

Between the Dog and the Divine: Resistance and conventionalism in cosmopolitanism

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1. Introduction

Cosmopolitanism is generally defined as a worldview that emphasizes what human beings have in common. Whatever differences there may be in terms of, for example, culture, wealth, gender or physical location, a human being is always also a *kosmopolitês*; a citizen of the world. The fact that people share membership of the kosmo-polis matters in normative terms, as exemplified in, for example, human rights law or the law protecting the environment. Where principles such as nationality or territoriality emphasize the normative importance of difference, cosmopolitanism stresses that commonality matters in normative terms. In that sense, cosmopolitanism goes beyond extraterritoriality; it simply declares that for certain moral issues, place or nationality should be irrelevant. Thus, the Stanford Encyclopedia defines the cosmopolitanism position as follows: ‘The nebulous core shared by all cosmopolitan views is the idea that all human beings, regardless of their political affiliation, are (or can and should be) citizens in a single community.’¹

The story of cosmopolitanism is generally told as one that began in ancient Greece, with Diogenes of Synope answering the question of what country he was from: ‘and he replied, “I am a citizen of the world”.’² From there, the story goes to Rome, via clerical teachings in Medieval times, the natural law positions of early Modern philosophers such as Grotius and Locke, Kant’s ideas of cosmopolitan law and a federation of republics, towards the liberal theories that dominate contemporary debates on cosmopolitanism.³ However, emphasizing the development and continuity in cosmopolitan thinking, while not necessarily incorrect, comes at a price. It hides the fact that a significant break occurred between the often-quoted person of Diogenes and the subsequent approaches towards cosmopolitanism. In this article, we explore the decisive move in cosmopolitan thinking as it tried to steer away from the teachings of Diogenes of Synope, towards the teachings of one of his pupils, Zeno of Citium. At its roots, the move from Diogenes to Zeno is about a shift from cosmopolitanism as a negative position of resistance to cosmopolitanism as a positive programme of rules, policy and action. Diogenes, the first Cynic and avowed *kosmopolitês*, embraced the image of a dog that was ascribed to him, famously resisted convention and relied in his resistance on spontaneous, physical acts. Those acts, however, gave his cosmopolitanism a deeply situated character, limiting his resistance to a responsive posture defined by the local constraints against which he rebelled. Pauline Kleingeld, however, in the Stanford Encyclopedia, characterizes Diogenes’ cosmopolitanism as follows, holding that the whole

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1. P. Kleingeld & E. Brown, ‘Cosmopolitanism’, in E. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (2014), <<http://plato.stanford.edu/archives/fall2014/entries/cosmopolitanism/>> (last visited 16 March 2017).

2. Diogenes (404-423 BC) as reported in Diogenes Laertius, *The Lives and Opinions of Eminent Philosophers*, C.D. Yonge, trans. (1909).

3. Cf. W. Werner & G. Gordon, ‘Kant, Cosmopolitanism and International Law’, in A. Orford & F. Hoffmann (eds.), *The Oxford Handbook of the Theory of International Law* (2016).

of the Cynic way of life propounded by Diogenes was 'supposed to be cosmopolitan: by living in accordance with nature and rejecting what is conventional, the Cynic sets an example of high-minded virtue for all other human beings'.⁴ His follower, Zeno of Citium, endeavoured to overcome the peculiar character of Diogenes' resistance. Zeno, who became the acknowledged founder of Stoicism, apparently endeavoured to carry forward the virtuous dimension of Diogenes' otherwise Cynical cosmopolitanism. Zeno's major work, *The Republic*, was an effort to elevate Diogenes' Cynical ethos to the level of universal order. Local convention would be overcome not by situated acts of resistance, but by a singular code applicable everywhere. The physical immediacy of Diogenes and the universal timelessness of Zeno are joined in the legacy of cosmopolitanism that follows from them, two poles of a singular programme.

