A World in Need of a Grand Strategy
An Interview with Luis Moreno-Ocampo

YJIA: Mr. Ocampo, we’re delighted that you’re joining the Jackson Institute. Why did you decide to come to Yale this year?

Moreno-Ocampo: For my nine years as prosecutor I saw how the twenty-first century was changing the way in which we manage violence in the world. What I’ve learned is that I need to learn how to transform that experience into information and knowledge. That is why I like the Jackson Institute because firstly, it is global affairs, not international relations. I am doing a course on Gaddafi, because my feeling is that Gaddafi expressed something new, he showed the possibility to have a new global order, and also the limits—because nothing was perfect with Gaddafi—but there’s a possibility there. No one is thinking in a global strategy, a grand strategy, for the world. I believe that we need a grand strategy—not just for one country but also for the world.

YJIA: Let’s go back to your time in Argentina. How do you think your experience as a prosecutor in the junta trials shaped your experience at the ICC [International Criminal Court]?

Moreno-Ocampo: When I was 32 years-old, suddenly I was involved in the junta trial in Argentina, the first trial where the top leaders of the country were prosecuted for massive atrocities. Argentina had a dictatorship, we went to the Malvinas-Falklands War, and then the dictatorship collapsed and we went to free elections. All of the information about the crimes committed by the dictatorship appeared and there was a big debate: what to do? It’s amazing because Argentina has sixty years of coups d’état, and suddenly people are voting for law, and the Congress adopted immediately a law that no amnesty is valid here. The first act of the president was to request a case against the generals, and for some crazy reason I became the deputy prosecutor of the junta trial. It was my first criminal case; I never did a case before, so it was interesting. Argentina transformed this into a basic foundation of the new democracy.

Luis Moreno-Ocampo was the first Chief Prosecutor of the International Criminal Court. Previously, he was the Deputy Prosecutor in Argentina during the “junta trial” in 1985 and the Prosecutor in the trial against a military rebellion in 1991. This year he’s joining the Jackson Institute at Yale as a Senior Fellow.
Normally people assume that the police and the army control the criminals, and in this case the army and police were the criminals. And normally people assume the community is against the criminals, but in Argentina, many people—including my mother—were in favor of the criminals, so everything was different, and for me it was fascinating to see the limits of how lawyers think. Lawyers believe everything is the law, but in fact it is not—the law is relevant, and being Argentinian, I know how relevant the law is—the law in my country was the difference between life and death, so for me the law is no detail. But there are other dynamics, political dynamics, and how they mix—that for me was shocking.

In Argentina, [what] I learned, was that the killings, the dirty war, was not just an Argentinian problem, but part of the Cold War. The corruption cases were also global; the money was coming from outside, going outside, so that’s why we need to do something global. We had a country committed to requesting justice and the leaders ensuring justice. At the ICC it’s different. The global community is like a unicorn, you can see a picture but it does not really exist. That’s why in some way it was much more complicated and different [at the ICC] but I believe there is a global contingency in some way, it’s moving and growing.

YJIA: Do you think there is a trend toward a globalization of the ICC despite the fact that a number of countries including the United States and China seem determined not to submit to its jurisdiction? Is that a threat to the future of the ICC?

Moreno-Ocampo: No, it’s showing something normal. The law is a tool for the weakest, no? If I am very strong, I don’t need the law, I can tell you what to do. But if you are weaker, you tell me, “Hey, you cannot do that. You should not do that, if you do that the police are there, the judge is there.” The fact that the biggest countries are not there and the Court is still working shows the power of the idea. I hope Climate Change is not ruining everything but if we are good, in twenty to forty years there will be a convergence.

When I started, President Bush was talking about me in his campaign with Kerry, “an unaccountable prosecutor” he was totally against. Just one year later he accepted the Darfur referral. In 2011, fifteen countries, China, Russia, India, the U.S., accepted the referral in Libya in one day—consensus. So, for me that is fantastic because it is the only twenty-first-century institution and it is working against all the predictions. That is what I think we need to understand better.

When I was at Harvard teaching, I had to leave because I was appointed prosecutor, and a colleague of mine told me: “You should reject the offer, Luis, it would be a shame for you, you will spend nine years at The Hague doing nothing on a single salary, because, without the U.S., how can you conduct investigations, how can you arrest people?” That was my challenge, and after nine years, we did it, the Court is in function.
I feel that we are not conceptualizing the changes, which are so fast, and I hope that my present place at Jackson Institute can help me to learn how to transform this experience into information—I have to learn how to be in touch with people like you. I believe that my generation, we were located in national systems, I see it in my colleagues, they cannot think in a global way. For you, it’s normal, you were born global, and we need that.

**YJIA:** In terms of creating a global strategy, how do you think you can persuade states to sign up to a global vision, to have more globalized institutions, when they might regard them as a threat to their sovereignty?

