

# “WE CANNOT ALLOW OURSELVES TO IMAGINE WHAT IT ALL MEANS”<sup>1</sup>: DOCUMENTARY PRACTICES AND THE INTERNATIONAL CRIMINAL COURT

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## I

### INTRODUCTION

Looking back on his years as International Criminal Court (ICC) prosecutor, Luis Moreno Ocampo recalled what the trials against the Argentine junta had meant to his mother.<sup>2</sup> Initially, Moreno Ocampo’s mother opposed putting the former Argentine regime on trial. She wholeheartedly supported Videla and simply could not believe that he or his government was responsible for massive human-rights violations. However, at some point during the trials she changed her mind. Although she still loved Videla, she was now convinced that he deserved to be sent to prison for his role in the atrocities.<sup>3</sup> What made her change her mind? According to Moreno Ocampo, “It was the hearings with victim testimonies that convinced her, not her son. The judicial ritual is very important. It is a neutral ritual that gives order to society.”<sup>4</sup>

Moreno Ocampo has not been the only one to invoke the term “ritual” to capture the nature of criminal proceedings. In the past few years, scholars have used terms such as “ceremon[y],” “rite[ ],” and “‘service’ of remembrance”<sup>5</sup> or “sacrificial practice[ ]”<sup>6</sup> to describe human-rights trials or international criminal proceedings. Recently, Kathryn Sikkink has argued that if human-rights prosecutions prevent future crimes this is “because [of] the ritual or symbolism of a trial, the evidence presented, and the apparent neutrality of the process.”<sup>7</sup>

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1. CARTE BLANCHE (PS Film and Specogna Film 2011) (interview of Eric Bacard). The film documents the trial of Jean-Pierre Bemba Gombo. *Id.*

2. KATHRYN SIKKINK, *THE JUSTICE CASCADE: HOW HUMAN RIGHTS PROSECUTIONS ARE CHANGING WORLD POLITICS* 75 (2011).

3. *Id.*

4. *Id.* (internal quotation marks omitted).

5. Immi Tallgren, *The Sensibility and Sense of International Criminal Law*, 13 *EUR. J. INT’L L.* 561, 593 (2002).

6. Edwin Bikundo, *Humanity’s Exemplary Justice: From Hostis to Hostia Humani Generis*, in *HUMANITY ACROSS INTERNATIONAL LAW AND BIOLAW* (Britta van Beers, Luigi Corrias & Wouter Werner eds., forthcoming 2013) (on file with author).

7. SIKKINK, *supra* note 2, at 75.

In a similar fashion, Joachim Savelsberg and Ryan King have argued that the power of international criminal trials is that they produce “images of the past” that are stored in collective memory.<sup>8</sup> Yet these images are “not an objective portrayal of the truth, but rather a ritualized presentation of evidence of the kind required by the legal system.”<sup>9</sup>

International criminal justice can take a variety of ritualistic forms. In the first place, international criminal trials fit the concept of practice that Jens Meierhenrich has adopted in this issue of *Law and Contemporary Problems*.<sup>10</sup> Taking cue from Adler and Pouliot’s 2011 article in *International Theory*,<sup>11</sup> Meierhenrich defines the ICC as a series of practices—consisting of patterned action, performed by competent agents—that enact and reify background knowledge and link discursive and material worlds. No doubt all these elements are present in the workings of the ICC. Insofar as the ICC is a series of practices, it is ritualistic in a broad sense.

The term “ritual,” however, also refers to something more specific. At minimum one can say that rituals consist of proceduralized actions that have symbolic meaning; they stand for something other, something bigger than the corresponding practices<sup>12</sup> themselves. Rituals, in Rappaport’s definition, are about “the construction of orders of meaning transcending the semantic.”<sup>13</sup> In similar fashion, Bell has argued that rituals establish links between concrete practices taking place here and now and “nonimmediate sources of power, authority, and value” as well as assumptions about peoples’ “place in a larger order of things.”<sup>14</sup> Schneider adds that most researchers on ritual

either concentrate on ritual’s social aspects—as a way to assert power and authority or to reflect the existing social order—or on ritual’s contact with the difficult to articulate—on chaotic forces in a human community, on unconscious drives and desires, or on the human quest for the divine.<sup>15</sup>

The ICC contains both aspects of rituals described above. First, ICC criminal proceedings contain factual rituals that allow the court to claim the authority to give voice to victims and to stigmatize or cleanse the accused. Second, ICC criminal proceedings contain legal rituals that evoke intangible notions of global justice, world community, and humanity.

8. Joachim J. Savelsberg & Ryan D. King, *Law and Collective Memory*, 3 ANN. REV. L. & SOC. SCI., 189, 189 (2007).

9. SIKKINK, *supra* note 2, at 173.

10. Jens Meierhenrich, *The Practice of International Law: A Theoretical Analysis*, 76 LAW & CONTEMP. PROBS., nos. 3–4, 2013 at 1, 10–27.

11. Emanuel Adler & Vincent Pouliot, *International Practices*, 3 INT’L THEORY 1, 1 (2011).

12. Practices consist of patterned action, performed by competent agents, enacting background knowledge, and linking discursive and material worlds. See Meierhenrich, *supra* note 10.

13. ROY A. RAPPAPORT, RITUAL AND RELIGION IN THE MAKING OF HUMANITY 27 (1999) (emphasis omitted).

14. CATHERINE BELL, RITUAL: PERSPECTIVES AND DIMENSIONS, at XI (1997).

15. Gregory W. Schneider, *Cinematic Ceremony: Toward a New Definition of Ritual*, 21 VISUAL ANTHROPOLOGY 1, 5 (2008).

Bikundo explains the purpose of legal rituals in international criminal proceedings. According to Bikundo, international criminal trials are

organised around achieving universal justice on behalf of the international community/humanity through singular trials of particular individuals. . . . All that is in order to visualize the invisible, and hear the inaudible international community through its icons as embodied representations of something that has its own existence, yet which is only visible and audible through those icons.<sup>16</sup>

Thus, the purpose of legal rituals in international criminal proceedings is to connect and embody an intangible international community by prosecuting individuals responsible for collective crimes. However, for ritualized forms of resolving past political violence to succeed, the court must engage in quite radical forms of redefinition and translation. Whatever the personal experiences of victims, perpetrators, or the wider community, international criminal law utilizes specific language and procedures to address acts of violence. Some of these procedures include redefining behavior in terms of “elements of crime,” presuming that the accused is innocent, determining which experiences of violence and injustice should be highlighted, and translating broad political conflicts into cases against specific individuals.

The legal-ritual resolution of suffering and violence has two faces. On the one hand, legal-ritual resolution offers an opportunity to speak about what has happened and to link stories of suffering and victimhood to notions of order, justice, and community. For example, ICC interventions in the Central African Republic have shown that international prosecutions can offer a forum for victims “thirsting to speak in front of justice.”<sup>17</sup> Speaking in this forum empowers them to relabel international crimes as aberrations of normalcy and violations of a sound political order.<sup>18</sup> On the other hand, the legal-ritual resolution sometimes only “empowers” victims by radically transforming their experiences. Rather than representing what “really happened,” trials offer an authoritative presentation of the facts, which is organized around legal notions such as jurisdiction, responsibility, and victimhood.<sup>19</sup> This can result in a variety of unfavorable outcomes. For example, victims whose stories are deemed irrelevant to the case may be omitted, those unfit to testify may not be invited, testimonies may be restructured to fit the case at hand, alternative notions of

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16. Bikundo, *supra* note 6.

