



Research Article

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Transitional Justice in Albania, Kosovo, and North Macedonia in a Comparative Framework

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Abstract

This thesis aims to enhance transitional justice studies with a focus on the Balkan peninsula, by providing a comparative analysis of the extent of transitional justice mechanisms in Albania, Kosovo, and North Macedonia. With the fall of military dictatorships in Latin America in the 1980s, the breakup of the Soviet Union, and the emergence of new states in the 1990s, the concept of Transitional Justice (TJ) saw a significant rise in the late 1980s and early 1990s. This was further propelled by the fall of the Berlin Wall (1989), the prolonged breakup of the Socialist Federal Republic of Yugoslavia (1992) as well as the fall of the communist dictatorship in Albania (1990). The emergence of new states and the state-building processes that followed the political and social changes also brought new challenges and conflicts, although they marked the end of significantly repressive political regimes. Considering that the implementation of TJ has undergone several changes over time and is dependent on the different settings in which it was employed, it is necessary to conduct extensive comparative research to determine the extent to which TJ differs in post-communist and post-conflict nations. The study has developed three main hypotheses: (1) The limited achievement of lustration law in Albania has conditioned the current status of transitional justice; (2) The state-building process has contributed to the evolution of Transitional Justice in Kosovo; (3) The power-sharing process as a TJ pillar in North Macedonia has fueled TJ in the country. By utilizing a mixed methods approach, data was collected through elite interviews, conducted in the three countries with 44 representatives from academia, politics, media, and civil society. To conclude, two hypotheses are fully upheld in terms of the limited achievement of lustration law and its implications with the current status of transitional justice in Albania; and the contribution of state-building in Kosovo to the evolution of transitional justice. The third hypothesis related to the power-sharing process in North Macedonia as a fueling mechanism for the evolution of transitional justice is partially upheld.

Keywords: Transitional Justice, Albania, Kosovo, North Macedonia, Comparative framework

1. Introduction

For more than 40 years, Albania under the communist regime and several countries within the Former Federation of Yugoslavia have been subject to massive human rights violations, including massive killings, segregation in concentration camps, denial of movement, denial of the practicing of religious belief, and other liberties and freedoms. For more than 30 years, after the fall of the communist regime, these post-communist and post-conflict societies continued to keep skeletons in their closets and live under a highly polarized political environment. Transitional Justice (TJ) is the concept that in the past 30 years has seen a huge proliferation of studies and different forms of conceptualization to provide a proper theoretical framework for societies to know how to manage their relationship with their past. The United Nations has defined TJ as “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, to ensure accountability, serve justice and achieve reconciliation” (United Nations, 2004, p.4).

These political and social changes brought to an end significantly repressive political regimes but also new challenges and conflicts that arose with the emergence of new states and the state-building processes. Even though TJ has evolved throughout times and in different contexts, it is important to conduct extensive comparative studies that analyze to what extent TJ is different in post-communist and post-conflict countries. In a political, geographical, and historical context - like the Western Balkans - there is a lack of studies comparing different types of conflicts and, more importantly, there is no previous study comparing the case of Albania with any other country within the former Yugoslav Federation. Indeed, communist Albania was the only country to have isolated itself from the Western and Eastern world.

1.1 Research Questions and Hypotheses

The main Research Question **RQ**: *How have the applied transitional justice mechanisms contributed to the evolution of TJ in Albania, Kosovo, and North Macedonia?*

RQ1: How has the lustration developed and contributed to the evolution of TJ in Albania?

RH1: The limited achievement of lustration law in Albania has conditioned the current status of transitional justice.

RQ2: How has the state-building process contributed to the evolution of TJ in Kosovo?

RH2: The state-building process has contributed to the evolution of Transitional Justice in Kosovo.

RQ3: To what extent did the power-sharing process contribute to the evolution of Transitional Justice in North Macedonia?

RH3: The power-sharing process as a TJ pillar in North Macedonia has fueled TJ in the country.

2. Conceptual and Theoretical Framework

In addition to the concepts of *transitional justice*, *dealing with the past*, *justice*, and *transition*, various other related concepts fall under the field of study, including but not limited to *reparations*, *political apology*, *political memory*, *cultural memory*, and *collective memory*. *Guarantees of non-recurrence* encompass several goals, such as the reformation of institutions, the implementation of reforms and training on human rights, lustration and vetting, and the issuance of public apologies and assurances. Considering its essential role in transitional justice, this pillar is viewed as a crucial element that requires continuous engagement and a long-term approach.

