

**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**



PART II – GENERAL PROVISIONS

Article 6

Timeframe of Operation

1. The timeframe set for RECOM's operation is three years.
2. The timeframe set for RECOM's operation does not include the preparation period, which begins at the constitutional session and lasts no longer than six months.
3. RECOM can extend its operational timeframe for up to six months maximum.

Comment:

I don't think we can do much in three years. (Zijad Nuhanović, Association for Sustainable Return of Refugees to Zvornik and Podrinje, Zvornik, BiH, Regional Consultation with War Veterans on the Draft RECOM Statute, Skoplje, Macedonia, December 18, 2010).

PART VI – GOALS AND ASSIGNMENTS OF THE COMMISSION

Article 12

The Goals of the Commission

The Commission 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, the political and societal circumstances that led to the commitment of the acts, and the impact of those crimes and human rights violations;

Comment:

I think it should read: "to collect information necessary for the establishment of the facts", because facts can be established by competent institutions. (Željko Špelić, Hrvatski časnički zbor, Regional Consultation with War Veterans on the Draft RECOM Statute, Skoplje, Macedonia, December 18, 2010).

- (b) To help make political elites and societies in the member states accept the facts about war crimes and human rights violations;
- (c) To help clarify the fate of the missing;
- (d) To acknowledge injustices inflicted upon victims in order to establish mechanisms and build strategies for developing a sense of compassion and solidarity with victims;
- (e) To help victims exercise their rights; and

- (f) To help prevent the recurrence of war crimes and serious human rights violations in the future.

Article 13

The Assignments of the Commission

The Commission has the following assignments:

- (a) To collect information on war crimes and serious human rights violations, to give a detailed account of these war crimes and serious human rights violations, and to demonstrate human rights violation patterns and their consequences;
- (b) To collect information pertaining to the fate of the missing and to cooperate with competent bodies conducting the search for the missing;
- (c) To compile a register of human losses, to include:
1. Civilians whose loss of life or disappearance was caused by the war or other form of armed conflict;
 2. Veterans whose loss of life or disappearance was caused by the war or other form of armed conflict;

Comments:

*(...) I am in favour of a **register of all losses** which would include both **civilians and military men**, and that list must inevitably include foreign nationals who participated in those conflicts. How are we going to register them? We should include them in the same register, together with the members of international forces. And a separate register should be created for victims, primarily **victims of war crimes**. (Veljko Vičević, Association of Volunteers of the Homeland War, Zagreb, Croatia, Regional Consultation with War Veterans on the Draft RECOM Statute, Skoplje, Macedonia, December 18, 2010).*

All those who were killed or lost their lives due to war-related situations must be registered. (Nermin Karačić, war veteran, Sarajevo, BiH, Regional Consultation with War Veterans on the Draft RECOM Statute, Skoplje, Macedonia, December 18, 2010).

(...) it is very hard to make a distinction between those who died as civilians and those who were killed as military men. However, all victims need to be registered. (Mevludin Plančić, former Yugoslav National Army officer, war veteran, Vršac, Serbia, Regional Consultation with War Veterans on the Draft RECOM Statute, Skoplje, Macedonia, December 18, 2010).

- (d) To collect information on all detention locations connected to the war or other form of armed conflict and to compile a comprehensive list of all individuals who were illegally detained,

subjected to torture and inhuman treatment along with proper identity protection measures where necessary.

(e) [OPTION A: To research political and societal circumstances that directly contributed to the commencement of the war or other forms of armed conflict as well as the commitment of war crimes and other human rights violations];[OPTION B: To research political and societal circumstances beginning in the 1980s which have directly contributed to the commencement of the war or other forms of armed conflict as well as the commitment of war crimes and other human rights violations];

(f) To hold public hearings of victims and other individuals on war crimes and serious human rights violations;

(g) To recommend measures to help prevent the recurrence of such human rights violations in the future;

(h) To compile, publish, and present its Final Report in a way that will enable fast and easy circulation of the Report so that it is read by as many people as possible on the territory of the former Yugoslavia.

