

**Consultation with Civil Society Organizations in Osijek and Osijek-Baranja County on the  
Draft RECOM Statute**

July 13, 2010  
Volunteer Center, 12 Jägerova Street,  
Osijek, Croatia

**COALITION FOR RECOM  
DRAFT STATUTE OF THE REGIONAL COMMISSION FOR ESTABLISHING THE  
FACTS ABOUT WAR CRIMES AND SERIOUS HUMAN RIGHTS VIOLATIONS  
COMMITTED ON THE TERRITORY OF THE FORMER YUGOSLAVIA  
- MAY 25, 2010 -**

PREAMBLE  
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**PART ONE – DEFINITIONS**  
*(Section still pending)*

**PART TWO – GENERAL PROVISIONS**

**Article 1.**  
Definition

The Regional Commission for Establishing the Facts about War Crimes and other Serious Human Rights Violations Committed on the Territory of the Former Yugoslavia (RECOM) is an international regional organization formed by the countries formed following the break-up of the former Social Federal Republic of Yugoslavia (SFRJ) and tasked with establishing the facts about the war conflict, war crimes, and other serious human rights violations committed on the territory of the former SFRJ during the period from January 1, 1991 until December 31, 2001.

**Article 2.**  
Name

1. The name of the Commission is Regional Commission for Establishing the Facts about War Crimes and other Serious Human Rights Violations Committed on the Territory of the Former Yugoslavia.
2. The abbreviated name is RECOM

**Article 3.**  
Symbol and Logotype

1. RECOM has a distinguishable symbol and logotype which creates its visual identity.
2. RECOM decides independently on its visual identity.

**Article 4.**  
Main Office

RECOM's Main Office is in Sarajevo, Bosnia and Herzegovina.

**Article 5.**  
Timeframe for RECOM

1. The timeframe set for RECOM's operation is two years plus a six-month preparation period.
2. RECOM can extend its operational timeframe for up to six months maximum.

**Comment:**

*Two, three years, unfortunately, for everything that happened, I think that is not enough.*  
(Branislav Vorkapić, Civic Initiative Organizations, Osijek, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).

**Article 6.**  
Representation

1. RECOM is represented by its President.
2. RECOM can also choose to be represented by another member.

**Article 7.**  
The Use of Language  
*(Section still pending)*

**PART THREE – MANDATORY COOPERATION WITH RECOM**

**Article 8.**  
Mandatory Cooperation of States with RECOM

1. All government bodies of each State Party to this Agreement are under the obligation to cooperate with RECOM and enable it to conduct its activities as efficiently and successfully as possible.
2. All government bodies of each State Party to this Agreement will provide, upon a request submitted by RECOM, access to government owned databases [in compliance with that State's regulatory acts].

**PART FOUR – THE GOALS OF RECOM**

**Article 9.**

## The Goals of RECOM

RECOM has the following goals:

- a) To establish the facts about the wars/armed conflicts and war crimes and serious human rights violations committed on the territory of the former SFRJ in the period from January 1, 1991 until December 31, 2001;
- b) To help clarify the fate of the missing;

### **Comment:**

*Former detention camp prisoners are a group that deserve attention. Their fate should also be clarified. I would like to include it under b) or c).* (Veselinka Kastratović, Center for Peace, Non-Violence, and Human Rights, Osijek, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).

- c) To acknowledge all injustices inflicted upon the victims and to restore their dignity; to establish mechanisms and build strategies for developing a sense of compassion and solidarity with the victims;
- d) To make a contribution to establishing a feeling of confidence between the nations in the region, the individuals, and the states formed following the break-up of the former SFRJ,, as well as to contribute to a lasting peace and stability in the region;
- e) To help promote democracy and a culture of respect for human rights through RECOM's continued activities aimed at reinforcing the responsibility of legal and political institutions, media, and the education system in each State Party to this Agreement.

## **PART FIVE – MEMBERS OF RECOM**

### **Article 10.**

#### Composition of RECOM

[Option A – recommendation of the Work Group]

RECOM is made up of 20 members distributed as follows:

- a. Bosnia and Herzegovina – five members;
- b. Croatia, Kosovo, and Serbia – three members each;
- c. Montenegro, Macedonia, and Slovenia – two members each.

