Exclusive Interview: Phil Clark, Research Fellow in Courts and Public Policy, University of Oxford, and David Anderson, Professor of African Politics and Director of the African Studies Centre, University of Oxford

David Anderson, MA (BA Sussex; PhD Cantab), is a Professor of African Politics, Director of the African Studies Centre, and a Fellow of St. Cross College at the University of Oxford. He has a long-standing interest in the history and politics of Eastern Africa and state violence and its consequences. He is the author of The Khat Controversy, which examines the global expansion of Eastern Africa’s khat economy, and of Histories of the Hanged: Britain’s Dirty War in Kenya and the End of Empire, which is the first full history of the Mau Mau rebellion and its brutal suppression in 1950s Kenya. Professor Anderson is also the founder and Executive Editor of the Journal of Eastern African Studies.


Q. How will the potential referral of cases from Kenya be viewed on the ground and how will it impact construction of the violence?

David Anderson:
The Kenya case for the ICC is really intriguing because it brings to light some of the real dilemmas that the ICC throws up. The people who want the ICC in Kenya are the civil society groups, Kenya Human Rights Commission, and their allies. The reason that they’re so keen on the ICC is not because they think it’s a wonderful institution necessarily but because they feel that international justice is the only justice they will ever get. They have no faith in their local judiciary. They feel that the collapse of institutions in Kenya is such that if they wait for Kenyan justice then it will never come. So they’re appealing to an international route because that’s the only one that will work.
The Kenyan government on the other hand, which is known as the unity government or coalition government, is made up of two blocks of politicians. Among each of those two blocks, there are people who might find themselves indicted. Those indictments might relate to the violence of last January and February of 2008 or they might relate to the other events that the UN Special Rapporteur for Extrajudicial Killings, Mr. Philip Alston referred to in his report of two weeks ago, which included police killings of alleged criminals and gangsters in the summer of 2007, and also referred to army atrocities, which are extremely well documented, from Mount Elgon in March and April 2008. So for the Kenyans there are a number of things coming together here. The ICC is seen to be a useful device.

But the government of course doesn’t want this. Those politicians, quite unlike the human rights activists, see the ICC as a tremendous threat because it will expose them. Now, in this sense, the indictment of Bashir in the Sudan, combined in the Kenyan case with the visit of the Special Rapporteur from the UN, Mr. Alston, to Kenya two weeks before the indictment, has had an effect of significantly heating up the politics of this in Kenya. And following the indictment of Bashir a few days later, two Kenya human rights activists who worked for the Oscar Foundation were assassinated in Nairobi. Subsequent to that, threats have been issued to a group of other Kenyan human rights activists and several are now in hiding and many are in fear of their lives.

Now, the extent to which the Kenyan government is a coalition of gangsters needs to be recognized. You can’t say this might happen anywhere else. Kenya’s politics are particular and peculiar at the moment, so one wouldn’t want to infer any comparative lessons from this, but there is a direct relationship between the indictment of Bashir and what is now going on in Kenya because people realize the stakes have been raised.

Q. If the Waki Report is turned over and indictments are issued in Kenya by the ICC, what might the impact be for peace and reconciliation and on the political situation?

David Anderson:
That’s the question that everyone is now mulling over. Since the violence of January and February 2008, there has been much thought given in Kenya to the likely impact of trying to prosecute those who were responsible. Now, public opinion is pretty well divided down the middle on this. Some people argue that to take this forward might be morally and ethically correct but because of the condition of Kenya’s politics and institutions, it would be likely to spark further violence of a targeted, specific nature such as the assassinations of the human rights workers. In other words, people are worried that to pursue these people when you don’t have the protections that a state institution that functions would give you is very dangerous and very destabilizing. Others argue that that may be the case but that we shouldn’t let that stop us with moving forward with these prosecutions because what else can we do? If Kenyans don’t have the courage to grasp this nettle, then they’re forever in the throes of these gangsters and thugs. That is the dilemma. You’d have to be a very brave person to say which of those arguments is right. For myself, personally, I worry about it because ethically I want to see these people
prosecuted. But I don’t want to see my friends in the human rights community killed or threatened. So this is a genuine moral dilemma, and a very difficult one.

Q. If the ICC is the mechanism of justice pursued instead of local or national mechanisms, will that deter or increase future violence?

