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Enforcement of international humanitarian law



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Upon completion of Module 4, students will appreciate that:

- a grave breach of IHL is the same as committing any other serious crime and is punishable in courts, just like any other serious crime
- because of the nature of many war crimes, special courts and institutions have been created to exclusively deal with those crimes
- not all breaches of IHL constitute war crimes, and only activity which is a grave breach of IHL rules would be classified as a war crime
- war crimes can be tried both in domestic courts of a country or in international courts specially set up to deal with war crimes. If it is difficult to try a war crime in the domestic courts of a country, such crimes are sometimes taken to an international court. However, it is usually expected that the domestic courts of a country will deal with the war crimes committed by its nationals.

The exercises are designed to help students:

- understand the mechanisms through which IHL is enforced
- decide the best course of action by putting themselves in the shoes of decision-makers
- develop their lateral thinking skills and their ability to critically evaluate a set of facts
- understand the different perspectives of those involved as victims, perpetrators and observers
- understand the limitations of the different mechanisms involved.



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The focus of this module is war crimes. War crimes occur in **armed conflict**, and are defined under international humanitarian law (IHL). Students may also have heard of other types of international crimes, including genocide and crimes against humanity which are not categorized as war crimes. These are not defined under IHL, and can occur in armed conflict or in peacetime. All these different categories of international crimes can be tried by international and national courts. They are explained further below.

A **war crime** is a grave breach of the Geneva Conventions or Additional Protocol I, or a serious violation of the laws and customs that apply to armed conflicts. Students have already covered the basic principles of IHL, from which war crimes are derived. This can include wilful killing, torture or inhumane treatment, taking hostages, killing prisoners, attacks on undefended towns which are not military objectives, or attacks on civilians or those who are providing humanitarian assistance. Enlisting and conscripting children under the age of 15 as soldiers and using them in hostilities is also a serious breach of IHL. The list is long, but the overall aim of IHL is to reduce unnecessary suffering associated with conflicts.

Genocide covers acts committed, during peacetime or wartime, with the intent to destroy a national, ethnic, racial or religious group. This can include killing or seriously injuring members of that group, forcibly transferring children from one group to another group, or acts designed to prevent births of children to a particular group. The term “genocide” is not used in the Geneva Conventions or in their Additional Protocols, although such acts (e.g. killing of civilians) may constitute war crimes under IHL.

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Crimes against humanity may also occur in peacetime or wartime, and include many different types of crimes, such as murder, torture, enslavement, arbitrary imprisonment, enforced disappearances and rape. To be considered as a “crime against humanity”, such crimes must have been carried out as part of a widespread or systematic attack against a civilian population.

Not all breaches of IHL are regarded as war crimes. While any breach of IHL is punishable, all states have a collective and greater responsibility to prosecute war crimes.

Crimes of aggression: Students may also raise questions as to whether it is an international crime for one country to wage war on another country. For information, the unlawful use of force by one country towards another is called “aggression”. This crime is not a part of IHL, which concerns the conduct of parties to a conflict once war has broken out. Acts of aggression are regulated by the United Nations Charter, which defines when states may use force against one another (for example, in self-defence). A formal definition of a crime of aggression has yet to be agreed upon by states. The International Criminal Court is unable to hear such cases until a definition is agreed.

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Enforcement of IHL

The process of enforcing IHL can be done in two ways:

Judicial: A range of courts and tribunals are involved in ensuring that IHL is enforced. They span from domestic courts through to the International Criminal Court (ICC) in The Hague, in the Netherlands. The main focus in this module is the ICC and we will be looking at how this works in practice, through interactive activities and role play.

Non-judicial: Governments of countries involved in conflicts have also been known to offer non-judicial services in a bid to help victims and to bring about justice. These services do not involve courts or judges, may be more informal in nature and governments are not bound to offer them. However, it is sometimes felt that because court trials can take a long time to complete and may be costly, these options may offer a quicker route to achieving justice. Such mechanisms include truth commissions, apology and forgiveness, compensation in the form of monetary, psychological and medical services, memorials, community reconciliation and the return of property.

Truth commissions have been especially useful in highlighting many war crimes and in helping victims achieve justice. According to Amnesty International, from 1974 to 2007, at least 32 truth commissions were established in 28 countries. These commissions offer war victims, among other things, the opportunity to discover the true reasons behind the crimes they suffered from, and may offer family members the chance to find out what happened to those who were killed or disappeared during the war. Truth commissions are different from court proceedings, in that they are not specifically set up to try individuals for crimes, but may involve gathering evidence, compiling reports and issuing recommendations. In general, the truthful telling of events in armed conflict may lead to forgiveness, and eventual reconciliation, among war-torn societies.

Another non-judicial mechanism sometimes used is compensation given to war victims so they can rebuild their lives. Unfortunately, in some societies affected by conflict, such compensation may not be readily available.

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PART 1: EXERCISE 1: ICE-BREAKER: WAR CRIMES



This introductory activity is designed to allow students to explore crimes that can specifically be classified as war crimes and to understand that not all breaches of international humanitarian law (IHL) are classed as war crimes.

For group use

- 1A.** Agree
- 1B.** Disagree
- 1C.** Neutral
- 1D.** Unsure

TIMINGS: 5 minutes

Words marked in **bold** are resources available to the teacher in this lesson pack.

List the following on the board:

1. Shooting civilians who are not participating in the armed conflict.
2. Misusing the red cross or red crescent emblem to trick the opposing side and injure or kill their combatants.
3. A commander of a prisoner-of-war camp failing to post a copy of the Geneva Conventions for prisoners to view.
4. Attacking historic monuments.

Now ask the students to decide and classify the listed actions into the following categories:

AGREE It is a war crime

DISAGREE It is not a war crime

NEUTRAL It depends

NOT SURE

The students can show the decision they have made through a 'walking debate' with **1A. AGREE** at one side of the room, **1B. DISAGREE** at the other and **1C. NEUTRAL** and **1D. NOT SURE** in the middle, forming a continuum. Students can position themselves in the room, according to their decision. Alternatively, it can be carried out as a 'four corners' exercise with one category displayed in each corner of the room and students asked to move to the corner which best corresponds to their decision.

