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CHAPTER

25 Moving Images: Modes of Representation and Images of Victimhood in Audio-Visual Productions

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Abstract

This chapter is an analysis of how audio-visual representations of the work of international criminal tribunals create narratives around victims. It highlights one important aspect of those narratives: they do not merely reflect and represent, they also create. More specifically, victims and victimhood are not pre-given categories, but are instead constituted via acts of representation, including audio-visual ones. Viewing this material through the lens of a typology of modes of representation in documentary film theory, this chapter argues that audio-visual productions have created different types of victims. Whereas advocacy documentaries have produced ‘ideal’ victims, critical documentaries ‘argumentative victims’, and observatory documentaries ‘translated victims’, audio-visual materials produced by the International Criminal Court itself have presented ‘bureaucratized victims’.

Keywords: [International criminal law](#), [International Criminal Court ICC](#), [International criminal law](#), [victims](#), [Audio-visual representations](#), [Outreach](#), [Documentary film](#), [Visuality](#)

Subject: [Criminal Law](#), [International Law](#), [Law](#)

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I. Introduction

NUREMBERG 1945; the screening of the documentary film *Nazi Concentration Camps* shocks audiences inside and outside the palace of justice. Nuremberg shortly after 1945; the trials themselves become the topic of several documentary films, aimed at educating the German population. Fast forward to the new millennium; Ben Ferencz, chief US prosecutor in the *Einsatzgruppen* case, appears in several documentaries on the International Criminal Court (ICC) and sets up his own website filled with short documentary films on international criminal justice.¹ Former Chief Prosecutor of the ICC Moreno Ocampo attends the *Movies that Matter festival* to promote a documentary about the work of the ICC, which figures himself as one of the main characters.² The online campaign Kony2012 spreads images of maimed children and mass graves throughout the world to urge the arrest of Ugandan rebel leader Joseph Kony.³ These are just some examples to illustrate that the life of international criminal law not only takes place in courtrooms or at diplomatic conferences. Audio-visual materials are not just important within the courtroom; they also play a significant role in sending out messages about the work of courts and tribunals. International criminal law is also a field of audio-visual representations, where the main topics, subjects, and categories of international criminal justice enjoy a second life on screen.

p. 584 In this chapter we will examine the audio-visual life of one of the emerging core subjects or categories of international criminal law: the victim.⁴ In this context, it is important to note that the victim is not a pre-given entity for (international) criminal law.⁵ The victim herself is very much created by international criminal law. Through its provisions and proceedings, and through its discourses, international criminal law constitutes its own victims. It is *through* the act of representation that an individual appears as a victim under the rules and discourses of criminal law; as if the representation created that which it presents anew.⁶ In this context, it is useful to recall Nouwen and Kendall's distinction between two types of victims that are represented and created in international criminal law.⁷ The first is the victim as a participant in trials. As Nouwen and Kendall argue, international criminal law is highly selective when it comes to this type of victim. Not all individuals suffering from injustices enter legal proceedings: only some forms of violence count as international crimes, courts and tribunals have limited temporal and territorial jurisdiction, only some of the many international crimes are prosecuted. In this way, the rules and proceedings of international criminal law determine who can act as participating victim and who is left out. The second is the 'abstract victim' that underpins the ethos and mission of international criminal law. The abstract victim is an icon of victimhood that transcends the experiences of specific individuals and indeed of the juridical victim. Moreover, even if concrete individuals appear (e.g., on fundraising posters), they appear as *typical* victims, not as persons with their own biography and context. The abstract victim exists by virtue of its representation by others (such as NGOs, the prosecution, academics).⁸ Invoking the abstract victim generally comes with a claim to authority, a claim that one is entitled to speak on behalf of the category of the abstract victim. This authority is also a claim to 'authorship', namely the power to write the story and history of victims in a particular way.

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What counts for criminal proceedings also applies to audio-visual productions: victims and victimhood are not pre-given, but constituted via acts of representation. In other words: victims are not simply copy-pasted onto the screen, but created and presented anew, this time in an edited story underpinned by sound, text, and moving images. This raises the question how specific modes or methods of audio-visual representation affect the way in which victims are represented. In this chapter we will take up this question in relation to two forms of audio-visual material that share the same topic but have a different aim and production process: (a) documentary films on the ICC produced by independent film-makers; (b) audio-visual material produced by the ICC itself. Both forms of audio-visual materials engage with representations of victims in relation to the ICC. Documentaries about the ICC are made by 'outsiders', who nevertheless cooperate with ICC staff members, ICL experts and—to a lesser degree—victims, to construct their stories.

The audio-visual materials produced by the ICC signify the 'insider' perspective; the institution has a direct influence on the content of the videos. However, it still is a separate audio-visual team who takes up the task of making the video. In both cases, the representation of victims in these audio-visual products results from a balancing act between substantive and aesthetic concerns, and objectives of different parties, with different—and sometimes remarkably similar—outcomes.

Based on a typology of modes of representation in documentary film theory, we will discuss how the materials represent, and thus produce, specific forms of victims and victimhood in international criminal law. As we will show, audio-visual productions have created different types of victims, 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.

II. Representation in Documentary Film

A. Attracting Audiences and Representing Reality

p. 586 In 1922, Robert Flaherty produced *Nanook of the North*, one of the first documentary films ever made.⁹ The film depicts the life of an Inuit fur trader 'Nanook' and his family ↵ in Northern Quebec. It soon became a box office success internationally and has since then acquired almost iconic status. The film is mentioned in almost every introduction to documentary film theory and was one of the first to be selected for preservation in the United States National Film Registry.¹⁰ However, the film was not free from controversy. As it turned out, many scenes were staged and re-enacted, the name of the main character faked, the woman depicted wasn't Nanook's wife, and the 'traditional' methods of hunting showed in the film had long ago been replaced by the use of modern guns.

