

Justice on Screen – A Study of Four Documentary Films on the International Criminal Court

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Abstract

In the past ten years or so, several documentaries on international criminal justice have been produced, shown at film festivals, and used for advocacy and educational purposes. On some occasions, artists, humanitarian organizations, and the Office of the Prosecutor of the International Criminal Court (ICC) have worked closely together in the production of documentary films. Documentaries have thus become important tools for education and the spread of imageries of international criminal justice. So far, however, international legal scholars have largely shied away from researching cinematic representations of their field. In this article, I seek to remedy this by focusing on a family of four recent influential documentaries related to the ICC: *The Reckoning*, *The Court*, *Prosecutor*, and *Watchers of the Sky*. All four use similar modes of representation, narration and promotion and basically communicate the same message about the Court. My article critically analyzes how such artistic interventions have helped create specific images, stories, and sentiments.

Keywords

documentary film; expository representations; International Criminal Court

I. INTRODUCTION

The year 2014 witnessed the release of *Watchers of the Sky*, one of the latest documentary films on international criminal justice.¹ Based on Samantha Power's *A Problem from Hell*, the film tells the story of Raphael Lemkin's lifelong struggle for an effective legal response to genocide. The film features not only Power herself, but also some key figures in international criminal law such as Ben Ferencz, Chief Prosecutor for the *Einsatzgruppen* case and life-long advocate for international criminal law, and former ICC Prosecutor Luis Moreno Ocampo. The film won several nominations and awards at film festivals and has been positively received and promoted by a range of human rights organizations and film critics. *Watchers of the Sky* is by no means unique in its focus on international criminal law, its promotion through film

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¹ *Watchers of the Sky* (2014), directed by Edet Belzberg.

festivals, the appearance of key figures in international criminal law, or its links to human rights organizations. In the past ten years, many more documentaries on international criminal law were produced, screened at film festivals, promoted by critics and embraced by advocacy groups.²

The recent proliferation of documentaries on international criminal law seems to confirm that we ‘live in a visual age, in which life takes place on a screen’.³ However, there is more to it than that. A similar proliferation of documentaries took place some 70 years ago, when post-Second World War trials were the subject of several documentary films, often sponsored or solicited by governmental authorities.⁴ Subsequent high profile cases such as *Eichmann* or *Barbie* have also been the topic of documentary films.⁵ Apparently, the prosecution of international crimes lends itself well to representation in documentary film. This is not surprising given that there are at least two structural similarities between international crime trials and documentary films.

In the first place, international criminal trials are often used for didactic purposes, be it recording history, delegitimizing political ideologies, validating community norms, or reminding the world that international crimes must not go unpunished.⁶ Although legitimate questions have been raised regarding the use of criminal trials for such purposes,⁷ the prosecution of international crimes is generally also justified

² Some other recent examples are: *The Reckoning* (2009), directed by Pamela Yates; *Prosecutor* (2010), directed by Barry Stevens; *War Don Don* (2010), directed by Rebecca Richman Cohen; *Peace vs Justice* (2012), directed by Klaartje Quirijns; *Carte Blanche* (2012), directed by Heidi Specogna; *The Court* (2013), directed by Markus Vetter; *The Khmer Rouge and the Man of Non-Violence* (2013), directed by Bernard Mangiante; *Law not War* (2014), directed by Ullabrit Horn. Of course, the form and content of these documentaries differ widely, with some openly advocating international courts (such as *The Reckoning*, *The Court*, *Prosecutor*, *Watchers of the Sky*, and *Kony 2012* directed by Jason Russell), others criticizing specific trials or courts (such as *Slobodan Milošević Trial* (2010), directed by Jos de Putter), and yet others focusing on the dilemmas that come with the prosecution of international crimes (examples include: *War Don Don*, *Peace vs Justice*, *Carte Blanche*, and *Khmer Rouge and The Man of Non-Violence*).

³ C. Weber, *Imagining America at War: Morality, Politics and Film* (2006), 137 (paraphrasing and quoting N. Mirzoeff, *An Introduction to Visual Culture* (1999)).

⁴ Some of these documentaries are discussed in S. Liebman, ‘La Libération des camps vue par le cinéma: l'exemple de *Vernichtungslager Majdanek*’, *Cahier de judaïsme*, no. 15 (2003), 49–60; S. Leibman, ‘Documenting the Liberation of the Camps: The Case of Aleksander Ford’s *Vernichtungslager Majdanek-Cmenarzyko Europy*’ (1944), in D. Herzog (ed.), *Lessons and Legacies* (2006), Vol. VII, at 333–51; and S. Liebman, ‘The Majdanek Trial: The Holocaust on Trial on Film’, in C. Delage and P. Goodrich, *The Scene of the Mass Crime, History, Film, and International Tribunals* (2013), 113–129.

⁵ *Hôtel Terminus: The Life and Times of Klaus Barbie* (1988), directed by Marcel Ophüls, *Eichmann Trial* (1961), directed by Leo Hurwitz. By now there is also a film about two key figures involved in documenting the Eichmann trial, Leo Hurwitz and Milton Fruchtman (see: *The Eichmann Show* (2015), directed by Paul Williams).

⁶ The literature on expressivism and the educational function of international criminal justice is vast. Among the many publications: M. Osiel, *Mass Atrocity, Collective Memory and the Law* (1999); M. Koskenniemi, ‘Between Impunity and Show Trials’, *Max Planck Yearbook of United Nations Law* (2002), Vol. 6, at 1–35; M. Drumbl, *Atrocity, Punishment and International Law* (2007). L. Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (2001); C. Sunstein, ‘On the Expressive Function of Law’, (1996) 5 *East European Constitutional Review* 66; T. Meijers and M. Glasius, ‘Expression of Justice or Political Trial, Discursive Battles in the Karadžić Case’, (2013) 35 *Human Rights Quarterly* 720.

⁷ This critique was voiced by H. Arendt in, *Eichmann in Jerusalem, A Report on the Banality of Evil* (1963). For a more recent critique, see, for example, J. Snyder and L. Vinjamuri, ‘Trials and Error’, (2004) 28 *International Security* 5, at 39–40; B. Sander, ‘The Expressive Limits of International Criminal Justice: Trauma, Local Culture and the Iron Cage of the Law’ (2016, forthcoming, text on file with the author).

in terms of its educational effects.⁸ In turn, the practice of documentary-making grew out of a desire to use film in order to educate people. Not coincidentally, the term ‘documentary’ itself is derived from the Latin ‘*docere*’ which means ‘to teach’ or ‘to educate’. This was also reflected in the earliest name used to denote documentaries – ‘educational’.⁹ Early documentary makers such as John Grierson defined the genre in opposition to Hollywood fiction films, which were believed to be primarily for entertainment. Documentaries, on the other hand, were deemed to serve social and emancipatory purposes.¹⁰ The educational function of documentaries meant they had to contain an argument based on facts. However, this argument is not only *told*, it is also *shown*, as well as suggested, edited, and supported by sound. The subject of documentary making, according to Grierson, is ‘the blazing fact of the matter’;¹¹ the representation of facts in such a way that the audience’s feelings are mobilized as well, because ‘emotion properly felt and understood, *does* engender decent feeling; *is* intelligence’.¹² This explains why documentaries were seen as helpful tools to educate populations about the post-Second World War trials. They could show facts, both of the trial and of the atrocities committed by the Nazis, provoke emotions, and engender support for the trial and new political regimes. Although by now the documentary genre has become so diverse that it escapes easy definition, the idea of education through a combination of facts, arguments, and emotions still captures a significant portion of documentary making today.¹³ It certainly captures most of what goes on in most documentaries on international criminal law, as I will explain more extensively in the sections below.

