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The International Criminal Court Needs Fixing

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The International Criminal Court building is seen in The Hague, Netherlands, in this January 16, 2019, photograph. (Reuters/Piroschka van de Wouw)

As strong supporters of the International Criminal Court (ICC), we believe that an independent assessment of the Court's functioning by a small group of international experts is badly needed.

The [rejection of an investigation of war crimes and crimes against humanity in Afghanistan](#) by the Court's judges on April 12, citing a lack of confidence that the Court could successfully carry out the job, is a prime example of why.

We see a growing gap between the unique vision captured in the Rome Statute, the Court's founding document, and some of the daily work of the Court.

Last July, we commemorated the Rome Statute's 20th anniversary. The final days and hours of the Rome Conference have left an indelible imprint in the minds of those who were present when the ICC was created. We have all committed ourselves to the ICC, driven by a belief in the central role of accountability for the most serious crimes of international concern and the conviction that the ICC offers a unique opportunity to fill the impunity gap.

We have never needed the Court more than today. At a time of erosion of the rule of law, attempts to undermine the international order, and challenges to multilateral solutions when it is clear that other approaches fail, an effective ICC is more important than ever. From Syria to Myanmar, from Yemen to South Sudan, we are witnessing conflicts fought with cynical disregard for human dignity and international law. This has devastating consequences for the prospects of sustainable peace.

The sheer existence of the ICC has had a strong positive impact. In some countries where the Court has been active, most notably in Colombia, it has helped bring about peace. Perpetrators all around the globe have been put on notice that they may face justice, sooner or later. Public calls for accountability, with the ICC as its beacon, have enabled important innovation, such as the accountability mechanisms for Syria and Myanmar, where the Court's reach did not extend. Victims around the world, sadly millions of them, look to the Court as their best, and often only, hope.

But the powerful impact of the Court's central message is too often not matched by its performance as a judicial institution. We are disappointed by the quality of some of its judicial proceedings, frustrated by some of the results, and exasperated by the management deficiencies that prevent the Court from living up to its full potential.

That is why we think an independent assessment of the Court's functioning is needed. Such assessments have been carried out, with very positive results, with respect to other international criminal tribunals. If done right and used smartly, this can provide Court officials and all stakeholders with a common point of reference going forward, at a crucial moment for the Court. The assessment we are proposing should be completed in time to be part of the conversation with those who show interest in forming the next generation of leadership of the ICC, beginning in 2020.

This is an unfortunate moment for the Court to appear less resilient than it should. While it has been the target of political attacks from its very inception, the current climate is particularly adverse. While almost two-thirds of the states making up the United Nations have joined the Rome Statute, some of the most powerful nations have not. Russia, China, and the United States have not only decided to stay away from the ICC, they are showing varying levels of contempt or hostility vis-à-vis the Court.

Just recently, the US administration [announced unprecedented measures against Court officials](#) simply for carrying out their work with the full judicial independence expected of them. And no less important in our view, many of those who publicly support the Court often do so half-heartedly. We see too little genuine political engagement, too little diplomatic support, and way too much micromanagement and mistrust.

Today, it is time to make a new deal between the ICC and its states parties, in the spirit that made us succeed in Rome. The Court should clarify the legal standards it applies to its criminal proceedings, work on the basis of clear prosecutorial strategies and policies, end its endless internal squabbles, and address its management issues head-on.

The other end of the deal is an obligation on states: They must, finally, fully embrace the potential of the ICC as the central institution in the fight against impunity. A Court that has the mandate to prosecute individuals for committing the most egregious crimes is bound to come under attack—it is powerful people who commit such crimes, and they will not concede without a fight. States have to stand up for the ICC in its mission to be judicially independent, even or in particular in situations where that may be politically inconvenient. And states need to give the Court the resources it needs to do the job.

External attacks on the Court will continue—the only question is what dimension they take—but if those inside and outside the Court work together, they will succeed in providing justice for the world's worst crimes.

The authors of this blogpost are all former presidents of the International Criminal Court's Assembly of States Parties, the Court's management oversight and legislative body that is composed of representatives of the states that have ratified or acceded to the Rome Statute. Prince Zeid Raad Al Hussein was president of the ICC Assembly of States Parties from 2002 to 2005; Bruno Stagno Ugarte from 2005 to 2008; Christian Wenaweser from 2008 to 2011; and Tiina Intelman from 2011 to 2014.

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