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# Why being there mattered: Staged transparency at the International Criminal Court

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## ABSTRACT

The International Criminal Court (ICC) represents a criminal justice setting exceptionally welcoming to discourse scholars. The court website provides ample information about ongoing cases, hearings are livestreamed, and transcripts, video footage, and other relevant documents are available online. Against this background of comprehensive transparency, this paper explores the additional value of physically attending ICC trial hearings. An auto-ethnography of how the ICC court landscape structures the visitor's path to the courtroom gallery, it is claimed, brings out the *staged* nature of the Court's projection of transparency. The ensuing discussion explicates the implications of these staging practices for the hearing transcripts published on the ICC website. It is argued that these transcripts contribute to this projection of transparency by obfuscating the processes through which the Court constitutes its audiences, both the 'physical' gallery audience as well as its 'virtual' counterpart browsing through the materials on the ICC website. In this sense, the paper enhances our understanding of ICC hearing transcripts as ethnographic objects, because it shows that their sociocultural entanglements also extend to the ways in which they are disseminated and the role they play in staging the ICC as a transparent institution. © 2021 The Author. Published by Elsevier B.V. This is an open access article under the CC BY license (<http://creativecommons.org/licenses/by/4.0/>).

## 1. Introduction

In January 2018, I visited the premises of the International Criminal Court (ICC) in The Hague (The Netherlands) for the first time, as I had just started doing research on trial performance in this international criminal law setting. Still awestruck by the rigid security measures and the complex's monumental architecture—five cube-shaped towers placed within a 'fortified' enclosure, with a vast glass façade overlooking a water basin—I proceeded through the lobby to the massive reception desk, and from thereon to the cloakroom and the courtroom gallery. During a hearing break later in the day, I discovered that the lobby also housed an interactive exhibition, comprising a guided audio tour organized around six listening posts explicating the Court's operation through the eyes of a victim. The tour is available in English and French (the ICC's two working languages) and in Dutch (the official language of the host country), and headsets can be obtained from reception. The first post consists of a copper-clad shed-like structure, with the inscription (in English and French): *THIS CAUSE ... is the cause of all humanity*. Inside, video footage of victims of atrocity crimes recounting their story is projected on four screens, in a continuous loop but with the audio muted. Three screens show victims in an African setting, including a group of schoolchildren reenacting a rebel attack. The footage is not contextualized, and apart from one subtitled fragment, it remains a mystery which crimes the testimony relates to. After pushing a button on a centrally located pole, a female voice with an East African accent reads out:

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I am a survivor. I want to tell you my story, but for my own safety, I cannot give you my name or tell you where I am from. I will tell you my experience, but I must also represent the many different stories of others who have suffered. Through me, you are going to hear the voice of thousands, and like so many others, I tell my story because I want the world to know what happened. I want justice to be done.

At the second post, the victim recounts how she heard about the Court and decided to file a complaint. The next posts review the successive stages of the ICC trial procedure, from the Office of the Prosecutor (OTP) collecting evidence up to the victim appearing before the Court. In the final listening booth, bearing the inscription *a way forward*, she recounts how the sexual violence and degrading treatment to which she had been subject had made her a pariah in her own community, and states that her neighbors no longer consider her a human being. Right before the narration closes, she reenacts a trial dialogue with her attorney, who asked her during her appearance what she expects from the Court.<sup>1</sup> Proudly she answers: *By coming before the ICC judges, I am human again!* Inside the booth, muted video footage is shown (again in a loop) of a female African victim addressing the ICC Judges, and the subtitling makes it clear that this is the original dialogue which the anonymous narrator is reenacting. Once it is recontextualized as part of the narrator's reenactment, however, the metapragmatic statement by the victim on screen (about the cathartic effect of sharing her story with the Court) is no longer framing this 'historic' trial. Instead, it explicates to the visitors of the exhibition the abstract rationale behind the proceedings at the site they are visiting: Justice is being done in the name of the victims, and in this process, the Court restores the victims' humanity.

At this point, I could not fail to notice the parallels with what I had observed, more or less around the same time, in the trial transcripts of Ahmad al-Faqi al-Mahdi, a Malian Islamist accused of the destruction of cultural heritage in Timbuktu (D'hondt, 2019, 2021; D'hondt et al., forthcoming). The analysis concerned the intertextual/interdiscursive practices by which trial actors metapragmatically regiment (Silverstein, 1993) the hearing and insert it into broader 'dialogical fields,' understood as aggregates of imaginary dialogues and 'shadow conversations' (Irvine, 1996) that also involve court-external constituencies. Like in the exhibition at the ICC lobby, ICC Prosecutor Fatou Bensouda approached the Court as a framework for policing the boundaries of humanity. Her submission framed the ICC as an institution that speaks justice in the name of abstract mankind, acting in response to cries for help by faceless victims, devoid of any political agency and reduced to a state of "mere biological existence" (Clarke, 2009: 119, drawing on the distinction Agamben, 1998 makes between *Zoe* and *Bios*; see also the discussion in Kendall and Nouwen, 2013). Here as well, the role of the Court is to facilitate the victims' reentrance into "morally qualified life" (ibid.) and restore the humanity the perpetrators had stolen from them.<sup>2</sup>

Upon closer inspection, another parallel emerged between the exhibition and ICC trial discourse, drawing attention to a yet unexplored dimension of framing. The female narrator's story formed part of an arrangement of images, texts and objects, very much material in nature, that is at once 'staged' for an audience and 'staging the victim's story' for that audience. (The latter must be taken literally, as a button must be pushed in each successive shed to activate the narration of the next stage.) Much in the same way, ICC trial discourse, which I had hitherto examined with an eye on its metapragmatic framing potential, is in turn framed by the material arrangements through which hearings are made accessible to the audience. Put differently, the various actors, units and agencies that together constitute the ICC (and purportedly speak in its name) are not only producing discourse, they concurrently also create an appropriate forum for the performance of that discourse, and this process is inscribed both in ICC actors' discursive practices and in the Court's material organization.

