

SYMPOSIUM ON ART, AESTHETICS, AND INTERNATIONAL JUSTICE

ART, AESTHETICS, JUSTICE, AND RECONCILIATION: WHAT CAN ART DO?

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The potential convergence of art and international justice has received greater attention in recent years. In light of recognition of the limitations of international courts¹ and the challenges of outreach, scholars and practitioners have begun to seek alternative ways of fostering engagement among the communities most affected by the crimes under their jurisdiction. In this context, the question has arisen: What can art do? What is the potential role of art and aesthetics in furthering goals of international courts beyond justice, i.e., towards peace and reconciliation? In this essay, I discuss three ways in which art has enormous potential, while also acknowledging that there are associated risks and challenges that might cause us to temper our enthusiasm.

First, visual methodologies can help us to articulate the extent to which the process itself is visual and performative: a “spectacle.” This can be especially apparent where international justice is invoked to reinforce the power of the state, faith in justice and the rule of law, or to relate a particular historical narrative. In this regard, it becomes a site of storytelling.

Second, visual images and artistic approaches can be deployed as a method or practice not only to communicate the work of courts in “outreach,” but also to *engage* affected communities in an ongoing process of rearticulation, reworking, and even rejecting the work of international courts and other transitional justice mechanisms.² They help to uncover not only what international justice looks like at a particular moment in time, but also to think more eclectically about how justice and reconciliation are continually enacted, reimagined, contested, and resisted.

Third, they can uncover important new perspectives on the purported goals, processes, and outcomes of international courts, especially highly contested concepts such as justice and reconciliation. Here, I am making an assertion that reconciliation is a goal of international justice, which itself is contestable. Nevertheless, while reconciliation was not explicitly included in the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY), it was included in the International Criminal Tribunal for Rwanda’s (ICTR’s) mandate, and it has increasingly been seen as inextricably tied to goals of justice, peace, and deterrence, as a means of ensuring “non-recurrence.” Arts and creative processes encourage a fundamental rethinking or reframing of what we might understand processes of reconciliation to entail, and how they unfurl. I argue that the emergent, unstable, and open-ended character of art can provide “discursive space” in which a form of dialogic reconciliation might occur.

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¹ PHIL CLARK, [DISTANT JUSTICE: THE IMPACT OF THE INTERNATIONAL COURT ON AFRICAN POLITICS](#) (2018); Marko Milanović, [The Impact of the ICTY on the Former Yugoslavia: An Anticipatory Postmortem](#), 110 AJIL 233 (2016).

² For discussion, see the [Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence](#), UN Doc. A/HRC/36/50 (Aug. 21, 2017), and [TRANSITIONAL JUSTICE, CULTURE AND SOCIETY: BEYOND OUTREACH](#) (Clara Ramírez-Barat ed., 2014).

"Spectacles" of Justice: Visuality in and out of the Courtroom

The particular sites, spaces, and rituals of international justice create a unifying aesthetic that resonates across international courts. There is a performative aspect to international trials, with recognizable legal costumes of black and red robes for counsel and judges, rituals of entering and leaving the courtroom, seemingly lengthy and archaic procedures, opening and closing speeches, and the ritualized language of law. All of this conforms to expectations about what criminal proceedings *should* look like and so reinforces the courts' legitimacy as sites of justice.

At the same time, international justice can be seen as in some senses "carnavalesque" when participants seek to parody and subvert it, as has occurred in some of these courtrooms. High profile defendants such as Slobodan Milošević and Saddam Hussein tried to use the court as a political stage, playing not to the judges and other participants in the legal drama, but to their audiences at home. The final ICTY trial was tragically subverted by the defendant, Slobodan Praljak, who upon being sentenced, committed suicide in open court by drinking a vial of poison.

