Chapter 24

Building the ICTY Legacy for Local Communities

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ICTY has created a point of no return in accountability, in the end of the culture of impunity and world expectation that military and political leaders must be made to account for their criminal actions. There will be debates as to whether any particular decision was correct or incorrect in law but that will never displace the legacy of the fact that it succeeded against most expectations at the outset.

—Louise Arbour, in the South East News Service Europe (SENSE) documentary, Against All Odds

While the legacy of the International Criminal Tribunal for the former Yugoslavia (ICTY) beyond the region is undeniable, its legacy in the region is very much in question. Public perception of its work was rarely positive, but in the last year or two it has reached an all-time low.¹ The ICTY has succeeded in alienating two main pillars of support it had in the region: human rights nongovernmental organizations (NGOs) and victims associations.

There is no doubt that the ICTY has a serious public relations problem in the region.² Public perception of its work and role is less dependent on what the prosecutors and judges are actually doing in The Hague, and more on the positions as well as the interests of local political and intellectual elites. But that does not mean that the ICTY could not have done more to improve its image and get its message across to the region.

It seems that even those from the Tribunal who prepared documents for the Legacy Conference that gave life to this volume had some doubts whether it was appropriate for an international court to “promote” its work, since national courts do not engage in this behavior. The documents cited an argument against the creation of information centers in the region based on the lack of trust towards the ICTY and the possible misuse of centers to serve a political agenda.

It should be clear that the lack of trust is, first, the result of a prolonged smear campaign conducted by local political and intellectual elites against the ICTY, and second, a consequence of ICTY passivity in responding to it. The ICTY could not prevent misuse and manipulations, but it did not have to make it easier through its passivity and disinterest.

The ICTY regional legacy rests on two main pillars: local judiciaries and civil society in the countries of the former Yugoslavia. The lasting legacy of the ICTY in the region will depend on how the local judiciaries will continue prosecution of war crimes perpetrators in the decades to come. The ICTY has established a principle of accountability and prosecuted the tip of an iceberg of Balkans war crimes, but its real legacy depends on the continuation of that work by local courts. There are two main preconditions for the success of that work: first, the transfer of ICTY evidence, knowledge, and best practice to local prosecutors and courts, and second, the continuation of the EU and international community policy of conditionality and monitoring.

Human rights and humanitarian law NGOs, victims associations, and other civil society organizations and institutions face an uphill struggle to fight denial, promote accountability, historical reflection, and confrontation with the past, particularly when using “products” from ICTY trials and judgments—victims testimonies, forensic evidence, and factual and legal findings.

The Tribunal’s story remains largely untold or, if told, unheard in the local communities in the countries of the former Yugoslavia. Our intention is to create conditions for the continuation of the Tribunal’s story, long after ICTY closes its doors.

**SENSE/Tribunal Legacy Project**

With all we have done over the past decade—more than 440 weekly TV programs, six documentary films, and tens of thousands daily written and audio reports from the trials—we feel we have told only about 10 to 20 percent of the Tribunal’s story. The remaining 80 to 90 percent is in our audiovisual and written archive, which should not remain merely a “warehouse” of tapes, DVDs, CDs, and other documents. It should be a source that will make it possible to further reconstruct the events as seen in the courtrooms, to confront the past, delegitimize the myths, and hinder denial.

Depending on the number of trials, we generate between 100 and 150 hours of audiovisual material weekly from the ICTY courtrooms. From that “raw footage” we take clips, their length varying between a few seconds and two to three minutes, and