Ask the students **why** they have classified each action in this way.

This exercise will help clarify that not all illegal actions during wartime can be classed as war crimes even if they do constitute a technical breach of IHL.

Then ask the class to state what crimes they have heard or read about in the media that might have occurred during wartime. Encourage them to refer to examples from previous Justice and Fairness modules. You can also provide newspapers or media articles in which they can look for examples. Write the additional examples provided on the board and ask the class to classify them into the above categories as well.

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PART 1: EXERCISE I: TEACHERS' GUIDANCE

These notes give the correct answers and can be used to help you guide the students' discussions in Part 1: Exercise I: Ice-breaker: War crimes

Action 1.

Shooting a group of civilians who are not participating in the armed conflict.

Students who have studied previous modules should recognise that civilians are a protected category under IHL. Attacks on civilians are a grave breach of the Geneva Conventions and, therefore, a war crime under IHL.

Action 2.

Misusing the red cross or red crescent emblem to capture enemy soldiers during an armed conflict.

This situation was previously discussed in Module 3. It is called the act of perfidy and, under IHL, perfidy is prohibited.

Perfidy is defined as:

“Acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence”.

Examples of perfidy include:

feigning an intent to negotiate under a flag of truce or surrender; feigning of wounds or sickness; pretending to be a civilian with non-combatant status; and the feigning of protected status by using signs, emblems or uniforms of the United Nations, or of neutral or other states not involved in the conflict.

Ruses of war, which are intended to mislead the enemy or induce them to act recklessly but which don't infringe international law in armed conflict are not prohibited because they do not invite the confidence of an adversary with respect to protection under IHL. For example, the use of camouflage, decoys, mock operations and misinformation are all allowed.

This example of perfidy is a war crime as it results in the injury or death of the victims.

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Action 3.

A commander of a prisoner-of-war camp failing to post a copy of the Geneva Conventions for prisoners to view.

This is a technical breach of IHL but not serious enough to be considered a war crime.

Action 4.

Attacking historic monuments

Attacking historic monuments, provided that they are not being used for a military purpose, either in internal or international armed conflicts, is classed as a serious violation of IHL and therefore is a war crime.

Any seemingly less serious breach of the rules may change in gravity and therefore classification, if they are connected to the serious injury or death of protected people. War crimes are considered serious because of their grave impact on people.



PART 1: EXERCISE 2: MINI CLASS QUIZ



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Through this activity, students will be introduced to the complexities of determining criminal behaviour during war and the idea of potential war criminals being punished. They will learn that anyone who is suspected of a war crime, be it a soldier, military commander or head of state, can be tried and, if found guilty, punished under international humanitarian law (IHL).

For group use

Flipchart

Words marked in **bold** are resources available to the teacher in this lesson pack.

TIMINGS: 10 minutes

This activity can be done with the whole class as one group or by dividing the class up into three or four groups. The activity could also be carried out as a classroom 'circus' exercise with students moving between stations with a different question from the list below written at each station on flipchart paper. The students can move round in groups, debating the issue and adding their group's comments to the flip chart.

- 1. If a soldier shoots a civilian whom they mistake for someone who is actually taking part in the war (e.g. a soldier), what sort of consequences might there be?**
- 2. You are part of the Blueland military forces based in Redland, in the early days of Blueland's invasion of Redland. It has been made public knowledge that Sam Dictator of Redland is a tyrannical ruler and that most people in Redland are unhappy under his rule. Blueland has launched an attack on Redland in order to rid the country of Sam Dictator's rule. You find out that Sam Dictator is in a restaurant. So are 200 other people but they are civilians. You have the chance to fire a missile at the restaurant that will kill the leader of the regime you are fighting. It will also kill the civilians. Would it be a war crime to fire the missile?**
- 3. If it is later determined that by firing the missile, IHL rules have been breached, who could be held accountable? Do you think it would be fair to charge only you for the act or should your superiors be held accountable too? Why?**
- 4. Who can be tried for war crimes?**
- 5. Are there special courts to try suspected war criminals?**



PART 1: EXERCISE 2: TEACHERS' GUIDANCE

1. If a soldier shoots a civilian whom they mistake for someone who is actually taking part in the war (e.g. a soldier), what sort of consequences might there be?

Making civilians the object of attack is a war crime. However, if the soldier is able to show that he or she genuinely mistook the civilian to be someone taking part in the war, and if this is thought to have been a reasonable assumption in the circumstances, there may be little or no criminal consequences. If the soldier is found to have been negligent, or not to have taken the necessary care to determine whether the person was a civilian, they could be prosecuted. This could range from anywhere as serious as being prosecuted for a war crime to being prosecuted for lesser breaches of IHL or military rules, such as not following orders, with fatal consequences. Allowances may be made for the difficulties of operating in the middle of a combat zone. However, where crimes are committed, they are normally prosecuted.

2. You are part of the Blueland military forces based in Redland, in the early days of Blueland's invasion of Redland. It has been made public knowledge that Sam Dictator of Redland is a tyrannical ruler and that most people in Redland are unhappy under his rule. Blueland has launched an attack on Redland in order to rid the country of Sam Dictator's rule. You find out that Sam Dictator is in a restaurant. So are 200 other people but they are civilians. You have the chance to fire a missile at the restaurant that will kill the leader of the regime you are fighting. It will also kill the civilians. Would it be a war crime to fire the missile?

In general, launching an indiscriminate attack affecting the civilian population, and knowing that such an attack will cause excessive loss of civilian life, is defined as a war crime. There is no exact numerical test in such cases: the question is whether the loss of 200 civilian lives may be considered excessive, when balanced against the military advantage of killing someone like Sam Dictator. Under IHL, this principle is called "proportionality", and there may not be a clear answer in each case. For example, it could be argued that killing Sam Dictator at this time may possibly save thousands of other lives, if it were to bring an end to the armed conflict. On the other hand, it could be argued that better means of weaponry may have been available to carry out the operation, which could have avoided so many civilian casualties.

