

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**

PART II – GENERAL PROVISIONS

Article 1

Definition

1. The 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 created by this act.

Comment:

RECOM is an auxiliary, supporting body designed to help the judiciary make proper judicial decisions. That has to be included in Article 1. (Salih Rasovac, Corridor, BiH, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

2. The abbreviated name of this commission is RECOM

Article 5

The Timeframe for RECOM's 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 sessions and lasts no longer than six months.
3. RECOM can extend its operational timeframe for up to six months maximum.

Comment:

(...) I suggest we add point 4 after point 3 to read: "When petitioned by at least three member states, the commission can be convened for an all-member meeting in seven days exclusively for reasons involving implementation of Article 11, points b) to f) of the Statute of the Coalition for RECOM. (Amir Kulaglič, member of the Coordination Council of the Coalition for RECOM, BiH, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

Article 6

Representation and Acting on Behalf of the Commission

1. RECOM is represented by the Chairperson of the Commission.
2. RECOM can also choose to be represented by another member of the Commission.

Comment:

(...) we need to determine in what kind of situations the commission can be represented by other persons other than the President of the Commission. (Amir Kulagić, member of the Coordination Council of the Coalition for RECOM, BiH, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

PART III – MANDATORY COOPERATION OF STATES WITH THE COMMISSION

Article 10

Mandatory Cooperation of States with the Commission

1. All government bodies in member states are required to cooperate with the Commission and facilitate its efficient work in compliance with the Statute.
2. All government bodies in member states will respond to the Commission's requests to provide timely access to information, including the option for the Commission to take statements and conduct field investigations.
[OPTION A: in compliance with the legal provisions of that member state] or
[OPTION B: unless it violates legal regulations of the member state concerning the confidentiality of information or if it jeopardizes a criminal prosecution. Information or documents marked as classified for the purpose of protecting perpetrators of war crimes or other serious human rights violations cannot be considered a state, military, or official secret.]
3. In case a member state believes that disclosure of a document or a piece of information requested by the Commission would jeopardize its national interests or national security, all reasonable measures will be taken to overcome the situation by a joint effort of the Commission and the member state in question. These measures may include:
 - (a) A statement issued by the Commission explaining the relevance of the required document or information;
 - (b) An explanation or alteration of the request;
 - (c) The consideration of possible other sources for obtaining the same information, or considering requesting a different form of the same document or information;

(d) Reaching an agreement with the member state in question concerning the conditions of information disclosure, including, among other things, a partial disclosure of the contents of the document, restrictions with respect to publishing the information, and/or application of other confidentiality and protection measures.

Comment:

We cannot use the Statute to compel the states to cooperate (...) the Statute's main purpose is to regulate the work of the Commission and not to determine responsibilities of states. So, that issue should be tackled by an international agreement. (Vesna Simović, Association of Lawyers of Montenegro, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

PART VI – GOALS AND ASSIGNMENTS OF THE COMMISSION

Article 11

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;

Comments:

(...) in point a) it is necessary to define the consequences of war crimes and human rights violations. (Amir Kulagić, member of the Coordination Council of the Coalition for RECOM, BiH, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

(...) we need to establish who is responsible for everything that happened (...) who is the highest ranking individual responsible for the crimes, "who started the war on my island" as they say. Without that part, we will leave an option open again to manipulate the number of victims, the number of those killed – as it is being done now, and I only talk about my country. (Murat Tahirović, Association of Former Detention Camp Inmates of Bosnia and Herzegovina, BiH, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

*(...) causes, the establishment of the causes – i.e. all those who insist upon Commission's dealing with the causes of the conflict, put the Commission in an absolutely impossible situation by giving it a task it cannot implement. It would also mean that from the beginning we agree that the Commission will be unsuccessful and that's something I ask you to consider (...) What I think is relevant in this domain is **that***

the Commission is capable of offering a platform for establishing motives for the commitment of many crimes, i.e. the crime of genocide or the crimes against humanity.

(Zoran Pajić, Board of Directors of the Humanitarian Law Center, United States of America, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

*(...) working groups and law professionals are slowly diverging from the concept of victim, although I cannot understand why, and I also have trouble understanding why it is impossible to include in the initial definition the following category: **to establish the facts about the victims of war crimes and serious human rights violations.***

(Ljiljana Canjuga, Association of Volunteers and Veterans of the Homeland War, Croatia, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

- b) To help make political elites and societies in the member states accept the facts about war crimes and human rights violations;

Comment:

*(...) to rephrase point a) of this Article to include as one of the sub-goals, so to speak, **raising awareness in member states on the need of accepting the facts about war crimes and serious human rights violations.***

(Vesna Simović, Association of Lawyers of Montenegro, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

- 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;

Comment:

*(...) I think that this is not the best choice of words, I think it should say: **“the goal is to build a culture of solidarity and compassion”.***

(Vesna Simović, Association of Lawyers of Montenegro, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

- e) To help victims exercise their rights; and
- f) To help prevent the recurrence of such crimes and serious human rights violations in the future.