Joanna R. Quinn, in her analysis within the volume “Research Handbook on Transitional Justice” (2017, p.15), addresses the colorful connotations of the term due to the various philosophical positions that scholars take. According to her, interestingly, transitional justice accommodates largely different approaches and practices, because different understandings and beliefs of scholars are grounded in their philosophies. In another article of hers, published in 2015, she explores the concept

of transition not only in the context of well-known cases but in non-transitional societies as well. Accordingly, she maintains that “the very ideal of transition is a key premise of transitional justice” (2015, p.64). The critique of Quinn reflects the main limitation of conceptual boundaries in transitional justice, such as the proper definition of transition, be it from repressive regimes to democratic ones, from war to peacebuilding, and so on. Similarly, the same conceptual limitation is viable for the definition of transitional justice, whether it is a full range of processes and mechanisms or a societal response to massive violations. Moreover, Quinn addresses four specific moments in the attempt to deconstruct the term transition.

The authors Guo and Stradiotto (2014) have identified and discussed four distinct types of transitions, which include *conversion*, *cooperative*, *collapse*, and *foreign intervention*.



Figure 2. Transition Types According to Guo and Stradiotto (2014)
Source: Figure elaborated by authors.

The authors have put forth the argument that the mode of transition to democracy is a crucial factor that has a significant impact on both the quality and duration of democracy. In addition, it appears that the success of democracy is not necessarily linked to the type of previous regime (2014, p.121).

As Quinn says:” There is no definite transition from one regime to the next, nor a clear move from war to peace” (2015, p.72). The last category among these typologies is non-transitional states, which refers to societies living in a solid democracy and peaceful environment (2015, p.72). The main issue in these arguments is the fact that transitional justice mechanisms may be employed at any phase of transition a society might be going through. Thus, the concept of transition should be deconstructed and put in the context of the Troika countries, considering whether the time of transition and transitional justice mechanisms have passed or have lasted for too long.

In line with Quinn, another prominent scholar, Hansen (2017), bases his arguments on three main assumptions related to the time and space of transitional justice. His first assumption is related to the belief that transitional justice takes place during a limited ‘window of opportunity’ (2017, p.36). This assumption might be one of the key dilemmas in conceptual debates on transitional justice; more specifically, it sheds light on whether the term paves the way for societies to respond to human rights violations up to the settlement of a democratic regime or if it confines a certain period in a political and social transition of a society. Within this assumption, there are two crucial issues that scholarship has strived to address; the first one is related to the scenario when transitional justice is applied before the transition and, most importantly, to whether justice processes might lead to political transformation, even though securing a sustainable political transition is highly dependent on the ‘great-power agreement’ among actors at the time (2017, p.38). This question is raised mostly in contexts where international criminal courts hold justice processes at times when repressive regimes are still in power and conducting massive human rights violations. The second issue within

the first assumption is related to the scenario where transitional justice is applied after the transition has begun, and this is the case of the three countries, where various mechanisms such as lustration, vetting, reparations, power-sharing agreements, trials, institutional reforms, and amnesty are some of the tools used in different phases of transition after the regime change in the 1990s and post-conflict disputes after the 1998 and 2001. The second assumption implies that Transitional Justice is destined to liberalize political transition. This assumption refers to contexts where transitions have led from armed conflicts to peace and from an authoritarian regime to a liberalizing one. As Hansen points out, these two scenarios do not generalize all the possible political transitions, due to the fact that there are cases where transitions have led to an authoritarian rule like in Rwanda or Uzbekistan (2017, p.44). The third and last assumption is that transitional justice is a state-driven process. Hansen explains that “contemporary transitional justice discourses perceive the State only as one among several actors with the ability to shape and implement transitional justice” (p.47). In this sense, the field of conceptualization of transitional justice has been diverse and includes different actors and processes over time.

