Colin Thomas-Jensen is a Policy Advisor at the Enough Project. Based in Washington, D.C., Colin helps to guide Enough’s analysis and policy recommendations to end crimes against humanity. He also oversees Enough’s field research in Sudan, Chad, Congo, Uganda, and the Horn of Africa. Colin previously worked at the International Crisis Group, where he had a range of responsibilities including direct advocacy with senior policymakers and research trips to Africa. He joined Crisis Group from the U.S. Agency for International Development (USAID), where he was an information officer on the humanitarian response team for Darfur. He also served as a Peace Corps volunteer in Ethiopia and Mozambique, and has traveled extensively in East, Central, and Southern Africa. Colin has an MA in African Studies from the University of London's School of Oriental and African Studies (SOAS), with a concentration in the history of Islam in Africa, African politics, and Islamic family law. He has written for Foreign Affairs on U.S. policy in the Horn of Africa, publishes regular commentaries and op-eds in U.S. and African newspapers, and speaks frequently with international news outlets.

Q. You recently authored a strategy paper for ENOUGH outlining different mechanisms for peace building and conflict resolution in Eastern Congo. In the report you argued that Court should investigate and prosecute cases in North and South Kivu. Specifically, what role do you think the Court can play in conflict resolution in the DRC? You say the Court should increase pressure on international actors to develop an apprehension strategy for Ntaganda - how can it do this? More generally, what should be the political role of the Court?

A. One of the big issues that’s fueling conflict and atrocities and human rights violations across Congo is impunity. You essentially have a state with non-functional / dysfunctional court system and a limited capacity to investigate, arrest, try, and hold people accountable for the crimes that they commit, all the way from shoplifting up through war crimes. In the Kivus, certainly over the past ten years, we’ve seen a level of criminality and a level of violence directed towards civilians that’s almost unprecedented. For anyone doing human rights work, the Great Lakes is one of the biggest challenges that we have. Beginning to establish accountability for war crimes and crimes against humanity is critical to changing the behavior of combatants in these conflicts and ultimately ending them.
In the Kivus specifically, and since 2002 because we’re talking about the ICC here, we’ve seen sexual violence perpetrated on a massive scale, we’ve seen war crimes, forced displacement, murder, torture. All of the ingredients are there for what I believe should be a full scale ICC investigation. The state in question is unable to end impunity on its own in the Kivus and certainly because of the situation we’re seeing now with Bosco Ntaganda, unwilling to even live up to its own commitments under international law and as a signatory to the Rome Statute. And on that question in particular, I was really struck when Nkunda was removed from the head of the CNDP and replaced by Bosco Ntaganda that there was almost deafening silence from the human rights community, from nation states—specifically those signatories to the Rome Statute—and from the Court itself, on the fact that Bosco was essentially walking around unmolested in Goma. And that continues. He appears regularly in public, he spends time with government officials, yet this is someone who they’re obligated under international law to arrest. I’d like to see the Court increase pressure on the Congolese government to arrest him, and doing that means pounding the table a bit more. The prosecutor and his deputy do have a bully pulpit and can start to make a lot more noise about the fact that this guy, a guy who’s responsible for some pretty heinous stuff, is not only walking around carefree in Eastern Congo, but also has been given military responsibilities by the Congolese government that most certainly would give him yet another platform to commit atrocities.

Q. In the case of the Sudan, Enough’s strategy has particularly focused on accountability for state actors and state crimes, but in the DRC, your strategy appears to focus more specifically on rebel leaders and non-state actors like Ntaganda and the CNDP. What is the reason for this strategy? Is there a role for the ICC to play in helping to assure accountability for state crimes in the DRC, as well as for those committed by rebel leaders?

