

Summary

A privilege, a momentum, a solemn occasion, a tale of horror; just a few terms to refer to what is most often simply called ‘the opening statement’. The phenomenon of opening an international criminal trial is marked by a serious lack of academic as well as legislative attention, which contradicts its striking content and form. The opening statement is ambiguous in nature: It is both a common practice and a historical moment; both political and non-political; both argumentative and non-argumentative; a mere introduction as well as a leading roadmap. In a way, the opening statement is both crucial and irrelevant to the trial. While usually not obligatory, the opening statement is hardly ever omitted. Apparently, a trial is not complete without an opening statement. The statements are not part of the ‘actual’ legal proceedings, but at the same time they transpire the big ideas behind the procedures and defend the relevance of the trial, the tribunal, and international criminal law (ICL) like no other moment in the courtroom process. Opening statements have to focus on a particular case and are subject to procedural constraints, but cannot ignore the broader social and historical context. Due to its relatively high media coverage, the opening statement appears to be the moment *par excellence* to address not only the participants inside the courtroom, but also all other audiences that international criminal trials claim to serve: the victims of mass atrocity, current and future perpetrators of international crimes, and the international community at large. As such, the opening statement is both less than law and more than law.

The dissertation is a collection of observations about the practice of making an opening statement and it discusses the recurrent themes and tensions that dominate the opening narratives in different times, at different tribunals: the International Military Tribunal (IMT), the International Military Tribunal for the Far East (IMTFE), the International Criminal Tribunal for the former Yugoslavia (ICTY), The International Criminal Tribunal for Rwanda (ICTR), the Special Court for Sierra Leone (SCSL), the Extraordinary Chambers in the Courts of Cambodia (ECCC), the Special Tribunal for Lebanon (STL), and the International Criminal Court (ICC). The opening statement of the prosecution is a consistent element in international criminal trials, but there is no consistent set of rules with regard to its status and form. Despite the lack of regulation, the statements rather consistently invoke similar themes presented in a similar tone over time and across tribunals. Importantly, all opening statements tell a story about what ICL is or what it wants to be.

This dissertation illuminates that story about the role and meaning of ICL as told in the opening statement of the prosecution, and analyzes what this story is doing. What stands out is the construction of a narrative of legitimization. Specific understandings of history, humanity, perpetrators, victims, and space are invoked and deployed in a story that enhances a particular image of ICL and the importance of international criminal trials to particular audiences that are framed to be ‘global.’ The opening statement puts forward the trial of which it is part as the most sensible solution to ‘unimaginable’ atrocities. In order

SUMMARY

to do so, emphasis is put on the extraordinary character of the crimes while the criminal trial is presented as the ordinary way of dealing with those crimes. The message must be solemn yet simple, and constantly negotiates between the legal, the social, and the transcendental.

From the analysis appears that the purpose of the opening statement is to state a sense of purpose. The narrative elements of time, place, and characters are ‘juridified’ and constructed in such a way that they fit into this specific narrative of the prosecution; a story that aims to enhance the credibility and integrity of the prosecutor’s message that says: this trial is important. This particular self-justifying narrative is marked by paradoxes. The opening statement’s ambition to tell a coherent and authoritative narrative about the meaning of the trial inevitably creates a story that is inherently unstable and contradictory. Different elements in the opening statement create and reproduce similar tensions: between objectivity and subjectivity, between the universal and the particular, between order and chaos, between distance and identification, between the familiar and the novel. The dissertation is divided into four articles that each discuss a dimension in the statement of the prosecution that maps onto one of the classical ingredients of a story: time (chapter 2), place (Chapter 3), and characters (Chapter 4 and 5). All pieces have a different focus and address their own methodology, but they are closely connected and work in tandem in uncovering the persisting tensions in the opening statement’s story.

Chapter 2 and 3 show that, in the opening statement, the trial has to be located in multiple dimensions at once. Temporally, it has to be in the present, the past, and the future; both novel and pre-existing. Geographically, it has to be the local but also exceed the local; universal and particular at the same time, both abstract and specific.

