

ICTY has to be addressed. ICTY is only a court that punishes episodes of crimes committed in war and in order to deal with the issue of interest for the "opponents" (ultimate guilt and responsibility for the outbreak of Yugoslav civil wars) some sort of Truth and Reconciliation commission(s) should be established. These two institutions will be dealing with different aspects of recent Yugoslav history: the ICTY will deal with specific issues, while the Truth and Reconciliation Commission(s) will be dealing with contextualization, thus with more broader and general issues. As the state sponsored Truth Commissions' reconciliation domains would not provide for the inter-ethnic reconciliation, there is a space for NGO community to fill this gap with its own trans-border initiatives making this triad of actors (ICTY, states' based Truth Commissions, and NGOs) working on different but complementary fronts. Thus, if apples and oranges were to be placed in proper boxes these acts would establish a minimum of rule of law required for potential reconciliation among different ethnic groups.

What kind of justice

The reason for allocating these three groups of actors into three different avenues of activity is based on the understanding that three parallel concepts of justice could be applicable to the core successor states, namely the retributive justice, the restorative justice, and the transitional justice. The Yugoslav civil war represented traumatic experience for the core Yugoslav successor states, and a remedy for such an experience should be based on comparative experiences of countries that have suffered wars, communitarian violence, and transition from authoritarian to democratic regimes. The list of countries that struggled with similar challenges but applied some of the justice concepts is quite long: Argentina, Bolivia, Chad, Chile, East Timor, Ecuador, El Salvador, Germany, Guatemala, Haiti, Malawi, Nepal, Nigeria, Panama, Peru, Philippines, Sierra Leone, South Africa, South Korea, Sri Lanka, Uganda, Uruguay, Zimbabwe. Almost each of these cases has left bitter feelings among the significant political and social actors as they thought that more could have been done. To prevent similar feelings from emerging in the former Yugoslavia the three parallel concepts of justice should be applied simultaneously. I would argue that the implementation of these parallel concepts would delineate and facilitate the work of existing three groups of actors involved in the truth, justice and reconciliation issues. It means that there is a niche for each of these actors and that they should not see each other as obstacles or competitors. This approach could also give to international community more sophisticated tools for influencing the judicial capacity building in the region than only on relying at the ICTY.

The ICTY was created in the midst of the Yugoslav civil war in 1993. It was an ad-hoc legal body created by the UN Security Council with a clear political mission – to facilitate the end of the civil war. The ICTY had two-fold nature: it was launched as a coercive tool for punishing those who committed crimes; while at the same time it was a deterrent aimed to remind the Yugoslav powerbrokers that they should reconsidered their policies in the ongoing civil war. For that matter the ICTY was used within a framework of retributive justice. The nature of retributive justice is to offer punishment for the criminal acts committed in the past. It is hard to believe that the diplomats at the East River believed back in 1993 that this ad-hoc body should act along the lines of restorative justice. The nature of restorative justice is to provide healing of the victims' wounds through community efforts that include both victims and offenders. Therefore, as the ICTY is not created and equipped to promote healing and provide the restorative justice that task should be taken by some other entities. For several years during the reign of local post-communist authoritarian systems the sole leaders in doing healing were local NGOs. These very noble activities of local NGO community gain them reputation that exceeded strict ethnic or state lines. However, the competition for such a role in the Yugoslav post-authoritarian successor states has been intensified recently by the creation of truth and reconciliation commissions. Though, the argument can be made that already established or announced truth and reconciliation