Q1: Why don't we just start by asking you what you were doing when events were heating up in the Balkans, and what your reaction was? Were you following what was going on in the region?

Muller: Well, the interesting thing is that when I think of the Balkans, I immediately think of the birth of my daughter. We went to the South of France with her soon after she was born. I was walking outside with her, trying to put her to sleep because babies don't like to sleep, as you may know, and at the same time I was following what was happening in Srebrenica every single minute. Sometimes, around the time of her birthday, that comes back. It's a really odd memory. There were the images of dancing Dutch soldiers that were really happy to be back, the now King, then Prime Minister visiting our brave Dutch boys that had come back. Everybody was very happy, and then slowly the news started to drip in: well, there's nothing to be happy about and these guys weren't as successful in their mission as we initially thought. And so a moment of happiness and patriotism fizzled out.

Q2: So is that about 1995?
Muller: That was the Summer of 1995. I had just defended my Ph.D. on international law and was an Associate Professor at Leiden University at the time, managing the LL.M. program. So this was passionate stuff to me, Srebrenica and everything that was happening. Not long thereafter, in 1996, I was recruited by the UN to work in the Middle East, so I went to a completely different part of the world.

Q2: So what brought you back to the ICTY?

Muller: I went to the Middle East for two years, and while I was there the Rome Statute was adopted and everything else. All I could do was read about that while I was working in the Occupied Territories as a legal advisor. And then I don't even know how, but somehow it reached me that they were looking for a deputy legal advisor at the Registry of the ICTY. I got in touch with David Tolbert and he hired me and I became his deputy. But the day I arrived he had just moved to Gabrielle Kirk McDonald to become her Chef de Cabinet. So even though I was a deputy, I also had to kind of run the show. I don't think I was fully qualified for everything that I had to do so I landed in the middle of something huge. What I remember is, at the end of every workday, going up to David's office and then working with him through the stuff that I was responsible for on his behalf. He was a tremendous teacher.

Q1: What were some of the things that you did initially when you got to the Registry?
Muller: There were a couple of things. There was the negotiation of victims and witness agreements. There was the negotiation of enforcement of sentences agreements that were starting up. And for me, probably the most formative moment was when Louise Arbour indicted people for Kosovo, and then the Kosovo war started. We started preparing for an investigation for the minute that war ended. The Registry worked very closely with the Office of the Prosecutor to put in place the Memorandums of Understanding with as many states as possible that would give us investigators and forensic teams in order to go out into the field as soon as NATO would allow us to go in. I actually went there four weeks after NATO to see these teams put in place. It was a frantic (emphatic) negotiation day and night to try and get as many teams out there.

One thing I remember was the impossibility of negotiating with Americans [laughing]. One of the teams we got was the FBI and we had one clear rule: the forensic investigators that we get from the states never (emphatic) carry arms, because we are the UN and we don't carry arms. But you can say that a thousand times to the FBI or to a U.S. diplomat but it is not going to happen [laughing].

Q2: I didn't realize that you had teams coming from so many different national jurisdictions. How did you coordinate that?

Muller: Well it was a very complex affair. We had a standard Memorandum of Understanding to deal with a lot of bureaucracy, including at the UN. Our main interlocutor at UN HQ was the
Office of Legal Affairs in New York. They had a couple of very clear requirements that had to be met before a state could loan to us, some of which we thought were rather bizarre rules. It's now coming back to me, but they had, for instance, these rules on equitable geographical distribution. As a rule, the UN’s staff should come from all parts of the world. That makes sense. So if all kinds of Western states start giving you forensic teams, then you're actually circumventing equitable geographical distribution. But if you face a huge crisis and you need urgent help, then competence should take precedence. And of course UN HQ realized that, but we had to find ways around that.

Once we had a standard agreement we had to just negotiate that time and time again, and each team had its special requirements. In addition to that I was head of the contracts committee there, which scrutinized every procurement effort. So we had to buy bulletproof cars, mobile morgues, I don't know what kind of equipment, really lots of stuff to be able to go out there. We had to open field offices, negotiate with FYROM (the former Yugoslav Republic of Macedonia), as it had to officially be called (we could not use "Macedonia"), to open an office there, and with the UN Mission in Kosovo to open an office in Kosovo. All the mobile phones and transmitters, which you get when working with the UN, had been bombed. So we had to get the mobile system up and running again. Yeah, it was frantic (emphatic)!

Q2: You joined the Registry when in the 1990s?
Muller: Let's see, I worked in the Middle East the whole of 1996 and 1997. So in early 1998 I probably joined.