17. Marlies Glasius, ‘We Ourselves, We are Part of the Functioning’: *The ICC, Victims, and Civil Society in the Central African Republic*, 108 AFRICAN AFF. 49, 61 n.61 (internal quotation marks omitted) (interviewing a female double-rape victim who was widowed in Bangui).

18. As a rape victim put it, what is important is to show that “it’s not normal for them to come and rape us like that, and leave like that.” *Id.* at 61 n.65 (interviewing a young female rape victim in Bangui).

19. See KAMARI MAXINE CLARKE, FICCTIONS OF JUSTICE: THE INTERNATIONAL CRIMINAL COURT AND THE CHALLENGE OF LEGAL PLURALISM IN SUB-SAHARAN AFRICA 90–109 (2009) (explaining how the conflicts and violence need to be translated into language that makes a case admissible, ensures that the story can be brought before the court); see also Sara Kendall & Sarah Nouwen, *Representational Practices at the International Criminal Court: The Gap Between Juridified and Abstract Victimhood*, 76 LAW & CONTEMP. PROBS., nos. 3–4, 2013 at 235.

justice may not be voiced, and legal procedures may stand in the way of desires for retributive justice.

In this article, I study the tension between actual victim experiences and the portrayal of those experiences in ICC practices. I study this tension as borne out in documentaries about the ICC. I focus on documentaries instead of more conventional ICC institutions because documentaries have turned into a powerful set of practices through which the court is imagined and narrated, ultimately influencing opinions about the court's work. In the past few years, ICC documentaries have become an important way to educate broader audiences about the role and activities of the court.

The opportunity to reach a wider public by using documentaries has not been lost on the Office of the Prosecutor (OTP) of the ICC. The previous Chief Prosecutor Moreno Ocampo as well as the current Chief Prosecutor Bensouda have appeared in several documentaries promoting the ICC, including *The Prosecutor*,<sup>20</sup> *The Reckoning*,<sup>21</sup> *The Court*,<sup>22</sup> and *Kony 2012*.<sup>23</sup> These documentaries are often supported by human-rights nongovernmental organizations, (NGOs) including the International Center for Transitional Justice, the Coalition for the International Criminal Court, and Invisible Children.<sup>24</sup> ICC documentaries are shown at human-rights festivals around the world, including the Movies that Matter film festival in The Hague.<sup>25</sup> These documentaries are also promoted by humanitarian celebrities including Angela Jolie and Mia Farrow.<sup>26</sup> The International Bar Association—in cooperation with

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20. THE PROSECUTOR (White Pine Pictures & National Film Board of Canada 2011).

21. THE RECKONING (Skylight Pictures 2009).

22. THE COURT (Bukera Pictures 2013).

23. KONY 2012 (Invisible Children 2012).

24. Invisible Children is an activist organization focusing specifically on what it calls “the LRA conflict.” See *Our Work*, INVISIBLE CHILDREN, <http://invisiblechildren.com/our-model/> (last visited Nov. 10, 2013). It is responsible for the production and distribution of *Kony 2012*, *supra* note 23, which, with over 100 million views, is probably the most viral video ever. Samantha Grossman, ‘Kony 2012’ Documentary Becomes Most Viral Video in History, TIME NEWSFEED (Mar. 12, 2012), <http://newsfeed.time.com/2012/03/12/kony-2012-documentary-becomes-most-viral-video-in-history/#ixzz2QYdcSZv3>. The documentary received worldwide support, but also fierce critique, from sources like the Acholi population in Northern Uganda and country experts that accused the filmmaker of one-sided and misleading representations of the conflict. For some of the criticisms, see VISIBLE CHILDREN, <http://visiblechildren.tumblr.com/> (last visited Nov. 10, 2013). In response to the critiques, Invisible Children produced a follow-up, *Kony 2012 Part II — Beyond Famous*. INVISIBLE CHILDREN (Apr. 18, 2012), <http://invisiblechildren.com/media/videos/program-media/kony-2012-part-ii-beyond-famous/>. Despite the global splash made by the documentary and the effects it had on U.S. politics, it should be noted that the self-proclaimed goal of the documentary, arresting Kony before 2013, has not been achieved. *Id.*

25. Movies that Matter is an annual human-rights documentary festival that developed out of the Amnesty International Film Festival. See MOVIES THAT MATTER, <http://www.moviesthatmatter.nl/> (last visited Apr. 8, 2013).

26. Angelina Jolie, for example, is featured prominently in the documentary *The Court*, in which she provides the opening speech celebrating the work and person of Moreno Ocampo. See THE COURT, *supra* note 22; see also *infra* text accompanying notes 77–80 (discussing this scene in more depth). Jolie also appears at the press photos promoting the film. See *The Court*, BUKERA PICTURES, <http://www.bukerapictures.com/en/films/the-court> (last visited Nov. 10, 2013). Mia Farrow is featured in

the ICC itself—has even made use of a twenty-seven minute documentary that focuses on defense rights at the ICC and highlights defense career opportunities at the ICC.<sup>27</sup> *In the Dock* echoes this need for proper defense rights by presenting the ICC as a ritualized contest between prosecutor and defense.<sup>28</sup> In sum, documentaries serve an important purpose by representing the court to the public, and are worth studying in their own right as ICC-related practices.

I begin my study of documentary films in part II, by describing their general role as social practices. In part III, I proceed to the main focus of this article: how documentaries portray the tension between giving voices to victims and transforming those voices. I discuss this tension by comparing the documentary *Carte Blanche* to three other ICC documentaries: *The Reckoning*, *The Court*, and *Kony 2012*.<sup>29</sup>

*Carte Blanche* illustrates the tension between giving and translating victim voice through at least two means—first, modes of representation, and second, portrayal of victims and the court’s role therein—and from at least four different perspectives: victim communities, forensic experts, victim experts, and the prosecutor. The film tells the stories of several victims of who have suffered rape and pillage in a village in the Central African Republic. It is especially illustrative of the aforementioned because the film oscillates between, on the one hand, the stories of victims and victim communities, and on the other hand, the production of a legal case against Jean-Pierre Bemba Gombo by experts working for the prosecution. Although all experts are driven by a desire to give the victims voices, they also realize that their way of achieving justice unavoidably requires that voices will be translated into expert languages that could be far removed from the experiences of the victims. Thus, the film aptly illustrates the tension between giving and transforming victim voice.

## II

### DOCUMENTARIES AS SOCIAL PRACTICES

It is virtually impossible to come up with a clear-cut definition of documentaries that would set them apart from other genres such as fiction film or journalism. However, in terms of practice theory it is possible to highlight

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a promotional trailer for *The Prosecutor* in clear admiration for Moreno Ocampo. See *Prosecutor*, INT’L DOCUMENTARY FILM FESTIVAL AMSTERDAM, <http://www.idfa.nl/nl/tags/project.aspx?id=C69857BC-F3C2-430B-8B65-5F17714BD35B> (last visited Nov. 10, 2013).

