

EDUCATOR'S
GUIDE

A man in a white suit and blue shirt is walking towards the camera in a grassy field. He is surrounded by other people, some in suits and some in military-style uniforms. In the background, there is a white van with the number 'NO-873' on its side. The scene is set outdoors with a grassy field and a hillside in the background.

PROSECUTOR

No law. No order.

A NATIONAL FILM BOARD OF CANADA PRODUCTION



INTRODUCTION

By Diana Dicklich and Kristine Collins

ABOUT THE FILM

Prosecutor follows the first prosecutor of the International Criminal Court (ICC), Luis Moreno-Ocampo, as, after five years on the job, his first two cases come to trial and he indicts a sitting head of state, Omar al-Bashir of Sudan. We have a front-row seat as Moreno-Ocampo, with no police force and only the law on his side, indefatigably travels the globe trying to end impunity and bring justice to a violent world ruled by force.

We watch as this supremely energetic man wears different hats—salesman, lawyer, manager, diplomat, victims’ champion—while carrying out his “crazy job.” With extraordinary access, we see him behind the scenes strategizing with his advisers and staff, struggling with the English language, meeting victims, doing media interviews, rehearsing the opening of his first case, dealing with the fallout indicting a sitting head of state and trying to hem in his wily opponent, al-Bashir. Moreno-Ocampo never forgets that the camera is on him. He never doubts his mandate or cause, even when others do. He never loses hope.

Along the way we get an overview, augmented by archival footage and interviews, of the founding of the International Criminal Court—the promise it holds out for global justice and the many obstacles that stand in the way. The filmmaker, Barry Stevens, never shies away from the tough questions, either posing them directly to the Prosecutor or letting his critics have their say and giving Moreno-Ocampo the chance to respond.

The film also shines a light on the role of some of the young, dynamic Canadians at the court: Nicola Fletcher, his media liaison; Eric MacDonald, the lead lawyer in one of the cases coming to trial; and Matt Brubacher, the Mennonite minister’s son from Kitchener, Ontario, who tires of waiting for arrests that haven’t come in one of the worst cases at the ICC and leaves for another far more dangerous job, extracting demobilized soldiers from the grip of one of the ICC accused, who remains at large.

RECOMMENDED AGE LEVEL

15 and up

N.B.: This film contains mature content which may not be suitable for all viewers. It is always recommended that educators preview a film before it is presented.

TARGET SUBJECT AREAS

Secondary: Global Studies, Social Studies, Geography, Law, World Issues, Media Studies

Post-secondary: Law, Global Studies, International Relations, Communication Studies, International Development, Anthropology, Sociology

KEY THEMES

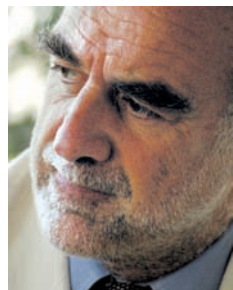
- Human Rights
- International Justice
- International Relations
- Empathy
- Diplomacy
- Peace
- Conflict Resolution
- Child Soldiers
- Armed Conflict
- Humanitarian Aid
- Jurisdiction

ABOUT THE GUIDE

This educator’s guide is designed to assist educators at the secondary level to integrate this film into their curriculum. The film is layered and complex and addresses highly sensitive issues. These aspects of **Prosecutor** make it both engaging and intimidating. This guide will provide the necessary background information to prepare a suitable lesson plan or unit to accompany the film, and to equip students with contextual information to better understand the various issues and processes presented in the film.

ABOUT THE FILMMAKER

Barry Stevens began his 25-year film career writing drama and then switched to documentary, writing such films as the International Emmy Award-winning *Gerrie & Louise* (1997), about the South African Truth Commission. His films as director include *The Bomber’s Dream* (2006 – Silver Chris Award, Writers Guild of Canada Award) and *Offspring* (2001), about Stevens’ search for his own sperm-donor father (Donald Brittain Award, International Documentary Film Festival Amsterdam Audience Award, nominated for an Emmy and a Grierson).



DISCUSSION QUESTIONS



This section is divided into five parts: **General, Legal, Ethical, Media Literacy and the Lubanga Trial.** Each of these proposes questions that can be asked of students across subject areas. As this is a complex film that addresses several cases currently with the ICC (as of 2011), this guide focuses on the lead-up to the trial of Thomas Lubanga and the trial itself—which was the first ever held at the International Criminal Court—in 2009. These questions are designed as “discussion starters”; as the educator, you can decide how best to use them in your classroom.

LEARNING APPROACHES

Your students may not know much about international justice, or they may know a lot! Encourage them to explore what they know and what they want to know BEFORE watching the film, using a tool called a KWL.

A KWL is an excellent inquiry-based tool that works very well when using media works in the classroom. This tool challenges students to question their own assumptions, reflect on those assumptions and knowledge vis-à-vis the film or media text they are consuming, and share what they learned in the process. KWL refers to what the students *Know*, what they *Want to know* and what they have *Learned*. If you want to take this process a step further, you can add a **C** for how the students’ opinions and knowledge *Changed* after watching the film. A KWL can follow a very simple structure such as this:

KWL – Template

Topic:		
K (WHAT I KNOW)	W (WHAT I WANT TO KNOW)	L (WHAT I LEARNED)

(The KWL was developed by Donna Ogle in 1986.)

Other approaches include hosting a classroom debate, holding a mock trial or following coverage of current ICC cases by creating a video diary or blog.

