

From Nuremberg to The Hague

The Road to the International Criminal Court

An exhibition of the Nuremberg Human Rights Centre on behalf of the Foreign Office of the Federal Republic of Germany, in collaboration with the Goethe Institute 2006

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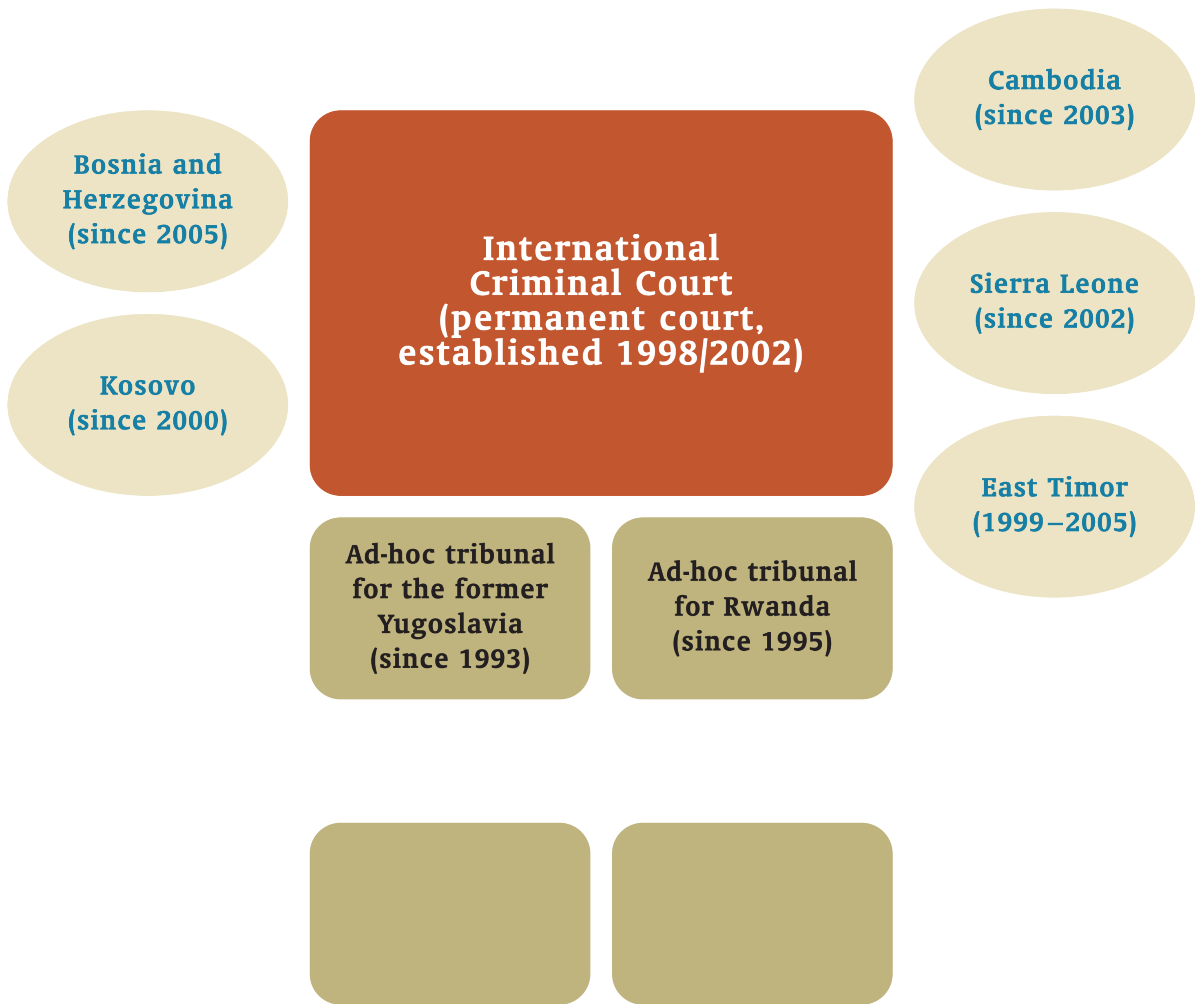
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Nuremberg was little more than a beginning. Its progress was paralyzed by cold-war antagonisms. Clear laws, courts and a system of effective enforcement are vital prerequisites for every orderly society. The matrix for a rational world system has countless parts that are gradually and painfully being pressed into place. The ICC is part of this evolutionary process. It is a new institution created to bring a greater sense of justice to innocent victims of massive crimes who seek to live in peace and human dignity. That's what the ICC is all about.

Benjamin B. Ferencz, a former Nuremberg Prosecutor as delivered at the swearing-in ceremony in the Hague of Luis Moreno Ocampo as Chief Prosecutor of the new International Criminal Court, June 16, 2003.