Chapter 2 discusses how the opening statement locates itself in time, specifically through the invocation of the history of the tribunal where it is presented. Appeals to history as well as appeals to legitimacy are omnipresent in ICL discourse. This chapter addresses the widespread practice of combining these appeals into one narrative. It analyses how international prosecutors engage with justifying the legitimacy of trials through the invocation of a tribunal’s own history: what I call auto-history. The opening statements at the International Military Tribunal, the Special Court for Sierra Leone, and the International Criminal Court reveal a recurrent, self-justifying narrative where both rootedness in history and a break with the past are key to singing the tribunal into existence as a crucial mechanism in the transition from chaos to peace. The connections between auto-histories at different tribunals show how legal practitioners discursively contribute to constructing the ICL’s identity by relying on both origins and future. This temporal logic comes down to the exploitation of the fundamental tension between novelty and tradition. The trial is portrayed as both a break *and* a continuation of tradition, a revolutionary step as well as a self-evident outcome of history. In both ways, trials are presented as positive developments. An ambivalent use of causality in the opening statement shows how history of the violent events can be either separated from or integrated with the history of international criminal trials, depending on how it will serve the justifying

narrative. The continuing occurrence of grave atrocities is detached from the performance of international criminal law when it comes to history: the repetition of violence is not due to a failure of the development of ICL. However, the prevention of grave atrocities and the performance of international law are attached to each other when discussing the future: the reoccurrence of violence will come to an end due to a successful development of ICL. Trials are portrayed as mechanisms that help to overcome chaos and to end mass atrocity. But if the chaos continues or if new cases of mass atrocity occur, this is hardly ever ascribed to a failure of ICL; a never again promise can be made ever again, previous trials are presented as successes, and new tribunals are introduced as improved versions of what was already good.

Chapter 3 explores the way in which the opening statement locates itself spatially by studying the frequent use of maps and landscape descriptions. In an international courtroom, space and place are contested and mean multiple things. Every international tribunal has to consider where, physically, the trial has to take place and every proceeding requires details on the location of the events on trial. Moreover, ICL institutions continually discuss their spatial focus with regard to cases, victims, defendants, and audiences. The opening statement is tasked to situate the ‘international’ trial in relation to ‘the local’ over which it is contemplating. Therefore, the local has to be ordered, simplified, abstracted, and allocated a specific meaning within the trial context. A recognizable and accepted way of doing this is through the use of maps. But a cartographic abstraction is not sufficient; the ‘local’ has to be imagined by way of vivifying descriptions of the landscape and scenery in order to be understood. On the one hand, familiarization with the local is stimulated through these stories, bridging the distance between the local situation and the global court. On the other hand, the local is kept in the realm of the far-away by portraying it as strange and unsafe. The local landscape is inscribed with stories of fear and danger. The opening statement needs to bridge the distance in order to appear grounded and truly concerned but it simultaneously needs to distance itself in order to appear authoritative, neutral, and necessary. Maps are not just innocent illustrations; cartographic representations and their accompanying description create a certain type of local, one that is in need of global intervention. As such, maps and landscape descriptions reflect the court’s spatial anxieties and illuminate the embedded tension between the global and the local, the universal and the particular.

Chapter 4 and 5 show that, in presenting its main characters, the opening statement thrives on conflicting commitments. The trial has to be framed in legal language, drawing on concepts and principles from criminal law. Simultaneously, it has to be framed in terms of the unimaginable and extraordinary character of the crimes, which warrants an international response. The statements negotiate between the personal and the de-personalized, signaling the need to introduce ‘real’ people as well as the inescapability of stereotypes.