Q2: So that was a few years into the operation of the tribunal. When you got to the Registry, were there already really clear routines and operating procedures? Or was the Registry still in the process of deciding how it was going to work and what its regulations were?

Muller: There had been a first Dutch Registrar and a successor to him, Dorothy de Sampayo. She was excellent; really good and a very structured person. One of her top advisers was my then boss, David Tolbert, who was also top quality. He'd also made sure there were very clever people. There were interesting issues at the senior level, and that was fascinating. I remember Louise Arbour, Gabrielle Kirk McDonald, and Dorothy de Sampayo rarely met, the three of them, which is a bit strange to think about, but that just didn't always go that well. So I remember meetings where I was Dorothy's right hand, Graham Blewitt was Louise's right hand, and David Tolbert was the right hand of Gabrielle. And sometimes Graham and I would look at each other and go, "Oh boy – this could be done in an easier way."

And then a big change came with Claude Jorda. I always thought he was not an easy person, but he saw a number of things, I think, very accurately. He was one of the people that had been a judge already before coming to the ICTY. He had been Procureur Général près la Cour d'Appel de Paris. So he had been an official in a justice system and wasn't a "professor-become-judge," or a "diplomat-become-judge,". You knew he'd been there. So he started literally on a piece of
paper, thinking through, "Well if the Prosecutor indicts twenty people, and if these twenty people all need to go through the whole system then we're probably finished in 2032 at the rate we're going, given the number of judges we have, given the amount –." And nobody had ever done that; nobody had ever looked at the tribunal as a machine.

So you had the Prosecutor doing her stuff, you had the judges doing their stuff, and you had the Registry trying to make it work. Jorda really analyzed the whole thing and said, "guys, if we do it at the pace we're now doing it, and everybody's who's been indicted has to go through the whole system – and you can't un-indict – which leads either to an acquittal or a conviction, then we're on a very, very long road that is unsustainable. This is absolutely not going to work."

When he became President of the Tribunal, he created the idea of a coordination council in which the President, Prosecutor, and Registrar periodically met to coordinate overall tribunal matters, without prejudice to each other’s independence. When you think of it now, this was a completely normal thing to have. But it was new then.

Years later, at the ICC, the first thing we installed was a similar coordination council: a body where the Prosecutor, the Registrar, and the President meet once a month to talk about the whole system rather than their individual pillars. Jorda invented that and I think it was good he did, because it turned out that the budgets were very disjointed. Louise would defend her budget, Gabrielle would defend her budget, and we would try and hold it together. But it was not a very coherent machine. And of course we, as the Registry, even though I guess hierarchically speaking we were slightly below the Prosecutor, we were the only ones that could see the whole
machine because we were serving the judges in chambers and we were helping the Prosecutor with its operations. So I always thought Claude Jorda was a great leader by looking at this and starting to make noise about it.

Q3: So when he made that prediction, what was the response? Did it mean that the institution needed to have more judges, or another courtroom?

Muller: Through his analysis it was realized that we needed more judges. To achieve that, but without having to extend the permanent bench, he came up then with the idea of *ad litem* judges; this also saved some costs. He had to go to UN HQ in New York and make the case, also before the member states. He got it through. So then they created these *ad litem* judges who have a high salary but don't have pensions and these kinds of things to save costs. They created the coordination council, which started meeting. It did not always work that well, but it at least was something; it was an attempt to really institutionalize thinking and it forced everybody to start thinking much more of things in a system.

Then, I think, a second reformer that I admired, by coincidence a Frenchman again, was Bruno Cathala, who became Deputy Registrar and later the first Registrar of the ICC. He had been a "juge inspecteur" in Paris, so his job was to inspect courts in France for their effectiveness. He had an idea about what are the indicators for the success of a court. Everybody in the tribunals was always saying that "we're so special, you can't compare us to national systems, we're completely (emphatic) different, and there's no way (emphatic) you can measure whether we're
successful or not." And he said, "that's not true, you can develop some indicators for success."
So he started thinking of ways that you could create a dashboard on the quality and efficiency of our procedures, of course with Hans Holthuis, the then Registrar.