David Anderson:
There is now anxiety about the ICC in Kenya. Last month, the Kenyan parliament voted down a bill that would have created indigenous tribunals to try the people accused of violence in January and February of last year. It’s fairly obviously why parliament turned down that bill, because too many parliamentarians feared that they and their staff would find themselves in the dock. It is as simple as that. Whatever careful language one wants to use to describe it, it’s an avoidance strategy. Everyone in Kenya knows this. This is no secret. But it’s the decision not to have the indigenous tribunals that has also promoted this crisis; it’s not justice the ICC’s indictment of Bashir, it’s also an internal political process that has failed. And Kofi Annan, who was the arbiter of the Kenyan dispute last year is the one who is threatening to give the names to the ICC of the people he is aware of who were involved in the violence.

Now, I should say that there is another context to this that needs to be understood. Why do Kenya’s human rights activists have no faith in the judicial process? There are many reasons for that in terms of the lack of functionality of the judiciary but there are also more immediate concerns. Since January, there have been at least six attempts to prosecute individuals who were named as having participated in the violence. None of these cases have been successful. Every time the case is thrown out, usually because of lack of evidence. What this reflects is that witness protection is a serious problem and people are being got at, but it also reflects the ethical dilemma I referred to. Some very honest, good, upright people don’t want to give evidence if that evidence leads to further killing. This conspiracy builds up a momentum that goes beyond the conspirators and affects ordinary people who feel challenged and threatened by the very act of saying what it is they saw.

Q. We’d like to ask you to speak about the ICTR and regional tribunals more generally. How can these actors interact with the ICC and local justice actors? What connections should they be maintaining with national and local actors? What role should complementarity play?

Phil Clark:
There are a couple of things to say on this. The first is that the legacies of an international tribunal located in Africa are very messy. What we’ve seen with the ICTR is in many ways an institution that is, in the future, going to make it very difficult for international agencies to operate in Africa. The reason is that the ICTR has been very ineffectual in terms of understanding the politics of Rwanda and the politics of the region as a whole, which has really hampered its relationships with governments and its ability to do trials effectively. Subsequently, there’s been a real forfeit of legitimacy of that tribunal.
In the bigger framework, what that means is it’s now very difficult for international justice to happen in Africa and for it to be seen as a legitimate process. Populations look at these very expensive tribunals that have been foisted upon them from the outside, the ways in which they’ve blown in, and found it very difficult even to do legal jobs, to get investigations going, and to do it quickly, let alone have any kind of bigger impact. So the ICTR has made it more difficult for justice to happen on the grander scale.

In terms of the regional dimension, it’s very difficult to see where the regional impetus for justice in Africa is coming from at the moment. The AU is reluctant to go down this path. There’s been some talk of setting up an Africa-wide justice mechanism that could perhaps be more locally situated and with a greater understanding of domestic politics than the ICC might have. But the AU has its hands full in terms of peacekeeping issues and broader security questions, and it’s also an institution that is struggling to maintain internal coherence. It’s a deeply divided organization with many factions. Without that kind of cohesion, including a range of leaders who have very different viewpoints on whether justice is a good thing or not, depending on their own actions domestically, then it’s difficult to think that that kind of regional dream is ever going to become a reality. So you have a difficult situation where international justice in many ways is debased across Africa, and regional questions are even more complicated.

So when asked, “What’s the likelihood for seeing justice done in a range of African countries?” this is where the conversation turns to the possibility of using national jurisdictions, and perhaps even community level processes. The ICC at least at the rhetorical level supports this move because of the principle of complementarity and giving domestic courts the first bite of the justice cherry. The problem of course has been – and Dave alluded to this in the Kenyan case – that it is difficult to see many domestic judiciaries being willing to go after their own, being willing to deliver justice for sitting members of government. Perhaps with one key example that hasn’t been discussed enough internationally: in Congo, the increasing capacity and willingness of the military courts to deal with very serious cases. This is an interesting development. I don’t think many people looked at Congo and thought that military courts were going to be where justice would be done, but that’s what we’ve seen. The military courts, in the last year and a half, have prosecuted some serious perpetrators, including high-ranking officials within the army and senior rebel leaders for serious crimes, including war crimes and crimes against humanity. And in many ways, on the ground in Congo, the perception is that it’s not the regional bodies nor the ICC that is most likely to do justice for the most serious perpetrators; it’s actually the military courts operating in people’s midst. Now it’s difficult because military tribunals across Africa don’t have a good history of doing justice. They’ve been very selective in the candidates that they’ve prosecuted; they’ve usually insulated their own. Military courts have often done very short shrift to the justice processes across Africa, but what we’re seeing in Congo is a change. So that’s a challenge to the human rights community internationally, who would not inherently have a lot of faith in military tribunals. But in terms of domestic processes in Africa geared toward prosecuting major crimes, the military courts in Congo are probably the most active at the moment.
Q. How do you think the doctrine of complementarity can be best implemented to work with local and national jurisdictions to provide the whole picture of justice?

