

**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 -

**PART TWO – GENERAL PROVISIONS**

**Article 1.**  
Definition

Regional Commission for Establishing the Facts about War Crimes and other Serious Human Rights Violations Committed on the Territory of the Former Yugoslavia is an international regional organization formed by the countries formed following the break-up of former Social Federal Republic of Yugoslavia (SFRJ) 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 in the period from January 1, 1991 until December 31, 2001.

**Comment:**

*So, we decided we did not want to include year 2004. Wasn't that the year when there was a massive human rights violation in Kosovo under the auspices of the United Nations?* (Dragislav Mijanović, representative of the Association of Handicapped War Veterans of the Zvornik Municipality, Zvornik, BiH, Regional Consultation with Victims on the Draft RECOM Statute, Sarajevo, BiH, September 18, 2010).

**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.

**Comment:**

*There is no point going with Option B. Option A makes more sense (...) it goes from state to state individually and takes into consideration the number of victims. I can't allow (...) Serbia having the same number of representatives as Bosnia and Herzegovina... there's no way we'll ever let that happen (...) Option A is a very good option if you ask me, and I think that we can even reduce the number of representatives from Serbia, **giving Serbia two instead of three representatives.*** (Alija Hodžić, Association of the Families of the Children Killed During the Siege of Sarajevo 1992 – 1995, Sarajevo, BiH, Regional Consultation with Victims on the Draft RECOM Statute, Sarajevo, BiH, September 18, 2010).

*(...) you know that Bosnia and Herzegovina and Serbia did not recognize the independence of Kosovo. **We consider Kosovo to be the south province of the Republic of Serbia. For that reason, Kosovo cannot have three members like Croatia and Serbia, and no one from Republika Srpska and from Bosnia and Herzegovina will accept that Kosovo is an independent republic.*** (Dragislav Mijanović, representative of the Association of Handicapped War Veterans of the Zvornik Municipality, Zvornik, BiH, Regional Consultation with Victims on the Draft RECOM Statute, Sarajevo, BiH, September 18, 2010).

***I am personally more in favour of Option A** because, if you take a better look of the conflict in the former Yugoslavia, you will see that Bosnia and Herzegovina were the centre of the conflict. They suffered the largest number of casualties, and it is a complex state that has a Bosniak, Croatia, and Serbian components.* (Drago Kovačević, Serbian Democratic Forum, Belgrade, Serbia, Regional Consultation with Victims on the Draft RECOM Statute, Sarajevo, BiH, September 18, 2010).

*I think that there should be 21 or 23 members – an **uneven number** so that we can vote and make decisions and ultimately have results. And I think we should go with a 75% instead of 50% majority.* (Lush Krasniqi, victim family member, Đakovica/Djakovë, Kosovo, Regional Consultation with Victims on the Draft RECOM Statute, Sarajevo, BiH, September 18, 2010).

*(...) in Montenegro, (...) there are approximately 15, 400 displaced persons from Kosovo and Metohija and some (...) 3, 500 refugees. So, we cannot allot the same number of representatives to **Montenegro, Macedonia, and Slovenia. I think that one of these representatives should be a representative of associations of displaced persons and associations of refugees or to add one more person to the existing number of representatives.*** (Ljubiša Filipović, Crveni Božur Association of the families of the kidnapped, killed, and missing individuals in the period 1998 to 1999 on the territory of Kosovo and Metohija, Montenegro, Regional Consultation with Victims on the Draft RECOM Statute, Sarajevo, BiH, September 18, 2010).

*(...) if you ask me, **Option A** is quite satisfactory when it comes to Bosnia and Herzegovina.* (Murat Tahirović, president of the Association of Former Detention Camp Inmates of Bosnia and Herzegovina, Sarajevo, BiH, Regional Consultation with Victims on the Draft RECOM Statute, Sarajevo, BiH, September 18, 2010).