The story of *Nanook* illustrates at least two important aspects of documentary film. First, the success of *Nanook of the North* shows the potential of documentary films to reach broad audiences and to focus public attention. The success of *Nanook* was partly due to the innovative character of the documentary genre at the time. However, even today documentary films manage to attract broad audiences and sometimes successfully mobilize social, legal, or political action. Some examples are Al Gore's *An Inconvenient Truth*, Errol Morris's *The Thin Blue Line* (leading to the release of a person innocently sentenced to death), or the recent Netflix series *Making a Murderer*. The potential of documentary film has not gone unnoticed in the field of international criminal law. In the recent past, some close ties have been established between filmmakers, human rights organizations, criminal courts and tribunals, and media companies. The producers of the ICC documentary *The Reckoning*, for example, established an advisory board with seats for influential human rights and transitional justice organizations, which in turn helped to disseminate the film. In addition, the documentary makers managed, in their own words, to establish 'common ground' with the Office of the Prosecution, something they believed was key to the success of the film.¹¹

p. 587 Markus Vetter, one of the directors of another documentary on the ICC, *The Court*, was even more open about his warm relations with the Office of the Prosecution. In a 2013 interview Vetter explained: 'Ocampo was very welcoming, we even slept at his place. We actually became friends with everyone at the criminal court'.¹² Of course, the example of Vetter and his crew sleeping over at the prosecutor's house is a bit of an exceptional case. Not all documentaries on the ICC are built on such close ties between filmmakers and the Chief Prosecutor. Still, the example does illustrate that the Office of the Prosecution is well aware of the fact that we 'live in a visual age, in which life takes ↵ place on a screen'.¹³ Especially the former Chief Prosecutor, Moreno Ocampo, has enthusiastically solicited collaboration with visual artists and organizers of film festivals, emphasizing that filmmakers 'can spread the truth beyond the courtroom' because 'movies are connecting us, movies are building a new community'.¹⁴

Human rights organizations have also played a crucial role in propagating, disseminating, and sometimes defending documentary films.¹⁵ One of the most important tools at their disposal is human rights film festivals, such as the Human Rights Watch Film Festival or *Movies that Matter*, which is sponsored by Amnesty International. In the past few years, several documentaries on the ICC have been launched at such festivals, which subsequently opened doors to television broadcasting companies as well as providers such as Netflix.¹⁶ As a result, broad audiences have learned about the ICC through the lens of advocacy documentary makers. While court proceedings are often poorly attended, documentary films attract many people at film festivals, numerous hits on the internet,¹⁷ and sometimes a considerable audience on television.

Secondly, the criticism of *Nanook of the North* illustrates an important assumption at work in documentary film. As Thor Jensen put it: ‘When we sit down to watch a documentary film, we enter into a social contract with the moviemakers: what they’re about to show us is true, to the best of their abilities’.¹⁸ Failure to live up to this contract will generally elicit criticism; while parading under the banner of a documentary, the film in question was actually fiction. Whereas it is evidently fair practice for fiction films to use actors, staged scenes, and re-enactments, the expectation of documentary viewers is that they get the ‘real thing’: on-site shots, the actual people involved in events, real archival material. Documentary film, in the words of Bill Nichols, asks us to ‘consider it as a representation of the historical world rather than a likeness or imitation of it’.¹⁹

Of course, filmmakers can deliberately choose to play with the boundaries between fiction and documentary film, e.g., by using re-enactments or animations. Examples include Errol Morris’s *The Thin Blue Line* (using re-enactments) or Rithy Panh’s *The Missing Picture* (using clay figures to recreate the events in Cambodia under Pol Pot). However, it is not for nothing that these techniques are considered as exceptions that should be openly accounted for by the documentary maker. As Eitzen has put it, ‘a documentary is any motion picture that is susceptible to the question, “Might it be lying?”’²⁰ Thus, while both Netflix series such as *Crossing Lines* and documentaries such as *The Reckoning* or *Prosecutor* claim to be about the ICC, the former works with actors, sets, and (very) fictional cases, whereas the latter use representations of the actual building of the ICC, shots and interviews with people who actually suffered from crimes, and who actually work for the ICC.

B. Combining Presentation and Representation

Documentaries do more than represent reality, however. Documentary films on international criminal law, for example, do not depict actual victims, court buildings, or prosecutors just for the sake of it. The representations of reality are used to tell a story, and to develop an argument about international criminal law. Documentary film, to quote Nicholls again, ‘is destined to bear propositions. “This is so, isn’t it?” is the gist of the common and most fundamental proposition we find’.²¹

Documentary films thus combine representations of the world with presentations of an argument about that world. This implies that yet another form of representation is at work: documentary film somehow makes the claim that it is authorized to speak on behalf of the people and events it depicts—or, at least, that it enjoys authority to let people speak in the story presented on screen. This form of representation is not fundamentally different from representations in the political or legal realm, where someone is (or feels) authorized to act in the name of others. As we set out in the introduction, this form of representation often also means that the represented entity is constituted *through* the act of representation.

