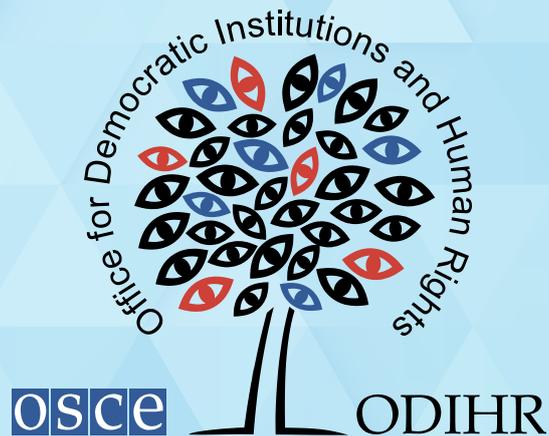


OSCE
Office for Democratic Institutions and Human Rights



WAR CRIMES JUSTICE PROJECT - PHASE II

**Supporting the Transfer of Knowledge in War Crimes Cases among
the National Jurisdictions of the Former Yugoslavia and with
the International Criminal Tribunal for the Former Yugoslavia**

FINAL REPORT

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Abbreviations

ADC-ICTY	Association of Defence Counsel Practising Before the ICTY
B/C/S	Bosnian/Croatian/Serbian
BiH	Bosnia and Herzegovina
CPC	Criminal Procedure Code
EU	European Union
fYRoM	Former Yugoslav Republic of Macedonia
ICC	International Criminal Court
ICL	International criminal law
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	International humanitarian law
JCE	Joint Criminal Enterprise
JPTC	Judicial and Prosecutorial Training Centre
KCA	Kosovo Chamber of Advocates
NGO	Non-governmental organization
ODIHR	Office for Democratic Institutions and Human Rights
OKO	Criminal Defence Section of the Ministry of Justice of Bosnia and Herzegovina
OSCE	Organization for Security and Co-operation in Europe
SEE	South-Eastern Europe
SFRY	Socialist Federal Republic of Yugoslavia
UN	United Nations
UNICRI	United Nations Interregional Crime and Research Institute
USDOJ	United States Department of Justice Office of Overseas Prosecutorial Development Assistance and Training
War Crimes Justice Project Phase II, Phase II or WCJP II	Supporting the transfer of knowledge in war crimes cases among the national jurisdictions of the former Yugoslavia and with the ICTY

A. Introduction

The present report summarizes the objective, results and activities of the project “Supporting the transfer of knowledge in war crimes cases among the national jurisdictions of the former Yugoslavia and with the ICTY” (War Crimes Justice Project Phase II), implemented by ODIHR under its Rule of Law program. ODIHR’s Rule of Law work focuses on the following areas: judicial independence, trial monitoring, criminal justice reform, administrative justice, electoral dispute resolution and war crimes justice. ODIHR draws its mandate in war crimes justice activities from commitments made by OSCE participating States to respect and ensure respect in all circumstances for international humanitarian law (IHL) (Helsinki 1992, Budapest 1994) and to hold individuals personally responsible for war crimes and violations of IHL (Stockholm 1992).

B. Overview of the project

The project “Supporting the transfer of knowledge in war crimes cases among the national jurisdictions of the former Yugoslavia and with the ICTY” (War Crimes Justice Project Phase II) aimed to further enhance sustainable peace and security in the states of the former Yugoslavia, to end impunity and to deliver justice to victims by assisting national legal systems in the adjudication of serious violations of international humanitarian law in line with international standards. To further strengthen justice systems in participating States of the Organization for Security and Co-operation in Europe (OSCE) in South-Eastern Europe (SEE), WCJP II facilitated exchanges of practices, joint initiatives and professional networks.

Phase II addressed follow-up areas identified in the first phase of the War Crimes Justice Project. The first phase of the War Crimes Justice Project commenced in May 2010 and concluded in October 2011 and was based on a detailed needs assessment of local justice actors in the SEE region. This four million EUR project funded by the European Union (EU) also endeavoured to support the establishment of sustainable peace and security in the former Yugoslavia through assisting national legal systems in the adjudication of serious violations of international humanitarian law, to end impunity and to deliver justice to victims. To implement this project, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) partnered with the International Criminal Tribunal for the former Yugoslavia (ICTY) and the United Nations Interregional Crime and Justice Research Institute (UNICRI). The OSCE missions to Bosnia and Herzegovina (BiH) and Serbia provided valuable support to the project.

The first phase of the War Crimes Justice Project significantly contributed to strengthening the capacity of regional justice actors handling war crimes cases, improving the capacity of local institutions providing training to legal practitioners and transferring ICTY jurisprudence and practice to local jurisdictions. It held 62 knowledge transfer events, produced over 64,000 pages of ICTY transcripts of

proceedings and 20,000 pages of witness testimonies in local languages, boosted the capacity of local institutions providing training to legal practitioners and developed training curriculums, including e-learning modules, on international humanitarian and criminal law that was applicable to local jurisdictions.¹

Several areas for follow-up were identified upon the completion of Phase I that Phase II sought to address. According to external evaluators of Phase I, these areas included further training for legal professionals, improved regional dialogue amongst witness support providers and amongst war crimes investigators, and peer-to-peer meetings.² With regards to legal professionals, training for defence attorneys was identified as a critical area for follow-up, particularly in order to extend the training seminars for these practitioners to areas outside of BiH. External evaluators also emphasized that any future follow-up projects should avoid “meeting overkill” as many other donors and NGOs were active in the region. As funding for such follow-up projects can be scarce, it was determined that any follow-up projects should focus on those jurisdictions with a considerable war crimes caseload, with a particular need for capacity building activities and with an interest in support, such as BiH, Kosovo³ and Serbia.

In addition to the factors identified in Phase I, legal institutions in the SEE region, while already playing a pivotal role, have increasingly become responsible for adjudicating war crimes cases as the ICTY has implemented its completion strategy. As more national, municipal and district courts became in charge of domestic war crimes cases, more justice actors became involved in handling these cases, thereby expanding the pool of actors that required training on international humanitarian and criminal law. Additionally, the adoption of elements from the adversarial system in the traditionally inquisitorial systems of SEE generated demand for trial advocacy skills, particularly for defence attorneys, to assist in guaranteeing the equality of arms in domestic trials. Resource constraints in local training institutions also created a greater need for international support to further the effective and efficient handling of war crimes cases.

To meet these needs, ODIHR developed Phase II of the War Crimes Justice Project to support the adjudication of war crimes cases in BiH, Croatia, the former Yugoslav Republic of Macedonia (fYRoM), Kosovo, Montenegro and Serbia. Originally, ODIHR envisaged the project to consist of 62 activities involving training seminars, peer-to-peer meetings, roundtables, conferences and training of trainers. These planned activities targeted judges, prosecutors, defence attorneys, witness support providers, investigators and legal advisors engaged in the adjudication of war crimes cases. The activities were to be adapted to meet the evolving needs of the local jurisdictions and to be undertaken with relevant local institutions and organizations so as to ensure ownership by local stakeholders. ODIHR planned to work closely with the ICTY and to

1 “War Crimes Justice Project Final Report 1 May 2010 – 31 October 2011: Report on the Implementation of the Project – Final Report”, OSCE-ODIHR, pp. 6-7, non-published.

2 See also “War Crimes Justice Project Final Report 1 May 2010 – 31 October 2011: Report on the Implementation of the Project – Final Report”, OSCE-ODIHR, pp. 56 – 57.

3 This designation is without prejudice to positions on status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence. The same applies to any mention of Kosovo institutions throughout the report.

rely on its expertise in boosting the capacity of local justice actors. The ICTY, however, had a more limited role in Phase II than in Phase I, as Phase I primarily aimed to transfer knowledge of war crimes adjudication from the ICTY to national and local jurisdictions. Phase II focused primarily on building local capacity and increasing regional dialogue and co-operation on war crimes cases.

ODIHR organized WCJP II activities in co-operation with the following organizations:

- Association of Defence Counsel Practising Before the ICTY
- Court of Bosnia and Herzegovina
- Criminal Defence Section of the Ministry of Justice of Bosnia and Herzegovina
- Embassy of Switzerland to Bosnia and Herzegovina
- International Committee of the Red Cross
- ICTY
- Judicial and Prosecutorial Training Centre of Bosnia and Herzegovina
- Kosovo Chamber of Advocates
- Montenegrin Judicial Training Centre
- OSCE Mission to Bosnia and Herzegovina
- OSCE Mission in Kosovo
- OSCE Mission to Montenegro
- OSCE Mission to Serbia
- OSCE Mission to Skopje
- United States Department of Justice's Office of Overseas Prosecutorial Development, Assistance and Training

C. Outlook

Throughout the implementation of the project, ODIHR monitored the developments in the SEE region to ensure that the activities remained useful and relevant to the project's target groups. But budget constraints and the broader involvement of donors on the ground in the area of war crimes led to a significant restructuring of the War Crimes Justice Project Phase II in 2013, to ensure added value and avoid duplication. Prior to this restructuring, four training activities had been implemented in 2012.

