Chapter 7

Optimizing the Effectiveness of the Knowledge Transfer: The Significance of Inter-Institutional Cooperation between the ICTY, ODIHR, and UNICRI

Janez Lenarčič *

Introduction

As the International Criminal Tribunal for the former Yugoslavia (ICTY) begins to wind down its activities, it is crucial that the Tribunal continues to engage in legacy building. Due to limited resources, the Tribunal’s primary goal must be to carry out the trials and appeals proceedings that fall within its jurisdiction. Nevertheless, the importance of preserving the ICTY legacy and enhancing the capacity of national justice systems in the war-affected states of south-eastern Europe cannot be underestimated. The Organization for Security and Cooperation in Europe (OSCE), Office for Democratic Institutions and Human Rights (ODIHR), and the United Nations Interregional Crime and Justice Research Institute (UNICRI) play a fundamental role in enhancing the ability of domestic courts to deal efficiently and effectively with the numerous cases that remain to be prosecuted and tried.1 The time-frame within which to ensure that the legacy of the ICTY is preserved is short, and there are numerous challenges—such as the transfer of specialized knowledge, expertise, and information from the ICTY to national jurisdictions—that remain. In order to overcome these obstacles to legacy building, the ICTY must rely on partners who have experience and expertise in developing capacities in its legal field. There is a clear need for inter-institutional cooperation. More specifically, the ICTY will benefit from the continuing support of ODIHR and UNICRI in preparing local professionals to take over its role.

* Janez Lenarčič is Director of the Office for Democratic Institutions and Human Rights (ODIHR).

1 The ODIHR is an institution of the Organization for Security and Cooperation in Europe (OSCE) based in Warsaw.
OSCE Monitoring Activities

OSCE Field Operations in the Balkans have monitored war crimes trials since the 1990s. This makes them ideally placed to provide targeted assistance based on the actual needs and reliably assessed capacities of regional actors. In fact, in 2005 the OSCE and the ICTY formally agreed, through a decision of the OSCE Permanent Council, to involve Field Operations in Bosnia and Herzegovina, Croatia, Serbia, and Montenegro in trial monitoring. The focus of the work carried out by the Field Operations was on the transfer of war crimes trials from the ICTY to the domestic jurisdictions. To this end, OSCE engaged independent and qualified monitors to report on the progress of war crimes proceedings before domestic courts.

The OSCE has shared the findings of its monitoring activities with the ICTY on an ongoing basis. The findings indicate that it is necessary to take further measures to ensure that the jurisprudence developed by the ICTY is utilized appropriately in local judicial proceedings. Moreover, additional efforts must be invested to overcome the difficulties associated with prosecuting and convicting high-level offenders. This is important to prevent mid- and low-level perpetrators from escaping prosecution.

The OSCE has made a number of recommendations based on its findings that have been useful in designing and implementing various training programs for the benefit of local justice actors. The aim of such foundational programs is to enable local actors to apply the knowledge received from the ICTY to the national regime.

The Goals of the ICTY–ODIHR–UNICRI Partnership

The ICTY, ODIHR, and UNICRI have complementary mandates. Their overarching goal is clear: All three organizations have a strong commitment to assisting in the development of strong justice systems in the Balkans.

In the last years of the mandate of the ICTY, the transfer of knowledge and skills in dealing with war crimes cases from the international level to the domestic jurisdictions has become an increasingly urgent priority. The legacy and lasting impact of the ICTY in fighting impunity and promoting accountability for the worst crimes in the region is intrinsically linked to ensuring that national jurisdictions have the capacity to try war crimes cases fairly and efficiently in accordance with international standards.

The partnership between the ICTY, ODIHR, and UNICRI aims to further equip national jurisdictions to resolve war crimes cases in accordance with the standards of international justice. This involves national courts utilizing the jurisprudence and practices developed by the ICTY and the evidence generated by the Tribunal. The effective transfer of knowledge, tools, and documentation to national jurisdictions will enhance the legacy of the ICTY. This will assist regional prosecutors in their own fight against impunity as they continue the Tribunal’s work through their own proceedings.

---

2 Field operations carry out mandates as specified by the OSCE.