“The Existence of the ICC Is Largely Due to the Traditions and Experiences of Latin American Countries”

An Interview with ICC Registrar Osvaldo Zavala Giler

Osvaldo Zavala Giler & Agenda Estado de Derecho Editorial Team

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In an exclusive interview, our partner Agenda Estado de Derecho spoke with Osvaldo Zavala Giler, the first Latin American to assume the position of Registrar of the International Criminal Court (ICC), who grants us access to the fascinating and challenging world of international criminal justice. From the operational core of the Court, Zavala leads efforts to ensure that this institution, responsible for adjudicating the most atrocious crimes, operates effectively within an increasingly complex global landscape.

The interview addresses crucial issues such as threats to judicial independence, massive cyber-attacks and political tensions that test the ICC’s resilience. It also reveals Latin America’s unique contribution: its experience in justice and reparations, which has enhanced the Court’s legitimacy globally. With a clear and passionate narrative, Zavala shares how the region’s values and diversity have strengthened the ICC’s mandate and how Latin American professionals can continue to make a difference in this pursuit for justice.

A conversation that not only unravels the current challenges of the ICC but also inspires reflection on the impact of international cooperation and the transformative role that voices from the Latin American region can play in building a truly global justice system.



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On the ICC Registry’s Mandate

1. What is the mandate of the ICC Registry?

The Registry of the International Criminal Court is the body in charge of providing the entire administrative and operational platform for the operation of the institution. If you think of criminal courts at the national level, there is always a state support structure that assists the efforts of judicial officials. So, there is a Prosecutor’s Office, a Ministry of Justice, detention centers, prisons, police with witness protection, bar associations, legal aid systems, among other bodies that, although they are not really part of the court, assist the efforts of justice. The ICC does not belong to a state, does not have a territory, is not part of a state apparatus, and therefore it is up to the Registry to ensure the operation of these structures for delivering on the mission of the institution.

2. How do you contribute to the implementation of this mandate?

My job consists, for example, of ensuring support to the chambers, from such specific things as ensuring language interpretation for witnesses or the accused to providing security measures around the courtrooms, facilitating the participation of the parties to the proceedings, promoting the communication of the Court's judicial mandate, managing the detention center, providing protection for witnesses and victims participating in the proceedings, either for the prosecution or the defense, among others. I am also responsible for all the field offices. We have offices in Kiev, Ukraine; in Bangui, Central African Republic; in Kampala, Uganda; in Bunia, Democratic Republic of Congo; and in Bamako, Mali.

3. What does the neutrality of the ICC Registrar entail?

A fundamental part of the Registrar's mandate is to be neutral. I am neutral to judicial processes, that is, I follow orders from judges. If the judges tell me that a person must be arrested, it is my responsibility to carry out the cooperation with the States to execute the arrest warrants. But I don't take a position on cases or situations. And that is important because my job requires me to support both the prosecution and the defense. For example, as I said a moment ago, I protect the prosecution witness and provide the defense with access to evidence in the field.

The role of the Latin American perspective in the ICC Registry



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4. You are the first Latin American to be Registrar of the ICC. What contribution can you make to the organization from a Latin American perspective?

The ICC obeys an international mandate in which the international community decided that certain crimes of universal transcendence threaten humanity as a whole and that it is in the collective interest that there be an institution that can have competence and jurisdiction over these crimes. Therefore, the Court exercises jurisdiction on behalf of the international community in the countries where the crimes are committed and over which the Court has jurisdiction. In that context, the Court has to be representative of the international community in order to maintain its legitimacy. If the Court is acting on behalf of the international community in any country in the world, its actions must be representative of the values, traditions, and experiences of the international community.

That is why I believe it is relevant for the Latin American region to know that we contribute to the development of this system from various perspectives. Latin American judges are sitting in the institution and are contributing to the development of jurisprudence. There is a Latin American Registrar today who contributes with his knowledge, his experience and his philosophy to the maintenance of the institution. There are professionals working in the institution who also contribute with this vision to the mandate of the Court. And the Latin American experience is very rich. The Latin American experience brings unique perspectives, precisely on issues of justice and conflict, which are not always easy to find. The Latin American experience in victim reparations is also very important. So, reflecting this cultural contribution, these very characteristic legal traditions of Latin Americans, I think, is very important for the legitimacy of the institution.

The challenges of the ICC



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5. More than a year into your mandate, what have been the main challenges you have faced?

Although I have detailed knowledge of the Registry's operations – since I have been linked to the Institution for more than 14 years and have worked directly with three previous Registrars –, I find the main challenge to be the management of the challenges faced by the Organization in terms of threats and coercive measures associated with acts of retaliation, as a consequence of the fulfillment of its mandate. The proliferation of these acts has resulted in a real transformation in terms of security and has therefore required an institutional response from the leadership of the institution. By its nature, I believe that this challenge has also created a stronger institution and generated greater attention to the risks affecting the ICC, as well as the need to protect its operational continuity.