In the second place, the nature and deep-structure of (international) criminal trials is an almost perfect fit for storytelling in documentary film. International criminal trials deal with grand questions about justice, good, evil, human nature, victimhood, etc. They do so, however, through the stories of individuals, such as the defendant, the victims, and the witnesses. In a similar fashion, many documentaries use personal stories to approach bigger socio-political issues. They ‘blaze the fact of the matter’ not only through the use of images and sounds, but often also by making socio-political questions the topic of a *personal story* (or at least a story *about* individual persons). Examples can be found in the films of documentary makers such as Frederic Wiseman, Michael Moore, Al Gore, Errol Morris, Joshua Oppenheimer, and Louis Theroux, as well as in all contemporary documentary

⁸ An example can be found at the website of the ICTY, which promotes itself by pointing at its pedagogical impact: ‘[T]he Tribunal ... has now shown that those suspected of bearing the greatest responsibility for atrocities committed can be called to account, as well as that guilt should be individualised, protecting entire communities from being labeled as “collectively responsible”.’ www.icty.org/ (accessed 15 February 2016).

⁹ S.R. Stein and S. Cashman, ‘Documentaries, Motion Picture’, in C.H. Sterling (ed.), *Encyclopedia of Journalism* (2009), 450.

¹⁰ For a discussion, see B. Nichols, *Representing Reality: Issues and Concepts in Documentary* (1991), Chapter 1, at 3–32.

¹¹ As quoted in W. Stott, *Documentary Expression and Thirties* (1986), 10.

¹² Stott, *supra* note 11, at 12 (emphasis in the original).

¹³ For a discussion of the concept of ‘documentary’ see C. Platinga, ‘What a Documentary Is, After All, (2005) 63 *The Journal of Aesthetics and Art Criticism* 105; M. Chahan, *The Politics of Documentary* (2007); B. Nichols, *Introduction to Documentary* (2001).

films on international criminal law. I will come back to this point in [Section 3.2](#) below.

Documentaries are potentially powerful political tools precisely because they combine telling and showing, argument and emotion, the general and the personal. There are several examples of documentaries that have had important political ramifications, including recent films such as *An Inconvenient Truth* (on climate change), *Kony 2012*, and *The Act of Killing* (on Indonesian death squad leaders from the 1960s). The nature of documentaries has also made them popular as tools in teaching, dissemination, and promotion. Humanitarian organizations have long seen documentaries as ways to spread their message and joined forces with artists in human rights film festivals such as *Movies that Matter* or *One World* and independent film festivals such as *Sundance*. Progressive broadcasting companies regularly show documentary films. At least one documentary on international crimes has gone viral on the internet,¹⁴ and by now documentaries about international criminal justice are even accessible through providers such as Netflix.¹⁵ While it is difficult to measure the impact of documentaries in any reliable way, it is safe to claim that nowadays broad audiences are educated about the field of international criminal law through documentary film.

There is, in other words, ample reason for legal scholars to engage more intensely with documentary film. Documentary films have been important for the politics of international criminal law. This is evidenced, for example, by the sometimes close ties between humanitarian organizations, the ICC Office of the Prosecutor, and some documentary filmmakers. An example is the film *The Reckoning*, which included influential human rights NGOs in its Advisory Board, actively sought common ground with the Prosecutor's Office and managed to gain support from human rights film festivals when the film was released.¹⁶ In addition, such films are often used in (academic) education as well as for outreach purposes.¹⁷ Nevertheless, documentary films on international criminal law have so far received relatively little attention from international legal scholars.¹⁸ In this article, I seek to remedy this by focusing

¹⁴ With more than 100 million views in six days, *Kony 2012* has been labeled as the most viral video so far: M. Aguilar, 'Kony 2012 Is the "Most Viral" Video of All Time', *Gizmodo*, 3 December 2012, available at gizmodo.com/5892541/kony-2012-is-the-most-viral-video-of-all-time (accessed 15 February 2016).

¹⁵ *Watchers of the Sky* has recently been made available for Netflix USA (*supra* note 1).

¹⁶ R. Hillman Harrigan, *The Reckoning*—Interview with Director Pamela Yates, *Huffington Post*, 13 August 2009, www.huffingtonpost.com/robyn-hillmanharrigan/emthe-reckoning-em—int_b_230516.html (accessed 27 July 2016).

¹⁷ For a recent analysis, see R. van Munster and C. Sylvest (eds.), *Documenting World Politics: A Critical Companion to IR and Non-Fiction Film* (2015).

¹⁸ It should be noted that the use of documentaries *within* criminal procedure has received more attention, in particular in the context of the Nuremberg Trials. As the editors of this journal rightly pointed out to me, the use of the Scorpions video in the *Milošević* case at the ICTY has also drawn considerable attention. For an analysis see V. Petrović, 'A Crack in the Wall of Denial: The Scorpions Video in and out of the Courtroom', in D. Zarkov and M. Glasius (eds.), *Narratives of Justice In and Out of the Courtroom: Former Yugoslavia and Beyond* (2014) 89. Documentaries representing international criminal law, however, remain largely unstudied. Some examples of scholars who have dealt with the representation of international criminal law in documentaries include Liebman, *supra* note 4; S. January, 'Tribunal Verité: Documenting Transitional Justice in Sierra Leone', (2009) 3 *International Journal of Transitional Justice* 207; J. Handemaker, 'Facing Up to the ICC's Crisis of Legitimacy: A Critique of *The Reckoning* and its Representation of International Criminal Justice', (2011) *Recht der Werkelijkheid*, available

on the representation of international criminal law in some recent documentaries. In the sections below I will show how specific artistic and promotional interventions determine the ways in which international criminal law is portrayed. I will do so by focusing on four documentaries, three of them specifically on the ICC: *The Reckoning*, *The Court*, and *Prosecutor*, and one of them ending with a plea for an effective ICC, *Watchers of the Sky*.