27. IN THE DOCK (International Bar Association 2011), available at <http://vimeo.com/23958341>.

28. *Id.* The documentary mainly consists of short interviews with court professionals, accompanied by seemingly random images such as traffic in The Hague, the Scheveningen prison, and African children playing football. The film advocates working at the ICC, and in particular promotes the ICC campaign to solicit female staff from Africa. It depicts a proud young female assistant to counsel who worked her way up from a traditional rural community in Africa to the world of international criminal justice. Throughout the documentary, a voice-over repeatedly emphasizes that “justice is important,” invoking an image of the ICC as the perfect move for lawyers interested in careers influencing global justice. *Id.*

29. CARTE BLANCHE, *supra* note 1.

certain elements that are prominent in the documentary field. As Nicolini has set out, practice-based approaches discern at least five elements of the social world: (1) the recurrent performance of activities, (2) the material and bodily nature of social practices, (3) the role of creativity of those performing practices, (4) the embeddedness of knowledge and meaning in practices, and (5) the centrality of interest and power.<sup>30</sup> All these elements can be identified in the field of documentaries, which has been characterized “as an institutional practice with a discourse of its own.”<sup>31</sup>

The documentary-making practice takes the form of a community that defines itself within (or against) a specific tradition of filmmaking by referring to its own mandate, “circuits of distribution,” “exhibition sites,” and “professional organizations.”<sup>32</sup> The development and transformation of documentary as a semiautonomous field can be charted in a variety of trends. Documentary makers are responding to earlier traditions and reinventing them, making use of new technological devices, and adapting to new structures of power and financing.<sup>33</sup>

The documentary-watching practice takes the form of a community of viewers who possess the “procedural skills of comprehension and interpretation that will allow them to make sense of a documentary”<sup>34</sup>—skills that literally become embodied and habitual. Of course, this does not mean that acquired skills and assumptions cannot be challenged or changed. “Reflexive documentaries,” for example, try to destabilize assumptions about the representation of reality in documentaries by revealing how truth in documentaries is crafted through processes of selection, editing, plotting, and so forth.<sup>35</sup> However, reflexive documentaries can only problematize the viewer’s skills and assumptions if the viewer possesses those skills and assumptions in the first place. Thus, even reflexive documentaries ultimately rely on a practice

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30. DAVIDE NICOLINI, PRACTICE THEORY, WORK, AND ORGANIZATION: AN INTRODUCTION 1–10 (2012).

31. BILL NICHOLS, REPRESENTING REALITY, ISSUES AND CONCEPTS IN DOCUMENTARY 15 (1991) [hereinafter NICHOLS, REPRESENTING REALITY].

32. *Id.* at 14–15.

33. See Francesco Ragazzi, *Your Film in Seven Minutes: Neo-Liberalism and the Field of Documentary Film Production*, in DOCUMENTING WORLD POLITICS (Rens van Munster & Casper Sylvest eds., forthcoming) (on file with author). Ragazzi explains, for example, the development of documentary films in the 1960s in terms of the desire to escape from the grand ideological and educational documentary works that dominated early documentary making, the rise of new cameras, and alternative funding channels. He subsequently traces the effects of private television channels, the rise of independent producers, and the development of documentary film markets by public film funds on the revival of the documentary genre since the late 1980s. Finally, he explains the power of documentary festivals and broadcasters in the selection of documentaries—and thus on the style a documentary maker has to adopt in order to enhance her or his changes of (commercial) success.

34. NICHOLS, REPRESENTING REALITY, *supra* note 31, at 24.

35. This is not the place to delve into the history, technique, and tradition of reflexive documentaries, but for a useful introduction see NICHOLS, REPRESENTING REALITY, *supra* note 31, at 56–75 and Jay Ruby, *The Image Mirrored: Reflexivity and the Documentary Film*, J. U. FILM ASS’N, Fall 1977, at 1, 3–11.

of documentary watching that comes with certain expectations, forms of knowledge, and ways of doing.

Although documentary makers and viewers participate in the independent practices described above, they are also united by the idea that documentaries portray the truth.<sup>36</sup> A documentary film, to use Aufderheide's phrase, "tells a story about real life, with claims to truthfulness."<sup>37</sup> Documentaries such as *The Reckoning* or *The Court*, include footage of actual trials and interviews with actual witnesses, victims, or prosecutors, not actors. However, other films sometimes blur the line between documentary and fiction film, for example when interviews with witnesses are supplemented with reenactments. A good illustration is Errol Morris's *The Thin Blue Line*, which bolsters actual interviews about the murder of a Dallas policeman with reenactments of the shooting itself.<sup>38</sup> More recently, Joshua Oppenheimer's *The Act of Killing* documents members of Indonesian death squads reenacting their squads' own killings from the 1960s.<sup>39</sup> These examples do not portray actuality directly but instead enact it through staged scenes.

However, the mere fact that documentaries generally claim to represent reality does not explain what documentaries do and why they can be so powerful. If representing reality were the most important aspect of documentaries, security-camera footage of court proceedings would qualify as documentary film.<sup>40</sup> Documentaries are distinguished from security-camera footage because the makers of documentaries are presenting arguments or points. These filmmakers present arguments through artistic interventions that organize actuality.<sup>41</sup> Documentaries, in one of the earliest definitions of the genre, are about the "creative shaping of natural material" and the artistic organization of actuality.<sup>42</sup> As these definitions show, documentaries combine the *representation* of actuality with the *presentation* of an argument or point; a combination made possible by the filmmaker's artistic tools. As explained above, reflexive documentaries reveal these artistic interventions. For example,

36. This is reflected in the titles of two classic introductions to documentary theory. See NICHOLS, REPRESENTING REALITY, *supra* note 31; LOUISE SPENCE & VINICIUS NAVARRO, CRAFTING TRUTH: DOCUMENTARY FORM AND MEANING (2011).

37. PATRICIA AUFDERHEIDE, DOCUMENTARY FILM: A VERY SHORT INTRODUCTION 2 (2007).

38. THE THIN BLUE LINE (MGM Video 1988).

39. THE ACT OF KILLING (Draft House Films 2012); *see also* THE ACT OF KILLING, <http://theactofkilling.com/> (last visited Nov. 10, 2013).

40. The example is borrowed from Henrik Juel, *Defining Documentary Film*, P.O.V., Dec. 2006, at 5, available at <http://pov.imv.au.dk/pdf/pov22.pdf>. Juel uses the example of surveillance cameras at gas stations and supermarkets to illustrate that documentaries do more than just represent actuality. *Id.*

41. As Nichols has put it, "Documentary also begins with the concrete representation of people and places, situations and events but depends for its success far more on its ability to induce us to derive larger lessons, broader outlooks, or more overarching concepts from the detail it provides." NICHOLS, REPRESENTING REALITY, *supra* note 31, at 29.

42. John Grierson, *First Principles of Documentary (1932-1934)*, in NONFICTION FILM: THEORY AND CRITICISM 20 (Richard Meran Barsam ed., 1976), available at <http://artsites.ucsc.edu/faculty/gustafson/FILM%20161.F08/readings/griersonprinciples.pdf>.

