform processes. In some instances, the situation even escalated to outright state backlash – that is, attempts to undermine the authority of the institution.⁸⁸ In this context, loyal communities of practice that came to the defence of the court became paramount. Accordingly, this article assumes that the challenges faced by both regimes throughout the last decade have also influenced their modes of institutional communication.

In the following section, I will investigate the practice of the European and Inter-American human rights regimes in order to assess whether the insights derived from the communication practices of international organizations can be transposed to the judicial and quasi-judicial bodies of both regimes. In order to create loyalty, both regimes would have needed to professionalize their communication actors, as well as pursue communication strategies that can create awareness among the general public and activate communities of practice.

⁸⁵Barberá, Mayoral and Godzimirska (n 83).

⁸⁶Ecker-Ehrhardt, 'Wie und warum kommunizieren internationale Organisationen?' (n 79).

⁸⁷Monroe E Price, 'The Market for Loyalties: Electronic Media and the Global Competition for Allegiances' (1994) 104 *The Yale Law Journal* 667, 669.

⁸⁸See, for instance, Soley and Steininger (n 1).

Research design and methodological remarks

This article adopts an internal perspective on the study of communication practices of both regimes. This means that, instead of analysing the external output of communication practices such as press releases or social media activity, I will focus on highlighting the role of communication officials. By using a qualitative approach, I can identify the underlying rationales and motives that led to the transformation of communication practices in both regimes over the last decade. As communication strategies are not disclosed to the public, interviews with key officials promised to be the most instructive method. This also allowed a comprehensive analysis of communication instruments as opposed to an exclusionary focus on a single instrument. Instead, the focus shifted towards identifying general trends in communication strategies featuring a wide range of instruments; after all, only those have the potential to create long-lasting loyalty among state and non-state actors. However, this research design necessarily limits the results of the empirical study. It is therefore not the purpose of this study to conclusively verify the effectiveness of communication practices.

The empirical insights of this article are based on seven semi-structured interviews with full-time communication officials of the European and Inter-American human rights bodies, which were conducted between April and August 2020. Due to the pandemic, the interviews took place via phone (two) and video technology (five); the latter enabled a verbatim transcription. The interviewees were selected based on their specific job descriptions as mid- and high-level communication officials.⁸⁹ The group of interviewees included officials from the two courts, as well as the IACHR, the Department of Execution at the CM and the CoE. This was necessary due to the strong inter-institutional linkages and workflows between the courts and other institutional bodies. However, to keep the focus on whether communication can create loyalty for international courts, only experts working on the communication of cases and judgments were selected.

The approximately one-hour interviews featured questions derived deductively from the aforementioned research on international organizations, namely organization of the department and personal background, forms of communication, communication strategies and outlook. In order to safeguard the confidentiality of the interviewees, their statements were anonymized in this article. As all the interviewees are currently employed as communication officials, the practices described in this article illustrate a particular period of institutional development, mostly the late 2010s. While this might exclude the historical origins and earlier developments, it puts the current crisis at the centre of the research design.

The professionalization of communication actors

Capacity-building

Over the last decade, all institutional bodies whose officials were interviewed for this piece have developed independent and full-time units, which are in charge of handling the institutional communication. While those teams might organizationally belong to the administrative or secretarial unit, each institution has assigned full-time press officers and communication specialists. Even though the first professional communication efforts at

⁸⁹The interviewees are anonymized in the footnotes: for officials from the European system, the initial E is used, for officials from the Inter-American system, the initials IA are used.

the CoE and the ECtHR have been established in the early 2000s, they have been significantly reformed and expanded in the last decade⁹⁰ and the most recent one, the Communication Department at the IACtHR, was only established in January 2020.⁹¹ This form of capacity-building is a crucial step for developing professional institutional communication since it allows institutions to promote long-term strategies beyond the daily routine of court-based activities. For human rights bodies, which are generally underfunded and overworked, it is particularly difficult to establish something as costly as a communication department. Political, organizational and financial resources are required to not only create professional communication, but also maintain it in the long term.

Establishing a separate communication department requires influential leadership able to build broad coalitions of support for this project, both inside and outside the institution. In this respect, the role of individuals who took on the position of executive secretary is crucial. They can act as agents of change for establishing or reforming institutional practices.⁹² For instance, Paulo Abrão, who became the Executive Secretary of the IACHR in 2016, had become convinced of the importance of professional communication for human rights issues in his earlier positions and thus swiftly implemented a new communication strategy. While the Commission had already developed social media accounts on Twitter, YouTube and Flickr, their creation was mainly incidental and the sharing of information was limited to press releases. After Abrão took office, he put together a small team including a communications coordinator and a design expert, and soon hired a social media coordinator. He also created a new communication strategy in 2017 to highlight the voices of victims in all communication instruments of the Commission. This required adding two video documentary professionals to the team in 2018, who started to document all the visits, in situ sessions, missions and other activities of the Commission.⁹³

In most cases, the development of communication capacities is a process that can take decades, not years. The experiences of Pablo Saavedra, Executive Secretary at the IACtHR are exemplary in this regard. In his words:

When I assumed the position of Secretary of the Court in 2004, I found a very small court, not well known in Latin America, and mainly for cases involving gross violations of human rights. The court did not have much communication, only the annual report which encompassed more than 1,000 pages with all the resolutions. It was huge. There was not much interaction with the civil society, with the people, nor with the states. This was also true for the academia. Even though some of the judges such as Cancado Trindade and Fix Zamudio were well known academics, there was not much interaction.⁹⁴

⁹⁰See Interviews E2 and E3.

⁹¹See Interviews IA1 and IA2.

⁹²This is in line with research on the communication of international institutions, see also Mark D Alleyne, *Global Lies? Propaganda, the UN, and World Order* (Palgrave Macmillan, New York, 2003); Roumen Dimitrov, 'Bringing Communication up to Agency: UNESCO Reforms Its Visibility' (2014) 3 *Public Relations Inquiry* 293; Ecker-Ehrhardt, 'International Organizations "Going Public"?' (n 15); Linda Risso, *Propaganda and Intelligence in the Cold War: The NATO Information Service* (Routledge, London, 2014).

⁹³See Interview IA3.

⁹⁴Interview with Pablo Saavedra. The interview is de-anonymized at this point as the identity of the speaker is relevant and the explicit permission was granted.

In this rather bleak situation, Saavedra prioritized the external communication of the Court. He developed the idea of the IACtHR as *una corte de toga y mochila* – a Court with robes and backpack:

The [backpack] is a symbol of going to the countries, of visiting the countries, going to the people, to have more interaction. The object of this was to have more legitimacy because it is very easy to have legitimacy when you always talk with the same people. Our main problem was that no one knew about the court. Even today, the people who live in the Americas don't know about the Court. For this reason, we decided to start having public sessions and hearings in the countries. This was very important. I believe we were the first tribunal to start having sessions in the countries, which included open public hearings, interactions with the universities and civil society in the states we visited. This changed a lot, especially for the visibility of the court.

Over the following years, Saavedra pursued the strategy of an interactive Court that reached out to the people, also regarding the activities of the Court in San José, Costa Rica. In 2007, public implementation hearings started taking place (there were only written submissions before), and since 2010 the public hearings have also been streamed on the Court's website and social media channels:

This was a massive change. Before, we only had the public hearings here in the courtroom in Costa Rica where at maximum only around 100 people can attend. Now it is open to all of the people in all of the countries and this changed a lot. It had a huge impact. As always in a court, there are always some more traditional and conservative voices. For instance, when we started to visit the countries, some judges thought that this would look like tourism, that they would be criticized for that. They favoured a more traditional court, not a tourist court. And later there was the discussion on the media court. They feared that the court was too fancy, that it would look like a comedy. I said, no one does it, we should start doing that. The traveling court, and the media court changed a lot for the proximity of the judges with the reality and also with the media and the new kind of communication. And after that, we saw that we need to increase our department of communication, but we lacked funds. I tried to work together with another lawyer from the court to become original, to do more communication, but we lacked the time to do different things such as infographics or start using Facebook. It was not enough. We needed some specialists in those matters.