In this paper, I propose the term staged transparency to capture the fundamentally ambiguous nature of the process of creating this forum. Transparency refers to the practices by which the Court opens up itself to outsiders. The exposition at the ICC lobby is one eminent expression of this, but also the livestreaming of trial hearings and the fact that court calendar, video footage and transcripts are freely accessible on the court website. While domestic criminal courts merely 'tolerate' the public (to ensure that justice 'can be seen to be done'), the ICC actively 'recruits' its audience (through its website, but also through the activities of its Outreach Unit in the various 'situation countries'). To my knowledge, it is the only criminal justice

<sup>1</sup> The ICC was the first international tribunal allowing victims to actively participate in trial proceedings, and their role is explicitly recognized in the ICC legal instruments (the Rome Statute and the Rules of Procedure and Evidence). As a compromise between accusatorial and inquisitorial legal traditions, the ICC permits victims to participate in the proceedings in two roles (which are not always clearly differentiated, cf. D'hondt et al., in press). Hence, victims can either be called as witnesses (and give sworn testimony), or they may apply for 'victim-participant' status (and in that capacity the Chamber can also allow them to make unsworn statements). It is unclear in which role the victim shown in the footage was addressing the Court. Note also that the anonymous narration is one of the few instances where victims are referred to as *survivor*, which belongs to a discourse of empowerment rather than victimhood.

<sup>2</sup> It should be clear, then, that victims feature prominently not only in the ICC legal instruments (cf. the previous footnote), but also in the legitimizing discourses produced by the various court divisions (Kendall and Nouwen 2013; Mégret, 2015; D'hondt, 2019). The prevalence of such legitimizing discourses, and the fact that they are produced by representatives of different Court divisions, illustrates the extent to which the ICC is still in the process of consolidating itself. Established as recently as 1998 – and beginning its operations in 2002 – as a permanent international tribunal with the authority to prosecute individuals accused of atrocity crimes (genocide, crimes against humanity, war crimes) and crimes of aggression (the latter only since 2018), the ICC is very much a 'legal laboratory.' Opening up the 'black box' of what goes on inside the courtroom provides an empirical snapshot of how ICC trial actors, in their situated courtroom conduct, attend to the multiple internal/external challenges facing this emergent, amalgamated form of globalized criminal justice, which lacks a coercive apparatus of its own and still bears the marks of the 'political' act of its institution (Clarke and Koulen, 2014; Wilson, 2016; Branch, 2017).

From a different angle, this emergent character also provides the ethical warrant for using these ICC trial transcripts for the research purposes outlined here. Although they contain personal data related to criminal convictions (of which the processing requires extra caution according to the EU's recently adopted General Data Protection Regulation (GDPR)), this 'incomplete' disentangling of law and the political (Clarke and Koulen, 2014) in the context of an international organism's public exercise of power warrants critical scrutiny (see D'hondt, 2020). Note, furthermore, that all information that could lead to the identification of a vulnerable witness is edited out before the transcripts are released to the public (cf. infra).

institution with a lobby where visitors, accidental or not, can roam around freely, watch an exhibition, or have a coffee—a vivid illustration of the extent to which courtroom architecture and the material organization of the court landscape are implicated in this production of transparency.

Staging, in contrast, points to the boundaries imposed on this openness. Calling to mind [Goffman's \(1959\)](#) dramaturgical metaphor and the notion of a hidden 'backstage,' it directs attention to those parts of the ICC complex closed to the public, where trial submissions are drafted, courtroom interventions prepared, and the materials to be distributed among external audiences edited and assembled, away from the public gaze. Staging also highlights the regimenting effect of the practices through which visibility is produced, in particular the fact that the recruitment of the audience simultaneously constitutes (or 'molds') audience members as passive spectators.

One aim of this paper, then, is to draw out this paradoxical nature of this staged transparency, through an auto-ethnographic account of the material organization of the court landscape. Here, I explore how ICC courtroom architecture creates a particular type of audience by subjecting visitors to a specific visibility regime. For this, I adopt the same procedure as [Eltringham \(2012\)](#) with regard to the Rwanda Tribunal in Arusha: "I [...] reflect on my own daily entrance and the role that the managed obstruction of the visiting public plays in the spectacle of law" (2012:427), and "trace the route of an artificial 'generic visitor' to describe this affective amalgam" (2012:435). The result is an ethnographic account of the visitor's passage to the ICC court gallery that oscillates between [Goffman's \(1974\)](#) 'vertical' conception of social reality as composed of hierarchically ordered frames (with an "open-ended quality [...] at the 'upper end'"; [Collins, 1988:62](#)) and a 'horizontal' assemblage-based perspective, which views the articulation of law with the social as a constantly re-shifting network of texts, actors, and objects, in which architectural arrangements and staging practices are essential for upholding the law as a distinctive mode of enunciation ([Latour, 2010](#)). The former approaches the ICC's court landscape and architectural arrangements as a non-negotiable, elementary frame adding an additional layer of contextualization to trial actors' performance. The latter emphasizes the multiplicity of animate and inanimate 'actants' involved in this process, including not only the visitors but also the various material and discursive arrangements by which they are recruited and transformed into a 'validating audience.'