Ask students to refer to their knowledge gained from Justice and Fairness Module 3 on the principles of IHL, in particular that of proportionality.



3. If it is later determined that by firing the missile, IHL rules have been breached, who could be held accountable? Do you think it would be fair to charge only you for the act or should your superiors be held accountable too? Why?

In general, those who carried out the attack should be held accountable. It is not a defence to say that you were merely following orders if you were aware that order was illegal. Those superiors who ordered the attack, or had knowledge of it being carried out and did not stop it, can also be held accountable. This recognises that there may be a chain of command responsible for such actions.

4. Who can be tried for war crimes?

Under the International Criminal Court (ICC), any individual who is suspected of an offence covered by the Rome Statute (the international treaty that created the ICC) can be brought to trial, subject to certain conditions. They could be ordinary soldiers, officers, members of militias or rebel groups, and government officials, including heads of government or heads of state.

the ICC cannot hear cases against countries themselves, but only against individuals. It can also only hear crimes that relate to conflicts after 2002, as this was when the ICC was set up.

5. Are there special courts to try suspected war criminals?

Suspected war criminals may be prosecuted in the national courts of a country including civilian or military courts, depending on the situation. In recent years, some special international tribunals have also been set up to deal with alleged international crimes committed in specific contexts. Two examples of these are the International Criminal Tribunal for the former Yugoslavia (ICTY), set up in 1993 by the United Nations, and the International Criminal Tribunal for Rwanda (ICTR) set up in 1994 by the United Nations. As they deal with specific situations, they are not permanent courts.

The ICC came into existence in 2002. It is a permanent court, set up to prosecute those accused of international crimes, including war crimes, genocide and crimes against humanity. Cases may only be heard at the ICC when a national court is unable, or unwilling, to deal with such cases itself. The ICC is located in The Hague, in the Netherlands.



PART 1: EXERCISE 3: WAR TRIAL SCENARIO



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The purpose of this activity is to explore the current processes for enforcing international humanitarian law (IHL) through a case study.

TIMINGS: 20-25 minutes

For group use

3A. Text box 1

3B. Text box 2

3C. Text box 3

3D. Text box 4

Words marked in **bold** are resources available to the teacher in this lesson pack.

Ask students to use their knowledge of IHL to explore the complexities of the trial process. In general, each country is required to prosecute those on its territory who are suspected of war crimes. However, in some cases, countries may be unwilling to try such people in their national courts, or they may lack the resources to do so. With the creation of the International Criminal Court, it is now possible to prosecute such individuals, if a country is unable or unwilling to do so itself. A war crimes trial conducted in an international court may be subject to a higher level of international scrutiny, therefore, the process may be more challenging but may also be of a higher standard.

In an extension activity, students can be introduced to non-judicial methods of enforcing IHL. Through this activity, students will appreciate that sometimes enforcement can be achieved effectively without going to court. This can be more desirable than having a court trial in some cases, and students can debate the advantages and disadvantages of the different processes.

Either divide the class into three to four large groups for this activity or you can leave the class as one large group if you prefer.





In Justice and Fairness Module 3, we considered the situation of the Yellow Territories conflict between Redland and BlueLand. Explain to the students that the conflict is now over and a peace treaty has been signed by both nations. Give every student a copy of **3A Text box 1** to read:

Ask students to discuss the following questions:

1. How could the ICC have been made aware of Alex Azzurro's alleged misdeeds?
2. How do you think investigations into war crimes are carried out?
3. Who can prosecute or punish violations of IHL?
4. What could be the advantages of involving the ICC instead of using BlueLand's own courts at home?
5. What difficulties might there be in involving the ICC?

Then hand the students **3B text box 2:**

Ask students to discuss the following questions:

1. Is the process of a war trial different from a regular criminal prosecution? Should it be different?
2. What are the difficulties in gaining evidence against war criminals during armed conflicts?
3. Is it necessary that Alex Azzurro should have a fair trial? What would be needed to ensure that the trial is fair?



For group use

- 3A.** Text box 1
- 3B.** Text box 2
- 3C.** Text box 3
- 3D.** Text box 4

Words marked in **bold** are resources available to the teacher in this lesson pack.





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Then hand the students **3C text box 3**.

Ask students to discuss the following questions:

1. Why do you think the ICC limited the charge to the enlistment, conscription and use of child soldiers?
2. Do you think victims should be able to participate in the trial process? Why or why not?
3. What challenges might the victims and their families encounter if they participate?
4. How might trying war criminals help victims?
5. Should the child soldier victims or their families get any compensation from the court for their losses? Can you suggest options? Where might this compensation come from? What form might it take and why?