GENERAL QUESTIONS

- 1- Describe the role and the function of the International Criminal Court.
- 2- Describe the role of the Prosecutor, in this case Luis Moreno-Ocampo. How do you think he had to prepare for a role like this?
- 3- What does the concept of “global justice” mean to you?
- 4- What is Canada’s role in ensuring that human rights abuses do not take place in Canada and around the world?
- 5- What is meant by the term “the end of impunity”?
- 6- Describe what is meant by the term “neo-colonialism” when used in the context of the ICC and Africa.

LEGAL QUESTIONS

- 1- Describe Luis Moreno-Ocampo’s background. What makes him a suitable candidate for the job of the Prosecutor of the ICC? What personal qualities make Moreno-Ocampo suitable for the job?
- 2- Moreno-Ocampo describes the contribution the ICC can make in the world. After watching the film, do you agree or disagree with what Moreno-Ocampo claims this contribution can be? Why or why not?
- 3- There are many opponents of the ICC. Describe the reasons why someone or an organization would oppose the ICC and its work.

ETHICAL QUESTIONS

- 1- Throughout the film, Moreno-Ocampo talks about applying the same “standards” to everyone. In your opinion, why is this contentious? Should the same “standards” apply to everyone in the world? Why or why not?
- 2- Former prosecutor Sir Geoffrey Nice argues that “world justice” does not exist. In your opinion, what is meant by “world justice”? After watching this film and hearing both sides of this argument, do you think “world justice” can exist? Why or why not?
- 3- In your opinion, whose responsibility is it to ensure that human rights are upheld and respected in all regions of the world?
- 4- Some of Moreno-Ocampo’s decisions have significant human impact in affected regions. Some people may never experience justice in their lifetime. In your opinion and based on what you have learned in the film, is the work of the ICC, considering its potential human consequences, causing more harm than good or more good than harm?



DISCUSSION QUESTIONS



MEDIA LITERACY


- 1- Before watching the film, had you heard about the ICC? If so, how, and what did you know? How did watching this film change your views or contribute to your knowledge about the ICC?
- 2- Throughout the film we learn about many human rights abuses in relatively remote regions of the world. How do we generally learn about human rights abuses? In your opinion, is the media doing enough to inform the public, and if not, why do you think that is?
- 3- Why do we know so much about some legal cases and so little regarding others? What do you think can be done to change that? What can you do, in your own day-to-day activities, to learn more about what is happening in other regions of the world?
- 4- Describe the importance of media in this film. In your opinion, what role does the media play in building/developing international support for the ICC?
- 5- How do you think new technologies and platforms have impacted what we know about these issues? Do you think this is a positive or a negative change?
- 6- Describe the importance of documentaries among these new platforms. Do you feel that this documentary provided you with insight and information that you may not have garnered from other media sources on other platforms? Why or why not?
- 7- Before his BBC interview, Moreno-Ocampo receives media training, which provides us with an inside look at how the media is addressed. Describe the challenges associated with being put on the “hot seat” and having such an important international role.
- 8- Describe the perspectives represented in the film. Do you think it was important to include Professor Mamdani’s perspective? Did his opinions support or contradict your opinions? What element did Mamdani’s perspective add to the film?
- 9- Whose perspectives do you feel were missing from the film? Why?
- 10- Moreno-Ocampo is a controversial international figure. How does the film show us this?
- 11- Describe the differences and similarities between television and movies about law and justice and the process that is shown in *Prosecutor*.

THE LUBANGA TRIAL

- 1- Describe the significance of the Lubanga Trial. What challenges did the Prosecutor and his team face while preparing for this trial?
- 2- Describe how the Prosecutor addresses his team in preparation for the Lubanga Trial. Did anything surprise you about the trial preparations?
- 3- One of Moreno-Ocampo’s team members suggests that he should stick to a “dry recitation” in his opening speech for the Lubanga Trial. What is meant by “dry recitation”? Do you agree or disagree?
- 4- Describe the Prosecutor’s strategy to win over the jury. If you were in his position, how would you present the case to the jury? Would you use a similar or different strategy?
- 5- Some people accused Moreno-Ocampo of “grandstanding.” What is meant by this statement? Do you agree or disagree?
- 6- In the film, Ben Ferencz states that “Nuremberg was easy.” Why does he say this? How was Nuremberg “easy” compared to the Lubanga trial? Describe the importance of the Nuremberg Trials in relation to the current International Criminal Court.
- 7- Moreno-Ocampo refers to sending a “clear message” that if Joseph Lubanga is convicted, the era of impunity is ending. What does he mean by sending a “clear message”? Can you think of an example where a “clear message” was sent, either in your own life or in your school? Do you think this “clear message” changed the behaviour of others?
- 8- Do you think it was a mistake for Moreno-Ocampo to leave for Davos, Switzerland, during the Lubanga case? Why or why not?



BIOGRAPHIES



Luis Moreno-Ocampo, Argentinian. In the mid-1980s, Moreno-Ocampo was the deputy prosecutor of the Junta Trial in Argentina. The experience convinced him of the potential of international criminal justice: “There were no more killings in Argentina for the last 25 years. So we have different problems. We have hyper-inflation, economic crisis, political crisis, but no killings. And I think that is the contribution the court can do in the world.” He was unanimously elected first Prosecutor of the ICC by the Assembly of States Parties in 2003. His nine-year term expires in mid-2012. As Prosecutor, he has been the public face of the court. During his term he has managed to shine a tremendous spotlight on the court, partly due to his flamboyant and controversial personality. He has been hailed and reviled. His office is the engine room that drives the court.