First, budgetary constraints led to a significant reduction in the number of activities carried out under the project, as the funding received only represented a fraction of the requested amount.⁴ The subsequent re-adjustment of the budget forced ODIHR to prioritize its interventions. Considering that international donors primarily focused

⁴ The original budget amounted to EUR 720,000, but due to a lack of funding by December 2013 the budget was revised downward to EUR 153,411. Ultimately, ODIHR received 144,546 euros from donors to implement Phase II.

their actions on domestic activities⁵, ODIHR looked for other areas where the War Crimes Justice Project II could produce additional value to justice actors in the region. As a result, ODIHR reinforced the comparative approach under its project and focused its interventions on the sharing of experience and knowledge at the regional level.

In addition, OSCE field missions continued to play an active role domestically in supporting the adjudication of war crimes cases. This broad support required readjustment and coordination and led to the shift of some project activities from ODIHR to the OSCE field missions.⁶

These factors prompted ODIHR to consult with key project stakeholders to reassess the scope of the project's activities. Stakeholders provided feedback on the project's activities to indicate what activities fit within their needs and priorities. This needs assessment revealed that the stakeholders expected the signing of key co-operation protocols in 2013 to vastly increase regional co-operation on war crimes cases. The prosecutors' offices in BiH and Serbia signed the Protocol on Co-operation in Prosecution of Perpetrators of War Crimes Suspects, Crimes against Humanity and Genocide on 31 January 2013. On 3 June 2013, the prosecutors' offices of BiH and Croatia agreed to a co-operation protocol with a similar title and scope. Thus, the assessment found that regional activities, such as peer-to-peer meetings and regional conferences, focusing on technical dialogue and the exchange of good practices in processing war crimes would add value to the work of relevant justice professionals in the region.

Following these developments, ODIHR decided to focus the project's remaining activities on regional activities with the aim of bolstering an exchange of good practices and facilitating dialogue. Accordingly, three new activities were developed and implemented to achieve this goal. These activities consisted of a training seminar for judges and prosecutors in Montenegro, a regional conference on the application of international law relevant to the prosecution of war crimes cases in SEE and a regional peer-to-peer meeting for investigators. In total, ODIHR organized 16 activities in BiH, fYRoM, Kosovo, Montenegro and Serbia, gathering a total of 409 justice actors involved in war crimes cases, including 168 women. For the reasons mentioned above, ODIHR

5 For instance, the EU provided approximately 15 million EUR to BiH to reduce the backlog of war crimes case processing, see "Conference on War Crimes Processing: Need to Speed Up and Improve the Quality of Processing War Crimes Cases in BiH", Delegation of the European Union to Bosnia and Herzegovina & European Union Special Representative in Bosnia and Herzegovina, 03 October 2014, <http://europa.ba/?p=17585>.

6 The OSCE Mission to BiH developed and implemented the project "Support to the Effective Processing of War Crimes Cases in BiH" in 2012 which aimed to strengthen the Bosnian institutions in charge of processing war crimes prior to the beginning of the EU Instruments for Pre-accession Assistance 2012-2013 annual programmes. It was agreed that project activities foreseen for Bosnia and Herzegovina in the original WCJP-Phase II project proposal which were similar to activities foreseen in the OSCE Mission to Bosnia and Herzegovina's project, would not be implemented so as to avoid duplication. Instead, ODIHR would continue to assist the Mission's project with its expertise. These activities included eight training seminars for judges and prosecutors from Bosnia and Herzegovina and seven training seminars for defense counsel from Bosnia and Herzegovina.

had to cancel 34 of the project's originally planned activities. Eleven training seminars were transferred to the OSCE Mission to Bosnia and Herzegovina.⁷

The project was initially projected to last for a period of 30 months starting in July 2012 and ending in December 2014. Due to the various developments discussed above, the project commenced in July 2012 and was completed in December 2015, with the publication of the present report.

In spite of the changing circumstances, ODIHR successfully completed the re-adjusted plan of activities and continued to gain visibility and standing in the field of war crimes justice. Given this experience, ODIHR was invited to present WCJP II's objective, activities and methodology in different forums with the hope that lessons learnt collected by ODIHR could be useful to participating States and other organizations active in providing support in processing war crimes cases.⁸

D. Staff

The original project proposal allocated three posts to the project. These three positions consisted of a Regional Co-ordinator, a National Project Officer and a National Project Assistant. Due to funding constraints, changes to the project's activities and greater support from OSCE field missions than originally foreseen, these positions were not filled. Instead, staff in ODIHR's Rule of Law Unit in the Democratisation Department administered and implemented the project. Additional support was secured through short-term contracts, as needed.

E. Achievement of Results

ODIHR implemented Phase II of the War Crimes Justice Project over three and a half years, from July 2012 to December 2015. While training seminars and workshops focused on judges, prosecutors and defence attorneys in BiH, Kosovo, Montenegro and Serbia, the peer-to-peer meetings and the regional conference targeted judges, defence attorneys, witness support providers and war crimes investigators handling war crimes cases in BiH, Croatia, Kosovo, Montenegro and Serbia.⁹ All activities aimed to further enhance sustainable peace and security in the jurisdictions of the former Yugoslavia, to end impunity and to deliver justice to victims by assisting national legal systems in the adjudication of serious violations of international humanitarian law in line with international standards.

⁷ See footnote 6 above.

⁸ For instance, ODIHR participated in ICRC's Fifth Regional Seminar on Implementation of International Humanitarian Law for Eastern Europe, South Caucasus and Central Asia Organized on 18-20 March 2015 in Minsk, Belarus, and in the Expert Consultation on the judicial sector and international humanitarian law organized on 28-29 May 2015 in Geneva, Switzerland.

⁹ Peer-to-peer meetings under Phase II also aimed to include practitioners from fYRoM; one such meeting was even organized in Skopje in 2013. Unfortunately, no participant from fYRoM attended any of the peer-to-peer meetings organized during Phase II of the project.

To achieve this objective, the project focused on organizing activities that would achieve two results:

- First, the project sought to **further strengthen the capacity of justice actors to handle war crimes cases.**
- Second, the project activities were intended to **facilitate the sharing of best practices and lessons learned in handling war crimes cases among justice actors in the region and with the ICTY.** These activities focused on enhancing regional dialogue and co-operation on war crimes issues.

Overall, the War Crimes Justice Project Phase II consisted of 16 activities in BiH, fYRoM, Kosovo, Montenegro and Serbia. These activities gathered a total of 409 justice actors involved in war crimes cases, including 168 women. Firstly, 11 activities, including nine training seminars and two joint workshops, focused on further strengthening the capacity of justice actors to handle war crimes cases. These capacity building activities were attended by 272 justice actors, including 125 defence attorneys, 67 prosecutors, 41 judges and 39 legal advisors, trainers and other individuals supporting war crimes cases. Then, five activities, including four peer-to-peer meetings and one regional conference, provided participants with the opportunity to share best practices and lessons learned in handling war crimes cases. These activities brought together 137 judges, prosecutors, war crimes investigators, witness support providers, legal experts and representatives from international and non-international organizations.

By reaching such a large number of justice actors, Phase II bolstered the knowledge of justice actors on the applicable international and domestic law relating to war crimes cases, developed trial advocacy skills and built networks among regional and local counterparts, as well as facilitated the sharing of best practices and lessons learned in handling war crimes cases. It also addressed relevant actors that were not among the primary target groups of other organizations, such as witness support providers and war crimes investigators, to discuss problems and potential solutions and to improve regional dialogue and co-operation. Furthermore, by including local defence attorneys in all types of activities, the project provided skills and knowledge training to local defence attorneys, thereby promoting the concept of the equality of arms in criminal proceedings.

Training seminars during Phase II built upon the success of Phase I by utilising the comprehensive training materials on international criminal and humanitarian law and trial advocacy developed during Phase I, namely, the International Criminal Law and Practice Training Curriculum¹⁰ and the Manual on International Criminal Defence.¹¹ By organizing training activities with five local institutions in BiH, Kosovo and Montenegro, as well as with the ICTY and OSCE field missions, the War Crimes Justice Project Phase II continued to assist local training institutions in implementing

10 See International Criminal Law Services, International Criminal Law & Practice Training Materials (OSCE-ODIHR, 2011). The curriculum is available online in English and B/C/S at http://wcjp.unicri.it/deliverables/training_icl.php

11 The manual is available online in English and B/C/S at <http://wcjp.unicri.it/deliverables/manual.php>.

international humanitarian and criminal law training curricula to further strengthen the capacity of regional justice actors.