In order to establish new structures for communication, additional funds had to be procured. This is particularly challenging for regional human rights institutions as they have experienced severe budget crises in the context of increasing state criticism over recent years.⁹⁵ The IACtHR relies heavily on external international contributions, in particular from European partners, to fulfil certain tasks such as translations.⁹⁶ Consequently, the Secretariat applied for an EU grant to fund the position of an official

⁹⁵See, for instance, Ximena Soley, 'A Response to "A Financial Crisis or Something More?"', *Voelkerrechtsblog*, 22 June 2016.

⁹⁶See the annual overview of income 2019, available at: <<https://www.corteidh.or.cr/aportes.cfm?lang=en>>.

spokesperson of the Court in 2014. It received the funding in 2019 and was able to hire the first spokesperson of the Court, Matías Ponce, in January 2020. Ponce, who holds a PhD in public diplomacy, soon implemented an innovative agenda to update and expand the Court's communication. Even though the new department headed by Ponce only consists of three people who were previously employed in the library of the Court, in the first six months of his tenure he set up a new homepage and infographics, and established a new communication strategy following distinct principles.⁹⁷ This points out the influence even a single communication professional can have in shaping the narrative of the institution.

There is also the possibility that state authorities themselves may want to improve the communication with the institution, and thus invest additional resources. Following Angela Merkel's visit to the ECtHR in 2008, the German state decided to second a German press officer to the communications team. During the past ten years, this additional person was able to focus on the cases that were interesting for the German press, create German-language media releases, and respond to German media inquiries. This was a unique opportunity for the Court to reach out to the German public and very much welcomed by the press department.⁹⁸ Naturally, this singular focus on one country and one language cannot easily be replicated by the official communication actors, which have to spread their attention over the 47 state member states of the CoE with a large number of languages.

Professionalization

This shift in communication approach, from passive transparency to active outreach, is reflected in the establishment of press units and communication departments. However, to produce professional communication, they also need to be staffed by specialists and implemented in a coordinative manner to produce professional communication.⁹⁹ Even a small number of people can make a huge difference. For instance, at the ECtHR – with eleven staff members the largest communication team in this sample¹⁰⁰ – it was possible to significantly diversify activities. In general, the team consists of two separate units: a seven-person press department, which handles the day-to-day activities of the Court, in particular through press releases and the presentation of cases to journalists; and a four-person communication unit, which develops long-term strategies and produces multi-media instruments such as short video clips to inform, explain and legitimize the Court's activities.¹⁰¹ In contrast to its Inter-American counterpart, the ECtHR's communication strategy remains more traditional, with several interviewees highlighting the ECtHR's strong focus on being perceived as a neutral and independent legal body.¹⁰²

Nevertheless, the European human rights regime has developed a strong inter-institutional network of communication, which complements the work of its press and media relations with more proactive communication strategies. At the CoE, specific

⁹⁷IACtHR, Communication Principles and Practices, available at: <https://www.corteidh.or.cr/principios_practicas_comunicacion.cfm?lang=en>.

⁹⁸Interview E3.

⁹⁹This also holds true for domestic courts. According to Johnson (n 71) 530–31, the earliest reported official media liaison officer was employed by the US Supreme Court in the 1930s.

¹⁰⁰The main directorate of communication at the Council of Europe has around 80 staff members, however, only a very small single-digit number work directly on the communication with and of the ECtHR.

¹⁰¹Interview E3.

¹⁰²Interviews E1, E2, E3, E4.

liaison officers link the central 80-person strong communication department of the Council with the smaller press and communication unit at the Court. For instance, the press officers of the Council work on country-specific media relations, and are thus able to monitor the national and foreign-language press. This allows them to address journalists and media outlets specifically and make them aware of upcoming judgments concerning their member state. Proactive engagement with national media outlets by the Council thus complements the very traditional approach of the Court. In contrast, reporting on the activities of the Court as the most prominent institutional organ also reinforces the visibility of the CoE.¹⁰³ Similarly, since the implementation of cases falls into the competence of the CM, the Department of Execution itself began pursuing an independent communication strategy in 2018 by establishing a separate communication team in its information division.¹⁰⁴ Again, a deliberate choice was made to intensify media and communication when reporting on the implementation of ECtHR judgments.

It must be stressed that the people working in the communication departments are not legal professionals, even though some might have been trained as lawyers. In fact, they mostly consider themselves generalists or communication specialists, either by training or through years of professional experience – for instance, in journalism. The majority of communication officers are early and mid-career professionals, who have gained practical communication experience in international institutions, domestic human rights bodies or the communication departments of different institutional organs.

This recruiting practice contributes to the socialization of a particular class of institutional bureaucrats, who have developed a significant amount of expert knowledge.¹⁰⁵ This shift towards communication specialists is in line with a broader move towards the professionalization of human rights work. Scholars have analysed how those new types of human rights professionals are characterized by a shared professional identity, including shared values, a body of scientific knowledge and systems to apply that knowledge.¹⁰⁶ From a sociological perspective, communication professionals in regional human rights bodies stand at the intersection between two different juridical fields¹⁰⁷ – the legal, human rights community that shapes the practice of human rights and the bureaucratic, administrative community that safeguards the organizational functioning. They exercise existential functions for both communities, but are also at the crossroads of professional cultures and ethics. Critics might argue that their focus on attracting media attention, developing an institutional ‘brand’ and creating positive narratives further entrenches the ‘marketization’ of human rights and global justice in the media age.¹⁰⁸

¹⁰³See Interview E2.

¹⁰⁴See Interviews E1, E4.

¹⁰⁵This is in line with developments for Court professionals in general; see also Mikkel Jarle Christensen, ‘The Professional Market of International Criminal Justice’ 19(4) *Journal of International Criminal Justice* 783.

¹⁰⁶Pierre Gentile, ‘Humanitarian Organizations Involved in Protection Activities: A Story of Soul-Searching and Professionalization’ (2011) 93 *International Review of the Red Cross* 1165; Michael O’Flaherty and George Ulrich, ‘The Professionalization of Human Rights Field Work’ (2010) 2 *Journal of Human Rights Practice* 1. See also, critically, Sebastián Rodríguez-Alarcón and Valentina Montoya-Robledo, ‘The Unrestrained Corporatization and Professionalization of the Human Rights Field’ (2019) 2 *Inter Gentes* 3.

¹⁰⁷See also Pierre Bourdieu, ‘The Force of Law: Toward a Sociology of the Juridical Field’ (1987) 38 *Hastings Law Journal* 814; Antoine Vauchez, ‘The Force of a Weak Field: Law and Lawyers in the Government of the European Union (For a Renewed Research Agenda)’ (2008) 2 *International Political Sociology* 128.

¹⁰⁸See also Schwöbel-Patel, *Marketing Global Justice* (n 12) 60–95.