**Moreno-Ocampo:** Yes, I agree, that’s why the ICC is such an interesting and unique example. States agree to reduce their sovereignty to have a common system, but this also shows the limits because the agreement is very basic—it’s not about human rights, it’s just massive atrocities. I think something we have to learn is that globality means the limit is very, very small. For instance, I went to Libya, to Misrata, and one of the leaders showed me a museum of the martyrs with pictures of the people who died or were wounded in the fight with Gaddafi. I told them, “look, it’s very impressive to see the faces, but I don’t see here the faces of the girls raped, and I understand that you don’t want to expose them, but you should not marginalize them again.” One of them said “no, no, no, we are aware of that, and that’s why we have a program for them, we have a human rights program for them.” He explained to me, he gave me a lesson on tolerance and respect for differences. He said: “The problem is the girls raped lost their virginity, and therefore they cannot be married, they will be marginal forever. So, to fix the problem, we propose that people should marry them. To show leadership, if I have two wives, I marry two girls.” If you are a 15 year-old girl from Libya, you were raped, and your best option is to be the third wife or fourth wife of this 45 year-old man. What should I say? Nothing. That’s a national issue, there are many issues that should be solved nationally, there is no way that a global court could face—could help. We have to learn and to apply the proper solutions for some of the new problems of the world.

**YJIA:** Do you think there is a balance between seeking justice and seeking peace?

**Moreno-Ocampo:** This is a real issue, and it’s interesting because until the end of the Cold War, the overwhelming focus was on conflict between states and the threat to international peace and security. Since the Kuwait crisis, and the wars in Iraq, it was clear that an internal crisis could be transformed into a threat to international peace and security. So even before the formation of the ICC, the Security Council recognized that internal conflicts are threats to peace and security. There are two reasons for this. Firstly, no conflict is local; the genocide in Rwanda cost one million people, but then, the war in Congo affects seventeen countries and almost four million lives. Secondly, if you allow national leaders to be in power by committing massive atrocities, or to gain power through atrocities, you know your work will be difficult, because the effects of their actions will cross borders; they will be aggressive to others, or they will allow organized crime to develop in their countries, as with Al-Qaeda. The ICC is needed in the world today. No massive atrocity is just a national atrocity. Internal conflicts and
atrocities are threats to international peace and security. The ICC is part of the solution. Peace should be based on the principle that no leader is allowed to commit massive atrocities to stay in power. That’s a rule that’s difficult to enforce, but the rule is there.

YJIA: Can the ICC deal with transnational terrorist threats like Al-Qaeda?

Moreno-Ocampo: Of course! For organized crime, I don’t think the ICC would be the only solution. I remember, in Mexico in the 1980s we were thinking that organized crime was a Colombian problem just passing through Mexico to the U.S., but now we cannot control it. If we deny the problem, we cannot control it. We should really think about organized crime, because if not we will lose control and that’s not just a national issue. Somalia piracy is a similar example; it’s crazy how we are dealing with it. There are some issues we are not dealing with properly, and we need to think on that.

But then, when Rwanda happened, the world said no one cares about what happens in Africa, now we care about what happens in Africa but some people care about the leaders of Africa.

YJIA: I don’t think we can have an interview without touching upon criticisms of an African bias within the ICC. Do you think the ICC is doing enough to address these criticisms?

Moreno-Ocampo: [Laughing] It’s funny. When this campaign [was] started by President Bashir, I remember the chair of the African Union going to see Ban Ki Moon and saying there’s an African bias. Ban Ki Moon told him “look it’s about genocide in Darfur, there’s no African bias.” When Rwanda happened, the world said no one cares about what happens in Africa, now we care about what happens in Africa but some people care about the leaders of Africa. For me, it’s interesting because you are not asking me about the genocide of Darfur; you’re asking me about an African bias, that’s a success of Bashir. He convinced us, abusing the colonial past, that it’s wrong to prosecute an African leader when he’s killing African victims. What’s happened, they have the right to kill African victims? Should European countries with their colonial past do nothing? The facts are: President Bashir is indicted for genocide in Darfur and he’s still committing the genocide, still women are raped massively and we’re not even talking about that. The law says I should prosecute cases where there is genocide and no national proceedings; the law is not saying I should present blonde, black, different genders, different countries. I don’t need to do gender representation. I have to focus on the crimes committed.

YJIA: Do you think the ICC needs to do more in terms of communicating this?

Moreno-Ocampo: No, the ICC needs to do nothing. You should scream each time [The] New York Times, says: “Why ICC is not in Syria, Iraq?” You should say: “Look, New York Times, there is no jurisdiction for the ICC, you are requesting intervening when there is no jurisdiction.” Do you see Supreme Court judges here explaining what they’re doing? No. We need people, communities explaining. The ICC is doing nothing wrong.
YJIA: How much flexibility should the ICC have when there are concerns that a prosecution might have negative consequences for national stability? For example in Kenya, some claim the charges against the President and Prime Minister are making it more difficult to transition into a functioning democracy after violent elections . . .

