

## SYMPOSIUM ON ART, AESTHETICS, AND INTERNATIONAL JUSTICE

### INTRODUCTION TO THE SYMPOSIUM ON ART, AESTHETICS, AND INTERNATIONAL COURTS

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This essay provides a general framework for thinking about art and international justice, and more specifically the work of international courts. As international justice searches for new methodologies and instruments of inquiry, aesthetic experience proves to be a lens through which it is possible to deepen our understanding of international justice as a specific social practice in its dynamic form. Art is both a representation of reality and an affective state in which both participants in judicial proceedings and outside observers can interact and experience justice directly. This essay and the symposium as a whole demonstrate that art is implicit in the rhetoric of international courts, their architectural design, and their commemorative practices expressed by symbolic reparations and outreach activities.

In convening this symposium with my coeditor Karima Bennoune, who is UN Special Rapporteur in the field of cultural rights, we aim to start a discussion on the connection between art and international justice. The latter discipline embodies the rules of conduct that have universal or quasi-universal application, reflecting shared consensus about certain areas of human activity that are of global or transnational concern. Ironically, if viewed from a static point of view, international law, while aiming at universality, is prone to fragmentation.<sup>1</sup> Academic debates addressing this dichotomy are plentiful,<sup>2</sup> yet they tend to focus on material outcomes of the process of the administration of justice—judgments and legal texts—often leaving untouched the actual direct experience of law’s active participants and outside observers. There is thus scope to develop new methodologies that engage with the discipline of international justice from a different, more experiential, standpoint.<sup>3</sup> This is where art and creative expression can prove to be useful tools for studying international justice.

This introduction discusses the overarching discipline of international justice and the specific bodies tasked with interpreting it, namely international courts. The arguments regarding the value of engaging with creative expression extend to both international justice and to international courts interchangeably, unless a clear distinction is made. Furthermore, the essay adopts a wide understanding of art that encompasses its representational and

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<sup>1</sup> Int’l Law Comm’n, [Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law: Report of the Study Group of the International Law Commission](#), UN Doc. A/CN.4/L.682 (Apr. 14, 2006) (finalized by Martti Koskenniemi).

<sup>2</sup> See, e.g., [PLURALISM IN INTERNATIONAL CRIMINAL LAW](#) (Elies Van Sliedregt & Sergey Vasiliev eds., 2014).

<sup>3</sup> Ingo Venzke, [International Law and Its Methodology: Introducing a New Leiden Journal of International Law Series](#), 28 LEIDEN J. INT’L L. 185 (2015).

transformational qualities.<sup>4</sup> The representational quality of art stands for its function of imitating social life by reflecting emotions and ideas associated with its various institutions.<sup>5</sup> The physical medium of creative expression is thus an important point of reference in the study of the representational aspects of art. In answering the question as to which forms of expression constitute art, this symposium adopts a traditional view of art and culture as accompanying collective human experiences rather than constituting specific forms relegated to designated spaces, such as museums and opera houses. The separation of cultural artifacts from the origins of their production happened rather recently and somewhat unnaturally, with the advent of industrialization.<sup>6</sup> In the context of developing new methods of international justice, it is more constructive to view art in its traditional understanding as accompanying and reflecting the experience within this field.

The essays in this symposium demonstrate how art—whether expressed through rhetoric, monuments, or architecture—is both inherent in international justice and simultaneously reflects on its collective practices. Reflecting does not necessarily imply accepting, as Mark Drumbl of Washington & Lee Law School points out in his piece dedicated to the legacy of Judge Pal—an international judge who is venerated and memorialized in Japan due to his strong dissent at the International Military Tribunal for the Far East.<sup>7</sup> When it comes to the architecture and decorative attributes of the physical space of international justice, Tanja Aalberts of VU Amsterdam and Sofia Stolk of the Asser Institute explain how the Peace Palace in the Hague, home to the International Court of Justice, is not just a decorum or a workplace of international law, but a living materialization of international community.<sup>8</sup> These two essays reveal how art can be used both to convey and create an “international community” and, also, to challenge it.