Communication professionals demonstrate significant inter-professional mobility and specialized knowledge. In the context of organizational ecology, they are not loudspeakers, but converters. Their main focus is not to increase the volume of the Court's decisions, but to 'shape those documents in an accessible, clear manner'.¹⁰⁹ Throughout the interviews, officials have stressed that their immediate objective lies in the translation of technical expertise for a general audience.¹¹⁰ In this sense, they act as transmission belts between the institution and the public, and ensure the accessibility of the institution on a vertical dimension. However, on a systematic level, they also pursue more systematic improvements such as transforming the general institutional approach of the institution towards the outside world in order to be responsive towards the current political climate and generate loyalty. This is what an official of the IACtHR described as establishing a *culture of communication* inside the institution:

My most important objective is to develop a culture of communication inside the Court, with the judges, lawyers, secretaries and so on, in order for them to better understand the value of communication for the legitimation of the whole institution ... It is most important that all members of the court are understanding the communication and how it can improve the legitimacy of the court. That they understand the importance of translating the decisions of the court to the different audiences and different targets and of course this is new for most of them.¹¹¹

The influence of communication officials thus exceeds any official job description and may trigger meta-institutional change. Moreover, this systematic approach highlights how institutional decision-makers have discovered professional communication as an instrument of strategic legitimation. Throughout the interviews, communication professionals of both regimes emphasized that they were very much aware of their role in the current crises of human rights courts. They highlighted their responsibility to not only counter these crises but also to develop long-term strategies to combat increasing state attacks:

We want the judges and lawyers to understand the work of the communication, and all the aspects of communication, such as the role of the spokesperson of the Court, our communication team, and of communication in general. This is especially important in our current political climate, with increasing state attacks on the Court. Hence, a Court without a good communication team and strategy falls prey easier to those attacks.¹¹²

There is significant evidence that the professionalization of institutional communication is a response to the backlash experienced by regional human rights courts. For instance, at the CoE, the stalemate with the Russian Federation over voting rights and Russia's refusal to pay its financial contributions has fuelled the need for improved communication as an instrument to create long-lasting institutional loyalty:

You have to invest resources and time to improve communication, which was not the case some time ago and it is more and more of a case today. [The Russian

¹⁰⁹Interview E1.

¹¹⁰Interviews IA1 and E1.

¹¹¹Interview IA1.

¹¹²Interview IA1.

situation] also awakened the fact that ... if you are relevant to them, people pay more attention and be more defensive: hey, you cannot target this institution. That is what the Council of Europe as a whole realized. We have to be known and respected for what we do – we cannot be pushed or considered non-important. We need *savoir fair – faire savoir*; we need to know how to do something, but we also have to do the things which make us known. Both are equally important. At the Council of Europe, we have skills and knowledge but we have to make others aware that we know this and that we have those skills. And this is key to avoid being considered not important, being pushed around, or not treated with the resources we need.¹¹³

So what do those communication strategies for combatting backlash look like? While interviewees have confirmed the existence of guidelines and strategy papers, those are considered internal working documents and are not publicly accessible. However, from the interviews, it was possible to deduce significant information on working methods that emphasize systematic reforms to communication practices, both regarding the audiences that communication agents want to reach and the instruments they deploy. In the following section, I will analyse how those developments correspond to the two strategies for the creation of loyalty identified earlier.

The evolution of communication strategies in times of backlash

Expanding audiences

The first step for the creation of loyalty is to raise social awareness about the existence of an institution. This is particularly challenging for international courts as their judgments address only the parties to the dispute: a state party and alleged victims. In particular, when communicating judgments or reporting on their implementation, courts and quasi-judicial bodies focus exclusively on the authorities of the respondent state. Those communication practices can generally take three forms: praise, criticism and non-communication. For instance, in the implementation stage, the communication could focus on positive steps implemented by the state parties such as an updated action report. It could also criticize states – for instance, by pointing out in a press release or a meeting with state authorities that a particular judgment still lacks implementation, or that the steps taken were insufficient. Most paradoxically, effective communication to state authorities could also mean remaining silent. In the words of one communication official:

Sometimes it is easier to make progress when there is not a huge amount of visibility on a case. You have to strike a balance sometimes between trying to maximize visibility when you think that can help move things along, and you have to know when not to say anything at all. This can be seen a bit lacking in transparency, but if it helps to move things forward and raise human rights standards and get people released from prison, then I also see that as being effective communication – knowing when to be quiet. Effective communication is what we can do as communicators to help get judgments implemented, which does not always mean generating headlines.¹¹⁴

¹¹³Interview E1.

¹¹⁴Interview E2.

The goal of effective communication becomes particularly challenging in hard cases – for example, states that have a difficult relationship with the institution, or a bad record of implementation. In general, interviewees have emphasized that their communication is no different when addressing generally compliant versus critical state parties. However, in a situation in which the state party is openly critical of the institution, reaching the general public and providing a counter-narrative become priorities.

Language is a huge obstacle to effective communication. Several interviewees have highlighted this as a problem of their communication strategy and something that they would hope to improve in the future. The European human rights bodies generally communicate in the two official languages of the Council: English and French. As the press and communication departments are institutionally separate from the language services and lack the resources for official translations, communication in other languages depends on the personal capacities and effort of communication professionals and thus can only be done on a case-by-case basis. For instance, at the Department of Execution, Bulgarian and Hungarian lawyers were able to prepare press releases for important cases in their native countries, which significantly increased the amount of attention these cases received in the national news.¹¹⁵ These are not isolated events: the statistical analysis of the Department demonstrates that information in the national news spreads faster and wider when the original press release is in the local language rather than in English or French. Moreover, the homepage of the Department of Execution, along with all the important documents and guidelines, features a Russian version.¹¹⁶ This is interesting, as the two other main languages of the Council, German and Italian, are not included and might suggest a particular attention to Russia, one of the most ardent critics of the European human rights system. Similar problems also exist in the Inter-American system, where the lack of resources means that most instruments are only available to Spanish-speaking audiences. The absence of English and Portuguese material complicates reaching the Caribbean states, not to mention Brazil. This is acutely felt by the communication officials, but with limited financial means creative solutions have to suffice. The IACtHR, for instance, is already cooperating with several Brazilian universities and hopes to adopt a special internship program to develop a Portuguese Twitter account.¹¹⁷ The availability of communication material in the respective languages is thus of utmost importance to reach audiences, in particular in those states in which populist governments rally against human rights bodies.

While the European human rights regime is still rather state-focused, the Inter-American system has embraced a more victim-centred approach. In the Inter-American human rights bodies, victims are at the front and centre of many activities, their names are eponymous to prominent judgments and they are also involved in the implementation hearings. This is very different from the European bodies, which generally refer to the ‘applicant’ as one of the two disputing parties. The 2017 communication strategy of the IACHR is built around the idea of victim-centred communication – a marked shift in its prior practice.¹¹⁸ Since then, the Commission, just like the San José Court, aims to highlight the experiences of victims in its communication. This allows the Commission to demonstrate the importance of its activities by showcasing an individual’s experience

¹¹⁵Interview E1.

¹¹⁶CM, Department for the Execution of the European Court of Human Rights, available at: <<https://www.coe.int/en/web/execution/russkij>>.

¹¹⁷Interview IA1.