The second part of the paper connects this auto-ethnographic exploration of the court landscape to another transparency practice which the ICC enthusiastically embraces: the livestreaming of court hearings and the publication of transcripts, court records, and selected trial footage on the court website (<https://www.icc-cpi.int/>), where it is freely available for consultation and download. In this paper, I focus primarily on the hearing transcripts, since video footage is usually only available for selected high profile moments (verdict, opening and closing statements, etc.). For ethnographers, these transcripts are indispensable because they provide a window into the 'black box' of what goes on inside the courtroom, redirecting attention from legal decisions and abstract doctrinal analysis to the real-life interactional processes through which ICC trial actors negotiate legal outcomes. However, as a form of public transcript ([Park and Bucholtz, 2009](#)), these hearing transcripts also constitute a black box in their own right, making invisible both the complexity of the interactional process they represent and the practical work that goes into their production ([Latour, 2005](#)). This last aspect of public transcripts has received a lot of attention lately, and the micro-politics of institutional reporting practices and how they transform the interactions they purport to describe has extensively been documented (see, for example, the papers in [Park and Bucholtz, 2009](#)). This paper, in contrast, explores another inscription of power, highlighting a yet uncharted (and equally black-boxed) aspect of the relational assemblage in/for which hearing transcripts are produced. It argues that transcripts also obfuscate the staged nature of trial performance, as they substitute the 'physical' spectator observing proceedings from the gallery with a virtually mediated one. Here too, transparency emerges a staged phenomenon, and elucidating this staging required a confrontation with the 'physical' court site and its surveillant landscape. In this sense, the remainder of the paper also provides a pertinent answer to the impertinent question alluded to in the title: in spite of the fact that the ICC website make resources for performing a discourse analysis so easily available, why would a visit to the ICC courtroom gallery still come highly recommended?

The conclusion wraps up the implications of our journey for language and law researchers and other scholars in pragmatics working with similar data. Taken together, the auto-ethnography and observations about black-boxing remind us that institutional, 'public' transcripts represent an ethnographic object in their own right, and that the 'ethnographic entanglements' of these transcripts not only extends to their (past) production but also to their ongoing positioning of (current) audiences.

## 2. Transparency as a topic of inquiry

In much language and law research, the courtroom is conceived as a public-adversarial arena for recontextualizing discourse, representing one stage in its journey through the legal text trajectory ([Heffer et al., 2013](#); [Komter, 2019](#)). The relevant backstage for this courtroom-arena is not the 'traveling text' as such, but the different sites of production and reception which that text ties together. For analysts, access to the site where the text's life starts (for example, the police interrogation room; van der Houwen and Jol, this issue) is therefore as important as acquiring a copy of the paper trail of its subsequent journey (the case file). This front/backstage distinction closely resonates with another all-pervasive binary contrast pair defining researcher positionality: the etic/emic distinction and the corresponding requirement that "[etic] findings" must be "[accurately articulated] against the background of participant understandings" ([Jacobs and Slembrouck, 2010:238](#)). The latter is implicit in Mertz' account of US legal training as "an initiation into a particular linguistic and textual tradition" (2007:4), as well as ethnomethodology's insistence that scholars must "[develop] a practical (and sometimes

professional) competence with legal activities as a condition for analyzing legal work” (Dupret et al., 2015:7). The intersection of the front/backstage and etic/emic distinctions is accurately captured in Lynch's following statement:

An analysis from the gallery has an indefinite, and uncertain, relation to the intelligibility of court proceedings to the principal parties. Perhaps some comfort can be found in the fact that, unlike, for example, mathematics seminars, courtroom proceedings (or at least major phases of them) are presented for lay audiences, and in the case of jury trials a lay audience enjoys a privilege in the proceedings. Consequently, while it may be unlikely for a non-lawyer adequately to grasp the legal horizons of judges' work, it is certainly possible to explicate the ordinary horizons of intelligibility for which a judge is also held accountable. (1997:104–5)

Lynch's position is rather unorthodox, as he argues for a 'gallery analysis' that is not informed by legal training and refuses to take into account the backstage regions of trial performance and judicial intelligibility. But in spite of this unexpected twist, the front/backstage distinction still features as the primary epistemological challenge to overcome.

The auto-ethnography below, in contrast, uncouples the front/backstage distinction from the etic/emic contrast pair, focusing instead on the discursive-material processes through which trial performance is staged. Taking a lead from ethnographers of international organizations, it views such staging practices as constitutive of the ICC as an institution and argues that 'transparency' constitutes a socio-discursive phenomenon that should be studied in its own right. For Cowan and Billaud (2017, on the UN Periodic Review), highly mediated public performances (often livestreamed, just like ICC trial hearings) represent just the “tip of the iceberg” (2017:114), and alternate with decision-making activities that are distributed across time and space and escape public attention. The challenge, Halme-Tuomisaari (2018) points out, is to resist conceiving of this patterning of transparency and opaqueness in epistemological terms, as a 'veil' to be penetrated:

The task of the ethnographer is [...] not to fill in the blanks through attempts at comprehensive empirical coverage, as such efforts are doomed to fail. Rather, the task becomes one of shifting one's analytical inclination toward encompassing these gaps as tangibly real elements in the very constitution of the global apparatus. (2018:466, on the UN Human Rights Committee)

The account below adds to these considerations the idea that the ICC's self-staging does not only involve the coordination of public performances and secret negotiations, but also extends to the discursive-material 'shaping' of the audience of these performances. By entering the ICC's glass-curtained complex, the visitor accepts being subjected to heightened visibility and institutional disciplining and is eventually transformed into a member of an abstract public, whose presence is required to validate the criminal proceedings.