[Option B]

RECOM is made up of 21 members, each State giving three members.

### **Article 11.**

Members of RECOM are Independent and Impartial.

All RECOM members act in their own capacity, independently and impartially.

### **Article 12.**

## Election Criteria for RECOM Members

1. Members of RECOM are citizens of States Parties to this Agreement.
2. Members of RECOM are persons fostering high ethical standards, respectable persons of integrity dedicated to nurturing the culture of tolerance and constructive dialogue in solving disputes, and persons enjoying the trust of the people in all States Parties to this Agreement.

### Comment:

*I understand that the citizenship criteria must be met, but all this regarding “high ethical standards” and so on, these are very fluid criteria, I must say. However, since it is going to be based on an international agreement and so on, it needs to be stipulated what criteria is going to be used, what source of evidence we are going to be using for the job we want to get done. (Branislav Vorkapić, Civic Initiative Organizations, Osijek, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).*

### Comment:

Article 12, point 2 – it will be sufficient to say that members of RECOM are **respectable persons of integrity dedicated to nurturing the culture of tolerance and constructive dialogue in solving disputes** and nothing else. (Slavko Kecman, Association for Peace and Human Rights, Bilje, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).

3. Members of RECOM have at least a college degree and they are mentally and physically fit for the job.

### Comment:

*Mentally and physically fit for the job should definitely be deleted. (Slavko Kecman, Association for Peace and Human Rights, Bilje, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia ).*

### Comment:

*I think it would make a lot more sense, except for the college degree requirement, which, I still believe means nothing without other prerequisites, but one criterion that should by all means be included is a certain amount of experience. (Branislav Vorkapić, Civic Initiative Organizations, Osijek, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).*

4. Each State Party to this Agreement must at least delegate one woman as a member of RECOM.

### Comment:

*I think that we should say at least one woman and one man are elected. If we leave it like this - at least one woman - we may end up electing all women, and we don't want that either. (Vesna Nedić, Oasis, Beli Manastir, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).*

5. If there is a reasonable doubt that an individual is in any way responsible for the commitment of an act violating human rights or international humanitarian law, or that the individual has close ties with persons responsible for the commitment of human rights violations or persons being investigated for the commitment of such acts, or that the individual supported or instigated the commitment of human rights violations, that individual cannot be elected as member of RECOM.

**Comment:**

*... persons in any way responsible for the commitment of an act violating human rights or the international humanitarian law, or that the individual has close ties with persons responsible for the commitment of human rights violations – that is not up to us to determine, it is up to the Office of the Prosecutor. We should not be misguided by such subjective elements. (Slavko Kecman, Association for Peace and Human Rights, Bilje, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).*

6. Prominent politicians or public officials active now or during the period which is the subject of RECOM's investigation cannot be elected as members of RECOM.

**Article 13.**

Members of RECOM Election Procedure

1. Each State Party to this Agreement will elect new members as described in this Article.
2. A non-for-profit organization or institution or a group of 30 citizens of each State Party to this Agreement can nominate a candidate for a member of RECOM.
3. The Election Panel conducts the candidacy procedure. The Panel receives nominations, reviews each nomination evaluating it against the requirements list, and finally creates a shortlist with two or three times the number of RECOM members each particular Member State will in the end elect. The short list is submitted to the President/the Presidency of each Member State for a final selection of members.
4.
  - a. The Election Panel consists of nine members, all of which must meet the requirements set for members of RECOM, except for the the requirement excluding those who are prominent politicians or public officials or individuals who held such positions during the period which is the subject of RECOM's investigation.
  - b. Members of the Election Panel cannot be nominated for RECOM membership.
  - c. Three members of the Election Panel are appointed by the Human and Minority Rights Minister or the Justice Minister following consultations with members of the Parliamentary Human Rights Committee. Members of the Coalition for RECOM from each State Party to the Agreement appoint three members of the Election Panel. Election Panel members appointed in this manner appoint the remaining three members of the Election Panel in an election procedure initiated no later than eight days after the appointment of two thirds of the Election Panel members.
  - e. During the nomination and appointment procedure of Election Panel members, special consideration will be given to a requirement that at least one third of Election Panel members are women and representatives of victims' association which have been

registered at least three years prior to the signing of this Agreement, including associations of victims which are not members of the Coalition for RECOM.