¹¹⁸Interview IA3.

while at the same time allowing third persons to empathize and identify with the victim. For instance, the 2018 Nicaragua mission, which for the first time put the stories of individual victims at the centre of its social media activities, resulted in victims and civil society increasingly addressing the Commission proactively, again highlighting that loyalty requires interaction between the institution and its constituents:

In the mission in Nicaragua, we had a press professional there and we tweeted a lot about it, and we saw that it had an immediate effect on people's lives. So when people were illegally detained, human rights organizations came to press the Commission to make a statement regarding this person's specific situation. Especially after Nicaragua, we saw the power of the Twitter statement which had an immediate effect. For instance, a tweet of the Commission was on the front page of all the major newspapers in Nicaragua every day. One single tweet was able to influence the agenda of the whole country. This positive experience also led other Commissioners to request tweets on the situations they were monitoring, the thematic issues or countries they were rapporteur for. At some point during the last and this year, we realized that we almost switched our main strategy to communication. We still send out a lot of press releases to traditional media, but it decreased a lot. Since 2018, you can see that the Commission is quite proactive in immediately responding and attending the main situations in the hemisphere ... We also have the positive effect that victims and civil society organizations write to the Commission, requesting the Commission to make a statement because they see that the Commission responds. They see that the Commission raises awareness, they provide more information and request the Commission to respond through social media. This is also increasing. It shows how they trust the Inter-American system and how they see another channel to have direct access and dialogue to the Commission and have an immediate response to some specific situation that they want attention for. This is also something new.¹¹⁹

Similar experiences have also been shared by communication officials from the IACtHR. With only a few cases per year, the Court strategically highlights the story of individual victims to showcase patterns of human rights violations across the region. The idea is to empower individuals in a similar situation to act – after all, even though the specific victim might be from Chile, the same type of cases can be found in Brazil, Argentina or Mexico.¹²⁰ Hence, the victim-centred approach transforms the idea of the public as a neutral arbiter to the public as a collective of people that is (potentially) directly affected by the human rights regime. In many instances, the human rights violations addressed by the Court are structural and the types of reparations required by the Court reflect that. Highlighting the positive impact of the activities of human rights bodies upon individual victims can thus not just demonstrate the effectiveness of the Court, but also showcase its relevance for various communities across the region.

So how does this relate to the creation of loyalty? First, all interviewees highlighted that their attempts to expand to new audiences have been successful even though challenges remain – for instance, in reaching specific audiences with a different language such as those in Brazil. This increase in attention and knowledge among the general public can

¹¹⁹Interview IA3.

¹²⁰Interview IA2.

then be used to portray positive narratives in favour of the institution. For instance, a recent survey experiment by Elias Dinas and Ezequiel Gonzalez Ocantos in the United Kingdom, one of the most critical constituents of the ECtHR, has highlighted that providing the public with positive arguments on the Court helps to contain backlash.¹²¹ Moreover, the statistics of institutional engagement can account for increased interaction with the general public. For instance, at the IACtHR, both the Spanish-speaking Facebook and Twitter accounts grew significantly in the last year to 537,485 followers (23,831 more than in 2018) and 350,058 followers (82,717 more than in 2018), respectively.¹²² Even the Instagram account, which was opened on 1 May 2019, reached more than 27,000 followers in its first 18 months.¹²³ The ECtHR also reports a significant positive development of public communication, with a 14 per cent increase of online visits to the case law database HUDOC in 2019 to more than 4.5 million visits a year, as well as 8.3 per cent increase in general website visits (including HUDOC) to more than 7 million visits in 2019.¹²⁴ Moreover, its Twitter followers grew from 13,000 in 2016 to 30,000 in 2020.¹²⁵ This shows it is not only a positive belief in the court (sociological legitimacy) that is generated through professional communication, but also active interest among the general public to have increased interaction with the institution – in other words, loyalty.

Activating communities of practice

The second pillar for the creation of loyalty is the activation of communities of practices, which have the potential to safeguard the authority of the institutions against both internal and external threats. Both the European and the Inter-American regime are embedded in human rights communities of legal actors, some of which date back more than five decades.¹²⁶ This means that, in the current crisis, communication practices do not need to aim at establishing those communities, but rather at activating them. In order to tap into their potential, communication practices must thus not only relay general information to the public, but also allow the institution to engage in a dialogue with specific communities.¹²⁷ This sounds relatively simple, but it poses a major organizational hurdle for communication departments. While a selection of specific communication addressees has to be made, it is difficult to pre-assess which communities might be more receptive to foster loyalty among them *vis-à-vis* human rights courts.

Communities of practice are neither homogenous nor without internal strife. As they develop organically through the lifetime of an organization, the respective actors vary

¹²¹Dinas and Gonzalez-Ocantos (n 22).

¹²²Annual Report of the Inter-American Court of Human Rights (2019) 196f.

¹²³Available at: <https://www.instagram.com/corteidhofficial>.

¹²⁴Annual Report of the European Court of Human Rights (2019) 112f., 117.

¹²⁵Interview E3.

¹²⁶See Stéphanie Henneke-Vauchez, 'The ECHR and the Birth of (European) Human Rights Law as an Academic Discipline', in Antoine Vauchez and Bruno de Witte (eds), *Lawyering Europe: European Law as a Transnational Social Field* (Hart, Oxford, 2013); Mikael Rask Madsen, 'From Cold War Instrument to Supreme European Court: The European Court of Human Rights at the Crossroads of International and National Law and Politics' (2007) 32 *Law & Social Inquiry* 137; Soley, 'The Transformation of the Americas' (n 56).

¹²⁷Naturally, this is also of concern to the judges of the ECtHR and IACtHR in their outreach activities, see also Ezequiel Gonzalez Ocantos, 'Communicative Entrepreneurs: The Case of the Inter-American Court of Human Rights' Dialogue with National Judges' (2018) 62 *International Studies Quarterly* 737.

significantly in their socialization, size and legal culture, ranging from journalists and grassroots activists to religious communities and bar associations. A community of practice is not clearly defined from the outside, thus its structure is rather flexible. The interests and needs of its members are also not always aligned. This diversity requires institutions to develop specific types of communication practices to reach distinct audiences, which are not necessarily complementary. With limited resources and a high number of human rights violations, communication professionals have to decide on the selection of audiences, instruments and ultimately topics to be covered. In principle, this can even result in conflicting narratives or messages. Moreover, some actors are more suited to engage in a dialogue than others. On the one hand, communicating primarily to intermediaries such as journalists or media actors might help to disseminate information broadly to the general public, but the relationship to journalists is usually rather one-sided. On the other hand, communicating to actors who are directly involved, such as state agents, human rights experts and alleged victims, requires significant impartiality and is thus bound to disappoint at least one side.

This is why communication officials have identified selected communities that they aim to address specifically. From the interviews, it was possible to identify several core stakeholders in the communities of practice surrounding each respective court which the institution attempts to address through their communication. While these are only isolated insights and should not be understood as excluding further audiences, it helps to understand to whom the institutions primarily aim to speak and, consequently, how the specific information has to be shaped by the communication professionals.

In the European human rights regime, one official differentiated between three ‘circles’ of targets (see [Figure 1](#)). The first circle is considered the main target and primary addressees of the communication. It consists of experts, state delegations and human rights lawyers – that is, parties to the dispute – who closely follow specific ECtHR judgments and their execution. Important but subordinate audiences are human rights institutions, NGOs and academics who have a connection to the institution but might not be directly involved in cases (second circle), or the general public (third circle).¹²⁸ The primary aim of the communication strategy of the European institution is thus to reach the first circle and strengthen the relationship with those communities of practice – for instance, via missions, conferences, roundtables and workshops. Those communication activities, which are then also published in official reports and social media channels, provide direct contact and are considered to be more effective.

Both the IACHR and the IACtHR have long organized missions and sessions abroad.¹²⁹ The IACHR’s mandate includes the monitoring of situations of human rights violations, and thus requires timely responses to ongoing crises. As discussed earlier, this facilitates a fast-paced approach to communication – for instance, video reporting and live-streaming, as well as social media during in-person visits of the Commissioners. On the other hand, the new communication strategy of the IACtHR is focused primarily on reaching specific audiences even when the judges are not visiting the region. Consequently, the first targeted group is journalists, who can act as mediators to the wider public. The IACtHR has organized them into a network with overlapping circles ([Figure 2](#)). The first circle consists of around 20–25 journalists from Latin America and the Caribbean, who are handpicked by the Court. They have access to a weekly

¹²⁸Interview E1.