Comments:

*(...) I'm afraid we are not going to be able to differentiate between a goal and an assignment. Goals can be phrased like this, for example: **“establishing the facts”** is a goal; to **“establish the facts”** is an assignment arising from a general goal (...) **the last***

goal is a general goal and all previous goals stem from that goal. It is not a good idea to put it in the end, it should be defined as RECOM's general goal, and that general goal creates all other sub-goals. (Vesna Simović, Association of Lawyers of Montenegro, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

(...) something for the writers of the Draft Statute to think about is if there are any real differences between what we call goals and assignments. (Zoran Pajić, Board of Directors of the Humanitarian Law Center, United States of America, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

Article 12

The Assignments of the Commission

The Commission has the following assignments:

- (a) To collect information on war crimes and serious human rights violations, give their detailed account, and demonstrate human rights violation patterns and their consequences;

Comments:

(...) I am a little disappointed with the work of the Working Group because I participated in three consultations on the Draft Statute, two of which were consultations with victims of war crimes, we talked about the genocide, explained why we wanted to have "establishing the facts about the genocide" included as one of the assignments of RECOM but that proposal was denied. (Amir Kulaglič, member of the Coordination Council of the Coalition for RECOM, BiH, Seventh Regional Forum on Transitional Justice, Working Group: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

(...) we should delete the phrase "give their detailed account", please, because it is clear that (...) having in mind the objective abilities of the Commission, it is going to be an impossible mission. (Amir Kulaglič, member of the Coordination Council of the Coalition for RECOM, BiH, Seventh Regional Forum on Transitional Justice, Working Group: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

- (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:
 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:

*(...) the explanation that in the course of a three-year-long mandate the Commission would not be able to establish who true victims are in terms of **defining** the definition of a victim and so on, I think that if the whole thing is victim-centred, then **the mandate must be dedicated** to that instead of wasting time over establishing political and societal circumstances that led to the commitment of the crimes, although it is very important, but I think it is highly unlikely that such a mission can be accomplished and defined within a three-year-long mandate, while at the same time we all have numerous and different criteria for defining a victim. (Ljiljana Alvir, Mothers of Vukovar, Croatia, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).*

(...) not all veterans can be considered victims and it should be very precisely defined when a veteran becomes a victim as stipulated by Geneva Conventions. (Ljiljana Canjuga, Association of Volunteers and Veterans of the Homeland War, Croatia, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

*(...) we also have **to make a distinction between the terms “human loss” and “victim”**
(...) RECOM must build its own standards to be used in compiling a register of the killed
(...) we want all victims to be categorized according to a unique methodology so that they have a precise definition and categorization in the register. (Amir Kulaglic, member of the Coordination Council of the Coalition for RECOM, BiH, Seventh Regional Forum on Transitional Justice, Working Group: Goals and Assignments, Zagreb, Croatia, October 16, 2010).*

(c) To collect information on all detention locations connected to the war or other form of armed conflict and to compile a comprehensive description of all such locations;

(e)

[OPTION A: To research political and societal circumstances that directly instigated 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 instigated 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 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.

PART V – COMPETENCIES OF THE COMMISSION

Article 14

Competencies of the Commission

War crimes and serious human rights violations the Commission will investigate include but are not limited to:

- (a) Murder;
- (b) Enslavement;
- (c) Illegal detention;
- (d) Torture;
- (e) Forced disappearance;
- (f) Deportation and forced and forced relocation of populations;
- (g) Rape and other forms of sexual abuse;
- (h) Large-scale property confiscation and destruction;
- (i) Hostage taking;
- (j) Destruction of religious and cultural-historical objects;
- (k) The use of civilians and prisoners of war as “human shields”;

Comment:

(...) I am deeply disappointed that (...) in the Working Group failed to include the crime of all crimes – genocide – into Article 14 (...) I think we must include genocide in RECOM’s mandate, and that the judgments handed down in court proceedings with respect to the genocide must be considered in the process of establishing the facts and in the Final Report writing process. (Amir Kulaglič, member of the Coordination Council of the Coalition for RECOM, BiH, Seventh Regional Forum on Transitional Justice, Working Group: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