IN HIS OWN WORDS

“A colleague told me: It’s a great honour to be a prosecutor of the court, but you have to decline. It would be a shame for you. You have a reputation. And then you will be nine years in The Hague doing nothing because the US is not supporting you. So how will you carry out investigations? How will you arrest people? So that was my challenge . . . When I started I had seven floors empty.”

“I have to ignore the criticism. I have to ignore those who are clapping in my favour. I cannot follow either. My role is to be totally clear. My only focus is stopping the crimes. That’s my job. I will not answer any stupid comments. I don’t care.”

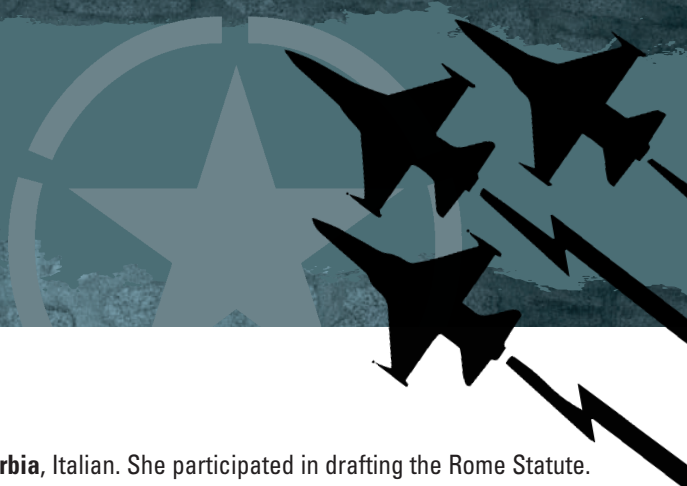
“All the time I have to think—the law, the judges, the media, the state parties. So my mind is focused on strategies all the time. I’m not a normal man.”

“It’s the beginning of a new era. It’s the beginning. So I see back to me five years ago—wow, we did a lot. When I see ahead—wow, it’s a long way. At least, okay, we are working.”

Fatou Bensouda, Gambian. Elected ICC Deputy Prosecutor in 2004. Lead prosecutor of the Lubanga Trial. Listed as the fourth-most influential African personality by *Jeune Afrique* magazine. Bensouda is slated to replace Moreno-Ocampo as chief prosecutor of the ICC in June 2012 at the end of his nine-year term. An African woman, she reacts angrily to charges that the ICC is a tool of neo-colonialism.

IN HIS OWN WORDS

“The first three cases are all referrals by African governments, and the court is working on behalf of African victims. So how this accusation can be made I don’t understand.”



Silvana Arbia, Italian. She participated in drafting the Rome Statute. Elected Registrar of the Court in 2008. It is her office that distributes arrest warrants to state authorities. She visited Darfuri refugees in Chad after the arrest warrant for President al-Bashir was issued to answer questions about the ICC and the warrant process and to listen to the concerns and opinions of Darfuri refugees. Her office, the Registry, is responsible for court outreach, witness protection, victim participation and running the detention unit.

IN HIS OWN WORDS

“Some people are going to put peace in conflict with justice. They want to diminish the value of some of the court’s decisions. But the fact remains that justice will take its course.”

Matthew Brubacher, Canadian. A Mennonite preacher’s son from Kitchener, Ontario. Worked at the ICC as an expert on the Lord’s Resistance Army (LRA) and the Joseph Kony case for years. Tired of waiting for arrests that never came, he left the ICC for a job with the United Nations helping young soldiers escape militias in eastern Congo. This is direct action— something he couldn’t do at his old job at the ICC. The contrast between his ICC desk job and the risky direct action of his new job is stark.

Ben Ferencz, American. He graduated from Harvard Law School in 1943 and was on the ground gathering evidence when the Nazi concentration camps were liberated, witnessing first-hand the horrors of crimes against humanity and genocide. He was a 27-year-old prosecutor at the Nuremberg Trials when he first pronounced, “The case we present is a plea of humanity to law.” Over 60 years later, in his 92nd year, he uttered the same words as prosecution special counsel during the closing arguments in the Lubanga Trial. He has spent his life tirelessly working toward the goal of replacing the rule of force with the rule of law.

IN HIS OWN WORDS

“Nuremberg was easy. We had control of the territory. Germans were totally obedient. We had no financial controls of any kind. We had access to all the documents in an incredible way. I didn’t call a single witness and convicted 22 guys of mass murder.”

“In my lifetime, a relatively short period in the history of man, I have seen the birth and growth of international criminal jurisdiction, which didn’t exist when I was a student. So this is tremendous progress.”

BIOGRAPHIES



Sir Geoffrey Nice, British. Lead prosecutor at the ICTY in the trial of Serbian President Slobodan Milosevic—the first post-Nuremberg head of state to be indicted and tried by an international tribunal. Once in the forefront leading the charge for international criminal justice, Sir Geoffrey now has his doubts. He is a vocal critic of how Moreno-Ocampo does his job. He represents Sudanese groups opposed to the arrest of President al-Bashir.

IN HIS OWN WORDS

“There is no world order, nor will there be until we have a world police force and a world army, so perhaps never. However, the establishment of ad hoc tribunals and then the ICC reflected some thinking—[maybe] woolly thinking. Optimistic thinking that a world order was or is possible and that these tribunals might be bringing some reality to that optimism. It may be that that well-intentioned thinking has had unfortunate results.”