¹²⁹Soley, ‘The Transformation of the Americas’ (n 56) Ch 3.

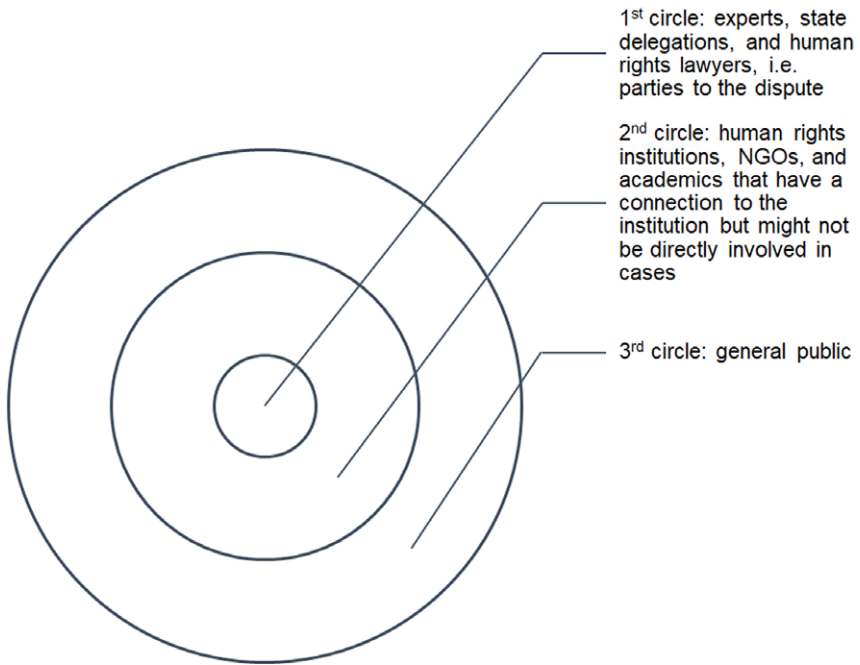


Figure 1. Circles of communication in the European human rights system

meeting with Court officials and thus dispose of a wide range of information and close collaboration with the Court. The second circle of journalists consists of approximately 800 journalists, which the Court has grouped according to countries of origin and tries to keep up to date with country-related information on specific cases and investigations. In the third circle, there are around 1,500 journalists in Latin America, the United States and Europe, with whom the Court shares general information about the work of the Court to improve the understanding of the Inter-American human rights system. Next to this network of journalists, the Court has developed a database of over 25,000 contacts all over the world, which constitute the second important group of stakeholders the Court aims to address: judges, human rights lawyers, human rights defenders and academics. This database allows the court to develop more targeted messages, whether via the traditional newsletter or specialized groups on LinkedIn.¹³⁰

Comparisons between the regional systems can be made. Broadly, the European human rights regime focuses its communication primarily on important stakeholders that are already involved in its activities such as state delegates and human rights professionals, while the Inter-American system focuses on intermediaries such as journalists. However, this also reflects the internal institutional structure of communication in the respective regional system. For instance, in the European system, the connection to journalists and media actors is also handled via liaison press officers at the Council of Europe. Similarly, the IACHR and IACtHR differ not only in the temporality of their activities but also in their workload. While the IACHR has to monitor a multitude of

¹³⁰Interview IA1.

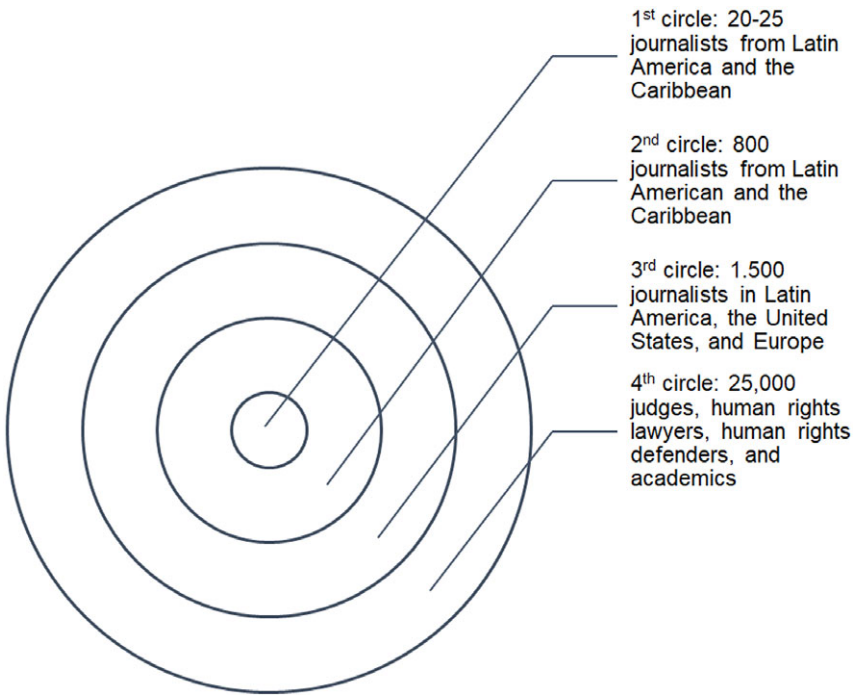


Figure 2. Circles of communication in the Inter-American human rights system

current situations of human rights violations and process thousands of complaints, the IACtHR only hands out around 15–30 judgments per year, very often long after the violation has taken place. Hence, its focus is on disseminating the information rather than attracting the attention of the regional public to an ongoing crisis. This determines the type of loyalty ties that can be made, balancing between fostering long-standing relationships with specific regional NGOs, such as the Center for Justice and International Law¹³¹ or international foundations such as the KAS,¹³² and more ad hoc initiatives to increase the visibility of human rights in a situation of crisis.

In addition to developing proactive communication strategies, human rights regimes have also attempted to increase the general accessibility of information to the aforementioned communities. This holds true not only for the various modern communication formats on social media, but also for more traditional communication instruments. For instance, in the last years, the IACtHR and the Department of Execution have both revamped and streamlined their homepages to make information more readily accessible. At the execution department, this led to a 30 per cent increase in website traffic in 2019.¹³³ Moreover, several additional communication outputs are provided to interested parties, such as case summaries, country fact sheets, thematic overviews and Q&A brochures.¹³⁴

¹³¹See <https://cejil.org/en>.

¹³²See <https://www.kas.de/de/web/rspla>.

¹³³Interview E4.

¹³⁴ECtHR, Questions & Answers on cases and themes, available at: <<https://www.echr.coe.int/Pages/home.aspx?p=press/Q-A&c=>>>.

The ECtHR was the first institution to provide those thematic fact sheets after a change in secretarial management ten years ago, and now offers more than 60 fact sheets that are updated regularly.¹³⁵ By re-narrating judgments in an accessible manner, interested stakeholders and local actors can learn of and rely on the human rights jurisprudence. It also lowers the reliance on state authorities to disseminate and translate the respective jurisprudence to domestic audiences, as well as the inherent risk of being misunderstood or intentionally misinterpreted.

Even the most traditional judicial communication instrument, the press release, has been reformed over the last decade to make it more accessible. The press release is a particularly challenging instrument, as it must follow a very specific formula and be written in a neutral and impartial style, and generally includes very technical language. For the ECtHR, the press release is still the most important communication instrument. Among the 2,000 people who receive them regularly, three communities are the main addressees of press releases, namely journalists, representatives of governments and academics.¹³⁶ The ‘grey box’ at the top of the press release includes the main info about the case. In contrast, the IACtHR has abandoned the traditional judicial approach and developed a simplified and clearer style of press releases.¹³⁷ Since the establishment of the communication department in 2020, the press releases are now written by communication officials, not the lawyers. They are significantly shorter and integrate many insights from communication studies – for example, instead of long and empty case names, they emphasize the core message in the title (‘For the use of racial profiles Argentina is responsible for the illegal, arbitrary and discriminatory detention and subsequent death of an Afro-descendent person’).¹³⁸ In the press release, the judgments are also more contextualized and technical language is avoided in order to make them more intelligible to communities that lack legal expertise, such as journalists and the general public. This enables human rights bodies to reach out to respective audiences directly and thus foster loyal relationships.