### 3. The path to the gallery

In January 2016, the ICC moved into its new permanent premises at the outskirts of The Hague, in the 'International District' of the Netherlands' political capital. Set in a dune landscape on a former military barracks site next to the seaside resort of Scheveningen, its new facilities comprise a block-shaped central tower flanked on each side by two more compact tower blocks. The central tower consists of three courtrooms stacked on top of one another, and is entirely covered by a glass shell (see Fig. 1). The use of such glass surfaces for the exterior of public edifices is not restricted to courthouses, but its iconic



Fig. 1. The ICC complex ('International Criminal Court Headquarters, Netherlands', by Hypergio, <https://commons.wikimedia.org/w/index.php?curid=47958553>, available under CC BY-SA 4.0, <https://creativecommons.org/licenses/by-sa/4.0/>).

projection of transparency has become a recurrent trope in modern courthouse architecture (Resnick and Curtis, 2011: 341ff).<sup>3</sup> This suggestion of transparent justice is maintained in the interior of the complex, and the three superimposed courtrooms are designed in such a way that gallery visitors can literally 'look through them' (cf. infra).

This openness, however, is instantaneously countered by the complex's accentuated architectural projection of authority, in a delicate 'mirror game' with the surrounding cityscape (Branco, 2019). Elevated above the Waaldorperweg and the residential neighborhood with interbellum terraced family-housing that lies across, the ICC complex is highly inward-looking and minimizes interaction with its environment. The plethora of lunch places, sandwich bars and bistros surrounding Belgian courthouses (where I did my previous field research), which often carry names that directly refer to the court or the legal profession, is here non-existent. Instead, the ICC presents itself as an "impermeable citadel" (Branco, 2019:604), and its elevated, insular character dominates its surroundings. Insularity should be taken literally here. Invisible from the road (and only revealing itself after one has mounted the stairs and passed a first security check in the 'gatehouse'), the entire tower complex is surrounded by a water basin that functions like a 'moat,' with a bridge-like platform giving access to the central island on which the complex is located.

Before getting to see this 'inner fortification,' however, one must first assent to a security screening in the ICC's detached entrance section. Visitors enter this 'gatehouse' through a separate revolving door, left of the centrally located (and more spacious) staff entrance. Often the door is locked, and a security officer may inquire after the reason for one's visit through the intercom. "I'd like to visit the gallery" suffices as response, but the question forcefully communicates that from here on, visitors are maneuvering through a surveillant landscape. According to Jones (2017), their surveillant character entails that these landscapes 'discipline' their inhabitants (in a Foucauldian sense), first, by making them visible (and making them aware of the visibility they are subjected to), and second, by rendering their conduct legible. This establishment of disciplinary oversight starts right after entering. The revolving door directs the visitor to a glass booth located right opposite the visitor's entrance. Here, one must produce personal identification and hand it over to a security officer for scanning and electronic registration. In return, one receives a lanyard with a visitor's badge, and a bookmark-like instruction leaflet that says *Rules ICC Premises* on one side and *Rules Courtroom Gallery* on the other. The lanyard must be worn around the neck at all times, thus transforming the bearer into an object of inscription. Visitors are also forced to accept a new instruction leaflet every time they reenter the court (also if one is a regular), as a constant reminder of the eternal, non-negotiable nature of one's novice-outsider status. Next, one must queue for a first X-ray arch. Coats, bags, belts and coins go through a separate luggage scanner. Once the security check is completed, one is quickly ushered to leave the gatehouse.

Now again outside, the visitor must proceed across the platform traversing the water basin that surrounds the main building, which sports a multifaceted glass façade magnificently reflected in the water. The doors on the other side give access to the lobby, the only space inside the complex where visitors are allowed to roam around freely. The space is dominated by a massive reception desk, which also surveys the visitor's entrance to the central tower and to the three superimposed courtroom galleries that is located almost right behind it. To the left of the reception is the victim-centered exhibition on the Court's operation discussed in the introduction. To the right, one successively encounters a small, slightly idiosyncratic art exhibit (mainly consisting of diplomatic gifts the Court received), an ATM and an espresso bar. Still further to the right, the lobby gradually morphs into a corridor to the ICC Conference Center (not open to the public). The espresso bar (and also the ATM) appears somewhat out of place in this kind of setting, but during session breaks it is regularly frequented by members of defense and prosecution alike, alone or in the company of their team. The bar emphasizes the insularity of the court complex in relation to the surrounding city.<sup>4</sup> Its presence also indicates that, in spite of its global aspirations, the ICC (like other international tribunals) represents a site that possesses a strongly 'localized' character (Eltringham, 2015). As such, the bar is the material embodiment of the fact that the actors inhabiting this site, although cosmopolitan oriented and from a variety of national backgrounds, are recruited from a relatively small circle of international law professionals and often know one another from previous assignments (Baylis, 2008).

The central lobby is a hub where multiple paths cross. It gives access to the courtroom galleries in the central tower, one of the few other spaces inside the complex open to the public. The large majority of paths, however, connect offices and spaces exclusively reserved for staff members. The ICC thus exhibits the same ambiguity Latour (2010) noted in his comparison of the French *Conseil d'État* with a research lab: The Court proclaims itself a public building, but internally it enforces a strict separation between freely accessible and restricted zones, thereby establishing a form of secrecy essential to the integrity of the legal process.

Before entering the galleries, visitors must first turn left and descend to the cloakroom, located below ground level. Coats, bags, laptops, mobile phones and communication equipment must be stowed away in a locker. In the gallery, only pen and paper are allowed.

Behind the entrance to the central tower, a second X-ray arch is waiting, and remaining personal items (wallet, keys, coins, etc.) must again go through a luggage scanner. Once cleared, a security officer will direct you to one of the two elevators. The glass elevator cabins move up and down a glass shaft integrated into the tower's glass shell, dropping off its passengers at the floor where the hearing is held. The salience of such separate circulation systems for the dramatic staging of court hearings

<sup>3</sup> Resnick and Curtis (ibid.) point out that glass also reflects sunlight and may create a sense of opaqueness. This tension between transparency and concealment will be a recurrent theme in our account.