A. Justice must be impartial. In the case of DRC, there’s no question that the Congolese army – whether of Kabila I, Kabila II, the transitional government, or the current government – has been responsible for a significant number of human rights abuses and in many ways has been one of the causes of the conflict. In Congo, the army is more of a predator and a protector. The inability of the state not only to protect its own citizens but the decision by members of the military to commit atrocities is something that ought to be punished. The focus thus far has been on rebel leaders because as we’ve seen, the state referred the case and Nkunda and Bosco and others are obvious targets because of their reputations and the investigations that have gone on by a lot of human rights groups that I’m sure presented information to the Court. But the state in this case is often complicit in violence against civilians, particularly sexual violence. And also, I think here, again, there’s a split. Because the Court’s mandate is 2002 on, we’re looking at different periods. Many of the war crimes committed during Congo’s civil war were committed before 2002. Many of the criminals responsible for this violence are sitting in rather plum positions in the military or have retired to nice villas. In addition to the Court going after crimes post-2002, we also need to start looking at broader forms of transitional justice in DRC and particularly a process to vet army officers and remove and punish those who are proven to be responsible for war crimes and crimes against humanity.
Q. What was your reaction to the arrest of Jean-Pierre Bemba and the charges of war crimes and crimes against humanity brought against him? Is it significant, and how so, that these charges are for crimes committed in the Central African Republic and not the Democratic Republic of Congo? How might this affect the perception of the Court and his trial at the local level as opposed to an international level?

A. Bemba is someone who bears significant responsibility for crimes in both CAR and in DRC and the Court very well could have put together a pretty strong case against him for his conduct during the Congo War. That the arrest warrant was issued for crimes committed in CAR and that that case was referred to the Court by President Bozize and that that President Bozize is a close ally of Kabila and that Bemba is Kabila’s main political rival – these factors add to the perception that Kabila, like Museveni in Uganda, many think, have used the Court to isolate and neutralize political or military enemies. And whether that’s true or not, the question is: has the Court done its job in investigating crimes committed by all sides in putting together strong cases against the most egregious offenders and in ultimately, bringing these guys to justice? On the specific case of Bemba, I think it’s quite obvious that he did some pretty awful stuff in CAR and I do think he deserves to be in the dock for that and for that the ICC should be commended. But the other side of that is that there were atrocities committed by all sides in the war in Central African Republic and I would hope that there are ongoing and aggressive investigations to bring those members of the government responsible for atrocities to justice.

Q. We have seen some successful military tribunal trials in Eastern Congo recently, despite larger problems of impunity that you previously discussed. It seems that individuals like Lubanga or Bemba could ostensibly have been tried in military tribunals instead of the ICC. How does this affect the legitimacy of the Court? Are these too small of fish to be tried by the ICC, or did these cases warrant ICC attention?

A. The trials in Katanga ought to be seen as big successes, though from a human rights perspective, it’s unfortunate that the defendants were sentenced to death. Because I focus mostly on the Kivus, my understanding of what’s gone on in Katanga is mostly from Human Rights Watch and friends and colleagues there, and a successful Congolese prosecution is something we ought to applaud. But at the same time it is a small drop in the bucket of the level of criminality and violence that has characterized these wars. The imperative in the Kivus, where we often forget that 1,000 people are still dying a day due to this war, is bringing the conflict to an end. I think that whatever mechanisms are available to both the Congolese government and the international community to end impunity, which is fueling these wars, have to be exploited and the ICC is certainly one of them. I’m not sure if it’s a question of big fish versus little fish – the ICC certainly wants to be going after the high-profile individuals, those with command responsibility and responsibility for significant violations of international law. But in the Kivus, there are so many murderers running around and so many people with blood on their hands that the Court certainly has a role in both conducting its own investigations but also, and
Ocampo always stresses this, working with local government or the host country government to improve its capacity to do these types of things on their own. And in some way, and I wish I had the evidence for this, with the trials and convictions in Katanga, there is perhaps a connection between the success that the Court has had in Ituri and in apprehending suspects and having them delivered to the Hague and the Congolese government taking on more responsibilities to try and prosecute its own war criminals.