A. Phil Clark:
I think the key to complementarity working is for the ICC to enact the principle in the way that it was originally defined, which is that the reason the ICC exists is to prosecute the most difficult cases that national jurisdictions are not able or willing to prosecute. The problem that we’ve seen in the ICC’s first five or six years of operation is it has been dealing with the small fish only: middle ranking officials, rebel leaders, who, as the Congolese example indicates, could have been prosecuted domestically. The problem we’re seeing at the moment is the Court is not dealing with the difficult cases it was ultimately designed to prosecute. This engenders a lot of confusion in the wider realm of justice about where this international institution actually fits in. It undermines the confidence of domestic judiciaries; it sends a message that they might be trying to reform themselves and might be trying to deal with very complicated justice questions, but that’s not necessarily going to stop an international body from intervening.

So it comes back to the question: What then is the purpose of having the Court? In an ideal sense, the notion of complementarity is a useful one in that it divides the labor between a number of different actors. It gives states the possibility to reform their judiciaries and to pursue justice for serious perpetrators. But the big question across Africa, and this is what the Court needs to wrestle with the most, is the extent to which the state is one of the key perpetrators in cases of mass conflict. What we’re seeing consistently is state judiciaries being unwilling to prosecute their own. That’s where the ICC can certainly play a role. If the Court is interested in getting runs on the board in the early years and storing up its legitimacy to help the Court in the future, then that’s where it needs to be targeting its operations. It needs to be going after leaders like Bashir and other heads of state who are responsible for very serious crimes. I think some of the peace and stability questions that Dave refers to are salient and we should always be cautious about the impact that this kind of justice can have. But for the Court to be going after the middle-ranking suspects it has so far does a huge disservice to the principle of complementarity and to the whole enterprise of justice.

David Anderson:
I think there’s a connection between the thrust of international policy in the region, which is increasingly limiting its goals to stabilization. This is a word we’re seeing more and more being used in policy documents. So the ambition is not statebuilding anymore, it is just stabilization. If you think about that, you see that the justice issue becomes even more of a dilemma, because in order to pursue justice against some of these major state players, you are going to threaten stability. So there is a more powerful argument than before for not pursuing justice. This is very interesting because the African Union has embraced this stabilization idea for exactly the reasons I’m suggesting. It takes the sting out of certain interventions and it makes it easier to negotiate and broker deals. The African Union essentially favors power-sharing. In a positive sense, power-sharing is epitomized in the government of Rwanda’s system of proportional representation that gives the losers something out of the process. At the other end of the scale of power-
sharing are Kenya and Zimbabwe, where it generates a government of inertia, put together by people who are trying to avoid the consequences of their actions. The problem is that stabilization views all of these things as a general good. The OAU, the AU’s predecessor, was often referred to as a trade union of tyrants. The AU has to prove it is not the same and, at the moment, it’s not doing a very good job. I think much of the international community would share a disappointment in this, given the hopes invested in the AU at its rebirth a few years ago.

I would also put into the mix that the regional organization for Eastern Africa, EGAD, went through a very positive phase in the late 1990s and 2000s, largely under Kenyan leadership, when EGAD really seemed to be addressing some of the region’s problems. With hindsight, we can realize that EGAD’s successes also held the seeds of some of the current problems. It raised the stakes in some of these conflicts, particularly Great Lakes and Sudan, and people have taken perhaps more entrenched positions. The governments in East Africa have begun to realize that these regional and subregional organizations are the places where you can build your consensus. This is reinforced by the sense that the international community doesn’t wish to be seen to be imposing solutions upon any region in the world and that ownership of political decision-making is a crucial and accepted norm and good. So the countries that wish to assist Eastern African countries are keen for them to decide their own solutions to these problems. That means that for the Kenyan and Sudanese governments, counseling their neighbors and canvassing support in EGAD and the AU can build a powerful bulwark against any wider international consensus. And it’s notable that the amount of lobbying done in EGAD and the AU has gone up considerably in the last 18 months. Politicians across the region have come to realize this is where you build your support base against wider international criticism and interference. In the Kenyan case, they have skillfully built a support network in EGAD and the AU, and similarly in the Sudanese case. They have very cleverly made alliances that will protect them from international criticism. What this leads to is a divide that sees African governments as representatives of these organizations taking one position while the ICC takes another. And that is a very dangerous political position to find ourselves in. It is disempowering for many of the western donors in particular, who don’t want to be exposed as standing against African governments. They want to be seen as moving forward in decisions with African governments. African governments have realized this and are playing politics accordingly.