It is difficult to assess whether those communication activities are sufficient to activate communities of practice in times of backlash, yet, a number of recent interactions can be identified. An example might be the public outcry following the joint declaration by the governments of Argentina, Brazil, Chile, Colombia and Paraguay in 2019.¹³⁹ In this declaration, the five signatory states, which represent 70 per cent of the region’s population and 80 per cent of its gross domestic product,¹⁴⁰ reaffirmed their commitment to the Inter-American human rights system, but also put forward several reform proposals. Those were mostly aimed at strengthening the principle of subsidiarity and broadening the states’ discretion in the implementation of judgments. While this does not amount to a backlash *per se*,¹⁴¹ it triggered an avalanche of civil society voices in defence of the

¹³⁵ ECtHR, Fact sheets, available at: <<https://www.echr.coe.int/pages/home.aspx?p=press/factsheets>>.

¹³⁶ Interview E3.

¹³⁷ Interview IA1.

¹³⁸ IACtHR, media release 101/2020, available at: <https://www.corteidh.or.cr/docs/comunicados/cp_101_2020_eng.pdf>.

¹³⁹ Chile, Ministry of External Relations, ‘Comunicado de prensa Ministerio de Relaciones Exteriores – Ministerio de Justicia y Derechos Humanos sobre Sistema Interamericano de Derechos Humanos’, available at: <<https://minrel.gob.cl/comunicado-de-prensa-ministerio-de-relaciones-exteriores-ministerio-de-minrel/2019-04-23/105105.html>>.

¹⁴⁰ See also von Bogdandy and Uruña (n 56) 403.

¹⁴¹ Melina Girardi Fachin and Bruno Nowak, ‘The Joint Declaration to the Inter-American System of Human Rights: Backlash or Contestation?’, *I-CONNECT. Blog of the International Journal of Constitutional Law*, 12 December 2019.

Commission's activities. More than 200 organizations and persons of the region signed a common statement against the joint declaration, which they interpreted 'to reflect a coordinated effort to weaken the promotion and protection of human rights in the continent, as it looks to cut back on the powers of the Interamerican Commission and Court of Human Rights'.¹⁴² Similarly at the ECtHR, the draft of the 2018 Copenhagen Declaration and its strong emphasis on subsidiarity has also been heavily criticized by a network of academics, NGOs, national human rights institutions and members of national parliaments in the Parliamentary Assembly of the Council of Europe (PACE). Their outspoken criticism was ultimately shared by a number of state parties, which succeeded in watering down the most criticised aspects and changing the overall tone of the declaration. A third situation in which loyal non-state actors played an essential part occurred in the context of the crisis between Russia and the CoE in November 2018, when a large number of Russian human rights defenders published a memorandum to appeal to 'all the stakeholders involved in discussions and decision-making within the Council of Europe, including parliamentarians and executive authorities of the member states' to prevent a Russian withdrawal.¹⁴³

What became clear in the interviews is that communication officials in both the European and Inter-American human rights regimes do not just wish to expand their general audiences; they have also identified specific communities they want to address and developed the respective instruments required to do so. Among the instruments that have been deployed to counter the rising criticism over the last decade, one dominant trend can be observed: the use of new instruments, in particular visualization and storytelling, which will be analysed in the following section.

Visualization and storytelling

Interestingly, in both regimes, we can observe a shift towards visual media and the use of story-telling techniques in order to create loyalty among state and non-state actors. While story-telling techniques – involving a focus on individual stories and 'human faces' in public communication – can also be integrated into more traditional written formats to develop institutional narratives,¹⁴⁴ visual media are particularly suited to highlight personal stories – for instance, through photography or video. All interviewees stressed that they hoped to expand the use of visual media formats in the future. This is in line with the visual turn of human rights activism in general.

The translation of human rights claims and ideas into photographic or other visual media formats has become an essential element of human rights advocacy over the course of the last 50 years.¹⁴⁵ The rise of technology, which allows a wide range of actors to not only consume but also create visual images, has massively altered forms of knowledge

¹⁴²Center for Justice and International Law, 'Attacks on the Interamerican Human Rights System Violate the Regional Protection of Human Rights', available at: <<https://www.cejil.org/en/attacks-interamerican-human-rights-system-violate-regional-protection-human-rights>>.

¹⁴³Memorandum 'Addressing the crisis in relations between the Council of Europe and Russia: Uphold the values and fulfil the mission to protect rights across all of Europe', available at: <<https://mhg.ru/addressing-crisis-relations-between-council-europe-and-russia-uphold-values-and-fulfil-mission>>.

¹⁴⁴Yiannis Gabriel, *Storytelling in Organizations: Facts, Fictions, and Fantasies* (Oxford University Press, Oxford, 2000).

¹⁴⁵See, for instance, Aoife Duffy, 'Bearing Witness to Atrocity Crimes: Photography and International Law' (2018) 40 *Human Rights Quarterly* 776.

production about human rights.¹⁴⁶ Non-governmental organizations have embraced image-making practices to increase the awareness of the mass public to human suffering and persuade audiences.¹⁴⁷ Digital technology – especially video – has allowed human rights NGOs to engage in story-telling by using ‘video as visual evidence, testimony, and moral story before local, international, and transnational human rights audiences’.¹⁴⁸ They often use personal testimony to put a human face on mass atrocities.¹⁴⁹ In the course of the visual turn in international institutions,¹⁵⁰ international criminal courts have particularly embraced audio-visual media formats to increase their legitimacy via outreach programs,¹⁵¹ highlighting the experience of the victims¹⁵² or marketing themselves to a global audience.¹⁵³

The communication practices of the regional human rights regimes in Europe and the Americas have mirrored those approaches during the last years. By moving away from the technical legal language of the courts and towards a more proactive, advocacy-oriented style, they are thus replicating the strategies of non-governmental organizations.¹⁵⁴ In the words of one communication official:

When talking about human rights, you need to create empathy. To be able to show what are the main issues behind it. Sometimes, when drafting a press release in very technical language, you will not be able to create this empathy. You will not be able to talk about what are the main issues of concern – for example, people who do not have

¹⁴⁶Lilie Chouliarakis, Michael Orwicz and Robin Greeley, ‘Special Issue: The Visual Politics of the Human’ (2019) 18 *Visual Communication* 301.

¹⁴⁷Meg McLagan, ‘Making Human Rights Claims Public’ (2006) 108 *American Anthropologist* 191.

¹⁴⁸Sam Gregory, ‘Transnational Storytelling: Human Rights, Witness, and Video Advocacy’ (2006) 108 *American Anthropologist* 195, 195.

¹⁴⁹Sandra Ristovska and Monroe Price, ‘Images and Human Rights’ in Sandra Ristovska and Monroe Price (eds), *Visual Imagery and Human Rights Practice* (Springer, Dordrecht, 2018); Kay Schaffer and Sidonie Smith, ‘Venues of Storytelling: The Circulation of Testimony in Human Rights Campaigns’ (2004) 1 *Life Writing* 3.