In Section 2 we will use the works of Diogenes and Zeno to argue that the cosmopolitan world view remains torn between negation and conformation; between anti-conventional resistance against and super-conventional organization of power. This point will be further illustrated in the sections that follow. In the first place, we will show how the International Criminal Court combines the two elements of cosmopolitanism in its responses to international crimes. Secondly, we will illustrate the tension in cosmopolitanism through a discussion of two of the artworks that form the topic of this special issue of the *Utrecht Law Review*.⁵ Both artworks are about the 2010 Flotilla mission and the different responses it evoked. The artworks offer a cinematic representation of the tension between cosmopolitanism as a form of resistance and cosmopolitanism as a positive, conventionally embedded programme.

2. Diogenes & Zeno

We know Diogenes of Synope from another Diogenes, Diogenes Laertius (for purposes of clarification: when referring only to Diogenes, we mean the former). No original work of Diogenes the Cynic remains. He appears to have written a document entitled *The Republic*, but it has been lost without further record – unlike *The Republic* of Zeno, to which we will turn in a moment, of which suggestive bits have been reported, though nothing remains of it either.⁶

In the absence of major works, Diogenes is principally memorialized by dialogue attributed to him, and remembered for his iconoclasm and the severely ascetic lifestyle he is reported to have lived, which became an inspiration to succeeding generations of Cynics, in ancient Greece, Rome and beyond. He lived out of an empty wine cask, and famously eschewed owning even a wooden bowl to drink from, disposing of his own upon seeing a boy drinking from his hands. He was equally celebrated and despised for outrageous acts and provocative humour. He would eat in the marketplace though it was not allowed, and is known for having defecated and masturbated in public. Concerning the latter, he is supposed to have said something along the lines of, 'if only I could satisfy my hunger by rubbing my belly.' He is known to have walked around Athens with a lighted lamp in daylight, searching in vain for an honest man. And he is on record as the first self-described kosmopolites, or cosmopolitan. Diogenes hardly resembles a cosmopolitan as that term is received today, with connotations of harmony and inclusiveness. Nonetheless, he represents a virtuous universalism, set vividly in opposition to spurious distinctions imposed by convention. Moreover, as the primary inspiration for Zeno, the founder of Stoicism and the next figure in our contribution here, Diogenes can be recognized as foundational to consistent cosmopolitan aspirations reproduced into the present in Western political discourses.⁷

Diogenes's Cynical cosmopolitanism took the form of opposition to local convention, typically on the grounds that local conventions posed false and arbitrary constraints. He represents, in the depictions of him, always an oppositional position, a constant rejection of local rules and norms. For his refusal to observe the laws and standards incumbent of the community, Diogenes was also ostracized and disparaged. The term Cynic comes from Kynikos, or dog-like in ancient Greek, and the term is both telling and central to

4 See Kleingeld & Brown, *supra* note 1.

5 See C. Ryngeart, 'Representations of the (Extra)territorial: Theoretical and visual perspectives', (2017) 13 *Utrecht Law Review*, no. 2, <http://doi.org/10.18352/ulr.378>, pp. 1-6.

6 J. Sellars, 'Stoic Cosmopolitanism And Zeno's Republic', (2007) 28 *History Of Political Thought*, no. 1, p. 9.

7 See Laertius, *supra* note 2.

our story here: Diogenes was dismissed as less than human for his refusal to observe social conventions. Diogenes, however, accepted and celebrated the characterization – hence the term Cynic as the name of the school for which he is known.⁸ Moreover, as the first Cynic *and* the first cosmopolitan, Diogenes linked the subhuman characterization with celestial association as part of a consistent attack on the pretense to temporal, territorial authority. His cosmopolitanism, like his embrace of the dog image, was a protest: a strategic, placeless association adopted to contest the specious authority of local rules.⁹ Being a citizen of the cosmos placed him beyond the political sources of legitimacy for local rules. The placeless characterization of his cosmopolitan pretension, however, is misleading. The consistently and vigorously oppositional nature of Diogenes’s perpetual dissent, the ‘dogged’ nature of his attack on local rules and mores, does not suggest the sort of disaffection or disinterest that placelessness might mean, in the sense of ‘no place or any’. Rather, there seems an apparent attachment to the places in which he lived. Moreover, Diogenes does not appear to have been particularly peripatetic. There is no nomadic quality of belonging everywhere. Instead, Diogenes appears trenchantly to have fought to be at home, in his own way, in Athens and later Corinth. His character is fixed in the places of his agitation, as though he were the only genuine inhabitant of those places, surrounded by pretenders propounding false authority, a constant challenge to their jurisdiction.

