

## COLUMNIST

# Courting controversy

The time has come for the prosecutor at the International Criminal Court to stand down



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**R**adovan Karadzic's first appearance at the United Nations war crimes tribunal last week must have come as a welcome distraction for those working at another criminal court on the other side of The Hague.

The UN tribunal deals only with grave crimes committed in the territory of the former Yugoslavia since 1991. It will close when its work is completed.

By contrast, the International Criminal Court (ICC) is a permanent tribunal with jurisdiction over crimes committed from 2002. Not part of the UN, it is run by the 106 countries — 'states parties' — to have signed the Rome Statute of 1998.

The key figure in any such criminal court is its prosecutor. Serge Brammertz, who is prosecuting Karadzic, was appointed to the UN tribunal at the beginning of the year. A former law

ICC prosecutor.

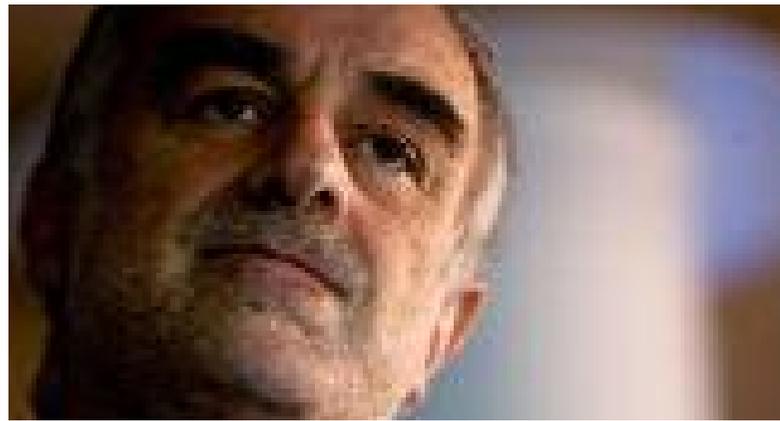
Before taking the job in 2003, Moreno-Ocampo was best known in his native Argentina as a 'celebrity' lawyer — although he had also helped prosecute former members of the junta in the late 1980s. He became ICC prosecutor after the states parties decided that they did not want Africans to be prosecuted by a western European. Despite having been a visiting professor at Harvard, he has limited English and, I am told, no French.

But three decisions in the past month or so have cast doubt on Moreno-Ocampo's competence. As I have said elsewhere, I believe he should now resign.

'It is very important that the prosecutor's independence be protected,' Professor William Schabas insisted at a recent meeting of the British Institute of International and Comparative Law in London. 'I think many people would be relieved if he offered his resignation, but I don't want him to be hounded out of office. That will only make things worse for the next person to take the job.'

But Schabas, director of the Irish Centre for Human Rights and hugely experienced in international criminal law, told me he would not mind if Moreno-Ocampo 'fell on his sword at this point'.

The first sign that things were going wrong was the decision of an ICC trial chamber to 'stay' the trial of Thomas Lubanga, accused of war crimes in the Democratic Republic of Congo. This



Luis Moreno-Ocampo: failed to disclose evidence in war crimes trial

which is not, in itself, admissible — but which could lead, in turn, to usable evidence. Sir Adrian Fulford, the presiding judge, ordered Lubanga's release 'because a fair trial of the accused is impossible'. That decision has now been suspended pending an appeal by the prosecutor.

Moreno-Ocampo's second misfortune involved allegations put to an internal panel of judges that he himself was guilty of sexual misconduct. The prosecutor has firmly denied the allegations, and they were roundly rejected by the panel.

Nearly two years ago, Christian Palme, a media spokesman in the prosecutor's office, submitted an internal staff complaint alleging that Moreno-Ocampo had engaged in 'improper conduct' with a female journalist from South Africa while visiting the country. Based on a recording of what the alleged victim had said two days later, Palme claimed that the prosecutor 'had taken that journalist's car keys and would not return them to her unless she agreed to sexual intercourse'.

His complaint was considered by a panel of three judges from the court. They interviewed the alleged victim. She firmly denied the allegations — as did Moreno-Ocampo. Given the lack of evidence, the complaint was dismissed as 'manifestly unfounded' in December 2006. But the judges made no finding that Palme had acted in bad faith or maliciously.

Moreno-Ocampo then personally sacked Palme for 'serious misconduct', claiming his press officer had complained maliciously. Palme appealed — and the tribunal that deals with employment

disputes at the court found there was 'no basis for concluding that [he] did not believe on reasonable grounds the truth of what he put in his internal complaint'.

The tribunal also found that Moreno-Ocampo's decision to dismiss Palme personally had been a breach of process. 'It is a fundamental aspect of due process that a person should not take a decision in a matter in which he or she has a personal interest,' the tribunal said. Palme was awarded compensation.

Just days later, Moreno-Ocampo announced publicly that he was seeking the arrest of the Sudanese president, Omar al-Bashir, for genocide, crimes against humanity and war crimes in Darfur. This was strange — there would have been more chance of apprehending him if the prosecutor had kept this application private, as frequently happens.

And although there may be enough evidence to convict Bashir of lesser crimes, leading lawyers believe that the charge of genocide is not made out. 'To make headlines, Moreno-Ocampo has gone for the spectacular case,' Schabas said. 'The ICC should acquit Bashir of genocide.'

You may wonder why you have not read much about this. It is because campaign groups that normally bombard journalists with information about the ICC — such as Amnesty International and Human Rights Watch — have kept their heads down. They seem to think that publicity will damage the court. In reality, the opposite is true.

**The Thomas Lubanga war crimes trial was thrown out because the prosecutor had failed to disclose evidence that could have exculpated the defendant**

professor and Belgian federal prosecutor, he is fully fluent in four languages, including English and French, the working languages of international institutions.

The UN tribunal's gain was the the ICC's loss. Brammertz had been a deputy prosecutor at the ICC until he walked out in 2005 — initially on leave, though it was widely known that he would not return so long as Luis Moreno-Ocampo remained

would have been the first case brought to trial by Moreno-Ocampo in his five years at the court. But it was thrown out last month because the prosecutor had failed to disclose evidence that could have exculpated the defendant.

The prosecutor's approach, according to the court, amounted to 'a wholesale and serious abuse' of an exception that allows prosecutors to receive evidence

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