But the rituals and aesthetics of the courtroom can also have an alienating effect, making international justice seem far removed from the everyday concerns of the citizens affected by the crimes with which it is concerned. In research on the role of visual images in war crimes prosecutions, we found that, for some people, rather than bridging the gap between people in the region and the court in The Hague, televised proceedings of the ICTY reinforced the sense of remoteness, with the tribunal perceived by some in Bosnia and Herzegovina as a kind of "space-capsule justice."³

Outreach, Effect, and Affect: Reconciliation, Dialogue, and Resistance

While for some, the images of the courtroom itself increased the perception of distance, for others, images of the proceedings and, in particular, the visual evidence deployed in the courtroom in the form of film, photography, and drawings was immensely powerful. In one notable example, footage of the execution of several Bosnian Muslims by a Serb paramilitary group at Srebrenica in July 1995, shown during the Milošević trial at the ICTY, pierced the veil of denial that had shrouded discussion of Srebrenica and of Serb responsibility.⁴ Given that this footage was not in the end admitted as evidence, one could argue that it had much more impact outside the courtroom than within it. A similar argument could be made about the showing of the Nazi Concentration Camp film at Nuremberg. The film was deployed by the prosecution on day six of the trial to demonstrate the horrific nature of Nazi crimes, which it did very effectively. Footage relayed the atrocious nature of the camps in a way that words could not.⁵

The power of visual images in transmitting certain messages raises the question of what the potential role might therefore be of visual images and art in and around international justice, in particular in relation to goals of justice and reconciliation. To what extent can visual and artistic material facilitate better understanding and a deeper engagement with the work of international courts and connect with wider processes of contending with past atrocity?

There are different ways in which this might occur. Courts and other transitional justice institutions have used arts-based approaches to supplement and translate judicial findings into language accessible to a wider audience.

³ James Gow et al., *Space Capsule Justice: The ICTY and Bosnia—Image, Distance and Disconnection*, 91 SLAVONIC & EAST EUR. REV. 4 (2013).

⁴ Ivan Zveržhanovski, *Watching War Crimes: The Srebrenica Video and the Serbian Attitudes to the 1995 Srebrenica Massacre*, 7 SOUTHEAST EUR. & BLACK SEA STUD. 3 (2007).

⁵ Lawrence Douglas, *Film as Witness: Screening Nazi Concentration Camps Before the Nuremberg Tribunal*, 105 YALE L.J. 2 (1995).

We have seen the creation of documentary films, posters, graphic novels, and exhibitions by international courts like the ICTY, the ICTR, the Special Court for Sierra Leone, and the International Criminal Court. The International Residual Mechanism for Criminal Tribunals has also curated a very powerful online exhibition of visual material, including photographs, drawings, and sketches that were admitted into evidence in court proceedings before the two ad hoc tribunals, which offers an alternative and potentially more accessible way to connect with the trials.⁶

In addition, there is a wide spectrum of creative activity driven by a range of stakeholders—community workers, NGOs, heritage institutions, arts organizations, artists, etc.—drawing on a variety of artistic interventions including, but not limited to, fine art, photography, film-making, theater, dance, and creative writing.⁷ While some of these actors have explicitly rejected the term “reconciliation” in their work, largely because of its political baggage, these interventions have been transformative. Art can play with time and space, order and disorder, reflecting complexity and creating room for competing narratives and interpretations, as well as a space in which people might be engaged emotionally and physically as well as intellectually.⁸

Creative expression can also focus attention on particular groups of victims—making the invisible visible—or translate into legal remedies in the form of formal reparations, legal claims, and even new law.⁹ And yet, while there is certainly instrumental value to this expression, what is perhaps most striking is the ability of the arts to contribute to a critical recalibration of what reconciliation might mean in different contexts and to different constituencies. As John Paul Lederach has argued, the emergent, unstable, and open-ended character of art has the potential to produce new and creative means of intervention that might enable the necessary “discursive space” and “moral imagination” required for peacebuilding and, possibly, reconciliation.¹⁰

Arts and Reconciliation: Reconceptualizing Goals of International Courts

“Art and Reconciliation: Conflict, Culture and Community” was a collaborative interdisciplinary project undertaken by a team of researchers and artists from King’s College London, the London School of Economics and Political Science, and the University of the Arts London. It sought to investigate how reconciliation was conceptualized, understood, and practiced in societies and communities recovering from a legacy of war and atrocity, and in particular to investigate the potential role that the arts and creative approaches might play. The geographical focus of the project was on the Western Balkans, predominantly Bosnia and Herzegovina.