Q. How significant is it that the first (and still all) of the cases currently before the Court are against Africans for crimes committed in Africa? How does this affect the perception of the Court in Africa and in the international community more broadly?

Phil Clark:
There is an unfortunate cliché that the ICC is a court of Western intervention in Africa, targeting only African leaders, and the suggestion is that there is something inherently illegitimate about the Court. In many ways this argument has been hijacked by the regional actors Dave’s talking about. The argument also does not take into account that there is very serious – although certainly not universal – support for the ICC at the
popular level in a number of countries. An interesting case to look at is Zimbabwe. In
some cases similar to the Kenyan question, Zimbabwe is a country where the ICC is not
yet operating, but the possibility of its involvement is a question that hangs in the air and
is having an impact on politics on the ground. In the Zimbabwe situation, for a number of
different reasons, civil society has aligned itself with the elements within the power-
sharing government in opposing the ICC. So the argument—and it’s interesting that it is
coming from human rights groups and NGOs, as well as the government—is that it’s
about local solutions, we need to sort this situation out ourselves. There is a very different
message coming from many victims of the violence, however, saying “we have no faith
both in the judiciary of this country and in this power-sharing agreement and the leaders
within it. We’re not going to see serious justice done by these people so there may be
recourse to a body like the ICC.” Zimbabwe is a particular case where the strongest
support for the ICC comes from the grassroots level, but it is very difficult for those
voices to be heard because of the government and civil society opposition to the Court.

This is something that opponents of the Court need to contend with. For many African
populations there is a great amount of hope for the ICC. We saw this in Congo and
Uganda in early days when the ICC first became involved. These cases concerned
populations that had seen the debasement of domestic institutions, suffered at the hands
of their own governments, and had huge hopes and expectations of international bodies. I
think the problem in Uganda and Congo has not been outright popular opposition to the
Court—it’s been, in many ways, unfulfilled hopes. Because of the way the Court has
gone about its work in Uganda and Congo, it has disappointed the people the most.
That’s the sad reality for the ICC at the moment.

David Anderson:
‘Unfulfilled hopes’ is a very good way of summarizing it. It leads on to the question of
the perceptions that people have of the ICC, which are not entirely positive, and the
actual practicalities of what the ICC can do and should do. On the one hand, you have the
arguments that the ICC is ‘white man’s justice’ being applied to international law. I think
this is a gross misrepresentation of what the ICC is and what it is trying to do. However,
the current configuration of the politics is making it all too easy for politicians in Kenya,
Sudan, and Zimbabwe to portray it in that way. The fact that we now have a situation
where both the African Union and the Arab League have publicly opposed the indictment
of Bashir, while Western governments have generally supported it, has polarized this
debate in a way that allowed politicians who wish to popularize the idea that this is white
man’s justice to do so. I think that is very unfortunate and I think it misrepresents the
reality of the Court. We are now on the back foot having to sort that out, which is taking
up a lot of time and effort. The substantive issue that makes it more difficult still is that
the ICC has not always had the best record. Its decisions and processes have sometimes
been wanting. Now we know, internationally, especially from experience in the Balkans,
that if you want to prosecute state actors for atrocities and organized political violence—
which is an extremely difficult and laborious task—then it is likely to require a strong
investigative process in which the Court and the prosecutors need to be highly
professional and robust. In attempting such prosecutions, you are fighting against a set of
institutional and controlling parameters and mechanisms that work in the interests of
those you are seeking to convict. If one talks to prosecutors in the Balkans, they will tell you about this in detail. Thousands of pages of testimony, months of work—this is a slow process and it is an enormously expensive process. Now relate that to the ICC: understaffed, under-resourced, and with too many things on its plate. The ICC is not equipped, yet, to deal with this kind of justice. So perhaps, if the prosecutor has made decisions to go forward with certain cases rather than others, then that might be a pragmatic decision given the resource and staffing issues. Whatever the reason, the ICC has not always been able to do its job very effectively. There are also management and cultural problems within the organization itself and it needs to be revived and to reconsider some of its procedures, some of its staffing issues. Maybe the quality of the staff in the ICC needs to be improved, bringing in those with local expertise and knowledge, and maybe the sense of which level of detail and proof are required for prosecutions needs to be reconsidered and set at a higher level. All these things are institutional, procedural matters that the ICC needs to deal with. I would argue that unless and until the ICC tackles these issues, it is going to find it difficult to win more supporters for what the Prosecutor rightly and justly want to do.