To ensure that activities were relevant and useful to participants, ODIHR tailored each activity to the participants' background and learning needs. Participants were usually contacted in advance, particularly for peer-to-peer meetings, to develop the topics for discussion. International experts and local trainers often delivered training seminars together to relate international jurisprudence to the local context. Participants also served as moderators during some events. Additionally, ODIHR partnered with local counterparts and consulted with them in selecting topics and participants thereby increasing the local ownership of the process. By reviewing and evaluating participants' comments after each activity, ODIHR was further able to adapt future activities to local needs. For instance, the principle of legality arose as an issue of interest in a peer-to-peer meeting and then was incorporated into a future training workshop in Serbia. The adaptability and local ownership of activities increased the usefulness and applicability of the project's activities and thereby enhanced participants' ability to utilise their new knowledge and skills in their daily work on domestic war crimes trials.

Overall, the War Crimes Justice Project Phase II bolstered the capacity of war crimes justice actors in handling war crimes cases, spread knowledge of best practices and lessons learned throughout the SEE region and enhanced regional dialogue and co-operation. Ultimately, justice actors in the SEE region possess a wealth of experience in dealing with mass violations of human rights that will not only benefit justice actors within the region, but also those in other parts of the OSCE region when and where similar expertise might be required.

F. Table of Activities

Activity	Description of Activity	Date of Activity	Location	In co-operation with	Number of Participants (male/female)
Training Seminar on ICTY Jurisprudence for Defence Attorneys in BiH	Training seminar for defence attorneys working in BiH on ICTY jurisprudence relating to modes of liability and elements of an offence	6 July 2012	Sarajevo, BiH	Criminal Defence Section of the Ministry of Justice of Bosnia and Herzegovina (OKO), ICTY and OSCE Mission to Bosnia and Herzegovina	29 (17/12)
Training Seminar on International Humanitarian Law for Judges and Prosecutors in BiH	Training seminar organized for judges and prosecutors working in BiH on war crimes	17 – 18 October 2012	Sarajevo, BiH	ICTY, Judicial and Prosecutorial Training Centre and OSCE Mission to Bosnia and Herzegovina	27 (14/13)
Training Seminar on International Humanitarian Law for Judges and Prosecutors in BiH	Training seminar organized for judges and prosecutors working in BiH on modes of liability	8 – 9 November 2012	Sarajevo, BiH	ICTY, Judicial and Prosecutorial Training Centre and OSCE Mission to Bosnia and Herzegovina	30 (18/12)
Training Seminar on International Humanitarian Law for Judges and Prosecutors in BiH	Training seminar organized for judges and prosecutors working in BiH on mutual legal assistance and co-operation between state authorities and international criminal courts	22 – 23 November 2012	Sarajevo, BiH	ICTY, Judicial and Prosecutorial Training Centre and OSCE Mission to Bosnia and Herzegovina	25 (14/11)
Training Seminar on Criminal Defence in War Crimes Cases	Training seminar on criminal defence in war crimes cases for defence attorneys working in Kosovo	28 March 2013	Peja/Peć, Kosovo	Kosovo Chamber of Advocates and OSCE Mission in Kosovo	26 (21/5)
Training Seminar on Criminal Defence in War Crimes Cases	Training seminar on criminal defence in war crimes cases for defence attorneys working in Kosovo	29 March 2013	Prishtina/Priština, Kosovo	Kosovo Chamber of Advocates and OSCE Mission in Kosovo	18 (13/5)

Peer-to-Peer Meeting for Defence Attorneys	Peer-to-peer meeting for defence attorneys to exchange experiences and expertise on defence work in war crimes cases	19 April 2013	Podgorica, Montenegro	OSCE Mission to Montenegro	16 (12/4)
Training Seminar on Advanced Advocacy Skills and Calling Victim and "Insider" Witnesses	Training seminar for judges, prosecutors and defence attorneys on trial advocacy skills and on how to work with victims and witnesses in war crimes cases	29 – 31 May 2013	Sarajevo, BiH	Criminal Defence Section of the Ministry of Justice of Bosnia and Herzegovina, ICTY, Judicial and Prosecutorial Training Centre, OSCE Mission to Bosnia and Herzegovina and United States Department of Justice's Office of Overseas Prosecutorial Development, Assistance and Training	27 (16/11)
Peer-to-Peer Meeting for Witness Support Providers	Peer-to-peer meeting for witness support providers to exchange ideas and expertise	21 June 2013	Skopje, fYRoM	OSCE Mission to Skopje	17 (2/15)
Training Seminar on Criminal Defence in War Crimes Cases	Training seminar on criminal defence in war crimes cases for defence attorneys working in Kosovo	17 October 2013	Prizren/ Prizren, Kosovo	Kosovo Chamber of Advocates and the OSCE Mission in Kosovo	31 (26/5)
Training Seminar on Criminal Defence in War Crimes Cases	Training seminar on criminal defence in war crimes cases for defence attorneys working in Kosovo	18 October 2013	Prishtina/ Priština, Kosovo	Kosovo Chamber of Advocates and the OSCE Mission in Kosovo	24 (19/5)
Peer-to-Peer Meeting for Judges	Peer-to-peer meeting for judges to discuss common challenges in adjudicating war crimes cases	15 November 2013	Sarajevo, BiH	OSCE Mission to Bosnia and Herzegovina	16 (7/9)
Joint Trial Skills Workshop	Workshop to develop trial skills for judges, prosecutors and defence attorneys handling war crimes cases in Serbia	26 – 27 November 2013	Belgrade, Serbia	OSCE Mission to Serbia	16 (10/6)

Training Seminar on International Humanitarian and Criminal Law	Training seminar for judges and prosecutors working in Montenegro on international humanitarian and criminal law	16 December 2013	Podgorica, Montenegro	Montenegrin Judicial Training Centre and the OSCE Mission to Montenegro	19 (3/16)
Role of Domestic Jurisdictions in the Implementation of International Humanitarian Law	Regional conference on the role of domestic jurisdictions in the implementation of international law for judges, prosecutors and defence attorneys from across Europe	19 – 20 May 2014	Sarajevo, BiH	ICRC, Court of Bosnia and Herzegovina, Embassy of Switzerland to Bosnia and Herzegovina and OSCE Mission to Bosnia and Herzegovina	73 (34/39)
Peer-to-peer meeting for war crimes investigators	Peer-to-peer meeting that provided an opportunity for war crimes investigators to exchange experiences and discuss issues	25 May 2015	Sarajevo, BiH	OSCE Mission to Bosnia and Herzegovina	15 (15/0)

G. Description of Activities

RESULT 1: FURTHER STRENGTHEN THE CAPACITY OF JUSTICE ACTORS TO HANDLE WAR CRIMES CASES

SPECIFIC ACTIVITY: TRAINING SEMINAR ON ICTY JURISPRUDENCE FOR DEFENCE ATTORNEYS IN BOSNIA AND HERZEGOVINA

On 6 July 2012, ODIHR and the OSCE Mission to Bosnia and Herzegovina organized a one-day training seminar in co-operation with the ICTY and the Criminal Defence Section of the Ministry of Justice of Bosnia and Herzegovina (OKO). This seminar brought together 26 defence attorneys and three trainers (including 12 women) to discuss ICTY jurisprudence regarding modes of liability and elements of war crimes. Additionally, the participants received training on how to use the ICTY's jurisprudence in domestic courts.

Two experts, Kyle Wood and Virginie Monchy from the ICTY's Office of the Prosecutor delivered the training. They conducted five sessions on ICTY jurisprudence relating to joint criminal enterprise (JCE), superior responsibility, modes of participation in the offence (aiding and abetting), and distinguishing war crimes, crimes against humanity, and genocide. Trainers utilised the International Criminal Law and Practice Training Curriculum as the basis for this training.

In addition to substantive training, the participants received practical training to strengthen their advocacy skills. Joan Blum from Boston College law faculty presented the guidelines on drafting appeals before domestic courts. This presentation included guidelines on writing an appeal, structuring the document, numbering the paragraphs, quoting relevant legislation, presenting precedence, ensuring that documents flow logically and incorporating visual aids.

Following the changes to the project in 2013, only one of the eight originally planned training seminars for defence attorneys in BiH was conducted during Phase II of the War Crimes Justice Project. The independent evaluation for Phase I had identified the usefulness of these training seminars, but also found that other states in the region would benefit from this training. As the OKO maintained a very strong profile and provided training to defence lawyers, the project's limited resources were allocated to other jurisdictions needing training for defence attorneys. Furthermore, the OSCE Mission to BiH planned to conduct additional training seminars for defence lawyers under its program on war crimes justice.¹²

SPECIFIC ACTIVITY: TRAINING SEMINARS ON INTERNATIONAL HUMANITARIAN LAW FOR JUDGES AND PROSECUTORS IN BOSNIA AND HERZEGOVINA

In 2012, ODIHR conducted three two-day training seminars on international humanitarian law for judges and prosecutors working in BiH. ODIHR and the Judicial and Prosecutorial Training Centre (JPTC) jointly organized all of the training seminars

12 See supra Section C. Outlook, page 6.

with support from the OSCE Mission to Bosnia and Herzegovina and the ICTY. Eighty-two legal practitioners, namely 28 judges, 48 prosecutors and six trainers participated in these seminars. Of these participants, 36 were female. All training seminars were based on the International Criminal Law and Practice Training Curriculum.