I have selected these documentaries for two main reasons. In the first place, they have managed to reach a broad audience, partly through their set-up and message, partly because of their promotion by film festivals, human rights organizations, academics, and outreach workers of the ICC itself.¹⁹ These documentaries, in other words, have shaped the popular image and understanding of the ICC and are used by the ICC itself to promote its work. Secondly, the four documentaries share so many characteristics that they can be treated as a specific sub-category or family of documentaries. For one, similar footage appears in all four of them, as will be further discussed in Section 3. In addition, the four documentaries share some structural resemblances in: (a) their mode of representation, combined with their central political message; (b) their mode of narration, combined with the main characters that determine the storyline; and (c) their mode of promotion. In the sections below I will discuss their shared characteristics in more detail. Through this discussion I hope to fulfill the promise formulated above – to show how advocacy documentaries use artistic interventions to create particular imageries and arguments about the ICC.²⁰

2. MODES OF REPRESENTATION AND DOCUMENTARY SUB-GENRE

2.1 Representation and argument

We see images of hills, villagers gathering in anticipation, soldiers holding a shotgun and a helicopter flying over. We see Moreno Ocampo, wearing a spotless white suit leaving the helicopter, on his way to an African village. We hear music suggesting suspense and promise at the same time, together with a male voice-over informing us what we are actually watching:

at www.bjutijdschriften.nl/tijdschrift/rechtderwerkelijkheid/2011/3/RdW_1380-6424_2011_032_003_008 (accessed 27 July 2016); F.A. Akena, 'Pornography and the Entrenchment of Western Hegemony: Deconstructing the Kony 2012 Video', (2012) 10 *Socialist Studies* 50; W.G. Werner, "'We cannot allow ourselves to imagine what it all means': ICC Documentaries and Practices of Representation' (2013) 76 *Law and Contemporary Problems* 319.

¹⁹ Note that the ICC also actively promotes itself through documentaries, e.g., via Youtube. See, for example, *The International Criminal Court, Institutional Video* (2014), available at www.youtube.com/watch?v=rK4Y8iqLzxQ (accessed 26 January 2016).

²⁰ In their modes of representation, central message, and mode of narration, the four documentaries differ from two other advocacy documentaries on the ICC. The first is *Kony 2012*. While this film does advocate the ICC, it does so in a very specific context (advocating military intervention to arrest Kony) and with the aim of mobilizing 'humanity' in order to protect children from war. The ICC, in other words, appears only in the background of the documentary and is hardly discussed as such. The second is *Law, Not War* (2014), a film about the life and achievements of Ben Ferencz. While this documentary contains a central message similar to the one that can be found in the four documentaries under study here, its mode of representation is fundamentally different. The documentary basically consists of an interview with Ben Ferencz, who tells his life story and shares his message with the viewers. For these reasons, I have selected only *The Reckoning*, *The Court*, *Prosecutor*, and *Watchers of the Sky* for further analysis.

A war was fought in these hills and war crimes were committed. That's why the man in the white suit has come to this Congolese village. His name is Luis Moreno Ocampo. He is the chief prosecutor of the International Criminal Court. He has no police force. He relies on cooperation. So the prosecutor has to be a bit of a salesman. He has to persuade people of a new idea: global justice.²¹

This is the opening scene of *Prosecutor*, a documentary film on Luis Moreno Ocampo, released in 2010. The opening scene combines two important components. On the one hand, it *represents* reality; it shows us the actual village where Ocampo landed, the local population he engaged with, the white suit he was wearing, the helicopter he used, etc. On the other hand, the documentary *presents* these facts in the function of an argument. In this case the central argument runs more or less as follows: the Prosecutor works for global justice, in complicated environments, without the hard power that comes with police forces and the military – and although he has the combined forces of history and justice on his side, his job is a difficult one. *Prosecutor*, to use Bill Nichols' characterization of documentary film, 'is asking us to consider it as a *representation* of the historical world' and at the same time speaks to the viewer with 'an *argument* about the historical world'.²² *Prosecutor* thereby fits in a long tradition in documentary practice, which revolves around questions of truth and reliability. Documentary makers (generally) claim to show and speak the truth, and documentary audiences expect to receive truthful representations of facts and trustworthy arguments. As Dirk Eitzen put it, 'a documentary is any motion picture that is susceptible to the question, "Might it be lying?"'.²³ Especially at human rights film festivals the audience comes to see documentaries that show facts in the function of an argument and will indeed be disappointed if it finds out that the motion picture *was* lying. All four documentaries under study in this article fit this frame, with an emphasis on representations of actuality constructed in order to educate the audience about the blessings of international criminal law.

2.2 Combining representation and argument: Three forms of documentary

There are different ways to link representations of reality to the arguments pursued in documentary film. Below I will sketch three of them.²⁴

Some documentaries deliberately create dissonance between the representation of reality and the central argument pursued in the documentary film. A good example is *The Atomic Café*, a 1982 documentary on the early decades of the nuclear arms race, which was recently discussed by Casper Sylvest.²⁵ The documentary uses black humor to critique nuclear policies pursued by the US and to educate the audience

²¹ The same scene is quoted (albeit for different purposes) in C. Schwoebel, 'The Market and Marketing Culture of International Criminal Law', in C. Schwoebel (ed.), *Critical Approaches to International Criminal Law* (2014) 264, at 272–3.

²² Nichols, *supra* note 13, at 110 and 111 (emphasis added).

²³ D. Eitzen, 'When is a Documentary?: Documentary as a Mode of Reception', (1995) 35 *Cinema Journal* 81.

²⁴ Both Nichols and Plantinga, *supra* note 13, have developed much-quoted taxonomies of documentary sub-genres. For this article I rely on the more recent adaption of their work by Van Munster and Sylvest, *supra* note 17.

²⁵ *The Atomic Café* (1982), directed by Jayne Loader, Kevin Rafferty and Pierce Rafferty. Discussed by C. Sylvest, 'Nuclear Weapons in Documentary Film', in Van Munster and Sylvest, *supra* note 17, at 95–113.

about the dangers of the nuclear age. This is done, for example, by showing original US propaganda films, but now in the context of an ongoing anti-nuclear argument and a critique on the misinformation provided by the US government. One episode shows a US colonel visiting one of the Pacific islands. The colonel tells the inhabitants that they have to evacuate because the US has planned nuclear tests in order to turn a ‘great destructive force’ into ‘something good for mankind’. This shot is followed by footage from a radiobroadcast explaining that the natives, who are nomadic people, are ‘well pleased that the yanks are going to add a little variety to their lives’.²⁶ The use of dissonance between ‘showing’ and ‘saying’ is particularly well suited for critical documentaries that seek to expose lack of competence or bad faith of authorities, as illustrated by, for example, Michael Moore’s classical scene of George Bush reading in an elementary school in Florida on 9/11.²⁷ An example in the field of international criminal justice would be the documentary *Milošević Trial*, with the hardly subtle subtitle *Corruption of International Justice*; a film that openly takes pride in ‘cracking the demonizing images’ of Milošević that allegedly have been spread by (Western) media.²⁸