Q. Is there a role for politics in the prosecutor’s work? Does the Court have an implicitly political role to fulfill in conflict situations?

Phil Clark:
The first thing to say is that, whether the court likes it or not, it is a political institution. These questions of whether the ICC and the prosecutor are political actors in many ways are facile and unhelpful. As soon as the Court begins to operate on the ground in Africa, and particularly when it begins to operate in conflict environments, it will inevitably be embroiled in political situations. For that reason, and I would concur with Dave entirely on his last point, that this is largely a question of ICC staffing. Something that has hamstrung the Court immensely is the absolute absence of country specific experts within the institution itself. The court has undoubtedly some of the most talented legal advisors on the planet, but what it does not have is experts who are well versed in the nuanced politics of Sudan, Central African Republic, Uganda, etc. Without that expertise, the Court is not able to judge well how politics is playing out on the ground.

This is important for two reasons. First is a practical one for the court itself: if you want to intervene in ongoing conflict situations, you had better know who you need to talk to, how to get to them, how to get people to trust you, to give you evidence and to assist you in your investigations. Without that level of cooperation, trials do not get off the ground. The Court has found that difficult to achieve so far. The second reason is a broader political issue: the Court needs that ground level expertise because it needs to know how its operations are going to be represented locally, nationally and internationally. The Court has struggled with the extent to which its job has been manipulated and broadcast by others for their own means. We have seen this in the Bashir situation because of the way the Court has gone about constructing the case against Bashir and the way the Court has gone about releasing information about what it has done in Sudan—this has played into Bashir’s hands. Bashir has found a political savior in the ICC. We are talking about a president who was bedeviled domestically, and facing increasing political opposition in
Khartoum let alone the rest of Sudan. In the ICC Bashir has found a rallying cry. He has used alliances with the African Union and the Arab League to bolster the argument he is propagating domestically that the ICC constitutes neocolonialist meddling in Sudan’s affairs. What we have seen now is vociferous support for Bashir from erstwhile opponents and silence from even the government of Southern Sudan and some of the rebel movements in Darfur, who are very concerned about what it would mean domestically to openly support the ICC. Bashir has manipulated this situation extremely well. It remains to be seen how sustainable that support will be. As national elections near and the referendum in Southern Sudan looms, we will see the cracks in Sudanese politics reappear. In the immediate, however, Bashir has gained a huge amount of credibility since the indictment. That makes the Court’s job a whole lot harder. It has to deal with questions of white man’s justice, it has to deal with the fact that there is decreasing sympathy towards the Court domestically. This will make it more difficult to get the material and evidence that would be necessary for a trial of Bashir.

The Court has tried to be an apolitical organization and it has not wrestled with these realities on the ground, and it has made its own job harder in the process. What we have learned from international justice in the last ten years is that it is one thing to have the best lawyers in the world, but you have to understand the societies where you are operating. The ICTY under Louise Arbour was particularly good at hiring country experts. And what those experts were able to do was shape the Court’s operations and make sure the ICTY was able to convince governments to hand over their own. That was one of the great successes of that tribunal. In absolute contrast, you have the ICTR, particularly under Carla del Ponte, that did not believe that the nuances of local politics mattered. As a consequence there was continual bad blood between the tribunal and Kigali. This made it impossible for the tribunal to act effectively on the ground and completely eliminated the possibility of looking at crimes committed by the sitting government of the day. I think the sad thing from the ICC’s point of view is that it has not learned these very obvious lessons from the tribunals that preceded it. The prosecutor often talks about the ICC as representing the evolution of international justice, building on a heritage of law developed through the ad hoc tribunals. But in the case of politics and the importance of local politics for international justice, the ICC has not learned these lessons.

Q. Could you speculate on the future of the Court in five of ten years? What are the best and worst case scenarios for its standing in the international system? What can the Court and international actors do to cement the Court’s legitimacy?