(...) if there are any indications in the Draft Statute that RECOM will not be dealing with the crime of genocide, then it is a major flaw and a warning that the draft text should be amended. (Draško Bjelica, Faculty of Philosophy, Niš, Serbia, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

(...) we suggest that the category of serious human rights violations be included in Article 14, in addition to competencies of the Commission. This category would involve the case of individuals erased from the register of permanent residents of Slovenia (...). the category we recommend is: “a systematic, arbitrary, or illegal deprivations or obstruction of individuals to exercise their right to permanent residency and deprivations or obstruction of individuals to exercise their right to obtain citizenship”. (Jovana Mihajlović-Trbovac, Peace Institute, Slovenia, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

I suggest another point is added to Article 14 – “deliberate and/or systematic hiding of facts and/or destruction of documents that testify or may be used to clarify and document cases of serious human rights violations”. (Koča Pavlović, Member of Parliament, Montenegro, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

(...) war crime does not exclude genocide (...) words “war crimes” are contained in the name of the Commission and I understand it is about a war crime as a generic term that includes the crime of genocide, as well. But, to make one thing clear right now, and with respect to the fact that during the war in the former Yugoslavia, or to be more precise in the conflict in Bosnia and Herzegovina, the crime of genocide indeed happened after the Second World War, after all these discussions I have heard here, I think that the crime of genocide should be included in the list of crimes in this Article. (Zoran Pajić, Board of Directors of the Humanitarian Law Center, United States of America, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

(...) I think that the problem of erased individuals can be included in the “serious human rights violations and I would not put it in a separate chapter. I would list is an example of specific violations, but it is very important we interpret the title in a broader meaning – war crimes and serious human rights violations. (Zoran Pajić, Board of Directors of the Humanitarian Law Center, United States of America, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

I would consider adding, in addition to the destruction of relevant documents, “intimidation and execution of witnesses” to Article 14. (Milan Reljić, UG Struga, BiH, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

(...) if the International Court of Justice has already categorized as a genocide, why does RECOM keep avoiding the word genocide? (Persa Vučić, Women in Black, Serbia, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

(...) to include the word genocide and to list all of it: genocide and all other human rights violations, serious crimes (...) why not use “execution of children” (...) we can add many specific crimes, such as “erased individuals” for those people in Slovenia. (Aprilia Lužar, Taxiart, Slovenia, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

Why is it so important to include the case of “erased individuals” into the list of serious human rights violations? It is important because it is not even the case of human rights violations because it was preceded by the deprivation of the right to have rights. (Vlasta Jališić, Peace Institute, Slovenia, Seventh Regional Forum on Transitional Justice, Working Group II: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

We are not asking RECOM to establish individual responsibility, but we do ask that RECOM establishes the facts about the crime of genocide because that will mean that we are not revising court decision. (Amir Kulaglič, member of the Coordination Council of the Coalition for RECOM, BiH, Seventh Regional Forum on Transitional Justice, Working Group: Goals and Assignments, Zagreb, Croatia, October 16, 2010).

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PART V – COMPETENCIES OF THE COMMISSION

Article 13

Time Period and Territory the Commission is Mandated to Investigate

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

- [OPTION A: the political and societal circumstances that directly instigated the war or other forms of armed conflict as well as the commitment of war crimes and other human rights violations]
- [OPTION B: the political and societal circumstances, beginning in the 1980s, which have directly instigated the war or other forms of armed conflict as well as the commitment of war crimes and other human rights violations]

Comment:

Why can't we take the year 1990 as the start year for our investigation? We should definitely do it because we have been having problems in Croatia since that year. We have had the "log revolution" (balvan revolucija), our flow of goods, people, and capital have been blocked, we have had sporadic armed conflicts in 1990, we have had victims, etc. If we apply these criteria, those people are automatically out. (Veljko Vičević, homeland defender, Croatia, Seventh Regional Forum on Transitional Justice, Working Group: "Composition and Election of RECOM members, Zagreb, Croatia, October 16, 2010).

PART VII – ELECTION PROCEDURE OF MEMBERS OF THE COMMISSION

Article 22

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. Each member state will elect at least one woman and at least one man as members of the Commission.

3. The member states 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.

Comment:

I want this sentence to be more precise and concise. What does it mean “to will make every effort”? What does it mean when you say “will make every effort to ensure” (...) what would happen to the states that only have two RECOM member? (Bekim Blakaj, Humanitarian Law Center Kosovo, Kosovo, Seventh Regional Forum on Transitional Justice, Working Group: “Composition and Election of RECOM members”, Zagreb, Croatia, October 16, 2010).