The second and arguably even more important element to art that comes to life in the symposium is its experiential dimension, independent from the medium through which it is expressed. This quality makes art or aesthetic experience transformational because of its capacity to generate intimacy with the present moment by allowing individuals to transcend habitual patterns of thinking and acting. Simon O’Sullivan refers to this function of art as the “aesthetics of affect,” which is the quality of art to induce direct and uninhibited experience of life.<sup>9</sup> It is this feature of culture and its inherent component of art<sup>10</sup> that makes it, in the words of the Special Rapporteur in the field of cultural rights, an “oxygen for the human spirit.”<sup>11</sup> Karima Bennouna further argues in her essay in this symposium that despite such great importance of art and culture for various aspects of humanity, its value is rarely recognized in the specific area of international justice, save for a few distinct subfields such as women’s human rights.<sup>12</sup> Arguably, integrating the alternative vision of justice that incorporates all senses and allows for the kind of direct experience discussed by O’Sullivan contributes to a more holistic understanding of international justice.

<sup>4</sup> Simon O’Sullivan, *The Aesthetic of Affect: Thinking Art Beyond Representation*, 6 ANGELAKI: J. THEORETICAL HUMAN. 125, 130 (2001).

<sup>5</sup> JOHN DEWEY, *ART AS EXPERIENCE* 7 (Capricorn Books 1958) (1934).

<sup>6</sup> *Id.* at 9.

<sup>7</sup> Mark A. Drumbl, *Memorializing Dissent: Justice Pal in Tokyo*, 114 AJIL UNBOUND 111 (2020).

<sup>8</sup> Tanja Aalberts & Sofia Stolk, *The Peace Palace: Building (of) the International Community*, 114 AJIL UNBOUND 117 (2020).

<sup>9</sup> O’Sullivan, *supra* note 4, at 127.

<sup>10</sup> Along with knowledge, beliefs, morals, laws, customs, and any other capabilities and habits acquired by [a human] as a member of society. See the classic anthropological definition of culture by EDWARD BURNETT TYLOR, *PRIMITIVE CULTURE: RESEARCHES INTO THE DEVELOPMENT OF MYTHOLOGY, PHILOSOPHY, RELIGION, LANGUAGE, ART AND CUSTOM* (1871).

<sup>11</sup> UN Human Rights Council, *Cultural Rights: Tenth Anniversary Report - Report of the Special Rapporteur in the Field of Cultural Rights*, UN Doc. A/HRC/40/53, para. 90 (Jan. 17, 2019) [hereinafter “Cultural Rights: Tenth Anniversary Report”].

<sup>12</sup> Karima Bennouna, *Dignifying, Restoring, and Reimagining International Law and Justice Through Connections with Arts and Culture*, 114 AJIL Unbound 108 (2020).

Following this conceptualization, art and culture become both an instrument of inquiry into the field of international justice and simultaneously a protected value.

What is meant by art as an instrument of inquiry? The traditional way of looking at international justice is to see it as evolving along a linear timeline with distinct developments in the form of legal documents generated by courts and international organizations, each new document attached to a fixed point in time on the overall timeline. If one looks at international justice through the lens of art and creative expression, however, it is possible to uncover new viewpoints complementing such a static understanding of the discipline.

One perspective, grounded in aesthetics, challenges the orientation of the work of international courts towards specific outcomes. It is true that traditional legal method focuses on the content of the documents produced through judicial and legislative processes. This approach dovetails with the nature of law as analytical and formulaic—an instrument geared towards creating a normative framework that either resolves a particular conflict or sets guidelines of general applicability. Art, in contrast, is experiential and does not occupy itself with outcomes to the same degree. The symbioses between the two fields can be best explained by examining the apparent opposition between ethics and aesthetics. Ethics is a branch of knowledge that is outcome-oriented: the goal is to apply generalized principles to a specific matter in order to attain a result aligned with a certain moral foundation. In contrast, aesthetics is concerned with the process through which such action takes place. Aesthetics is therefore preoccupied with thoughtful contemplation.<sup>13</sup> The two approaches do not imply a different set of underlying values, however; rather, they discuss the very same process from a different perspective.<sup>14</sup> They are the two sides of the same coin.