To tailor the training seminars to the participants, the training seminars ensured that international jurisprudence and practice were discussed in relation to the domestic judicial system. Accordingly, at least one local expert served as a trainer for each training seminar, while two training seminars also included an expert who had worked at the ICTY. The seminars first addressed international humanitarian and criminal law and practice before addressing the same concepts and issues in BiH.

The first training seminar occurred on 17 and 18 October 2012 in Sarajevo and focused on the adjudication of war crimes. Seven judges, 19 prosecutors and one trainer from BiH attended this two-day training session. Thirteen of the participants were women. The seminar aimed to ensure that the participants understood how elements of war crimes are unique in comparison to other domestic offences. The origins and development of international humanitarian law combined with practical examples were presented to highlight the legal requirements of war crimes and to stimulate discussion.

Džemila Begović from the BiH Prosecutor's office conducted the first training seminar. Throughout the seminar she introduced challenging topics and allowed the participants to ask questions and exchange experiences. This method allowed the participants to discuss the difficult issues and challenges they encountered in their daily work and to discuss good practice relating to war crimes cases. The training seminar addressed international humanitarian law and its impact on international and domestic criminal law, breaches of the Geneva Conventions that invoke criminal responsibility, the elements common to all war crimes, individual war crimes including those involving sexual violence, elements of crimes in the Criminal Code of BiH and their interpretation in relation to international criminal law standards and relevant jurisprudence of the ICTY and the Court of BiH. Participants also considered a case study that focused on crimes against humanity. Two participants presented their views on this case before the participants engaged in a deeper discussion on crimes against humanity.

The second training seminar was held on 8 and 9 November 2014 in Sarajevo. The objective of the seminar was to provide judges and prosecutors with an understanding of how perpetrators can be held responsible for their participation in war crimes. Eight judges, 20 prosecutors and two trainers, including 12 women, took part in this opportunity to receive training on modes of liability that entail individual criminal responsibility.

Catherine Marchi-Uhel, the Head of Chambers at the ICTY, and Azra Miletić, a judge at the Court of BiH, conducted the second training seminar on international humanitarian law. The seminar involved the presentation of issues in a way that allowed for discussion, questions and comments. Specifically, the seminar outlined and compared the modes of liability listed in the statutes of the ICTY, the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Court (ICC); modes of participation in crimes in BiH; superior responsibility as contained in the statutes of the ICTY, the

ICTR and the ICC; and superior responsibility in the laws and practice in BiH. After the modes of liability were presented in terms of international and domestic law and practice, participants compared and contrasted the laws and related practice. Two case studies were discussed at the end of each training day.

Thirteen judges, nine prosecutors and three trainers, including 11 women, attended the final training seminar on international humanitarian law on 22 and 23 November 2012 in Sarajevo. This training seminar aimed to inform participants of the legal basis for states to co-operate with, and to provide mutual assistance to, other states regarding cases involving war crimes, crimes against humanity and genocide. Furthermore, the training seminar provided participants with an understanding of states' obligations to co-operate with the ICTY and the ICC.

This training seminar was conducted by Dan Saxon, a former Senior Trial Attorney from the ICTY Prosecutor's Office, Ibro Bulić from BiH's Prosecutor's Office and Nikola Sladoja from BiH's Ministry of Justice. They presented the primary rules and challenges regarding mutual legal assistance and co-operation with international tribunals for the investigation and prosecution of war crimes, crimes against humanity and genocide. The trainers used case law to explain how relevant laws operated in practice. To increase the relevance of the training, a special focus was placed on BiH's assistance to neighbouring states and its co-operation with the ICTY. The trainers commenced the seminar by providing an overview of the principles and requirements for state co-operation with international courts, including states' obligations to the ICTY and to the ICC. The seminar then focused on mutual legal assistance, co-operation with the ICC, relevant laws and international agreements and the practice of BiH's courts and the Office of the Prosecutor.

Participants provided positive feedback on all of the training seminars and participated actively in discussions. The prosecutors in BiH acknowledged that they rely heavily on the application of international law and jurisprudence for their work on war crimes cases. In the first training seminar they said they were particularly interested in the criteria and the evidence necessary for an incident to be classified as a war crime. Prosecutors from the lower courts were also very interested in the discussion on crimes against humanity as they had not handled such cases.

SPECIFIC ACTIVITY: TRAINING SEMINARS FOR DEFENCE ATTORNEYS IN KOSOVO

During Phase I of the War Crimes Justice Project, ODIHR did not initially target legal practitioners in Kosovo as the view was that other organizations active in strengthening the judicial and legal sphere in Kosovo such as EULEX would be conducting similar activities. However, after a new law established serious crimes departments in Kosovo, including war crimes, it became clear that a future follow-up project would include Kosovo due to this increased need for support on war crimes related issues. Thus, Phase II involved four one-day training seminars for defence attorneys in which 99 participants, including 20 women, received training on criminal defence in war crimes cases.

ODIHR, in co-operation with the Kosovo Chamber of Advocates (KCA), the Association of Defence Counsel Practising before the ICTY (ADC-ICTY) and the OSCE Mission in Kosovo, organized the training seminars for defence attorneys in Kosovo in 2013. These seminars aimed to provide skills training to build the capacity of Kosovo defence attorneys handling war crimes cases by developing their understanding of international criminal and humanitarian law and their trial advocacy skills. Two training seminars were held in Peja/Peć and Prishtina/Priština in March 2013. The final two training seminars were conducted in Prizren/Prizren and Prishtina/Priština in October 2013.

ODIHR conducted the first two one-day training seminars for defence attorneys in Peja/Peć and Prishtina/Priština on 28 and 29 March 2013, respectively. Forty-two defence attorneys, including ten women, attended the seminars. The remaining two one-day training seminars took place on 17 and 18 October 2013 in Prizren/Prizren and Prishtina/Priština, respectively, and gathered 53 participants. In Prizren, 28 defence attorneys and two practitioners, including five women, participated in the seminar, while 19 defence attorneys and four practitioners, including five women, attended the seminar in Prishtina/Priština. The training seminars provided participants with both substantive training on international criminal and humanitarian law, as well as on advanced trial advocacy skills for war crimes cases. The training seminars were based on the International Criminal Law and Practice Training Curriculum and the Manual on International Criminal Defence, which analyses the developed practices of defence attorneys appearing before the ICTY.

ADC-ICTY defence counsel and United States lawyer, Gregor Guy-Smith, conducted the training seminars in March and October 2013. To ensure the seminars were relevant for the participants, the trainer asked the participants about their background, previous professions and the length of their experience in the legal profession. He also asked how they would solve problematic scenarios that occur during trials. Participants actively participated as they were encouraged to disclose the challenges they faced in their daily work.

During the seminars in March 2013, participants received guidance and participated in discussions regarding the principles and practical considerations related to the presumption of innocence and the burden of proof. Furthermore, the general elements necessary to be reviewed in war crimes cases and the development of a case strategy were discussed in relation to international and domestic law and practice. Skills sessions during the seminars also addressed opening and closing arguments and direct and cross-examination. Parallels were made to the United States legal system and to the trainer's practical experience as a defence attorney as the new Criminal Procedure Code (CPC) of Kosovo that entered into force in January 2013 had further introduced elements from the adversarial criminal procedure model.

Following the first two training seminars in March 2013, ODIHR, KCA and ADC-ICTY evaluated all aspects of the training. Particular attention was paid to participants' training absorption capacity, increasing the seminars' participatory nature and addressing the seminars' technical nature. Although the training seminars in October 2013 covered the same topics as the seminars in March, as a result of this evaluation, these seminars

increased the focus on analysing the defendant's rights relevant to war crimes cases under the CPC. This analysis also took into account international fair trial standards, such as the presumption of innocence, the privilege against self-incrimination and the right to remain silent. As the new adversarial system in Kosovo created new tools for defence attorneys, the training seminars also addressed relevant CPC provisions that could be utilised starting at the investigation stage.