Q. What do you think of the Pre Trial Chamber’s decision to issue an arrest warrant for Omar al-Bashir? What is the impact of the absence of a genocide charge on the advocacy movement? If there is a consensus among international jurists from the UN Commission of Inquiry Report from 2005 and now the Pre-Trial Chamber of the ICC that the violence of Darfur does not constitute genocide, will this affect the advocacy movement’s, and Enough’s, strategy and advocacy focus with regard to the conflict?

A. First, on the Pre-Trial Chamber’s decision, I understand that the deliberations, specifically over the question of genocide charges, were extremely contentious and that a couple of the judges are no longer on speaking terms because of it. And I think that speaks to the fact that this wasn’t, as some armchair academics have said, a slam-dunk in the face of the Prosecutor that Bashir is not responsible for genocide. It was something the judges debated and discussed and disagreed upon. Whether those charges are warranted or not - ultimately in this case not - there will be other prosecutions and I’m sure there will be other attempts through whatever justice mechanism, whether it’s domestic in Sudan or international, to prove these charges, because I think there’s evidence enough to warrant at least a trial on genocide charges. I say that in part because of the decision reached by the US government to call this genocide, and it was not one taken lightly. It resulted from a legal investigation and determination by State Department lawyers, who are not known to interpret these things liberally. They are quite conservative, so to make that determination was something they felt quite strongly they had legal basis to do. And look at the Commission’s report itself. It was incredible to me that despite the litany of crimes listed as committed by the government and its proxies, the government of Sudan was able to twist the report into quite a propaganda machine for itself simply because the commission didn’t say that genocide had been committed. It said that there were acts committed that were tantamount to genocide but didn’t quite reach that threshold. But there was very little legal discussion of what that meant. To me it sounded like the US State Department talking about Rwanda in 1994, when the spokesperson famously said that acts of genocide had been committed but the U.S. government shamefully refused to say, in the face of continued questioning, that genocide was being committed.

On the question of how this is going to impact advocacy and activism: my own strong belief is that the question of whether or not what’s happening in Darfur, or what has already happened in Darfur, was or is genocide is important from a legal perspective and from the victim’s perspective. It has to be said that the use of the word was certainly important to building an activist movement and certainly catalyzed a number of communities to take action in the United States and around the world. The continued use
of that term is a contributing factor to the energy that we’ve seen built up around ending this conflict. But at the same time, the debate over whether or not it is genocide has been unproductive in many ways. It’s also been non-productive and it’s been counterproductive to the movement to end whatever we want to call it: war crimes, crimes against humanity, genocide, mass atrocities, atrocities, atrocities crimes. It has been unproductive in the sense that it’s been a distraction. We’re still seeing reams being written and discussed about whether this is or is not a genocide. At this point, it is important from a legal perspective, but it is more important that six years into this conflict, we have yet to see meaningful steps taken to end it, except by the ICC. It is non-productive because, even though the US reached the determination that the violence constituted genocide, it then made this astonishing leap and said, “And we’re doing all that we can to stop it.” The fact that you had the conservative General Counsel and lawyers at the State Department authorizing the US to make a pretty extraordinary claim on the international stage and then following it up by saying, “And that’s basically it,” raises the question of: what was the point? What then did it mean? And then I think counterproductive for the reason I said before: the fact that any time an institution or a commission makes a finding that it is in fact not genocide, the government of Sudan can rail against the United States and others for their claims without having to face what’s often embedded within the text, which is that the government is responsible for terrible crimes against humanity and atrocities no matter how you cut it or how you define it.

I think the way it’s going to impact the movement in immediate terms of the Chamber’s decision is minimal. I think that many activists and, it must be said, many lawyers and academics believe strongly that genocide has occurred and may be still occurring. And as a way to frame a conflict in which civilians have certainly been targeted on the basis of their race and ethnicity, it’s going to continue to be a descriptor and it’s going to continue to drive a movement that we hope will help to end the conflict.