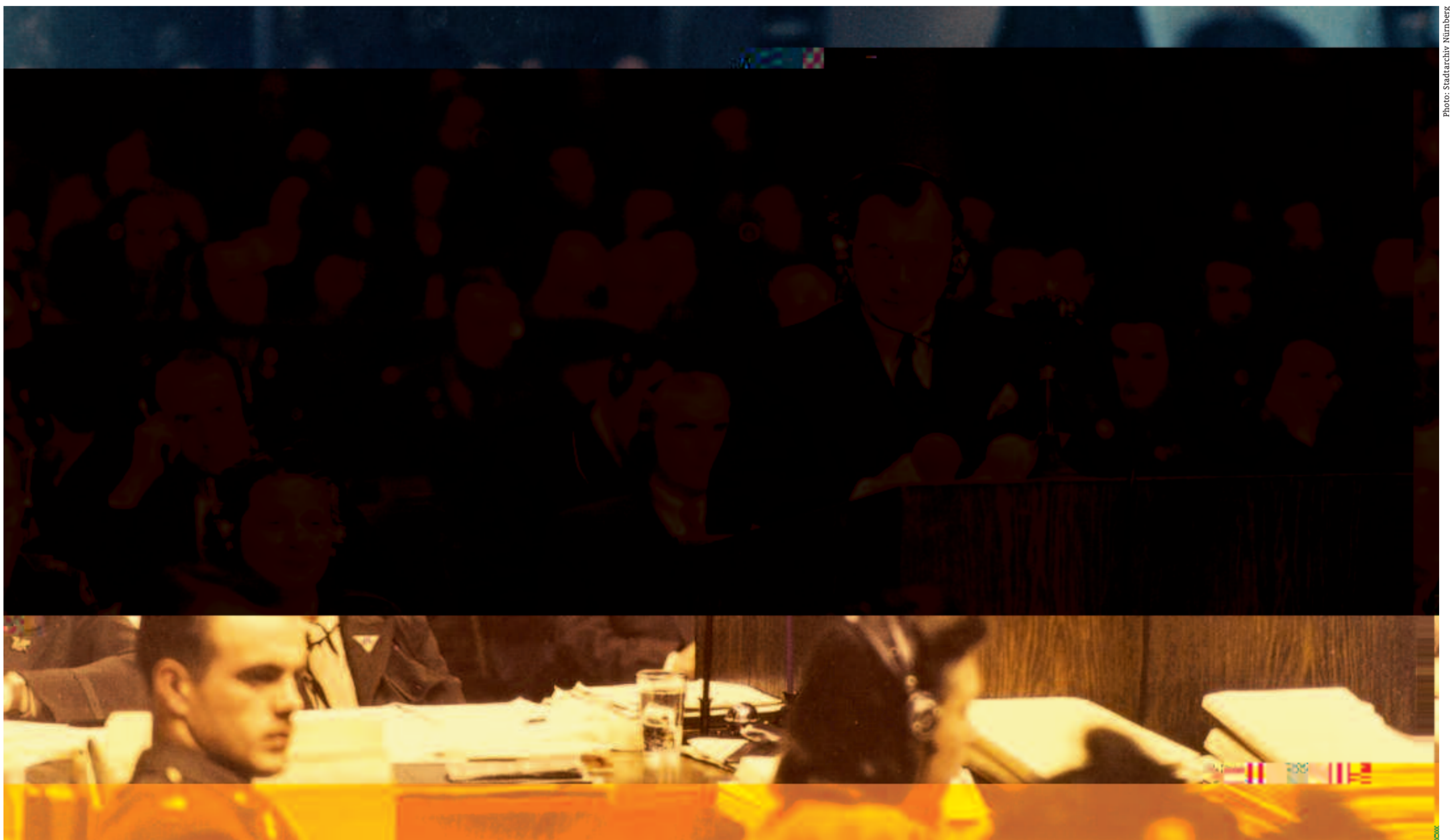
“From Nuremberg to The Hague”:

International and mixed criminal courts



The significance of the Nuremberg Trial for the development of international law

The Nuremberg Principles



Robert Jackson, the US Chief Prosecutor, warned against double standards in his opening statement in Nuremberg on 21 November 1945

1945
After World War II: “Justice, not revenge”
The international trial conducted by the victorious Allies at the end of World War II, at which those primarily responsible for the war and war crimes in Germany had to answer for their actions, was designed to meet the legal standards of the time insofar as was possible. The principles of this International Military Tribunal in Nuremberg went on to become an important source of international law. They thus had to be put on a generally recognized legal footing for future trials.

1946
The UN General Assembly, at its first session, reaffirms the principles of the Nuremberg trial
This endorsement, which came only weeks after the end of the trial, marked the first step towards their recognition as general principles of international criminal law.

1947
The International Law Commission is established by the UN General Assembly
The members of the International Law Commission (ILC) are independent international law experts, and are as a body charged with fostering the progressive development of international law and its codification.

1950
The Nuremberg Principles
The ILC developed the Nuremberg Principles from the provisions of the Charter of the Nuremberg Tribunal. They have since played a crucial role in the evolution of international law.

1. Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment.
2. The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.
3. The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.
4. The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.
5. Any person charged with a crime under international law has the right to a fair trial on the facts and law.
6. The crimes hereinafter set out are punishable as crimes under international law:
 - (a) Crimes against peace
 - (b) War crimes
 - (c) Crimes against humanity.
7. Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.

The Nuremberg principles thus set new standards for international law:

- Politicians are responsible under international law and can personally be held accountable for their actions.
- The safeguarding of international peace and respect for human rights prevail over national sovereignty.

“... we must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our own lips as well.”

Robert Jackson, US Chief Prosecutor in his opening statement in Nuremberg on 21 November 1945

A historic milestone:

The International Military Tribunal, Nuremberg, 1945–46



The political basis

Even before World War II was over, the Heads of Government of Great Britain, the US and the USSR had declared the punishment of the principal war criminals to be one of their main war objectives. In August 1945 Great Britain, the USA, the USSR and the Provisional Government of France signed the London Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, as well as the Charter of the International Military Tribunal (IMT).

