

The Topic of the Issue - REGIONAL COOPERATION

THE "PALIC PROCESS" – A SUCCESS STORY IN JUDICIAL INTERSTATE CO-OPERATION

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For the countries of the former Yugoslavia to make the transition from a troubled past to a secure future, impunity for war crimes should end. But they face a number of substantive challenges, as both a post-conflict region as well as being countries in transition. International and domestic law imposes an obligation to prosecute and try war crimes suspects respecting fair trial standards, doing justice to both the accused and the victims. The countries are bound to co-operate with the International Criminal Tribunal for the former Yugoslavia (ICTY), as established under Chapter VII of the UN Charter. Moreover, the obligation to prosecute and try genocide, serious violations of international humanitarian law and crimes against humanity before the local courts also forms a part of the commitment to co-operate with the ICTY, but it is primarily the duty of these countries under international and their own laws.

The regional dimension of war crimes proceedings is obvious. In almost every war crimes case there is a regional aspect: crime sites and evidence may be located in one country while victims, witnesses or the accused are residing in different countries; at the same time investigations, prosecutions and trials might be conducted under different legal systems. Long-term stability, enhanced rule of law, and strong and constructive relations between the countries of the former Yugoslavia are impossible as long as impunity for war crime atrocities remains the norm. True freedom of movement, sustainable return of refugees and internally-displaced persons and the prevention of any future conflicts can only be achieved if trust in the justice system and in the state is restored. The suffering of the victims should be publicly acknowledged and the perpetrators punished, while ensuring respect for the rights of the accused.

The judiciaries of Bosnia and Herzegovina, Croatia and Serbia and Montenegro have all recognized the importance of regional judicial co-operation as essential for successful war crimes prosecution. In the frame of the Tribunal's completion strategy, the ICTY has recognized that regional co-operation is an important condition for the transfer of cases to national jurisdictions. The European Union considers proper war crimes prosecution and regional co-operation, as outlined in the Copenhagen criteria, of vital importance.

Regional co-operation did not start rapidly, even though its importance was recognised by all sides. At the end of 2004, the Organization for Security and Co-operation in Europe (OSCE) in close consultation with judicial and political authorities agreed on the necessity to meet each other on a regional level. For this purpose a regional conference was organised in November 2004 by the OSCE, hosted by the OSCE Mission to Serbia and Montenegro and chaired by the OSCE Conflict Prevention Centre. The meeting, held in Palic, brought relevant judicial and state administration actors from Bosnia and Herzegovina, Croatia and Serbia and Montenegro together. The sole item on the agenda was interstate judicial co-operation in war crimes proceedings. The expert-level meeting mapped out a series of concrete actions that the participating countries undertook to carry out to give a boost to regional co-operation in this area. This has become known as the "Palić Process".

Further meetings were held in Brioni, in June 2005, hosted by the OSCE Mission to Croatia, and in October this year, in Mostar, hosted by the OSCE Mission to Bosnia and Herzegovina. The participation in the meetings included the highest representatives of prosecutors' offices and courts from Bosnia and Herzegovina, Croatia, and Serbia and Montenegro in charge of war crimes investigations and trials. Representatives of justice ministries from the respective countries, as well as the Ministry of Human and Minority Rights of Serbia and Montenegro, also attended. The format of the meetings has gradually changed and currently includes representatives of the police witness protection services from all three states. ICTY officials participated in each meeting as observers and brought in their experience and expertise as valuable assets to the process.

The meetings – with agendas well focused on the problems, needs and goals as identified by the local judiciaries – aimed at improving mutual legal assistance between the three states. In particular, they aimed at procuring evidence, strengthening and expanding mechanisms for cross-border co-operation in war crimes proceedings and maintaining a regular forum for co-ordination and consultation among the parties involved.

Since the process has started in Palić late 2004, important steps have been taken and results achieved. To highlight a few examples: regular exchange of evidence, sharing of information and expertise in war crimes proceedings among the judiciaries of BiH, Croatia and Serbia proved to be possible. Direct lines of communication between the prosecutors and judges in the region have been established. Mutual trust and reliance has been enhanced. To address the reluctance of witnesses to go to the territory of another country of the region to testify in a war crime case, the participants have explored modalities, such as video conference hearings and establishment of witness support teams. Evolving co-operation between the countries' police witness protection units has also played a major role to encourage witnesses from the region to appear at trials conducted in the countries they associate their sufferings with.

Regular meetings have contributed to developing interstate instruments for co-operation in the prosecution of war crimes in addition to the existing legal framework. During 2005, co-operation agreements were signed between the prosecutors of Serbia, Montenegro, Croatia and Bosnia and Herzegovina. These agreements enable the prosecutors to maintain direct contacts, exchange information and co-ordinate their actions in pre-trial proceedings not only in war crimes cases, but also in other areas. It allows them to avoid sometimes slow and cumbersome bureaucratic procedures.

These steps improved the efficiency of war crimes investigations and trials in the region. The OSCE is ready to continue to facilitate the process, while preserving regional ownership over the process, and to assist the local authorities in other activities aimed at improving the co-operation in war crimes proceedings. Meetings at expert level of representatives of the judiciary and police from the respective countries should remain as a forum for regular consultations, oriented toward defining problems, proposing solutions, experience-sharing, harmonization of jurisprudence and further strengthening of cross-border co-operation. The urgency of pending problems and the level of interest of the participating countries in addressing these will be the guide for the topics of discussion and the format of future meetings.



The experience of the Palić process shows that regional co-operation in a sensitive matter such as war crimes trials is possible, and can achieve significant results with a positive spill-over effect in other fields of the justice system. Mechanisms that work for war crimes could equally be applied to the fight against organized crime, terrorism, trafficking in human beings and financial crimes. Such co-operation would increase the overall capacity of the respective countries' judiciary and law enforcement agencies to fight crime effectively and efficiently.

Success stories in judicial co-operation among the countries of the former Yugoslavia could provide further opportunities to develop co-operation networks in the region in many other areas. It is also a message for the authorities and the public that the challenging mission of coming to terms with the past and suppressing crimes cannot be completed in isolation and solely within one country's borders, but rather has to be carried out in partnership with neighbouring countries.

Prosecutors and judges deserve credit for their readiness and initiative to engage in this co-operation in war crimes proceedings. This will be the way to prove commitment to establishing the truth about past events and punishing the responsible for grave crimes. It is also part of a broader picture of a country's contribution to regional stability and good neighbourly relations that forms an integral part of its record in Euro-Atlantic integration.

Judicial and political authorities have the chance to take full ownership of the Palić process. The OSCE continues to stand ready to support them in these efforts.

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