

## SYMPOSIUM ON ART, AESTHETICS, AND INTERNATIONAL JUSTICE

### DIGNIFYING, RESTORING, AND REIMAGINING INTERNATIONAL LAW AND JUSTICE THROUGH CONNECTIONS WITH ARTS AND CULTURE

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This symposium provides a critical opportunity for international legal scholars to engage with the value and power of certain aspects of culture. The successive holders of the UN mandate on cultural rights have declined to define culture, instead taking a holistic, inclusive approach to its meanings, including inter alia diverse forms of artistic and cultural expressions, languages, worldviews, practices, and cultural heritage.<sup>1</sup> Cultural rights—including the right to take part in cultural life without discrimination, the right to access and enjoy cultural heritage, and freedom of artistic expression—are a core part of the universal human rights framework.<sup>2</sup> They are vital in and of themselves and protect key aspects of the human experience, but they have also been increasingly recognized as important elements of accessing justice and responding to atrocities<sup>3</sup> and as “fundamental to creating and maintaining peaceful and just societies and to promoting enjoyment of other universal human rights.”<sup>4</sup> The artistic and cultural expressions which result from the exercise of these rights likewise have inherent value and can also play

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<sup>1</sup> See [Report of the Special Rapporteur in the Field of Cultural Rights](#), UN Doc. A/HRC/31/59, at para. 8 (Feb. 3, 2016) [hereinafter 2016 Report of the Special Rapporteur].

<sup>2</sup> See, e.g., [Universal Declaration of Human Rights](#) art. 27, UNGA Res. 217A (Dec. 10, 1948); [International Covenant on Economic, Social and Cultural Rights](#) art. 15, UNGA Res. 2200A (XXI) (Dec. 16, 1966). Cultural rights protect “in particular: (a) human creativity in all its diversity and the conditions for it to be exercised, developed and made accessible; (b) the free choice, expression and development of identities, which includes the right to choose not to be a part of particular collectives, as well as the right to change one’s mind or exit a collective, and indeed to take part on an equal basis in the process of defining it; (c) the rights of individuals and groups to participate—or not to participate—in the cultural life of their choice and to conduct their own cultural practices; (d) their right to interact and exchange, regardless of group affiliation and of frontiers; (e) their rights to enjoy and have access to the arts, to knowledge, including scientific knowledge, and to their own cultural heritage, as well as that of others; and (e) their rights to participate in the interpretation, elaboration and development of cultural heritage and in the reformulation of their cultural identities.” [2016 Report of the Special Rapporteur](#), *supra* note 1, at para. 9. Cultural rights are to be distinguished from cultural relativism and are not an excuse for violations of other human rights or of discrimination. [Universality, Cultural Diversity and Cultural Rights, Report to the United Nations General Assembly for the 70th Anniversary of the Universal Declaration of Human Rights](#), UN Doc. A/73/227, at paras. 48–53 (July 25, 2018).

<sup>3</sup> See, e.g., Jonathan White & Cynthia Cohen, [Strengthening Work at the Nexus of Arts, Culture and Peacebuilding](#) (Report for Search for Common Ground, Brandeis University Program in Peacebuilding and the Arts, Feb. 2012); Michelle LeBaron & Cynthia Cohen, [Breathing Life Into the Ashes: Resilience, Arts and Social Transformation](#) (Final Report of the Peter Wall Institute for Advanced Studies International Round Table, University of British Columbia Peter A. Allard School of Law, Oct. 2013).

<sup>4</sup> [Report of the Special Rapporteur in the Field of Cultural Rights](#), UN Doc. A/HRC/37/55, at para. 2 (Jan. 4, 2018).

significant roles in achieving basic goals of international law and human rights. As I noted in a report to the UN Human Rights Council in my capacity as UN Special Rapporteur in the field of cultural rights:

Humanity dignifies, restores and reimagines itself through creating, performing, preserving and revising its cultural and artistic life . . . . Cultural heritage, cultural practices and the arts are resources for marshalling attention to urgent concerns, addressing conflicts, reconciling former enemies, resisting oppression, memorializing the past, and imagining and giving substance to a more rights-friendly future.<sup>5</sup>

Despite these contributions that can be and are being made by artistic and cultural initiatives, international lawyers only rarely engage directly with culture and the cultural dimensions of their discipline. Pablo de Greiff, the former UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, has argued specifically that “transitional justice has generally and systematically ignored claims of culture,”<sup>6</sup> and he has insisted on the importance of recognizing the “unparalleled potential of cultural interventions”<sup>7</sup> and the critical roles they can and should play in transitional justice processes.<sup>8</sup>