The charges

- Crimes against humanity
- Crimes against peace
- War crimes

The notion of “war crimes” could at that time be traced back to the Hague Convention and Regulations on War on Land of 1907. The Tribunal referred to the Kellogg-Briand Pact of 1927 to support the inclusion of “the planning, preparation, initiation or waging of a war of aggression” as a crime against peace. The offence of “crimes against humanity” was based on the general principles of law recognized by civilized nations that formed part of the law of all nations, including Germany.

The defendants

The Allies put on trial 24 Nazis from the highest echelons, including the principal surviving members of the government, the army, the machinery of repression, as well as business and administrative leaders, including those in the occupied territories. The defendants were represented by German legal experts.

The judgments

22 judgments were handed down: twelve death sentences, seven prison sentences and three acquittals. In addition the main institutions of the Nazi regime were branded criminal organizations.

The aftermath

Nazi war criminals and concentration camp staff were also charged and convicted by other states. A further 12 trials with 177 defendants took place in Nuremberg between 1946 and 1949 under the authority of US Military Tribunals.

*The principal defendants:
Hermann Göring, Rudolf Hess,
Joachim von Ribbentrop and
Wilhelm Keitel
(front row from left to right)*

The Tokyo Tribunal, 1946–1948 (International Military Tribunal for the Far East, IMTFE)

In 1946, 28 major war criminals from Japan's military and political leadership were charged in Tokyo with the same range of offences prosecuted in Nuremberg. Seven were sentenced to death. The court was organized by the US with the participation of its allies in the war against Japan.

“... that four great nations flushed with victory and stung with injury stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that power has ever paid to reason.”

Robert Jackson, US Chief Prosecutor in his opening statement
in Nuremberg on 21 November 1945

Civil society's key role in the development of international criminal jurisdiction

The cry for justice

From Chile to Argentina, from East Timor to Rwanda and from London to Moscow, victims' families and human rights activists around the world have refused to be silenced – their call for justice has been sustained over the decades. Countless petitions and memoranda, demonstrations and acts of remembrance, and of course the remarkable truth and reconciliation commissions in numerous countries have contributed greatly to the new willingness of the judiciary and governments of many countries to finally give effect to the Nuremberg principles.



In Argentina and Chile, in Peru, Colombia and South Africa – around the world people are calling for truth and justice.



Fotos: Comisión de la Verdad y Reconciliación, Peru; Truth and Reconciliation Commission, South Africa; Rainer Hübler, Ernesto Jiménez, Vera Lenz

The UN establishes its first ad-hoc tribunal

The International Criminal Tribunal for the Former Yugoslavia

The legal and political basis

The disintegration of the former Yugoslavia led to a civil war that destroyed the lives of hundreds of thousands. In May 1993, for the first time in its history, the UN Security Council established an ad-hoc criminal tribunal under Chapter VII of the UN Charter as a measure to maintain international peace and security. The jurisdiction of the International Criminal Tribunal for the Former Yugoslavia (ICTY) is temporally and geographically limited to war crimes and human rights violations that constitute international crimes committed in any part of the former Yugoslavia after 1 January 1991.

The charges

- Crimes against humanity
- Genocide
- War crimes

Achievements to date

(as of July 2006)

161 persons from all sides of the conflict have been indicted, and proceedings undertaken against 155. The other six are still at large. To date 38 final convictions and 5 final acquittals have been handed down. The most spectacular trial to date, namely that of former President Slobodan Milošević, was brought to a sudden end by his death in March 2006. No judgment was passed.

Gender issues

The systematic rape of members of a rival population has been classified and prosecuted as a crime against humanity and a war crime. A special witness protection programme has been established for those giving testimony in such cases.

Muslim Bosnian women pray on 2 June 2004 with ICTY Prosecutor Carla del Ponte (left) at the Memorial Cemetery in Srebrenica.



Forensic experts inspect a mass grave near the Serb-controlled village Zvornik in Kamenica (archive photo from 21 August 2002). More than 100 Bosnian Muslims are thought to be buried here.

Genocide is brought to trial

The International Criminal Tribunal for Rwanda



Photo: Thomas Lohnes/Getty



Working for truth, justice and reconciliation: a gacaca court in Rwanda hears a defendant.

The International Criminal Tribunal for Rwanda has many similarities with the ICTY, especially as regards its creation, statute, objectives and structure. Like the ICTY, the Rwandan tribunal, which has its seat in Arusha, Tanzania, is an ad-hoc tribunal with limited temporal and geographic jurisdiction established under Chapter VII of the UN Charter. It commenced its work in late 1995 and has the task of investigating the crimes committed in Rwanda in 1994 and bringing the prime perpetrators to justice.

Nearly one million Tutsis and moderate Hutus were murdered between April and July 1994 and over two million people forced to flee their homes.

The ICTR charts new legal terrain

- The ICTR is the first court to have delivered a judgment that relied on the UN Genocide Convention of 1948 (in the Akayesu case). The former President of Rwanda, Jean Kambanda, is the first head of state in the world to plead guilty to the crime of genocide.
- The Tribunal has very clearly categorized sexual violence as part of genocide.
- The 66 persons detained, of whom 17 are serving sentences following final convictions (as of July 2006), include politicians and soldiers as well as businessmen, priests, doctors and media people who were involved in the genocide. The role of the media, whose hate speech made such large-scale genocide possible in such a short period of time, has been highlighted. For the first time since the Nuremberg trial, incitement to genocide has been condemned as a crime against international law.

