Chapter 32

The European Union and Its Role in Providing Support to the Regional Entities

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Introduction

The approach taken by the European Union (EU) in the Western Balkans with respect to the International Criminal Tribunal for the former Yugoslavia (ICTY) and domestic courts is to encourage state and private actors to face the past and address war crimes. This is one of the key conditions for the EU to consider its relationship with the countries of the region. While the situation differs from country to country, in many ways the legacy of the international engagement will depend on the domestic war crimes proceedings happening in the region. To some extent, the ICTY legacy will be determined by how vigorously domestic courts prosecute local war criminals.

The international community, including the EU, has the responsibility to provide resources for the continuation of the capacity building in the former Yugoslavia. Does it make sense for the ICTY to act as a driver, or should it instead sit back and encourage others to act? The role of the EU in the Balkans is by necessity more broadly focused than that of the ICTY, but one of the most significant aspects of its relationship with the region is the conditionality requirement—ensuring that each country that joins the EU fully cooperates with the ICTY. Indeed, very visible examples of this requirement have received significant media attention.

EU Accession

In order for a country of the region to become part of the EU, full cooperation with the ICTY is required, along with a commitment to domestic prosecution of war crimes. It is not possible to disassociate one from the other. To fulfill the second requirement the ICTY must be part of the process, though there are a number of other actors present, including the Organization for Security and Cooperation in Europe (OSCE) and the EU. All these actors, including the countries themselves, must have a clear understanding of the problems related to domestic war crimes prosecution, including the defense of witnesses in in absentia cases; a strong dialogue of national

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ownershi; and a national willingness to address issues in the long-term, including a willingness to reinforce the role of civil society, which has to push the actors in the right direction. Despite progress, problems remain, and they will need to be addressed.

There are two main examples of this conditionality and its effect on the region. The first is that Member State ratification of the Stabilization and Association Agreement between the EU and Serbia clearly depends on the Council’s assessment of Serbian cooperation with the ICTY, and this has been successively postponed since 2008. We look forward to the continuing cooperation required for apprehending the two fugitives that remain at large.

The second is that in Croatia, the entire negotiation process was frozen between March and October 2005, until the former ICTY Prosecutor stated that full cooperation was achieved; and indeed Ante Gotovina, one of the most wanted fugitives of the ICTY at the time, was arrested that December outside of Croatia. However, cooperation cannot be a stop and go process; it must be a continuous one.

It would be wrong to believe that the EU only looks at ICTY cooperation when addressing war crimes. The fact is that the ICTY had to concentrate on the high-level cases of those involved in the atrocities. For the sake of the victims and the fight against impunity, it is also crucial that justice be served from the top to the bottom of the chain of command, and the perpetrators must be made accountable for their acts and subsequently punished. Thus, in the negotiations for EU accession, a substantial part of the chapter dealing with the Judiciary and Fundamental Rights (Chapter 23) is dedicated to war crimes. This focus on fundamental rights is taken together with the overall reform of justice and other key issues like the fight against corruption, minority rights, refugee return, and reconciliation. Progress in all of these fields is monitored very closely: benchmarks are set for the initiation of Chapter 23 and will also be set in order to close the chapter.

The EU looks at the domestic capacity available to deal with a full range of issues related to war crimes: the protection of witnesses; adequate defense and fairness of trials; videolinks of testimonies; the treatment of in abstentia cases; uninvestigated cases; and the execution of sentences. These topics are not just examined in the abstract, but instead are evaluated by the EU’s monitoring of real cases. It is vital for the domestic judiciaries to build capacity to address war crimes not limited to Rule 11bis cases, i.e., cases transferred by ICTY to domestic courts; in fact, Rule 11bis cases represent a very limited number of cases (one to three per country). There must be a continuous effort to judge and sentence war criminals, even after the closure of the ICTY and after the regional countries’ accession to the EU. Attention must not be relaxed: In Croatia, some 700 so-called “events” are still uninvestigated. In Bosnia and Herzegovina, 16,000 people have lodged complaints. Their demands must not remain unanswered.

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