When I took the position, it was shortly before the arrest warrants were issued in the situation in Ukraine. The immediate response of the Russian Federation was to issue arrest warrants against the judges of the Court who were involved in the case and against the Prosecutor of the Court. In other words, there was a direct retaliation against the judicial independence of the institution. Our response as an institution, as well as that of our States Parties, has been to protect the integrity of the judicial process and the independence of the judges and Prosecutor of the Court. However, in practical terms, there is a significant impact on the institution and its officials, in the sense that security must be considered a priority operational element in the face of such threats and measures. This is all part of the new reality of the Court. While it is true that we have faced threats and coercive measures in the past, their number and sophistication have changed dramatically.

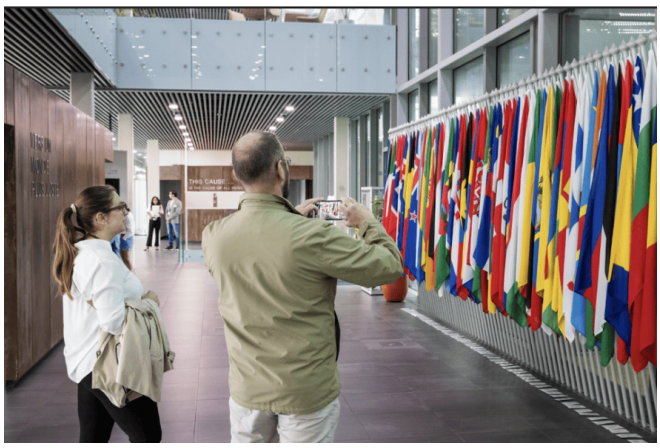
It should be noted that in September 2023, we faced a massive cyber-attack on the institution. This incident sought to weaken our IT structures and temporarily affected the continuity of the Court's operations. It was a large-scale attack that generated many break-ins. As a result of our investigation into the incident, it was identified that the actor seeking to penetrate our cybersecurity acted with purpose, with many capabilities and with persistence in seeking to obtain information from the institution to pursue their own ends.

Additionally, the latest thing we have faced is the proposal from certain sectors within the United States of America to sanction the institution on the grounds of arrest warrants issued in the context of the situation in the State of Palestine. This has happened before, in 2020, and there is a proposal before the Senate now, which could have a major impact on the ICC and its officers. While being serious in itself, I consider even more worrying the message that would result from sanctioning the only permanent international court empowered to exercise jurisdiction over the most serious crimes of international concern.

Sanctioning the Court would have a significant impact on our ability to operate anywhere in the world, and that is the great challenge we now face, especially given the new global political realities.

Clearly, the issue of security has become perhaps the biggest challenge – an existential one. On that basis, and in accordance with my mandate as Registrar of the Court, I have sought to present the realities of operation that the ICC has, to deepen our resilience in the face of any challenge.

The ICC's international cooperation



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6. These challenges to which you referred are precisely related to the relationship between the Court and the States. Could you elaborate on the role that international cooperation plays for the ICC?

The Rome Statute details the forms of mandatory cooperation, such as the execution of arrest warrants, judicial orders and requests from the Office of the Prosecutor. But there are also non-mandatory forms of cooperation that are necessary for the Court to survive. For example, witness protection. The Court has no territory, no mechanism to relocate a witness from one place to another if a State does not want to cooperate. I cannot make it possible for a person who has been sentenced to serve his or her sentence if we do not have the cooperation of a State that wants to receive him or her. I cannot facilitate access to evidence, to the defense, for example, so that witnesses can travel to the Court to testify, or victims can participate, if I do not have State cooperation. Therefore, State cooperation is one of the essential pillars for the functioning of the institution, which guarantees all its operations.

7. One of the essential prerequisites for the functioning of the ICC is international cooperation. What is your assessment of this point?

I think it is important to first understand when the Court was born. The world was facing the post-Cold War period. There was an unblocking of the Security Council. The Security Council had bet on justice mechanisms such as the Yugoslavia Tribunal, the Rwanda Tribunal, even as pillars of peace and security. In this context, in 1998, the ICC was conceived as an institution firmly rooted in this multilateralism and cooperation of States. The idea that this institution would be able to exist and be effective thanks to the cooperation of States.

But the Court was born in a world that had already changed. The Court was born in 2002, after the September 11 attacks, after the change in international dynamics with respect to the fight against terrorism and other conflicts that arose. So, in a way, the Court was born in a different environment from the one that created it, and that has forced us to develop with great emphasis on the issue of cooperation.

8. What is required to strengthen this cooperation?

International cooperation has several pillars, so to speak. First, a very important part is the legal structures. For a State to cooperate with the Court, sometimes it is not enough to sign the Rome Statute. It needs to have internal legal mechanisms that allow it to do so. Because surrendering a suspect to the custody of the Court is not the same as extraditing someone. Second, there also has to be an awareness to be able to understand the realities of each State. And that is the obligation of the Court itself. Requesting the freezing of assets, for example, of a suspect in Colombia is going to be different than requesting it in another country. So, we have to understand the specific realities of each State in order to be able to produce cooperation requests that are more relevant and that are adapted to their legal situation. But there is also a great element of political will. Political will is the engine that will generate cooperation. And we have seen instances where the lack of this political will is what has generated non-cooperation.