The research took an agnostic position regarding the term reconciliation, acknowledging that it is an essentially contested concept. Is it an end goal, or an ongoing process? Can it be “thick,” encompassing acknowledgement, repentance, forgiveness and mercy, or “thin,” meaning simply “coexistence” and the absence of direct or violent confrontation? It can also be backward- or forward-looking—a means of dealing with past wrongs, or a blueprint for a shared future built on new relationships.

⁶ *Worth a Thousand Words*, INT’L RESIDUAL MECHANISM FOR CRIM. TRIBS.

⁷ For discussion and examples, see *TRANSITIONAL JUSTICE, CULTURE AND SOCIETY: BEYOND OUTREACH*, *supra* note 2; PETER D. RUSH & OLIVERA SIMIC, *THE ARTS OF TRANSITIONAL JUSTICE: CULTURE, ACTIVISM AND MEMORY AFTER ATROCITY* (Peter D. Rush & Olivera Simić eds., 2013).

⁸ Cynthia Cohen, *Creative Approaches to Reconciliation* (Working Paper).

⁹ Pablo de Grieff notes how the media, literature, film, and other forms of art can generate new laws and practices enshrining human rights, for example. Pablo de Grieff, *On Making the Invisible Visible: The Role of Cultural Interventions in Transitional Justice Processes*, in *TRANSITIONAL JUSTICE, CULTURE AND SOCIETY: BEYOND OUTREACH*, *supra* note 2.

¹⁰ JOHN PAUL LEDERACH, *THE MORAL IMAGINATION THE ART AND SOUL OF BUILDING PEACE* (2005).

Reconciliation is also often strongly resisted, seen as either anti-justice or as a politics of distraction.¹¹ In the Western Balkans region, where thousands of dollars have been used to fund projects ostensibly aimed at reconciliation, the term was almost a dirty word—a “sardonic reference” to the impossibility of dealing satisfactorily with the past, and met with disdain, at best, and anger, at worst.¹² But it was important to focus on it because, in spite of its problematic nature, reconciliation is often seen as a *sine qua non* or “absolute necessity,” driving social and political transformation that is at the heart of the liberal peacebuilding project.¹³ Its popularity is predicated on the perceived success of reconciliation initiatives, in particular the South African Truth and Reconciliation Commission, where Archbishop Desmond Tutu characterized reconciliation as the engine of transition to a new South Africa. Whether because reconciliation has inherent appeal, or because there is faith in the mantra that it will lead to peace, it has come to have what Erin Daly and Jeremy Sarkin term “significant cash value.”¹⁴ What we can say for certain is that for a period of time, projects with “reconciliation” in the title attracted a great deal of funding in the Western Balkans.

The research involved a number of different sorts of practices and actors and was mainly focused on investigating the potential role of the visual arts. In total, eleven artistic interventions were produced. Two of these were participatory—a drawing workshop and a youth media project. Nine involved artists creating new work, either directly commissioned or in response to an open call. Our aim was emphatically not to provide a “toolkit” for artistic intervention. Nor was it to pin down an overarching definition of reconciliation, but rather to open up the concept and understand how each of these interventions engaged with a version of it.

The projects we worked with sought not only to converse with the past but also in some cases to reimagine the future. They also contended with different notions of reconciliation or anti-reconciliation, which was not about “closure” but rather about opening up and reworking the past in a manner that makes possible alternative visions of the future. It is worth noting, too, that all of them were very personal encounters. Here, I will focus on three of the artworks that artists created as part of an open call with the Historical Museum of Bosnia and Herzegovina in 2018, in which artists were invited to engage with the Museum’s exhibition and collections about the 1992–1995 Siege of Sarajevo.