In sum, on the record available, Diogenes occupied himself wholly with resisting local laws and custom, and exclusively by means of agitation, never proposing a positive programme in their place, beyond a call for more opposition and resistance. And in this relationship to rules, two aspects bear emphasizing for purposes of the present study. First, as a matter of strategy, he apparently refused to reduce his Cynical cosmopolitanism to its own set of rules. His resistance is consistently described according to radically unconventional behaviour characterized by spontaneity. Agitation appears always to have been a negative strategy, eschewing articulation as a positive programme. Second, and by the same token, it seems equally clear that Diogenes was apparently subject to rules all the same, in the sense that his behaviour was determined by them, though as a matter of opposition. In constantly opposing local rules, he was constantly subject to them, and constrained to a narrow band of acts limited to outrageous contravention of local convention. This reflects a paradox in Diogenes’s resistance to rules under the banner of cosmopolitanism. For all of his apparent resistance to observing or adopting a set of rules or a particular order, he lived programmatically all the same. Ultimately, his constant opposition constrained him to organize and conduct his with reference to the rules of Athens or Corinth, but in opposition to them, as much or more as any other inhabitant of those cities. For present purposes, the tension is revealing in the following way. His refusal to define a code of his own, despite his appeals to subhuman and celestial imageries, left him dependent on the codes against which all of his political action and entire lifestyle was arrayed. By the same token, however, his refusal may be understood to represent a strategic choice not to rationalize or institutionalize the programmatic consequences of his political commitment. The Cynical cosmopolitan commitment entailed seeing through temporal, territorial authorities, not reproducing them. This might be unflatteringly understood as denial, as a loss of self-direction for the sake of maintaining a sort of righteousness. In this sense, Diogenes represents an ambiguous individualism, a sort of individuation that remains other-determined. But it might also be understood as an uncompromising commitment to an active, highly situated form of dissent. Diogenes appeared to inhabit the contradiction and only the contradiction in action, without espousing any clear and positive ‘next step’, beyond an apparent determination to un-imagine, so to speak, false conventions. The rules ascribed to him are never more explicit than a call to arms, predicated on a negative invocation or generalized resistance, the most famous being to ‘deface the currency’.¹⁰

The next figure in our story, Zeno of Citium (whom we will also refer to simply as Zeno hereafter), takes Diogenes’s dilemma forward. Zeno bridges the Cynic and Stoic schools of Greek thought: he is known as having ascribed to the former school, but also as the foundational figure for the latter. Like Diogenes of Sinope, most of what we know of Zeno we know from Diogenes Laertius, though additional information

8 Cf. J. Moles, ‘Cynic Cosmopolitanism’, in J. Branham & M. Goulet-Cazé (eds.), *The Cynics: The Cynic Movement in Antiquity and Its Legacy* (1996), p. 107.

9 Cf. G. Leung, ‘A critical history of cosmopolitanism’, (2009) 5 *Law, Culture and the Humanities*, no. 3, pp. 370-390.

10 Cf. R. Branham, ‘Defacing the Currency: Diogenes’ Rhetoric and the Invention of Cynicism’, in R. Branham & M. Goulet-Cazé (eds.), *The Cynics: The Cynic Movement in Antiquity and Its Legacy* (1996).

about Zeno's major work, *The Republic*, which has been lost, comes from a variety of sources. Laertius states that Zeno arrived in Athens as a result of a shipwreck, but remained there to study with Crates of Thebes, a prominent Cynic of the time. Zeno lived an ascetic lifestyle, in keeping with the teachings of Diogenes and the Cynics. Unlike Diogenes, however, Zeno appears to have lived a respectable life in Athens, with no comparable record of scandalous or immodest acts of his own.¹¹ The difference in temperament is telling to the turn that Zeno represents here. His apparent personal disinclination for the outrageous act as negative praxis, and preference for less sensational modes of social and political engagement, reflect choices with strategic consequences.