Yet other documentaries make an attempt to let the representations speak ‘for themselves’ – or to let the audience attach meaning to what is shown in the film. Such ‘observational documentaries’²⁹ show representations of reality without interviews, without apparent interference of the director/editor and without voice-overs informing the audience about the argument that is developed in the film. Observational modes of representation often work with long shots that are meant to give the impression that we ‘see how things really are’. Or as Jean Rouch has put it;

it would be better to call it cinema-sincerity That is, that you ask the audience to have confidence in the evidence, to say to the audience “This is what I saw”. I didn’t fake it, this is what happened.³⁰

Observational documentaries were facilitated by the introduction of the 16mm camera, and made a perfect fit with the anti-authoritarian *zeitgeist* of the 1960s. Some examples include *Titicut Follies* (1967, on patients/inmates at a hospital for the ‘criminally insane’), *Salesman* (1969, on people who try to sell expensive bibles in low-income neighborhoods), and, more recently, *Armadillo* (2010, on Danish soldiers in Afghanistan).

In the field of international criminal law, observational documentaries have gained little traction so far, although many elements of ‘direct cinema’ can be found in, for example, *Carte Blanche*, a film about forensic and witness experts in the *Bemba* case.³¹ *Carte Blanche* is filmed without voice-over, does not contain an explicit argument and shows long shots of scenes from the daily life of a variety of individuals,

²⁶ *The Atomic Café*, *supra* note 25, at 0:15. The example is borrowed from Van Munster and Sylvest, *supra* note 17, at 101.

²⁷ *Fahrenheit 9/11* (2004) directed by Michael Moore, at 16:55.

²⁸ *Milošević Trial, Corruption of International Justice* (2010), Jos de Putter, VPRO Tegenlicht.

²⁹ Nichols, *supra* note 13.

³⁰ In G. Roy Levin, *Documentary Explorations: Fifteen Interviews with Film-Makers* (1971), 135. Quoted by T.T. Minh-ha, ‘The Totalizing Quest of Meaning’, in M. Renov (ed.), *Theorizing Documentary* (1993), 90, at 95.

³¹ *Carte Blanche*, *supra* note 2. For an analysis see Werner, *supra* note 18.

spanning from Bemba's family to ICC experts, victims, and villagers in the Central African Republic. Of course, the ideal of showing things as they really are is an impossibility, if only for the inevitable choices involved in editing and the purposes behind the making of the documentary film in the first place.³² What is more, the point of observational documentaries, despite their claims to authenticity, is not just to represent life as it is. If that were the purpose, one could as well regard the footage of a security camera in a parking lot as a documentary film. Even observational documentaries make claims beyond 'just showing'; they show actuality in order to make a point about the social practice they represent, although the specific mode in which this is done allows for a less articulate argument, more room for ambiguity and doubt, as well as more space for interpretation by the audience.

The third way to combine representations and argument is through the so-called 'expository mode'. The expository mode is the classical way of documentary making, and still the dominant one in the field of international criminal law. Expository documentaries are organized around explicitly formulated arguments and forms of knowledge, which fit 'categories and concepts accepted as given or true in a specific time and place, or with a dominant ideology of common sense'.³³ Some common ways to communicate arguments and knowledge in expository documentaries are the use of text appearing before images are shown,³⁴ the use of an impersonal, invisible voice-over ('voice of God' narration),³⁵ and the construction of a coherent argument via the voice of one of the main characters of the film.³⁶ Expository documentaries show representations of the world in order to confirm and illustrate the main argument; they explicitly privilege 'saying' over 'showing'.³⁷ An example can be found in *The Reckoning*, which starts with images of victims and survivors of mass crimes, together with sober and somber music. What we see and hear is put in perspective through spoken text, first by an apparent survivor of international crimes, teaching the viewers about the need to break the cycle of revenge and violence: '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.'³⁸ Within one minute, the same message is repeated by the Prosecutor of the ICC, who puts the local suffering in global and historical perspective: 'During the previous century millions of people were the victims of unimaginable atrocities'.³⁹ It was the realization that such crimes concern the international community

³² The idea of a 'direct cinema' or 'cinéma vérité' was criticized, *inter alia*, by Errol Morris: 'I believe cinéma vérité set back documentary filmmaking twenty or thirty years. It sees documentary as a sub-species of journalism . . . There is no reason why documentaries can't be as personal as fiction filmmaking and bear the imprint of those who made them. Truth isn't guaranteed by style or expression. It isn't guaranteed by anything'. Quoted in P. Arthur, 'Jargons of Authenticity (Three American Moments)', in Renov (ed.), *supra* note 29, at 127.

³³ Nichols, *supra* note 10, at 35.

³⁴ Examples can be found in 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* (1936), and *The City* (1939). For a discussion, see Stott, *supra* note 11.

³⁵ Examples can be found in *The Reckoning* and *Prosecutor*, *supra* note 2.

³⁶ Examples can be found in *The Court*, *supra* note 2, and *Watchers of the Sky*, *supra* note 1.

³⁷ Plantinga, *supra* note 13, at 114–15.

³⁸ *The Reckoning*, *supra* note 2, at 1:30.

³⁹ *Ibid.*, at 1:52.

and should not go unpunished, the Prosecutor continues, that led to the creation of an independent, permanent international criminal court. As illustrated by these scenes from *The Reckoning*, expository documentaries tend to come with a reassuring flavour. They spell out a central argument fitting at least some established categories and ideologies, inform the audience how the representations of the world underpin this argument, and let the events unfold in a logical order held together by the central message of the film. Therefore, it is not surprising that expository documentaries have been popular with filmmakers seeking to reach a broad audience. By contrast to observational documentaries, expository documentaries send the audience home with a clear message, underpinned by sounds and images that mobilize ethos, pathos, and logos at the same time.

As I stated above, the expository mode is by far the most popular in documentary films on international criminal law. Most documentaries on this subject, therefore, have a rather moralizing and educational tone – they come with a message. The centrality of the verbal message has important implications for the way in which, for example, victims are portrayed. In documentaries such as *Carte Blanche*, which make use of observational modes of representation, there is ample room to show victims as socio-political human beings whose lives are not defined by the crimes committed against them. In expository documentaries, it is more difficult to do justice to the complexities of individuals and their socio-political lives. After all, persons are shown in the function of an argument; not for the sake of portraying their personality or lives. This is not to say that expository documentaries always reduce individuals to mere illustrations of the central message. However, the risk of doing so always looms large. In *The Reckoning*, for example, victims basically appear as suffering bodies or as disempowered persons asking for the ICC's intervention, whereas the Court itself is portrayed as the one that articulates the suffering of victims, the one that gives voice to the voiceless.⁴⁰