Mahmood Mamdani, Ugandan-American. Academic, African specialist. A critic of the ICC. He does not believe, for example, that the recruitment of child soldiers has stopped because Moreno-Ocampo took Lubanga to court. He believes that the roots of violence in Africa are political and social, not just criminal, and unless all those issues are addressed the cycle of violence will continue. He also believes that the vast majority of people would be happy without justice as long as there is peace. Others, like the Prosecutor, believe that you cannot have peace without justice and the two go hand in hand.

IN HIS OWN WORDS

“A court which does not enforce the rule of law universally does not deserve the name of a court of law.”

Omar al-Bashir, Sudanese. President of Sudan. First sitting head of state to be charged by the ICC with genocide, war crimes and crimes against humanity committed against civilians in the Darfur region. Sudan is not an ICC member. The situation was referred by the Security Council. The indictment of a sitting head of state has been highly controversial. After the warrant was issued, al-Bashir expelled a number of international humanitarian organizations aiding Darfuris, potentially making their living conditions far worse. Despite Moreno-Ocampo’s prediction that as soon as al-Bashir entered international

airspace he could be arrested, al-Bashir has travelled to a number of countries, including two that are States Parties members but that did not arrest him. The African Union (AU) has refused to cooperate with the ICC in carrying out the arrest warrant.

IN HIS OWN WORDS

“We think the ICC is a tool to terrorize countries the West thinks are disobedient. The African position today, by consensus, is not to cooperate with this court, and it has reached a conclusion that this court is directed against the countries of the Third World, and a tool of neo-colonialism.”

Fabrice Weissman, Médecins Sans Frontières / Doctors Without Borders: “The ICC is supposed to work in the interest of the victims, and one can wonder if it’s in the interests of victims to start a prosecution right now.”

Darfuri refugee in Chad: “He has killed so many of us, it can’t get much worse for us here. What more is there to fear?”

Joseph Kony, Ugandan. Leader of the Lord’s Resistance Army (LRA). The first case referred to the ICC by the government of Uganda. Accused of committing crimes against humanity and war crimes, including murder, brutalization of civilians, abduction, sexual slavery, rape, mutilation and forced enlistment of children in northern Uganda. He remains at large in the jungles of the Democratic Republic of the Congo (DRC), where the LRA continues to commit the same brutal crimes. One of Kony’s co-accused, Dominic Ongwen, was himself an abducted child soldier. Kony has said he will not sign a peace agreement with the Ugandan government while an ICC warrant remains in force. This has made some ICC critics argue that justice stands in the way of peace, but most experts believe that Kony would never sign a peace agreement even if there were no ICC warrant for his arrest.

IN HIS OWN WORDS

Matt Brubacher: “Joseph Kony: he’s probably the worst criminal that we have even here in the ICC. The crimes kind of go beyond what would normally even be considered a war crime or a crime against humanity.”

Matt Brubacher: “Met one [child soldier] years ago who had just come out. Forced to bite his brother to death using his mouth. About six or seven years old, this kid. He was a really nice kid. When a child kills a family member, he feels like he can’t go back to the community anymore.”



BIOGRAPHIES



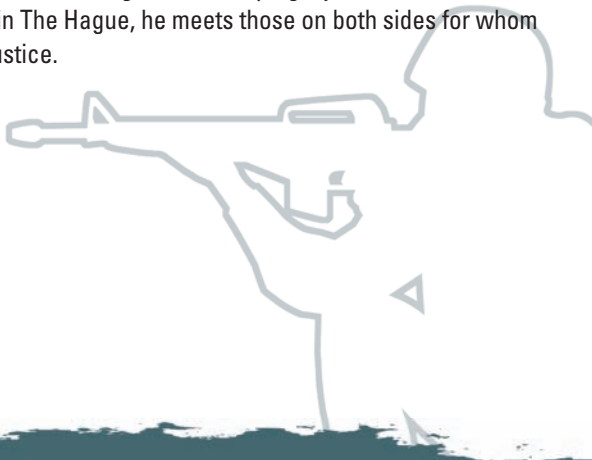
Thomas Lubanga, Hema (DRC). First ICC accused to be arrested, leading to the first ICC trial. Lubanga is charged with war crimes for allegedly enlisting and conscripting children under 15 years old—child soldiers—and using them to actively participate in hostilities between September 2002 and June 2003 in the Ituri district of the Democratic Republic of Congo (DRC). The Lubanga Trial has put the issue of child soldiers in the international spotlight, but it has also highlighted how long and costly mounting an international trial can be. (See sidebar: By the Numbers – The Lubanga Case.)

IN HIS OWN WORDS

"We have no child soldiers in our ranks. Sometimes they look younger than they are."

Luis Moreno-Ocampo (opening statement, Lubanga Trial): "They cannot forget what they saw, what they did. Child soldiers were exposed to the sexual violence perpetrated by Thomas Lubanga's men in unspeakable ways. One child soldier became severely traumatized after killing a girl who refused to have sex with the commander. Mr. President, Your Honours, Thomas Lubanga knew he was breaking the basic rule that the world established to protect those with the least power among us... little children. Children are not soldiers."

Mathieu Ngudjolo, Lendu (DRC). Lubanga's militia committed war crimes against Ngudjolo's Lendu tribe. In revenge attacks, Ngudjolo's forces committed war crimes and crimes against humanity against Lubanga's Hema tribe. Ngudjolo's trial is the second ICC trial, and the prosecution team is led by Canadian lawyer Eric MacDonald. His fiancée is a prosecution lawyer in the Lubanga case. The Prosecutor makes a trip to Ituri to visit Ngudjolo's village and meets his mother. He also visits the Hema village attacked by Ngudjolo's forces. Far from the courtroom in The Hague, he meets those on both sides for whom he is seeking justice.