SPECIFIC ACTIVITY: TRAINING SEMINAR ON ADVANCED ADVOCACY SKILLS AND CALLING VICTIM AND "INSIDER" WITNESSES

ODIHR, along with the OKO, the JPTC, the ICTY, the USDOJ and the OSCE Mission to Bosnia and Herzegovina, organized a three-day training seminar on advanced trial advocacy skills and how to work with witnesses in war crimes cases. The seminar was held in Sarajevo from 29 to 31 May 2013. Ten prosecutors, eight defence attorneys, four judges, and one witness support co-ordinator in BiH attended the seminar. Ten of these participants were female.

Former ICTY Judge, Frederik Harhoff, an ICTY defence counsel, Edina Rešidović, and two United States prosecutors, Andrew Dunne and John Vaudreuil, delivered the training. The training seminar covered the elements of conducting war crimes cases, the preparation and deliverance of opening statements and closing arguments, the direct and cross-examination of witnesses, the considerations when calling victim witnesses and the special considerations when using "insider" or co-operating perpetrator witnesses. The sessions included plenary lectures where the trainers instructed the participants on the topic and then opened the floor for discussion. Group workshops involved each profession working on exercises only with other individuals from the same profession. For instance, roundtable sessions for judges involved discussions on what can be expected in opening and closing statements, on admitting witnesses' written statements, on how to control the admission of evidence, on how to control parties during examination, on the impact of the socio-political environment, on safeguarding the appearance of impartiality and on dealing with the media. In each exercise, considerations for using "insider" and victim witnesses served as the underlying theme. On the final day, seminar participants participated in a mock trial where they could practice the skills discussed throughout the seminar.

Participants provided positive feedback on the seminar. They found the sessions to be intellectually challenging and useful for their daily work. Additionally, they recommended that this mix of professions in a seminar be used in the future.

SPECIFIC ACTIVITY: JOINT TRIAL SKILLS WORKSHOP

Judges, prosecutors and defence attorneys participated in a workshop on joint trial skills in Belgrade on 26 and 27 November 2013. This workshop provided the participants with an opportunity to discuss issues with and learn from experienced legal practitioners on how to effectively adjudicate war crimes cases in Serbia. Seven judges, four prosecutors and two defence attorneys working in Serbia attended the workshop. Six participants were female. The participants came from the War Crimes Chamber of the Belgrade

Court of Appeal, the Serbian Supreme Court of Cassation, the Serbian War Crimes Prosecutor's Office and the Serbian Bar Association.

Three trainers led the workshop. Former ICTY Judge Wolfgang Schomburg, ICTY defence counsel Novak Lukić and Judge Siniša Važić from the Belgrade Court of Appeal served as the trainers for this workshop. The trainers were selected to incorporate both domestic and international perspectives into the workshop.

The workshop adopted a comparative approach to ensure it was relevant and challenging for participants. Throughout the workshop, Serbian legislation and jurisprudence was discussed in light of the practice and case law of international criminal tribunals.

The workshop was organized into both plenary group discussions and separate group discussions. Six plenary sessions addressed the general requirements of war crimes, the underlying crimes, gathering and admitting evidence, the preliminary proceedings, the modes of liability and the protection of human rights in war crimes proceedings, particularly the principle of legality. Each plenary session involved a presentation of the topic followed by a discussion. Two separate group discussions were held on criminal procedure and adherence to fair trial standards. During these separate group discussions, judges conducted roundtable discussions on the length and efficiency of proceedings and drafting judgments and sentencing. These involved an introductory presentation by either an individual selected by the participating judges or the two judge trainers. The presentation was followed by a discussion led by the two judge trainers. Meanwhile, prosecutors and defence attorneys participated in lectures on opening and closing statements and on direct and cross-examination. These lectures were followed by a practical discussion and exercises on the topic.

SPECIFIC ACTIVITY: INTERNATIONAL HUMANITARIAN AND CRIMINAL LAW TRAINING

On 16 December 2013, ODIHR, the OSCE Mission to Montenegro and the Montenegrin Judicial Training Centre jointly organized a one-day training seminar for judges and prosecutors in Podgorica. The training seminar was attended by 19 judges, prosecutors, advisors and trainers, including 16 women.

Judge Joanna Korner, who is from the Crown Court of England and Wales and was a former ICTY senior prosecutor, conducted the training. She used presentations and discussions, a case study and a video on the ICTY to engage participants. Participants discussed the applicable law in war crimes cases, including elements of war crimes, modes of liability, relevant war crimes case-law in Montenegro, dealing with victims and witnesses, particularly vulnerable witnesses, and the mechanics on how to conduct war crimes trials, such as gathering evidence, disclosure of evidence and plea bargains. The training seminar was based on the International Criminal Law and Practice Training Curriculum.

RESULT 2: BEST PRACTICES AND LESSONS LEARNED IN HANDLING WAR CRIMES CASES ARE EXCHANGED AMONG LEGAL PRACTITIONERS IN THE REGION AND WITH THE ICTY

SPECIFIC ACTIVITY: PEER-TO-PEER MEETINGS

According to external evaluators, the first phase of the War Crimes Justice Project ascertained that peer-to-peer meetings were an effective and relevant way to transfer knowledge and to build networks among war crimes legal practitioners. For senior legal practitioners, peer-to-peer meetings were identified as the best learning format. Furthermore, participants in these peer-to-peer meetings expressed the most interest in meeting with counterparts from other states in the region to discuss challenges and solutions.

Accordingly, ODIHR organized four one-day regional peer-to-peer meetings during Phase II for defence attorneys, witness support providers, judges and war crimes investigators. These meetings brought together a total of 64 senior professionals, including 28 women, from BiH, Croatia, Kosovo, Montenegro and Serbia. These meetings were held with a view to bring together peers from the region to exchange information and best practices in war crimes justice, as well as to develop professional relationships with other war crimes justice practitioners. Overall, participants in all of the peer-to-peer meetings expressed their satisfaction with the meetings and their interest in additional regional meetings.

Defence attorneys

ODIHR, in co-operation with the ADC-ICTY and the OSCE Mission to Montenegro, organized a regional peer-to-peer meeting for senior defence attorneys in war crimes cases on 19 April 2013 in Podgorica. Sixteen defence attorneys, including four women, from BiH, Croatia, Kosovo, Montenegro and Serbia participated in this meeting. Overall, the meeting provided defence attorneys handling war crimes cases in the SEE region with the opportunity to discuss challenges and best practices for defending individuals charged with war crimes.

Prior to the meeting, ODIHR consulted all participants to ensure the relevance of the topics for discussion. The meeting was then moderated by Gregor Guy-Smith, ICTY defence counsel, and Dan Saxon, a former ICTY prosecuting attorney. The moderators introduced topics to initiate discussion and then facilitated the participants' discussions on common problems and possible solutions related to each topic. They discussed access to ICTY records and files, the use of ICTY evidence, defence investigations and plea agreements in war crimes cases and the impact of the socio-political setting on the fair administration of justice in war crimes cases. The participants who had previously practiced before the ICTY often provided the basis for discussions, which also facilitated comparisons between the practices of the ICTY and regional courts.

Witness support providers

On 21 June 2013, ODIHR organized a one-day peer-to-peer meeting for witness support providers in Skopje. Given that sustainable and integrated structures are critical to

the protection of victims and witnesses' rights, this meeting allowed regional victim and witness support providers to engage in a constructive debate to address common problems and related solutions regarding witness support. The meeting gathered 17 participants, including 14 women, from BiH, Croatia, Kosovo, Montenegro and Serbia. Sixteen participants were witness support providers for war crimes cases in victims and witnesses sections within courts and other national institutions, non-governmental organizations (NGOs) and international organizations. An officer from the ICTY Victims and Witnesses Section in the Sarajevo field office also participated in the event.

ODIHR undertook several measures to ensure regional ownership of the event. Prior to the event, feedback was solicited by email on the agenda to ensure that the topics discussed would be relevant and useful for the participants. Additionally, four moderators from BiH, Croatia and Serbia moderated the event. Lucija Lukić from the Investigation and Witness Support Section of the Prosecutor's Office of BiH, Nikica Hamer Vidmar from the Independent Sector for Victim and Witness Support of Croatia's Ministry of Justice, Jasmina Nikolić from the Victimology Society of Serbia and Alma Taso-Deljković from the Witness Support Office of the Court of BiH served as the moderators. Participants discussed the definitions and principles of witness support and compared regional witness support models. They also addressed international and regional co-operation, working with victims of wartime sexual violence and the role of NGOs and related co-ordinating support provisions.

Participants greatly appreciated discussions on the regional comparative approach, the position of NGOs, the opportunity to network and the opportunity to present challenges related to witness protection and support.

Judges

On 15 November 2013, ODIHR, in co-operation with the OSCE Mission to Bosnia and Herzegovina, held a peer-to-peer meeting for judges in Sarajevo. The meeting brought together judges handling war crimes cases to discuss common challenges in adjudicating war crimes cases in SEE. Through this discussion, judges exchanged experiences to highlight solutions to common challenges. Fourteen judges from BiH, Croatia, Kosovo, Montenegro and Serbia and two judges with international experience from Switzerland and the United States participated in the event. Nine of the judges were female.