*The Man with a Movie Camera*<sup>43</sup> informs the viewer about the process of filming and editing the documentary itself. Thus, documentaries are unique insofar as they include arguments or points. As Nichols has stated, “documentaries take shape around an informing logic,” which “requires a representation, case, or argument about the historical world.”<sup>44</sup>

The etymological origin of the term “documentary” is the Latin *docere*, which means to teach or educate, such that the genre used to be called “educationals.”<sup>45</sup> The educational function of representations is particularly important in some of the recent pro-ICC documentaries. The documentary *The Prosecutor* serves as an example. One of the film’s subjects, an ICC investigator, grows increasingly frustrated with the court’s progress in the *Kony* case.<sup>46</sup> The documentary shows the ICC investigator as he gradually decides to leave the court and then begins work for a humanitarian organization operating in East Congo’s conflict zone. The focus later returns to the (former) investigator, now in his office, where he receives a call that some soldiers fighting for a warlord are willing to defect. Upon receiving the call, he abruptly interrupts the interview, makes a couple of hectic phone calls, and rushes out to save the soldiers. A spectacular scene follows, mimicking a classical action scene from a fiction film, complete with miscommunications, helicopters, nervous yet controlled leading characters, bad guys trying to recapture (and probably execute) the defected soldiers, and ultimately a happy ending. However, unlike a fiction movie, the footage represents the actual situation on the ground, not some kind of reenactment. The characters in the film are for real. Their real lives, their real careers, and their real anxieties are at stake. At the same time, however, the purpose of the scene is not just to represent reality. It is part of a bigger story, and through editing, pacing, and voice-over the meaning of the scene becomes pedagogical. Directly after the scene, the director uses a voice-over to explain that the action scene provides a sharp contrast to how the ICC functions. This is followed by an explanation by Moreno Ocampo that the court works according to preset procedures as part of a long-term attempt to subject the world to the rule of law. The representation of the spectacular rescue action thus ultimately serves an educational and argumental function. It teaches the viewer about the proceduralized way in which the court brings justice.

Thus, the film *The Prosecutor* does not just represent reality to the viewer. It also presents an educating argument. This combination of representation and presentation is not unique to *The Prosecutor*; it is common to almost all of the documentary films on the ICC. Each documentary represents actuality in the form of images of victims, material from trials, or interviews with witnesses, prosecutors, and members of the defense. However, the ICC documentaries are

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43. THE MAN WITH A MOVIE CAMERA (Vufku 1929).

44. NICHOLS, REPRESENTING REALITY, *supra* note 31, at 18.

45. Sarah R. Stein & Shaun Cashman, *Documentaries, Motion Picture*, in ENCYCLOPEDIA OF JOURNALISM 450, 450 (Christopher H. Sterling ed., 2009).

46. THE PROSECUTOR, *supra* note 20.



also different from one another. They differ in terms of the arguments that are presented affect the public understanding of the ICC. Filmmakers present different arguments by editing actuality, linking it to sound and perspective, and organizing it to form. Therefore, in order to critically examine how documentaries attempt to affect public understanding of the ICC, it is necessary to study how artistic interventions are used to make general points about the court's practices. For this, I will analyze how the makers of *Carte Blanche* have edited actuality in order to present an argument about the legal-ritualistic resolution of political violence in the Central African Republic. This brings the discussion back to the logic of rituals, as elaborated above.

### III

#### THE TENSION BETWEEN JUSTICE AND EXPERT LANGUAGE

International criminal-law documentaries simultaneously portray victims and translate victim experiences into the expert languages of international criminal law. In part III.A, I will explain that this is accomplished to a significant degree through “modes of representation” adopted in documentary films. By comparing *Carte Blanche* with *The Reckoning* and *Kony 2012* I will highlight the specific observational modes of representation that have dominated documentaries on the ICC. In part III.B I will explain how the different modes of representation adopted in ICC documentaries affect the way in which victims and the ICC are portrayed.

#### A. Modes of Representation

In her short introduction to *Documentary Film*, Aufdereheide articulates what most people have in mind when thinking about a documentary:

A “regular documentary” often means a film that features sonorous, “voice-of-God” narration, an analytical argument rather than a story with characters, head shots of experts leavened with a few people-on-the-street interviews, stock images that illustrate the narrator’s point . . . perhaps a little educational animation, and dignified music. This combination of formal elements is not usually remembered fondly.<sup>47</sup>

This archetypical image of documentaries reflects what Nichols has called the “expository mode” of representation;<sup>48</sup> a mode of organization that directly addresses the viewer with an explicit message about the world. Expository documentaries generally use voice-overs to state their messages and to create continuity in the film; images and personal stories do appear, but primarily to reinforce the documentary’s central message. The voice-over commentary operates on a level removed from the images and sounds of the documentary film; it “seems literally ‘above’ the fray; it has the capacity to judge actions in the historical world without being caught up in them.”<sup>49</sup>

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47. AUFDERHEIDE, *supra* note 37, at 10.

48. BILL NICHOLS, INTRODUCTION TO DOCUMENTARY 105 (2001) [hereinafter NICHOLS, INTRODUCTION TO DOCUMENTARY].

49. *Id.* at 107.

The expository mode figures prominently in some pro-ICC documentaries such as *The Reckoning*.<sup>50</sup> *The Reckoning* presents the central idea that the ICC constitutes the provisional end point in a progressive history from Nuremberg until the present day and that professionals working at the court deserve the viewer's support as they fight against impunity. This message is communicated to the viewer by a sonorous male voice-over that provides coherence and moral clarity. The voice-of-God narrator connects the ICC to its post-1945 predecessors, in several ways: by listing the difficulties facing the court in a world of power politics, by correcting some misunderstandings about the court, and by signaling hope that the ICC will bring about a world without impunity. The spoken message is underscored by often-solemn music and illustrated by excerpts from interviews with members of the OTP, short victim statements, trial footage, and images of violence and victimhood to which the court should answer. The representation of different people and their stories, as well as the inclusion of historical footage, serves to underscore the central argument. The main point is not to show those appearing in the film as persons with doubts and anxieties, but to present them as illustrations of the moral lesson that the film aims to communicate.

In *Kony 2012*, the voice-over comes from Jason Russell, the filmmaker himself, who also turns out to be the leading character in his own documentary.<sup>51</sup> The documentary juxtaposes the birth and bringing up of Russell's own son with the unhappy faith of Ugandan child soldiers. The film also explores Jason Russell's role as leader of a mighty NGO, documenting his meetings with celebrities and powerful politicians, and his successes in getting U.S. politicians and the military involved. However, despite the personal outlook of the documentary, the persons and images appearing in it still present a call for action. The requested action ranges from donations, to publicity, to pressure on political representatives, and even to military intervention and the arrest of Kony.<sup>52</sup>

The mode of representation in *Carte Blanche* is completely different from those dominating *The Reckoning* or *Kony 2012*. In terms of documentary genre, *Carte Blanche* includes elements of the "observational mode," which "stress the nonintervention of the filmmaker."<sup>53</sup> Of course, although *Carte Blanche*

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50. THE RECKONING, *supra* note 21. A similar dominant mode of representation can be found in *The Prosecutor*, which is another documentary film propagating the ICC, particularly the work of the OTP. See THE PROSECUTOR, *supra* note 20.