Unfortunately, there are numerous obstacles to overcome in achieving such recognition of the potential of cultural initiatives and analyses in the area of international justice, and across the field of international law more broadly. One of the main stumbling blocks is that culture is often seen as less important—optional, a luxury item—even by some human rights defenders and experts. For example, the International Criminal Court’s decision to hear the Al Mahdi case, the first ever stand-alone international prosecution for the war crime of destroying cultural property, provoked criticism of the Court by some, including some human rights advocates. The critics saw these crimes as less important than others that had taken place in Northern Mali, overlooking the deep meaning that these acts of cultural heritage destruction had for many in the local population, as well as their grave impacts on a range of their human rights, even if the offenses of destroying culturally significant mausoleums and a mosque were not equivalent to direct attacks on human beings.<sup>9</sup> As the International Criminal Court itself described the crimes in question, they aimed at “breaking the soul of the people of Timbuktu” and were of “significant gravity.”<sup>10</sup> This interpretation of the cultural dimensions of international crimes reinforces the case for culture being considered a critical element of discussions about international justice.

A related problem in mainstreaming such perspectives is the view of arts and culture as separate from other aspects of experience and of society (such as law), or as elite or cabined in cultural institutions often deemed to be inaccessible. Overcoming such artificial boundaries can enrich our understanding and provide a more holistic view of international legal debates. As my coeditor Marina Aksenova stressed during the editing of this symposium, bringing art back—in the sense of acknowledging its presence inherent in various activities and fields, including international law and justice—is a way of reclaiming what has too often been overshadowed. The philosopher John Dewey, writing in the early twentieth century, similarly argued, “This task is to restore continuity between the refined and intensified forms of experience that are works of art and the everyday events, doings, and sufferings

<sup>5</sup> *Id.*

<sup>6</sup> Pablo de Greiff, *Preface: On Making the Invisible Visible: The Role of Cultural Interventions in Transitional Justice Processes*, in *TRANSITIONAL JUSTICE, CULTURE AND SOCIETY: BEYOND OUTREACH 12* (Claire Ramírez-Barat ed., 2014).

<sup>7</sup> *Id.* at 20.

<sup>8</sup> For an illustrative example, consider Nadia Siddiqui & Hjalmar Jorge Joffe-Eichhorn, *From Tears to Energy: Early Uses of Participatory Theatre in Afghanistan*, in *TRANSITIONAL JUSTICE, CULTURE AND SOCIETY: BEYOND OUTREACH 368* (Claire Ramírez-Barat ed., 2014).

<sup>9</sup> See, e.g., Prosecutor v. Ahmad Al Faqi Al Mahdi, Case No. ICC-01/12-01/15-214-AnxI-Red3, *Brief by Ms. Karima Bennouna*, UN Special Rapporteur in the Field of Cultural Rights, Expert Appointed by the Court, Reparations Phase (Apr. 27, 2017).

<sup>10</sup> *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Case No. ICC-01/12-01/15, Judgment and Sentence, paras. 80 and 82 (Sept. 27, 2016).

that are universally recognized to constitute experience.”<sup>11</sup> The power implicit in arts and culture renders this reconnection with the fields of international law and international justice essential.

Of course, that power is ambiguous. There can also be many negative aspects and usages of culture, cultural expressions, and art itself in regard to law and human rights, as the symposium essays recognize. Cultural heritage can be erased and destroyed, and both it and the arts can be used to celebrate notorious perpetrators and histories of human rights violations and impunity, to promote problematic narratives about past conflicts, or to incite discrimination and abuses, undercutting the enjoyment of cultural rights by all. For example, certain forms of music are being used today to foster hatred, fundamentalism, and extremism from India to Eastern Europe and beyond.<sup>12</sup> This is all the more reason to take arts and culture seriously as a sphere of analysis in international legal scholarship.

In any case, surfacing the potential and the risks associated with the intersections of law and culture generally, and of international justice and art specifically, is a critically important task. This symposium is a significant step in that direction, one that is to be warmly welcomed and that will hopefully be built upon in future international legal scholarship.

<sup>11</sup> JOHN DEWEY, [ART AS EXPERIENCE](#) 3 (1934).

<sup>12</sup> See, e.g., Kai Schultz, [India's Soundtrack of Hate with a Pop Sheen](#), N.Y. TIMES (Nov. 10, 2019); Colin Moynihan, [Heavy Metal Confronts Its Nazi Problem](#), THE NEW YORKER (Feb. 19, 2019).