Several steps were taken to improve local ownership over the meeting, while also incorporating an international legal perspective. First, consultations were held in advance with participants to ensure that topics relevant for the participants were discussed during the meeting. Second, participants moderated the meeting. The four moderating roles were evenly split between international judges and judges from the region. Judge Azra Miletić from BiH, Judge Minka Kreho from BiH, Judge Stefan Trechsel former Ad Litem Judge at the ICTY and United States Judge Patricia Whalen, former international judge at the BiH State Court, acted as moderators.

Participants discussed the responsibility of commanders in war crimes cases, the protection and support of witnesses in war crimes trials and the impact of war crimes

prosecutions on post-conflict reconciliation. Furthermore, the judges deliberated about the procedural challenges stemming from introducing elements of the adversarial model into criminal procedure laws in the region. As the introduction of elements from the adversarial system in traditionally inquisitorial systems has been challenging for both lawyers and judges, this session focused on the new role of judges as an “arbitrator” between parties during criminal proceedings, application of the legal standard of guilt beyond a reasonable doubt, challenges for the admission of evidence, challenges emerging from assessing the evidence, plea agreements and the impact of these changes on defence attorneys.

War crimes investigators

War crimes investigators from the region participated in a one-day peer-to-peer regional meeting in Sarajevo on 25 May 2015. ODIHR organized the meeting with the support of the OSCE Mission to Bosnia and Herzegovina and the OSCE Mission to Serbia. The purpose of the meeting was to provide a place for war crimes investigators in the region to exchange information and expertise with the goal to share best practices and lessons learned. Thirteen of the war crimes investigators participating in the meeting were from BiH, Croatia, Kosovo and Serbia. The majority of these investigators held positions within police directorates, while only one participant worked for a prosecutor’s office. Two additional international investigators from the United Kingdom and Finland, who have extensive experience in SEE, were also present.

To provide regional ownership of the event, the moderation was split equally between two local investigators and the two international investigators. Mario Kapetanović from BiH, Dejan Marinković from Serbia, Howard Tucker, former Head of the ICTY Mission to BiH, and Matti Raatikainen, EULEX Head of War Crimes Investigation, served as the moderators.

ODIHR consulted with participants prior to the meeting to develop the topics for discussion. These topics included the structural set-up of investigation units, the relationship between investigators and prosecutors, the allocation of resources, security issues, managing conflicts of interest within investigation units and cross-border communication and information exchange where suspects are located in other states in the region. During discussions on these topics, the investigators shared experiences and good practices, as well as discussed their concerns arising from the different institutional realities in which they work, the solutions adopted and possible ways forward at both the domestic and regional level.

This meeting was the final event in the War Crimes Justice Project Phase II. The participants found the meeting valuable, particularly for strengthening their contacts in the region.

SPECIFIC ACTIVITY: CONFERENCE ON THE ROLE OF DOMESTIC JURISDICTIONS IN THE IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW - LAW AND PRACTICE

From 19 to 20 May 2014, ODIHR jointly organized a two-day conference in Sarajevo with the International Committee of the Red Cross (ICRC), the OSCE Mission to Bosnia and Herzegovina, the Court of BiH and the Embassy of Switzerland to Bosnia and Herzegovina. Through the conference, ODIHR aimed to provide justice actors from SEE with the opportunity to exchange experiences and good practices regarding war crimes prosecutions at a national level, to promote and develop inter-state co-operation and to discuss national reconciliation. This conference brought together 73 judges, prosecutors, defence attorneys, legal experts and representatives from international and non-international organizations to discuss the role of domestic jurisdictions in the implementation of international law. Thirty-nine participants were female.

The conference was organized into four sessions in which panellists discussed the main challenges of prosecuting war crimes at a national level, the interaction between international and domestic law, co-operation in prosecuting war crimes and the specific challenges of the transitional justice process. Each panel consisted of judges, prosecutors, defence attorneys and/or legal experts who sought to encourage discussion and was moderated by a judge or a legal expert. After the panellists discussed the topic, participants were given the opportunity to pose questions.

Overall, the conference served as an opportunity for participants to take stock of the number and scope of war crimes prosecutions in SEE, to discuss the role of domestic jurisdictions in implementing international law, to promote regional co-operation, and to sensitize participants on their role in transitional justice processes. Participants appreciated the opportunity to discuss challenges and practical issues that they encounter in their work. The conference also supported efforts to strengthen regional co-operation and to promote mutual legal assistance in war crimes cases. Finally, the discussions promoted international standards, OSCE commitments and state responsibility in preventing and prosecuting war crimes and crimes against humanity.¹³

13 The Final Report of the conference is available online in English and B/C/S at <https://www.osce.org/odihr/142256>.

H. Lessons Learned, Good Practices and Topics for Follow-up

I.1. LESSONS LEARNED AND GOOD PRACTICES FROM WAR CRIMES JUSTICE PROJECT PHASE II

The following lessons learned, good practices and topics for discussion represent the views of the participants as discussed during the War Crimes Justice Project Phase II's activities. Given the fact that discussions during the peer-to-peer events are held "behind closed doors" any sensitive information and mention of specific participants will be omitted.

IMPORTANCE OF SEE JURISDICTIONS' EXPERIENCE IN PROSECUTING WAR CRIMES CASES ON A LARGE SCALE

South-Eastern European jurisdictions have generated a unique experience in dealing with war crimes and other international crimes over the past two decades. These lessons learned and good practices in terms of judicial processes or reconstruction and reconciliation of the society should be shared with other states having to deal with mass atrocities in the context of armed conflicts as the primary responsibility for the prosecution of such crimes rests on the states themselves. SEE jurisdictions' experience in co-operating with the ICTY should also be widely shared and promoted because it can benefit other countries which are currently co-operating with the International Criminal Court or might co-operate with the permanent criminal court in the future.

THE ADJUDICATION OF A LARGE NUMBER OF WAR CRIMES CASES

Domestic jurisdictions in SEE have undertaken the prosecution of a large number of war crimes cases, particularly in BiH, which has created challenges for ensuring efficiency, the right to a fair trial and the allocation of sufficient resources. Participants in the WCJP II activities discussed these challenges and corresponding practice. They identified creating a national strategy, dividing cases between courts and creating specialized chambers as relevant considerations for prosecuting a large number of war crimes cases.

A national strategy to address the large number of war crimes cases is essential. Successful implementation of such a strategy, however, requires the appropriation of sufficient funds and trained human resources. For instance, while BiH developed a national strategy, the implementation of this strategy was affected by financial issues. Additionally, the failure to investigate and prosecute cases of witness tampering may also hinder the strategy's effectiveness.

Many SEE states created specialized chambers to handle war crimes cases. While the creation of these specialized chambers has assisted in focusing resources on fighting impunity, more effort is needed to ensure that those involved are adequately trained, are informed about relevant legal frameworks and are aware of national and international developments.

Another method for handling a large number of war crimes-related cases is to divide the cases between the different levels of a state's courts. To improve efficiency in handling war crimes cases, BiH divided cases between the State Court and the cantonal and district courts in the entities and in the Brčko district. The State Court deals with the most serious war crimes cases whereas cantonal and district courts hear less serious cases. Participants in BiH stressed that training on war crimes cases was crucial due to the remaining large number of cases to be dealt with by district and cantonal courts. Entrusting cases with jurisdictions without sufficient experience in dealing with complex crimes may thus require a significant amount of training to ensure there is sufficient capacity of legal practitioners to try these crimes. It may also necessitate an increase in the overall resources required.

CO-OPERATION IN WAR CRIMES PROSECUTIONS

With many of the war crimes cases occurring in more than one state in the region, inter-state co-operation was highlighted as a critically important area for war crimes cases with an international component. Co-operation with the ICTY was also considered necessary.

Participants specifically identified inter-state co-operation as essential for interviewing witnesses and collecting evidence, as well as for cases where the defendant has dual citizenship. Several practices have contributed to increased inter-state co-operation and co-operation with the ICTY and thereby improved the handling of war crimes cases domestically.