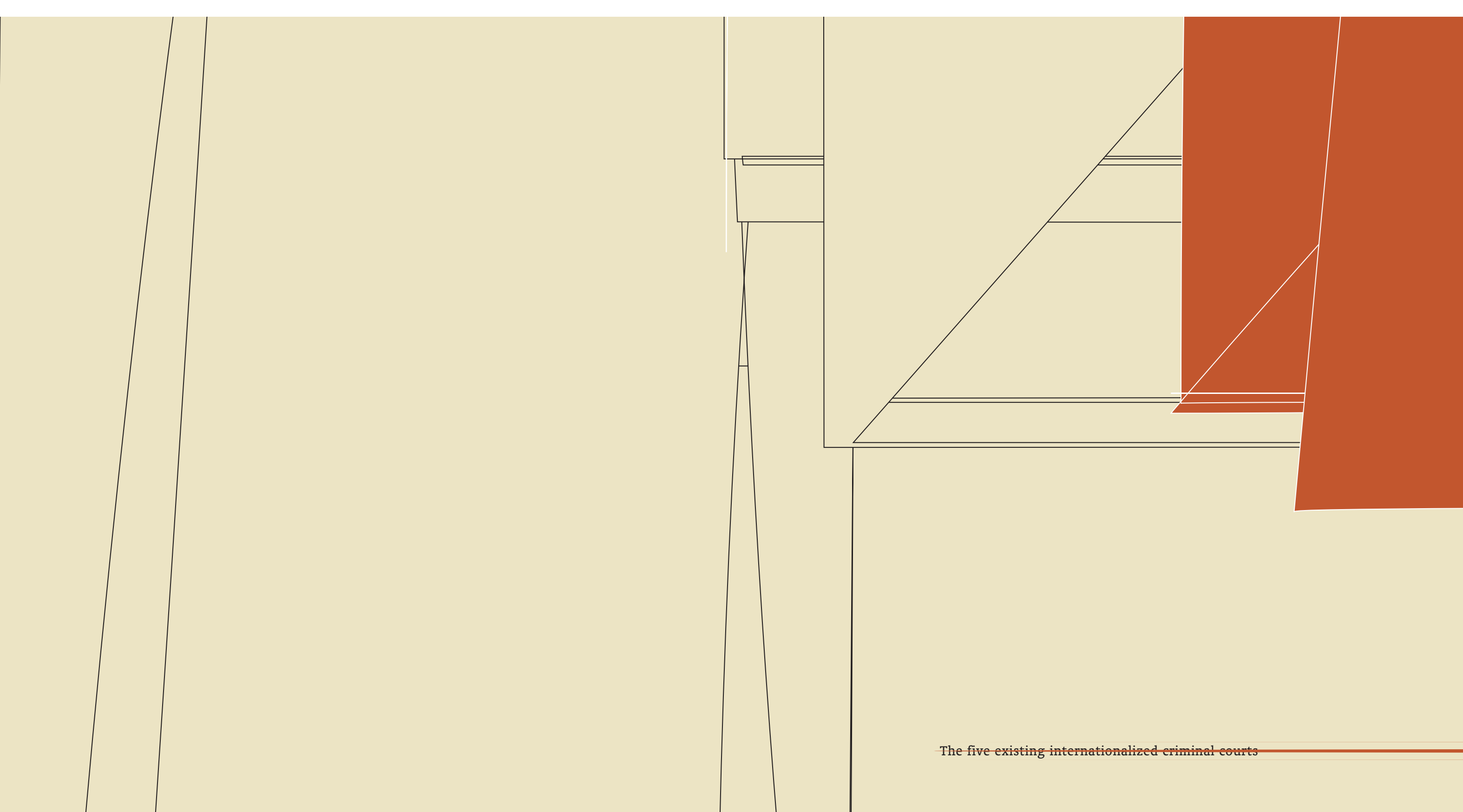
The ICTR and the national courts

Rwanda was home to millions of victims, but also to countless perpetrators. However, the ICTR only has the capacity to try a limited number of those who bear a particularly serious responsibility for the crimes committed.

It is therefore vital that justice is also meted out at national level. In addition to the ordinary courts, “**gacaca jurisdictions**” have been established. These are people’s courts with lay judges, derived from traditional concepts of community justice. The aim of these gacaca courts is not only to judge alleged offenders, but also to advance the process of reconciliation.

A mixed success

Internationalized criminal courts



The five existing internationalized criminal courts

An innovative instrument for international criminal

*“Regulation 64” Panels in the Courts
Special War Crimes Chamber
for Bosnia-Herzegovina*

the ICTY can thus focus its attention on senior leaders such as former Yugoslav President Milan Milutinovic, and give the national courts to deal with second and third rank leaders.

Universal jurisdiction for core international crimes



Anti-Pinochet demonstrators outside the Prime Minister's office at 10 Downing Street in December 1998 following the arrest of the Chilean dictator in Great Britain.

Crimes against humanity, genocide and war crimes may in principle be tried by the normal criminal courts of any country under the principle of universal jurisdiction. This principle has long been part of international law. When prosecuting on this basis, the courts of one country act in the general interest of all (law-abiding) states. Some countries' legal systems make it relatively easy to bring such prosecutions; others make it difficult unless their own nationals are involved.

The Pinochet case

Universal jurisdiction hit the headlines in October 1998 when the former Chilean dictator Augusto Pinochet was arrested in London on the basis of a Spanish warrant. This intervention by foreign courts led to Pinochet facing charges in his home country.

Numerous judges in various countries have launched investigations and issued arrest warrants against other former dictators and their lackeys.

Universal jurisdiction

Universal jurisdiction makes it possible for perpetrators to be indicted by a criminal court, even if there is no link between that forum and the perpetrator, victim or place where the crime was committed. Universal jurisdiction can be considered a further pillar of international criminal law that complements the international and hybrid ad-hoc courts and the International Criminal Court.