Moreno-Ocampo: I would say “read,” read the past and learn. In 2009, everyone was desperate in Kenya thinking there would be violence in 2012, at the next elections. When I was working on Kenya, I went there and met the president and prime minister and they said they would support the prosecutor, and in fact the elections were pretty quiet and calm. I resisted the idea of some, that I should arrest Kenyatta Uhuru, to [prevent him] from running to be a candidate for the presidency. I moved no finger; it was not my role to try to stretch the judicial system to define an election in Kenya. The voters in Kenya elected and Kenyatta was smart enough to present a reconciliation process. Now, they are pretending “we cannot be prosecuted.” Well, O.K., [you may be] president, but you should respect the law, and in fact, respecting the law is the way to keep Kenya stable. The ICC is helping a lot, even today, to keep Kenya stable.

YJIA: Are there ways the ICC can help national-level trials take place, working in a facilitating position as a mediator rather than having to take people to The Hague?

Moreno-Ocampo: I know how important it is to be as local as you can. The legal standard is clear; the ICC has no primacy in the national system. Libya has the primacy to prosecute cases themselves. The ICC is basically like a panopticon. ICC is watching; states are doing more. Colombia is an example. The best outcome for the ICC will be zero cases, because zero cases means “no genocide” or that the international system is working. ICC is just a back-up system.

YJIA: In the case of Libya could you talk us through how do you decide who should be tried where?

Moreno-Ocampo: For us it’s obvious. We collect evidence, we review the evidence, and we define who is prosecuted, and that’s it. We follow the evidence. Diplomats don’t understand that. We try to prosecute those who are most responsible. We are not investigating who pulled the trigger, we are investigating who organized the system, gave an instruction, that’s what we did with Gaddafi’s regime. At the beginning I was insisting to my people that the evidence is good for Gaddafi but not for the others, but they convinced me that we also had enough for Saif and Sanoussi. We have good evidence that Saif was organizing the massacres and Sanoussi was implementing the decisions.

YJIA: So with people like Sanoussi in the Libya case, how do you decide who gets tried in Libya and who gets tried in ICC?

Moreno-Ocampo: When I received the referral, we started the investigation immediately, and in the middle of the conflict we had the evidence and we indicted Gaddafi, Saif, and Sanoussi. When Saif was arrested, I went to Tripoli to try to convince the government to let us do it. The leader of the government said to me, “Prosecutor, we are very grateful for what you did, because in those days we could not. But now we are a government, we should do it ourselves.” Saif is still in discussion, because it’s a
problem, but in Sanoussi they won. The ICC judges accepted the primacy of the national state. The problem with Saif is the fact that he is not yet in the custody of the national government. Saif is under the custody of the local militia, which is not giving access to the national government, so that is a real issue. As soon as this problem is solved, I think the Libyans will win the case.

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YJIA: Do you think some people see the ICC producing threats that don’t necessarily materialize in anything?

Moreno-Ocampo: Yeah I agree. Look, you don’t need to believe. Something is happening here. In nine years the ICC became operational, it started with the U.S. and China strongly against and in 2011 they’re both in favor, that is the reality, it’s not idealism. If State’s are committed to executing the warrant, then the threat will be much stronger.

We need to understand, to use it better. I did an op-ed on Syria because we can use the ICC in Syria, for the future. You can say: “In June 2014 the Security Council can decide whether to have the ICC there, six months to stop the crimes and negotiate a solution. If not, the ICC will intervene and to be sure they are afraid, request plans to arrest people.” With this combination then you send Kofi Annan, not naked as before. You send Kofi Annan with a threat and then you change the situation. It’s funny because, what I’m saying is exactly what any federal prosecutor in the U.S. would do to destroy mafias or organized crime. They use the law to threaten and to manage people but that’s new in international relations. That’s why, for me, one of the things I want to do at the Jackson is to try and see how to harmonize better the political decisions, the judicial decisions, and the media decisions. We should integrate and provide some tools. In twenty years the world stopped smoking in bars. We can stop leaders to commit massive atrocities.

YJIA: How do you see the ICC evolving in the future?

Moreno-Ocampo: The ICC is succeeding; the issue is that we’re not taking advantage of it. We need to understand how to control other massive atrocities, organized crime, human trafficking. The ICC is a beautiful global model because it respects national states. We need to learn how to transform this model to different areas. The issue is not about the court operations. The issue is about how humanity should enforce the same rules. I hope in the next semester we can start to find a new way of thinking. There is a possibility to do something big in the world today. We can do it. Live for it. Fight for it, or it will be impossible. It’s your generation who can do that.

– Interview conducted and edited by Louisa Brown with assistance from Mads Neumann and Scott Ross.