Q. Looking at Enough’s four “P” strategy - Peace, Prevention, Protection and Punishment - sometimes these various objectives may come into conflict with one another. Could you describe the decision making process of Enough staff when deciding to support a decision like the ICC arrest warrant for Bashir that, while it furthers the interests of justice, may also have negative implications for peace and protection in the short term?

A. Our strong belief is that you need all three at the same time if you are going to make any progress towards ending a conflict. Protecting civilians in and of itself not going to end a conflict. Peace without justice most likely fails to end conflict and accountability in the absence of anything else is not going to end the conflict either. You need to move forward on all fronts. We also have to be realistic and sober when we think about what the impacts of various moves might be for people on the ground and it is disingenuous for any activist to say that the ICC’s decision and the way that the government of Sudan has responded to the ICC’s decision, is not going to have an extremely harmful impact on civilians in Darfur, in both the short and perhaps medium term. That is why the international response to the Sudanese government’s decision is so important is that up until now, the government has really faced very few if any real consequences for what it
has done in Darfur. I do agree with some that the regime is acting in part out of paranoia that western NGOs are embroiled in a plot to bring down this government. However, I also think that they have calculated the human cost of this decision and it is something that plays into their war strategy. If there is no response, or if the response is to consider an Article 16 suspension of the warrant so that humanitarian assistance can continue, we will have essentially enabled the regime and others like it to manipulate humanitarian assistance and accountability to their own ends. If the Sudanese government does not reverse its decision to expel humanitarian groups or face harsh consequences for its actions, the immediate lesson for this regime and others like it is that for all of the rhetoric of human rights, international law, and responsibility to protect, the international community remains as toothless in the face of genocide as it was in Rwanda. A return to the status quo right now, despite the overwhelming costs that I fear civilians are going to suffer, is the worst thing that can happen to Sudan just now.

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? Where might the Court issue its next set of indictments? Where should the Court look for future prosecutions? Also, as a parallel question given that Enough also describes itself as an organization dedicated to ending genocide and crimes against humanity, what is the significance that all of the conflicts Enough has thus far focused on are also African? Does Enough plan to focus on other conflict situations in the future?

A. At Enough, when we began our work, it was essentially two Africanists that founded the organization – John Prendergast and Gayle Smith – and I was a sort of wobbly third wheel and also an Africanist. We believed strongly at the time that the three conflicts that warranted the most attention and would benefit the most of a constituency of Americans pushing policymakers to take action to end atrocities were Sudan, Congo, and Northern Uganda, or wherever the LRA happened to be at the time. Over time, however, our strategy certainly is going to be to expand beyond just Africa and to start adding any crisis to our portfolio in which crimes against humanity or genocide are occurring. One of the ways we are going to make those determinations is through a project to establish metrics for those places most at risk—tackling this question with political science research. We are going to examine the question of where atrocities are most prevalent and what countries are most at risk of atrocities. I am pretty certain that once we finish that project, we will have a roadmap to some of the other countries that we are going to be working on. I have no doubt that Sri Lanka and Burma would be high on the list as places where civilians are bearing a high cost in war. It must be said that we receive a constant barrage of feedback on the website from people asking why we are not focusing on Iraq and Gaza. There is a strong case to be made that atrocities are being committed in the Middle East, but many of these crises already get a whole lot of attention from the media and policymakers and from activists. Our mandate is to try to shine a spotlight on those conflicts that are equally bloody, if not bloodier, but that do not generate the same kind of heat. That is how we make our decisions.
As for the Court and the fact that its work has been limited to Africa, I do think the Court now has a big perception problem on its hands. I think they are aware of it, but I do not know what specific steps they are taking to deal with it. For those who critique the Court on these grounds, their argument is that it is a neo-colonialist imperialist enterprise aimed at keeping African countries in their place. The counter-argument of course is that three of the current cases – CAR, Congo, and Uganda – were referred to the Court by elected, sovereign governments and the Sudan case was referred by the Security Council, which is the ultimate arbiter of international peace and security. It may not look fair, the argument goes, that the Court only has cases in Africa, but that it has just turned out that way early on. I think that that is the case, but the issue of perception has to be managed better as well; the perception that this is a Court of white man’s justice needs to be accepted on face value and combated aggressively not only by the Court but by state parties to the Rome Statute as well. My greatest frustration with the ICC is not with the institution itself, but rather with the states that signed the Rome Statute and the fact that in the face of criticism from the global south, criticism from multilateral organizations like the Arab League and the African union, that the Court’s major backers have been somewhat muted in their response—this certainly hurts the ICC.