Phil Clark:
I’ll make two main points here. The first thing is that we are going to see a shift in prosecutorial strategy as time goes on. The early years of the Court have inevitably been difficult because it is a new judicial institution that needs to get results. I think that has led to the kind of pragmatism from the Court that we have seen so far. Part of the reason that the Court has gone after low and middle ranking officials, rather than the Bashirs of the world, is because it has to get legal results. The hope of course is that with the cases that the ICC has at the moment we are going to see those kinds of judicial results and this
will then allow the Court to be more ambitious. We are probably going to see convictions in the Congolese cases; I think the cases against those individuals are quite strong, the evidence has been very systematically gathered—although not always by the ICC but by other sources—nevertheless I think the legal cases are quite firm. What this will do is buy the Court some breathing space, and that breathing space will be a key factor when the current prosecutor moves on. In that way Ocampo has had the most difficult job, which is to get the Court off the ground. The next prosecutor will face a very different set of challenges, namely whether the Court can live up to its highest vision of itself, will it prosecute the toughest cases, will it move outside of Africa and truly become a global court? This will be a big challenge for the incoming prosecutor.

The second issue, and this is where it is uncertain whether the Court will succeed or fail, is can it get the US on side? This will have to be one of the Court’s major goals over the next five to ten years. Without the US’s support the ICC is going to continue to face difficulties within the Security Council, which translates to blocking the Security Council’s referral of the most important cases to the Court. Let’s be honest, with Bashir, we were never going to see a head of state brought to the ICC if we had to rely on a state referral; the ICC needed the UN to do that. This is a trend that is going to continue into the future. We will probably only see sitting members of government indicted by the ICC if they are referred by the Security Council. So if the ICC is going to fulfil this utmost vision of itself, dealing with the toughest cases, then it is going to require strong support and coherence from the Security Council, and the US will be central to this. The other reason that the Court is going to need Security Council support is that it will rely on UN peacekeeping missions and other military support on the ground to do the arresting of the suspects in question. The problem that the Court has faced to date is that it has rarely had that support. The Court can issue arrest warrants for the LRA in the Northern Uganda situation, but what good is that if there is no military presence to back this action and arrest and transport these individuals? The same situation will undoubtedly come into play with Bashir: yes he’s been indicted and most members of the Security Council have backed that rhetorically, but Ocampo is right to doubt the fortitude of the UN and AU missions on the ground to do the dirty work. He knows that for the future of the Court this issue has to be dealt with, and that there has to be this kind of cooperation and the US will be the most important state in terms of getting that cooperation.

**David Anderson:**
I think the ICC is standing at the crossroads. The decisions of the next eighteen to twenty-four months are probably going to be critical. Everything depends on credibility: can the Court maintain credibility if they cannot get Bashir into the dock? How the international community chooses to react to this is critical. Much of this may be out of the current prosecutor’s hands; Mr. Ocampo may have no control over this whatsoever. What he has done by indicting Bashir is rolled the dice. The crucial actors here are the US and the EU. Will they support the Court and will they lobby and canvass for it to be properly resourced and developed in such a way that will allow it to bring its cases forward? Or will they decide that you can only do that if you have the support of other regional organization? If that is what they decide, and I think that is what they might decide, then the future of the ICC is very troubled. At present I cannot see the US under
the Obama administration or the leading EU countries, UK and France, moving forward to support the ICC if they know that it is going to bring confrontation with the AU and the UN. We have not really talked about the UN structures here but they are very important, you have to ask why did the UN Security Council pass the Bashir case on to the ICC and why did the US abstain? To an extent here you have a game being played called ‘pass the parcel.’ The UN is very good at passing problems on to other bodies when it does not think it can fix them without breaking a consensus. The UN now has a Peacebuilding Commission, which is very rapidly becoming more important in the UN. It seems likely that the Peacebuilding Commission will adopt a stabilization and power-sharing approach, and this will incline towards non-prosecution, aiming to build peace in the short-term, and leaving prosecution issues to the long-term. I may be wrong, but my best bet at the moment is that the combination of the lack of resolve on the behalf of the US and the EU, the UN’s desire not to cause any major rifts with member states, plus the Peace Building Commission’s commitment to stabilization does not bode well for the ICC. My view is not optimistic; I think the ICC could be in for a very difficult four or five years.

*Interview Conducted by Zachary Manfredi and Julie Veroff.*