Using ‘Managerial Compliance’ to Strengthen the International Criminal Court Cooperation Regime

Emilie Hunter

1 Introduction

Practitioners, NGOs, academics and diplomats have identified a diverse variety of challenges that restrict full and effective participation in the cooperation regime of the ICC.\(^1\) They include the *formal* challenges of States adopting adequate legal provisions to enable cooperation to take place, but more frequently, of *behavioural* challenges, where States and other entities engaged in cooperation practices struggle, refuse or ignore the requests for cooperation and judicial assistance. Each of these challenges contributes to the weakening of the ICC and frustrates, restricts and even prevents the Court from executing its mandate. Solutions have also been proposed with the purpose of strengthening the ICC in this vital area of its mandate.\(^2\)

These efforts are largely responsive, addressing specific challenges as they arise, and yet the process of addressing States’ adherence to the cooperation regime is a clear example of managerial compliance. As a counterpart to *coercive* mechanisms such as sanctions and monitoring, *managerial* compliance seeks to encourage compliance with the law, norm or standard, either in advance of its execution, or as it is being ignored or overlooked.\(^3\) It does so through constructive measures such as rule interpretation, capacity building and transparency activities, where the treaty body diversifies its role as an enforcer to one of an expert or manager:\(^4\) Given the legal framework of the cooperation regime, and its notable lack of enforcement mechanisms, managerial compliance can be considered a central yet overlooked asset of the Court’s cooperation practice.\(^5\)


\(^{2}\) Ibid.


\(^{5}\) In contrast, compliance analysis has informed, however vaguely, literature on the complementarity principle and positive complementarity, as well as the completion strategy activities of the *ad hoc* Tribunals. Jan Kleffner has recognised that the Complementarity regime contained
This chapter introduces managerial compliance as a framework that can help to structure responses to the challenges facing rule adherence within the cooperation regime. It does so by first outlining the two core compliance theories (Section 1), then it summarises the cooperation regime in terms of the formal and behavioural actions it requires actors to undertake, including the consequences for failure or rejection to comply (Section 2). It then turns to the managerial solutions or actions to strengthen compliance (Section 3) and its assumptions and limitations (Section 4).

2 Coercive and Managerial Compliance Mechanisms

Compliance theories have been applied to several fields of international law as a mechanism to measure State adherence to international treaties,\(^6\)

---


---