f. The election procedure for the remaining three members of the Election Panel must be finalized no later than 60 (sixty) days after these positions were advertised.

g. Ministry for Human and Minority Rights or the Ministry of Justice confirms the decision of the Election Panel and provides the necessary conditions for the work of the fully staffed Election Panel.

h. The Election Panel will no later than eight days after it has been fully staffed advertise an open candidacy period for the membership with the Coalition for RECOM.

i. The Election Panel will no later than eight days following the close of the candidacy period inform the public on the number of received applications, the number of applications rejected because of formal reasons, and the number of applications to be considered.

j. Information on the number of received applications, rejected applications, and applications for consideration will be published on the web site of the Ministry of Human and Minority Rights or the Ministry of Justice.

k. No later than 60 (sixty) days following the close of the candidacy period, the Election Panel will inform the public about the list of candidates which will be submitted to the President of the President of member States.

l. The Election Panel can interview the candidates. These interviews will be conducted in public.

5. a. Thirty days after they receive the lists of candidates from Election Panels, Presidents or the Presidency of member States shall inform each other about the candidates they chose before informing the public about it.

b. Fifteen days after they inform each other of the choices they made, Presidents or the Presidency of each State Party to this Agreement shall simultaneously make a public announcement of the persons elected as members of RECOM.

**Comment:**

*I am not sure that according to the Constitution of the Republic of Croatia that the president of the Republic can do this, especially because you compared this matter to the ICTY – the government must decide about it and not the president. (Branislav Vorkapić, Civic Initiative Organizations, Osijek, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).*

6.a. The oldest member of RECOM shall schedule the Constitutional Assembly of RECOM no later than 15 (fifteen) days after all members of RECOM have been elected and that person chairs the Assembly held in the RECOM Main Office.

b. At the first Constitutional Assembly members of RECOM shall attempt to elect a President of RECOM and adopt the Rules of Procedure document.

**Article 14.**

Participation of Members of Non-Majority Communities

While electing members of RECOM, member States will make every effort to ensure equal representation of all ethnic groups, so that in addition the largest group members of other ethnic communities from that State are also included.

**Comment:**

*I don't think it is important because they are already represented by their state. But if they are members of, let's say, Serbian minority, it means Serbia is represented, but it is still good to have it for the sake of ethnic minorities who are not being represented by member states. (Drago Solar, Documenta, Zagreb, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).*

**Comment:**

*It would be a good idea to have in all states, in all former Yugoslav republics, a member of smaller ethnic minorities – in Croatia, for example, we should have a representative of Hungarian minority, not Serbian, that would be silly. (Slavko Kecman, Association for Peace and Human Rights, Bilje, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).*

**Comment:**

*What minorities? Are we going to consider smaller or larger minority communities? (Branislav Vorkapić, Civic Initiative Organizations, Osijek, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).*

**Article 15.**  
Taking Oath  
*(Section still pending)*

**Article 16.**  
Rights and Obligations of the Members of RECOM

1. Members of RECOM act in a conscientious, dedicated, independent, and impartial manner which in no way jeopardizes the integrity and the credibility of the Commission.
2. Members of RECOM are paid for their duties as provided by Annex 2 of the Statute.
3. Members of RECOM are obliged to keep in confidentiality all information obtained during the RECOM mandate which has not been publicly released.
4. The confidentiality clause is in effect until RECOM decides to make a public disclosure by issuing a press release.

**Article 17.**  
Quorum and Decision Making

1. The working and decision making quorum is two thirds of the total number of members of RECOM.
2. RECOM can decide with a two thirds vote that in order to adopt a specific procedural decision it is necessary to have a simple majority vote of all members of RECOM.