3. Theoretical Framework of Transitional Justice According to the Leading Scholars

Scholar	Theory / normative claims
Huntington	If the regime has been defeated, and the new elite assumes power, it is more likely that punitive TJ takes place
Moran	If the regime did not allow dissent and emigration, the new elite feels a greater impulse to impose punishment measures
Welsh	TJ is used to undermine the legitimacy of the opponent and enhance self-legitimacy
Elster	The shorter the duration of the autocratic regime, the more vivid the memories, the more urgent the demand for retribution
Grodsky	If public opposition is high, justice carries a cost and may be deferred
Nalepa	If the former opposition is infiltrated with former collaborators of the secret services, they will not be willing to struggle for punitive measures, despite capacity;
Hansen	The vertical and horizontal expansion of TJ -TJ in liberalizing political transitions; TJ in non-liberal political transitions; TJ in the absence of a political transition.
Jelena Subotic	A theory of TJ compliance- coercion, symbolic pressure, bureaucratic pressure, domestic demand for justice, old regime spoilers, domestic political coalitions
Anja Mihr	Regime change and regime consolidation- the spiral relationship between TJ measures and institutions; ‘+20 generation’ (only after 20 years or one generation that it becomes clear whether civil society can be active without fear, intimidation and free from want in a regime). She uses Myrdal’s concept (TJ measures can be seen as external incentives and interference mechanisms, and their effects depend on how actors use or abuse them). Delegitimization of former regime and legitimization of the new one (determined by the way the constitution or electoral system is set up, and on how various actors and parts of the society delegitimize the previous regime.

In a recent study of Vello Pettai and Eva-Clarita Pettai within the volume of the Routledge Handbook of East European Politics of 2018, the authors make a distinguished claim that helps to understand one of the reasons why any comparative study related to the Balkan region in terms of transitional justice is absent. Accordingly, the authors conclude that scholars of post-communist transitions had never seemed to make comparisons of transitional justice between a post-communist and a post-totalitarian regime (2018, p.282). Another attempt by Pettai and Pettai is their definition of a ‘protracted transitional justice’, or as other scholars define it ‘post-transitional justice’. Authors such as Raimundo (2013), Collins (2010), Pettai and Pettai (2015) would frame another concept as ‘post-transitional justice’ to relate the process to the ‘late lustration’ that scholars like Horne (2009) and Szczerbiak (2015) have claimed to better portray the post-communist transitional justice.

4. Methods

The goal of this research is to answer four research questions. The central research question (RQ): **“How have the applied mechanisms of transitional justice contributed to the evolution of transitional justice in Albania, Kosovo, and North Macedonia?”** is a general one involving three case studies that seek to answer how the applied transitional justice mechanisms have contributed to the evolution of TJ in Albania, Kosovo, and North Macedonia. This research question is well-developed through the second part of the interview through interview question 1: *“What would be transitional justice in the Albanian/Kosovo/ North Macedonian context?”* and through secondary data available for the three countries, such as documents, reports, public surveys, and other studies. Through the first interview question, which is the same for the three countries -Albania, Kosovo, and North Macedonia -, respondents have referred to the mechanisms and initiatives undertaken in their respective countries also shedding light on the main debates and limitations of transitional justice mechanisms. Other research questions are country-based questions, specific to each case study. The first sub-research question (RQ₁) which corresponds to the Albanian case study, is *“How has the lustration law developed and contributed to the evolution of transitional justice in Albania?”*. Transitional justice mechanisms such as lustration and vetting are the most used mechanisms in post-communist countries, which scholars themselves have paid more attention to in comparison to other mechanisms.

Another country-based research question (RQ₂) is *“How has the state-building process contributed to the evolution of transitional justice in Kosovo?”*. The interview question implied for this research question is: *“What is the significance of the new types of international intervention for Kosovo?”*

The last research question (RQ₃) is based on the North Macedonia case study: it is *“To what extent has the power-sharing process contributed to the evolution of transitional justice in North Macedonia?”* The interview question in this case corresponds to: *“How did the power-sharing approach (through the Ohrid Framework Agreement) help or hinder transitional justice?”*.

The interview was structured with two sets of questions. Interviews were composed of general questions and country-based questions. In the first section of the interview for the three case studies were asked 6 general questions, which were the same for the three countries. These questions were mostly sketched to understand the level of knowledge on transitional justice; to get an understanding of the perception of the interviewed-on mechanisms of transitional justice and to know whether these profiles had any relation with a victim or were suppressed by the former regime. The second section of the interview was composed of questions that were country-based, and different from one another, to test hypotheses specific to each country. The focus group was composed of four different layers, such as academics, politicians, civil society, and media for each country. In total, there were 44 elite interviews conducted in three countries.