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For group use

3A. Text box 1

3B. Text box 2

3C. Text box 3

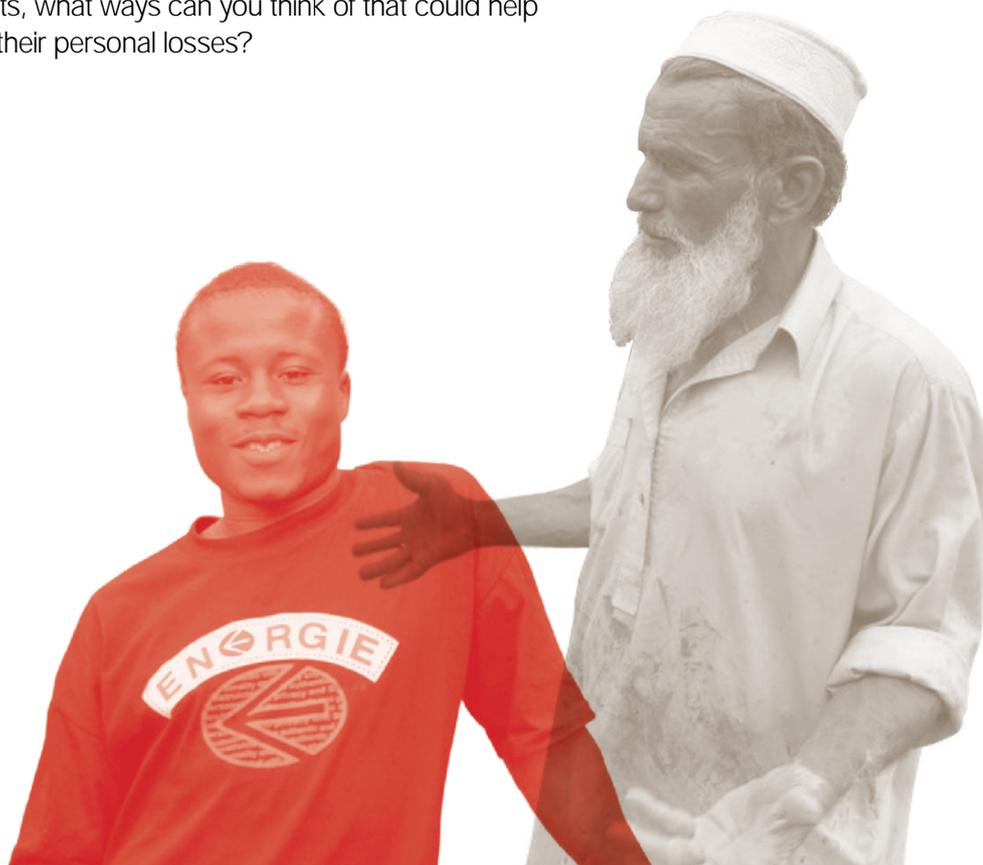
3D. Text box 4

Words marked in **bold** are resources available to the teacher in this lesson pack.

Hand the students **3D text box 4**.

Ask students to discuss the following questions:

1. What sentence would you pass in this case? Why?
2. Is there any point in having trials after the conflict is over? Discuss this from the perspective of those who have lost close family members.
3. Other than formal courts, what ways can you think of that could help war victims overcome their personal losses?





TEXT BOX 1 QUESTIONS

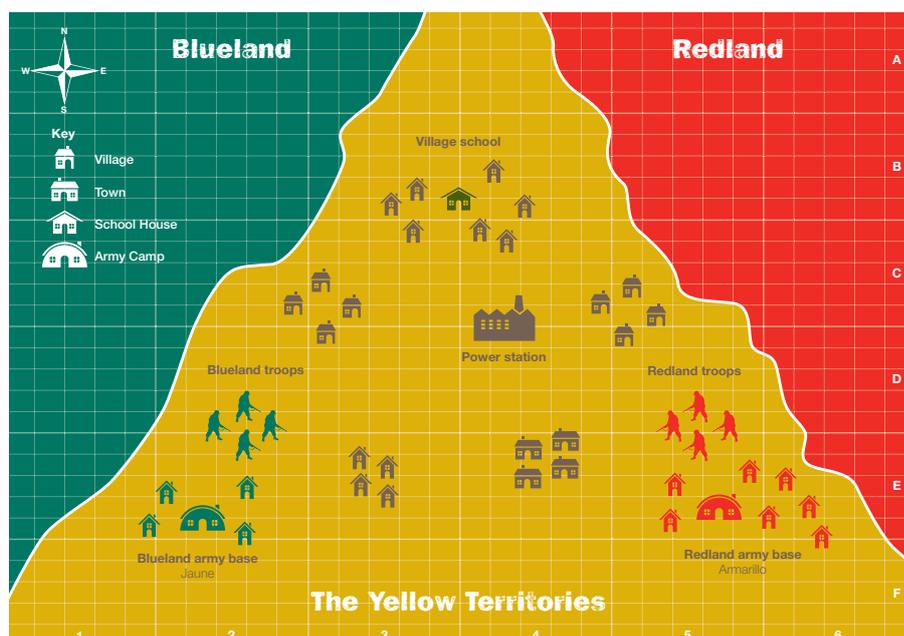
1. How could the ICC have been made aware of Alex Azzurro's alleged misdeeds?

Let us assume first that Blueland and Redland have signed up to the Rome Treaty that created the ICC. The actions of Alex Azzurro, as a Blueland commander, may have come to light in a post-conflict assessment or inquiry, conducted by Blueland or by Redland. Such details could have been revealed through a military investigation, or by civilian organisations carrying out research.

Blueland authorities may have agreed that there was sufficient evidence to try Alex Azzurro but have been unable to prosecute him. Perhaps its national courts are overstretched or it does not have appropriately trained judicial officers to carry out this type of prosecution. In this case, Blueland authorities may have referred the case to the ICC.

Alternatively, Blueland authorities may not have wanted to undertake the prosecution for political reasons. Perhaps in those circumstances, Redland made the ICC aware of the situation, as the crime allegedly happened on its territory. On an assessment of available evidence, the ICC may have determined that a prosecution was necessary and, because Blueland was unwilling to carry one out, it would carry out the prosecution itself.

Alternatively, the UN Security Council may have considered the case to be so serious that the ICC should investigate it and may, therefore, have referred the case to it.





TEXT BOX 1 QUESTIONS

2. How do you think investigations into war crimes are carried out?

States have an obligation to impartially investigate serious violations of international humanitarian law (IHL) that involve their national citizens, through military or domestic courts or other institutions.

If the state is unwilling or unable to do so, the ICC is empowered to undertake a criminal investigation if one of the following applies:

- the alleged perpetrators are citizens of a state that signed up to the Rome Statute (which created the ICC)
- violations take place in a state that signed up to the Rome Statute, or if a state that did not sign up to the Statute specifically requests the involvement of the ICC in violations on its territory.

Investigations into serious violations of IHL can also be carried out through the appointment of an independent international commission of experts or a United Nations (UN) fact-finding mission, which has a specific mandate. The mission members will hold meetings with a broad range of stakeholders including UN member states, non-governmental organisations (NGOs), community organisations, medical and other professionals, legal and military experts, and relevant authorities. They may invite interested parties to submit information to help them investigate. The mission may also carry out field visits during which they interview victims and witnesses, and visit the sites of alleged atrocities. They may hold public hearings during which victims and experts who have direct experience or expertise give testimony.