PART V – COMPETENCIES OF THE COMMISSION

Article 14

Time Period and Territory to be Investigated

The Commission establishes the facts about war crimes and other serious human rights violations committed in the period from January 1, 1991 to December 31, 2001 in the states formed on the territory of the former Yugoslavia and it investigates:

Comments:

For us it is very important that the wars were waged in the period starting in 1990 instead of 1991 because first victims in Croatia fell as early as 1990. (Bruno Čavić, Association of Volunteers and War Veterans of the Homeland War, Zagreb, Croatia, Regional Consultation with War Veterans on the Draft RECOM Statute, Skoplje, Macedonia, December 18, 2010).

(...) not until 2001, it should be until 2002 because most crimes in Macedonia happened in 2001 in spite of the signing of the Ramkovniot Agreement and the adoption of the amnesty law. (Predrag Petruševski, Bingo, Association of Defenders, Kumanovo, Macedonia, Regional Consultation with War Veterans on the Draft RECOM Statute, Skoplje, Macedonia, December 18, 2010).

[OPTION A: To research political and societal circumstances that directly contributed to the commencement of the war or other forms of armed conflict as well as the commitment of war crimes and other human rights violations]

[OPTION B: To research political and societal circumstances beginning in the 1980s which have directly contributed to the commencement of the war or other forms of armed conflict as well as the commitment of war crimes and other human rights violations];

Comments:

(...) if we want to make something good out of it, we really need to get rid of all restrictions preventing us from exploring political and societal circumstances of the armed conflict. Why? Simply because certain things had happened in a very distant past. (Bruno Čavić, Association of Volunteers and War Veterans of the Homeland War, Zagreb, Croatia, Regional Consultation with War Veterans on the Draft RECOM Statute, Skoplje, Macedonia, December 18, 2010).

(...) there should not be a timeframe for the process of exploring political and societal circumstances of the armed conflict. (Nikola Grkov, Association of Military Veterans, Kavadarci, Macedonia, Regional Consultation with War Veterans on the Draft RECOM Statute, Skoplje, Macedonia, December 18, 2010).

We should not put a cap on the process of exploring political and societal circumstances of the armed conflict. (Veljko Vičević, Association of Volunteers of the Homeland War, Zagreb, Croatia, Regional Consultation with War Veterans on the Draft RECOM Statute, Skoplje, Macedonia, December 18, 2010).

I think that the time period for investigating political and societal circumstances of the armed conflict should be limited. (Anđelko Kvesić, Croatian Association of former detention camp inmates of the Mid Bosnia Canton, member of the Coordination Council of the Coalition for RECOM, Busovača, BiH, Regional Consultation with War Veterans on the Draft RECOM Statute, Skoplje, Macedonia, December 18, 2010).

(...) we should not impose any static restrictions. Instead, we should focus on securing margins for additional activity. So, I think that in order to be more efficient and focused, RECOM's mandate should be limited as stipulated in the Draft RECOM Statute. (Lush Krasniqi, Association of the Families of the Missing "April 27, 1999", Đakovica/Gjakovë, Kosovo, Regional Consultation with War Veterans on the Draft RECOM Statute, Skoplje, Macedonia, December 18, 2010).

I am in favour of a limited timeframe of RECOM's mandate to investigate political and societal circumstances of the armed conflict. (Predrag Petruševski, Bingo, Association of Defenders, Kumanovo, Macedonia, Regional Consultation with War Veterans on the Draft RECOM Statute, Skoplje, Macedonia, December 18, 2010).

(...) the timeframe for investigating what happened in the period between 1990 and 2001 should not be strictly limited (...) the war that happened on the territory of the former Yugoslavia was caused by many different events and situations that had happened a long time before the war broke out. (Rrahim Limani, Association of War Veterans of the Liberation National Army, Skoplje, Macedonia, Regional Consultation with War Veterans on the Draft RECOM Statute, Skoplje, Macedonia, December 18, 2010).

The commission should not discuss the political and other causes of the war at all. It should focus on the facts testifying about the origin of the crime. (Željko Špelić, Hrvatski časnički zbor, Regional Consultation with War Veterans on the Draft RECOM Statute, Skoplje, Macedonia, December 18, 2010).