3. REPRESENTING INTERNATIONAL CRIMINAL LAW IN THE EXPOSITORY MODE

3.1 Communicating the central message

What is the central message shared by the four expository documentary films *The Reckoning*, *The Court*, *Prosecutor*, and *Watchers of the Sky*? Given the argumentative set-up of expository documentary films, it should not come as a surprise that the answer to this question can be found in their final, concluding scenes. Notably, all four documentaries end with a scene where the same key figure appears to teach us an identical lesson. The key figure is Ben Ferencz, US Chief Prosecutor in the *Einsatzgruppen* case in Nuremberg, and tireless activist for the ICC and the

⁴⁰ For a more extensive analysis and critique see W.G. Werner, 'The Reckoning: Advocating international criminal justice and the flattening of humanity', in C. Sylvest and R. van Munster (eds.), *Documenting World Politics* (2015), 166.

criminalization of aggression.⁴¹ Take for example the final scene of *The Court*. The film ends with melancholic music, which signals that time has come for some conclusions and reflection.⁴² First, we see typical end-of-the-movie images of a black screen with white letters informing the audience about the current status and whereabouts of the main characters of the film. Then we see images of Miami Beach, quickly followed by close up images of Ben Ferencz who is about to deliver the epilogue: ‘Without courage to live your dream, or to try to live your dream, we cannot overcome the evil reality’. Then the shot widens and we see Ferencz and Moreno Ocampo together on the beach, as two old friends discussing serious matters. The film suggests that Ferencz now addresses not only the viewers, but also Ocampo personally: ‘It is not an easy thing to dream and make the dream reality ... And what we are doing here (sic) at the International Criminal Court is a continuation of what was started at Nuremberg 65 years ago’. After these last words, the music changes; instead of melancholic it turns more and more energetic as the credits run over the screen. Other documentary films use similar shots, with Ferencz teaching us virtually identical lessons against the background of big empty spaces such as the sea or the sky, underpinned by music suggesting reflection and hope at the same time.

In terms of substance, the central messages of the documentaries revolve around the idea that the Court is a progressive force in and beyond history. Through spoken text, the invocation of precedent and hope, images of open spaces, and melancholic and promising music, the four documentary films present international criminal law as emanating from, operating in, and moving beyond history. This relation is very similar to the way in which opening statements of the prosecutor have related international criminal law to history and the course of time. As Sofia Stolk has recently argued, prosecutors tend to present international criminal law as both the outcome of *and* a break with history.⁴³ In a similar fashion, the central message of the documentaries under study here can be summarized as follows: international criminal law is (a) rooted in history, (b) liberating us from history, and (c) pointing us to an ever-receding future.

3.1.1 *Rooted in history*

That international criminal law is rooted *in* history is shown through images of Nuremberg, domestic trials, *ad hoc* tribunals, culminating in the establishment of the ICC. All four documentaries show these images and tell the story of international criminal law as one of gradual progress. The promise made in Nuremberg is increasingly realized through domestic trials, *ad hoc* tribunals and, most of all, the ICC. Historical progress is also personified through the (simplified) life stories of Ferencz

⁴¹ Ferencz has his own website documenting his life and efforts and promoting his project for international criminal justice, www.benferencz.org/#media. The editors of this journals pointed to the fact that Ferencz is also active on social media, including Twitter: twitter.com/BenFerencz.

⁴² In this context, it is interesting to note that most of the music was specifically composed for *The Court*, *supra* note 2. Thanks to Sofia Stolk for pointing this out.

⁴³ S. Stolk, ‘“The Record on Which History Will Judge Us Tomorrow”: Auto-History in the Opening Statement of the Prosecution in International Criminal Trials’, (2015) 28 *Leiden Journal of International Law* 993.

and Moreno Ocampo. *The Reckoning*, for example, shows footage of the impressive opening speech delivered by Ferencz at Nuremberg – a slim, young figure standing behind a big rostrum, symbolizing the grandiose task he was facing (the exact same footage appears in *The Court*). The speech is then continued by Ben Ferencz in 2009 – an old, wise man looking back at his great moment (an editing technique also used in *The Court*). Later in the film we see the same Ferencz appearing at the ICC in the team of the Prosecutor, thus symbolizing historical continuity and progress. In a similar fashion, *The Reckoning* shows Moreno Ocampo as a young man, responsible for prosecuting the *junta* in his homeland of Argentina. An older, more reflexive Ocampo states in *The Reckoning* that his work in Argentina was just the prelude to his current job as Prosecutor for the ICC (an episode which is copied almost exactly in *The Court*). The progressive history of international criminal law functions as a signal of hope and encouragement: in the past much has been achieved, now even more has been achieved, so there is every reason to keep our hopes up for the future of international criminal law.

3.1.2 *Liberation from history*

International criminal law is, however, not just the culmination of a historical process; it also liberates from history. The history from which we⁴⁴ need to be liberated, however, is quite different from the history that created international criminal law. It knows no progress, but only cycles of violence, revenge, and lust for power. This history is shown abundantly in all four documentaries through, for example, images of war, torture and inhuman treatment, child soldiers being trained to hate their enemies, dictators clinging to power, or human suffering. These images work quite powerfully and directly. It is impossible, for example, *not* be appalled by images of a child that is scared and put to death; *not* to feel quite intensely that such crimes should not go unpunished.⁴⁵ The images are supplemented by gloomy readings of history, claiming that violence and impunity have always been the human condition. In *Prosecutor*, for example, we see images of killed and mutilated bodies and endless lines of skulls. This is voiced over by Moreno Ocampo who explains what they stand for: ‘The Nazi regime killed millions of peoples. We said “never again”. It was not true. It happened again and again.’⁴⁶ Later in the same documentary Ocampo sets out that ‘for centuries humanity was trying to stop crimes through negotiations. But this isn’t working. Hitler could not be appeased, and many others’.⁴⁷

This image of history fulfills a function akin to that of the state of nature in liberal political theory: it represents that part of human nature and social (dis)organization that cannot be denied, but should be feared and overcome. It is a constant reminder

⁴⁴ The somewhat amorphous term ‘we’ is chosen deliberately here, as the four documentaries all actively seek to create a ‘we’ feeling. The ‘we’ in the documentaries takes different meanings, from ‘humanity’, to ‘states’, to ‘the viewers’. On the problematic nature of ‘we talk’ in international criminal law, see I. Tallgren, ‘The Voice of the International; Who Is Speaking?’, (2015) 13 *Journal of International Criminal Justice* 135.

⁴⁵ *The Court*, *supra* note 2, at 10:00.

⁴⁶ *Prosecutor*, *supra* note 2, at 3:00–3:11.