There is also the International Humanitarian Fact Finding Commission, created by Additional Protocol 1 to the Geneva Conventions. This is a permanent body, set up in 1991, whose primary purpose is to investigate serious and grave breaches of IHL. It is not a court or judicial body. In order for it to begin an inquiry, it must receive a request from a state that recognises the Commission's authority. The Commission does not have the power to act on its own initiative. During the course of the investigation, the warring parties are invited to present their evidence and challenge others' evidence.



TEXT BOX 2 QUESTIONS

1. Is the process of a war trial different from a regular criminal prosecution? Should it be different? Discuss.

The judicial process is broadly the same as for any other criminal trial. It starts with a formal accusation, followed by presentation of evidence, then examination and cross-examination of witnesses. National courts, whether civilian or military, can try alleged breaches of IHL.

2. What are the difficulties in gaining evidence against war criminals during armed conflict?

It is often very difficult to investigate alleged war crimes. It is hard to secure crime scenes and evidence in the middle of a combat zone, witnesses might be afraid to come forward, and people may have ulterior motives for incriminating other groups or factions.

3. Is it necessary that Alex Azzurro should have a fair trial? What would be needed to ensure that the trial is fair?

The right to a fair trial for anyone accused of a crime is a basic human right. The elements of a fair trial are set out in IHL treaties such as the 1949 Geneva Conventions and in several international human rights treaties. Some universally agreed elements of a fair trial are:

- the right to a public hearing (although there can be exceptional cases)
- the right to an independent and impartial judge
- the right to a trial within a reasonable time
- presumption of innocence until proven guilty
- the defendant's right to be informed of the nature and cause of the accusations against him/her at a very early stage
- the defendant is present during his/her trial
- the defendant has the right to legal counsel, or to defend himself/herself
- the right to have adequate time to prepare a defence
- legal assistance for the defendant if he/she does not have sufficient funds to pay for it
- the defence has the right to examine or cross-examine witnesses
- the defence counsel may present witnesses before the court
- the right to an interpreter, if required, throughout the trial
- the defendant must not be forced to testify against himself/herself or to confess guilt
- the right to a public judgment (although this may be restricted in certain types of cases).

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TEXT BOX 3 QUESTIONS

1. Why do you think the ICC limited the charges to the enlistment, conscription and use of child soldiers? What would be the advantages and/or disadvantages in limiting the charges?

The ICC may have chosen to limit the charges to the ones that it had sufficient evidence to prove. It may not have been able to secure enough evidence to prove the additional crimes. The charge of enlisting or conscripting child soldiers is a very serious crime in itself, as the use of children in armed conflict may destroy their future opportunities and cause irreversible psychological damage to both child soldiers and affected populations.

2. Do you think victims should be able to participate in the trial process? Why or why not?

The ICC allows victims to apply to participate in trials. The ICC judges will then determine whether someone qualifies as a victim in the case. Only those who are able to prove that their injuries or losses are closely related to the issues at the trial can be counted as a “victim” for the purposes of the trial. If someone is deemed to be a victim, they have the right to have a lawyer represent them at the ICC. They can also send information to the ICC Prosecutor which they feel will help the Prosecutor pursue the case better.

The advantages of allowing victims to participate in trials include:

- an increased chance of achieving justice
- enabling reparations and reconciliation for victims
- a better chance of receiving useful evidence which may help in a trial.

The disadvantages include:

- managing the process of victims appearing at the court could be very time-consuming and expensive
- it may be difficult to provide all victims with the means to be represented in court.

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TEXT BOX 4 QUESTIONS

3. Other than formal courts, what ways can you think of that could help war victims overcome their personal losses?

There are non-judicial options that can be used to help war victims. These include truth commissions, apology and forgiveness, monetary compensation, psychological and medical services, memorials, community reconciliation and return of property.

Students should be encouraged to suggest the above options and discuss the implications of each. They could also discuss whether non-judicial options are more appropriate than judicial options for war victims and their families. They can explore this through extension activity 3A.



EXTENSION ACTIVITY: EXPLORING ALTERNATIVE FORMS OF JUSTICE

Background

For nearly two decades, northern Uganda was embroiled in a violent conflict between the government of Uganda and the Lord's Resistance Army (LRA). The LRA was formed in 1987, and is led by Joseph Kony. The LRA claimed to fight on behalf of the Acholi people, an ethnic group living primarily in northern Uganda. However, it is the Acholi people who have suffered most in the conflict. Up to 1.6 million people have been displaced by the conflict, which was also characterised by lootings, murders, and mutilations. Children have suffered terribly. At the height of the conflict, between 2002 and 2005, thousands of children became 'night commuters', flocking from the countryside to towns at night to seek refuge from abduction. Many children were abducted, often from schools, and used as child soldiers in the LRA's military campaign, or as porters or 'wives' for LRA commanders.

By 2003, there was national and international recognition that military strategies to end the conflict had failed, and the humanitarian impact of the conflict had generated international attention. At the time, different ways of achieving peace were being explored:

- The Amnesty Act (1999): This offered amnesty (a general pardon) to former rebels, for which over 5000 rebels had applied by mid-2004. This was supported by local council bylaws stating it was an offence to harass ex-combatants and abductees. However, as LRA commanders staged reprisals, it became clear that amnesty could not work by itself.
- Peace talks: efforts opening the way for a ceasefire and peace talks looked promising.