Zeno apparently wrote his *Republic* during his period of training as a Cynic with Crates of Thebes. In keeping with the Cynical cosmopolitanism programme, Zeno proposed with his *Republic* to do away with differences among local orders, identities and laws. In a crucial distinction, however, he proposed to replace or supplant local orders and conventions with principles of universal order, a common identity and uniform rules, including a rejection of currency, as well as a rejection of temples, and a common dress code for all, men and women, among other rules.¹² As such, Zeno's *Republic* appears to have endeavoured something like an institutionalization of Diogenes's opposition to local rules and conventions. If Diogenes presented a first, foundational articulation of a cosmopolitan, Zeno presented a first, foundational articulation of a cosmopolitan order: no longer a political programme defined always only by opposition to local rules and conventions, but a political programme representing a consolidated order all of its own. Likewise, not as a constant justification for resistance, but as a consistent master law. Instead of demonstrably contesting the local, Zeno went about articulating the rules for its replacement. Thus Zeno abandoned the praxis of strict opposition, and endeavoured instead to advance Cynicism by systematizing it. In doing so, he apparently rejected Diogenes's embodiment of Cynic cosmopolitanism as a constant series of provocative acts. An explanation presents itself: in the figure of Diogenes, the Cynical impetus always to oppose particular rules with provocation portended perpetual subjection to precisely those rules by that very dogma; Zeno, in turn, can be read as trying to break the grip of that subjection by attempting to consolidate an independent, Cynical order. In short, Diogenes manifested a cosmopolitan praxis, the rule-guided nature of which remained tacit, and Zeno articulated a cosmopolitan order, the rule-guided nature of which defined it. Each, notably, was differently situated in relation to space and time (or chronotopically, to borrow the Bakhtinian term that is gaining use lately), Diogenes's politics deeply invested in the local place at the then-present moment, contesting local conventions with a special sort of placeless authority – everywhere was a contest because nowhere were the rules he encountered tolerable. Zeno's object or aim, by contrast, was not a local one, not immediate in nature, but a universal site properly ordered for all time. By this reading, Zeno roughly inverted the formula of Diogenes: nowhere did he engage in Diogenes's provocations; instead he focused on producing the rules that must adhere everywhere, like an early theory of natural law. In sum, one can see Zeno, in his character, disfavouring the title of Dog – in keeping with his subsequent association instead with the Stoa. Not associated with the subhuman element, his contribution to the cosmopolitan origins story amplifies the pretension to celestial order, applying everywhere, over and beyond the temporal and territorial constraints of particular communities. The individuation in Diogenes's practice is ceded by Zeno, replaced with an investment in a more perfect, universally-valid system of rules, to replace those that negatively determined Diogenes's resistance.

To conclude this brief overview, in their separate codes and relations to convention, Diogenes and Zeno expose complementary and conflictual sides of cosmopolitanism: in Diogenes, a challenge to local regimes, and in Zeno a plan for overcoming them; but in Diogenes a political programme that cannot attain its own ends, and in Zeno a political solution that comes unmoored from its foundations. Each promotes recourse to the other, but each denies the possibility of simultaneously maintaining both positions, even though, being joined in substance, they would pursue similar moral and ethical objectives. From the perspective of contemporary international legal scholarship, they become twinned poles of an indeterminate cosmopolitan condition. And the legal form subject to indeterminacy produces equivocal relationships and, likewise,

11 See the depiction of Zeno in Diogenes Laertius, supra note 2.

12 Ibid.

historically is joined to the exercise of power as its ultimate arbiter. Between them, without more, they allow no definite stopping point between the immediate and the ideal, the bodily in all its situated particularity, and the celestial in all its harmonious expansiveness. As a result, the legacy of Diogenes and Zeno can be mobilized in contradictory ways. Consequently, cosmopolitanism becomes indistinct from its strategic mobilization, an indeterminate vocabulary for expansive political ambitions. For an example, we turn now to observe the deployment of cosmopolitan discourses at the International Criminal Court.