**Article 18.**  
Immunity of Members of RECOM  
*(Section still pending)*

**Article 19.**  
Termination of the Mandate of RECOM and Expiration of the Mandate of the Member of  
RECOM.

1. a. The mandate of the members of RECOM expires upon the termination of RECOM's mandate.  
b. The mandate of the members of RECOM expires in case of resignation, death, physical ability limitation, business ability limitation, or commencement of a legally binding prison sentence.  
c. RECOM shall note the expiration of the mandate of a member of RECOM and inform the President or the Presidency of the Member State about it. The President or the Presidency of the Member State will act accordingly and in period no longer than 15 days elect a new member from a shortlist adopted by the Election Panel during the initial election procedure of RECOM members.
2. a. A motion to expel a member of RECOM can be submitted by RECOM in case of a member's failure to fulfil obligations set forth by the RECOM Statute to the President or the Presidency of Member States who can decide whether a member is to be expelled.  
b. Members of RECOM vote on the motion to expel a member of RECOM in the absence of that member.  
c. If the motion to expel a member is adopted, President or the Presidency of the Member State will choose a new RECOM member from the shortlist created by the Election Panel during the initial nomination procedure of RECOM members.

**PART SIX – ASSIGNMENTS AND COMPETENCIES OF RECOM**

**Article 20**  
Assignments of RECOM

In order to establish the facts about wars/armed conflicts and war crimes and other serious human rights violations, RECOM has the following assignments:

1. Collect information and give a detailed account of the cases of human rights violations, i.e. individual and mass war crimes;
2. Collect information on the fate of the missing and cooperate with the bodies assigned by the Member States to search for the missing;

**Comment:**

*Also, in Article 20 I would like to add, under point 2) or 3), I must mention that groups again – to mandate RECOM to collect information on former detention camp inmates. (Veselinka Kastratović, Center for Peace, Non-Violence, and Human Rights, Osijek, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).*



3. Compile a register of human losses:
  - a. Civilians whose death or disappearance is a direct consequence of the armed conflict;
  - b. Veterans whose death or disappearance is a direct consequence of the armed conflict/wars;

**Comment:**

*You mention here, under point b) Veterans whose death or disappearance is a direct consequence of the armed conflict/wars. I understand it in terms of the Convention on the Prevention and Punishment of the Crime of Genocide, so I think it would be better to rephrase it to read **combat participants**. (Slavko Kecman, Association for Peace and Human Rights, Bilje, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).*

4. Collect information on the detention places with respect to the war/armed conflict and provide their detailed description.
5. Research the context, the motives, and various activities from as early as 1980, which have led to the beginning of wars/armed conflicts, the commitment of war crimes and other serious human rights violations.

**Article 21.**

Time Period and Territory which RECOM is Mandated to Investigate

RECOM establishes the facts on war crimes and other serious human rights violations committed in the period from January 1, 1991 until December 31, 2001 in the countries formed on the territory of the former Socialist Federal Republic of Yugoslavia (SFRJ), as well as the political and social circumstances that have in the period from January 1, 1991 until December 31, 2001 instigated the wars/armed conflicts and the committing of war crimes and other serious human rights violations.

**Article 22.**

Human Rights Violations RECOM is Mandated to Investigate

Human rights violations RECOM is mandated to investigate include but are not limited to:

1. Killing of civilians and prisoners of war;
2. Enslavement;
3. Illegal imprisonment/detention;
4. Deportation and forceful relocation of civilians;
5. Rape and other serious forms of sexual abuse;
6. Torture and other inhumane acts deliberately performed to cause great suffering;
7. Forced disappearances;
8. Confiscation and large scale destruction of property;
9. Hostage taking;
10. Desecration of religious, cultural, and historical buildings and monuments;
11. Use of civilians and prisoners of war as “human shields.”

## PART SEVEN – RECOM’S COMPENTENCIES

### Comment:

*I think that areas that are going to be included in RECOM’s mandate are definitely going to require some legal requirements in member states, maybe the adoption of some new laws, or some other legal acts in order to secure executive power for the entire process. (Branislav Vorkapić, Civic Initiative Organizations, Osijek, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).*

### Article 23.

#### Taking Depositions

1. RECOM is authorized to take depositions from victims, witnesses, and other citizens about war crimes and other serious human rights violations within the scope of RECOM’s area of competence.