Thus, through its nostalgic depiction of Inuit life, *Nanook of the North* also created the typical noble savage inhabiting the barren landscape of the Arctic. Or, more recently, through their depiction of a progressive history of international criminal law, advocacy documentary films evoke and bring about the liberal-

minded 'humanity' that supposedly drives the fight against impunity. This is not to say that documentary films' claims to authority are always successful. For example the short documentary film *Kony 2012* claimed to provide authoritative representations of the situation in Northern Uganda, as well as a morally uncontested message: capture Joseph Kony and send him to the ICC.

p. 589 However, when the film was screened in the region, the population was offended by what it perceived as misrepresentations in the film.²² As the film proceeded, more and more people expressed their dissatisfaction, and 'the event ended with the angrier members of the audience throwing rocks and shouting abusive criticism, as the rest fled for safety, leaving an abandoned projector, with organizers and the press running for cover until the dust settled'.²³

Some documentaries explicitly problematize their authority to represent. This is done, for example, in Dziga Vertov's classic *Man With a Movie Camera* (1929). At one level, the film shows different aspects of city life in the Soviet Union. However, at another level, the film problematizes what it is to represent social life in film: it contains several shots showing how sets are staged or how the film is shot and edited. In line with Bertolt Brecht's idea of the alienation effect in theatre, the point of these techniques was to spur critical reflection in the audience and to make it aware that the world presented on screen is the result of a series of artistic decisions.

However, when it comes to documentaries in the field of international criminal law, such modes of representation are absent.²⁴ As we will set out in this chapter, most documentaries on international criminal law use the so-called 'expository mode', that is centred around a verbal central argument or message about the represented world. Some common ways to communicate arguments and knowledge in expository documentaries are the use of text appearing before images are shown,²⁵ the use of an impersonal, invisible voice-over ('voice of God' narration),²⁶ and the construction of a coherent argument via the voice of one of the main characters of the film.²⁷ Expository documentaries show representations of the world in order to confirm and illustrate the main argument; they privilege 'saying' over 'showing'.²⁸

p. 590 Less frequently, documentaries about international criminal law themes use techniques of the so-called 'observational mode'.²⁹ This mode of representation privileges 'showing' over 'saying'³⁰ by letting the presented world speak 'for itself', as if the camera, editor, and film-makers were just flies on the wall that did not interfere with the way in which reality unfolded. An example of the observational mode outside the field of international criminal law can be found in *Armadillo*, a documentary on Danish troops in Afghanistan that contains no voice-over, verbal narration, or interviews. Through the use of observational techniques, the audience gets the feeling that it is co-present at the events represented on screen and able to form its own interpretations about the represented world. Of course, the feeling of authenticity and co-presence is also the result of artistic and political decisions made by filmmakers, camera crew, and editors. After all, even observational documentaries seek to do more than simply represent facts; they too aim to say something about the world, albeit in an often more indirect and ambiguous way.

III. The Representation of Victims in Documentary Film

A. Ideal Victims

As we have set out so far, expository documentaries revolve around verbal messages or arguments. One of the techniques often used in such documentaries is the presentation of contrasts.³¹ This can be seen, for example, in Frank Capra's *Why We Fight, Prelude to War* (1942),³² the first in a series of documentary films commissioned by the US government to solicit support for its involvement in the Second World War. The film is structured around an opposition between the 'free world' and the 'slave world'. People from the free world are portrayed as hard working individuals, whereas inhabitants of the slave world are shown as masses, with the exception of their leaders who are depicted as the embodiment of evil ('Remember their faces. Remember them well. If you ever meet them, don't hesitate'). In similar fashion *Kony 2012* builds up its argument around contrasting images and propositions. One crucial contrast is that between 'old' and 'new', where the old world stands for inaction and impunity, and the new world for a caring active world community connected via social media. Another contrast is that between the victims and the documentary maker who comes to the rescue of those suffering from the crimes committed by Kony and his army. Where victims appear as vulnerable and in need of external intervention, the documentary maker himself appears as active, caring, and ready to step in. At 7:22 of the documentary, for instance, we see a child victim of Kony telling the story about his killed brother. After a little while, the child breaks down and starts crying. The screen turns black and we hear the comforting voice of the documentary maker, seemingly appearing out of nowhere: 'It's okay; Jacob it's okay'; followed by a part where the documentary maker actively explains his promises and plans to the audience.

Similar contrasts can be found in several documentary films on the ICC, such as *The Reckoning*, *The Court*, *Prosecutor*, and *Watchers of the Sky*. While not identical of course, these four films all contain comparable storylines and largely the same central message.³³ The viewers are called upon to actively support the ICC, not to stop believing in its importance despite the numerous challenges and criticisms. After all, the success of the Court is under constant threat: from unwilling US administrations, from warlords, from African states granting immunity to suspected criminals, from the human tendency to go around in endless circles of violence and revenge. These threats are shown abundantly in ICC advocacy documentaries, often with shocking imageries of violence and their effects.

The point of showing these threats is to solicit support for the Court: although the ICC is presented as the outcome of a progressive history, it is also shown as vulnerable. The danger that societies lapse into primitive, violent modes of conflict resolution always looms large; and without support (including that of the viewer), the ICC is unable to complete the natural course of history. Thus, at the end of documentaries such as *The Reckoning*, *Prosecutor*, *The Court*, or *Watchers of the Sky* the viewer is confronted with a similar message, each time delivered by former Nuremberg prosecutor Ben Ferencz against the background of wide, open spaces. After having shown the history of international criminal law, the workings of the prosecution, and the endless threats to the success of the Court, the documentaries end with a personal message from an iconic figure in the field: as history has taught us, our orientation should be towards the future. And as exemplified by the life and persona of Ben Ferencz, the viewer should feel proud, concerned, and ready to act at the same time.

This message is developed throughout the films via a series of contrasts. One prominent example is the opposition between victims and the ICC. Of course, the point that these documentaries try to drive home is that there is no opposition between the two: the struggle against impunity is fought by the ICC for the benefit of the victims. However, in order to make this point, the films present all kinds of contrasts between the ICC and victims. Victims are often portrayed as 'local', suffering, bodily, and lacking appropriate voice. The ICC, by contrast, appears as global, rational, disembodied, and possessing a voice that matters.