The ICC and Latin America



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9. What do you consider to be the contribution of Latin America to the ICC?

I believe that the existence of the ICC in itself is due, in large part, to the traditions and experiences of Latin American countries, especially in the contexts of security and peace. In fact, the principles that make it up, the constituent elements, for example, the very comprehensive reparations mandate provided for in the Rome Statute, are elements that come from the Latin American experience and that have created this system for international benefit. In fact, a great source of experience for the ICC system is the Inter-American Human Rights System, especially in the area of reparations. The experience that the Inter-American Court has in reparations is perhaps the most directly relevant for the ICC, because the European Court of Human Rights does not have that kind of experience in reparations for such massive crimes.

Moreover, there are concrete and current experiences that have not only contributed but will serve as a point of reference for the work of the ICC. For example, the way in which Colombia communicates justice processes to the population or what kind of legitimacy it has generated within the population will be a great object of study, because these are challenges that the Court faces. It will be very important for us to analyze and understand the experience Colombia has had in this regard to understand how we can replicate some of the lessons learned in other contexts.

10. And what would be the ICC's contribution to Latin America?

Although it is difficult to measure the impact, I could highlight, first, the ratification of the Rome Statute by Latin American States and the incorporation of the definitions of crimes in their domestic legal systems that serve judges, prosecutors and the legal profession in the investigation, prosecution and punishment of international crimes.

Second, as a relevant impact, I find the realization of one of the fundamental principles of the Rome Statute: complementarity. What substitutes does not complement, what absorbs does not complement. Complementarity has to be just that, complementary. So, if the Court begins to investigate a situation, it means that the State maintains its responsibility to continue implementing complementary mechanisms for access to justice. And within this framework, there are two situations that are very interesting to analyze. The first is the situation in Colombia specifically and the other is the situation in Venezuela that is currently under investigation by the Court.



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11. What can the situations in Venezuela and Colombia reflect?

I am not going to talk much about the situation in Venezuela because it is a matter under investigation by the Office of the Prosecutor and my neutrality would not allow me to do so. But it is an investigation that is currently ongoing and that has and will have an impact on the region regarding the way in which the Court carries out these investigations and the way in which the State also complements them.

The situation in Colombia is interesting. Colombia never became under investigation before the Court. There was a preliminary examination that was closed a few years ago. And what I find interesting is how this principle of complementarity developed with the Colombian situation, in which a State will always be in a better position than the Court to carry out investigations. The Court will always have a limited capacity, it will perhaps carry out the most relevant and serious trials, but the impunity gap that exists in a situation of massive conflict will not be completely resolved by the Court and that is why it is important that the States assume that responsibility.

And the Colombian experience has been very interesting because the peace talks in Colombia were always imbued with a need for justice. And I believe that the existence of the Rome Statute and the preliminary examination were important catalysts for these talks to take place within an objective framework. And it is interesting to see how the Colombian experience in transitional justice has implemented concepts of truth, justice and reparation, many of them coming from or replicating the Rome Statute.

12. Why did you say at the beginning that it is difficult to measure the impact of the ICC?

There is an author, Steven Pinkert, who says that it is difficult sometimes to measure the impact of, for example, the United Nations because we never see journalists reporting from conflicts that didn't happen. And the same thing can happen with the Court. Sometimes the impact of the Court is not in the investigations it has opened, sometimes it may be in the investigations it didn't open because States took a series of internal measures.

13. In what ways could professions such as law, political science, psychology, anthropology in Latin America approach the work of the ICC?

In many ways. First, I think it would always be important for these people to consider continuing their careers at the Court. For us, the principle of geographical representation and gender balance is very important as a way of legitimizing the representativeness of our institution. And in that sense, we are always actively looking for Latin American professionals who want to come and work with the Court in all those disciplines you mentioned and more – police, witness protection experts, psychologists who work with victims of violence, experts in detention centers, handling detainees and the cultural elements involved, linguists, lawyers, investigators. Latin America is very capable of providing that kind of support and many of the great professionals working in the institution today come from our region and contribute to the institution on a daily basis.

Obviously, there are other ways to contribute, because not all the work for the Rome Statute system is done by the ICC. It is also done at the national level and all the professionals who are dedicated to expanding the impact of international criminal law at the national level play a very important role. Because only when we understand that the Court is not an isolated institution, but rather that the Court belongs to this vast network of actions that constantly contribute to and strengthen the system, which may seem disconnected or separate but actually have a direct link to the principles that underpin the Rome Statute, will we be able to truly strengthen the system universally.

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Osvaldo Zavala Giler is an Ecuadorian lawyer. He was elected as Registrar of the International Criminal Court on 10 February 2023 for a five year mandate.
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