Universal jurisdiction is faced with a number of problems, including the fact that provisions of criminal law and criminal procedure differ from country to country. By incorporating the principles of the Rome Statute on international criminal law, including procedural guarantees, into their national law, the states that support the ICC create a common basis for jurisdiction.

The Rome Diplomatic Conference of 1998 and the establishment of the Court

1989

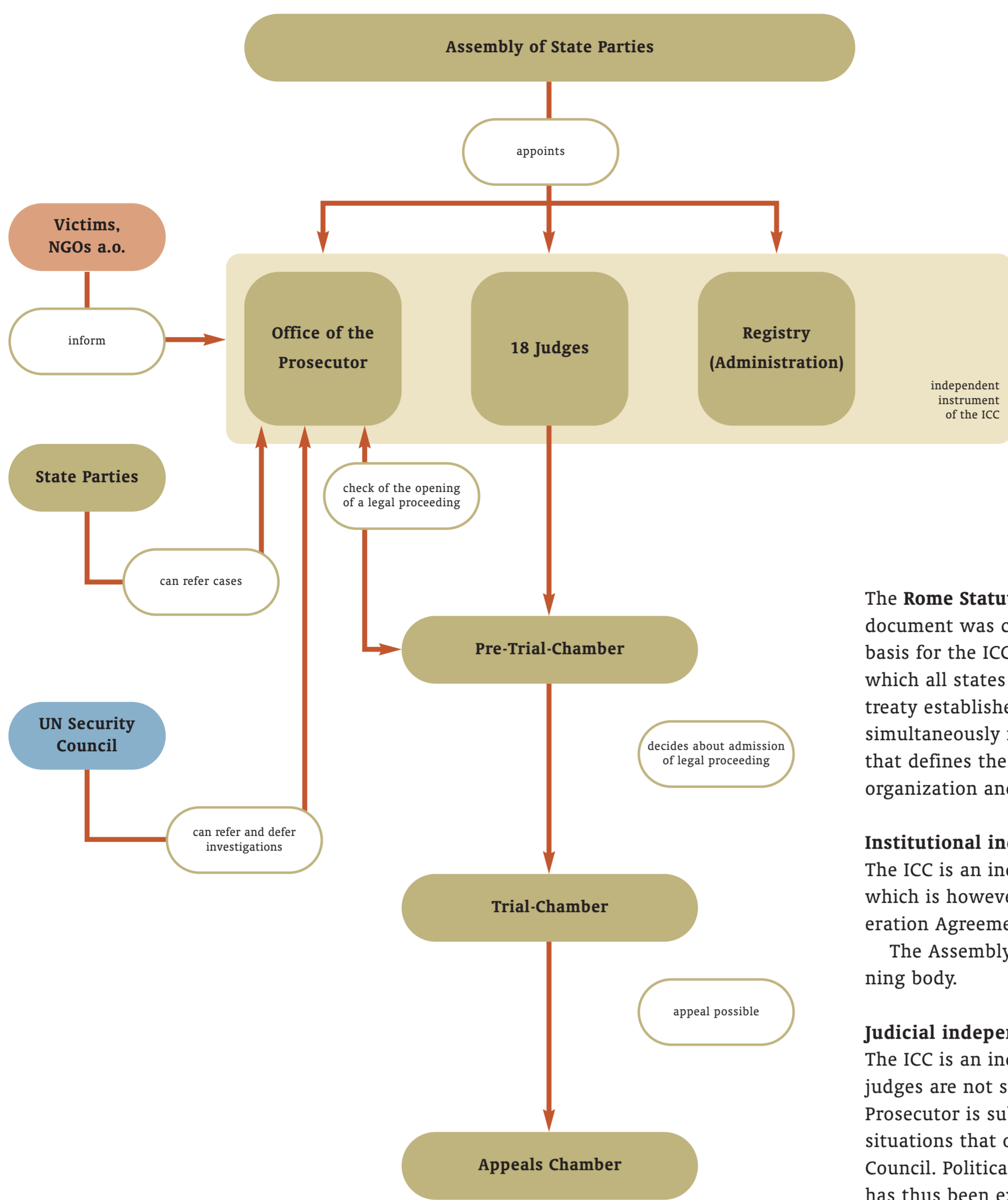
The idea of an international criminal court is resuscitated.

In response to a request by Trinidad and Tobago, the UN General Assembly asks the International Law Commission to resume the work it began in the 1950s on an international criminal court.

1994

Draft statute for an international criminal court; further discussions lead to the cr

The Rome Statute



The **Rome Statute**, named after the city where the document was concluded in 1998, forms the legal basis for the ICC. It is an **international treaty** to which all states may accede if they so desire. This treaty establishes the ICC (see Article 1) and is simultaneously its Statute, i.e. the legal document that defines the powers of the court and governs its organization and procedures.

Institutional independence of the ICC

The ICC is an independent international organization, which is however linked to the UN through a Cooperation Agreement and an Agreement on Immunities. The Assembly of States Parties is the Court’s governing body.

Judicial independence of the Court and Prosecutor

The ICC is an independent court. Once in office, the judges are not subject to any external authority. The Prosecutor is subject to no authority except in specific situations that of the Court itself or the Security Council. Political influence on the work of the Court has thus been excluded to the greatest possible degree.