Referral to the International Criminal Court (ICC)

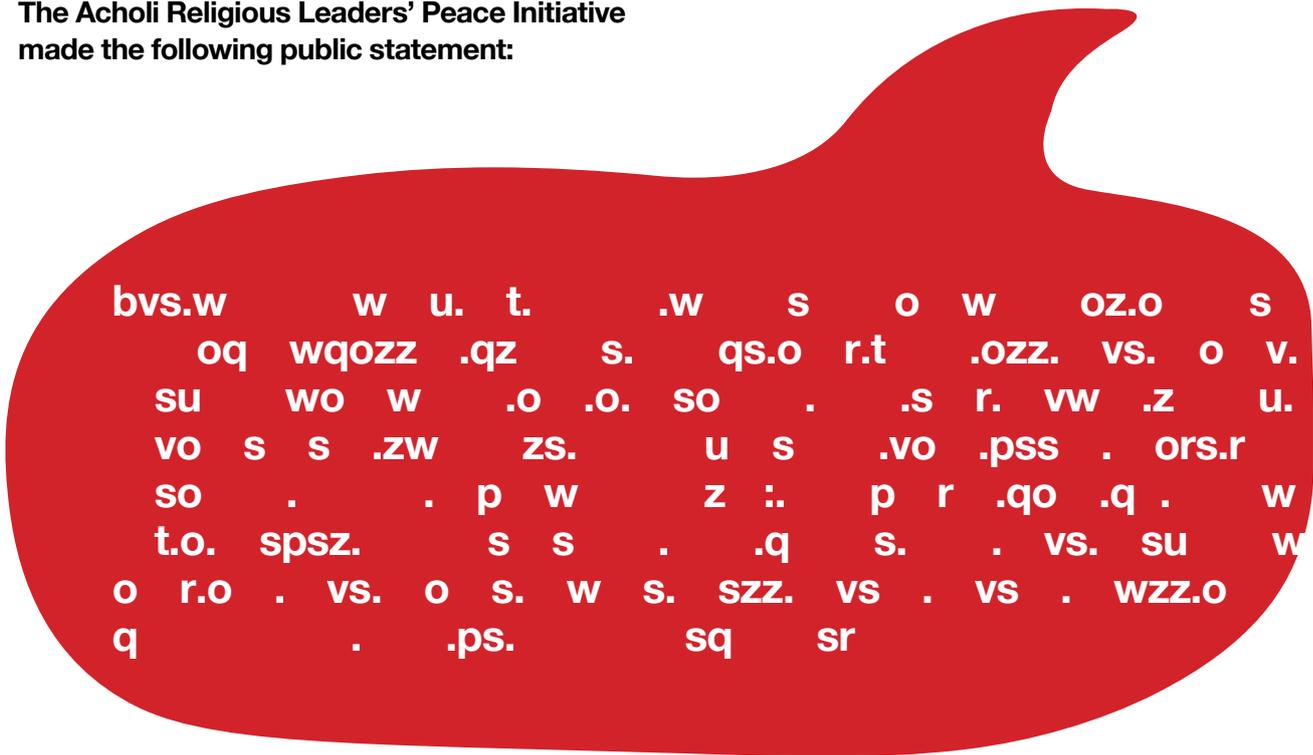
In January 2003, a press statement announced that Ugandan President Yoweri Museveni had asked the prosecutor of the ICC to investigate ‘the situation concerning the Lord’s Resistance Army’. The statement also indicated that President Museveni believed the leadership of the LRA should be excluded from receiving amnesty, ensuring that ‘those bearing the greatest responsibility for the crimes against humanity committed in Northern Uganda are brought to justice’. The ICC then began initial inquiries.

In September 2005, after extensive investigation of both the Ugandan government and the LRA, the ICC issued arrest warrants for five LRA leaders, including Joseph Kony. They were the first warrants issued by the ICC since it was established in 2002, and they provoked concern that:

- as the main witnesses and victims were children, the LRA might increase discipline and fear among children within its army
- former abductees giving evidence might be endangered
- it could become difficult to rehabilitate and reintegrate former abductees.

When the ICC announced that there was sufficient evidence to proceed with a formal investigation, locals felt their voices had been ignored and many were angry, particularly when the amnesty and peace talks had showed signs of producing results.

The Acholi Religious Leaders’ Peace Initiative made the following public statement:





Alternative forms of justice

Article 53 of the Rome Statute, which created the ICC, indicates that prosecution can be stopped if it is 'not in the interests of justice taking into account all the circumstances', which includes 'the interests of victims'. This implies that victims' views can affect whether court proceedings go ahead. In northern Uganda, this meant that the ICC accepted that the Acholi people have their own alternative approach to justice. An example of this is the Acholi tradition of 'mato oput', a ceremony which has been encouraged and facilitated by various agencies involved in promoting peace.

Mato oput is one of the mechanisms for forgiveness and reconciliation among the Acholi people of northern Uganda. It literally means "to drink a bitter potion made from the leaves of the 'oput' tree". In the ceremony, representatives from the family that committed the killing and the family that lost a member jointly drink from a shared bowl. The concoction is made from the blood of two slaughtered sheep mixed with mato oput. By doing this, the two parties accept the bitterness of the past and promise never to taste such bitterness again. The payment of compensation to the victims' family follows the ceremony, e.g. in the form of cows or cash. The aim is not to establish whether a person is guilty or not but instead to encourage community participation and harmonious relations.

References

Allen, T. (2006), Trial Justice: The International Criminal Court and the Lord's Resistance Army, Zed Books

Facing History and Ourselves, (2010), Teaching The Reckoning: Understanding the International Criminal Court, Facing History and Ourselves National Foundation, Inc. www.facinghistory.org/reckoning

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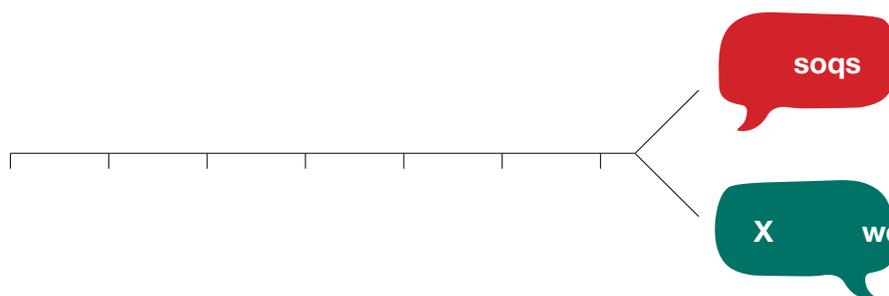


Suggested activities:

1. Identify the different groups that have an interest in the conflict in northern Uganda. Based on the information you have been given about the attempts at peacemaking in northern Uganda, what are the issues for each group?
 - the Acholi people
 - ICC
 - Ugandan government
 - LRA
 - Non-governmental organisations (NGOs).
2. The experience of the ICC in northern Uganda has highlighted a moral dilemma. Attempts to build a lasting peace to the conflict seem to have been hampered by the ICC issuing arrest warrants to bring those responsible for the suffering to justice.