3. Unimaginable cosmopolitanism at the ICC

The tension between Diogenes and Zeno plays out in different cosmopolitan projects today. One of the clearest illustrations can be found in international criminal law, and in particular in the institutional practices of and around the International Criminal Court (ICC). The ICC is often characterized as a cosmopolitan institution,¹³ or as a court serving global justice.¹⁴ This image of the Court is underlined in its own Preamble, which speaks of ‘all people’, who are ‘united by common bonds, their cultures pieced together in a shared heritage’; as well as the ‘well-being of the world’. The Preamble also contains a cosmopolitan argument as to why the Court was established. It recalls that ‘during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity’; and that making sure that such crimes do not go unpunished requires ‘taking measures at the national level and by enhancing international cooperation’.

As we set out in the previous section, cosmopolitanism has dual roots. It is rooted in a highly situated form of dissent, but also in an attempt to institutionalize universal principles in conventional rules and institutions. This duality also structures the International Criminal Court, undermining the integrity of its praxis, as we will explain. We begin with the observation that the Court simultaneously offers resistance against ‘unimaginable atrocities’ and a positive programme to counter atrocities through the use of legal proceedings. Both aspects are linked of course, and taken together they reveal the tension within cosmopolitan thinking that we discussed in Section 2. The atrocious, unimaginable nature of international crimes works as the constitutive outside of humanity: while it may be impossible to define what ‘humane’ or ‘humanity’ means, it is possible to discover when the boundaries of humane treatment are transgressed: when human beings are victimized in ‘inhumane’ ways. Just like the emergence of space photography changed our conception of the Earth as a whole,¹⁵ international crimes create a sense of community as a contiguous whole encompassing a harmonious image of humanity. International crimes are, to paraphrase Beck, ‘an attack from our inner Mars’;¹⁶ from that which lies outside the now-conventional bonds of humanity, yet happens on the same globe that we all inhabit. What it is to be part of the global community is then delimited through its negative dimension, the inhumane act that defines ‘them’ and, hence, ‘us’.

Both aspects of the Preamble, the global community and in/humanity, take the Rome Statute beyond state borders and sovereign territories. They both posit something universal, be it a global community or that which makes us human and humane. Both thereby come close to the cosmopolitan law as described by Cicero; a law rooted in natural law from which ‘we cannot be freed (...) by senate or people, and we need not look outside ourselves for an expounder or interpreter of it’. But this immanent possibility, which conforms both to the individualism of Diogenes and the natural law-like universalism of Zeno, reproduces the tensions we discussed in Section 2. International criminal law starts out from a situated dissent of inhumane,

13 See for example S. Roach, *Governance, Order, and the International Criminal Court: Between Realpolitik and a Cosmopolitan Court* (2009); J. Habermas, *The Divided West* (2006).

14 For an overview of the different characterizations of the ICC in terms of global justice see: S. Nouwen & W. Werner. ‘Monopolizing Global Justice: International Criminal Law as Challenge to Human Diversity’, (2015) 13 *Journal of International Criminal Justice*, no. 1, <https://doi.org/10.1093/jicj/mqu078>, pp. 157-176.

15 R. van Munster & C. Sylvest (eds.), *The Politics of Globality Since 1945, Assembling the Planet* (2016).

16 For similar arguments in the field of terrorism see Ulrich Beck’s argument about 9/11 as a cosmopolitan moment: ‘A question repeatedly asked and discussed in the past was the following: what can unite the world. The experimental answer was “an attack from Mars”. In a sense that is just what happened on 9/11; an attack from our “inner Mars”’. U. Beck, ‘The Terrorist Threat: World Risk Society Revisited’, (2002) 19 *Theory Culture Society*, no. 4, p. 46.

international crimes. However, in order to fight these crimes, it is necessary to develop conventional rules and institutions, which can only be imperfect articulations of the cosmopolitan ideals underlying them.