The role of the Security Council

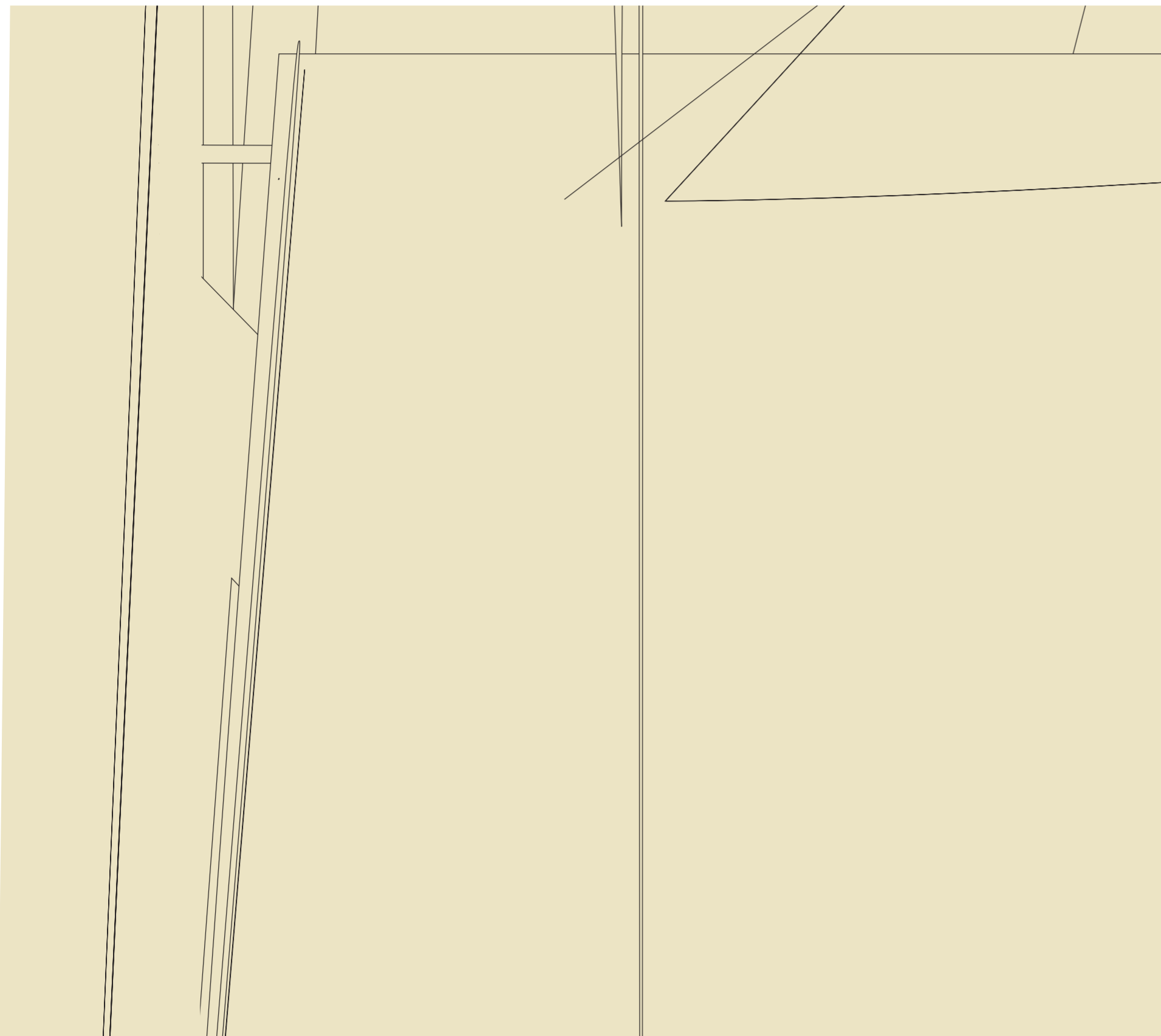
Pursuant to the Rome Statute, the Security Council has two prerogatives:

1. It may, in a resolution adopted under Chapter VII of the Charter of the United Nations, request the Court not to commence or proceed with a given investigation or prosecution under this Statute for a period of 12 months; the request may be renewed by the Council under the same conditions (see Art. 16).
2. The Security Council acting under Chapter VII of the Charter of the United Nations may request the Prosecutor to initiate proceedings. The result of such proceedings cannot however be influenced by the Security Council (see Article 13 (b)).

“Recognizing that such grave crimes threaten the peace, security and well-being of the world...”

Rome Statute of the ICC, preamble

The Court's organs



Election of judges and composition of the bench

The 18 independent judges are elected by the Assembly of States Parties for terms of three to nine years. They must be persons of high moral character, impartiality and integrity, who possess the qualifications required in their respective countries for appointment to the highest judicial offices.

The judges should

- represent the principal legal systems of the world,
- be drawn from different countries to ensure equitable geographical representation,
- include a fair number of female and male judges (Art. 36).

The Office of the Prosecutor

The Office of the Prosecutor acts independently as a separate organ of the Court (Articles 34 and 42). The Prosecutor may initiate investigations on the basis of information from any source, in order to determine whether a person may have committed a crime falling within the Court's jurisdiction (Art. 15).

The Court has no sovereign powers, and is thus dependent on the cooperation of the member states, for example in surrendering defendants to the ICC.

The Registry

The Registry is the administrative organ of the Court, which serves the Presidency of the ICC. In addition to administration as narrowly defined, the Registry is also responsible for protecting and assisting witnesses and victims.

The jurisdiction of the ICC



Luis Moreno-Ocampo (in front), Chief Prosecutor of the ICC, briefs the UN Security Council in New York on the Situation in the Crisis-Region Darfur (Sudan)

The ICC is the first universal, permanent court in history to be charged with trying crimes against international law.