The first, *MWRL 100mm*, by Banja Luka-based artist Mladen Miljanović, is a life-sized replica of a rocket launcher, but it fires water, not mortars. It is made from parts of the building of the former army barracks in Banja Luka where Miljanović had undertaken his own military training. This building is now an Arts Academy, where he later trained as an artist and now teaches. The launcher is now permanently installed at the Academy, where it waters the new botanical garden. The work is at the same time a reconciliation of the parts of Miljanović’s life and identity (his rejection of militarism and position as an artist), a reconciliation of the space, and a reconciliation of past, present, and future.

The second, *Memoria Bosniaca*, by Vladimir Miladinović, a Belgrade-based artist, included work with the archives of the History Museum of Bosnia and Herzegovina. The artist selected documents relating to the Siege of Sarajevo, which he redrew in ink wash and displayed at the Museum. Again, this was personal and political. Miladinović sought to reconcile his own personal sense of guilt of having known nothing of the siege when he was a teenager in Serbia, and the collective sense of guilt at what was done in his name. Through the meticulous and time-consuming process of drawing the documents, he wrestled with his own conscience, and the beauty of the drawings serve to engage people in a different way with the story of the siege than they might otherwise do.

¹¹ Stef Jansen, *If Reconciliation Is the Answer, Are We Asking the Right Questions?*, 7 *STUD. IN SOCIAL JUST.* 2 (2013).

¹² James Hughes & Densia Kostovicova, *Rethinking Reconciliation and Transitional Justice*, 41 *ETHNIC & RACIAL STUD.* 4–5 (2018).

¹³ DAVID BLOOMFIELD ET AL., *RECONCILIATION AFTER VIOLENT CONFLICT: A HANDBOOK* 12 (2003).

¹⁴ ERIN DALY & JEREMY SARKIN, *RECONCILIATION IN DIVIDED SOCIETIES: FINDING COMMON GROUND* (2007).

The third, *Bedtime Stories*, by Lana Čmajčanin and Adela Jušić, now forms part of the Museum's permanent collection. *Bedtime Stories* recreates the experience of the siege, when people were forced to live in basements, sometimes for days and weeks at a time. In apartment blocks, basements had small storage spaces, which were emptied and transformed into sleeping cells. The installation recreates these spaces; visitors are invited to put on headphones to listen to stories narrated by people who lived through the experience. The effect is profound and very moving. It does what Čmajčanin and Jušić intended, which is to demonstrate "resistance, resilience, and creative survival techniques [and] the strength of the human spirit during the war and crisis."

Conclusion

These are just three illustrations of the potential for arts-based interventions to do something different. Miladinović has since turned his attention to the archives of the ICTY and is reproducing the wartime diary of the Bosnian Serb military leader, Ratko Mladić, which was entered as evidence at his trial, in ink wash. There is potential therefore to apply new creative approaches directly to the work of international courts in order, it is hoped, to foster new and different forms of engagement with their work.

But, while this provides strong justification for deeper engagement with the arts in justice and reconciliation processes, we should also be cautious about assuming uniformity in practice. As discussed, all of the projects were distinct and had their own form of engagement, purpose, and practice. They did not seek to put out a particular narrative or to heal division in the way that is normally associated with reconciliation activity, but rather to open up discursive space so that through their own self-reflective practice, they might encourage others to reflect also. And, in the case of *Bedtime Stories*, the message is arguably not one of reconciliation but of resistance.

So, while all of this suggests a potentially powerful role for the arts and creative approaches in terms of their ability to uncover new insights into international justice processes, practices, and core concepts, it is precisely the idea that the engagement is open-ended, and not predetermined, that is valuable. The arts can accommodate difference, not seek a single didactic "truth." The dialogic potential of art is therefore to open up a space for what Lederach calls the "moral imagination" in peacebuilding, transitional justice, and reconciliation. "Moral imagination" allows us to recast how we think about reconciliation as space in which paradox and contestation can be accommodated, rather than seeking a single narrative or experience. But we should also understand that open-ended connection can also be difficult and counterproductive, and that just as art might push for positive change, it can also serve to reinforce the status quo and consolidate divisive narratives. In sum, there is considerable room for optimism, but also a note of caution, and a great deal of scope for further research and reflection on this important topic.