

The rocky road to justice for atrocities committed during the Kosovo war

The Kosovo war marked a period of unimaginable violence. The Serbian campaign of ethnic cleansing of Kosovar Albanians, overseen by then-president of Serbia, Slobodan Milošević, met with retaliatory atrocities by opposing forces, led by the Kosovo Liberation Army (KLA). In the years since, various tribunals and organisations have been created to deliver justice, but they have been hampered by continued distrust, intimidation of witnesses, and perceptions of unfairness from opposing sides. At Vrije Universiteit Brussel, Dr Mathias Holvoet has closely examined the post-conflict justice responses related to the Kosovo war with the aim of identifying a more comprehensive and meaningful road to justice, which does not complicate but could eventually nurture reconciliation.

As it has for time immemorial, the concept of a 'Just War' remains widely debated. But while there is much fodder for disagreement, few deny that crimes against humanity and war crimes perpetrated for reasons of ethnic cleansing, are the very antithesis of 'just'. In 1998, years of smouldering tensions surrounding the breakup of Yugoslavia erupted in unimaginable violence, pitting ethnic Albanians against ethnic Serbs, and resulting in atrocities that continue to haunt the region today.

For the broader public, the Kosovo war seems inextricably linked with the North Atlantic Treaty Organization (NATO) intervention in 1999, which halted the Serbian campaign of ethnic cleansing of Kosovar Albanians in Kosovo, overseen by the then-president of Serbia, Slobodan Milošević. Ethnic Albanian citizens were subjected to killings, sexual violence, and the destruction of social, cultural, and personal property. Less well known are the violent retaliatory atrocities committed by opposing forces, led by the Kosovo Liberation Army (KLA),

including summary executions of ethnic Serbs, ethnic Albanian 'traitors', and other minorities. Fewer people still know about the efforts to deliver justice and criminal accountability in the aftermath of the war.

Dr Mathias Holvoet, a researcher with more than 10 years of academic and practical experience in the field of International Criminal Law, believes that the approach to accountability for crimes committed during the Kosovo war has been inconsiderate and incomprehensive. The competence to deliver accountability has been scattered in a piecemeal fashion across various institutions who either lacked the time, the capacity, and/or the appropriate jurisdictional mandate to dispense meaningful, inclusive, and comprehensive criminal justice.

From his base at Vrije Universiteit Brussel, where he is affiliated with the Brussels School of Governance (BSoG) and the Fundamental Rights Research Centre (FRC), Dr Holvoet is putting his considerable experience into examining the different mechanisms used to deal with the investigation, prosecution, and adjudication of atrocity crimes during the Kosovo war – and most importantly, to illuminating possible ways forward.

A FAILED SEARCH FOR JUSTICE

The jurisdiction of the first institution to handle crimes committed during the Kosovo war, the International Criminal Tribunal for the Former Yugoslavia (ICTY), was strictly confined to crimes committed during the armed conflict. Crimes committed in the aftermath of the war were excluded from consideration. Moreover, the ICTY was curtailed by the



Gazimestan speech, 1989 by Serbian president Milošević, often described as an important precursor to ethnic tensions eventually leading to the Yugoslav Wars.



Uniform and Badge of the Kosovo Liberation Army (UÇK) at the Military Museum, Belgrade, Serbia.

adoption of the Completion Strategy by the UN Security Council, which in practice prohibited the ICTY Office of the Prosecutor from issuing any further indictments after 2004. Most significantly, this deadline was a severe blow for investigations into sexual crimes. Just six former senior Serb officials and one former KLA member were ultimately convicted by the ICTY, a comprehensively underwhelming track record. Most frustratingly to many observers, and particularly to ethnic Albanians, was the death of Slobodan Milošević before his trial could be completed.

Alongside the ICTY, local war crime trials were held under the auspices of the United Nations Mission for Kosovo (UNMIK) and, subsequently, the European Union Rule of Law Mission (EULEX). While these trials met with some success in holding accountable lower-level perpetrators, they failed to successfully prosecute high-level actors responsible for crimes committed during the Kosovo war, with witness intimidation being the main detrimental factor.