51. KONY 2012, *supra* note 23. As may be recalled, *Kony 2012* was produced by the U.S.-based NGO Invisible Children as part of its broader campaign on the atrocities committed by the Lord's Resistance Army. The documentary had an enormous impact worldwide. With over 100 million views it rapidly became a topic discussed in many news shows and newspapers. See Grossman, *supra* note 24.

52. KONY 2012, *supra* note 23.

53. NICHOLS, REPRESENTING REALITY, *supra* note 31, at 38. Observational documentaries leave the impression that the viewer gets a "sense of intimacy with the material documented," as well as the impression that "it is not the filmmaker but the event that determines the length and nature of [a] shot." SPENCE & NAVARRO, *supra* note 36, at 195. Observational documentaries gained popularity in the 1960s with the introduction of 16 mm cameras and portable tape recorders. NICHOLS,

includes observational elements, it does much more than just register the social life and character of those appearing in the film.<sup>54</sup> For example, the documentary includes both spoken stories informing the viewer about the intervention in the Central African Republic in 2002 and explanations of the social meaning and context of rape. Even so, in comparison to other ICC documentaries, the inclusion of expository or observational modes of representation is striking. *Carte Blanche* does not use voice-over to create coherence between the different parts of the documentary or to communicate a central message. Nor does it use music to influence viewer interpretations of the social events shown in the film. In the absence of explicit direction from a voice-of-God narrator, the images presented in *Carte Blanche* reach out much more directly to the viewer, sometimes leaving the impression that the viewer is personally present at the scene. This direct style can create feelings of uneasiness, because the viewer may feel that she is intruding in the private lives of the people represented. In one of the final shots, for example, the documentary shows how a mother washes her daughter's wounds—wounds that were caused by crimes committed when the daughter was young, and that would never be healed because the family was too poor to pay for proper medication. Without any commentary or music, the film follows the mother's preparations and documents the girl's screams from pain and fear. The viewer watches the painful cleansing routine, while remembering past atrocities and experiencing grief over the young girl's diminished chance of survival. The film's directness is further strengthened by seemingly unimportant aspects such as Moreno Ocampo speaking Spanish rather than English or shots of the victim's expert bringing and preparing her own food during a site visit in Central Africa.<sup>55</sup> Moreover, the relatively slow pace of several scenes gives the impression that the event, rather than the filmmaker, determines the scene. One example is the scene portraying a group of men in a village in the Central African Republic carrying water and sand to bake bricks. The activity is documented even though its link to the Bemba trial remains unclear. Another example is a scene in which a group of Bemba supporters exits a car in The

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INTRODUCTION TO DOCUMENTARY, *supra* note 48, at 100, 109. Partly in response to the explicit and moralistic framing of expository documentaries, documentary makers began portraying the social world “as it is” without explicit artistic interventions or reframing. NICHOLS, REPRESENTING REALITY, *supra* note 31, at 33. Contrary to expository documentaries that prioritize the central spoken message over other material presented, observational documentaries tend “to reveal aspects of character and individuality” of those appearing in the film while leaving the viewer “to take a more active role in determining the significance of what is said and done.” NICHOLS, INTRODUCTION TO DOCUMENTARY, *supra* note 48, at 111. To be sure, it is controversial to say that documentaries are ever able to record life as it is. The mere presence of the documentary maker, for example, is likely to affect the behavior of the filmed subjects, not to mention the impact of the filmmaker's selection and editing decisions. Yet the observational-documentary representation style is markedly different from the expository style; instead of images and persons illustrating a clear central message, those appearing in documentaries move to the center, leaving room for viewers to determine what they have just seen.

54. See CARTE BLANCHE, *supra* note 1.

55. *Id.*

Hague, and Bemba's wife takes the time to thoroughly introduce everyone present, including not just their names, but also their identities and their roles in family relations or Congolese politics. Through these introductions the viewer gains a more complete understanding of Bemba, not just as the accused, but also as a person embedded in family life and high Congolese politics. This scene is complemented later on when Bemba's wife explains Bemba's newly discovered hobby of making ceramic pots and bowls in prison. Rather than mentioning this as a curiosity, the documentary takes the time to let Bemba's wife her display the pots that he has created.<sup>56</sup> Here too, viewers sense that the camera records the scene without interruption, and they are direct witnesses to the wife's ambivalence as she shows the products of her husband's newly discovered talents.

The absence of a voice-over or explicit moral message allows *Carte Blanche* to focus on the personal histories of those involved in the Bemba trial. To be sure, the film does not provide an in-depth psychological study of any of the people it portrays. Psychological analysis is limited to those persons' reflections on how they experience their jobs and how their personal histories keep them motivated. Compared to expository ICC documentaries, however, the focus of *Carte Blanche* is radically different. The film does not rely on a voice-of-God narrator to provide coherence within the film; rather, the focal point is the footage of people, and the viewer is left to attach meaning to what is shown.

#### B. Portrayal of Victims and the Role of the ICC

Not surprisingly, the choice to use a particular mode of representation affects the way that victims and the ICC are portrayed. Consistent with expository documentaries, the portrayal of victims in both *The Reckoning* and *Kony 2012* is functional and meant to underscore the spoken message of the film. This way of representing victims limits their ability to use their voices to convey their individual experiences.

In *The Reckoning*, for example, footage of victims is included to show the "unimaginable atrocities" that the ICC is about to address.<sup>57</sup> The ICC itself is presented as a redemptive force, giving voice to victims and linking their suffering to a world of order, meaning, and community. Victims are presented predominantly in two ways: either as suffering bodies without voices of their own or as people desperately seeking intervention from the ICC.<sup>58</sup>

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56. *Id.*

57. THE RECKONING, *supra* note 21. These "unimaginable atrocities," are, ironically enough, subsequently "imagined" in the documentary itself.

58. *Id.* In this context it is worth noting that the documentary also shows brief footage of the leader of an internally displaced-persons camp pleading for a halt to the arrest warrants and even of northern Ugandan communities overwhelmingly voting for lifting the arrest warrants against members of the Lord's Resistance Army. The latter images, however, are accompanied by a voice-over informing viewers that they are witnessing attempts by the Lord's Resistance Army to "push their anti-ICC case."

