



LESSON PLAN: THE ICC AND CHILDREN

Outcome

- Students will be informed about the impact of war on children around the world, and will be able to identify the violations that are being perpetrated against children according to the statutes of the International Criminal Court (ICC).

Materials/Resources

- “Small Victories” article
- Case studies
- Case Studies Organizer
- Department of Foreign Affairs and International Trade (DFAIT) summary of ICC statutes pertaining to children

Activities

1. Inform students that children are affected by war on a daily basis. Hand out the article entitled “Small Victories: Children’s rights under the International Criminal Court”. The article may be read aloud as a class or independently. Have them respond to the following questions:
 - Why do you think some countries strongly support the protection of children while others do not?
 - What are some of the ways in which children are being victimized through warfare?
2. Give students a copy of the case studies (based on true events) and the summarized version of the International Criminal Court Statutes that relate to children. Ask students to compare the case studies and determine which violations have been committed against these children. Students will use the included organizer.
3. Review the activity and engage students in a discussion about the role the International Court plays in protecting children from these crimes.
 - How successful will the ICC be in protecting the rights of children?
 - What challenges will the ICC encounter in enforcing laws?
 - Do you think there should be any special measures taken for children who are required to come before the court? What should these special measures be?
4. Inform students of the special treatment that will be afforded to children involved in ICC procedures.

Extensions

This lesson is a great lead into a more specific subject such as child soldiers, conflict diamonds, coltan, child trafficking, etc.

ARTICLE ON THE ICC & CHILDREN

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Small Victories Children's rights under the International Criminal Court¹

By: Karen Austin

Increasingly, children are the victims of war. UNICEF estimates that in the past decade there have been 2 million children killed in situations of warfare, 4-5 million disabled, 12 million left homeless, and more than 1 million orphaned or separated from their parents. Children are particularly vulnerable to the ravages of war because of their inability to resist prolonged trauma. Low food supplies and contaminated waters brought about by warfare also affect children whose growing bodies need nutrients and are unable to resist infections. In addition, psychological damages affect children for the rest of their lives.

The establishment of the International Criminal Court will help protect children who are victims of war as it will bring to trial perpetrators of some of the worst crimes known to humanity.

The Statute also aims to protect children who are actively involved in armed conflicts and may even be perpetrators of war crimes. In contemporary conflicts, government and armed opposition groups often recruit child soldiers as either support staff or active combatants.

Globally, it is estimated that there are over 250,000 child soldiers. In Rwanda there are 4,000 children being detained for their participation in the 1994 genocide. In Mozambique, close to 10,000 children recruited by RENAMO were forced to kill their own families and other civilians. In Liberia, 20 percent of total combatants were children under the age of eighteen. Some soldiers have been as young as six.

Because of their age, vulnerability, and immaturity, child soldiers are easy to coerce and control. They can be pushed into violent situations which they are too young to resist. Commanders often force child soldiers to participate in violent acts, sometimes against their own communities, in an attempt to desensitize the children and distance them from their families.

The Rome Statute has two clauses which aim to protect child soldiers. Although they are potential perpetrators of war crimes, their very participation, often under conditions of intimidation and fear, makes them victims as well as offenders. The definition of war crimes includes conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities (Article 8:2e/vii). This clause in the definition of war crimes moves the focus from the child soldier to the child recruiter, who will be liable for prosecution under the jurisdiction of the ICC and is a victory for advocates of children's rights. It also means that it is a war crime to not only conscript children, but also to use them for purposes other than direct combat.

¹ Document obtained from Human Rights Databank: <http://www.hri.ca/tribune/viewArticle.asp?ID=2476>

The inclusion of this clause was not without debate. The Chinese delegation was opposed to any provision against recruiting child soldiers, while several Middle Eastern states wanted only limited legislation concerning children taking part directly in hostilities. Several countries including Russia, Turkey, Brazil, and Cuba favoured even stronger legislation against recruiting child soldiers. The NGO community wanted the minimum age requirement to be raised to 18 years old, although there was opposition to this proposal, especially from the United States, whose army allows 17 year olds to enlist. Because of US insistence, the clause was changed from "recruiting children under the age of fifteen..." to "conscripting and enlisting children under the age of fifteen...". Many fear that this will prevent the Court from prosecuting guerrilla armies who 'recruit' children into their ranks. Although the clause is there, it is weaker than many human rights groups and government delegations had hoped.

In another attempt to protect child soldiers, the ICC Statute states that the Court shall have no jurisdiction over any person who was under the age of eighteen at the time of the alleged commission of a crime (Article 26). There is general agreement among the NGO community that with regards to children committing crimes under the jurisdiction of the ICC, the focus should remain on rehabilitation rather than punishment.

The protection of children and child soldiers under the ICC is a victory for which many delegations and NGOs struggled. Although somewhat diluted, the clauses offer a certain level of protection to children and offer a basis from which it is possible to move forward.

For further information, contact UNICEF (www.unicef.org); or the Coalition to Stop the Use of Child Soldiers (www.child-soldiers.org).