TIMELINE OF EVENTS



The following events are referenced in the film *Prosecutor*.

WHERE IT ALL BEGAN

1945

- Nuremberg Trials

“NEVER AGAIN”

1948

- Genocide Convention

THE COLD WAR

1950s–1980s

- Junta Trials
- 1989 fall of the Berlin Wall

THE ROAD TO ROME

1990s

- Violent breakup of Yugoslavia
- Rwandan genocide
- ICTY, ICTR established

1998

- 120 countries sign Rome Treaty



A FUNCTIONING COURT

2002

- The Rome Statute enters into force
- Fighting in Ituri province, Democratic Republic of Congo

2003

- Judges elected, sworn in
- Prosecutor Luis Moreno-Ocampo elected, sworn in
- Uganda refers Lord’s Resistance Army (LRA), headed by Joseph Kony, to the ICC
- Darfuris rebel in Sudan

2004

- Democratic Republic of Congo (DRC) refers the situation in DRC to the ICC

2005

- UN Security Council refers the situation in Darfur to the ICC
- First ICC arrest warrants issued for LRA commanders

2006

- Thomas Lubanga arrested; first accused in custody

2008

- Mathieu Ngudjolo arrested
- Prosecutor requests arrest warrant for Sudanese president al-Bashir

2009

- Lubanga Trial starts
- Arrest warrant issued for al-Bashir
- 13 international aid groups expelled from Darfur
- Al-Bashir flies to a number of non-member states. He is not arrested and remains at large.
- ICC Registrar visits Darfur refugee camps in Chad
- Prosecutor flies to Ituri in DRC, visiting villages where Lubanga and Mathieu Ngudjolo committed crimes; meets Ngudjolo’s mother
- Matt Brubacher extracts demobilized soldiers from Commander Ntaganda’s ranks
- Ngudjolo Trial starts



GLOSSARY OF TERMS



NUREMBERG TRIALS

(“Where it all began”) When the Allies conquered Germany at the end of WWII, instead of taking revenge they put the most responsible Nazi leaders on trial in a court of law for war crimes, crimes against peace and crimes against humanity.

GENOCIDE CONVENTION

(“Never again”) In 1948, the new United Nations defined genocide as an international crime. The Genocide Convention recognized the desirability of establishing a permanent international court to try acts of genocide, war crimes and crimes against humanity. Legal experts set to work drafting a statute for such a court.

COLD WAR

From the late 1940s until the fall of the Berlin Wall, international affairs were dominated by two rival superpowers (the United States and the Soviet Union) and their competing ideologies (capitalism and communism). They were caught up in a nuclear arms and space race, carrying out espionage, propaganda and proxy wars (Korean War, Vietnam War, Cuban Missile Crisis) as they competed for influence among the decolonizing nations. One effect of the Cold War was that for half a century there would be no agreement and little progress in setting up an international criminal court.

DECOLONIZATION

When the United Nations was established after WWII, more than a third of the world’s population (750 million people) lived in territories controlled by the colonial powers: England, France, Belgium, Portugal, Germany, the Netherlands. Since then, 80 colonies have gained their independence, bringing the number of UN member states to 193. Initially the greatest supporters of the ICC, a number of African nations are now voicing concern that the court is an instrument of **neo-colonialism**, arguing that the ICC is only targeting Africa.

JUNTA TRIAL

1985 trial of the leaders of the military dictatorship that ruled Argentina from 1976–1983, accused of torturing, murdering or “disappearing” thousands of its citizens in a dirty war. Luis Moreno-Ocampo was the assistant prosecutor. It was the first time since Nuremberg that such powerful leaders were held accountable for human rights violations.

FALL OF THE BERLIN WALL

After WWII, Germany was divided into East and West Germany, and the city of Berlin in communist East Germany was itself divided into East and West Berlin by a wall. The fall of this iconic symbol of the Cold War in 1989 was the first step toward German reunification and marked the end of the Cold War.

BREAKUP OF YUGOSLAVIA

Starting in 1991, Yugoslavia broke apart in a violent war, the first on European soil since WWII. A new term, “ethnic cleansing,” entered the lexicon. In 1993, the Security Council established the International Criminal Tribunal for the Former Yugoslavia (ICTY) to try those most responsible for war crimes, crimes against humanity and genocide. It was the first international war crimes tribunal since Nuremberg.

RWANDAN GENOCIDE

In 1994, more than 500,000 Tutsis were massacred by Hutus in Rwanda, prompting the Security Council to set up a second international war crimes tribunal: the International Criminal Tribunal for Rwanda (ICTR). The horrible crimes committed in Yugoslavia and Rwanda once again highlighted the need to establish a permanent international criminal court and helped pave the road for an international conference to be held in Rome to draft the statute for the International Criminal Court.

COALITION FOR THE INTERNATIONAL CRIMINAL COURT (CICC)

A global network of over 2,500 civil society organizations—humanitarian and human rights groups, community and women’s organizations, academics, lawyers, bar associations—from 150 countries, the CICC played a significant role in pushing forward the Rome Conference, held in 1998. It subsequently led a concerted campaign for countries to ratify the treaty. That the Rome Statute came into effect only four years after the Rome Conference is extraordinary. The CICC continues to advocate, educate and lobby countries for universal ratification of the Rome Statute.

ROME STATUTE OR ROME TREATY

An international treaty signed by 120 states in Rome in 1998, it is the legal basis on which the International Criminal Court (ICC) is founded. The signatories agreed that the most serious crimes of concern to the international community—**genocide, crimes against humanity, war crimes, crimes of aggression**—must not go unpunished, and impunity for the perpetrators of these crimes must end.