Take for example the opening scene of *The Reckoning*, which shows two people walking in a field of high grass in total silence, apart from the soft sounds of crickets and birds. One person leads the way and shows to the other, who is carrying a notepad, the exact location of a skull and the remains of a skeleton in the field. Then tragic, slow music sets in, followed by images of a line of men walking through the field. The men all appear to be survivors or first-hand witnesses to mass atrocities. However, true to the expository nature of the documentary, viewers are immediately reminded of what these images of mass atrocities stand for. First by one of the men walking through the field, who explains to the audience: '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' (1:30). Subsequently, images of suffering are directly linked to images of the ICC. After the brief testimony of the man in the field, the tragic music grows louder, and we see the tormented face of the survivor from the opening scene. Then, immediately, we hear a chairman's hammer, and the survivor looks up as if he is hearing the same sounds. Coming from afar, we hear a voice from The Hague, declaring the birth of a new era: '[t]he International Criminal Court is now in session', followed by images of the courtroom, and the voice of the prosecutorial team putting the local suffering in global and historical perspective: 'During the previous century millions of people were the victims of unimaginable atrocities' (1:52). It was the realization that such crimes concern the international community and should not go unpunished, the prosecutor continues, that led to the creation of an independent, permanent criminal court. Shortly after this message, we see images of the old ICC building (taken from below, looking up to the top), and shots from lawyers at work in the rooms and corridor of the building.

The opening scene mobilizes two oppositions, the earlier discussed opposition between victims and the ICC, and another opposition in the presentation of history as both an endless cycle of violence and revenge *and* a progressive development towards the end of impunity. The opening scene starts out with images of intense suffering taking place in a specific, yet unnamed location that apparently is rooted in a cyclical history of violence and revenge. The film then moves to the prosecutor's speech, which reframes the suffering shown in the first shot as exemplary, as representative of the harm done to millions of people throughout history. Subsequently, we are asked to view the suffering as contributing to a different kind of history: no longer cyclical and violent, but progressive and peaceful. Confronted with the suffering of so many people, the international community has come to realize that the time has come for a new way of dealing with mass atrocities; that the rule of law should replace cycles of revenge.

In this way, advocacy documentaries have helped produce what Kendall and Nouwen have called the 'abstract victim'; a victim that is made present through the discourses of international criminal law. In this context, it is worth recalling that documentaries not only seek to make a rational argument about the world. Especially advocacy documentaries are also meant to cultivate emotions, to educate audiences on how to *feel* about certain issues. Through a combination of sound, image, and narration, the documentary teaches its audience a certain attitude, a 'proper' state of mind when it comes to victimhood and international criminal law. This implies that not just any kind of victim will do for advocacy documentaries. In order to drive home a message about international criminal law as a redemptive force in history, such documentaries tend to create so called 'ideal victims'; archetypical victims that come across as vulnerable and dependent.

B. Alternative Messages

p. 593 As we stated earlier, documentaries use representations of reality in the function of arguments or propositions about the world. This means that similar representations of the social world can be used to communicate quite different messages. Take for example *Peace vs Justice*, a documentary film on the intervention of the ICC and the peace process in Uganda. This film, too, uses images of victims of the Lord's Resistance Army to underpin a central argument about the role of the ICC. However, this argument is diametrically opposed to the one put forward in, for example, *The Reckoning*, *The Court*, *Prosecutor*, or *Watchers of the Sky*. The ICC is not portrayed as a redemptive force in history, but as a threat to the peace process in Uganda. Victims and their suffering are shown to illustrate the importance of making peace with the Lord's Resistance Army as well as the need to ensure that fighters feel safe enough to leave the bush and reintegrate in society. The imagery of victims thus partly overlaps with what is shown in pro-ICC advocacy documentaries, but what the images stand for differs fundamentally. Victims and images of victimhood are shown to illustrate what happens if the ICC meddles with the peace process, not to solicit support for criminal prosecutions. For that reason, victims also appear as more vocal and outspoken than in pro-ICC documentaries. They make a case for forgiveness and reconciliation that underpins the more general, critical message of the documentary as a whole.

Yet another portrayal of victims can be found in *Carte Blanche*, a documentary film on the *Bemba* trial before the ICC. The documentary is predominantly filmed in the observational mode, without voice-overs, music, text on screen, or an explicitly spelled-out central argument. As a result, 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'.³⁴ This impression is confirmed by the inclusion of relatively long shots of seemingly mundane activities such as making food, setting up a building, or preparing for a field trip. Watching these long episodes can even create feelings of uneasiness in the audience, 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 heal because the family was too poor to pay for proper treatment. Without any commentary or music, the film follows the mother's preparations and documents the girl's screams of pain and fear. Precisely because there is no apparent intervention from the filmmaker, the viewer gets the feeling she is co-present at a place where she does not belong. The observational style makes it virtually impossible to portray victims as 'ideal' victims, as icons for victimhood. Instead, because of the attempt to privilege 'showing' over 'saying', the documentary zooms in on the social and political environment of the victims and offers them a platform to discuss what the crimes committed mean for their lives. However, the documentary does more than show contextualized lives of victims. Although its techniques are observational, the documentary does tell a story, and provides an argument about international criminal law. The story is one about the creation of victims in international criminal law and fits the analysis of the 'victim participant' by Kendall and Nouwen.³⁵

p. 594 *Carte Blanche* too is structured around a set of contrasts, in particular the contrast between the experiences of people living in a village that has been attacked by Bemba's troops and the attempts of different experts that try to articulate what happened in terms of fitting international criminal law. The documentary follows witness experts, who explain the difficulties involved in translating personal experiences into testimonies that hold up in court. Moreover, the film portrays the work of forensic experts, who are equally aware of the processes of selection and reframing that come with criminal investigations. Finally, the film shows how legal experts are bound to translate the experiences of victimized communities into questions of jurisdiction, rules of procedure, elements of crimes. The film thereby portrays victims in two different ways: as people with specific experiences that try to retake their lives and as a category of international criminal law, produced through a process of translation by different experts.