First, the signing of bilateral agreements between states in the region has improved co-operation and enabled the exchange of information and evidence. Even with these agreements, participants recognised areas where these protocols could be improved. Prior to the 2013 co-operation protocol between BiH and Serbia, participants explained that BiH had experienced difficulties due to the lack of a bilateral legal assistance protocol with Serbia. More information and potentially training may be necessary to ensure that cantonal and district jurisdictions in BiH are informed of the co-operation mechanisms with the ICTY due to the large number of war crimes cases these jurisdictions have to handle. This also underlines the importance of ensuring that available co-operation mechanisms are further promoted and used by domestic jurisdictions in front of the UN Mechanism for International Criminal Tribunals, beyond the closing of the ICTY. Bilateral agreements between states would also benefit from the inclusion of provisions relating to extradition of own nationals, which is still seen as an obstacle for fighting impunity in SEE. Other solutions for greater efficiency in tackling war crimes cases include adopting a Western Balkans arrest warrant (on the model of the European arrest warrant) although this idea is likely to face obstacles due to the lack of political will to arrest own nationals. States are also encouraged to resort to universal jurisdiction to address impunity to prosecute perpetrators of war crimes. One such example is the investigation against a national from BiH residing in Denmark which was conducted on the basis of universal jurisdiction. This investigation involved an agreement between the Danish and BiH authorities which allowed the Danish prosecution service to

establish an office in BiH to efficiently access crime scene evidence. The investigation was completed in only three months.

Even with bilateral agreements in place, other obstacles remain for effective and efficient cross-border co-operation. Communication and co-ordination at a regional and a bilateral level in the course of the investigation phase of such cases is deficient. Regional meetings that bring together war crimes investigators and prosecutors may facilitate the creation of networks that could allow investigators and prosecutors to communicate on both professional and more informal levels thereby improving regional co-operation.

Second, signing bilateral agreements and adopting related domestic laws has allowed evidence collected by the ICTY to be used in domestic jurisdictions. The Law on the Transfer of Cases from the ICTY in BiH, for example, allows for domestic courts to use ICTY evidence, to use facts established by ICTY decisions and to use records of witnesses and experts' testimonies, unless the parties disagree. In this latter case, cross-examination is required.

Other potential mechanisms to facilitate co-operation are the appointment of liaison officers or the creation of joint investigative teams. Liaison officers from one country can be dispatched to another one to specifically co-ordinate investigations with the other country's authorities. Liaison officers can also be appointed to co-operate with the ICTY. Serbia appointed a liaison officer to exchange evidence and information with the ICTY. Some complications arose regarding the omission of information to protect a witness' identity and regarding the occasionally lengthy process of information communication, which in some cases took six months. Regardless, participants generally viewed this practice as facilitating the exchange of information and evidence. Joint investigative teams, such as those that combine teams of police officers and prosecutors from relevant states, may also improve the handling of war crimes cases that extend beyond a state's borders, but these could create additional challenges in terms of conflicting domestic criminal laws and procedures.

Parallel investigations of the same defendant by multiple states have created challenges, including inconsistent application of the law. Yet, they still ensure that legal actions are taken despite the fact that the suspect has moved to another territory. In that sense parallel investigations contribute to combatting impunity. Additional communication and co-operation between relevant parties could contribute to ensuring more consistent and efficient prosecution of perpetrators.

INTRODUCTION OF THE ADVERSARIAL SYSTEM AND NEW CRIMINAL PROCEDURE CODES

The introduction of elements from the adversarial criminal procedure into states which traditionally had inquisitorial systems has raised multiple challenges for all legal practitioners handling war crimes cases and created a need for skills and knowledge training. Defence attorneys, in particular, expressed concern relating to international fair trial standards, including the equality of arms, independence and impartiality of judges and the presumption of innocence. According to participants, these issues appear

to have arisen due to deficient criminal procedure laws and the transition to a system with predominantly adversarial features. Many defence attorneys that participated in Phase II of the War Crimes Justice Project explained that they had difficulties in understanding the new criminal procedures. In BiH, even ten years after the new CPCs entered into force,¹⁴ participants found it difficult to understand the concepts and related philosophy of the new CPCs and to utilise new criminal procedures that derive from common law systems, such as cross-examination or plea bargaining. On the other hand, some participants in Serbia welcomed the expeditiousness of some of the new procedures, such as the introduction of the preliminary hearing and plea-bargaining procedures. Participants suggested that the shift to an adversarial system had been carried out in an uncoordinated manner in certain jurisdictions and had resulted in different standards in defence rights throughout the region.

Similar to other states in the region, some defence attorneys in Kosovo believe that they continue to be placed at a disadvantage in comparison to prosecutors, particularly in terms of equality of arms. Various participants from the region highlighted challenges regarding basic procedural guarantees due to the text of the law or the developed practice, such as difficulties faced by defence counsel in accessing evidence or confronting prosecution witnesses prior to the main hearing. In that regard, judges expressed interest in training seminars or meetings that addressed their role in ensuring that standards relating to equality of arms are met.

As a result of the change to an adversarial system, additional support in legislative drafting and training for judges and practitioners on the new provisions of the criminal procedure codes and trial advocacy skills required are necessary for the success of the procedural reform. Training seminars focusing on skills should address trial skills at all stages, from the investigative stage through to the appeals stage. It was also suggested that harmonization of the region's systems and laws could help with predictability and efficiency in war crimes adjudication.

MODES OF LIABILITY

International legal practitioners promoted the use of superior responsibility and JCE in domestic war crimes cases in several events during Phase II of the War Crimes Justice Project as a method to prevent impunity. Domestically, legal practitioners have faced several difficulties in utilising these modes of liability.

The application of JCE is particularly challenging at the domestic level. International jurisprudence on this mode of liability has diverged and ICC jurisprudence is still developing. JCE is rarely used in domestic jurisdictions, but BiH courts have recognized the concept in exceptional circumstances. Participants working in BiH, however, have had difficulties in applying international criminal law standards established by the

14 In Bosnia and Herzegovina, four criminal procedure codes with similar provisions are in force: one applicable before the State Court, one before cantonal courts in the Federation of Bosnia and Herzegovina, one before district courts in Republika Srpska and one before the Basic Court of the District of Brčko.

ICTY when trying to prove one specific mode of liability, particularly JCE III,¹⁵ and aiding and abetting crimes committed by omission.

Regarding superior responsibility, some judges from the region expressed concerns over the challenges of using this mode of liability due to the prohibition on retroactive offences. This topic was especially important for legal practitioners in Serbia where the legal provision relating to superior responsibility was only enacted in 2006. Many Serbian participants appeared to struggle with this concept and how it could operate within the Serbian legal system. Similar to Serbian practitioners, legal practitioners in Montenegro did not believe that the applicable law at the time recognized superior responsibility. Other judges from the region said they had adopted a broad interpretation of aiding and abetting and co-perpetration to prosecute commanders for war crimes.

Overall, more training on modes of liability would be beneficial as participants found it to be an extensive and legally complicated topic. In terms of modes of liability, participants expressed particular interest in the differences between the modes of liability established by the jurisprudence of the ICTY and the ICTR and what they represent in domestic law and jurisprudence. Such training seminars should be adapted to the local context and thereby relate international jurisprudence to domestic law and practice.

WITNESS AND VICTIM PROTECTION

Throughout the SEE region, participants agreed that witness support mechanisms require strengthening. Specifically, participants said that witness support mechanisms in the region lack sufficient resources and staffing and experience difficulties in coordination. Mechanisms and events, such as peer-to-peer meetings, that allow witness and victim support providers to compare policies, methods and models may benefit support structures throughout the region.

Witness and victim protection programmes need to be in place not only at the trial stage, but from the point of first contact at the onset of an investigation and need to continue to be available after the individual testifies. Witness protection programmes could offer logistical, informational and psychological support to witnesses and victims. Croatia's and BiH's witness protection programs allow vulnerable witnesses to testify through video link or through voice or image distortion. Protected witnesses in some jurisdictions may testify openly in court, but they are then enrolled in a witness protection programme and some are even relocated abroad.

Witness support providers expressed their interests in participating in longer training seminars, peer-to-peer meetings that included court staff and community-level

15 JCE III arises where a plurality of persons have agreed on a JCE and a member of the JCE commits a crime that, although outside of the common purpose, is a natural and foreseeable consequence of carrying out the common purpose. See International Criminal Law Services, International Criminal Law & Practice Training Materials (OSCE-ODIHR, 2011), Module 9 p. 14. See, also, ICTY, Prosecutor v. Duško Tadic, Case No. IT-94-1-A, 15 July 1999, paras. 195-196 and 204, <http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>

meetings. They also said they would be interested in conferences that focused on one particular theme, such as victim support mechanisms for victims of sexual violence.

WAR CRIMES INVESTIGATORS

Jurisdictions in the SEE region maintain different levels of centralization of investigative units which seem to be similarly effective. Serbia and Kosovo maintain the most centralized systems, whereas Croatia organizes investigative bodies at the county level and BiH has a mixture of state and local level investigative units. Increased centralization, however, may allow for flexible utilisation of available investigative resources as it allows for resources to be deployed according to actual needs. Throughout the region, investigative units are reportedly dynamic and able to adapt to changing circumstances.