### Comment:

*When it comes to taking depositions from individuals, the decision to testify should be entirely voluntary. I think that it has to be more clearly emphasized in the text. (Branislav Vorkapić, Civic Initiative Organizations, Osijek, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).*

2. Depositions will be taken:
  - a. In the place of residence of the person offering the deposition;
  - b. In RECOM’s offices;
  - c. In embassies and consular offices of each State signing the Agreement on the creation of RECOM, if an individual offering the deposition is in third countries;
  - d. On the territory of third countries if it is not in contradiction with legal provisions of these countries (in situations where victims, witnesses, and other individuals cannot give depositions in embassies and consular offices of member States).

### Article 24.

#### Collection of Documentation from Other Sources

RECOM is authorized to collect relevant written, electronic, and physical documents from various sources:

- a. Documents owned by international and domestic institutions and organizations collected for the purpose of documenting war crimes, detecting war crimes perpetrators, solving the cases of missing persons, or for any other reasons;
- b. Foreign and domestic print and electronic sources (including, but not limited to documents owned by governments, parliaments, presidencies, local and territorial self-governing bodies, public and private companies, the army, police, intelligence and security services);
- c. Court decisions, transcripts, and court documents of the International War Crimes Tribunal for the Former Yugoslavia (ICTY), of national courts of States signing this

- Agreement, and of other courts conducting war crimes trials for crimes committed on the territory of the former Yugoslavia on the grounds of universal jurisdiction;
- d. Other forms of archive materials (including death certificates, mortuary certificates, hospital reports, etc.);
  - e. Print and electronic media sources;
  - f. Photo, video, and audio recordings,
  - g. Other sources in connection with the subject of the investigations;
  - h. Written opinions of experts and representatives of institutions and organizations, prepared for use by RECOM.

**Article 25.**  
Field Investigations

RECOM is authorized to establish relevant facts by conducting field investigations and touring the locations of war crimes, places of illegal detention, individual and mass graves, and all other locations of interest for establishing the facts about war crimes and other serious human rights violations.

**Article 26.**  
Issuing Invitations and Requests

1. RECOM is authorized to send invitations requesting individuals to give their statements and testify in public and requesting documentation declared confidential which is relevant for the period RECOM is authorized to investigate.
2. Invitations are sent in compliance with legal regulations in each State Party to this Agreement.
3. RECOM can request information declared confidential by a Member State by asking competent institutions in that State to act on its behalf. If RECOM obtains such documents through the mediation of the institution in charge, RECOM is under the obligation to protect the confidentiality of such information.
4. All documents Member States have already submitted to the International War Crimes Tribunal for the former Yugoslavia, which have already been used by that Court without specific confidentiality requirements, are considered public.

**Article 27.**  
Holding Public Testimonies of Victims and Other Individuals

1. RECOM holds public testimonies where victims can tell the broadest public about their suffering and the suffering of their loved ones. Public testimonies of victims are voluntary.
2. Public testimonies can also include testimonies of witnesses of war crimes, i.e. serious human rights violations, of perpetrators of crimes which can be qualified as war crimes or serious human rights violations, as well as of persons who have helped victims or whose acts have helped an individual/individuals become victims of war crimes or serious human rights violations.

3. During public testimonies RECOM can apply identity protection measures as well as special measures protecting the physical or psychological integrity of those testifying.
4. State-owned electronic media, i.e. public services on the territory of the former Yugoslavia, are obliged to air the public testimonies. Commercial electronic media can air these programmes under the same rules and regulations applied for the state-owned media (public services).
5. Public testimonies can be held in different locations.

#### **Article 28.**

##### **Holding Themed Sessions**

1. RECOM can organize sessions dedicated to analysing the role of state institutions, political and cultural organizations, religious communities, and the media prior to and during the armed conflicts with respect to the commitment of war crimes and serious human rights violations.
2. State-owned electronic media, i.e. public services on the territory of the former Yugoslavia, are under the obligation to air themed sessions of RECOM.
3. Themed sessions can be held in different locations.

#### **Article 29.**

##### **The Methodology Applied in Taking Statements, Collecting Documentation, and Organizing the Public Testimonies of Victims and Other Individuals and the Themed Sessions.**

1. RECOM applies a uniform methodology when taking statements, collecting documentation, and organizing and performing public hearings and themed sessions.
2. RECOM adopts a specific Rules of Procedure document which regulates the uniform methodology applied in the statement taking and document collecting process.
3. RECOM adopts a specific Rules of Procedure document which regulates the procedure used in organizing public testimonies and themed sessions.