C. The Bureaucratic Victim

Not only documentary makers but also the ICC and other international criminal tribunals themselves have taken up the practice of making and distributing videos of their work;³⁶ a practice that is directly connected to an explicit commitment to transparency³⁷ and the ICL mantra that ‘justice must be seen to be done’. In May 2008, the ICC’s Public Information and Documentation section started an audio-visual project.³⁸ Their audio-visual team regularly publishes videos on the ICC’s YouTube channel, it can be viewed worldwide and further transmitted by international and regional media.³⁹ The channel presents a mix of different types of videos: trial summaries, Q&As with courtroom staff, announcements, event registrations, and informative videos about the purpose and work of the Court. The self-produced videos about the ICC are primarily characterized by images of the institution’s daily work. They show courtroom proceedings, offices, and explain proceedings or cases. The set of clips labelled ‘institutional videos’ also include a short history of the ICC, its goals, and its values, comparable to the presentation of the Court in expository documentaries such as *The Reckoning*.⁴⁰ Still, these more contextual videos largely consist of the visualization of the Court’s everyday bureaucratic reality.

p. 595 In these documentary videos, the victim is part of the bureaucracy. The ICC’s YouTube channel includes a separate playlist entitled *Victims at the ICC*,⁴¹ and the video entitled ‘Victims’ participation before the International Criminal Court’ is the video that was selected as the opening video on the channel’s homepage.⁴² However, while victims and affected communities are central in the presentation of the ICC’s *raison d’être*, they only marginally appear in the ICC’s self-produced videos, in a supportive rather than a central role. For example, the homepage video opens with multiple images that show the courtroom in The Hague, but also local communal gatherings and operative armed forces. However, after this introduction the video immediately turns into a technical story when the outreach coordinator takes the viewers on a tour in the ICC building while she explains the victim participation procedure. After that, images of ICC staff members ‘in the field’ become more prominent, but the bureaucratic story prevails. Repeatedly, a split-screen shows images of villagers in affected areas who are sitting in rows while listening to an ICC staff member on one side, and the headshot of an ICC staff member who explains the proceedings to the YouTube viewers from an office environment on the other. The emphasis lies on the bureaucratic process and expert commentary, not on the crimes, the suffering, or the opinions of the victims.

Illustrative is the scene where two NGO workers interview a victim who potentially wants to participate at the ICC. Probably for security reasons we see only the interviewers’ faces, not of the victim. The conversation concerns only procedural issues of protection for the participating victim, and while it unfolds, the camera zooms in on a shelf with legal books in the office. Here, the victim appears as part of the procedural machinery. Not the suffering ‘ideal’ victim nor the vocal argumentative victim but the bureaucratic victim is central to these promotional materials.

p. 596 A similar representation of the victim appears in the Court’s informative YouTube programmes such as *Ask the Court*, *In the Courtroom*, and *ICC at a glance*. These informative programmes aim to explain the courtroom proceedings in laymen terms and emphasize the good work the Court is doing. The majority of the programmes are set up as static Q&A sessions, suggesting that victims and members of the affected communities can submit their questions to the ICC. In these Q&A videos, characteristically, a question will appear written in white letters on a black screen and be read aloud, after which an ICC staff member will answer the question.⁴³ These videos give the impression that the ICC is directly answering questions from people from affected communities who follow the proceedings from afar, adhering to the Court’s ideal of an ‘effective system of two-way communication’.⁴⁴ What it also suggests, is that the same local people are watching the videos to obtain the answers to their questions. In a very early episode, the ones who ask the questions actually appear on the screen and ask their question themselves. However, most recent videos are limited to projecting the questions on the screen, while the source of the question remains unclear and there is no explanation of how these questions reach the Court and whether it is possible to submit a question.

The *Ask the Court* videos usually explain the judicial terms, decisions, and unfolding procedures. In the early episodes, different staff members address different questions, usually from their offices. In more recent videos, the questions are mainly or exclusively answered by the ICC spokesperson. Questions are for example: What is the International Criminal Court? Is the ICC an office or an agency of the United Nations? How long will the process against Thomas Lubanga Dyilo last? Why did the ICC reject the request to hold the hearings in Kenya or in Tanzania? Will there be any breaks when the trials begin, or will they continue uninterrupted? What did the Appeals Chamber decide regarding Mr Ruto's presence at the hearings? Who can be prosecuted by the ICC for the crimes in Mali? While the questions are presented as rather straightforward issues about the ICC procedures to which the Court has an objective or 'neutral' response, the answers, clearly, and perhaps unsurprisingly, send out an unequivocal message of support for the ICC. As with the documentaries, these audio-visual productions contain an argument about the meaning of ICL. Rather than a conversation between Court and audience, these are promotional videos that match the ICC's strategic plan for outreach and its objectives to 'promote greater understanding of the Court's role during the various stages of proceedings with a view to increasing support among the population for their conduct' and to 'counter misinformation'.⁴⁵ The latter is interesting in light of the increasing critique on the ICC's bias, which is firmly rejected by the Court itself.⁴⁶ For example, in one episode of *Ask the Court* about the situation in Mali, the following question is displayed: 'there are allegations that the ICC is only targeting African countries. Is that true?'⁴⁷ The ICC spokesperson responds by saying that '[t]he ICC is a judicial institution that is permanent and independent. It is not subject to any political control'. He states the facts that portray the ICC in the most favourable light, for example that four out of eight investigations in Africa were self-referred by the states and two were opened based on Security Council resolutions. Furthermore, he sums up the preliminary investigations that are conducted outside of Africa, and emphasizes the strong African support for the ICC at the Rome conference and the continuing support from African civil society. The question is phrased as a 'yes/no' question, as if there is a zero-sum answer, and the Court is presented as the authority to answer this question. The ICC is not engaging in dialogue that takes the origins of this critique seriously, but rather evades making any substantive response by simply rejecting the Court's relation to politics.⁴⁸