*I think that **Option B is the best solution**. I think that **Option B is better because all states should have equal representation**. (Hysni Berisha, Shpresimi, Suva Reka/Suharekë, Kosovo, Regional Consultation with Victims on the Draft RECOM Statute, Sarajevo, BiH, September 18, 2010).*

*(...) **20 representatives is not an appropriate number because in one of the articles of the Statute it is stipulated that decisions should be made by a two-thirds majority (...) However, number 21 is not good either because I think that considering the complexity of the goals ahead of us, we would be better off having 24 or 25 members**. (Amir Kulagić, Women of Srebrenica, BiH, Regional Consultation with Victims on the Draft RECOM Statute, Sarajevo, BiH, September 18, 2010).*

### **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, persons enjoying the trust of the people in all States Parties to this Agreement.
3. Members of RECOM have at least a college degree and they are mentally and physically fit for the job.
4. Each State Party to this Agreement must at least delegate one woman as a member of RECOM.
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 the 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.
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.

#### **Comment:**

*I think that "physically fit" should not be one of the criteria for the membership with RECOM. I think that any physical impairment should not be an impediment for membership with RECOM. Also, **insisting on a college degree** is another unacceptable criterion because that will result in a rejection of a large number of people who may not have a college education but have a proven track record of being humanists. (Lush Krasniqi, victim family member, Đakovica/Djakovë, Kosovo, Regional Consultation with Victims on the Draft RECOM Statute, Sarajevo, BiH, September 18, 2010).*

*I am very offended by the fact that this draft Statute requires a college education for members of RECOM. What does that mean? Is everybody else stupid, dumb, and ignorant?* (Alija Hodžić, Association of the Families of the Children Killed During the Siege of Sarajevo 1992 – 1995, Sarajevo, BiH, Regional Consultation with Victims on the Draft RECOM Statute, Sarajevo, BiH, September 18, 2010).

### **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 one 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.

6.a. The oldest member of RECOM shall schedule the Constitutional Assembly of RECOM no later than 15 (fifteen) days after all members or 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 President of RECOM and adopt the Rules of Procedure document.

**Comment:**

*Ministry of Justice of Bosnia and Herzegovina cannot make that decision for its three ethnic components without including Republic of Serbia and the Federation of Bosnia and Herzegovina. Also, the deadline is too short.* (Dragislav Mijanović, representative of the Association of Handicapped War Veterans of the Zvornik Municipality, Zvornik, BiH, Regional Consultation with Victims on the Draft RECOM Statute, Sarajevo, BiH, September 18, 2010).

**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 to the largest group members of other ethnic communities from that State are also included.

**Comment:**

*I have a very specific proposal to make: we should replace: “will make every effort” with “will be under obligation to”.* (Milan Reljić, representative of Struga, Association of victims’ families from Bosansko Grahovo, BiH, Regional Consultation with Victims on the Draft RECOM Statute, Sarajevo, BiH, September 18, 2010).

*Let's take Montenegro as an example. There should be two or three members from Montenegro. If we only have national Montenegrins as members of RECOM, it would turn out that the only victims in Montenegro were Montenegrins, that there were no Bosniak or Albanian or any other victims. So, we must advocate for a **true representation here**, which will help us get a better understanding of the level of war crimes as well as the number of victims on the territory of Montenegro.* (Amir Kulaglič, *Women of Srebrenica*, Srebrenica, BiH, Regional Consultation with Victims on the Draft RECOM Statute, Sarajevo, BiH, September 18, 2010).

## **PART SIX – ASSIGNMENTS AND COMPETENCES 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 destiny of the missing and cooperate with the bodies assigned by the Member States to search for the missing;
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;
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.

#### **Comment:**

*Victims are civilians who were not armed, who had no weapons at all, and I think that in its Final Report RECOM should include two different categories – victims and veterans of war, because **war veterans cannot be considered victims**. Veterans were armed, they went to the combat zone, they were killed and injured, that's true, but that's a different story.* (Munira Subašić, Association Mothers of Enclaves of Žepa and Srebrenica, Sarajevo, BiH, Regional Consultation with Victims on the Draft RECOM Statute, Sarajevo, BiH, September 18, 2010).