⁴⁷ *Ibid.*, at 8:00.

of what humans are capable of – and the full powers of documentary making are used to show us what that looks like. International criminal law then is presented as the way to overcome this dark side of history and human nature, as a turning point in history. Thus, after his gloomy reading of human history in *Prosecutor*, Ocampo presents the viewers with a way out: ‘Then in 1998, a new idea: no more impunity for mass criminality, genocide and crimes against humanity. End of impunity ... A new era. That is the International Criminal Court.’⁴⁸ International criminal law is thus portrayed as a break with history and the cycle of revenge and violence that characterizes the state of nature. However, the documentaries also make clear that the state of nature is never far away; it looms large in power politics, obstruction to the Court, and in the dark side of human nature itself. International criminal law therefore is also a vocation, a never-ending task to struggle for justice.

3.1.3 *Beyond history*

The four documentaries under study portray international criminal law not only as located in history, nor solely as a break with history. They also imagine international criminal law as a pointer to the possibility of global justice *beyond* history; beyond the endless ideological and political struggles of the past. Of course, none of the documentaries contains the radical claim that we have reached ‘the end of history’ with the universalization of a set of norms about political organization.⁴⁹ Still, they do contain the claim that with the establishment of the ICC we have entered ‘a new era’,⁵⁰ an era where certain core values are deemed to be beyond legitimate political struggle and contestation. The point of the documentaries is not that the ideals of global criminal justice have been fulfilled. On the contrary, the films are filled with images and stories of international crimes, precisely to show the need for an effective international criminal court. In line with the long tradition of advocacy documentary film, their point is to *mobilize* viewers, to encourage them to keep struggling for the promise of global criminal justice. The dark sides of history are not denied, but redefined as mettle tests for the ones that seek a better world; the ones that believe that ‘one day there will be justice’,⁵¹ ‘obstacles are a test of my moral strength’,⁵² ‘if we try hard enough and long enough to make it a more humane world, I am confident it will come about’,⁵³ or the ones always thinking ‘about the privilege, of you know, of getting to try. Just to try’.⁵⁴

The documentaries contain several pointers to the promise of a better future that ‘we’ as viewers can help achieve. The most outspoken example can be found in the closing scene of *Watchers of the Sky*. It shows animations of outer space, with configurations of stars, giving the impression of timelessness and infinity. This impression is reinforced by minimalistic, slow, fragile music. The vastness of outer

⁴⁸ Ibid., at 3:11–3:30.

⁴⁹ F. Fukuyama, *The End of History and the Last Man* (1992).

⁵⁰ Moreno Ocampo in *Prosecutor*, *supra* note 2.

⁵¹ Moreno Ocampo in *The Reckoning*, *supra* note 2, at 5:8:28.

⁵² Moreno Ocampo in *Watchers of the Sky*, *supra* note 1.

⁵³ Ferencz in *The Reckoning*, *supra* note 2, at 5:8:30.

⁵⁴ Power in *Watchers of the Sky*, *supra* note 1.

space contrasts with the images of the homey environment that follows, with Ben Ferencz and his wife sitting on the couch. We see a sign on Ferencz' study room, saying 'Here rests Tycho Brahe, ad infinitum'. The sign, we are told, has been on his door for over 30 years. This is the prelude to the (rather romanticized) story of Tycho Brahe, told by Ben Ferencz. Brahe (1546–1601) is presented as an astronomer who wanted to find out the meaning of the universe by observing and recording the position and movement of stars for more than 25 years. Brahe was almost forgotten, Ferencz' story goes, until some treasurers of the king came to his observatory and asked him what he had been up to the last 25 years, in his observatory on the island near Helsingør:

O, he said, I have been watching the skies. Watching the skies? What for? Well, I make a chart and I have 97 volumes . . . and can tell you the movement of every one of those stars. What's the use of it? . . . I admit that I was trying to find out the meaning of the universe and I haven't found it yet. But I believe that some day, somebody will. And I will have saved that person 25 years of labor.⁵⁵

'And when the astronauts landed on the moon', a visibly moved Ferencz continues, 'they had with them the tables of Tycho'.⁵⁶ The story of Tycho Brahe summarizes the vocational message of *Watchers of the Sky*. The ideal of global justice belongs to an ever-receding future, just like the meaning of life will always escape us. Yet, we should try to achieve it, against the realities of the world and the skeptical responses we may get, because some day, someone will build on our efforts to make yet another attempt to reach for the ideal of global justice. As history shows, our orientation should be towards the future.

3.2 Personifying and marketing the central message

Not surprisingly, the central message in the four documentaries is delivered from the perspective of the prosecutor. The prosecutor personifies the struggle to end impunity, against all odds and with an eye to a future that is always yet to come. In contrast to documentaries such as *War Don Don*, *Khmer Rouge* and *The Man of Non-Violence*, or *Carte Blanche*, the defendant is virtually absent in the four documentaries. He has no context, no history, and no voice, other than through his lawyer in the courtroom, in scenes that are meant to show how ending impunity looks like in reality. This is not to say that critique and doubt about interventions by the prosecution are entirely absent in the films. Especially *The Court* and *Prosecutor* contain scenes that could raise critical questions about the impact of ICC interventions. *The Court* includes several scenes showing human suffering and international crimes, immediately followed by shots of experts discussing the legal technicalities of a case. The mismatch between intense suffering and the technical, semi-objective interpretation by legal experts creates feelings of unease for the viewer. Apparently, something is lost in translation when the ICC intervenes to speak for the voiceless.⁵⁷ *Prosecutor* shows how a young investigator gets increasingly frustrated about the lack of progress in the *Kony*

⁵⁵ *Watchers of the Sky*, *supra* note 1, at 1:53–1:54.

⁵⁶ *Ibid.*, at 1:54.

⁵⁷ For an analysis see Werner, *supra* note 18, at 334–5.

case, eventually quits his job and decides to work for a humanitarian organization that rescues child soldiers. The film follows him on a spectacular mission, which manages to liberate a number of defected child soldiers. However, notwithstanding the critical moments in the films, the general message remains untouched. In some cases, critique is even silenced immediately after it has been voiced. In *Prosecutor*, the scene showing the direct impact of humanitarian rescue operations is followed by a voice-over explaining that the ICC works through procedures aimed at long-term effects, and Ocampo explaining how the slower, legal approach has the potential to effectuate changes across the world. Another example can be found in the editing of two subsequent scenes in *Prosecutor*.⁵⁸ In the first shot we see and hear Mahmood Mamdani, who questions the deterrent and beneficial effects of ICC interventions in Africa, because criminal law is unable to address the structural aspects of mass violence. Mamdani's critique is immediately followed by shots of Ocampo in his car, explaining how much impact the prosecution of Lubanga has had already in different parts of the world. The film then leaves the critique of Mamdani behind and continues with shots of the Court in action. Critique is silenced even more directly in *The Reckoning* where we see images of Ugandan villagers who oppose prosecution of the leaders of the Lord's Resistance Army (LRA). The images are put in context by images of fighters and a voice-over informing the viewers that the LRA only seeks to 'push their anti-ICC case'.⁵⁹ In the rest of the documentary, the dilemmas around peace and the pursuit of criminal prosecutions do not recur. The function of the scene is mainly to show the difficulties encountered by the prosecution in its struggle for global justice.