After all, the global community for which justice is sought is extremely diverse, and contains numerous different and often conflicting interpretations of what it is to do justice in concrete circumstances. How can one possibly exercise authority in the name of cosmopolitan justice? One way out is to hark back to established, formal structures of decision-making power. As Koskeniemi has put it: 'A deep-structured cosmopolitanism maintains that deep down the world is already united. The problem is that the claimed deep-structural principles vary, are conflicting, indeterminate and receive meaning and applicability only through formal decision-making structures. Re-enter government to make the choice; re-enter intergovernmental negotiations to set the balance. Cosmopolis must wait.'¹⁷ At the International Criminal Court, this gives rise to a series of paradoxes that are expressed in the Preamble. Although the Preamble refers to the idea of a global community and a common sense of humanity, this recognition is laid down in the most conventional of international instruments, a treaty between sovereign states. And although the Preamble refers to 'unimaginable atrocities', it is actually the prelude to a document that contains relatively precise definitions of a limited number of crimes. Not surprisingly, the process of codification subsequently gives rise to political struggles over the question of which types of suffering should be included and which types should be excluded from the jurisdiction of the Court.¹⁸

What is more, the codification and definition of 'unimaginable atrocities' also forces the International Criminal Court to constantly translate concrete suffering into formal legal categories. That is: not just to 'imagine' the unimaginable, but also to define it, and to exclude particular kinds of suffering on formal grounds. Thus, we find the Prosecutor in the opening statement of the *Katanga* case declaring that the accused are 'responsible for some of the most serious crimes of concern to the international community as a whole'.¹⁹ In this way, the atrocious nature of the crimes in question function as that which brings the international community together in its 'concern'. However, this statement is quickly followed by a sobering observation, confirming the conventional nature of the Court: 'this international court has no jurisdiction over most of the crimes committed during the Congo wars'. In the Statement on the crimes committed by ISIS the Prosecutor makes the opposite move. After having set out that the ICC lacks jurisdiction over any of the reported crimes, she felt the need to 'emphasise our collective duty as a global community to respond to the plight of victims whose rights and dignity have been violated', partly because through the ICC Statute '[t]he international community pledged that appalling crimes that deeply shock the conscience of humanity must not go unpunished'.²⁰

These variations in the stuff of international criminal law make it difficult to explain its practice in a coherent and compelling way. The problem, such as we perceive it, is compounded when inconsistencies are taken into account, for instance in the persistent failure to prosecute crimes by figures of Western power, rather than predominantly African states. In short, and in keeping with the conflicted condition of cosmopolitanism as we have observed it, the particular practices of international criminal law and its grand gestures are in tension, undermining the aspiration to a positive programme of justice. As a result, the ICC appears to occupy the local site of suffering, but on the basis of a universalizing code that floats freely above that site, a code that is otherwise unconnected and administered from afar.

17 M. Koskeniemi, 'Legal Cosmopolitanism, Tom Franck's Messianistic World', (2002) 35 *New York University Journal of International Law and Politics*, p. 471.

18 See for example the discussion and critique in K. Clarke, *Fictions of Justice, The International Criminal Court and the Challenges of Legal Pluralism in Sub-Saharan Africa* (2009).

19 *The Case of the Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Opening Statement, ICC-01/04-01/07, 24 November 2009, <<https://www.icc-cpi.int/NR/rdonlyres/D8F34FB0-DEAD-431A-8F80-54757F418EAC/281274/091124KatangaOpeningStatementformatted1.pdf>> (last visited 16 March 2017).

20 Statement 08/04/2015, at:<<https://www.icc-cpi.int/Pages/item.aspx?name=otp-stat-08-04-2015-1>> (last visited 11 April 2017).