Acknowledging that EULEX would not be able to prosecute high-profile accused and would not be able to guarantee the protection of witnesses and judges, in 2015 the EU and the USA pressured the Kosovo Assembly into

establishing a wholly new institution, the Kosovo Specialist Chambers and the Kosovo Specialist Prosecutor's Office (KSC & SPO). However, the KSC & SPO's legitimacy has been extremely fragile from the outset, as its mandate has been effectively restricted

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to investigating, prosecuting, and adjudicating crimes by former KLA members during and in the aftermath of the war.

This has led to widespread frustration among Kosovar Albanians, many

of whom feel that they are unequally treated compared with Serbs when it comes to criminal justice for crimes committed during the Kosovo war, with the general consensus being that crimes committed by Serbs "enjoy widespread impunity". For Kosovar Albanians, the

post-war narrative has glorified the role of the KLA, whose crimes often had the overt and tacit support of international bodies,

such as NATO and the United Nations (UN), which raises the question as to whether political responsibility can negate individual criminal responsibility. The perceived unfairness is further fuelled by the complete unwillingness of Serbia to assume any public or collective



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Kosovo refugees in Albania, 1999.



Soviet-built T-55-tank used by Serbian military lies in ruins near Prizren, Kosovo.

responsibility for its numerous crimes committed against the Kosovo Albanian population; the denial of the 1999 Reçak massacre by the incumbent Serbian president, Aleksandar Vučić, in which 45 Albanian civilians lost their lives, being a notable and recent example.

Ultimately, instead of facilitating recognition of responsibility for atrocities on all sides, the mandates and performances of the different accountability mechanisms have led to either the denial or minimisation of responsibility. Moreover, these efforts to deliver criminal justice for atrocities committed during the Kosovo war have further fuelled grievances between Serbs and Kosovar Albanians, in a way that does not bode well for the normalisation of relations, let alone mutual recognition between Serbia and Kosovo.

TOWARDS TRUTH, RECONCILIATION, AND JUSTICE

Dr Holvoet suggests that a new approach is needed to address post-conflict resolution in the region. In particular, the EU and USA, as Kosovo and Serbia's main partners, should adopt a principled approach that includes accountability as one of the main pillars of dialogue. Ideally, this would lead to mutual recognition and membership of both countries within the EU in the future.

A principled approach implies that all crimes committed deserve justice on an equal footing and relies on both

acceptance of responsibility for crimes committed, and for the justice process, is needed from the ethnic Albanian community, and perhaps from the wider international community who threw their support behind the KLA.

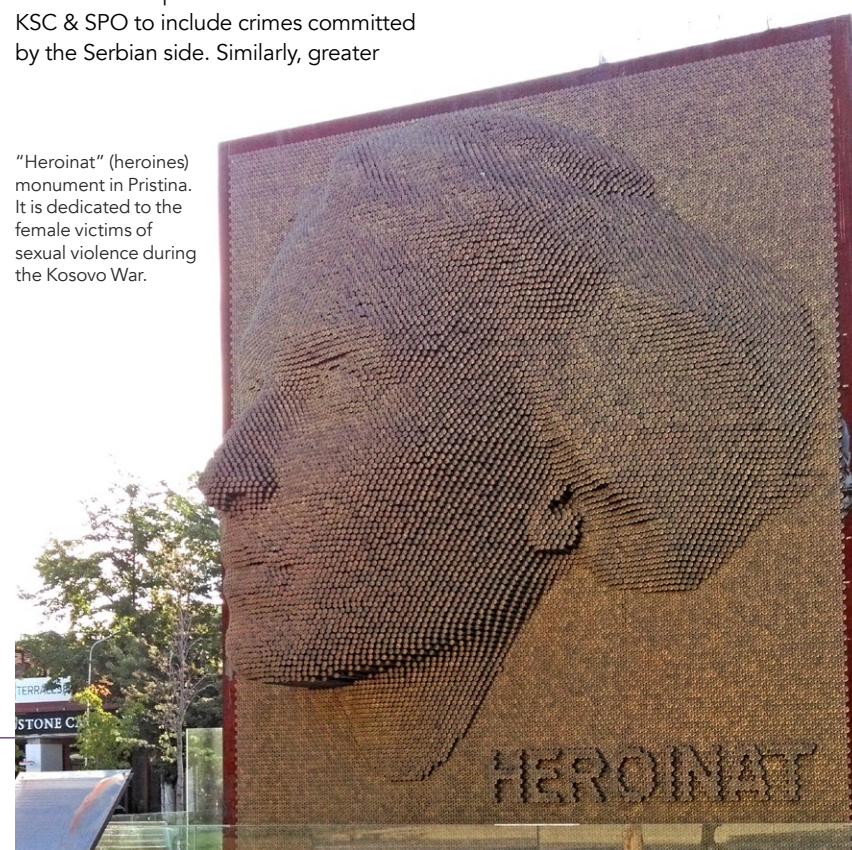
However, it is increasingly acknowledged the path out of conflict is not paved by justice, but by non-judicial transitional justice approaches, such as truth and reconciliation commissions and apologies. The first to tread such a road was post-Apartheid South Africa, but more recent commissions include those in post-Pinochet Chile, post-communist East Germany, post-colonial Canada and Australia, and post-Maoist conflict Nepal. While these commissions have met with differing levels of success, they nonetheless mark a sea change in the culture and dialogue of post-conflict management. In both Kosovo and Serbia, the EU and USA could certainly promote a more holistic approach to societal reconstruction, which, besides truth and reconciliation commissions