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The videos are part of the 'activities to provide information to victims and witnesses and other members of affected communities',⁴⁹ but do not take the form of the ideal two-way communication.⁵⁰ In these videos, the victims and affected communities are invisible enablers who ask the questions but are not invited to give their own opinion, and are not allowed to talk back. The representation of the victim as an invisible person with questions to the Court facilitates the presentation of the Court as an authoritative and respected institution. The replacement of real people asking real questions with a more sterile verbalization of what an abstract viewer presumably asked to the Court signals an increasing emphasis on technicalities and emphasizes the bureaucratic function of the victim. The victims assist the Court, their questions enable the Court to explain its work and to elaborate on its ideal. In these instructive videos, the invisible victim gives voice to the Court rather than the other way around.

The static setting of the Q&A videos departs from the idea of *moving* images. While there is some 'movement' in the videos through the inclusion of real talking heads, these audio-visual productions are closer to a Frequently Asked Questions list than to a movie. The textual content is more important than the images. Bureaucracy prevails over people. A clear choice of focus was made in these videos: they depict the practical work of the Court and its staff, not the victims and their stories. Attention to the individual suffering of the victim, other than some introductory images, cannot be appropriately placed in a video that focuses on the institutional reality of the Court and its procedures. In that sense, these videos reflect a balancing act that also takes place in the ICC's courtrooms. The tension between text and image resembles the constant struggle of international criminal trials to translate stories of unimaginable, unspeakable suffering into technical legal language.⁵¹ The victim-centred approach demands that experiences of victims must be seen, heard, and acknowledged, but the form of a criminal trial affects the presentation of their

stories. The image of victimhood has a place in the introduction of trial and video alike, but '[w]hen the judicial plot takes the overhand, the bigger picture and the contextualization of the suffering itself is pushed aside'.⁵²

IV. Conclusion

p. 598 In this chapter, we have examined the audio-visual life of victims of mass atrocity in documentaries and self-produced videos about the ICC. Two aspects of documentary film gain an interesting meaning in light of the ICC's ideals: they attract audiences and they are presumed to tell the truth. Equally so, the ICC aims to reach an audience as large as the whole world and claims to present to us the truth about mass atrocity. Not surprisingly, the ICC makes use of video to spread its message and has been depicted by documentary makers. The 'second' life of international criminal law's subjects on the screen might even be the primary way in which they reach the audience that international criminal law aims to serve. This includes a representation of the victim that is not merely an authentic reflection of 'reality' but always part of an argument, part of a story that means to say something about the work of the Court and its place in the world.

The majority of documentaries about the ICC are expository rather than observatory or reflexive. They show an 'ideal' victim who is waiting for the Court to be saved. These stereotypical victims are silent stereotypes that legitimize the ICC's redemptive force and its ability to bring justice, peace, and individual as well as collective restoration. Similar images of victims can however also be integrated in a different argument: an argument that undermines the ideals of the ICC, or one that estranges the audience from the victim as an icon and points to the difficulty of translating victims' stories into international criminal law's categories. Finally, the video productions of the ICC itself show us a bureaucratic victim. A victim that enables the Court to do its work and to explain its work in the most favourable terms. This is an active victim, a participating victim, but still a victim that can be represented by the Court only as long as it fits within the procedural box. In its most extreme form, the image of the victim who interacts with the Court is replaced by text. Paradoxically, this means that the ultimate representation of the victim in the ICC's audio-visual productions is an invisible one.

Notes

- 1 <<http://www.benferencz.org>> accessed 6 June 2018.
- 2 Movies that Matter <https://www.moviesthatmatter.nl/english_index> accessed 6 June 2018.
- 3 Invisible Children inc., *Kony 2012* <<https://www.youtube.com/watch?v=Y4MnpzG5Sqc>> accessed 6 June 2018.
- 4 The explicit victim-centred approach of the ICC marks this fairly recent development. Previously, other ICL tribunals such as the IMT and ICTY have been criticized for their marginal attention to the victims. See, e.g., Yael Danieli, 'Reappraising the Nuremberg Trials and their Legacy: The Role of Victims in International Law' (2005) 27 *Cardozo Law Review* 1633; Suzanne Karstedt, 'From Absence to Presence, from Silence to Voice: Victims in International and Transitional Justice since the Nuremberg Trials' (2010) 17 *Intl Rev of Victimology* 9; Carolyn Hoyle and Leila Ullrich, 'New Court, New Justice? The Evolution of "Justice for Victims" at Domestic Courts and at the International Criminal Court' (2014) 12 *J of Intl Crim Justice* 681.
- 5 Victims are often invoked as the driving force of the ICC's Chief Prosecutor, in press releases, trials, and interviews. See, e.g., *The Prosecutor v. Lubanga* (Transcript) ICC-01/04-01/06-T-107 (26 January 2009) 34-35 (Trial Chamber I). Rick Gladstone, 'A Lifelong Passion Is Now Put to Practice in The Hague' *The New York Times* (New York, 18 January 2018); ICC, 'Statement to the Press by the Prosecutor of the International Criminal Court (Press Release, Abidjan, Côte d'Ivoire, 20 July 2013) <https://www.icc-cpi.int/iccdocs/PIDS/wu/ED181_ENG.pdf> accessed 6 June 2018. On the victim as ICL's *raison d'être* see also Sara Kendall and Sarah Nouwen, 'Representational Practices at the International Criminal Court: The Gap Between Juridified and Abstract Victimhood' (2014) 76(3) *Law and Contemporary Problems* 235 (hereafter Kendall and