<sup>4</sup> There is a small commercial center with lunch restaurants and an ATM only a few blocks away from the ICC complex.

has been noted before (for example, [Mulcahy, 2007](#)). Usually, however, this separate circuit is reserved for magistrates, while the public mingles freely with parties waiting for their case to be called (provided they are not in custody). At the ICC, in contrast, visitors too are subject to a separate circuit, and the path mapped out for them is tightly monitored. If there is more than one hearing at the same time, the security officer will inquire which trial you came for and wirelessly communicate the number of visitors coming up to the colleague posted on the matching floor. The affective impact of this monitoring can hardly be underestimated. Mechanically transported through the transparent shell, in a transparent cabin and with security officers posted on the other side of the glass wall, one becomes acutely aware of the ambiguities such transparent surfaces create:

The use of glass for exterior walls of courts or their atriums may signal a powerful metaphor about the transparency of justice but can have the opposite effect for users of the courthouse who suffer from the constant threat of inspection. It is important to remember that it is not the walls of the private corridors in the backstage of the court that are being exposed but the public areas in which spectators and defendants are caught in a new field of visibility. ([Mulcahy, 2007:39](#))

Hence, transparent surfaces impose visibility onto visitors and simultaneously regulate these visitors' visual access through the creation of “openings, obstacles and ‘lines of sight’” ([Jones, 2017:151](#)). They are therefore crucial to the material inscription of power into the court landscape.

The elevator exits onto a separate landing, where other security guards usher the visitors into the gallery. Inside the gallery, one is literally ‘looking down’ into the courtroom from behind a glass wall (see [Fig. 2](#)). The gallery consists of three separate blocks, each numbering six descending rows of eight foldable seats, and can accommodate approximately 150 visitors. The glass wall is fully soundproof, but each seat is provided with its own headset. On the armrest, visitors can choose the language. One channel gives direct, untranslated access to the floor, and there are others in the Court's two working languages (English and French) and in one or more case-specific ‘situation languages’ (Acholi, in the hearings I attended). Left and right of the glass wall, there are video monitors showing the hearing's livestream. During testimony-taking, this is the only visual access visitors have to the witness, as the witness box is located directly underneath the gallery, right into their blind angle. When the witness's identity must remain secret, the image on the monitor is scrambled.

The internal design of the gallery and the courtroom matches the ICC's external projection of transparency. The upper part of the wall above the judges' bench entirely consists of glass, so in front of them visitors have constant visual access to the sky outside. The two walls behind them, between gallery and landing and between landing and outer glass shell, are also made of glass, so that gallery occupants (but not the trial actors in the ‘pit’) can literally ‘look through’ the courtroom. This accentuated visibility is again deeply ambiguous, as it may in turn expose the visitor to the trial actors' attention. Larger cohorts of visitors, like students on a guided tour, usually only stay for shorter periods of time, and often I was the only person who stayed for the entire day. Occasionally, this resulted in an uncanny role reversal and the eerie feeling that I was the one observed. Gallery visitors are also without interruption subjected to surveillance by the security officers, and the *Rules Courtroom Gallery* mentioned earlier strictly curtail their participation: no eating, talking, reading; no pointing or gesturing at trial actors; no coats, cameras, mobile phones. Taken together, these proscriptions enforce a participation framework ([Goffman, 1981](#)) that tolerates people in the gallery as ratified participants, but limits their role to that of overhearer of the proceedings and prevents the emergence of alternative involvements. On every occasion an audience member tries to engage in subordinate communication, security officers immediately intervene, blocking both side-play (whispering to other visitors) and cross-play (pointing at trial actors or gesturing to them). In the gallery, the only permitted activities are silent observation and notetaking.

Surveillance, however, is open to multiple interpretations. So far, our account of the court landscape and the gallery path focused on visibility arrangements, without paying much attention to the legibilities they impose on the visitors' conduct (the second aspect of surveillance, according to [Jones, 2017](#)). We proceeded from the idea, pervasive in court design and courtroom architecture, that a lay audience's presence poses the risk of ‘contaminating’ the legal process. Historically, this assumption undergirded the gradual imposition of zoning restrictions, which from the 18th century onwards progressively banished

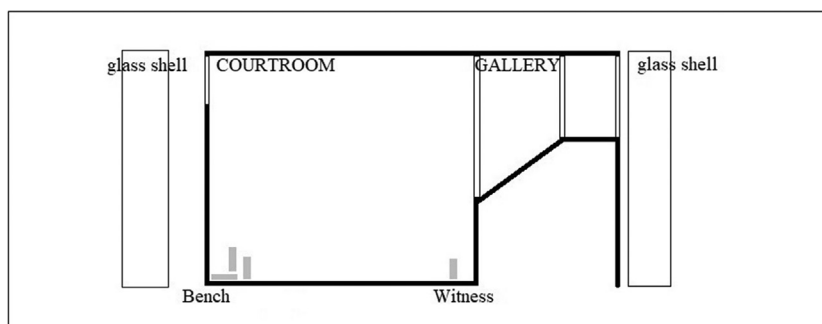


Fig. 2. The gallery (cross-section).

outsiders to the periphery of the courtroom (Mulcahy, 2007). This containment perspective, however, represents only one possible reading that the ICC court landscape imposes on its inhabitants, and is also at odds with the Court's external projection of transparency. However, the presence of these lay actors can also be read in an entirely different fashion, provided that we also take into account the readiness with which visitors subject themselves to the Court's disciplinary practice.