The Court has jurisdiction over all types of crime that were prosecuted in Nuremberg and by the ad-hoc tribunals for the former Yugoslavia and Rwanda – i.e. war crimes, genocide and crimes against humanity.

As in the statutes of the ICTY and ICTR, sexual crimes (rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization) are explicitly included under those headings.

The crime of aggression is also included in the ICC Statute, but cannot yet be prosecuted since no agreement on its definition was reached in Rome.

The ICC cannot claim jurisdiction over crimes committed before the Court was established. It may thus try any of the above crimes committed on or after 1 July 2002, or at any time in the future.

The ICC may only hear cases if the competent state is unwilling or unable genuinely to carry out the investigation or prosecution (**principle of complementarity**, Art. 17). The ICC is not an appellate instance for national courts and cannot review their decisions.

In principle, there are three ways in which a case may come to be heard by the ICC:

- (a) A State Party to the Rome Statute refers a case to the Court;
- (b) The UN Security Council acting under Chapter VII of the UN Charter requests the Prosecutor to initiate an investigation;
- (c) the Prosecutor initiates an investigation at his own initiative on the basis of information he or she has received.

“Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished ...”

Rome Statute of the ICC, preamble

Due process guarantees

The first defendant to be tried by the ICC: Thomas Lubanga (Congo), Ituri militia leader, charged with conscripting child soldiers.



Photo: ICC Photo Gallery

The International Criminal Court is designed to be exemplary when it comes to questions of due process. The defendants are guaranteed a fair trial.

The Statute reaffirms general principles such as:

- *Ne bis in idem* (double jeopardy): nobody may be tried more than once for the same conduct;
- *Nullum crimen sine lege*: nobody may be tried for conduct that is not defined as a crime in the Statute;
- Presumption of innocence: all defendants are presumed innocent until proven guilty;
- No retroactive jurisdiction: nobody may be tried for anything they did before the Court was established.

It also explicitly states that the crimes within the Court's jurisdiction are not subject to any statute of limitations.

Appeals may be filed against ICC rulings:

- Appeals may be lodged with the Appeals Chamber against convictions, acquittals and sentences;
- Appeals may be made against other decisions taken by the Court or Prosecutor during the trial;
- Under certain conditions, a new trial may be applied for.

As an institution upholding the human right to life, the ICC **cannot impose the death penalty**.

“Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes ...”

Rome Statute of the ICC, preamble

Punishment is not everything

The victims' role

An old Kosovo-Albanian woman near Gjakova, Kosovo.



In cases before the ICC, as in all criminal trials, society's purpose is to condemn proven wrong-doers. But punishing the perpetrators is not enough if the aim is justice for the victims. Victims of core international crimes want:

- the perpetrators to receive a just punishment
- to be heard in the proceedings
- moral and political rehabilitation
- material compensation
- protection from further human rights abuses.



South African women grieve for relatives who have disappeared.

Criminal justice systems are normally unable to provide such comprehensive rehabilitation for the victims of such crimes. However, when establishing the ICC, new solutions were sought to give the victims greater justice.

Protection of the victims

“The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses” (Art. 68 (1)). Victim protection is a key objective of the ICC. The Statute attaches particular importance to the protection of women and children.

Reparations

The Rome Statute itself contains provisions on reparations (Art. 75). The Court may determine the scope and extent of any damage, loss and injury to the victims, and can order convicted persons to make appropriate reparations “including restitution, compensation and rehabilitation”.

Participation in proceedings

Victims cannot themselves institute proceedings before the ICC. But they can give the Prosecutor relevant information (Art. 15) and so indirectly help initiate an investigation or prosecution. During the trial itself they may with the Court's permission present their views and concerns either in person or through a legal representative. They also have the right to examine the accused. They appear for this purpose as victims, independently of any possible appearances as witnesses.

