

commissions are more suitable to promote the transitional than the restorative justice. While the retributive justice focuses on offenders, laws broken, and punishment of a guilty party the restorative justice focuses on offenders, victims and community combined and is being oriented on providing healing, strengthening responsibility, and working towards prevention.

On the other hand, the nature of transitional justice is to provide a societal or rather an elite compromise at crucial regime change junctures. Therefore, the truth and justice commissions are rather geared to provide comfort of smooth transition during the periods of change than to represent radical departure from previous wrongdoings. The main working mechanism of such commissions is not to conduct investigations and trials but hearings, research, and appeals to public awareness. The transitional justice is often accused of searching for the establishment of one version of truth. However understandable such criticism often forgets that the creation of truth and reconciliation commissions was in response to the existence of official narrative of events or simply of official truths. These bodies are rather, as Desmond Tutu (former chair of the South African Truth and Reconciliation Commission) put it, "a third way between national amnesia and criminal prosecution."

One may argue that the post-YU societies are not that fragmented or heterogeneous in order to warrant healing mechanisms, as for example there would definitely exist a need for such a mechanism if after a bloody civil war a federal Yugoslavia were still one country. However, the existence of vocal constituencies that demand some sort of reassessment of the recent past undermines the authority and legitimacy of the elites in the successor states to the point that these elites adhered or might adhere to the creation of such commissions. Once created these commissions would most likely have different impact on the successor states: from being a potential pillar of nation building in the case of Bosnia; to being a tool of smoother transition for Croatia and Serbia. But in the final analysis it should be pointed out that the nation building is the task for state institutions and political elites and not ad-hoc investigative bodies.

Conclusion

In conclusion I would argue that the ICTY should not act as the marker of democracy tests that could actually penalize entire societies for their poor performances. Instead it should assist the Yugoslav successor states' institution-building by being a partner with their juridical branches. Otherwise, there is a danger that the ICTY, with its over one thousand employees and more than one hundred dollars yearly budget, could follow the Weberian prophecy of institutional self-admiration of serving only its own self-preservation bureaucratic interests instead of specific goals for which it is created.

Notwithstanding ICTY's good intentions and noble goals the international community could find itself slightly disappointed in 2008. The ICTY is supposed to close its office in 2008 and by that time, following its current record, it would have prosecuted approx. 150 people for the total cost of over 1 billion US dollars. In such a situation the dilemma could remain unanswered: were it better for the regional recovery and stability to invest money and resources into the capacity building of the Yugoslav successor states legal systems and simultaneous application of all three concepts of justice than to insist only on retributive justice.