Chapter 4 discusses the complex relation between international criminal courts, victims of mass atrocity, and the search for truth. The truth about mass atrocity is often portrayed as a major concern of victims,

SUMMARY

international criminal tribunals, and the wider international community. This chapter discusses the implications and complications of combining different aspirations to truth at the specific stage of an international criminal trial. In light of the embracement of a 'victim-centred' approach at ICC, a discourse emerges in which the search for truth appears to be multidirectional: from court to victim and vice versa. Especially in the opening statements at the ICC, victims are typically presented as both passive recipients *and* active contributors to the truth about what happened. The search for truth at the ICC consists of at least three components: the provision of and search for information, contextualization and acknowledgment. The court provides the victim with information and vice versa. Furthermore, the court claims to contextualize and acknowledge the stories of the victim. This results in a complex web of truth-telling relations. The analysis of the different aspirations to truth of court and victims reveals a mutually reinforcing yet also mutually disruptive relation; the victims' search for truth and that of the court are interdependent as well as incompatible. This is the consequence of the two competing aims of international criminal trials: On the one hand, the ICC seeks to include victims' voices and the 'pure' truth of their experiences of suffering. Simultaneously, it aims to speak with an authoritative 'legal' voice that adheres to procedures, strict limits on the use of emotional language, and a focus on the facts of the case. Victims' stories are crucial to the validity of the truth about mass atrocity that is supposed to be the outcome of the trial, but it appears to be impossible to translate their suffering into a courtroom narrative that is dominated by legal facts. The opening statement promises truth from and to the victims, but the statement itself is a prime example of the mediated form in which the victims' stories are presented, emphasizing the persisting tension between 'pure' truth and authoritative legal truth. The victim's account must be transformed to be part of the trial, adapted to be acknowledged, silenced to be heard.

Chapter 5 reveals the interesting paradox with regard to the portrayal of the defendants in opening statements: while criminal law is based on the idea that perpetrators are responsible agents, human members of a community who can be held accountable before the law, speaking about mass atrocity seems to always involve a dimension of inhuman evil that places the accused outside the realm of humanness. This involves the dual attribution of a despicable human character as well as inhuman or beastly evilness to the alleged perpetrators of mass atrocity. The process of simultaneously humanizing and dehumanizing the defendant results in a stereotypical 'ideal perpetrator' who is, paradoxically, human and inhuman at the same time. The 'ideal' perpetrator needs to conform to the rational and responsible human agent requirement of criminal law but also to the category of inhumane monsters whose deeds are evil beyond human comprehension. The perpetrator has to be as far removed from a human being as possible, but also be able to 're-enter' humanity, otherwise a trial would make no sense. The presentation of the defendant as an inhuman human clearly shows this balancing act and *needs* to contradict itself to be able to work.

In conclusion, the rather pompous language of the opening statements that is uttered in the sterile setting of a courtroom, and the self-contradictory story that it tells, emphasizes that there is only a thin line

between solemnity and absurdity. The analysis shows that absurdity is not an accident, but internal to the process, scripted in taken for granted forms such as an opening statement. While the many conflicting elements in the opening statement disrupt each other's coherence, they are, in a way, constructive contradictions. The paradoxes seem inescapable if one wants to tell an opening narrative that combines authority with compassion, rule-based ratio with incomprehensible drama. What all chapters show, is that the fundamental tensions they bring to light stem from the persistent attempt to present extraordinary horror in law's cloak of structure, rationality, and clarity. All elements in the story express the ambition of creating a stable narrative about the relevance and meaning of the trial, which results in a story that is unstable and self-contradictory. There is a certain inevitability to this; the recurrence of these tensions signals that they are so much part of the internal structure of the opening statement that it cannot do without them. If we would restructure the fundamentals, which might or might not be possible or desirable, we would inevitably end up, or rather begin, with a different story.

This dissertation does not assess the opening statement in terms of failure or success but dissects the story that it tells. The analysis initiates questions about the persistent attempt to give legal meaning to 'unimaginable' situations that 'shock humanity', situations that prove to be difficult to narrate comprehensively in a language that is as specific as that of international criminal trials. The discursive attempt to overcome the trial's inbuilt tensions and difficulties at the start of the process already reflects and acknowledges the impossibility of this endeavor. The analysis shows that the opening statement aims to provide certainty when there is none. By uncovering contradictions and inconsistencies in the opening narrative, this dissertation fits with an emerging call to critically reflect on the 'juridification' of international problems, to acknowledge the politics and paradoxes inherent to the international legal system, and to recognize the suppressive roots and effects of international criminal law.