We put together some criteria, but then it became very difficult to figure out what to do with them. For example, criteria like, "Per chamber, how many witnesses were called per case?"
"How many of those called actually testified?" And, "How many days did they stay in The Hague in relation to the time that they testified?" Well, if you do that you learn very quickly that there's a sizeable group of people being flown into The Hague that never testified; people that are flown into The Hague and spend an extended period of time here to testify for one day. Also, for example, regarding documents. "How many documents were translated for a case?" All this gives you management information, and basically we wanted to use the management information we gathered to see how trials might be managed slightly differently to save costs and time,. What we then started doing is putting those indicators on the table at the judges' plenary. This wasn't always fully appreciated, but these were just facts. We hoped that that would create an atmosphere whereby the president of one chamber would say, "Boy! I have more witnesses that are not being heard than my colleague in the other chamber, I must change my behavior."

Q2: But there was some defensiveness on the part of the judges?

Muller: Oh yes. Judges generally don’t like management. But again, somebody like Claude Jorda understood this; he was more used to this. Generally, in my memory, the upheavals I was
involved in were mostly about the management of such a place, the control of its costs, and an increase in its effectiveness. And I should also mention Louise Arbour, who was the Chief Prosecutor when I came. She was an amazing communicator. Thanks to her tremendous communication skills, I felt the world generally liked and appreciated us a lot.

Q1: Did you work on issues related to the defense at all?

Muller: There was an Office for Defense Counsel, so as Chief Legal Advisor for the Registrar I did not work directly on that topic, except as part of overall management, the budget, and if there were serious issues that touched upon ‘Legal’. One of the great things about my job was that I got to see all elements of the tribunal, and defense was another one. How do you ensure good defense, an effective process, and manage costs? I do remember that states, and especially states whose contribution to the whole UN budget was not as high as other states, could get very upset about money that was being paid for the Defense Counsel. They said that it was too much. We spent a lot of time being transparent about these costs. At one point we got – I remember that very well – we had the "fee-splitting scandal." That was a big one and we really had to go out and defend ourselves for that one.

It started with reports about a practice amongst accused and some ICTY defense council from the former Yugoslavia, whereby the accused would go to a lawyer, and say, "You defend me, I know I'm going to go to jail anyway, so I'm going to give you fifty percent of what you get as a lawyer, which is already a lot more than you would ever earn, and fifty percent goes to my
family." I don't know whether it was actually fifty percent, but there was some kind of deal there whereby the tribunal money destined for Defense Counsel was actually used by some of these people to, for example, pay the rent or buy a car for the family. The thinking amongst the accused was simple: "I'll do my day in court and I'll just make money off the system. Go to jail, serve my time, come back and then I will have a nicer house paid for by the UN."

Q2: I believe that also was an issue that came up at the ICTR.

Muller: Yes, it happens when you have such incredible inequalities and disparities between different systems.

Q2: Yeah. Did you have very much contact with members of the ICTR Registry? Were you comparing notes, or taking lessons from one another?

Muller: I think there again it was a matter of personality. So the first Registrar, I forget his name, it was the Registrar before Adama Dieng.

Q2: Agwu Okali?

Muller: I forget his name. Anyway, he got himself into some trouble and he was not an easy person to work with, so there wasn't a lot interaction between us. But then Adama Dieng changed it. He was stellar. He started regular visits and I found working with him a pleasure. So
there were certainly some discussions, and later — although it's surprising how late — an official registrar coordination, a "let’s learn lessons" kind of body, came into being. But we never thought of instituting that in earlier times for some reason.

Q3: How long did you stay at the ICTY?

Muller: Through David I became involved in the advising of the Assembly of States Parties (ASP) in the negotiation process of the Rules of Procedure and Evidence, the headquarters agreements, and all the stuff that came after the Rome Statute – basically the real flesh and bones of the Rules of Court, how it really worked. And that slowly grew into a huge chunk of my work, the entry into force of the Rome Statute, which was in 2002.

I started out as a part-time adviser to the ASP, flying frequently between The Hague and New York, in addition to my work as legal adviser for the ICTY. That was hard work. Then, as entry into force of the Rome Statute became evident, I was asked to head an Advance Team to set up the ICC, which I agreed to do. I must thank Hans Holthuis, the ICTY Registrar, for allowing me to do this. I then moved over to ICC full time.

Q2: I didn't realize there was that close a connection between the Registry at the ICTY and the ICC.
Muller: Oh, yes. Morten Bergsmo from the Office of the Prosecutor and I were two people who were much involved in this but, initially, didn’t have an official role. Here’s what would frequently transpire during the negotiations. States would get all fired up about a particular issue and then, if they couldn't really find a way out, the man or woman that was chairing the negotiations would say, "Could the representatives of the tribunal enlighten us on how this really works?" And then they would turn to Morten and I who were sitting at the back of the room. And we would say, "well, you know, you guys had a really interesting discussion for the last half hour, but that's not how it works. This is how it works and this is what you should do." And that usually helped discussions. So we were kind of back-room advisors.