In three out of the four documentaries the main figure of the film is Luis Moreno Ocampo (the exception being *Watchers of the Sky*). We see Ocampo not only in his official capacity, but also at home having breakfast, playing a game of angry birds in the plane, out running in The Hague, talking over the phone while driving (an illegal act under Dutch law), walking across the beach, being nervous before a big day while his son supports him, etc. However, the point of these personal anecdotes is not to tell the story of the life of Moreno Ocampo. If that had been the purpose, we would have seen and heard much more context, and scenes would have been long enough to actually tell us something about the person. Instead, the purpose is to personify the central message of the documentary. The struggle to end impunity is not just some abstract idea; it is the lived experience of someone like you and me, who eats, gets tired and nervous, exercises, makes phone calls, etc. *Watchers of the Sky* is a bit more ambivalent about its main character. One would expect it to be Raphael Lemkin, whose life and struggle for an effective legal response to genocide is the main topic of the film. And indeed, his life-story is told and shown through historical footage, interviews, and beautiful animations. At the same time, the main narrator of the film is Samantha Power, whose life, book, advocacy and governmental work guide the film. At the end of the film, the attention moves to the ICC and we see images that look very much like the ones that were shown before in ICC advocacy

⁵⁸ *Prosecutor*, *supra* note 2, at 21:57.

⁵⁹ *Ibid.*, at 43:00.

documentaries, including, once more, Ocampo in Argentina, Ocampo in The Hague, and Ferencz delivering a concluding message of hope.

The personal character of the films also recurs in their marketing. *The Reckoning*, for example, is marketed as the story of a courageous individual. The film ‘follows dynamic ICC Prosecutor Luis Moreno Ocampo and his team . . . At every turn, he must pressure the international community to muster political will for the cause’.⁶⁰ Both *Prosecutor* and *The Court* advertise their product with prominent images of Moreno Ocampo and with texts such as: ‘A fascinating story with extraordinary behind-the-scenes access, (following) every move of this flawed yet charismatic champion of human rights as the ICC begins its very first trials’.⁶¹ The website of *Watchers of the Sky* promotes the film as one that ‘interweaves four stories of remarkable courage, compassion, and determination’, and contains a separate link called ‘meet the characters’. A click on the link takes the viewer to pictures of the heroes of the film, Lemkin, Power, Ferencz, Ocampo and Uwurukundo, with the possibility to click further and read their life stories.⁶²

The combination of general message and personal stories fits in a longer tradition of expository documentary making. However, there is also a noticeable difference between some of the classical expository documentaries and at least three of the four documentaries under study in this article. As was set out in the introduction, in their early days documentaries were defined in opposition to Hollywood films. While Hollywood movies were made for entertainment, documentaries were supposed to educate. This is different when it comes to the presentation and marketing of *The Reckoning*, *The Court*, and *Watchers of the Sky*. Even *Prosecutor*, for which the promotional material is generally more sober, markets itself through a trailer with Mia Farrow expressing her great admiration for Moreno Ocampo,⁶³ and with promises of ‘front-row seats to the historic events that will determine whether the ICC is a groundbreaking new weapon for global justice or just an idealistic, powerless dream’.⁶⁴ *The Court* sells itself with pictures of Hollywood celebrity Angelina Jolie, and pictures of Ocampo, Ferencz, and Jolie together.⁶⁵ Both *The Court* and *The Reckoning* present themselves as *thrillers*,⁶⁶ films usually associated with entertainment

⁶⁰ Skylight Pictures, *The Reckoning*, skylight.is/films/the-reckoning/ (accessed 15 February 2016).

⁶¹ Icarus Films, *Prosecutor*, icarusfilms.com/new2011/pros.html. The image used for the poster of *The Court* can be found at www.thecourt-movie.com (accessed 15 February 2016).

⁶² *Watchers of the Sky*, at watchersofthesky.com/about-the-film/ (accessed 15 February 2016).

⁶³ The trailer can be found at www.idfa.nl/industry/tags/project.aspx?id=c69857bc-f3c2-430b-8b65-5f17714bd35b (accessed 15 June 2015).

⁶⁴ icarusfilms.com/new2011/pros.html (accessed 15 February 2016).

⁶⁵ The most vivid example was the initial poster used to advertise *The Court*. The poster showed a picture combining the images of five people: Judge Fulford, Luis Moreno Ocampo, Fatou Bensouda, Ben Ferencz, and finally Angelina Jolie, Hollywood celebrity and human rights activist. At some point, the pictures of Jolie and Ferencz were removed from the poster, thus leaving only the judge and the two prosecutors to promote the film. The nature of the poster, however, remained basically the same: a tongue in cheek representation of the ICC modeled after a US courtroom drama.

⁶⁶ See the following examples: ‘Like a deft thriller, *The Reckoning* keeps you on the edge of your seat, in this case with two riveting dramas—the prosecution of unspeakable crimes and the ICC’s fight for efficacy in its nascent years’, at skylight.is/films/the-reckoning/ (accessed 15 June 2015); ‘The movie “The Court” is told from the point of view of the office of the prosecutor. In the style of a courtroom thriller Michele Gentile and Marcus Vetter (*The Tunnel*, *The Heart of Jenin*) follow Ocampo during an inordinately complex juridical process which is given a face during the course of the film’, at www.thecourt-movie.com/en/about-the-film,

through ‘thrills’ and with movies that ‘keep the audience cliff-hanging at the “edge of their seats” as the plot builds towards a climax’.⁶⁷ The ‘thrill’ that is promised in the promotional material is supposed to come from the struggle for justice by the prosecutor: will he succeed in overcoming opposition, will he be able to prosecute the suspects? *The Reckoning*, *The Court*, and *Watchers of the Sky* also flirt with a second genre: the *epic movie*. This genre is usually associated with a ‘grandiose story [and] sweeping musical score’,⁶⁸ together with ‘some sense of being caught up in the great moments of history: when a character’s actions affect an entire nation or civilisation, then it’s an epic’.⁶⁹ The epic experience that is promised to the audience revolves around the attempts of individuals to change the course of history through their struggle for justice. Although the epic movie is not explicitly invoked in the promotional material,⁷⁰ flirtations with the genre are clear from the way in which, for example, *The Reckoning* is promoted: ‘A David & Goliath battle of titanic proportions unfolds . . . in [Ocampo’s] struggle to tame the Wild West of global conflict zones.’⁷¹ Similarly, it is hard not to think of epic movies when recommendations include phrases such as ‘the message is heard by millions of people all around the world’⁷² or ‘as this tiny court in The Hague struggles to change the world and forge a new paradigm for justice, the forces of impunity fight back. Will the Prosecutor succeed? Will the world ensure that justice prevails?’⁷³ The epic genre is also present in the trailer of *Watchers of the Sky*, which combines music, text, and historical footage to create the impression that the viewer is about to witness turning points in history, brought about by idealists that never give up. The film is presented as dealing with ‘the story of an idea that inspired a movement’; an idea that materialized in constitutive moments such as the unanimous adoption of the Genocide Convention.⁷⁴

Of course, one should not take any of the terms used in promotional material too literally. After all, promotional material is there to sell a documentary film in a highly competitive market.⁷⁵ The flirt with Hollywood is even used for idealistic purposes, as explained by the directors of *The Court*. The fact that Angelina Jolie appears at the ICC, they hold, ‘makes it also attractive for people who would normally not attend documentary films’.⁷⁶ And indeed, the films discussed in this article have

(accessed 15 June 2015); ‘Shot in the style of a legal thriller, the documentary “The International Criminal Court” relates how the first internationally legitimated criminal court was founded in 2002, and how it investigates appalling crimes committed by some of the world’s most ruthless war criminals’, at www.imdb.com/title/tt2819570/plotsummary?ref_=tt_ov_pl (accessed 15 June 2015).