## PART SEVEN – RECOM’S COMPETENCES

### Article 23.

#### Taking depositions

1. RECOM is authorized to depose victims, witnesses, and other citizens about war crimes and other serious human rights violations within the scope of RECOM’s area of competence.
2. Depositions will be taken:
  - a. In the place of residence of the person being deposed;
  - 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 is being deposed 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 be deposed in embassies and consular offices of member States.

#### **Comment:**

*Intimidation and execution of citizens will result in a denial of witnesses to talk because they are afraid (...) this should be included in Article 15. We should elaborate on this and see if we can find proper methods to address this problem. What motive would a witness have to testify and how can we secure protection measures for potential witnesses guaranteeing their personal safety, the safety of their family members, as well as the safety of their family members.* (Miloslav Stojković, Center for the Protection of Families of Victims of War in Kosovo and Metohija, Belgrade, Serbia, Regional Consultation with Victims on the Draft RECOM Statute, Sarajevo, BiH, September 18, 2010).

### 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, detection of 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, army, police, intelligence and security services);
- c. Court decisions, transcripts, court documents of the International War Crimes Tribunal for the Former Yugoslavia (ICTY), national courts of States signing this Agreement, and 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 with connection with the subject of investigation;
- h. Written opinions of experts and representatives of institutions and organizations, prepared for the use by RECOM.

**Comment:**

*We have to find a way to – I don't want to say "force", but to have institutions do what we want them to do for us – to open confidential files because a lot can be learned from those files.* (Miloslav Stojković, Center for the Protection of Families of the Victims of War in Kosovo and Metohija, Belgrade, Serbia, Regional Consultation with Victims on the Draft RECOM Statute, Sarajevo, BiH, September 18, 2010).

**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, perpetrators of crimes which can be qualified as war crimes or serious human rights violations, as well as 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 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 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.

**Comment:**

*I think it would be quite human to give an opportunity to war crimes perpetrators to appear before RECOM (...) we have to give them a chance or an opportunity to (...) come before RECOM and give their views and interpretation of the facts about a certain event.* (Amir Kulagić, *Women of Srebrenica*, Srebrenica, BiH, Regional Consultation with Victims on the Draft RECOM Statute, Sarajevo, BiH, September 18, 2010).



## 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 an institutional reform, and mechanisms 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. The way of monitoring RECOM's recommendations, including the establishment of specially designated bodies for that purpose only.

#### **Comment:**

*I think that RECOM would make a terrible mistake if the Final Report does not have an introduction, a legend, which would clearly indicate the meaning of the term "victim" in the broadest possible meaning of the word. In Article 22 we gave a list of crimes and violations to be investigated, but it appears the term "victim" should also be categorized accordingly. If we only make a distinction between two most common categories – civilian and military victims – or killed and missing – that would be a terrible injustice with respect to a large group of people who were victimized by other forms of human rights violations such as rape, forced detention, physical and psychological abuse and so on (...) what we are forgetting is that RECOM will finish its work by publishing a Final Report **the last part of which must be recommendations.** And it is very important that all laws [in the area of transitional justice] that have already been adopted on the territory of the former Yugoslavia are listed in the recommendations of the Final Report along with the list of **specific mechanisms proven to be helpful for implementation of those laws.** (Amir Kulagić, *Women of Srebrenica*, Srebrenica, BiH, Regional Consultation with Victims on the Draft RECOM Statute, Sarajevo, BiH, September 18, 2010).*

### **Article 35.**

#### The character of the findings of RECOM

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

#### **Comment:**

*(...) this formulation can stay. It is a duty of each and every citizen to report a war crimes perpetrator. So, RECOM will not be mandated to point to someone and say "he committed a criminal act", but it will be mandated to say that from everything they learned about an individual, it points to the conclusion that that individual has committed a criminal act.* (Dragan Pjevač, Association of the Families of the Killed and Missing from Krajina and Croatia, Belgrade, Serbia, Regional Consultation with Victims on the Draft RECOM Statute, Sarajevo, BiH, September 18, 2010).