It is utterly salient, for example, that the visitor's passage to the gallery comprises multiple steps demanding complicity: allowing one's ID to be scanned, putting on a badge (and assenting to be made 'legible'), surrendering one's coat and communication devices, subjecting one's body to security routines and to the heightened visibility of a separate circulation system. As interventions on the visitor's body and personal belongings, they constitute a form of 'biopolitical' regulation (Lemke, 2011) that continually reinscribes the power differential between institution and visitors.<sup>5</sup> It is also true, however, that each successive step requires active consent and represents a point of possible withdrawal, which indicates that more is at stake than the containment of a 'polluting force.' Taking a lead from Eltringham (2012), one could argue that the path to the gallery is composed of threshold practices that gradually transform the visitors. Through these threshold practices, the ICC's surveillant landscape imposes an alternative legibility onto the visitor that is quintessential for staging (or 'framing', cf. Goffman, 1974) the judicial process. Like the Rwanda Tribunal in Arusha, the ICC needs the presence of this newly molded validating public to demonstrate its sovereignty and to allow the authority of the law to impose itself:

provisions [like separate circulation systems] are also constitutive of the courtroom as a space for privileged speech, [...] and] the segregation and control of spectators is not solely supervisory, but a means of constituting a 'public' who, through their presence, simultaneously constitute the courtroom as a privileged space. [...] the privileged space of the courtroom depends both on its place in a wider complex and in the relation of active participants to docile spectators where the latter are formed in the passage through the wider complex as they make their way towards the courtroom. (Eltringham, 2012:429–30)

This validating public thus requires a particular type of visitor: a passive, complacent bystander whose role is literally restricted to 'observing.'

The distinct qualities required of the 'validating witness' are that she is uniform, docile and quiescent. It is her silent, observing presence as part of a uniform body ('the public') that is required, not that she demonstrate reflective investment in courtroom activity [...] (2012:442)

That visitors are not supposed to "demonstrate reflexive investment" is illustrated by the scarcity of information they receive. Next to the gallery's entrance, there is a stand with one-leaf case information sheets with a picture of the defendant, outline of the charges, and case history. This is more than most other courts provide (and confirms the ICC's self-conscious projection of transparency), but still far from sufficient for understanding the specifics of a particular hearing and truly engaging with what is happening on the stage in front them. Unlike in most domestic courts, it is not possible to obtain such information informally from the usher, and the ICC security officers consistently direct inquisitive visitors to the leaflets. The fact that police authority over the courtroom, traditionally symbolized by the Judge's gavel, is here 'outsourced' to a third party without investment in the ongoing case enhances the isolating effect of the soundproof glass wall, further reduces intimacy between trial actors and audience, and ultimately confirms the latter's reduction to tacit docility.

#### 4. ICC trial transcripts reconsidered

For those unable to make the journey to The Hague, this physical gallery is complemented with a virtual counterpart. Other practices through which the ICC projects an image of transparency include the livestreaming of court hearings and systematically publishing all transcripts and court records (written submissions, rulings, etc.), together with selected footage of key episodes. These can be freely consulted and downloaded from the court website, which simultaneously functions as its digital archive. Navigating the ICC homepage (<https://www.icc-cpi.int/>), one successively encounters:

- a news section with twitter feed
- a link to livestreams of ongoing hearings (relayed with a 30 min delay, to allow for post-editing necessary for preserving witness anonymity)
- the court calendar
- a feed of recently uploaded court records (including transcripts)
- an interactive map showing the various 'situations' where the Prosecutor's Office is currently carrying out investigations.

For many international organizations livestreaming public hearings has become an established routine (see, for example, [webtv.un.org](http://webtv.un.org); Cowen and Billaud, 2017:111–2), but among criminal justice institutions it is still less widespread, certainly in

<sup>5</sup> The asymmetric character of these interventions is most obvious from the fact that the court actively registers visitors and subjects their movements to heightened visibility, while simultaneously confiscating these visitors' own registration devices (mobile phones).



continental civil-law systems.<sup>6</sup> The website also publicly advertises ongoing and past cases, and the full names and pictures of defendants are publicly disclosed, regardless of whether they are at large, in custody, on trial, convicted, or have been acquitted. The interactive map and navigation menu in turn give access to pages where information on individual defendants is centralized, including case summary, timeline, and selected video footage, plus links to hearing transcripts and other documents.<sup>7</sup> The resources made available in this way serve a multiplicity of audiences. The various written documents facilitate an additional ‘judicial review,’ not by the ICC Appeals Chamber but by a wider community of networked NGOs, scholars, bloggers and activists (representing the ‘we’ of international criminal justice, which fully identifies with the ICC’s foundational myth of ‘ending impunity,’ Tallgren, 2014). Video footage and livestreaming also reach lay audiences, and the ICC outreach unit regularly uses the video feed for involving victim communities (see Bens, 2020 and this issue). In what follows, we briefly elaborate on the role that hearing transcripts play in communicating this sense of transparency.

In essence, transcripts consist of a presumably verbatim record of all that is said in the courtroom (“everything, everything, everything that we hear,” according to the ICC website).<sup>8</sup> They are taken down in shorthand by a court reporter (or “court pianist,” as they are called on the same webpage), reviewed ‘on the fly’ by a second reporter, and rendered into English by computer-aided software. Each transcript covers the hearing of one trial day, which consists of maximum three sessions of about 1.5 h each. It can take several weeks before it is released to the public. The trial actors themselves, however, have immediate access the court reporters’ efforts:

[The transcripts] are followed by everyone in the Courtroom in real time. Not only are people listening to the interpreters on their headphones, my transcripts come up live on their screens – so can be referred to – objected to – quoted – all during the course of the same hearing, all live.<sup>9</sup>

Hence, one regularly encounters transcripts in which the cross-examining attorney quotes verbatim from testimony that the witness gave on the same day (and thus from the same transcript), which gives them a rare ‘self-referential’ character. This is directly related to these transcripts’ status as an ‘endogenous’ product of the trial. They constitute the official record of court proceedings and form a crucial part of the evidential record (witness testimony). As such, they may be referred to, paraphrased, or quoted later in the hearings, in the submissions of defense and prosecution, and eventually, in the Chamber’s decision on guilt or innocence.

