complementarity publicly; and finally, to provide explanation.[[1]](#footnote-1) What spans these various aspirations is an important communicative function shaping how it would like its interlocutors, observers, funders, victims, defendants, and the international community more generally to view it and work with it. It is this communicative bridge spanning these aspirations of transparency that I examine in this dissertation in order to consider how these performances of transparency may ultimately work in tension with some of the Court’s other stated objectives in the earliest stages of proceedings. In so doing, I draw on Critical Transparency Studies (CTS), strategic expressivism, and myth.

CTS is an emergent field of study which views transparency as an almost magical concept characterised by semantic vagueness, normative appeal, and an implication of consensus.[[2]](#footnote-2) CTS calls transparency into question as one of the most important tools of democracy and as a demand that spans “fields as diverse as corporate and public administration, finance, scientific research, sports, technology, media, and healthcare.”[[3]](#footnote-3) Part of the appeal of CTS in this project is the accepted starting point that one need not provide a clear definition of transparency, indeed this is not entirely possible with the concept lacking a stable semantic core, but instead allows one to unpack how it is strategically used and functions as a floating signifier to serve various ends. While the turn toward transparency has been made in international law,[[4]](#footnote-4) and calls for it at the Court in particular are increasingly made out of a variety of aspirations,[[5]](#footnote-5) there is not yet much to draw on in terms of concrete analysis of what transparency may mean and *do* in ICL and at the ICC in particular. This project attempts to fill that gap by examining what I refer to ‘practices’ of transparency. In particular, I focus on how the OTP and the Court more generally communicate about their work, expectations and challenges. In this way, I understand transparency as an activity or practice of disclosure.

In using the language of ‘practice’ I take transparency as an ongoing process or effort in disclosing information with its attendant choices, mediums, indicators and implications. The language of practice also allows me to narrow the focus to the performativity of these communicative activities and in particular how they promote and enact certain ideals and expectations (deterrence, complementarity, cooperation, transparency, etc.). For example, the OTP talks about its work using a particular vocabulary, promising “an interesting, transparent and serious business model” which is assumed to be crucial for keeping “national governments willing to finance and support international justice”.[[6]](#footnote-6) It is this language of ‘business models’ and their attendant indicators and means of evaluation in which we recognise the demands of managerialism and which result in efforts to ‘sell’ the OTP’s work to its funders,[[7]](#footnote-7) but the underlying question still remains just as Clements posed: “[w]hy, at a time when efforts towards ‘global justice’ encompass such a broad range of agendas and communities, do so many see the answer to injustice in the restructuring of an international criminal tribunal?”[[8]](#footnote-8)

In order to begin to understand how these practices communicate about deterrence and complementarity I draw on strategic expressivism as developed by Barrie Sander.[[9]](#footnote-9) Strategic expressivism asks questions about the productive power of these seemingly insignificant, secondary practices of communication as well as about the promise of concepts like transparency more generally for the Court. Strategic expressivism, according to Sander, is a three-pronged approach aimed at uncovering how certain actors make use of the expressive power of international criminal justice toward their own strategic social or political ends.[[10]](#footnote-10) In this project I turn the approach primarily onto the Court itself, particularly the OTP, to look at how they create and propagate the expressive power of international criminal justice in the context of the ICC. Firstly, there is a struggle of vocabularies involved in trying to illuminate, in this project, the Court’s instrumental value. This can involve drawing out tensions between, for example, justice and peace or power and resistance

1. Rodríguez Pineda, 350–51 offers a list of several ways that the OTP communicates to the public about its examinations. Though I have included nearly all of these practices in my research, the following are not considered: reports and statements to the UN and OTP Weekly Briefings Newsletters. [↑](#footnote-ref-1)
2. Alloa in *Transparency, Society and Subjectivity Critical Perspectives*, 29 continues “transparency is held to be impartial, neutral, democratic and progressive. As such, it promises stability.” [↑](#footnote-ref-2)
3. Alloa and Thomä, 2. [↑](#footnote-ref-3)
4. Traced for example by Andrea Bianchi and Anne Peters, eds., *Transparency in International Law* (Cambridge: Cambridge University Press, 2013), https://doi.org/10.1017/CBO9781139108843; Ida Koivisto, “The IMF and the Transparency Turn,” *Minnesota Journal of International Law*, accessed February 15, 2018, http://heinonline.org/HOL/Page?handle=hein.journals/mjgt25&div=17&g\_sent=1&casa\_token=&collection=journals; Ida Koivisto, “The Anatomy of Transparency: The Concept and Its Multifarious Implications,” *EUI Working Papers*, 2016; Ida Koivisto, “Regulating Visiblity – Transparency As an Ideal in Global Administrative Law,” n.d.; Kevin Davis et al., *Governance by Indicators: Global Power through Quantification and Rankings*, *Governance by Indicators: Global Power through Quantification and Rankings*, 2012, https://doi.org/10.1093/acprof:oso/9780199658244.001.0001. See also Kevin Davis et al., *Governance by Indicators: Global Power through Quantification and Rankings*, *Governance by Indicators: Global Power through Quantification and Rankings* (Oxford University Press, 2012), https://doi.org/10.1093/ACPROF:OSO/9780199658244.001.0001. [↑](#footnote-ref-4)
5. *See* e.g. Alloa and Thomä, *Transparency, Society and Subjectivity Critical Perspectives*. [↑](#footnote-ref-5)
6. Philipp Ambach, “Performance Indicators for International(Ised) Criminal Courts – Potential for Increase of an Institution’s Legacy or ‘Just’ a Means of Budgetary Control?,” *International Criminal Law Review* 18, no. 3 (May 21, 2018): 426–60, https://doi.org/10.1163/15718123-01803001. See also Sara Kendall, “Donors’ Justice: Recasting International Criminal Accountability,” *Leiden Journal of International Law2* 24, no. 3 (2011): 585–606, https://doi.org/10.1017/S0922156511000264. [↑](#footnote-ref-6)
7. My approach here has been shaped by the masterful analysis of the marketing imperatives on the work of the ICC by Schwöbel-Patel, *Marketing Global Justice: The Political Economy of International Criminal Law*. [↑](#footnote-ref-7)
8. Clements, “Governing International Criminal Justice: Managerial Practices and the International Criminal Court,” 29. [↑](#footnote-ref-8)
9. Barrie Sander, “The Expressive Turn of International Criminal Justice: A Field in Search of Meaning,” *Leiden Journal of International Law* 32, no. 4 (December 1, 2019): 851–72, https://doi.org/10.1017/S0922156519000335. [↑](#footnote-ref-9)
10. Sander, 866–67. [↑](#footnote-ref-10)