Use a futures line (see side panel for more information) to encourage students to consider what peace and justice might mean for different groups involved in the conflict. Divide the class into groups and ask each one to focus on one of the groups from question 1. They should use the line to map the group's experience of the conflict to date, then consider what the experience of the group might be when different strategies of either peace or justice are pursued.

Students can then present their ideas to the rest of the class.



To de-brief, students should be encouraged to discuss whether they think pursuing peace or justice is best given the situation in northern Uganda. Which groups' needs are the greatest? Is there anything else at stake here? Can the students see a way in which peace and justice could be pursued together?



Futures line

A futures line is a tool that encourages students to express ideas about the future. Students draw a timeline, going back as far as necessary for the issue in question. The line can be annotated with information relevant to the discussion. At a certain point, the line splits, allowing students to explore different possibilities. In this activity, students are encouraged to consider what the implications of pursuing peace or justice might be for each group.



3. Mato oput is a forgiveness and reconciliation ceremony used in Acholi culture. Why do you think this ceremony might be more influential in achieving a sense of justice for the community than the ICC's intervention?
4. A report by the Refugee Law Project at Makerere University in Uganda, entitled 'Peace First, Justice Later' discussed the nature of justice in northern Uganda.
 - Do you agree that peace comes before justice?
 - Can there be peace without justice?

5. At the start of his book, **Trial Justice: The International Criminal Court and the Lord's Resistance Army**, Tim Allen refers to the following quote:

"The decision, on one hand, to seek justice through punishment or, on the other, to forgo punishment in favour of justice through reconciliation, is a decision that must be made by the concrete community that is the victim of the crimes and that will have to live with the consequences of the decision. Humanity is too thin a community on which to base a universal right to punish."

Branch A. (2004), 'International justice, local justice: the international Criminal Court in northern Uganda', Dissent, summer (p5).

- What group does Branch suggest should have a say in what ways justice is pursued? What is the basis of his argument?
- What do you think he means by suggesting 'humanity is too thin a community on which to base a universal right to punish'?

In the conclusion of his book, Tim Allen returns to, and inverts this quote:

'Humanity' is not 'too thin' a community upon which to base a universal right to punish.' On the contrary, it is the widest community we have. That is why the ICC, for all its faults, is so important (p181).

- What point is he trying to make?
 - International humanitarian law (IHL) is an international body of law which is used to limit the devastation of conflict, and to afford protections to certain groups of people. Do you think punishment for war crimes, supported by institutions such as the ICC, helps people abide by the rules of IHL?
6. Ask students to go away and find out what has happened in the situation in northern Uganda.



PART 1 EXERCISE 1

For group use

- 1A. Agree
- 1B. Disagree
- 1C. Neutral
- 1D. Unsure

PART 1 EXERCISE 3

For group use

- 3A. Text box 1
- 3B. Text box 2
- 3C. Text box 3
- 3D. Text box 4

#69Z



Make the required number of copies of the card below and either cut it out to hand to the students prior to starting Activity 1, or display on the classroom wall for the walking debate or four corners exercises.



9hVgZ



Make the required number of copies of the card below and either cut it out to hand to the students prior to starting Activity I, or display on the classroom wall for the walking debate or four corners exercises.



#CivVa



Make the required number of copies of the card below and either cut it out to hand to the students prior to starting Activity I, or display on the classroom wall for the walking debate or four corners exercises.