The transcripts’ institutional character is also evident from the various erasures and editing practices of which they exhibit the traces<sup>10</sup>. The first victim of erasure is the trial actors’ multimodal conduct, together with the social and indexical meanings projected by their courtroom demeanor and by the delivery characteristics of their talk. Sociolinguistic variation is also largely absent, and the computer software for translating shorthand only generates standard English and French spelling. Hence, the only available markers of sociocultural background, and of possible non-nativeness, are word order and lexical choice. Nevertheless, even though I did not systematically compare transcripts and video footage (where available), the level of editing appears less tight than in parliamentary reporting (Mollin, 2007; Voutilainen, 2017), and turn allocation routines and other performance features of spoken talk (insofar they have a lexical character) are not systematically removed. This policy of ‘only-the-words-but-all-the-words’ is consistent with (a) the fact that these transcripts constitute evidence and (b) the textualist ideology (Mertz, 2007; see also Eades, 2016) that permeates the legal process and on which their evidentiary value is founded. The latter locates meaning exclusively in the lexicon and systematically ignore semiosis related to performance and the text’s (re)insertion in a particular context (even though the law critically depends on performance-in-context to ground its authority, as the previous section amply demonstrated).<sup>11</sup>

Editing is also manifested in segmentation decisions (when talk by a single speaker is divided into chunks separated by a new line) and in the insertion of metapragmatic characterizations. In addition to line numbering and the score-like annotation of different actors’ speech, these include bracketed characterizations of the talk’s legal status (for example, “(the witness is still under oath)” if testimony continues on the next day) and, occasionally, explicit characterizations of sequential relationships. The latter commonly occurs in longer segments of testimony, with usually start with mentioning the name of the examining attorney (on a separate line), followed by alternating turns of witness and counsel marked with “Q” and “A” (regardless of their actual interactional content). Finally, before the transcript is approved for public release, all identifiers that might expose the identity of protected witnesses are redacted. This includes, by definition, all testimony given in closed session. Occasionally, this results in a transcript of which more than half consists of blank pages with only line numbers.

Of particular significance, furthermore, is the way these transcripts render the distinctly multilingual character of ICC courtroom performance. The Court’s two working languages are French and English; often one language is dominant depending on the sociolinguistic profile of the ‘situation country’ (for example, English in the Ugandan and Kenyan trials), but

<sup>6</sup> But see <http://tingshen.court.gov.cn/> (PR China). Also in the US, livestreaming criminal hearings appears more widespread, see, e.g., [www.courtstv.com](http://www.courtstv.com) and various streaming platforms run by state and federal courts.

<sup>7</sup> The latter are also published simultaneously on the ICC-sponsored international criminal justice resource website <https://www.legal-tools.org/>.

<sup>8</sup> <https://www.icc-cpi.int/get-involved/justice-at-work/pages/videoStory.aspx?name=video-the-courtroom-pianist>, accessed April 26, 2021.

<sup>9</sup> <https://www.icc-cpi.int/get-involved/justice-at-work/pages/story.aspx?name=the-courtroom-pianist>, accessed April 26, 2021.

<sup>10</sup> Note, furthermore, that the livestream is also subject to various forms of editing (e.g., panning, change of camera angles; cf. Licoppe, 2021).

<sup>11</sup> Unlike the British parliamentary Hansard (Mollin, 2007), the ICC website does not contain an explicit acknowledgment that hearing transcripts have been edited to improve readability. Instead, they explicitly insist on their verbatim character (for example, in the above-mentioned piece on the “court pianists”).

in many proceedings both can be heard. Defense counsels occasionally plead in another official court language (for example, Arabic in *al-Mahdi*), and witnesses typically address the Court in one of the case-specific 'situation languages' (for example, Acholi in the trial of Ugandan warlord Dominic Ongwen). In order to accommodate this multilingualism, the ICC has developed an elaborate infrastructure that includes 'conference-style' courtroom interpreting, under the auspices of the Registry's Language Services section (Swigart, 2019). This multilingualism, however, does not extend to trial transcripts, which are only available in 'monolingual' French and English. Consequently, most transcripts also contain extended segments of interpreted discourse. Importantly, ICC trial transcripts are not a product of 'post factum' translation of other-language segments (a procedure used by other international organisms such as the International Court of Justice), but a shorthand version of the 'on the fly' interpretation provided by the interpreters in the glass booths on the side of the courtroom (Swigart, 2019:291). In this sense, ICC transcripts capture the speech of actors speaking another language than that of the transcript, including the majority lay actors, only after it has been 'processed' by the ICC's architecture for accommodating the multilingualism of its jurisdiction—a powerful example of how institutions impose their own perspective onto the speech of their clients.<sup>12</sup>

The observations formulated so far illustrate one mode in which public transcripts (Park and Bucholtz, 2009) contribute to the reproduction of institutional authority: The entextualizing institution exercises power over those of whose speech is represented through the textual inscription of a particular (i.e. hierarchical) relationship "between the producer of the original discourse and the agent of entextualization" (2009:486). This 'vertical' interplay between represented subject and representing agent, however, is only one aspect of the power play implicit in/obfuscated by transcription, and the institutional authority projection also operates through the presumption that transcripts "speak to or on behalf of a consenting public" (2009:489). In the previous section, we saw that the ICC stages itself as a transparent institution, in this process transforming visitors to a validating audience. In what follows, I argue that the ICC's publicly available transcripts systematically perpetuate this projection of transparency. Hence, in addition to 'black-boxing' the micro-political interventions that come with reducing speech to writing, transcripts also structure the 'horizontal' relationship between the Court and its various audiences, both the gallery spectators navigating its surveillant landscape and the visitors of the 'virtual' gallery browsing through the court records online.