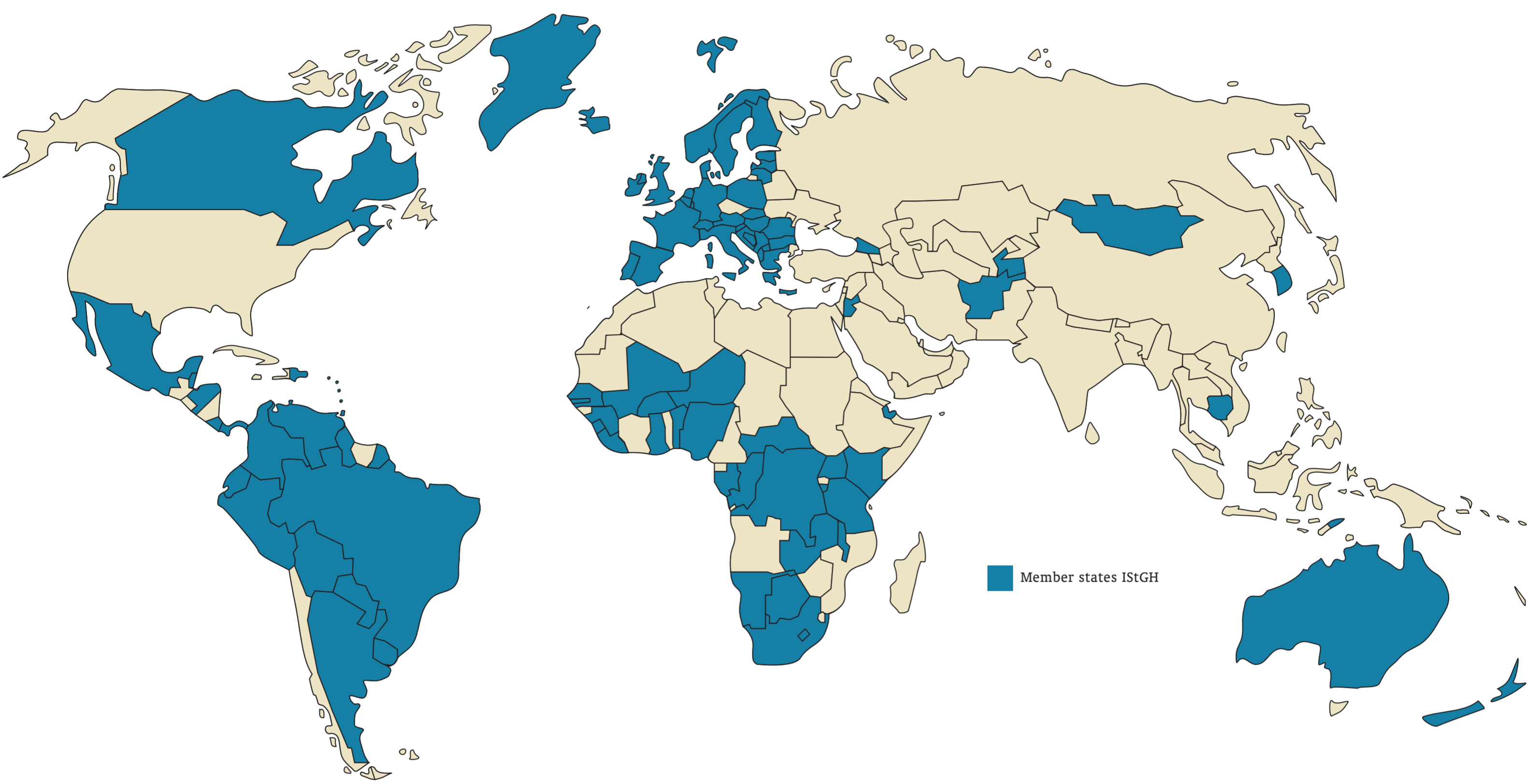
The Trust Fund for Victims

The Statute also provides for the creation of a Trust Fund for Victims by the Assembly of States Parties (Art. 79). The Fund is overseen by an independent Board of Directors and is currently administered by the Registrar. Money and other property collected through fines or forfeiture are paid into the Fund, which is disbursed for measures designed to ease the lot of the victims.

“Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity ...”

Rome Statute of the ICC, preamble

Towards a truly global international criminal court



A majority of UN member states have now joined the ICC

In November 2005, Mexico became the 100th state to ratify the Rome Statute of the ICC. The 100 member states include 27 from Africa, 22 from western Europe, 21 from Latin America and the Caribbean, 15 from eastern Europe, 12 from Asia, as well as Canada, Australia and New Zealand.

39 other states have signed the Statute, but have yet to ratify it (as of May 2006).

What states want to achieve with the ICC

- to end once and for all impunity for genocide, aggression, war crimes and crimes against humanity
- to subject everyone to the same rules with the same procedural safeguards
- to create a world-wide consensus on the work of the Court
- to bring about peace through law.

A world-wide consensus

If we all seize the opportunity the ICC presents, it will guarantee that these fundamental legal principles become universally recognized. All states are thus warmly invited to adopt this goal as their own and to join the ICC.

“Determined to these ends and for the sake of present and future generations, to establish an independent permanent International Criminal Court in relationship with the United Nations system ...”

Rome Statute of the ICC, preamble

” What people have said about the ICC

In the last sixty years we have moved from a world with no international criminal justice at all to a world that has begun to shape a sophisticated system for apprehending and prosecuting war criminals.

Richard Goldstone, former prosecutor at the ICTY, and former judge at the Constitutional Court of the Republic of South Africa

This Court has been established to end impunity for the most serious crimes that concern humanity as a whole. These crimes, often involving complicity by the very state that should prevent and punish them, deprive victims and communities of their basic rights and freedoms.

This is the primary mandate of the Court. Victims, witnesses, prosecution and defence acknowledge and affirm this mandate.

Getachew Kitaw, Secretary General, Pan African Lawyers Union

As a nation that has unfortunately experienced crimes of the utmost horrendous nature, we can only stress the importance of the establishment of the International Criminal Court to render justice to the victims and their families through the convictions of the perpetrators of such crimes. Only through justice can those who have suffered come to terms with the past, find peace and envisage a future without hate or resentment.

H.E. Ambassador Mirza Kusljagic, Permanent Representative of Bosnia and Herzegovina to the United Nations

In the long history of the world’s search for international justice and end to impunity, there is now a permanent court that promises to hold accountable perpetrators of the most serious crimes of concern to the international community: war crimes, crimes against humanity, genocide and the crime of aggression. For more than 50 years since the Nuremberg and Tokyo trials, the world has failed in bringing to justice those responsible for the millions of victims of such horrendous crimes.

Nobel Peace Prize Laureate, Jose Ramos-Horta, minister of foreign affairs and cooperation with the International Criminal Court (ICC)

The inauguration of the International Criminal Court today is a historic milestone that brings to fruition the collective efforts of the international community to establish a universal framework to end impunity for the most serious crimes under international law. This occasion also represents a reaffirmation of our commitment to human rights, fundamental freedoms and justice. The importance of the Court in the fight against impunity and in preventing gross human rights violations can not be over emphasized.

Sergio Vieira de Mello, former United Nations High Commissioner for Human Rights

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