And then my then boss, Hans Holthuis, who was an incredible guy, was slowly losing me as his Chief Legal Advisor, but he also realized we've got to help the ICC in its setup as well. Then the ratification of the Rome Statute went far quicker than anybody thought. So about one and a half years before 2002 there were already alarm bells, and people started thinking, "What the hell do we do now, because we can't have it enter into force and then there’s nobody to pick up the phone." So then the idea, and I helped them put together this idea, of an Advance Team that would work for half a year to prepare everything so that when the judges and other high officials come they already have something of a running organization and not an empty room in the Peace Palace like with the ICTY.

Q3: This question is a little bit out of order, but we always like to ask it at some point, and I think actually what you're talking about now leads to it. You were a law professor, and you
worked in so many different capacities, and if you think about Nuremberg till today, and look at this trajectory of international criminal justice with your rich experience at different tribunals, what are your thoughts about that trajectory?

Muller: My thoughts on this are largely determined about what I do now. What I have seen since leaving the ICC are the limits of what you can do internationally. Looking back, and given the way the world looks now, I think there were very naïve dreams about what you could internationalize, and what you could really (emphatic) change through some huge thing that you build in The Hague. The real justice work is done in communities, in countries, in villages, in towns, based on local cultures and social interactions which happen there. And the ability of these international tribunals to really (emphatic) interact with that is very limited. It doesn't mean they're useless, absolutely not. But it means that their role is limited. There are all these organizations that are working to try and connect the norms and the rules that we agreed internationally and in constitutions to the lives of communities, the lives of people, and countries. And that's very tough, as we've seen in Kenya. That's just really, really (emphatic) hard with sometimes impossible dynamics. The trajectory shows that the norms are, beyond a doubt, established. Nobody's going to say it's great to commit crimes against humanity, that's now clear on the map. The idea of international justice and accountability for these kinds of things is also out there. But getting it done is not a matter of hauling two or three big guys to The Hague, convicting them, and then thinking that "a people" will then slowly come to terms with the past and live in harmony.
Somewhere during my ICC work or in the transition between the two I started asking some of my own family members who suffered deeply in World War II, how and why they came to terms with the war. Starting with my dad, I asked, "Why can you buy a Volkswagen now?", "Why do you have German friends now?" I have to add that when I was still very young, my parents were distinctly anti-German. The answer I got was not Nuremberg. The answer was, "Because I saw the Germans deal with it themselves. Nuremberg was probably a catalyst for that. But what changed my mind and heart slowly is when I saw Germans putting Germans before courts for what happened. I saw, "now these guys mean it, this is serious." I don't know whether you can apply that to the rest of the world, but that's what I kept hearing. Germans dealing with themselves – in all openness. I suppose the passing of time and some other things like economic development also play a role, but this is, I think, an important one.

Q3: It makes a lot of sense on a couple of levels, and one is that justice is really being seen by those to whom it means the most.

Muller: Exactly. So we probably need to be a bit more modest about these international solutions. They're important, and I'm glad there are people doing the work, so keep at it.

When I was dealing with the press in those first months of the ICC, I almost always got the question "Is the ICC going to be successful?" And I always said, "Don't ask me now, ask me in ten years." And I thought then that ten years was a long way off (emphatic). And now it's ten years ago, in fact it's more than ten years ago, and I still think I'd answer, "Ask me in ten years." Because the record hasn't exactly been set yet.
Q2: Through the interviews we've been doing, people who were involved at the ICTY in the very early years talk about this really powerful sense of solidarity and people being in this "exercise" together with a lot of harmony, and just the sense that we need to work as hard as we can. What was it like there when you joined in 1998? Had that already dissipated to some extent? Can you comment on that? But also, what was it like at the beginning of the ICC. Was there also this kind of really powerful energy behind this new institution?