The opening scene of the film is illustrative of both modes of victim presentation.<sup>59</sup> It shows two men, walking in a field with tall grass, in total silence—apart from the soft sounds of some crickets and birds. A man who appears to have survived atrocity shows the exact location of a skull and the remains of a skeleton in the field. After a while tragic, slow music sets in. This is followed by images of more men walking through the field in a line. The men appear to be survivors of (or firsthand witnesses to) mass atrocities. One of the men first shown in the field speaks the film's inaugural words, unknowingly endorsing the project of international criminal law: "In this place killers go unpunished. Without justice people have no respect for each other. If this goes unpunished, it will happen again. Communities will go on killing each other."<sup>60</sup> The tragic music gets louder, and is accompanied by the tormented face of the survivor from the opening scene. The image is interrupted by the sound of a chairman's hammer, and the survivor looks up as if he hears the same sound. Coming from afar a woman's voice declares, "The International Criminal Court is now in session." Viewers then observe a member of the OTP, who puts the local suffering within global and historical perspective, stating, "During the previous century millions of people were the victims of unimaginable atrocities."<sup>61</sup> The prosecutor goes on to point out that "the realization that such crimes that concern the international community should not go unpunished led to the creation of an independent, permanent criminal court."<sup>62</sup>

This opening scene clearly demonstrates that *The Reckoning* portrays victims alternately as anonymous sufferers or as pleading for ICC help. The victims in the first shots remained unnamed, with their suffering unexplained and severed from social and political context.<sup>63</sup> Only much later do viewers learn that the scene is set in East Congo, but specific facts and context remain unclear. This is not surprising because the main function of this footage is to underpin the documentary's message, that the ICC is a beneficent body. The documentary's message is supported when the oblivious victim opens the film's dialogue by expressing belief in the preventative power of the ICC. Moreover, the documentary's message is also bolstered by the sequence of images that transports the viewer from the silent grieving man in the field to the ICC's world of voice and meaning, which reiterates the documentary's message.<sup>64</sup> The first-shown ICC proceedings come across as a *Genesis 1* moment: The silent (or rather: silenced) victims hear a voice from afar, and a new reality appears taking

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59. The description in the film's opening scene is taken from Wouter Werner, *Showing Trials, The Art of Crafting Humanity in The Reckoning*, in *DOCUMENTARIES IN WORLD POLITICS* (Rens van Munster & Casper Sylvest eds., forthcoming 2014) (on file with author).

60. *THE RECKONING*, *supra* note 21.

61. *Id.*

62. *Id.*

63. *Id.* The same applies to most other victims shown in *The Reckoning*, who are vividly illustrated with photographs while the film quickly summarizes the number of victims of international crimes in the twentieth century. *Id.*

64. *Id.*

viewers away from the troubled African fields to the ordered reality of a courtroom in The Hague. The victims' suffering is explained as part of a long series of "unimaginable atrocities" and presented anew as part of a progressive history in which humanity confronts inhumanity, from Nuremberg up to the ICC. The documentary focuses on the redemptive aspects of the judicial ritual, which its promotional trailer called "the plight of the victims, the promise of justice."<sup>65</sup> It suggests that the translation from victim suffering to legal procedures is unproblematic, because the move to legal procedures is simply a direct one, from silence into voice, from injustice to justice, and from bodily mutilation into a world of meaning and community. Rather than studying the problems inherent in the legal translation of political conflicts and victim experiences, the film focuses on the difficulties facing the prosecutor as he attempts to effectuate justice in a world governed by power politics. Thus, the role of victims in *The Reckoning* is only to uphold the legitimacy of the ICC, either by acting as subjects of the court's good work, or by endorsing the court explicitly.

In similar fashion, the victims in *Kony 2012* appear as simple beneficiaries rather than socially and politically located people.<sup>66</sup> The idea is that someone must give voice to these voiceless figures. That someone is the director himself, Jason Russell.<sup>67</sup>

Russell portrays himself as savior by showing how he keeps a promise made to a former child soldier, Jacob. Russell shows himself making the promise in 2003, when he first meets Jacob, who tells the story of his abduction and his brother's death. As Jacob begins to cry the screen turns black. Viewers then hear the soft, comforting voice of Russell: "It's okay Jacob, it is okay."<sup>68</sup> The scene shifts to 2012, with Russell explaining through a voice-over that "everything in his heart told him to do something." The scene then returns 2003, and the promise is announced: "We are [going to] do everything we can to stop them."<sup>69</sup> (The promise is later shortened to helping secure an arrest warrant against Joseph Kony.<sup>70</sup>) The promise scene is followed by 2003 through 2012 footage of Russell energetically mobilizing people to fulfill the promise to Jacob. Russell then returns to voice-over and, in an interesting turn, describes the film itself as the (preliminary) conclusion to his struggle to fulfill the promise to Jacob: "The fight has led me here, to this movie you are watching, as this promise is not only about Jacob, or me; it is also about you."<sup>71</sup> Thus, Russell becomes the hero, and Jacob is merely incidental.

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65. *Id.*

66. *See KONY 2012, supra* note 23.

67. *See id.*

68. *Id.* It is most likely unintentional, but the parallels between Russell's promise and God's promise to Jacob in *Genesis* 46:3 are apparent. *See Genesis* 46:3.

69. *KONY 2012, supra* note 23.

70. *Id.*

71. *Id.*

But Russell's last-quoted sentence also indicates that the quest to obtain the arrest warrant is about more than just Russell's individual promise to incapacitate Kony.<sup>72</sup> Through victim images, the documentary directly reaches out to the viewers. It presents the viewers as a global community of humane, caring people, who are connected through social media and living in a new, interdependent world (a "Facebook world" as Moreno Ocampo calls it in the film<sup>73</sup>). The viewer community is presented through a constant stream of images, such as the globe from a distance, a wall filled with pictures of people from all parts of the world, and shots of masses of activists who all demand an end to atrocities. As for the "Facebook world"—the world in which the new community of viewers supposedly exists—this is reiterated by the visual structure of the film. From the first shot *Kony 2012* resembles Russell's personal Facebook page. Russell takes the viewer through his own videos while telling the story of his life. The film thus combines the virtual and the virtuous<sup>74</sup> in an attempt to create the community and world it describes as already existing. The global community is partly created in the counterimage of the atrocities it seeks to fight: Interconnected, caring people discover their own humanity in response to the inhumane nature of Kony and his Lord's Resistance Army—and also in response to the suffering of victims such as Jacob. Therefore, in *Kony 2012*, Russell is not the only supposed hero. The viewers are apparently heroes too, and they are part of a community of heroes.

The ICC plays a small but crucial role in *Kony 2012*. The court's role is only to help the new community define itself and its world by arresting Kony.<sup>75</sup> Not surprisingly then, *Kony 2012* does not emphasize the procedural, ritualistic aspects of the ICC's criminal process—such as jurisdiction, elements of crime, forensic evidence, or witness statements—nor does the film emphasize the similarly procedural, ritualistic aspects of addressing mass atrocities. The film is only about the arrest. Of course, the imagined arrest is still connected to the ICC criminal process and to the broad project of addressing mass atrocities. But the film is more concerned with a different aspect of Kony's arrest, namely that it will function as a tangible token of the "new world" presented in *Kony 2012*.<sup>76</sup>

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72. See *id.* Note that the film seems to work on the unspoken assumption that arresting Kony will also incapacitate the Lord's Resistance Army.

73. See *id.*

74. These terms are taken from JAMES DER DERIAN, VIRTUOUS WAR: MAPPING THE MILITARY-INDUSTRIAL-MEDIA-ENTERTAINMENT NETWORK 98, 153 (2001).

75. See *KONY 2012*, *supra* note 23.

76. *Kony 2012* presents conflicting claims as to whether the world it describes already exists, or is just now being created. See *id.* On the one hand, the film repeatedly claims that social media has already changed the world. These claims are underpinned with visual cues, including money-topped pyramids turned upside down, such that the money is now on the bottom and the global interconnected community is on top.