### **PART EIGHT – STRUCTURE OF RECOM**

#### **Article 30.**

##### **Organs and Thematic Departments of RECOM**

1. RECOM establishes a Main Office in Sarajevo, BiH, called the Executive Secretariat, tasked with offering technical, administrative, and operational support to its members. RECOM coordinates the work of different departments and offices established by RECOM.
2. The Executive Secretariat consists of a number of various departments, including the following:
  - a. Department of Finance
  - b. Research Department
  - c. Legal Department
  - d. Victim/Witnesses Protection Department
  - e. Psychological Support and Counselling Department

- f. Statement Collection Department
  - g. RECOM Documentation Management Department
  - h. Final Report and Report Summary Department
  - i. Archives
  - j. Other departments RECOM may decide to establish.
3. RECOM can choose and appoint an Executive Secretary as well as Heads of the above listed departments.

**Comment:**

*The longer I analyse this Statute, the more confused I feel. I keep wondering if it is possible to create a **diagram** to reflect the stipulations of the Statute to help us see the organization more clearly. For example, it says here that members will be professionally engaged individuals. O.K. What exactly is then the management mechanism? Who makes strategic decisions? Then, as I see further down in the text, there are these members and it is not clear where they belong according to this scheme. Then, there are investigation teams, and then there is this executive secretariat which is further divided. Each of those segments has its leader, so to speak, and that segment is supposed to conduct a certain type of work. So, when I try to make a picture for myself trying to understand the whole mechanism, I get confused. One of the questions I cannot answer is – what are the 20 members of the commission expected to do if we already have a number of investigation teams? (Branislav Vorkapić, Civic Initiative Organizations, Osijek, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).*

**Article 31.**

RECOM Departments in Member States

1. RECOM shall establish offices in all Member States.
2. RECOM offices in Member States can establish one or more local offices in other places on the territory of a respective Member State, in cooperation with the Executive Secretariat, if they decide that is in the best interest of the project.
3. RECOM can choose and appoint Heads of research teams operating in a specific Member State based on the recommendation of the RECOM office in that Member State, the recommendation not being binding for RECOM.
4. RECOM offices in Member States have the right to establish mobile research teams in cooperation with the Executive Secretariat, which conducts a field investigation for the purpose of collecting data and information pertinent for a subject at hand.
5. (Status of RECOM in BiH and other Member States – regional offices – status of diplomatic missions?)
6. Employees and associates in the Executive Secretariat, departments, and RECOM offices and investigation teams in Member States are engaged regardless of their citizenship.

**PART NINE – HOW IS RECOM FINANCED**

**Article 32.**

Composing and Publishing the Final Report

1. At the end of its mandate RECOM is expected to publish a report on the facts established with respect to the armed conflicts, war crimes and other serious human rights violations committed on the territory of the former Yugoslavia.
2. RECOM submits the Final Report to the President or the Presidency of Member States, publishing it at the same time in all official languages of Member States.
3. RECOM is obliged to compile a Report Summary at the time the Final Report is submitted and make it available to the public.

## **PART TEN – FINAL REPORT OF RECOM**

### **Article 34.**

#### The Contents of the Final Report

1. The Report will have an Introduction, relevant facts on the wars/armed conflicts, war crimes and other serious human rights violations, a register of human losses, a list of missing persons, a list of detention locations, and recommendations.
2. RECOM's recommendations will, among other things, refer to:
  - a. Further steps each State Party to this Agreement shall take in order to advance the trust among the States and communities on the territory of the former Yugoslavia;
  - b. A proposed adequate model for providing financial and symbolic reparations, the way to conduct institutional reform, and mechanisms for securing the integration of established facts in the education system of Member States, in compliance with the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the Resolution of the United Nations No. 60/147 on December 16, 2005.
  - c. A way of monitoring RECOM's recommendations, including the establishment of specially designated bodies for that purpose only.