Muller: If I start with the ICTY, I definitely think that was there, but it was there at certain levels and I think there's always a tendency of people to romanticize in retrospect. The top leadership didn't always talk in a completely normal way, so you can talk about harmony, but let's be clear. Secondly, when we talk about harmony, I slowly got to see – and I can't remember the exact statistics – something like 80% of the key and leadership positions were held by Canadians, Americans, Australians, or British, or from countries very much affiliated with these states. So there was camaraderie, great, but it was all very (emphatic) biased towards the Anglo-Saxon common law system and systems that people knew about. If you were a French, Italian or Sri Lankan investigator, and I remember talking to some of them, it was tough, because you were not part of the mainstream. I remember being in interviews where people from completely different nationalities kind of disappeared in the interviews because you had to be from that world. I wasn't from that world, but I guess I was somehow accepted, but there was a very strong slant towards that. I remember people being annoyed that the French, like Claude Jorda, always wanted to talk French. I said, "Well hold on a minute: it's one of the official languages
here, and if we all cuddle up nicely in our English language comfort zone we create this fictitious idea that we are amongst each other, and we and the world outside all understand each other, and we don't. So let's just talk different languages and get used to the fact and be uncomfortable about that, that's the way to really get to know each other."

Q2: We've been trying to explore that idea a little bit. I'm particularly interested in the languages used at the tribunals. I asked about this of one interviewee who is a native French speaker, and she said, "well, French was never going to be dominant there so I just sort of had to let it go."

But I know that people have said that they sort of resented the fact they would be put in a French language team, or thought, "why don't they just speak English?"

Muller: Yes, bizarre. I remember that the registry leadership, the Dutch Registrar, Hans Holthuis, his deputy, Bruno Cathala, and myself, just decided we're going to only talk French. We're going to make all the management team meetings in French. We're going to send emails in French. Let's just be very uncomfortable.

Q1: And what was the response?

Muller: No, not nice for everybody. But I felt it was important to be uncomfortable. To work hard to understand each other. And then there was another element behind it, which was the common law versus civil law thing amongst judges and others. I remember that, in the beginning when I was there, I was very intimidated by that because I was a civil lawyer and in
the minority. We had a stupid legal system, common law was the thing, so I was playing catch-up like crazy to try and understand all this common law business. And I remember that at one point, I probably had been there for about three or four weeks, David took me to meet the great Louise Arbour. We sat in her office – she really took time for this – and she asked me at one point, "Well, Sam, you've been here for three weeks, or whatever: what really strikes you as an issue here?" And I said, "What's with all this common law/civil law business, I mean they're killing each other over this common law/civil law, I come across it all the time." And she almost dropped laughing and said, "Sam, I understand what you're saying but all that is really not an issue." And she continued, "that's what people use as an excuse for lots of other stuff. When you really apply it, a good lawyer can use the best from every system. The civil law/common law divide is made out to be something much bigger than it is. Just remember, when you're in that kind of argument, look for the good lawyer, don't look for common law/civil law."

Q3: And she probably was trained in both systems as a human rights lawyer?

Muller: She was completely at ease in both, and she said, "Just think about what you're trying to achieve and then work towards it." But it was a big thing. We had this running gag about one of the judges from Australia, who would always start conversation by saying, "Well, back in New South Wales…" and then he would start whatever he was saying. It was a way of saying, "Common Law," and then the rest. So, yes there was camaraderie around our common purpose and the adventure we were in, but it was also based on a number of premises, namely that you were English speaking and that you had the common law system. And one of the things I really
(emphatic) enjoyed about Carla del Ponte – even though I also saw she could be a difficult person to work with – is that she didn't give a toss about consensus. She had her ideas about how it should work, and she really bridged this gap of common law/civil law. I thought it was brilliant. She was the first "real" prosecutor to be appointed Prosecutor; the rest hadn't been prosecutors before.

One of the areas where the civil law/common law divide surfaced was the question of who was higher: the Chief of Investigations or the Chief of Prosecutions. In the common law system, they're both separate: the policemen do their stuff and then they give it to the barrister and the barrister does his stuff. "That's how the way of the world works, so that's how we should do it.", said the common law majority. And the humble civil law people said, "Well, I don't know, but that doesn't really seem to work here. You can't have investigators going all over and digging out mass graves in disconnection with what the prosecutors are doing." And in fact, later history showed that's what happened; a lot of the investigations just didn't sufficiently match up with what needed to happen in court. So, Carla said, "The division in the common law system works well when you're doing a murder case, but when you're doing very (emphatic) complex multi-national cases which involve millions of facts, and involve very complex analysis to get to the command level, you can't work this way. It has to be very simple: the Chief of Prosecutions is in charge, and the investigators work for him or her – finished, end of story. And if you don't like it, find another job." That's almost literally how she said it. But she did change it. Then there was, of course, no harmony for a while, and people got all upset. But again, I thought her instincts were right.
You see, there were a couple of changes that the ICTY had to go through. First we were very focused on setting ourselves up – we were very organization-focused, working on structures, systems, best practices, etc. Then we were an entirely investigation-driven organization, and then after about six years, things started ending up with the judges. So it's not surprising that then somebody said, "Well hang on a minute, there's a system here. Everybody's been focusing on this investigation but right now things are ending up with the judges." And that was Claude Jorda. And then they started focusing on trials. Then some people started realizing that what's been investigated is not always connecting fully to the trial that often took place many years later because of a sudden arrest, and as a result, "we're not really (emphatic) being able to prove the points we want to make beyond reasonable doubt." So then Carla analyzes it, and says, "Well, we need to put the prosecutors in charge now, because the arguments in court count in the end, and not all these investigations."