- Nouwen, 'Representational Practices'); Peter Dixon and Chris Tenove, 'International Criminal Justice as a Transnational Field: Rules, Authority and Victims' (2013) 7 *Intl J of Transitional Justice* 408; Jens Meierhenrich, 'The Practice of International Law: A Theoretical Analysis' (2014) 76(3) *Law & Contemporary Problems* 76 (2013); Wilfred Nderitu, legal representative for the victims in *The Prosecutor v. Ruto and Sang* (Transcript of Opening Statement) ICC-01/09-01/11-T-27 (10 September 2013) (Trial Chamber V(A)) quoting in his opening statement a victim of Kenya's post-election violence of 2007/2008: '[i]f there were no victims, there would be no case. If there was no suffering, would there be any reason to accuse the accused? We are the ones who experienced the atrocities. The Court sits because there were atrocities and there was pain suffered by the victims' at 36.
- 6 For a deeper analysis of the constitutive force of representation and repetition see Sarah Gendron, *Repetition, Difference and Knowledge in the Work of Samuel Becket, Jacques Derrida and Gilles Deleuze* (Peter Lang 2008). See also Wouter Werner, 'Play It Again, Sam; Practices of Repetition in the Security Council' (forthcoming).
- 7 Kendall and Nouwen 'Representational Practices' (n 5) 235–262.
- 8 On the representation of the victim for fundraising purposes see Christine Schwöbel-Patel 'Spectacle in international criminal law: the fundraising image of victimhood' (2016) 4(2) *London Rev of Intl L* 247.
- 9 Robert J. Flaherty, *Nanook of the North* (1922) <<https://www.youtube.com/watch?v=m4kOlzMqso0>> accessed 6 June 2018.
- 10 See, *inter alia*, Bill Nichols, *Representing Reality: Issues and Concepts in Documentary* (Indiana UP 2001) (hereafter Bill Nichols, *Representing Reality*); Bill Nichols, *Introduction to Documentary* (Indiana UP 2001); Patricia Aufderheide, *Documentary Film: a Very Short Introduction* (OUP 2008). For the complete list of the United States National Film Registry see Library of Congress <<https://www.loc.gov/programs/national-film-preservation-board/film-registry/complete-national-film-registry-listing/>> accessed 6 June 2018.
- 11 Robyn Hillman-Harrigan, 'The Reckoning—Interview with Director Pamela Yates' *Huffington Post* (13 August 2009, updated 6 December 2017) <https://www.huffingtonpost.com/robyn-hillmanharrigan/emthe-reckoning-em---int_b_230516.html> accessed 6 June 2018.
- 12 'The Court' (*Science Guide*, 3 April 2009) <<https://www.scienceguide.nl/201304/the-court.aspx>> accessed 6 June 2018.
- 13 Cynthia Weber, *Imagining America at War: Morality, Politics and Film* (Routledge 2006) 137 paraphrasing and quoting Nicholas Mirzoeff, *An Introduction to Visual Culture* (Routledge 1999).
- 14 Luis Moreno Ocampo, Cinema for Peace Gala Speech 2011 <<https://www.youtube.com/watch?v=wEEc5gFdBdQ>> accessed 6 June 2018.
- 15 For an example of Human Rights Watch defending *Kony 2012* see Anneke Van Woudenberg, 'How to Catch Joseph Kony' *Human Rights Watch* (Salon, 9 March 2012) <<https://www.hrw.org/news/2012/03/09/how-catch-joseph-kony>> accessed 6 June 2018.
- 16 See, e.g., Edet Belzberg, *Watchers of the Sky* (2014).
- 17 The classical example is *Kony 2012*, which went viral shortly after it was released. As of April 2016, the film has reached over 100 million viewers.
- 18 K. Thor Jensen, '5 controversial documentaries that blurred the line between fact and fiction' (*IFC*, 1 September 2015) <<https://www.ifc.com/shows/documentary-now/blog/2015/09/5-documentaries-that-turned-out-to-be-bullshit>> accessed 6 June 2018.
- 19 Bill Nichols, *Representing Reality* (n 10) 110.
- 20 Dirk Eitzen, 'When is a Documentary?: Documentary as a Mode of Reception' (1995) 35(1) *Cinema Journal* 81–102.
- 21 Bill Nichols, *Representing Reality* (n 10) 114.
- 22 Elizabeth Flock, 'Kony 2012 screening in Uganda met with anger, rocks thrown at screen' *Washington Post* (15 March 2012) <https://www.washingtonpost.com/blogs/blogpost/post/kony-2012-screening-in-uganda-met-with-anger-rocks-thrown-at-screen/2012/03/15/gIQADD98DS_blog.html?noredirect=on&utm=term=.058c0964f1bf> accessed 7 June 2018.
- 23 *ibid.*
- 24 In documentary film theory such documentaries are labelled as 'reflexive' documentaries; Bill Nichols, *Introduction to Documentary* (2nd edn, Indiana UP 2010). This is not to say that reflexivity as such is absent in documentaries on international criminal law; however, this specific mode of documentary representation has not been used so far.
- 25 E.g. documentaries from the 1930s produced to propagate and educate the American people about the New Deal, including *The River*, *The Plough that Broke the Plains*, and *The City*.
- 26 E.g. *The Reckoning* and *The Prosecutor*.
- 27 E.g. *The Court* and *Watchers of the Sky*.
- 28 Carl Plantinga, 'What a Documentary Is, After All' (2005) 63(2) *The Journal of Aesthetics and Art Criticism* 105, 114–15 (hereafter, Plantinga, 'What a Documentary Is').
- 29 Bill Nichols, *Representing Reality* (n 10).
- 30 Plantinga, 'What a Documentary Is' (n 28).
- 31 For an analysis of the use of contrast in documentary film see Louise Spence and Vinicius Navarro, *Crafting Truth*;