On the other hand, the film argues that "we" should work hard to make this new world a reality. See *id.* In this context, Kony's arrest will have iconic value. According to Russell's voice-over it will "prove that the world we live in has new rules; that the technology that has brought our planet together is allowing us to respond to the problems of our friends." *Id.* Interestingly, Russell leaves

If this is the important aspect of Kony's arrest, then the ICC's role in issuing the arrest warrant is to identify the negative counterpart of the global caring community: Kony. By issuing the warrant, the ICC affirms that the new world presented in the documentary actually exists.

*The Court* offers a different portrayal of the relationship between victim experiences and the ICC's pursuit of justice.<sup>77</sup> This may come as a surprise, because some portions of *The Court* seem to confirm the redemptive logic that prevails in films like *The Reckoning*. The scene begins with a shot of a huge television screen, without accompanying music or text. Angelina Jolie speaks the first words, "good evening," and then begins praising Luis Moreno Ocampo (at the time still the chief prosecutor of the ICC) for all the good work during his first term of office, giving "a voice to the voiceless."<sup>78</sup> Jolie continues by addressing the viewer directly: "In this world there is so much injustice and violence that we need you now more than ever."<sup>79</sup> After the opening words, text appears on the screen dedicating the film to the child soldiers who have been forced to fight in wars around the globe. The words fade out, but the term "child soldiers" remains for a short moment, as if to make sure that the viewer does not forget the film's dedication. When the dedication finally fades, melancholy and mysterious music sets in and a picture of Rome appears, along with text about the signing of the founding treaty of the ICC. This short shot is followed by footage of Moreno Ocampo's inauguration. The film then advances the viewer five years in time. Moreno Ocampo is cheerfully walking through his office, greeting people, and getting to work with a map of Ituri.<sup>80</sup> Based on this opening scene, the viewer would expect another pro-ICC, redemption-inspired documentary celebrating both the ICC the Moreno Ocampo.

However, *The Court* is not just a celebratory film. It is not entirely uncritical of the ICC or Moreno Ocampo. Although the film upholds the image of the prosecutor giving voice to the voiceless, it also shows that the voice of international criminal law is a technical, expert voice that is often disconnected from victim suffering. The film's emphasis on the disconnection between victim and legal voice seems designed to make the viewer uncomfortable, and to inspire criticism of the ICC.

The film presents the disconnect and achieves its intended effect through editing. Images of human suffering and international crimes are repeatedly placed just before narratives on legal technicalities. This technique very successfully creates an uneasy feeling about translating victim experiences into the language of international criminal law. The rituals of criminal justice often seem out of place when compared to the horrors that gave rise to the legal

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unclear whether "friend" here refers to Facebook followers, friend as opposed to enemy, or friend in the personal sense.

77. See *THE COURT*, *supra* note 22.

78. *Id.*

79. *Id.*

80. *Id.*



deliberations. This feeling is strengthened because the film provides no further commentary as it shows the horrors and the legal debates in subsequent order. The viewer is left to search for any connections between the two.

One of the film's sequences of violence followed by legal ritual provides an example of the disconnect between victim and law and the unease that this causes the viewer. The film's first images of war and human suffering portray Israel's 2009 attack on Gaza.<sup>81</sup> Instead of directly filming those who were targeted by the Israeli Defense Force, the documentary uses footage from an Israeli television program that follows a Palestinian family for several days during the Gaza War. Viewers see the presenter or reporter of the show holding a cell phone, through which viewers hear the father of the Palestinian family screaming out in despair after his house has been hit by a bomb.<sup>82</sup> The scene is so intense because it combines the father's invisible-yet-clearly-audible suffering with the shocked, helpless face of the reporter. It is a situation that clearly transgresses the codes of a normal news show, but the reporter is determined not to hang up: "We have been following his suffering the last days and when his call came in a shell hit his home . . . I don't know how to hang up this phone call. I will not hang up on him."<sup>83</sup> In contrast with this emotional portrayal, the next shot shows Richard Goldstone calmly presenting his report on Gaza, confirming that the Israel Defense Forces and the Palestinian authorities committed war crimes and crimes against humanity. This scene is then followed by images of the OTP discussing the issue of Palestinian statehood among themselves and with representatives of the Palestinian Authority. Thus, as the sequence proceeds, victim suffering (conveyed to the viewer through the cell phone call) is transformed into various legal rituals: discussions of jurisdictional issues, elements of crimes, and other criteria that will determine ICC action.<sup>84</sup>

At the very least, the documentary shows that "giving voice to the voiceless" actually entails transforming human suffering into the language, procedures, biases, and blind spots of legal expertise.<sup>85</sup> The ever-looming mismatch between victim suffering and expectations on the one hand and the expert language of international criminal law on the other is made even more explicit by a statement at the end of the documentary. Reflecting on his role as prosecutor, Moreno Ocampo states that "whatever empathy I have for the victims, and I have empathy for any victim of the world on that issue, my only way to serve them is to respect the legal limits."<sup>86</sup> By featuring this statement, the

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81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.* The legal rituals are of course significant. For example, discussions of jurisdiction are significant because, as Moreno Ocampo states in the documentary, if things happen "outside my jurisdiction they do not exist." *Id.* But whether the (uses of) legal rituals are significant *for valid reasons* is a different matter, and this question may also cause the viewer unease.

85. *Id.*

86. *Id.*

documentary emphasizes the process of victim-voice translation and also the shortcomings of that process.

*Carte Blanche* features victim-voice translation even more prominently, again with the effect of causing the viewer discomfort.<sup>87</sup> The film gives victims ample room to tell stories of the crimes committed. The victims speak about the crimes not just as “unimaginable atrocities,” but also as acts with social and political consequences for their personal lives and their village communities in Central Africa.<sup>88</sup> Moreover, the victims speak in what appear to be real-life situations, with the noise of passing cars, children playing, and people talking in the background. Sometimes the victims call for justice in the same manner as victims appearing in films such as *The Reckoning*. In the opening scene, for example, the representative of a village that was attacked by Bemba’s troops explains to two ICC experts that the village people are looking forward to the trial against Bemba and that they hope for a speedy verdict.<sup>89</sup> A sixteen-year-old girl, who had been raped six years earlier, states the point even more strongly: “I am waiting for justice. If justice does its work I’ll forget all of these thoughts.”<sup>90</sup>

Instead of using such calls as input to bolster the legitimacy of the ICC, one of the ICC experts tries to temper high expectations of what the court can accomplish. He explains it will take a while for the Bemba trial to start. The expert then says that judicial proceedings are hard to explain, and that his role is limited to collecting answers to medical questions.<sup>91</sup> In other words, the expert in question frankly recognizes the inherent tension between giving voice and translating the voice of victims. Other portions of *Carte Blanche* also illustrate the tension inherent in ICC experts’ attempts to translate political violence and human-rights violations into a criminal case. For example, the reflections of Eric Baccard, the forensic expert who visits to the Central African Republic, form an essential part of the documentary film. Baccard begins his forensic visit by first talking with victims, but then subsequently goes on a scientific mission, packing his equipment, body bags, portable freezer, and a drone. The uneasy transition between Baccard speaking to victims and then packing equipment and digging for bodies expresses the duality of the rituals of international criminal law. Baccard himself makes this tension explicit when he reflects on his role as forensic expert working for the prosecution. On the one hand, his mission is to give voice to the victims: “We feel it is our job to be some kind of interpreter. We allow victims to speak one last time. Through us they are present in the courtroom to testify what happened to them.”<sup>92</sup> On the other

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87. See CARTE BLANCHE, *supra* note 1.