All interviews were conducted from April 2020 until November 2021. There were conducted 44 interviews in total from Albania, Kosovo, and North Macedonia. Interviews were conducted through Skype, Google Meet, and Zoom platforms. Every interview was recorded with the consent of the interviewee and then transcribed into Word to analyze the data. Interviews took from 60 to 90 minutes. Interviews that were in Albanian were translated into English. Interviews were entered into Nvivo 14 software.

5. Results and Discussion

This section discusses the findings, such as the similarities and differences among the three countries, as case studies to deal with the past; knowledge on transitional justice; regional approach; international intervention; Transitional Justice in Albania; transitional justice in Kosovo and Transitional Justice in North Macedonia. This study has been accomplished by conducting semi-structured elite interviews with a group of 44 individuals in three case countries and the findings that



Figure 9. Word Cloud for the Most Frequent 100 Words used for the Code 'Power-Sharing'.

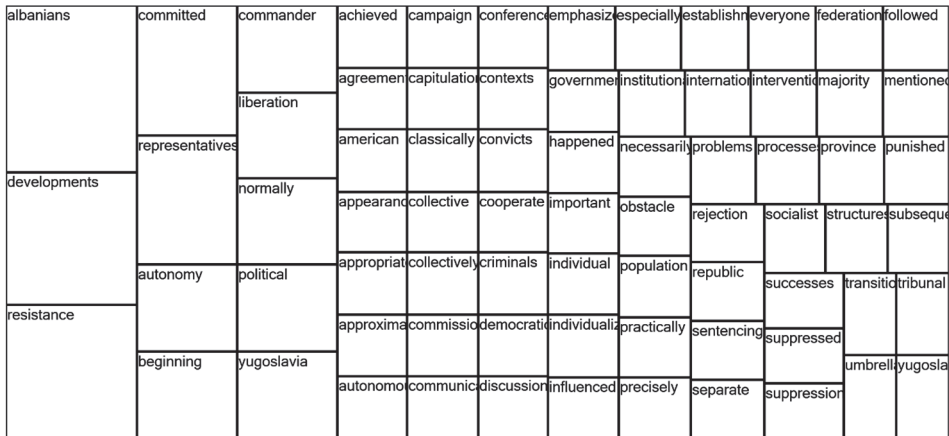


Figure 10. The Tree Map for the Most Frequent 100 Words used for the Code 'State-Building'.



Figure 11. Word Cloud for the Most Frequent 100 Words Used for the Code 'Transitional Justice in the Context of Kosovo'.



Figure 12. Word Cloud for the Most Frequent 100 Words Used for the Code ‘Transitional Justice in North Macedonia’.

For the Albanian case study, the literature review has provided specific findings and data from prominent scholars on the limited achievement of lustration in Albania. Data revealed from the key elite actors through interviews provide significant grounds to prove the first hypothesis of this study. When asked: “How well is the transitional justice concept known in your country?”, the majority of respondents are likely to focus the discussion on lustration and prosecution of communist crimes. Accordingly, the lack of a complete lustration process has conditioned the status of transitional justice as a whole in the country. A respondent from Media (A₉) explicitly answered:

“There has been no transitional justice after the fall of Communism and no dealing with the past. People choose to ignore the sufferings and the crimes committed during Communism and in some cases, the perpetrators continued to hold power till they retired or passed away. About 30 years after, there have been no persons prosecuted for crimes committed during communism and there has been no serious search for the bodies of those who disappeared. During a few attempts to search for those who were killed and buried in unmarked graves, there has been a strong reluctance by several institutions to hamper such attempts. An international court is a must for Albania, which has a different history from other Eastern European countries. Vetting and lustration could have been effective early on following the collapse of Communism, but 30 years after, few people can be vetted. Truth commissions are more necessary. However, the reluctance to open the archives is huge. Only by sentencing those who committed the crimes one can be sure that history will not repeat itself“.