4. Floating cosmopolitanism: The battle over images in the Flotilla incidents

The opposition between resistance and codification in cosmopolitanism also plays out in the artworks we were asked to reflect upon. In order to illustrate our point, we will focus on Maayan Amir's chapter on extraterritoriality and the capture of the Mavi Marmara,²¹ in combination with two of the artworks. First, the film *Scenarios Preparations*, which contains footage of preparatory sessions for activists who were about to leave for the 2010 Flotilla mission.²² Secondly, stills from a video on the Israeli capture of the Mavi Marmara, one of the ships of the Flotilla.²³ As Amir sets out, the Flotilla incident was to a large extent a battle over images. In her view, the confrontation between the Israel Defense Forces (IDF) and the activists was 'in the first place, a confrontation between two spatial logics of information flow – one devoted to restricting and monitoring communications within extraterritorial waters, the other dedicated to expanding the information flow as part of the protest agenda'.²⁴ And indeed, the confrontation between the activists seeking maximum reach-out and the IDF seeking control over images is one of the striking aspects of the Flotilla incidents and the capture of the Mavi Marmara. However, as the two artworks we discuss below illustrate, there was more at stake than a struggle between those seeking the free circulation of images and those seeking state control and monitored communication.

For one, the activists and the IDF both sought to mobilize cosmopolitan sentiments through the dissemination of images of the inhumane; of that which should be rejected in the name of humanity. These moves echo the situated dissent of Diogenes, as they appeal to some form of direct, unmediated image of the inhumane and immoral. The mission of the Flotilla was particularly suited for this: it carried humanitarian aid for a strangled population, and aimed for maximum media outreach. The latter included the policy to disseminate images of violent acts by the IDF against a non-violent, humanitarian mission. The IDF, on the other hand, sought to (literally) portray the Flotilla mission as an illegal intrusion, carried out by radicals that do not shy away from violent acts against law-enforcing officials. In the artists' rendering of this conflict, taking further what we have observed in the discourse of international criminal law, this contest of characterization is waged over the representation of the human body, especially as it may be identified by the face. A core issue behind the artwork concerns the control of information, pertaining to the visibility of the face, as the conflict is concentrated around the ability to see the face of the figure in the frame. The focus on the face becomes like a virtual unmasking, drawing attention to the body's 'true identity', and enlisting it as an ally in the political struggle for the institution of the law. And so we see an overlap with the methods by which international criminal law mobilizes the universal, reproducing and amplifying embedded political distinctions by occupying the figure or figures of humanity.

Secondly, the Flotilla mission was not about free press and the fight against censorship and state control of information. Rather, the goal was to disseminate images in the function of a media strategy, as part of a Zeno-like move to translate cosmopolitan sentiments into policy, rules and action. This becomes quite clear in the film *Scenarios Preparations*, which shows how some of the activists in the Netherlands prepare for their departure on one of the Flotilla ships. The film is edited as an observational documentary.²⁵ It is shot without voice-over, music or text on the screen, does not contain an explicitly spelled out argument or narrative, and gives the viewer the feeling that she is co-present at the meetings shown on film. The film starts out with a training session, which consists of a basic exercise used in theatre: the build-up of a character. The activists are asked to put themselves in the position of an ordinary Palestinian or Israeli, and to imagine as concretely as possible the life, times and character of this person. As the instructor explains,

21 M. Amir, 'Extraterritorial Images', in Forensis Architecture (ed.), *Forensis* (2014), pp. 720-740; R. Sela & M. Amir, 'Introduction', in R. Sela & M. Amir (eds.), *Extraterritorialities in Occupied Worlds* (2016), pp. 13-28. See also R. Sela & M. Amir, 'Representing Extraterritorial Images', (2017) 13 *Utrecht Law Review*, no. 2, <http://doi.org/10.18352/ulr.379>, pp. 7-12.

22 R. Sela & M. Amir, *Scenarios Preparations*, 2015, video, 35:20min. <<https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/WIM3AS>>.

23 *Image Blockade* (Works and Research Created within the Frame of Exterritory Project), The Center for Contemporary Art, 30 July-26 September 2015, Tel-Aviv. <<https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/PPBX1W>>. See also G. Peleg, 'Commando Unit Warrior is Prosecuting: "I Thought They Were Going to Execute Me"', Channel 2 News, 11 April 2014: <<http://www.mako.co.il/news-law/legal/Article-6cf8a45b4e15541004.htm>> (last visited 16 April, 2014).