This 'horizontal black-boxing' proceeds along two axes. First, hearing transcripts render invisible the constitutive role of the gallery audience and the way trial performance is embedded in a dialogical relationship between the trial actors and this validating public, which is constituted, among other things, through the material structuring of the path to the gallery. As Eltringham (2012) pointed out, the threshold practices by which the Court establishes this validating public delineate a space where the spoken word is privileged. Trial discourse is thus 'logocentrically prepackaged' at its site of production, and this on-site entextualization (which prepares discourse to be "lifted out of its interactional setting," Bauman and Briggs, 1990:73) greatly facilitates its subsequent fixation-through-writing. The presence of an overhearing audience is central to this logocentric prepackaging, but this staging process does not leave any traces in the (equally logocentric) transcripts through which trial performance is documented. That is, courtroom records successfully capture the multiplicity of dialogical exchanges between the trial actors (or at least its verbal component), but obliterate the broader dialogical relationship between trial actors and public in which these exchanges are grounded.

The second axis along which black-boxing operates relates to the ways in which hearing transcripts are involved in positioning the visitor of the 'virtual' gallery. Once the 'physical' gallery spectator's constitutive role in staging the logocentric performance has been obliterated, the resulting 'empty seat' is ready to be occupied by a virtual one. The previous section showed that this seat is far from neutral, as the various forms of surveillance inscribed in the ICC court landscape produce an audience specifically tailored to 'validate' court proceedings. Transcription, in turn, renders invisible this staging process and the vital role of the audience in trial performance. The obliteration of the audience, however, does not end here. The fact that these hearing transcripts are publicly accessible (and the promise of transparency this embodies) additionally also conceals that the 'virtual consumers' of these transcripts perform an equivalent legitimizing role. Of course, the experience of browsing through written records of past events, at one's own pace and behind the privacy of a computer screen, is incomparable to watching an ongoing trial together, in real-time, and collectively assenting to disciplinary oversight and heightened visibility. The way in which virtual visitors are positioned epistemologically, however, is strikingly similar. The ICC website features various statements emphasizing the Court's commitment to (abstract) victims, much in the same way as the exhibition at the lobby. Concrete signposts guiding the visitor through these massive quantities of transcripts and documents, however, are conspicuously absent. The practical information made available to the virtual visitor is identical to what can be found in the paper case information sheets: short, arid technical-factual summaries of past and ongoing cases that are of little help in making sense of real-time hearings or particular transcripts.

<sup>12</sup> At the same time, transcripts do present a picture of the interpretation process that is very much 'warts-and-all.' Interpreters' interventions (like request to insert a 5 s pause before taking a next turn) are an integral part of the transcript, and corrections of presumed interpretation errors are dealt with 'on record.' (On both the prosecution and defense team, there are multilingual members who keep an eye on the transcripts that are scrolling in front of them in real time, alerting the lead counsel in case of inaccurate translation (Swigart, 2019: 290).) On the whole, interpretation significantly affects the quality of courtroom interaction, and one could even argue that the logocentricity of ICC transcripts does not so much 'conceal' the multimodality of courtroom performance, but 'mirrors' the downplaying of embodied conduct and erasure of multimodality that takes place in situ as the interaction between trial actors is mediated by conference interpreting. Lawyers occasionally complain about the restrictions courtroom interpreting imposes on the range of rhetorical techniques at their disposal. During cross-examination, they indeed attempt to undermine witnesses' credibility, but only by 'denotational' pointing out inconsistencies and without the subtle metapragmatic cueing described, e.g., in Matoesian (2001).

## 5. Concluding remarks

This paper started with an auto-ethnographic account of the visitors' path to the gallery and explained the intricate ways in which the ICC court landscape models its audience. This, in turn, paved the way for a critical reconsideration of the transcripts made available on the court website. Here, I argued that ICC hearing transcripts, much like the court's distinctive architecture, (a) render invisible the staged character of trial performance, and (b) recruits a new audience, all the while (c) rendering invisible their own role in this staging process.

The relevance of this argument extends beyond the language and law field proper and concerns all of us in pragmatics and related disciplines working with institutional, public transcripts. It is a reminder that transcripts and other court records are not just 'data,' but constitute complex ethnographic objects in their own right (Blommaert, 2008; Bens et al., 2021). The various socio-political entanglements in which these transcripts-as-ethnographic-object are enmeshed have amply been documented, in particular how they reflect the power dynamics, writing practices and textual ideologies underpinning their production (see, for example, Park and Bucholtz, 2009 collection). The present discussion adds to this debate the notion that these entanglements comprise not only the production of the transcripts, but also extend to their dissemination, circulation, and consumption. As indicated, ICC trial transcripts recruit an audience (and contribute to the Court's self-staging as a transparent institution) in the same way as its courtroom architecture does. The logical consequence is that the reflexivity and dialogicity that characterizes ethnographic interviewing (see, for example, Briggs, 1986) also extend to analyzing transcripts, and that we should read them not only for what they represent but also for how they speak to us. As I have outlined above, it took a confrontation with the materiality of the court premises to become aware of this. At least in this sense, being there indeed mattered.

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