Applying this logic to international justice, it is clear that what matters is not only the material result of the work of international courts in the form of a judgment or order for reparations, but also the process through which this outcome has been generated. The word “process” is not limited to a legal procedure administered in accordance with the rule of law, which is in and of itself an essential component of the legitimacy of international institutions. On a more general level, the process of international justice as a whole can be seen as a form of ritual, where specific details play a role as they contribute to thoughtful reflection. The robes worn by international judges, the rhetoric adopted by the parties, the layout of the courtroom, and the architecture of an international court—all contribute to the perception of international justice by those intimately involved with it and also by those following its developments from the “outside.”

Seeing the work of international courts as a ritual or a process allows for a deeper engagement with the specific goals pursued in the field. Take, for instance, the goal of reconciliation, which is one of the declared aims of international criminal justice.<sup>15</sup> Reconciliation is best seen as a process in a postconflict society through which competing narratives are discussed and mediated, as Rachel Kerr of King’s College London demonstrates in her contribution to the symposium.<sup>16</sup> It has now become clear that, despite the meticulous work of the International Criminal Tribunal for the Former Yugoslavia, the region was not able to attain a full measure of reconciliation solely based on the judgments produced by the Tribunal.<sup>17</sup> Part of the explanation lies in cognitive

<sup>13</sup> Diane Collinson, *Ethics and Aesthetics Are One*, 15 BRIT. J. AESTHETICS 266, 266 (1985).

<sup>14</sup> *Id.*

<sup>15</sup> The point as to whether this goal is indeed a legitimate goal of international criminal law lies outside of the scope of this contribution, as we follow the pronouncements of the UN bodies and the courts themselves. For a critical discussion see, for example, [RECONCILIATION AFTER VIOLENT CONFLICT: A HANDBOOK](#) (David Bloomfield et al. eds., 2003); JOHN LEDERACH, *BUILDING PEACE: SUSTAINABLE RECONCILIATION IN DIVIDED SOCIETIES* (1998).

<sup>16</sup> Rachel Kerr, *Art, Aesthetics, Justice, and Reconciliation: What Can Art Do?*, 114 AJIL UNBOUND 123 (2020).

<sup>17</sup> Marko Milanovic, *Establishing the Facts About Mass Atrocities: Accounting for the Failure of the ICTY to Persuade Target Audiences*, 47 GEO. J. INT’L L. 1321 (2016).

biases held by individuals or groups—a tendency to lean towards interpretation of the facts based on preexisting beliefs, potentially at odds with the findings of the court. It is then the aesthetic experience that allows for a more direct engagement with the legal material or the issues underlying legal judgments. Such aesthetic experience has some potential for transcending popular cognitive divisions existing in regions affected by conflict.

Transitional justice is thus a space where art and international justice complement each other the most.<sup>18</sup> The practice of reparations embedded in the architecture of the International Criminal Court and the Extraordinary Chambers in the Courts of Cambodia (ECCC) allows for a direct pathway connecting legal outcomes with creative expression aimed at memorialization. It is important to note that the practice of symbolic reparations with creative value is still at its nascent stages within international criminal law. La Trobe Law School's Maria Elander, in her contribution to the symposium, provides a masterful exposition of the intricacies and controversies associated with one of the first instances of creative reparations in the field: the sculpture *For those who are no longer here* accepted as a form of reparation at the ECCC to commemorate personal and collective loss resulting from the Cambodian genocide.<sup>19</sup>