GLOSSARY OF TERMS



GENOCIDE

The intent to destroy in whole or part a national, ethnic, racial or religious grouping. The difficulty of proving genocide in court—versus the media or a human rights group describing a crime committed as genocide—is in proving the **intent** of the perpetrator. There is disagreement in the international community about whether the crimes in Darfur amount to genocide.

CRIMES AGAINST HUMANITY

Murder, extermination, enslavement, deportation, enforced disappearance, torture, rape, the crime of apartheid and other inhumane acts committed as part of a widespread, systematic attack against a civilian population

WAR CRIMES

Crimes committed during an armed conflict—international or internal—or as part of a plan or policy on a large scale, including: murder, mutilation, cruel treatment, torture, taking hostages, intentionally directing attacks against civilian populations, pillaging, rape, sexual slavery, conscripting/enlisting children under 15 into armed forces and using them to actively participate in hostilities.

CRIME OF AGGRESSION

Planning/using armed force against another state not justified by self-defence. The most complicated and controversial of the potential crimes the ICC can try. The court will not have jurisdiction over this crime until 2018 at the earliest.

INTERNATIONAL CRIMINAL COURT (ICC)

The first permanent international criminal court in history, the ICC began functioning in 2002 after 60 states ratified (agreed to be bound by) the Rome Statute. The ICC does not have global jurisdiction—it can only try crimes on the territory of member states or a non-member country that has accepted ICC jurisdiction or has been referred by the Security Council. The ICC has no jury trials, no death penalty, no trials *in absentia* and no statute of limitations. Crimes committed before 2002 are outside the court's jurisdiction.

ASSEMBLY OF STATES PARTIES (ASP)

This body is made up of the countries that have ratified the Rome Statute. It funds, manages and oversees the ICC, elects the Judges, Prosecutor and Registrar, and has the power to change or amend the Statute. By fall 2011 the ICC had 118 States Parties members. ICC member states are responsible for making arrests. (To see pages 13 to 17.)

THE HAGUE

A Dutch city of half a million people on the North Sea that is often referred to as the “International City of Peace and Justice” because it is home to over 130 international organizations, including the ICC, ICJ and ICTY. Although The Hague is the ICC's seat (headquarters), trials can be held in other locations. It has become common practice to warn alleged human rights violators: “You could end up at The Hague.”

UN SECURITY COUNCIL (UNSC)

The ICC is independent from the UN, but the Security Council can refer situations in non-member countries to the court for investigation. The Security Council also has the power to halt any ICC investigation or suspend any arrest warrant. The role of the UNSC is controversial because as permanent, veto-holding members, China, Russia and the US are not members of the ICC. The Security Council has referred the situations in Darfur and Libya to the ICC.

IMPUNITY

(“The era of impunity is ending”) Heads of state and other high officials customarily enjoy immunity from prosecution (as “untouchables,” they are rarely brought to justice or they easily escape it), and are usually not held accountable for human rights violations. Reasons for this include the absence of a tradition of the rule of law, corruption, a weak judiciary and special grants of immunity. The ICC believes that no one, no matter how powerful, should be immune from prosecution, and that the end of traditional impunity may serve as a deterrent to keep people from committing atrocities in the future if they know they are liable to be tried or “sent to The Hague.”



GLOSSARY OF TERMS



COMPLEMENTARITY

It is the duty of every state to prosecute those responsible for war crimes, crimes against humanity and genocide domestically. But where an ICC member state is unwilling or unable to try its citizens—because of corruption, a weak judiciary or special immunity of leaders from prosecution, for example—the ICC can step in as a “court of last resort,” complementing domestic jurisdiction so that the perpetrators of such crimes do not go unpunished.

SITUATION

The Prosecutor receives **referrals** from ICC member states or the Security Council and **communications** from anybody else—individuals, victims, human rights groups—about possible crimes in a country or area. These are called situations.

PRELIMINARY ANALYSIS

The Prosecutor examines each situation brought to his attention to determine whether it meets the legal criteria to warrant investigation. Did the crimes occur after 2002? Does he have jurisdiction? Is the situation already being investigated by domestic authorities? Are the crimes of sufficient gravity? Situations that do not meet the legal criteria are not pursued. In some instances a situation will remain under preliminary analysis, monitored by the Prosecutor.

INVESTIGATION

The Prosecutor retains full independence in deciding whether or not to launch a formal investigation into a situation. However, the oversight of the judges serves as a safeguard against a potentially over- or under-zealous Prosecutor. When a situation is referred to him by a State Party or the Security Council, if he decides not to open an investigation he must provide the judges with his reasons. In the absence of a referral, the Prosecutor has his own powers, referred to as *proprio motu*, to initiate an investigation. In such an instance he must first get permission from the judges before he can proceed.

CASE

As the Prosecutor collects his evidence, he builds a case against one or more individuals. A given situation can result in more than one case. For example, the government of the Democratic Republic of Congo (DRC) referred the situation in the entire country to the Prosecutor. After investigating, he brought forward four cases.

EVIDENCE

At each stage of the proceedings, the Prosecutor is required to turn over to the judges and defence the evidence he has gathered in an ongoing process called **disclosure** or **discovery**. Evidence demonstrating the guilt of the accused is called **inculpatory**. Evidence helpful to the defence is called **exculpatory**. The Prosecutor is required to turn over both types of evidence in his possession. Carrying out investigations in regions that are unstable or where conflicts are ongoing makes gathering evidence and not putting victims or potential witnesses at risk very difficult.