So it kind of fits also in the whole revolution, the life cycle. You go from an investigation-driven organization to a trial-driven organization. And that's basically what happened. And then from a trial-driven organization, you go slowly to an appeals trial-driven organization. I guess that is where they're slowly now, now that they're closing. And you'll probably see the same kind of cycles with the ICC.

Q2: Outreach must have been part of the Registry work, too.
Muller: Yeah. That's actually a good question, that's a really good question. So maybe that was another revolution.

Q3: And what was the state of it when you arrived?

Muller: There was no real outreach yet. We thought we're doing this great thing, we're there so everybody must like us. In my own mind I sometimes called this the "White Knight Syndrome." I think we were all suffering from it to some degree. And it basically means that you, as an organization, are doing good, so therefore you don't need to question whether you're doing good, and you assume everybody knows and understands that you are good. We were going after terrible perpetrators in the name of scores of victims, so we were naturally good. And this has huge (emphatic) implications on the psychology of the organization. Because it doesn't make you open to questioning yourself, it doesn't really (emphatic) put you in touch with the outside world because you're doing good. And you're constantly meeting those people that suffer and have huge pain, and you're hearing those stories, so you become even more of a "White Knight."

At some point we got a visit from three very good academics – Laurel Fletcher, Eric Stover, and Harvey Weinstein – who asked, "Would you be prepared to work with us on a survey in the region where we ask people whether you're actually doing useful work?" As part of the White Knight Syndrome, the initial answer was "No need for that. And even if we did it, it is bad for trials." Luckily they did not give up. There was a feeling with some, and David Tolbert was certainly part of that and so was Registrar Dorothy Sampayo, "We have to do this. We have to be
open." So we said, "yes – where we can we will work with you." And they went off to do their fieldwork.

And they came back with rather devastating results (very emphatic): "Not many people like you. In fact, you're often having the opposite effect. You can be so overbearing that even well-meaning judges in the region basically say, 'Forget war crimes trials, I'm not going to do it, because these ICTY people think I'm a crappy judge anyway, so I'm not going to do anything. If they think I am useless, I will be useless. According to the international community our whole legal system sucks, and we're all corrupt, that's what they keep telling us.'" This brought home that we were not always connecting and, in fact, to some degree we were having the complete opposite effect. We were not empowering local systems, we were not connecting there, we were distrusted, we were not understood. There was serious media coverage that we were a court stuffed with NATO generals, and people actually believed that. So when that slowly started dawning, that was a big revolution moment again, where people thought, "Wow, we really have a problem now and we've got to start doing serious outreach."

First of all, we had to find so-called extra budgetary funding for that. The idea that you would go to the UN member states and ask for a big outreach budget as part of the so-called regular budget was not realistic. So we had to find states that were willing to support it separate from the regular UN budget. We set up a trust fund for outreach, and then we recruited Liam McDowell. He is perhaps another person to interview: a tremendously smart, driven guy who knows the region really well. Liam became the head of the outreach program and started really interacting with the
local people and justice actors. From there, slowly, the strategy of giving cases back to the national level emerged. I think that had a big effect. But it was an incredible oversight – you think that if we have a mandate from the Security Council, if we set up a multi-national court in The Hague, everybody will understand it and all will be well. But we learned the hard way that this wasn't the case.

Q2: You talked about how much work you did to transfer the knowledge of the ICTY Registry to the ICC. In a number of interviews for this project with people who were in the ICTY OTP, they have said, "Somehow the ICC just didn't get our lessons, they're just making all the same mistakes again." Do you think this applies to the ICC Registry, or do you think that they did learn something? Or do you think that that's not true about the ICC OTP either?