⁶⁷ Filmsite, Thriller-Suspense Films, at www.filmsite.org/thrillerfilms.html (accessed 18 June 2015). Director Pamela Yates spoke of *The Reckoning* as ‘a political thriller about crime and punishment’, *supra* note 16.

⁶⁸ The Script Lab, Genre: Epic, at thescriptlab.com/screenplay/genre/epic# (accessed 19 June 2015).

⁶⁹ Prospero, Epic, Rise of a Genre, at www.economist.com/blogs/prospero/2014/05/film (accessed 19 June 2015).

⁷⁰ Note, however, that a review described *The Court* not only as a thriller, but also as having ‘an epic “good versus evil” plot’. S.S., ‘The International Criminal Court on screen; Ready for its close-up’, *The Economist*, 24 June 2013, at 13:37, www.economist.com/blogs/prospero/2013/06/international-criminal-court-screen (accessed 15 June 2015).

⁷¹ www.youtube.com/watch?v=kfolj07z7ZI (accessed 15 June 2015).

⁷² www.thecourt-movie.com/en/about-the-film (accessed 15 February 2016).

⁷³ www.youtube.com/watch?v=kfolj07z7ZI (accessed 15 February 2016).

⁷⁴ www.youtube.com/watch?v=1e0HFCKcVhc (accessed 15 February 2016).

⁷⁵ F. Ragazzi, ‘Your Film in Seven Minutes’, in Van Munster and Sylvest, *supra* note 17.

⁷⁶ ‘Er macht ihn auch für Leute attraktiv, die sonst nicht in Dokumentarfilme gehen’, in “‘The Court’”: Am Mittwoch hatte der erste Tübinger Film mit Angelina Jolie Premiere’, *Schwaebisches Tagblatt*, 29 April 2013, at

been very successful in attracting a broad audience that otherwise probably would have remained ignorant about the ICC. At the same time, there is a dissonance, to say the least, between the claims to truth and authenticity that come with the documentary genre and the flirt with entertainment and thrills that can be found in the promotional material. Moreover, one may wonder what is actually achieved if broad audiences are sent home with sentimental and simplified messages about the ICC, messages that hardly do justice to its limited capabilities as well as the politics that comes with prosecuting international crimes.⁷⁷ Portraying ICC interventions as epic moments not only creates naïve expectations about the powers of the Court, but also risks marginalizing alternative mechanisms of doing justice to mass atrocities,⁷⁸ sustaining archetypal imageries of victims, villains, and saviors, and glossing over the instrumental use of criminal law by the powers that be. If documentaries indeed seek to educate, they should go beyond selling the ICC as material for a reassuring good night out.

4. CONCLUSION

International criminal law has always been a popular topic for documentary filmmakers. With its educational ambitions, its treatment of grand socio-political questions, and its focus on individuals, international criminal law is an almost perfect fit for socially engaged documentary film. In the past ten years or so, several documentaries on international criminal law have been produced, shown at film festivals, and used for advocacy and educational purposes. So far, however, international legal scholars have largely shied away from researching documentary representations of their field. This is not surprising, given the fact that lawyers are trained to work with verbal, formal arguments; not with edited combinations of images, sounds, and narration. Nevertheless, given the possible impact of documentary film as well as their frequent use as tools for education, it may be wise for international lawyers too to further develop their visual literacy.

Through a study of four advocacy documentaries on – or related to – the ICC, I have made an attempt to carve out some of the artistic interventions used to create specific images, messages, and narratives about the Court. The four documentaries all share the so-called ‘expository mode’ of representation, which is organized around a central argument. In expository films, images and sounds are largely instrumental to the development of the argument. The central argument that can be found in all four documentary films is that international criminal law – and in particular the ICC – is a redemptive promise, rooted in a progressive history, liberating us from endless cycles of violence and injustice, and pointing us to an ever-receding future where justice will reign. The messianic flavour of all four documentaries bodes well with

www.tagblatt.de/Home/kino/filmregion_artikel,-The-Court-Am-Mittwoch-hatte-der-erste-Tuebingen-Film-mit-Angelina-Jolie-Premiere-_arid,212709.html (accessed 15 June 2015).

⁷⁷ For an analysis of the politics of international criminal justice, see *inter alia* G. Simpson, *Law, War and Crime* (2007); S. Nouwen and W.G. Werner, ‘Doing Justice to the Political: The International Criminal Court in Uganda and Sudan’, (2010) 21 EJIL 941; Schwoebel, *supra* note 21.

⁷⁸ For a more extensive elaboration of this argument, see Werner, *supra* note 40.

their advocacy aims, their desire not just to educate, but also to activate. The central message not only largely determines how images, sounds, and narration within the film are organized. It also determines what is not included in the documentary. All four documentaries, for example, privilege the point of view of the prosecutor, with virtually no room for the perspective of the defendant or the possible benefits of alternative responses to mass atrocities. The perspective of the prosecutor becomes literally visible in the person of Moreno Ocampo, who figures prominently in all four films. However, he does not appear in order to give the viewer insight into his personality, life or times; instead he functions as the *personified message* of the documentaries. His role as *persona* is intensified through the promotional material for the films, which present him as one of the main characters in a 'legal thriller' or 'epic battle'.

The four documentaries under study in this article have all been very successful in reaching a broad audience via human rights film festivals, internet, broadcasting companies, and the support of humanitarian groups and academics. Their mission, educating masses about the ICC, has been accomplished. However, as always, success comes at a price. Through their specific modes of representation, the four documentaries simplify the politics of law that surround the ICC and downplay the possible dark sides of relying so strongly on criminal law approaches to political violence. The four documentary films engender feelings of aversion to atrocities, pity for the victims, sympathy for those struggling for justice, and hope when the final message is presented. Much less effort is made to engender yet another feeling, one that is probably most appropriate when it comes to justice, law, and violence – the feeling of ambivalence.