ARREST WARRANT / SUMMONS

When the Prosecutor has enough evidence to proceed with a case, he or she provides this evidence to the judges and requests that they issue an arrest warrant or summons to appear. It is the judges who decide whether or not to issue a warrant or summons for some or all of the charges presented by the Prosecutor. A case cannot proceed until the accused is arrested or appears voluntarily before the judges.

ENFORCEMENT

Unlike in a national jurisdiction, the ICC does not have its own police force. It does not have the power to arrest anybody. It depends on the cooperation of member states and others, who are not always cooperative. This is a central weakness of the ICC: law, but no order. Of 16 arrest warrants issued between 2005 and 2011, only five accused have been arrested as of December 2011.

CONFIRMATION OF CHARGES

Once an accused is arrested or voluntarily appears before the judges, a confirmation of charges hearing is held to determine if there is reasonable evidence that the crimes as charged by the prosecutor have been committed and the case can proceed to trial. This is to safeguard the rights of the accused so that he or she is not put on trial with insufficient evidence.



GLOSSARY OF TERMS



TRIAL

Once the charges are confirmed, a case can proceed to trial. The accused is still presumed innocent at this stage. The Prosecutor first presents his/her case. The defence then presents its case. Each side is allowed to challenge the evidence and question the witnesses of the opposing side. A panel of three impartial judges then issues a judgment determining if the accused is guilty or innocent of some or all the charges.



VICTIMS

The ICC, for the first time in history, allows victims to participate directly in the court process to present their views and observations before the court and have their voices heard. In another first, the ICC judges also have the power to order a perpetrator to pay reparation to victims who have suffered as a result of the perpetrator's actions.

CHILD SOLDIERS

Under the Rome Statute it is a war crime to conscript or enlist anyone under 15 years of age and use them to actively participate in hostilities. There are an estimated 250,000 child soldiers in the world, 40 percent of whom are girls.

WORLD ORDER

Conspiracy theories aside, at present there is neither a world government nor a world army nor a world police force, but some critics of the ICC see the court as a step in that direction. A number of the countries that have so far refused to join the ICC, such as the United States, Russia, China, India, Pakistan, Israel, Turkey, North Korea and Iran, refuse to potentially have their citizens come under the jurisdiction of a court outside the boundaries of their sovereignty.

AD HOC TRIBUNALS/HYBRID COURTS

While the ICTY and ICTR, referred to as ad hoc tribunals, were established before the ICC came into existence, a number of other tribunals and hybrid courts have also been established since then, for example in Sierra Leone, Cambodia and Lebanon. They are non-permanent criminal courts, established within the UN system to address specific situations that fall outside ICC jurisdiction.

INTERNATIONAL COURT OF JUSTICE (ICJ)

Often referred to as the "World Court," the ICJ is also based in The Hague. It is frequently confused with the ICC, but they are not the same court. The ICJ is part of the United Nations and settles disputes between states. It does not try individuals. The ICC can only try individuals, not states or organizations.

BY THE NUMBERS

THE LUBANGA CASE

- | | |
|------|--|
| 2004 | Situation referred; investigation launched |
| 2006 | Lubanga arrested |
| 2007 | Charges confirmed |
| 2008 | Scheduled start of trial postponed when Prosecutor refuses to turn over confidential exculpatory evidence to the Defence |
| 2009 | Trial starts; halted when Prosecutor disobeys a judge's order |
| 2011 | Closing arguments |
| 2012 | Judgment expected |

Witnesses called:

- 36 prosecution, 19 defence, 4 court, 3 victims
- 123 victims granted status to participate
- 220 hearings
- 307 oral and 624 written decisions issued by the judges
- 3,560 filings (over 52,803 pages) made by the parties