Co-ordination and co-operation with the prosecution is an area for improvement throughout the region. Participants cited a lack of legal direction from the relevant prosecutor or a failure to understand each other's work as some of the reasons for poor communication and co-ordination. The investigators acknowledged that more prosecutorial oversight and legal direction is especially needed for interviewing potential insider witnesses as investigators may lack a full understanding of the value of these witnesses to the prosecutor's case. Activities that bring together war crimes investigators and prosecutors to build networks and to increase their understanding of each other's work may improve co-ordination and co-operation between these entities. Such activities are particularly important for war crimes investigators in Kosovo as the special investigative division is relatively new and investigators are looking at regional models for overall direction.

Currently, dedicated mechanisms to deal with conflicts of interest for war crimes investigative teams do not exist in the region. Participants suggested that conflicts of interest, which can for instance involve an investigator who is a former member of the military who served in the specific area where the acts under investigation took place, could potentially be dealt with by relocating officers facing a conflict of interest or by assigning the investigation to another jurisdiction rather than to the local community. Additionally, vetting procedures at the recruitment stage and mechanisms for special units to conduct internal investigations of police officers suspected to have been involved in past war crimes may be used to prevent conflicts of interest from arising, although participants said that such procedures and mechanisms are already normally in place.

Resource constraints are also negatively affecting the work of war crimes investigators, particularly in terms of human resources. More analysts and research professionals are needed given their importance to the investigation units and in light of the amount of war crimes to be processed at the domestic level. Recruiting and retaining skilled investigators is also problematic as other positions within the police forces offer higher salaries and the potential for promotion is rare.

INDEPENDENCE AND IMPARTIALITY

Participants raised several concerns regarding the independence and impartiality of judges in charge of war crimes adjudication. First, some participants shared that there exists a perception whereby, in reality, the judge and the prosecutor are a single unit. In certain jurisdictions, the media allegedly presents the prosecution much more favourably than the defence. As a result, some defence attorneys are concerned that the media influences the judge and thus the outcome of some war crimes trials. Participants thereby expressed their interest in future discussions on the influence of the media on trials, media pressure and the political divisions within the media itself. Last, the adjudication of some cases in close proximity to where the crime was committed has raised questions regarding the independence and impartiality of judicial authorities.

FORMAT AND METHODOLOGY OF ACTIVITIES

Similar to Phase I, peer-to-peer meetings continued to elicit thought-provoking discussions and positive feedback from participants as they provide an avenue to discuss challenges and solutions and to establish contacts amongst members of the same profession. The opportunity itself to exchange experiences and best practices with peers was said to be the most appreciated aspect of these meetings. For instance, witness support providers said that this type of platform allows them to strengthen witness support mechanisms as they are able to compare policies, methods and models in the region to determine what is actually effective in practice. Some participants preferred holding longer meetings, potentially two to three days, which could facilitate their ability to generate concrete conclusions and recommendations.

In addition to the valuable substantive discussions peer-to-peer meetings facilitated, these meetings also allowed participants to build networks. Participants were very interested in setting up regional networks with their peers and these meetings provided them with this opportunity. War crimes judges were interested in the establishment of a network of judges who handled war crimes cases in the region. They believe that such a network may significantly contribute to the effective and efficient handling of cases as this is the first time that judges from the region have had to try war crimes cases domestically on such a large scale.

Joint training seminars also proved to be a useful format for participants. For instance, defence attorneys working in Kosovo said they would like to attend joint trainings with the participation of police officers, prosecutors and judges that lasted two to three days. Participants in BiH also requested more seminars that included judges, prosecutors and defence attorneys. In particular, they thought it would be beneficial to systematically include a judge from the various levels of domestic courts that handle war crimes cases. It proved essential that WCJP II training workshops were organized in co-operation with judicial or legal training centres who are entrusted with the continuous legal education of justice actors and keep track of their training needs. This co-operation is key in ensuring that any training organized by external stakeholders complements and supports the training program of the training centre, which in turn increases the relevance and sustainability of donors' training activities. Finally, these training centres

co-ordinate the various donors' training initiatives and play an important role in minimizing the possibility of overlapping initiatives.

Training seminars on both substantive and procedural standards are useful for legal practitioners in SEE. Training seminars that use practical examples, such as cases from the relevant jurisdiction, increase the seminar's relevance and usefulness. Participants also said they were interested in training seminars that included roundtable discussions and interactive modes of training.

The inclusion of international experts in training seminars, workshops, peer-to-peer meetings and conferences was deemed very valuable. International experts are considered impartial outsiders which allowed for the inclusion of more sensitive topics and resulted in the conduct of more open discussions, in addition to facilitating the transfer of knowledge on concepts and possible solutions to issues that the participants may be encountering in their daily work. Participants appreciated the use of trainers who had previous work experience in an international tribunal, such as the ICTY, particularly when they were accompanied by a domestic legal expert who could relate the subject matter to the local context. The inclusion of a few international officials with regional practitioners helped create a vibrant and thought-provoking environment for all participants.

Local ownership remained critical for engaging participants and for providing relevant and useful training seminars, meetings and conferences. This ownership was realized by eliciting participants' views on relevant topics before the training seminars, by utilising local trainers and experts, and by evaluating the strengths and weaknesses of past events to incorporate these lessons into future events. Most activities also had participants from the region act as moderators.

Training seminars outside of capital cities also received positive feedback. Participants in Kosovo expressed their appreciation for such trainings and requested that more training seminars be held outside of Prishtina/Priština so that practitioners from other locations can also benefit from them.

I.2. TOPICS FOR FOLLOW-UP

In addition to the topics already mentioned in previous sections, participants in Phase II of the War Crimes Justice Project articulated a variety of topics they would be interested in for future training seminars and meetings.

Judges said they would be interested in further discussing the following topics:

- International criminal and humanitarian law:
 - ◆ The principle of legality;
 - ◆ Establishing the elements of crimes against humanity;
 - ◆ Superior responsibility;
 - ◆ *Mens rea*, particularly in relation to JCE and aiding and abetting;
 - ◆ Comparisons with the Nuremberg and Tokyo processes;

- Conducting war crimes trials:
 - ◊ Practical suggestions for preparing for a case;
 - ◊ Evidence in war crimes cases, particularly witness testimony;
 - ◊ Direct and cross-examination of witnesses;
 - ◊ Witness and victim protection;
 - ◊ Drafting judgments;
 - ◊ Sentencing policies;
- Extradition:
 - ◊ The extradition of war criminals;
 - ◊ The European Convention on Extradition;
- Reconciliation:
 - ◊ The influence of prosecutions in post-conflict situations;
 - ◊ Raising public awareness of court decisions;
 - ◊ Reparations;
- Types of activities:
 - ◊ Conference on war crimes in Kosovo;
 - ◊ Regional peer-to-peer meetings;
 - ◊ Training seminars that utilize practical case studies that are related to states in the region;
- Other:
 - ◊ The impact of ICTY case law on domestic cases;
 - ◊ Responsibility of civilian authorities during the war;
 - ◊ Manual of case law on war crimes.

Prosecutors expressed interest in the following topics for future training seminars:

- Modes of liability, particularly superior responsibility;
- The importance and role of international and domestic case law in processing international criminal law cases;
- Third Geneva Convention and the treatment of prisoners of war;
- Opening and closing arguments;
- Direct and cross-examination;
- Admission of evidence.

Defence attorneys communicated their desire to have further activities on:

- International Criminal and Humanitarian Law:
 - ◊ Modes of liability;
 - ◊ Crimes against humanity;
- Trial Skills:
 - ◊ Trial skills at all stages, from the investigative stage through to the sentencing stage;

- ◆ The preparation of the case;
- ◆ Opening and closing statements;
- ◆ Admissibility of evidence;
- ◆ Direct and cross-examination of witnesses;
- ◆ Defendant's rights in criminal procedures;
- Types of activities:
 - ◆ Joint training seminars with judges and prosecutors;
 - ◆ Regional meetings;
- Other:
 - ◆ Pre-trial detention and measures of restraint;
 - ◆ Protection of victims;
 - ◆ Ethical conduct by lawyers;
 - ◆ Harmonisation of the laws in Kosovo with European laws and treaties.

Witness support providers identified the following topics for further discussion:

- General methods of witness support:
 - ◆ Models for witness support units;
 - ◆ Guidelines on witness support;
 - ◆ How to handle victim/witness support after the witness testifies;
- Specific issues related to victim support:
 - ◆ Working with victims of sexual violence;
 - ◆ Specialized support to victims of torture;
 - ◆ Compassion fatigue and secondary traumatization;
- Co-operation:
 - ◆ Co-operation with NGOs;
 - ◆ Limits of formal co-operation based on informal/personal relationships and the advantages of formalized co-operation;
- Other:
 - ◆ Advantages and challenges related to including volunteers in witness and victim support;
 - ◆ Right to reparations;
 - ◆ Cross-examination of witnesses.



OSCE

ODIHR