It is not the prosecutor’s and the Court’s responsibility alone to defend their actions day in, day out. They need support from those countries and those institutions that helped to establish the Court. And not only does the Court need defense against and criticisms and questions about whether they are targeting Africa, but they also need support in executing the warrants. It was incredible to me that the ICC issued arrest warrants for Joseph Kony and his close associates and the Court’s major backers within the international community literally had no plan and no notion of a plan on how to execute them. As a justice mechanism it is the prosecutor’s job to take on cases, pursue them aggressively, and put people behind bars, but it is the broader international community’s job to support that effort in the face of criticism and to support the prosecutor if he makes a mistake. I’d like to see a more friends of the ICC that were more vocal and assertive in putting forth that alternative narrative, because I’m getting pretty sick of hearing how the Court is targeting Africans, particularly when it has to be acknowledged that some of the worst war criminals in the world are killing with impunity in Central African and Sudan.

Q. What do you see as the future role of the Court in 10 years? Will international criminal law gain increased authority and enforceability? Could you speculate about possible best- and worst-case scenarios for the Court? What can the ICC and other international actors do to ensure its own legitimacy in the future?

A. I think we have to look at the broader trends. Although by no means is the job close to being finished, the world has made leaps and bounds in halting atrocities and in ending impunity for war criminals. I do think you can say that we have made significant progress through the international tribunals of Rwanda and the Former Yugoslavia, and the Special Court for Sierra Leone; we are seeing major war criminals behind bars, on trial, in the dock, answering tough questions about their behavior and ultimately spending time behind bars. That is not something that was happening 20 or 30 years ago. The optimist
part of me, and it is not a large part, but the optimist in me says that despite the fits and starts that are inevitable with any institution that the ICC, over time, is going to establish its legitimacy through prosecuting and putting people behind bars and that it is going to earn increased support. A very important issue for the future is the strategy that the Court and its backers put in place to manage its perceptions, particularly in the Global South. I think there does need to be much more considered and concerted action taken to do that. I also think that the work that the Court’s main backers do behind the scenes to support its work is of incredible importance. The ICC does not have an army and it does not have a huge investigative force. When it does investigations, it relies on support from others within the international community. I know people who have provided evidence in a number of cases—they have just volunteered. They have said, “I have these photos of this incident, do you want them?” And the Court says of course. Those of us who support international justice have a responsibility to do what we can on an institutional and a personal level to support the Court. If the ICC does receive that support, we’ll have an institution that in ten years is locked in place within the international system. It will have its ups and downs, but will be well established as a mechanism to bring the worst war criminals to justice.

I don’t want to speculate on the worst-case scenario. Certainly the Sudan case is a major challenge and the fact that the Court’s backers and Rome Statute signatories have allowed the African Union and the Arab League and others to marshal as much opposition to this arrest warrant as they have is problematic. The possibility of African states pulling out in a block from the Court is a very real problem and one that ought to be combated. I do not think that would be a deathblow to the Court, but it would certainly be a significant shot. My general sense though is that, despite the horrible crimes that are still occurring, the trends in international law towards ending impunity and preserving human rights are positive. I think the ICC will ride that wave and in ten years will be in a place that might not be as far ahead as we would like it to be, but will be well-established.

*Interview conducted by Julie Veroff and Zachary Manfredi.*