THE 120 ICC MEMBER STATES

33 AFRICAN STATES



Benin
January 22, 2002



Botswana
September 8, 2000



Burkina Faso
November 30, 1998



Burundi
September 21, 2004



Cape Verde
October 11, 2011



Central African Republic
October 3, 2001



Chad
January 1, 2007



Comoros
August 18, 2006



Congo
May 3, 2004



Democratic Republic of the Congo
April 11, 2002



Djibouti
November 5, 2002



Gabon
September 20, 2000



Gambia
June 28, 2002



Ghana
December 20, 1999



Guinea
July 14, 2003



Kenya
March 15, 2005



Lesotho
September 6, 2000



Liberia
September 22, 2004



Madagascar
March 14, 2008



Malawi
September 19, 2002



Mali
August 16, 2000



Mauritius
March 5, 2002



Namibia
June 20, 2002



Niger
April 11, 2002



Nigeria
September 27, 2001



Senegal
February 2, 1999



Seychelles
August 10, 2010



Sierra Leone
September 15, 2000



South Africa
November 27, 2000



Tunisia
June 22, 2011



Uganda
June 14, 2002



United Republic of Tanzania
August 20, 2002



Zambia
November 13, 2002

The States Parties to the Rome Statute, February 24, 2012

THE 120 ICC MEMBER STATES

18 ASIAN STATES



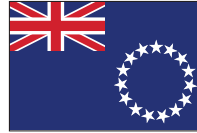
Afghanistan
February 10, 2003



Bangladesh
March 23, 2010



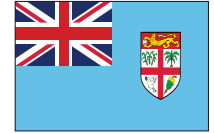
Cambodia
April 11, 2002



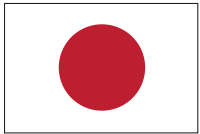
Cook Islands
July 18, 2008



Cyprus
March 7, 2002



Fiji
November 29, 1999



Japan
July 17, 2007



Jordan
April 11, 2002



Maldives
September 21, 2011



Marshall Islands
December 7, 2000



Mongolia
April 11, 2002



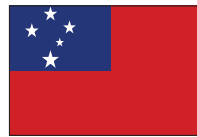
Nauru
November 12, 2001



Philippines
August 30, 2011



Republic of Korea
November 13, 2002



Samoa
September 16, 2002



Tajikistan
May 5, 2000



Timor-Leste
September 6, 2002



Vanuatu
December 2, 2011



THE 120 ICC MEMBER STATES

18 EASTERN EUROPEAN STATES



Albania
January 31, 2003



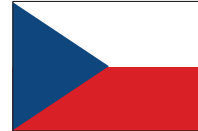
Bosnia and Herzegovina
April 11, 2002



Bulgaria
April 11, 2002



Croatia
May 21, 2001



Czech Republic
July 21, 2009



Estonia
January 30, 2002



Georgia
September 5, 2003



Hungary
November 30, 2001



Latvia
June 28, 2002



Lithuania
May 12, 2003



Montenegro
June 3, 2006



Poland
November 12, 2001



Republic of Moldova
October 12, 2010



Romania
April 11, 2002



Serbia
September 6, 2001



Slovakia
April 11, 2002



Slovenia
December 31, 2001



The Former Yugoslav Republic of Macedonia
March 6, 2002

THE 120 ICC MEMBER STATES

26 LATIN AMERICAN/CARIBBEAN STATES



Antigua and Barbuda
June 18, 2001



Argentina
February 8, 2001



Barbados
December 10, 2002



Belize
April 5, 2000



Bolivia
June 27, 2002



Brazil
June 20, 2002



Chile
June 29, 2009



Colombia
August 5, 2002



Costa Rica
January 30, 2001



Dominica
February 12, 2001



Dominican Republic
May 12, 2005



Ecuador
February 5, 2002



Grenada
May 19, 2011



Guyana
September 24, 2004



Honduras
July 1, 2002



Mexico
October 28, 2005



Panama
March 21, 2002



Paraguay
May 14, 2001



Peru
November 10, 2001



Saint Kitts
and Nevis
August 22, 2006



Saint Lucia
August 18, 2010



Saint Vincent and
the Grenadines
December 3, 2002



Suriname
July 15, 2008



Trinidad and Tobago
April 6, 1999



Uruguay
June 28, 2002



Venezuela
June 7, 2000

THE 120 ICC MEMBER STATES

25 WESTERN EUROPEAN AND OTHER STATES



Andorra
April 30, 2001



Australia
July 1, 2002



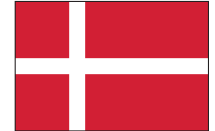
Austria
December 28, 2000



Belgium
June 28, 2000



Canada
July 7, 2000



Denmark
June 21, 2001



Finland
December 29, 2000



France
June 9, 2000



Germany
December 11, 2000



Greece
May 15, 2002



Iceland
May 25, 2000



Ireland
April 11, 2002



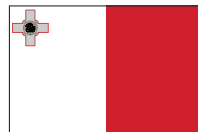
Italy
July 26, 1999



Liechtenstein
October 2, 2001



Luxembourg
September 8, 2000



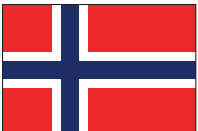
Malta
November 29, 2002



Netherlands
July 17, 2001



New Zealand
September 7, 2000



Norway
February 16, 2000



Portugal
February 5, 2002



San Marino
May 13, 1999



Spain
24 octobre 2000



Sweden
January 28, 2001



Switzerland
October 12, 2001



United Kingdom
October 4, 2001

RESOURCES



RELATED FILMS

- *The Reckoning: The Battle for the International Criminal Court* (2009)
– Directed by Pamela Yates
- *Milosevic on Trial* (2007)
– Directed by Michael Christoffersen (NFB)
- *Children of War* (2009)
– Directed by Bryan Single

RELATED BOOKS

- *A Long Way Gone: Memoirs of a Boy Soldier*
– Ishmael Beah, 2007
- *They Fight Like Soldiers, They Die Like Children*
– Roméo Dallaire, 2010



WEB RESOURCES

International Justice:

- ICC website
<http://icc-cpi.int>
- ICC channel on YouTube
<http://youtube.com/user/IntlCriminalCourt#p/p>
- Coalition for the International Criminal Court (CICC) website
<http://iccnw.org/?mod=home>
- The Hague Justice Portal
<http://haguejusticeportal.net>
- *International Justice Tribune*
<http://rnw.nl/international-justice>
(online magazine produced by Radio Netherlands Worldwide)

ICC Trials:

- Lubanga Trial
<http://lubangatrial.org>
- Katanga and Ngudjolo Trial
<http://katangatrial.org>
- Bemba Trial
<http://bembatrial.org>

Child Soldiers:

- War Child International website has a comprehensive Links and Resources section on child soldiers:
http://warchild.org/links_resources/childsoldiers/childsoldiers.html
<http://warchild.org.uk/issues/child-soldiers>
- Coalition to Stop the Use of Child Soldiers
<http://child-soldiers.org/childsoldiers/child-soldiers>
- The Red Hand Campaign – Worldwide Initiative to Stop the Use of Child Soldiers. Red Hand Day, February 12,
<http://redhandday.org/index.php?l=en&view=info>
- UN Office of the Special Representative for Children and Armed Conflict
<http://un.org/children/conflict/english/index.html>