- Documentary Forms and Meaning*, (Rutgers University Press 2011) 113–120. The example of *Why We Fight* is taken from their analysis.
- 32 <<https://www.youtube.com/watch?v=Mm3GsSWKyso>> accessed 7 June 2018.
- 33 For a more in-depth analysis of these four films see Wouter G. Werner, ‘Justice on Screen - A Study of Four Documentary Films on the International Criminal Court’ (2016) 29(4) *Leiden J of Intl L* 1043.
- 34 Louise Spence and Vinicius Navarro, *Crafting Truth: Documentary Form and Meaning* (Rutgers UP 2010) 195.
- 35 See Introduction (n 5).
- 36 See, e.g., the media page of the ICC <<https://www.icc-cpi.int/get-involved/Pages/media.aspx>>; the self-produced documentaries of the ICTY <<http://www.icty.org/en/outreach/documentaries>>; the online video archive of the ECCC <<https://www.eccc.gov.kh/en/video/archive>> all accessed 16 December 2018.
- 37 See, e.g., the recurring references to transparency in Office of the Prosecutor of the ICC, ‘Strategic Plan 2016–2018’ (16 November 2015) <https://www.icc-cpi.int/iccdocs/otp/EN-OTP_Strategic_Plan_2016-2018.pdf> accessed 7 June 2018.
- 38 A video about this Public Information and Documentation section can be found on YouTube, see ‘The ICC audio visual project’ (29 March 2010) <<https://www.youtube.com/watch?v=eOrwRPsEYTk&index=1&list=PL7DF9C0E3E9A52F73>> accessed 7 June 2018.
- 39 <<https://www.youtube.com/user/IntlCriminalCourt>> accessed 7 June 2018.
- 40 These videos are grouped in the playlist ‘about the court’: <<https://www.youtube.com/playlist?list=PL7DF9C0E3E9A52F73>> accessed 7 June 2018.
- 41 <https://www.youtube.com/playlist?list=PLz3-Py_E3klD-i68oFGxRB2xBtMmekehe> accessed 7 June 2018.
- 42 *Victims’ participation before the International Criminal Court (ICC)* (23 April 2013) <https://www.youtube.com/watch?v=chymGL8teX4&list=PLz3-Py_E3klD-i68oFGxRB2xBtMmekehe> accessed 7 June 2018.
- 43 See for example one of the first episodes ‘Les Congolais demandent à la Cour pénale internationale’ (4 October 2009) <<https://www.youtube.com/watch?v=d5cM0ys17Ks>>; ‘Kenya situation - Ruto and Sang case: Ask the Court programme’ (28 August 2013) <https://www.youtube.com/watch?v=85Q4LYZpbS8&list=PLz3-Py_E3klBv8_SkNTSVdAtYHZHtlwyh&index=16>; ‘Affaire Bosco Ntaganda : Programme “Demandez à la Cour”’ (9 June 2014) <https://www.youtube.com/watch?v=pGtP3_Uvrldk&list=PLz3-Py_E3klCCEAry1s7SE9QPbow-6h-t&index=14> all accessed 7 June 2018.
- 44 ICC, ‘Strategic Plan for Outreach of the International Criminal Court’, Assembly of States Parties, 5th session, ICC-ASP/5/12 (29 September 2006) at 3 <https://www.icc-cpi.int/NR/rdonlyres/FB4C75CF-FD15-4B06-B1E3-E22618FB404C/185051/ICCASP512_English1.pdf> accessed 7 June 2018 (hereafter ICC, ‘Strategic Plan for Outreach’). See also Sofia Stolk, ‘The Victim, the International Criminal Court and the Search for Truth: On the Interdependence and Incompatibility of Truths about Mass Atrocity’ (2015) 13(5) *J for Intl Crim Justice* 973, 980 (hereafter Stolk, ‘The Victim’).
- 45 ICC, ‘Strategic Plan for Outreach’ (n 44) 5 (emphasis added).
- 46 Jillian Dobson and Sofia Stolk, ‘The Prosecutor’s Important Announcements; the Communication of Moral Authority at the International Criminal Court’ (2016) *Law, Culture and the Humanities* <<http://journals.sagepub.com/doi/abs/10.1177/1743872116666466>> accessed 7 June 2018 (hereafter Dobson and Stolk, ‘The Prosecutor’s Important Announcements’).
- 47 ‘“Ask the Court” programme – Situation in Mali’ (18 January 2013) <https://www.youtube.com/watch?v=KCnYtCgFDec&list=PLz3-Py_E3klCwCtl4nxF3S7lo7fEg6ZCv&index=4> accessed 7 June 2018.
- 48 This seems to be the dominant strategy in ICC communication, for example in the OTP press releases, see Dobson and Stolk, ‘The Prosecutor’s Important Announcements’ (n 46).
- 49 ICC, ‘Strategic Plan for Outreach’ (n 44).
- 50 *ibid* 3.
- 51 Stolk, ‘The Victim’ (n 44) 985. On the inexpressibility of suffering, see, e.g., Iain Wilkinson, *Suffering: A Sociological Introduction* (Polity Press 2005); Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (OUP 1985).
- 52 Stolk, ‘The Victim’ (n 44) 989.