PART VI – AUTHORIZATIONS OF THE COMMISSION

Article 16

Deposition-Taking

1. The Commission takes statements concerning war crimes and serious human rights violations in the area of its competence from victims, witnesses, representatives of institutions and perpetrators of such crimes.
2. Each person invited to testify before the Commission must give a statement to the Commission. Exceptionally, victims are under no obligation to testify about their own suffering or the suffering of their family members.
3. In case a person refuses to give a statement to the Commission, invoking their legal obligation to protect confidential information, provisions contained in Article 11, point 3 and 4 of this Statute, will be applied.
4. Provisions of the Criminal Procedure Law of the member states will be applied to the right to refuse to answer certain questions and to the release of responsibility to testify, as well as other issues concerning the questioning of individuals that have not been regulated by the Statute of the Commission.
5. Identity protection measures can be offered at the personal request of those testifying.
6. The Commission can sign special agreements with member states in order to regulate the manner in which individuals from point 1 of this Article will be invited to testify. If the Commission deems it necessary, the Commission may suggest the competent court to act urgently in determining the measures necessary to secure the appearance of individuals invited to testify, in accordance with the law of the state where the invited individual resides.

Comments:

The commission cannot have the powers or authorizations similar to those of an investigative judge or the judiciary of member states. The commission can only have a corrective role and it can invite people to testify on a voluntary basis. For that reason you need to create stronger ties with associations of homeland defenders and veterans to give you guidelines in terms of who are the best people to testify about a particular event because they know how belonged to a particular unit, what operations were conducted by that unit and so on. (Bruno Čavić, Association of Volunteers and War Veterans of the Homeland War, Zagreb, Croatia, Regional Consultation with War Veterans on the Draft RECOM Statute, Skoplje, Macedonia, December 18, 2010).

*(...) I am in favour of the **voluntary approach** which will greatly simplify the work of the commission. The voluntary approach makes **points 2, 3, 4, and 6 redundant**. We should only **keep points 1, 5, and 7**. (Željko Špelić, Hrvatski časnički zbor, Regional Consultation with War Veterans on the Draft RECOM Statute, Skoplje, Macedonia, December 18, 2010).*

*It won't make any sense if it is left at the voluntary level. If so, how do you intend to invite former defence minister of former minister of the internal affairs to testify before the Commission? I think that **RECOM should be able to make an agreement with member states and arrange for representatives of institutions to be invited**. (Mile Aleksoski, Center for Research and Policy Creation, Skoplje, Macedonia, Regional Consultation with War Veterans on the Draft RECOM Statute, Skoplje, Macedonia, December 18, 2010).*

7. During and after the hearing, the Commission will, as needed, secure the psychological support for the victims.
8. The Commission collects statements:
 - (a) In the place of residence or temporary stay of the witness;
 - (b) In the offices of the Commission;
 - (c) In embassies and consular offices of member states, if the statement is to be taken in third party countries;
 - (d) On the territory of third party countries, if it is not contrary to the legal provisions of these states and it is not possible for victims, witnesses, or other persons to give statements in the embassies and consular offices of member states at these locations.

PART VII – ELECTION PROCEDURE OF MEMBERS OF THE COMMISSION

Article 23

Election Criteria for Members of the Commission

1. Members of the Commission are:
 - (a) Citizens of one of the member states;
 - (b) Persons fostering high ethical standards, respectable persons of integrity dedicated to nurturing a culture of tolerance and constructive dialogue in solving disputes, and persons enjoying the trust of the people in all State Parties to this Agreement;
 - (c) Mentally and physically fit to efficiently and continuously perform their duty as members of the Commission.
2. In each member state at least one woman and at least one man will be elected as members of the Commission.
3. Each member state will make every effort to ensure equal representation of all ethnic groups in the Commission, so that in addition to the largest ethnic group, at least one member of other ethnic communities from that member state will also be elected as a member of the Commission.

4. The following individuals cannot be members of the Commission:
- (a) An individual who held a prominent political position office two years before the election procedure for members of the Commission began, or an individual who was a prominent political figure during the period which is the subject to the Commission's investigation;
 - (b) An individual who is or was a professional member of the military, police, or intelligence structures or a member of paramilitary formations;
 - (c) If there is 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:

... So, we would like to suggest to the Working Group to remove all those "prominent political positions" and simply says: "individuals from any structures cannot be members of the Commission if there is a reasonable doubt that they committed war crimes".

(Nataša Kandić, Humanitarian Law Center, Coordination Council of the Coalition for RECOM, Regional Consultation with War Veterans on the Draft RECOM Statute, Skoplje, Macedonia, December 18, 2010).