Muller: I don't have in-depth knowledge of what's going on there now, but when I was at ICC in those first three years we tried very hard not to make the same mistakes but, as we liked to say, new ones. Because you make mistakes, there is no avoiding that when you are setting up something entirely new. I remember very well that Luis Moreno Ocampo was always saying, "We're not going to make the same mistakes."

Now I’m going to say something very politically incorrect, but one of the things that the ICTY and ICTR created was a large group of people skilled in "tribunals." That is a good thing. But it also has less good sides because this group carries around all the good and less good models, experiences, practices, and they export them. At the time it was becoming clear that the ICTY
and ICTR were going to close and people were starting to also look for jobs. The tribunal world is not very big so there aren’t always jobs for everyone. In the course of the years I have seen some of them branch out into advising, consulting, and the shaping of new tribunals. I did not always feel that the advice provided or new tribunal created was rigorously thought through from scratch. Rather, existing models – often designed for something else – were more or less replicated. I also saw this risk as we were setting up the ICC. And not just me. We really wanted to look at things afresh and did a lot of work to collect lessons learned. Morten Bergsmo really was a leader in that when it comes to the work of the Office of the Prosecutor. Some of comments about not learning from ICTY may also have been driven by a sense of not getting a job at ICC. I also think that they didn't learn all the lessons because I don't think that the then Prosecutor did everything he could to retain the best possible people. He had some really good people, but he also lost a lot of good people. If you want to not make mistakes, you have got to have the best possible people and make sure that you do that.

And it's a funny thing, when I look at the ICC now, I think they've been mostly focused on themselves, and on their own procedures and getting their own stuff in order, but, to a degree, they've lost touch with the world. This is sad, because they had so much support, from states and NGOs the world over. Saying that, I realize that being in touch with the world is very hard. For one, the budget they have in terms of outreach is pitiful. The States Parties clearly don’t consider outreach a priority. The ICC does not seem to be in a very good place now.
And competition from new, more agile ways of investigating and organizing accountability may be looming. It is too early to tell what they will do, but it is certainly something to follow closely. I'm involved in one of them. A year ago we set up the Wildlife Justice Commission, an interesting example of a completely private – meaning non-state – tribunal that is going to deal with wildlife crime. We've helped build it and I'm now the interim director. We're now recruiting a director. Around the war in Syria, we also see private – meaning non-state – investigations initiatives. It's funny how fast the time goes, the ICC is now there, has this huge building somewhere, and at the same time you're starting to see all kinds of agile, small, and effective initiatives popping up.

The Wildlife Justice Commission has an investigation team of 20-30 people of which only 5 are internationals and the rest are local, working in the countries/regions that are investigated, that are investigating two huge cases a year. That’s a lot less than the ICTY and ICC. Bill Wiley, a formed ICTY investigator, has set up an initiative that is collecting evidence on war crimes in Syria. There was a story about them recently in The Guardian. It appears he has done a large part of the investigations of war crimes in Syria using locals and outsourcing the investigations. I have conversations with NGOs and companies that could give me video cameras free of charge, that I could hand out to anybody, that capture GPS authenticated evidence that you could use in court. So I think we've also started to see technological developments that may raise the question: "Since the day we opened this building ten years ago, life has changed a little bit. Should we still be doing things based on the models of the year 2000?" We see that if these tribunals don't deliver, citizens just organize something themselves, start investigating, and
organizing accountability. Human Rights Watch does that; they can present full-fledged, completely prepared cases to national prosecutors and say, "Are you going to do something?"

And if that trend continues – I think it's a good thing – that may also change the work of the ICC, and international criminal tribunals more broadly.

Given where technology and society are going, you can really seriously ask the question, "Do they need seven hundred investigators in the OTP to do the work?" It's not unthinkable that they could manage with a hundred, and that the rest would all be done by others through all kinds of clever ways that are now slowly starting to emerge. I've had amazing conversations with people that are doing this kind of stuff in different areas. There's a guy that's now doing it in illegal fishing: an initiative called Black Fish It’s a massive private prosecution investigation service, and he just prepares cases of ships that are doing illegal fishing all over the world, and he does it at a fraction of the cost.

Q2: Who funds it? Who pays for the investigation?

Muller: Donors and philanthropists. And even States, funnily enough. And businesses are ready to support these kind of initiatives as well, often with expertise, networks, and donations in kind.