88. *Id.*

89. *Id.* Much later in the film, this is echoed in an ICC witness expert’s frustration about endless trial delays, which she fears will lead to renewed victim frustration and concern.

90. *See id.*

91. *Id.*

92. *See id.*

hand, he concedes that giving voice to the victim takes place through a particular lens and in a particular institutional context:

So it is true: the focus is on the technical aspects because the judiciary expects facts, not emotions. We are expected to do our job and give expert testimony. In other words: we cannot allow ourselves to imagine what it all means. We must not dwell on what happened<sup>93</sup> to these people or dwell on their final moments. It is true: that can be hard to bear.

Footage of Gloria Davies, the ICC victims expert, also illustrates the tension between giving voice and translating voice. Her job is to compile statements from victim witnesses to establish Bemba's command responsibility for crimes committed in the Central African Republic. The film follows Davies traveling to the attacked villages, preparing food at her hotel room, and organizing meetings with victim witnesses. She must determine which statements are useful in the trial and which witnesses are psychologically and physically fit enough to testify in court. At the same time, Davies seeks to prevent further harm to the victims:

It is a feeling inside you that yes you want to know, but yes I want to know at the victims pace. I want to know how she wants to let me know . . . So the focus is: how am I getting to get the information out of this person<sup>94</sup> with causing the *minimum* damage—or the ideal is to cause no damage at all.

Put another way, Davies is balancing the need to determine which victims have voices that will be useful in court with the need to protect (and not destroy) those voices. This balancing act demonstrates the tension between giving voice to victims and translating that voice.

Finally, the tension between giving voice to victims and making a legal case is illustrated by the ritualized way in which the OTP presents its arguments in court. The proceduralized way of addressing violence begins with footage of an opening pre-trial chamber session where both the prosecution and the defense formally introduce their teams to the judges. This is followed by explaining the nature of a "confirmation of charges" proceeding. Even these innocent court activities stand in tension with victim voices. The activities are sterile, and the voices are far removed.

Most of all, however, the ICC's court rituals demonstrate the tension with victim voices when, as part of that ritual, the crime of rape is redefined in terms of the Rome Statute. The presentation of the case against Bemba is supposed to be a way to voice what has happened in villages such as PK 12 (the village whose people are followed in the documentary film). And yet, when the viewer sees the prosecutor professionally dressed for court articulating how the acts of rape should be understood in the expert language of international criminal laws he cannot overcome a feeling of mismatch between the activities in The Hague and the experiences of the victims as shown and told in the documentary. The stories told at the beginning of the documentary by the young girls who were

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93. *Id.*

94. *Id.* (emphasis in original).

raped and awaiting justice are a far cry from to the words of the prosecutor, reminding the judges that “rape as a crime against humanity, has four elements,” and reading the defining elements of rape according to international criminal law.<sup>95</sup> As if to once more underscore the tension between giving voice to the victim and translating that voice, the prosecutor’s reading of the elements is accompanied by switching visuals: images of women living in PK 12 on the one hand and the image of the reading prosecutor on the other. Expert language mediates between human suffering and ICC attempts to deliver justice.

#### IV CONCLUSION

The ICC must preserve a delicate balance when articulating the voices of victims. On the one hand, the court’s legal-ritualistic way of dealing with violence is meant to give voice to victims and to help reconnect their grief and suffering with notions of justice, truth, and community. On the other hand, providing a voice to victims and linking victim experiences to transcendental notions requires the mediation of expert language and the limits that come with that language. As a judicial institution, the ICC selects and translates victim voices into witness statements or evidence in order to make a criminal case against a particular individual over which the court can exercise jurisdiction. Based on a close viewing of some six documentary films on the ICC, I have analyzed how the tension between giving voice and mediating the voice of victims has been portrayed in visual media in the past few years. So far, documentaries on the ICC have used two principal forms to represent the voice of victims and to portray the role of the court: expository modes and observational modes.<sup>96</sup>

Documentaries dominated by the expository mode of representation privilege spoken messages over personal stories. In expository documentaries, images and sounds are meant to illustrate or underscore the central argument of the film. This argument is generally communicated through a voice-of-God narrator that stands above the images and persons shown in the film. Such documentaries leave little room for giving voice to victims as persons with a life, social context, and political awareness of their own. In *The Reckoning* and *Kony 2012*, for example, victims appear mainly to either show the atrocities that the court is called to answer or to underscore victim desire for outside intervention. In both documentaries the ICC itself functions as a redemptive force. Victims are portrayed as voiceless or as longing for outside intervention and the ICC is portrayed as the institution that brings a world of justice, order,

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95. *See id.*

96. Other modes such as the poetic, the reflexive, the participatory or the performative have hardly been used until now. For an overview of the different modes of representation see NICHOLS, INTRODUCTION TO DOCUMENTARY, *supra* note 48, at 99–138.

and community to the troubled world of African violence. The expository mode makes it possible to communicate complex issues to a broad audience, by way of a relatively straightforward narrative about victimhood, guilt, and the role of the ICC. Both of the expository documentaries examined have indeed proven that simplifying arguments can be useful if the aim is to reach a broad audience. Bypassing the complexities of the work of the ICC, however, also comes at a risk. It will raise expectations that the court can indeed deliver unmediated justice to victims, redeem communities plagued by violence, and reconstitute notions of humanity and world community. Moreover, it may solidify the idea that victims of political violence always prefer answers in the form of international criminal proceedings. In the longer run, presenting the ICC in such a polished fashion will almost certainly backfire. After all, delivering international criminal justice is a complex task that necessarily involves processes of selection. Selection necessitates exclusion. Tradeoffs must be made between criminal justice and other political ideals. Translations of victims' experiences into expert languages will sometimes be uncomfortable, and victims who prefer other responses to the injustices they have suffered may oppose ICC action.

In contrast with expository modes of representation, observational modes avoid presenting a clear central message brought home by a voice-of-God narrator. Observational documentaries give the impression that the filmmaker is almost absent and that persons and events, rather than an editing process, determine the content of the film. *Carte Blanche* includes observational elements and, compared to other ICC documentaries, leaves more room for the persons involved in the trial, showing them without accompanying music or voice-overs. The film documents stories of victims, informs the viewer about the social and personal impact of the crimes, and provides shots of the victims' daily lives. Moreover, the film shows how forensic, victim-witness, and legal experts struggle to translate victim experiences into an argument that will help the prosecutor win the case. *Carte Blanche* thus eschews the eschatological language that drives advocacy documentaries on the ICC. Although this may limit its capacity to educate a broad audience, it does provide more realistic insight into the complexities and possible downsides that come with attempts to give voice to victims through the language and rituals of international criminal law.