Serbia and Kosovo being incentivised to commit and engage in delivering accountability for atrocities committed during the war. In this regard, a more confrontational and tougher stance on Serbia is warranted, as the country has

been dragging its feet with regards to prosecutions, particularly of high-level former officials, and continues to be in a state of denial. If Serbia were to continue along this path, one option would be to expand the mandate of the KSC & SPO to include crimes committed by the Serbian side. Similarly, greater

and apologies, could include additional pathways such as support for the development of free and independent media and the encouragement of truthful public education related to wartime atrocities.

"Heroinat" (heroines) monument in Pristina. It is dedicated to the female victims of sexual violence during the Kosovo War.



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Behind the Research

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Research Objectives

Dr Holvoet examines the work of the different mechanisms that are dealing with the investigation, prosecution and adjudication of atrocity crimes during the Kosovo war.

Detail

Bio
 Mathias Holvoet holds a PhD (2018) in International Criminal Law from the Vrije Universiteit Brussel, where he is affiliated as a researcher with the Brussels School of Governance (BSoG) and the Fundamental Rights Research Centre (FRC). Dr Holvoet has over ten years of academic and practical experience in the field of International Criminal Law.

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Personal Response

Is there a statute of limitations that will restrict the prosecution of crimes from 1998/1999, either in international law or in Servian/Kosovan law? If not, should there be?

It is widely accepted under international law that there are no statute of limitations for the so-called core international crimes: genocide, crimes against humanity, war crimes and the crime of aggression. This is justifiable both because of the gravity of these crimes and because of the considerable historical, political and societal impact they engender. The collective, broader societal dimension of these crimes generates an interest to see them prosecuted, even if a long period has passed after the commission of the crimes. This does not mean that it is always and at all times opportune to initiate prosecutions for atrocity crimes committed decades ago. For instance, one could seriously question the value of prosecuting very aged defendants, as happens in present-day Germany, where alleged crimes committed by former Nazi officials who are sometimes over hundred years old are being investigated and prosecuted.

Is there any marked difference in the outlook of young Serbs and Kosovans (those too young to remember the violence)? Does this generation offer hope for the future, or have old battlelines continued to divide the new generation?

For young Serbs and Kosovans in their twenties and thirties, the war continues to be a dividing issue. While they maybe not fully remember the violence itself, they surely felt the impact of the war on their daily lives. Because the even younger Serbs and Kosovans born after the war are for the most part still minors, it is difficult to gauge whether they hold markedly different outlooks compared to the older generations. Only time will tell, but there is nonetheless a broader trend discernible, which tends to show that the younger generation prioritises jobs and the fight against corruption over war-related issues and the dialogue between Serbia and Kosovo.