Q3: That's very interesting. When you left the ICC, were you sort of at the end of what you thought you could usefully do there? Or what they would usefully take from you? What was your
Muller: There were a couple of things. I thought, you know, I've given it my best. I was really tired, because it was three or four years of day and night working, so I literally felt drained and tired. I thought, if I continue like this, it's not going to end well. But I also felt, I've seen the limits; I've really (emphatic) seen the limits. I've been involved, and lucky enough to be involved, in one of the most amazing, innovative institutions. I was at the center of the storm and saw it all happen. But I've seen it, and from now on it's going to develop in a way that I can follow at a distance. And I felt very strongly that what was missing is the national component; to a large degree, international criminal justice was very stratospheric and superficial. I had spent a lot of time in preparing infrastructure for the investigations in Uganda and the DRC. So I'd been on the ground, I'd talked to some of the victims, I knew what was going on..

The idea for this institute really started with the question of how can we strengthen the relationship between the national and the international levels, and how can we really change paradigms about the way that works and go beyond what the ICC was then doing. I don’t mean that as criticism, but the predominant idea of making it work was implementing legislation and training judges and prosecutors.. But I did not feel that that was going to be enough. It may be part of the solution, but only a small part of it. You have to think differently. You need that national level to really engage, be connected. And that slowly turned into what we are now as an organization that's completely crazy about justice change. How do you change justice systems to
work better? How do you innovate? How do you make sure a justice system is able to reinvent itself all the time so that it really delivers to citizens what it should do?

Q2: "Innovating Justice" is a really good name to carry all those ideas, I think.

Muller: And there was a third thing why I thought I would stop at ICC. I had worked like a donkey for three to four years, day and night, and I really also thought I've got to step out of this because otherwise my marriage is not going to go well. I'm not fair to her; she is a doctor and also needs to work. This gave me a great way to be at home more while giving her a chance to do her stuff. So that was also important.

Q3: Sam, do you think that universal jurisdiction is an important part of this picture of national prosecutions? Or do you think that's waning?

Muller: This is a topic I think a lot about. It goes to the heart of the national versus international levels. I struggle with the very notion of universality. That's one of the lessons I really take out of all these years. I don't believe in it anymore, in a way. I do believe in it at a philosophical conceptual level, but it just isn't true that the whole world believes that men and women are equal in the same way. They don't. And that's a very easy example. But even when you look at something like genocide or war crimes, we all think that we agree that killing four hundred villagers is a bad thing. But killing four hundred villagers in Uganda, killing four hundred villagers in Sri Lanka, and killing four hundred villagers in Yemen are not the same things.
They're not going to be treated the same way. So if you go at it as an international tribunal and say, "We have one law that applies equally to the whole world," that's not true. Because in one area, they may want more forgiveness, and who are you to tell them that they should not get forgiveness, or that they should not have their local ways of dealing with it? I honestly don't know. I'm not a cultural relativist, and there is no doubt in my mind that that killing four hundred villagers is bad. But then from there, where do you go? You then go to a tribunal in The Hague. Is that the ultimate truth of what you have to do? Should that be the only option? Or can you say to the elders of a particular province, "Guys, think of a way to deal with it."

But then we always say, "it has to be this, it has to be accountable, it has to be punishable, it has to be fair trial, it has to be all the stuff that we put in the international treaties about how accountable justice should work." And there are a lot of people in the world who don't believe in that, who just have a different view of that. And in many ways, I always felt that one of the key philosophical things that the ICC, as a universal jurisdiction, has to do is try to reconcile the idea there is one norm while at the same time allowing for some kind of contextual local thing and convincing the world that you could do that. In Kenya, it clearly failed. Even people that were in favor of the ICC said at one point, "Get them out of here because they're destroying everything that we're fighting for, because it's not working, it's just not corresponding to the forces that are happening here."

Q3: Do you think that maybe it's an evolution we're seeing in the big picture of international criminal justice? Is there more of a move towards saying, "look, there are alternatives, there's
Muller: Yes, there are. And I think that is happening, but at the same time it's very difficult. I experienced it a little bit in Northern Uganda; if some of the serious perpetrators are put through local Acholi cleansing rituals while others end up in a crowded local jail, or in a high standard jail in The Hague, that doesn't feel right to me. But doing a local ceremony or procedure feels right to a lot of people there, and I guess at least we can say there is a difference here and we need to address it, we need to talk about it. We should not pretend that there is a universally accepted way of doing things. That's probably the most important thing. I don't know how you solve it, but probably you solve it by just making sure that it stays on the agenda. You keep talking about it and sometimes there will be tough compromises. There will be.

Q2: I think it's a time and place to end. Thank you very much for your time.

Q1: Thank you.

Muller: Good. Thank you. [END]
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