### **Article 35.**

#### The Character of the Findings of RECOM

#### **Comment:**

*We cannot say 'the character of the findings of RECOM'. We can say 'the importance of the findings of RECOM.' When we say 'character,' it describes a person; it is a subjective category, so from the professional point of view, it does not sound right. (Slavko Kecman, Association for Peace and Human Rights, Bilje, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).*

1. RECOM does not represent a judicial body and therefore does not establish criminal responsibility for war crimes and other serious human rights violations.
2. Regardless of the limitations set forth in the previous paragraph, in the Final Report RECOM is authorized to establish that the facts collected during investigation point to the conclusion that a certain individual has committed a war crime or other form of

serious human rights violations. Such conclusions do not have the effect of a court decision.

**Comment:**

*Is it or is it not going to represent a violation of human rights of this person, who will in a way, regardless of the relevancy of presented facts, going to be portrayed in public as a perpetrator of something which can only be established by a court? (Branislav Vorkapić, Civic Initiative Organizations, Osijek, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).*

*“Such conclusions do not have the effect of a court decision” – that should not be there at all. It is beside the point because it is quite clear that they possibly cannot have the effect of a court decision. (Slavko Kecman, Association for Peace and Human Rights, Bilje, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).*

*Each and every one of us individually, RECOM included, is under a legal obligation to report to the Office of the Prosecutor any persons suspected to have committed a criminal act, any crime, and in this case it is a war crime. That is beyond any discussion. So, to wait until the final report is drafted – I don't know, I don't really like the wording here. (Veselinka Kastratović, Center for Peace, Non-Violence, and Human Rights, Osijek, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).*

3. With respect to the cases processed by international or domestic trial chambers, and in the presence of the accused, in its Final Report RECOM can recommend adequate sentencing.

## **PART ELEVEN – MISCELLANEOUS**

### **Article 36.**

#### The Role of RECOM in the Processing of Criminal Cases

RECOM is authorized to:

1. Make a recommendation to the court – in the case of criminal prosecution – to consider as significant extenuating circumstances in determining the sentence of an individual the fact that a person believed by RECOM to have conducted a war crime or serious human rights violations has willingly disclosed to RECOM information leading to the discovery of a mass grave location or other information significant for discovering perpetrators;

**Comment:**

*The influence of significant extenuating or aggravating circumstances in determining a sentence, it is something people in the judiciary system are not going to like. We are not on the right track here. (Veselinka Kastratović, Center for Peace, Non-Violence, and Human Rights, Osijek, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).*

2. Make a recommendation to the court to partially pardon a sentenced perpetrator of a criminal act, unless it is in contradiction with legal provisions of that specific Member State, in cases when RECOM receives from that individual information leading to the discovery of a mass grave location or other information significant for discovering perpetrators;

**Comment:**

*If RECOM is going to be allowed to propose a sentenced perpetrator for a partial pardon, what criteria is going to be used in determining whether a person will or will not be pardoned.* (Veselinka Kastratović, Center for Peace, Non-Violence, and Human Rights, Osijek, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).

3. Propose an extraordinary pardon for a sentenced perpetrator of a criminal act if RECOM receives from that individual information leading to the discovery of a mass grave location or other information significant for discovering perpetrators.

**Comment:**

*If RECOM is going to be allowed to propose a sentenced perpetrator for a partial pardon, what criteria is going to be used in determining whether a person will or will not be pardoned.* (Veselinka Kastratović, Center for Peace, Non-Violence, and Human Rights, Osijek, Croatia, Local Consultation with Civil Society Organizations on the Draft RECOM Statute, July 13, 2010, Osijek, Croatia).

**Article 37.**

Protection of Sources of Information and Confidential Information

All members of RECOM, as well as RECOM employees, are requested to keep confidential all information they learn in the course of their mandate as members of RECOM, except in the case where RECOM decides to disclose certain information by issuing a press release.

**PART TWELVE – FINAL PROVISIONS**

**Article 38.**

Termination of RECOM's Mandate  
*(Section still pending)*

**Article 39.**

RECOM's Archives  
*(Section still pending)*

**Article 40.**

Establishing a Supervisory Body Tasked with Implementing RECOM's Recommendations  
*(Section still pending)*