24 Amir (2014), supra note 21, p. 724.

25 For an overview of the different documentary styles see B. Nichols, *Introduction to Documentary* (2001).

this is necessary for two reasons. First, because it gives the participations ‘another vision of a normal Palestinian or a normal Israeli, or whomever, as a message also they are just human beings’ (13:45). This cosmopolitan message is then linked to the more concrete aim of the training session, because thinking of Palestinians or Israelis as ‘just human beings’ ‘will definitely help you to communicate over there or to, ... yeah, ... to survive. When you feel oppressed you always think “okay, but maybe this is the guy whose dream is... you know, he has also two children and a wife”’. (14:10). This is necessary to empower the activists to fight with non-violent means for the good cause of the mission.

The film then, quite suddenly, moves to another topic, directly related to the struggle over images. The viewer sees an agitated leader of the action, informing the group that she has a ‘not so nice topic to discuss’ (16:46), because apparently one of the participants has leaked information about things that were discussed during the sessions to the press. What follows is footage of the group discussing the policy on media coverage: which kind of information should be freely given, which information should be on an embargo, which information should be censored at all? The viewer sees the group gradually reaching agreement on which restrictions on media coverage should be in place for the mission to be as safe and successful as possible.

The film stops there, but immediately raises subsequent questions about what we have just witnessed. The film contains an interesting tension between the style and the content: the style is observational, and suggests some sort of direct representation of what happened in the room. The fact that the film was shot on locations that were kept secret only adds to the feeling of co-presence created in the viewer. However, the content of the film shows that in that very same room activists and filmmakers discussed and agreed upon restrictions in terms of media coverage. Now what does this imply for the making and editing of *Scenarios Preparations* itself? It would defy the style and purpose of the film if answers to this question were presented directly within the film. Instead, we should treat the film as a starting point to think critically about the way in which we move from a Diogenesian moment towards policy, rules and action. The film shows that the move towards a ‘Zeno-like’ programme of cosmopolitanism unavoidably comes with distortions, selections as well as gatekeepers who determine what is shown, what is told as the dominant story of the cosmo-polis. Finally, in trying to mediate between the two, the caliber of the resistance that the film represents is compromised, as we discuss in conclusion.

5. Conclusion

In the end, the artists’ video reflects the peculiar stalemate we observe at the intersection of cosmopolitanism, extraterritoriality and international criminal law, where normative ideals are caught indeterminately between a particular act under law, and a grand gesture of legal renewal. Between them, there is the remainder of forces that fix the cosmopolitan possibility in a particular form – a form that does not overcome the conditions and discontents associated with territoriality, so much as reproduce them in a new register. Consider once more the video art, its genius consisting in part of aesthetic choices which underscore a central point of what we observe in the law: namely, there is nothing new here. The artists make a virtue of the lack of creativity in this piece of political art. The aesthetic is familiar and unadorned, the form and content alike defined by a series of simple choices. Likewise the photo stills from the Mavi Marmara, borrowed footage from well-known newsreels, are reminiscent also of the back pages of print weeklies.

More than anything else, the artwork is informative. From the video, we learn the everyday elements that constitute the heroic act of resistance, such as the quotidian exercise in empathy, the frustration of common betrayal, and the familiar negotiations that result. Against the overwhelmingly terrible backdrop of the Israeli occupation of Palestine, we see a record of what could have been a high school theatre production. In the video stills from the Mavi Marmara, we see a contest over identity reduced to tabloid images. In constructing these jarring juxtapositions, the artists reproduce for critique the conflicted history of cosmopolitanism. Cosmopolitan activism becomes caught: caught in the video between mundane solipsism and a compromised gesture, caught in the photo stills among competing claims of identity. And while the cosmopolitan ambition is caught up, the conditions it would reverse, including the abuses associated with the powers vested in and by territorial control, prove resilient. Likewise, we have observed a similar phenomenon in the practice of

international criminal law, where the underlying appeal to humanity takes several forms, moving between the local and the global – in the process papering over or distracting from temporal and structural problems of power and politics. Consequently, at times, the enterprise of international criminal justice, like the cosmopolitan programme that we trace back to Diogenes and Zeno, appears to become self-defeating. ■