When asked: “**What would be transitional justice in the Albanian case?**”, a respondent from civil society (A₄) would explicitly answer:

“The root of the problem can be traced back to the actions of the elite. Big initiatives are taken by those who are part of the political, economic, and cultural elites. Our lack of power in comparison to those who refuse to address the past and take a firm stance on it is problematic. Despite their responsibility, these individuals were never held accountable through the justice system. In essence, the Parliament of Albania did not develop the necessary legal infrastructure to commence this kind of process. Even to this day, a significant number of people from this group have remained involved in the field of politics”.

Thus, the first hypothesis, RH₁: The limited achievement of lustration law has conditioned the current status of transitional justice in Albania, is fully upheld.

The second point that was explored in the thesis involved an examination of the relationship between TJ mechanisms and state-building elements. This was done by looking at the case of Kosovo and investigating the extent to which the process is affected by international interventions. While

this study presents a comprehensive analysis of the context using official documents, international reports, and studies from prominent authors and scholars, it is worth mentioning that elite interviews also provided significant data. Accordingly, when asked about the significance of the international interventions and what would be transitional justice in the Kosovo context, representatives from politics and academia stated that:

“both the impact and consequences have been significant to the general social fabric—in the context of systematic attempts to promote a new social, political and institutional epistemology; a new system of knowledge and world-view regarding basic societal notions and norms related to factual truth, institutional justice, political organizing, and governance. Undoubtedly, in this context, the international intervention often proved traumatic for a society that was emerging from a reality in which it predominantly functioned internally through archaic norms of customary laws inherited since the Ottoman/feudalist period—while externally compelled to co-exist within ideological norms of Socialist/Communist legislation. In this respect, the overall paradigmatic shift that was required by the international intervention/administration was both too substantial and swift to be internalized and accommodated within the existing social and cultural reality of the Kosovo population and its most predominant ethnic group, Albanians. In terms of promoting transitional justice, the international community has pushed forward the agenda, but due to lack of capacities and its concerns about stability in general, often they have compromised their objectives on ensuring transitional justice”.

When asked: **“What would be transitional justice in Kosovo context?”**, a respondent from Academia (K8) stated that:

“While the beginning of the 21st century found most of the countries in the region facing the post-communist transition and the challenges of building new legal orders as a break from the past of the single-system, Kosovo was simultaneously developing its battle for status transition; it’s legal, right to independence as a final process. The construction of the legal system of Kosovo, which had just emerged from the war and was living with the many challenges of managing the post-war phase, was quite complicated. The legal order did not have the minimal legal continuity necessary to facilitate the transition, but on the contrary, it inherited a set of laws from the monist system, which turned out to be unenforceable. Thus, the need to create a legal framework for implementing the initial phase of the political, legal, economic, social, etc. transition was born. Despite the construction and consolidation of the legal system, the Republic of Kosovo, after drafting the legal framework in all areas of social relations, has started and continues, unifying the legal system, through the revision of the legislation and its harmonization, before above all, with the Constitution as the highest and fundamental legal act, but also with other constitutional-legal sources applicable in the Republic of Kosovo”.

Thus, the second hypothesis, **RH2: State-building process has contributed to the evolution of transitional justice in Kosovo**, is fully upheld.

Third, this study attempted to explore to what extent did the power-sharing process help - or hinder- Transitional Justice - in the light of the International Agreement in North Macedonia. North Macedonia, much like Kosovo, operates under a power-sharing system. It is worth noting that scholars and authors in the field have been analyzing the implementation of the OFA for years, and as a result, they have identified numerous flaws and opportunities for improvement. Through the use of elite interviews in North Macedonia, it has been discovered that there exists a dual understanding and perception when it comes to the impact of power-sharing mechanisms on justice in the country. The views of North Macedonian academics and civil society representatives regarding the Ohrid framework agreement have been expressed through their answers and statements during interviews. Among these, it was mentioned that the agreement was a triumph for Albanians, since it granted them certain power and rights, marking the end of the conflict.

“This is for Albanians. For Macedonians, the Ohrid framework agreement was always presented as a possibility or a framework that was imposed by the international community and not only for Albanians but also for other ethnic groups. There was no political will to go through this process until the end”;

“After the conflict in 2001, the Ohrid Framework Agreement was made, which aimed to ensure equality and fair treatment for all, and particularly for Albanians, as the biggest minority group in the country. When looked at in retrospective till today, the OFA seems to be more like a drafted plan of some political parties to gain political power and create a monopoly in the political stage rather than a wide document that would protect the interests of ethnic Albanians in North Macedonia”; “Power-sharing arrangements have helped to push the TJ agenda. Victims of ethnic conflict have been mostly reintegrated into the state administration and their wounds have been repaired. 2001 amendments were mostly related to the ethnic balancing of the situation, but also for prevention of future happening of war crimes”.

