Chapter 10

The ICTY Legacy Strategy and Legacy Projects of the ICTY

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The legacy strategy and legacy projects of the International Criminal Tribunal for the former Yugoslavia (ICTY) will be examined from four angles in this chapter: mandate completion, national courts’ responsibility, transfer of knowledge, and transitional justice in the broad sense. As well, the support provided by the European Commission to the Tribunal for the implementation of its legacy strategy in the region will be addressed.

Legacy in Light of the Mandate

The ICTY legacy should be viewed in light of its mandate. The Tribunal has an impressive record of activities. It has handled the most severe, complex, and sensitive cases. It has established a jurisprudence that guides the national jurisdictions and also other international courts. It should fulfill its mandate by ensuring the completion of all cases currently at trial, in addition to bringing Mladić and Hadžić—the two remaining fugitives—before the Tribunal.

The European Union (EU) is supportive of this process. Full cooperation with the ICTY is an EU accession requirement, as part of the Stabilization and Association Process (SAP) with the Western Balkans.¹ It is enshrined in the SAP agreements signed by the EU. It is also part of the accession negotiation mandate, for the time being with Croatia. This is strong leverage that can be used at different stages of the accession process.

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¹ The Stabilization and Association Process (SAP) is the framework for EU negotiations with the Western Balkan countries. The process has three aims: (1) stabilizing the countries and encouraging their swift transition to a market economy; (2) promoting regional cooperation; and (3) eventual EU membership. For more information, see the European Commission’s enlargement website at http://ec.europa.eu/enlargement/enlargement_process/accession_process/how_does_a_country_join_the_eu/sap/index_en.htm (last visited June 14, 2010).
National Courts Responsibilities

National courts face significant challenges in bringing all the other war crime suspects to trial. The simple truth of the matter is that the vast majority of war crimes must be domestically prosecuted. Here too we are bringing influence by putting pressure on the countries concerned in our regular dialogue meetings.

We go beyond it by strengthening national courts’ capacities. For example, we have financed the Bosnia and Herzegovina (BiH) State court and its War Crime Chamber with €9 million in assistance since 2004. Moreover, the EU strongly supported the High Representative’s decision in December 2009 to maintain international judges working at the war crimes chamber in Sarajevo. We are fully committed to continue supporting national courts as required.

National courts are however facing an important loophole, the so called “impunity gap” due to the lack of extradition agreements between the countries concerned. The Commission has called for closing this gap in its latest enlargement strategy, in October 2009.

Some developments have been registered recently in the form of bilateral agreements on mutual execution of sentences and on intensified mutual legal assistance. This is a positive step; however, all the countries concerned should now enter into full extradition agreements. This is the message that we will continue to pass forcefully.

Transfer of Knowledge

A very important part of ICTY’s legacy is the transfer of knowledge and experience. We are proud to support this process by financing three different projects. First, the Office of the Prosecutor sponsors two programs: the visiting national prosecutors program and the visiting young professionals program. The visiting young professionals program, which started in June 2009, will soon be extended into 2011.

Second, by financing the The War Crimes Justice Project, with the OSCE/ODHIR as contractor, know-how and best practices in the region are transferred and dissemi-