¹⁵⁰See Gronau (n 91) Ch 7; Davide Rodogno and Thomas David, ‘All the World Loves a Picture’, in Heide Fehrenbach and Davide Rodogno (eds), *Humanitarian Photography* (Cambridge University Press, Cambridge, 2015); and the research project of Dr Claudia Moisel, ‘“The Family of Man”: Zur Bildsprache der internationalen Organisationen im Mid-Century’, available at: <<https://visual-history.de/project/the-family-of-man-zur-bildsprache-der-internationalen-organisationen-im-mid-century>>.

¹⁵¹Most interestingly at the ICTY, see Nenad Golčevski, ‘Communicating Justice in Film: The Limitations of an Unlimited Field’, in Sandra Ristovska and Monroe Price (eds), *Visual Imagery and Human Rights Practice* (Springer, Dordrecht, 2018), 153–64; Paul Mason, ‘Justice Seen to Be Done? Electronic Broadcast Coverage of the International Criminal Tribunal for the Former Yugoslavia’ (2001) 95 *Proceedings of the ASIL Annual Meeting* 210; James Meernik et al., ‘Truth, Justice, and Education: Towards Reconciliation in the Former Yugoslavia’ (2016) 16 *Southeast European and Black Sea Studies* 413; Sandra Ristovska, ‘Video and Witnessing at the International Criminal Tribunal for the Former Yugoslavia’, in Howard Tumbler and Silvio Waisbord (eds), *The Routledge Companion to Media and Human Rights* (Routledge, London, 2017), 357–65.

¹⁵²Sofia Stolk and Werner Wouter, ‘Moving Images: Modes of Representation and Images of Victimhood in Audio-Visual Productions’, in Kevin Jon Heller et al. (eds), *The Oxford Handbook of International Criminal Law* (2020), 583–99.

¹⁵³Schwöbel-Patel (n 12), in particular Chapter 4 ‘A Picture Worth More Than a Thousand Words’.

¹⁵⁴See, in more detail, Lia Börsch, ‘Image Activists. Building Structures, Arguing with Images and Cooperating with Media Actors at Amnesty International 1975–1985’, in Michael Homberg and Benjamin Möckel (eds), *Human Rights and Technology Change: Conflicts and Convergences Since the 1950s* (forthcoming).

access to water, or any other example we have where people suffer human rights violations or do not have access to their rights.¹⁵⁵

In order to create empathy, human rights regimes have embraced the value of visual media formats, in particular videos and infographics that can easily be shared on social media. For instance, in the Inter-American regime, the victim-centred approach is well suited to new media formats – for example, they regularly produce videos of the Court and Commission ‘in action’, visiting victims and situations of human rights violations. Interviews of the victims describing their story and their experiences with the human rights institutions highlight the personal impact of the Court’s jurisprudence. Moreover, the IACtHR’s new press strategy is heavily focused on developing visual media formats as an educational resource – for instance, a series of animations to explain the American Convention and the role of the Court as well as a number of graphic stories to narrate some leading cases in a more detached, less brutal way for children and young people.¹⁵⁶ This again requires highly specialized knowledge and cooperation with animation experts, child psychologists, teachers, digital content creators and so on. Since June 2020, the IACtHR’s Twitter account has shared persuasive, one minute-long animations under the hashtag #ABCDerechosHumanos, and they are widely retweeted.¹⁵⁷

Another strategy adopted by human rights institutions from NGOs is the use of story-telling techniques in visual media.¹⁵⁸ Story-telling is a narrative method that uses factual stories to illustrate a core message. Especially in times of increasing state criticism, story-telling becomes essential to create a positive narrative. By illustrating the positive impact of the human rights regime on an individual case, the Court, respectively Commission, becomes the ‘hero’ of the story. Even the CoE, which usually prefers a more state-centred approach, has embraced it to show itself in a positive light in the face of growing resistance against the Convention system. For instance, in the context of the 70th anniversary of the ECHR in 2020, a pilot project was launched which portrayed the impact of the ECHR through a selected number of judgments per country.¹⁵⁹ The cases are grouped in twelve categories of rights – from the right to fair trial and torture to privacy and equality – and are told in a clear story-telling narrative. This means that the reader is walked through the whole story, from the background of the case to the final follow-up procedure, and the judgment itself is explained in very simple and accessible language:

We made a conscious decision two or three years ago to move more into that [i.e. story-telling] direction, partly because there is growing resistance against the Convention system as such and in a number of member states. And also because we felt that there is a real gap in peoples’ appreciation, their knowledge, their understanding, what it is and how it works, the real positive benefits it was able to bring to Europe throughout the years. It tends to be portrayed in some countries as a tool to defend unpopular minorities, whether they are criminals or terrorists. This is obviously a complete distortion of the court and how it works. That project is very

¹⁵⁵Interview IA3.

¹⁵⁶Interview IA1.

¹⁵⁷See the tweets, available at: <https://twitter.com/hashtag/ABCDerechosHumanos?src=hashtag_click&f=live>.

¹⁵⁸Henrietta Lidchi, ‘Finding the Right Image’, in Heide Fehrenbach and Davide Rodogno (eds), *Humanitarian Photography: A History* (Cambridge University Press, Cambridge, 2015), 275–96.

¹⁵⁹The homepage is available at <<https://www.coe.int/en/web/impact-convention-human-rights/home>>.

much aimed at tackling that by telling stories from a human point of view ... There has been a general shift over the last few years in terms of demonstrating across the Council of Europe as a whole the positive changes brought about by the Convention system, the ECHR, other Conventions and monitoring bodies, and in particular the changes in law and practice they instigated. But this project is so far the clearest manifestation of the changing approach and hopefully something we can expand.¹⁶⁰

Both instruments – the use of visual formats and story-telling techniques – are embedded in more traditional communication formats such as the streaming of sessions and official websites. They form part of a multifaceted approach to communication that can be adapted by courts.¹⁶¹ According to the interviewees, communication specialists consider them the most promising tools to actively portray a more positive and responsive image of the institution. This strategic visibility creates a particular narrative, an ‘institutional brand’, which stakeholders not only value in general, but might also come to defend in a situation of backlash. Importantly, those visual instruments and story-telling narratives are not only instruments of legitimation but can also be seen as evidence of an interactive loyalty creation process as they adopt the perspective of victims and other constituents.

VI. Conclusion: The need for professional communication in times of backlash

In this article, I have investigated how the European and the Inter-American human rights regimes have developed communication practices to create loyalty over the last decade. I began by demonstrating that loyalty is an essential concept to understand why critical state parties not only refuse to leave the institution, but might even become actively involved in reforming it. Loyalty, as a form of diffuse support, cannot only be expressed by state parties to an institution, but equally concerns domestic compliance partners such as bar associations, judges, civil society and academics, as well as the general public. I then argued that communication practices have been transformed from instruments of transparency and accessibility to tools of strategic legitimation. In order to create loyalty, new forms of communication and outreach practices have been designed, which can create awareness among the general public and activate communities of practice.

After this, I explored how the comparative regional approach¹⁶² to the European and Inter-American human rights institutions illuminated both the commonalities and differences in their communication practices. While they face the same budgetary challenges, they differ fundamentally in their general approach towards communication.¹⁶³ The institutions of the European human rights regime are prioritizing the appearance of impartiality and judicial independence in their state-centred approach to communication, while the Inter-American human rights organs have developed an

¹⁶⁰Interview E2.

¹⁶¹See, for instance, the various option proposed by the Consultative Council of European Judges (CCJE), Opinion No. 7 (2005) of the Consultative Council of European Judges to the Attention of the Committee of Ministers of the Council of Europe on ‘Justice and Society’, adopted by the CCJE at its 6th meeting (Strasbourg, 23–25 November 2005).

¹⁶²Alexandra Huneus and Mikael Rask Madsen, ‘Between Universalism and Regional Law and Politics: A Comparative History of the American, European, and African Human Rights Systems’ (2018) 16 *International Journal of Constitutional Law* 136.