Another way to challenge traditional static understandings of international justice through the lens of aesthetics is to see the process of international adjudication as a collective endeavor generating commonly shared reality. This viewpoint is a sociological way to challenge dominant static conceptualizations of international justice in general, and the work of international courts in particular. One may object that there is nothing new to this position—international justice is by definition collective as it involves a multitude of actors occupying themselves with matters of shared concern. While this is certainly true, the traditional outcome-oriented vision of international law highlights the conflicting interests of specific actors: defense versus prosecution in international criminal law, or state versus an individual complainant in international human rights law. This starting point leads to the assessment of (judicial) outcomes as a result of contestation of competing claims presented to an international (judicial) body. In contrast, a view that is more dynamic focuses on a situation itself as opposed to its singular constituent elements.

The theory of interaction rituals developed by Randall Collins is helpful in explaining this point.<sup>20</sup> Interaction theory looks to situations and momentary encounters among individuals charged with emotions and considers the consciousness created as a result of such encounters.<sup>21</sup> The focus is thus not on individuals but rather on situations in which these individuals partake. When the encounters reach a certain level of intensity based on the input of collective emotional energy, they generate commonly shared symbols; the latter acquire charge or emotional significance precisely through such interactions.<sup>22</sup> A ritual, then, is a mechanism of mutually focused emotion and attention producing a momentarily shared reality, which thereby generates solidarity and symbols of group membership.<sup>23</sup> The process of international adjudication is a prime example of an intense social ritual producing shared reality for its participants. The contentious nature of legal proceedings ensures that such encounters are charged with emotional energy. Their focus on issues of universal concern amplifies the moral significance of such rituals as well as their relevance to outside observers. In his contribution, Emiliano Buis of CONICET demonstrates how control over

<sup>18</sup> [Cultural Rights: Tenth Anniversary Report](#), *supra* note 11, at para. 78; see also [Joint Study of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence and the Special Adviser to the Secretary-General on the Prevention of Genocide](#), UN Doc. A/HRC/37/65, paras. 72-83 (Mar. 1, 2018).

<sup>19</sup> Maria Elander, [Visualizing Law and Justice at the Extraordinary Chambers in the Courts of Cambodia](#), 114 AJIL UNBOUND 128 (2020).

<sup>20</sup> RANDALL COLLINS, [INTERACTION RITUAL CHAINS](#) (2004).

<sup>21</sup> *Id.* at xiii.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 7.

shared experience in an international courtroom is achieved precisely through rhetoric charged with emotion. His call is to reveal and carefully examine traditionally concealed affective dynamics of international adjudication.<sup>24</sup>

An argument can be made that the whole field of international justice, with its core norms and values, can be thus perceived as a symbol of shared international consensus in and of itself.<sup>25</sup> Placing the work of international courts in this theoretical framework allows engagement with its specific tangible representations. Contributions to the symposium focus precisely on material symbols produced as a result of judicial rituals as they reflect the culture of international justice and the emotional patterns of the collective within this field.<sup>26</sup> Examining these symbols through the lens of artistic expression captures the direct experience of international justice by those partaking in it and those who observe it from the outside. This study is qualitatively distinct from the analysis of the normative outcomes of the discipline of international justice that manifest as, for instance, legal judgments. In studying the symbols of international justice through the lens of artistic expression and in seeing creative expression implicit in the process of international adjudication, one starts observing the collective dynamics in the field and its wider impact in the world.

<sup>24</sup> Emiliano J. Buis, *Aristotle in The Hague: Artistic Pleading and Emotional Theatricality in International Criminal Proceedings*, 114 AJIL UNBOUND 133 (2020).

<sup>25</sup> Marina Aksenova, *Symbolism as a Constraint on International Criminal Law*, 30 LEIDEN J. INT'L L. 475 (2017).

<sup>26</sup> COLLINS, *supra* note 20, at 11.