THE ROME STATUTE AND CHILDREN

1. Genocide

The Rome Statute specifically includes violations of the human rights of children in its definition of the crime of genocide, over which the Court will have jurisdiction:

Article 6: Genocide

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (e) Forcibly transferring children of the group to another group.

2. Crimes Against Humanity

The Rome Statute also affirms crimes against children as crimes against humanity.

Article 7: Crimes against humanity

For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

3. The War Crime of Recruiting or Using Child Soldiers

No Recruitment Under 15

An important feature of the Rome Statute of the International Criminal Court is that it criminalizes as a war crime the recruitment of children into national armed forces or armed groups and their use in hostilities whether the conflict is international or internal.

Most child soldiers are adolescents (although many are less than ten years of age), usually recruited because their immaturity makes them especially vulnerable to the psychological and physical control tactics of fear and intimidation used by their commanders. Child soldiers may serve in a variety of capacities from cook to combatant. Regardless of how they are recruited or for what use, child soldiers are likely to be forced into combat, where their inexperience and immaturity make them uniquely vulnerable to trauma, injury, and death. Often, the recruitment of children into armed groups involves children being forced into committing acts of extreme violence to desensitize them to death and bloodshed and fill them with the fear and hatred necessary to make them amenable to control by their commanders. Sometimes, children are forced to commit these acts against members their own family or community.

The Rome Statute specifically bans the use of child soldiers, both for international conflicts and for disputes within the countries party to the Statute. Consistent with the **Convention on the Rights of the Child** and **Additional Protocol II to the Geneva Conventions**, no person under the age of 15 may be recruited into armed forces or used to participate in hostilities.

Accordingly, the Rome Statute includes recruitment and use of child soldiers contrary to the **Geneva Conventions** as a war crime within the jurisdiction on the ICC:

Article 8: War Crimes

The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes such as:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities...

The Rome Statute also ensures that the conscription and use of child soldiers is not simply a crime when carried out in international armed conflicts, but also makes the practice a crime under ICC jurisdiction even when carried out nationally, within a country, such as during civil war:

Article 8: War Crimes

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

The Optional Protocol and the Rome Statute

The **Optional Protocol** was adopted after the Rome Statute. When the Rome Statute was negotiated, countries agreed that international law allowed for the recruitment of soldiers who were 15 years of age and over. Two years later, however, states agreed that international law had changed and that young people under 18 should not be compulsorily recruited into armed forces or groups or used in armed conflict

CASE STUDIES

Children and the International Criminal Court

The following are based on true stories. Compare these with the International Criminal Court statutes and find out what violations have been committed against children.

When a group of men arrive at a 14 year old girl's house in Sierra Leone she is raped. The aim of these men is to make people afraid of them. It worked, this girl is afraid.

13-year-old George is from Liberia. He joined the rebels when they came to his village and forced all the boys to join them. He is beaten by the soldiers and provided with drugs to give him the courage to fight. George has killed many innocent people.

In Northern Uganda girls have been forcibly impregnated by rebel commanders and then forced to strap their babies on their back and take up arms.

A boy in Burma talks about the beatings, sleep deprivation and starvation that the young recruits in the camp experience. He has been a soldier since he was 10 years old.

In Colombia, children who have been forced to fight are subjected to on-the-spot execution if they try to escape.

A boy from Burma is not allowed to practice his religion so he flees to the Thai-Burmese border after family members have been killed for their beliefs. He lives in a refugee camp with many other children like himself.

Thousands of women and children are trafficked each year. They are coerced, forced, and sold as sex workers, domestic workers, labourers and for other types of exploitative work in Thailand.

CASE STUDIES ORGANISER

Fill out this chart based on your findings from the fact sheet and the International Criminal Court Statutes (choose 5)

Country	Crime	Description
<i>Example:</i> Sierra Leone	Crimes against humanity War Crimes	Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity Wilfully causing great suffering, or serious injury to body or health

Country	Crime	Description

CHILDREN AND THE ICC

The following documentation was obtained from the Department of Foreign Affairs and International Trade website:

http://www.dfait-maeci.gc.ca/foreign_policy/icc/icc_youth-en.asp

The Rome Statute addresses children's interests by making sure that judges and advisers with the Prosecutor's Office will have expertise in issues pertaining to violence against children.

Article 36: Qualifications, nomination and election of judges

(a) The States Parties shall, in the selection of judges,...

(b) ... also take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children.

Article 42: The Office of the Prosecutor

The Prosecutor shall appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children.

The Rome Statute also requires the Prosecutor to be sensitive to the interests of children while performing his or her duties:

Article 54: Duties and powers of the Prosecutor with respect to investigations

The Prosecutor shall:

(b) Take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses, including age, gender as defined in article 7, paragraph 3, and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children.

Children As Victims

The Rome Statute also affords protection to children when they are called upon to be witnesses in ICC proceedings. In addition to the Victims and Witnesses Unit, the Rome Statute grants the Court leeway to make special arrangements for child witnesses, including holding portions of the proceedings at which children may testify in private.

Article 68: Protection of the victims and witnesses and their participation in the proceedings

The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children...

As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings **in camera** or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.