¹⁶³This in line with their general differences, also in courtroom practices, see Yildiz (n 78).

outreach-focused, victim-oriented approach. In recent years, both regimes have increasingly turned to visual media formats and story-telling narratives in their communication.

Naturally, there is ample criticism to be levelled against this communicative turn – for example, the danger of being too emotional and victim-centred, and thus infringing upon the impartiality and authority of the Court. Insights from international criminal justice highlight the potential threat of a visual and discursive specification of victimhood. Christine Schwöbel-Patel, for instance, emphasizes how the ICC has constructed the stereotype of the ‘ideal victim’, characterized by weakness, vulnerability, dependency and grotesqueness, to appeal to the Western donor community in the ‘global attention economy’.¹⁶⁴ In a similar vein, Sofia Stolk and Wouter Werner demonstrate how audio-visual materials produce particular types of victimhood in international criminal law, ‘varying from “ideal” victims in advocacy documentaries, argumentative victims in critical documentaries, translated victims in observatory documentaries, to bureaucratized victims in audio-visual materials produced by the ICC itself’.¹⁶⁵ Instead of empowering (potential) victims, they are exploited to profit the institutional reputation. Richard Clements has further demonstrated how the ICC has perpetuated a progress narrative of efficient managerialism in its institutional communication to bolster its institutional reputation.¹⁶⁶

As this investigation has focused primarily on the socio-legal transformation of communication actors, but less so on the specific content of communication, the risks of the victim-centred approach in both traditional and audio-visual communication can neither be affirmed nor disproven for regional human rights bodies. However, there is no doubt that the professionalization of communication actors, with their advanced communication skills, should come with heightened scrutiny of the potential consequences for institutional communication – for the moral authority of the ‘institutional brand’, the neutrality *vis-à-vis* state parties and the protection of alleged victims of human rights abuses.

This article investigated how the European and Inter-American human rights bodies have discovered communication practices as important instruments to create loyalty in times of state backlash. As this backlash spreads across many international institutions, the need for developing techniques for institutional resilience extends beyond the European and Inter-American human rights regimes. In particular two lines of inquiry require further exploration: On the one hand, analysing the substantive content of communication practices through linguistic and rhetorical methods could provide further insights to help design a more tailored approach to communication as an instrument of loyalty creation.¹⁶⁷ On the other hand, it could aid in expanding the case study of the role of communication officials to different international courts, which also suffer from increased politicization and criticism. For instance, in 2007 the International Criminal

¹⁶⁴Christine Schwöbel-Patel, ‘Spectacle in International Criminal Law: The Fundraising Image of Victimhood’ (2016) 4 *London Review of International Law* 247; Christine Schwöbel-Patel, ‘The “Ideal” Victim of International Criminal Law’ (2018) 29 *European Journal of International Law* 703.

¹⁶⁵Stolk and Wouter (n 153) 586.

¹⁶⁶Richard Clements, ‘From Bureaucracy to Management: The International Criminal Court’s Internal Progress Narrative’ (2019) 32 *Leiden Journal of International Law* 149.

¹⁶⁷See also Godzimirka (n 39) Ch 6; Amanda Potts and Anne Lise Kjær, ‘Constructing Achievement in the International Criminal Tribunal for the Former Yugoslavia (ICTY): A Corpus-Based Critical Discourse Analysis’ (2016) 29 *International Journal for the Semiotics of Law – Revue internationale de Sémiotique juridique* 525.

Court established an ‘Integrated Strategy for External Relations, Public Information and Outreach’,¹⁶⁸ which was updated in 2010¹⁶⁹ and was a major point of contention in the 2015 reform¹⁷⁰ of the ICC registry.¹⁷¹ Analysing the institutional communication in the current crisis of the ICC could test whether the arguments proposed in this article on the professionalization of communication officials can be transposed to other international courts.

Ultimately, the findings of the article supported the initial conviction: communication practices are an essential instrument for creating loyalty to the European and Inter-American human rights regimes. There is an increasing need for professional communication, especially in situations when the institutions not only have to put forward a positive image but also actively counter smear and slander. To put it simply: ‘If courts don’t tell their story, someone else will.’¹⁷²

Acknowledgements. For me, the lifeblood of the academic community is communication. This research was undertaken in the midst of the COVID-19 pandemic when our communication was most profoundly impacted. In this unprecedented situation, I am indebted to helpful remarks and comments by the Dienstagsrunde of Armin von Bogdandy, Ziv Bohrer, Lia Börsch, Jochen Abraham Frowein, Zuzanna Godzimirska, Mathis Lohaus, Sofia Stolk, Ximena Soley and the two anonymous reviewers. I am also grateful to audiences and commentators at the DVPW IB Sektionstagung 2020, the iCourts Lunch Seminar April 2021, the ESIL IGs on International Courts and Tribunals and Human Rights Law conference on ‘The Influence, Legacy and Future of the European Court of Human Rights in the International Legal Order’ in June 2021, the Connecticut/Baden-Württemberg Human Rights Research Consortium Annual Conference 2021, and the ICON-S Mundo Annual Conference 2021. My sincere gratitude goes to the communication professionals who were so generous in sharing their insights with me. Of course, all mistakes and errors remain my own.

¹⁶⁸International Criminal Court, Integrated Strategy for External Relations, Public Information and Outreach, 18 April 2007.

¹⁶⁹International Criminal Court, Assembly of State Parties, Report of the Court on the public information strategy 2011–13, 22 November 2010.

¹⁷⁰See, for instance, ‘Key Principles for ICC Communications’, March 2015, available at <<http://www.iccnw.org/documents/CommsTeamInformalCommentsRevision13MAR15.pdf>>.

¹⁷¹See also Karen L Corrie, ‘The International Criminal Court: Using Technology in Network Diplomacy’, in Corneliu Bjola and Marcus Holmes (eds), *Digital Diplomacy: Theory and Practice* (Routledge 2015), 145–63; Dobson and Stolk (n 12).

¹⁷²European Court of Human Rights, ‘Dialogue Between Judges “The Authority of the Judiciary. 1. Challenges to the Authority of the Judiciary 2. Responses to the Challenges”’, 39.

Appendix

List of Interviews

E1	Communication official	10 June 2020
E2	Communication official	11 June 2020
E3	Senior official also charged with overseeing communication	20 August 2020
E4	Senior official also charged with overseeing communication	19 June 2020
IA1	Communication official	29 May 2020
IA2	Senior official also charged with overseeing communication	18 June 2020
IA3	Senior official also charged with overseeing communication	30 June 2020

Guiding questions

Organization of the Department and Personal Background

1. Since when are you working at the department and what is your official position?
2. How many people work in your department?
3. How is the department organized?
4. What is your personal professional background?
5. What is, to your knowledge, the professional background of the majority of the people working in your department?

Forms of communication

1. Which communication activities does your department offer?
2. Which type of communication activities are you involved in?
3. What are the main challenges you face in conducting your work?
4. How would you rate the importance of specific communication activities?
5. How would you rate the effectiveness of specific communication activities?

Communication strategies

1. How would you define the goal of the communication activity?
2. Are there any guidelines or strategic programs which regulate your work?
3. Which groups of persons are the main addressees of your activities?
4. Would you rather favor general or specific communication activities, e.g. language, topics, etc.?
5. Do you address human rights-critical countries differently than generally conforming countries?

Outlook

1. When did your department start its communication and outreach activity?
2. Did the work of the department/your work change in the last ten years?

3. If yes, what do you think triggered the change?
4. Is there any instrument/activity, you would like to strengthen in the next five to 10 years?
5. Is there anything I missed asking you?