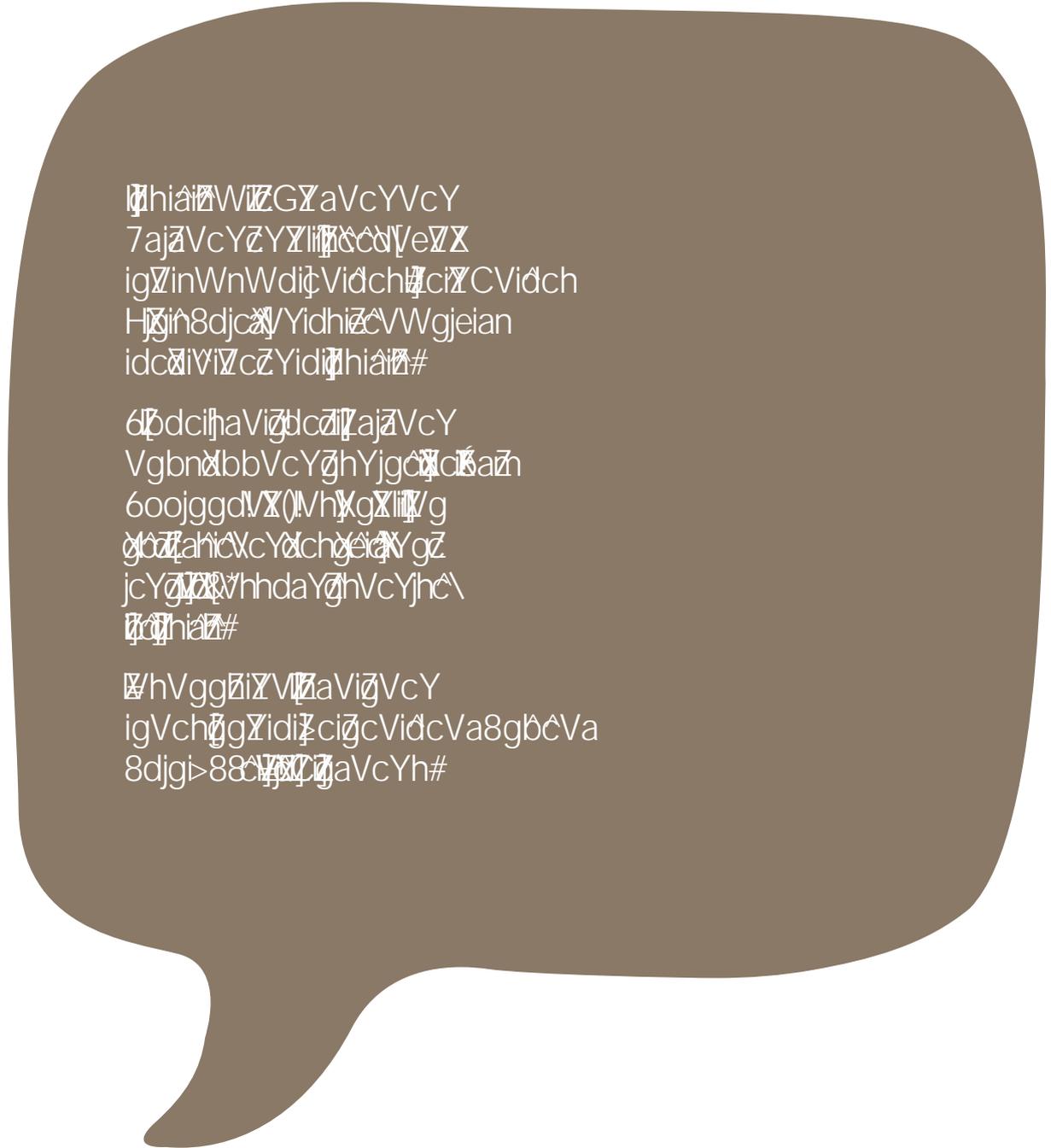
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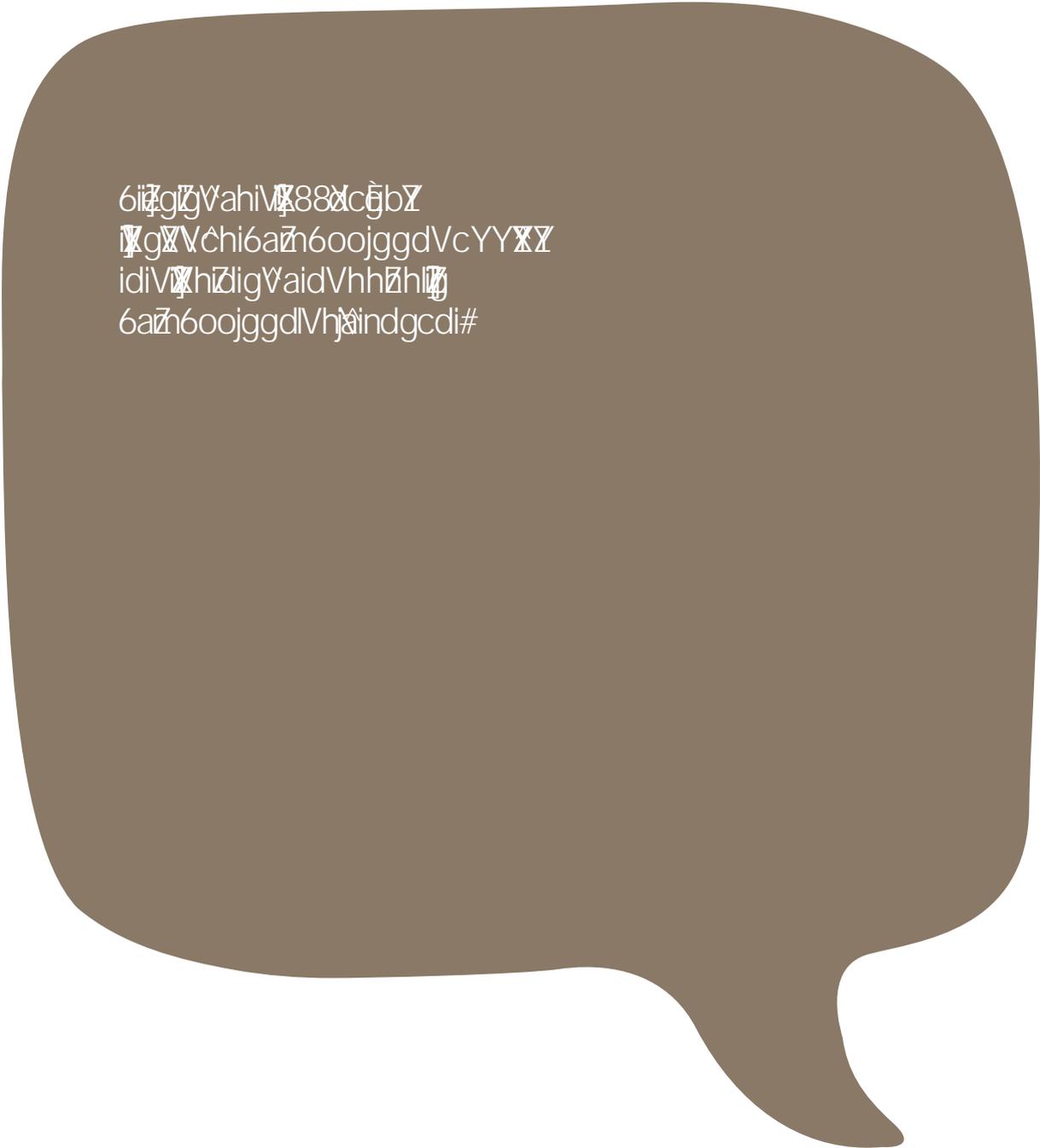
Make the required number of copies of the card below and either cut it out to hand to the students prior to starting Activity I, or display on the classroom wall for the walking debate or four corners exercises.



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(7# IznWdm'



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