Thus, the third hypothesis, **RH3: The power-sharing process as a TJ pillar in North Macedonia has fueled transitional justice in the country**, is partially upheld.

6. Conclusions

The complexity of the issues that shape the contexts of Albania, Kosovo, and North Macedonia countries necessitates further research in the field of transitional justice, which is highly recommended. Based on our interpretation and comprehension of the elite interviews, it has become clear that further investigation and debate among scholars and members of civil society is necessary, in addition to greater collaboration with others to address shared obstacles.

- Concerning the academia category for the three countries in the study, we would recommend jointly organizing study visits to familiarize themselves with the memory sites; places where the former regimes used to exercise terror and mass persecutions. It would be important to establish a joint space or forum with academia/researchers of political science, law, anthropology, journalism, history, and philosophy, to conduct extensive comparative research on the field of study. This way, the public discourse about these debates would be more concrete, accurate, relevant, and scientific. Public opinion would be having not just a polarizing political discourse, but an academic, intellectual debate on reconciliation, peace, truth, and justice. Societies in Albania, Kosovo, and North Macedonia must develop a better and more in-depth understanding of their past. The level of cooperation and exchange of experiences between academics and civil society in the context of dealing with the past is inadequate. The University of Tirana has its own Center of Excellence on Transitional Justice; thus, its activity should be more active and inclusive in terms of cooperation and public relations. Master students of this Center should be allowed to participate in various domestic and international events to promote their studies and expand their network. This Center should organize various forms of presentations on social media; create open forums to invite scholars and practitioners of the field; podcasts and other YouTube channels to further elaborate the debate on reconciliation, and better understanding of the contexts in Albania, Kosovo, North Macedonia, and beyond. There are recent studies where scholars imply the performance of transitional justice with the quality of representative democracy. Thus, debating on transitional justice would improve the debate on democracy and the rule of law. Additional funding should be allocated to research N-large case studies that focus on transitional justice, to support academic research.
- About the politician’s category, it is important to highlight their crucial role within their political parties and the relationship with their electorate and public opinion. New generations of politicians that correlate with the 20+’ after the regime change, should generate other forms of debates when it comes to dealing with the past. Their engagement to the Parliamentary Commissions, and plenary sessions, should express a visionary policy that would serve justice, state-building, and reconciliation for societies. Politicians should highlight in their public appearances the importance of peace and inclusiveness; the refusal of violence and divisive and hate speech for the ‘other’, when sometimes the “other” is related to the victim; should contribute to their political parties and among colleagues to

produce a national strategy on dealing with the past to advocate for the change of curricula in schools. Politicians should be more engaged with civil society and academia, to support and take into consideration their recommendations or civic actions. The willingness of politicians is highly important to advance the lustration or other TJ mechanisms in the society, thus politicians should match their rhetoric on European integration aspirations with the domestic policies on dealing with the past for the non-recurrence of communist crimes ever again.

- For transitional justice initiatives to be more effective, it is necessary to have a greater and more vocal presence of local demand and active civic participation. Civil society organizations in the three countries, which are focused on transitional justice, should establish a shared public space (i.e. a platform/forum) for actively engaging public discourse and media with TJ matters. Civil society should include in their democratization projects, issues of dealing with the past as a very important issue to link our present with the legacy of the past. Civil society should 'pressure' more politicians to create or advance policies for dealing with the past. Civil societies in the three countries should jointly engage with each other's activities and communicate in a closer way through joint initiatives, events, study visits, and meetings with different donors to support a regional approach but context-based, bottom-up policy to deal with the past. Civil society should extend surveys to produce reports and expertise on the field of study.

About the media category, the media should recommend engaging more and promoting role models of scholars and practitioners of the field. Media should create more public space through TV shows for public opinion to understand better through scholars and experts the importance and relation of dealing with the past with the present. Media should take the initiative to bring closer to respective countries the narrative and debate of countries, for the audience and public to get to know better the contexts and cross-border realities, and to bridge the gap between societies through mass communication and knowledge.

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