4. The following individuals cannot be members of the Commission:
 - (a) An individual who held a political 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;

Comments:

(...) it is necessary to define what exactly “a political function” means. (Ivan Novosel, Legalis, Croatia, Seventh Regional Forum on Transitional Justice: “Working Group: “Composition and Election of RECOM members, Zagreb”, Croatia, October 16, 2010).

Article 22, titled “Election Criteria for Members of the Commission”, paragraph 4 point a), I suggest we remove it completely. I don’t know anyone who was able to stand up to the political establishment throughout former Yugoslavia in the period in question? That person would have been declared a traitor or he or she could have been punished seriously or even lost their lives. (Milosav Stojković, Center for the Protection of War Victims’ Families in Kosovo and Metohija, Serbia, Seventh Regional Forum on Transitional Justice, Working Group: “Composition and Election of RECOM members”, Zagreb, Croatia, October 16, 2010).

- (b) An individual who was a professional member of the military, police, intelligence, or other state security structures;

Comments:

I personally believe that this article is not good because it is discriminatory with respect to a large number of citizens of the former Yugoslavia (...) I don’t believe that they were all war crimes perpetrators (...) Why would a professional soldier commit a war crime? (Veljko Vičević, homeland defender, Croatia, Seventh Regional Forum on Transitional Justice, Working Group: “Composition and Election of RECOM members”, Zagreb, Croatia, October 16, 2010).

If an individual was a member of a military, police, or intelligence state security structure, that individual cannot be impratual simply because he or she would be dealing with his colleagues, former state security members. (Faton Ademi, Balkan Investigative Reporting Network, Kosovo, Seventh Regional Forum on Transitional Justice, Working Group: “Composition and Election of RECOM members”, Zagreb, Croatia, October 16, 2010).

*(...) I suggest (...) article (...) point b) be redefined if possible, to read – **paramilitary, para-police units**, (...) but the facts testify that the most horrendous war crimes were committed by those forces, which were not legitimate forces. (Milosav Stojković, Center for the Protection of War Victims’ Families in Kosovo and Metohija, Serbia, Seventh Regional Forum on Transitional Justice, Working Group: “Composition and Election of RECOM members”, Zagreb, Croatia, October 16, 2010).*

(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:

***Who will be that authority to check the criteria** (...) what body will be responsible for ensuring that all those criteria stipulated by Article 22 are applied? (Veljko Vičević, homeland defender, Croatia, Seventh Regional Forum on Transitional Justice, Working Group: “Composition and Election of RECOM members”, Zagreb, Croatia, October 16, 2010).*

*(...) “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” ... Look closely – that **is also a form of discrimination**. How is it possible to blame a parson’s parents or relatives for the crimes committed by that person? (Veljko Vičević, homeland defender, Croatia, Seventh Regional Forum on Transitional Justice, Working Group: “Composition and Election of RECOM members”, Zagreb, Croatia, October 16, 2010).*

(...) what organ will establish the existence of “reasonable doubt”? (Bekim Blakaj, Humanitarian Law Center Kosovo, Kosovo, Seventh Regional Forum on Transitional Justice, Working Group: “Composition and Election of RECOM members”, Zagreb, Croatia, October 16, 2010).

Article 25

Composition and Selection of Members of the Election Panel

1. The Election Panel in each member state consists of nine members, all of whom must meet the requirements set for future members of the Commission, except for the requirement excluding those who are prominent politicians or public officials or individuals who held such positions during the period which is subject to Commission's investigation.

Comment:

(...) Article 25, paragraph 1 is not in compliance with Article 22 that reads: "The Election Panel in each member state consists of nine members, all of whom must meet the requirements set for future members of the Commission except for the requirement excluding those who are prominent politicians or public officials" because there is no mention or any description of "prominent politicians" in the previous text. (Ivan Novosel, Legalis, Croatia, Seventh Regional Forum on Transitional Justice, Working Group: "Composition and Election of RECOM members", Zagreb, Croatia, October 16, 2010).

2. Members of the Election Panel cannot be nominated for RECOM membership.
3. 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 or the International Relations Committee.
4. Three members of the Election Panel are nominated by members of the Coalition for RECOM in each member state.

Comment:

(...) just to indicate who nominates members. It is clear that members of the Coalition in each member state elect RECOM members, but in order to avoid confusion we need to say who nominates members and how many are nominated in each state. (Maja Mičić, Youth Initiative for Human Rights, Serbia, Seventh Regional Forum on Transitional Justice, Working Group: "Composition and Election of RECOM members", Zagreb, Croatia, October 16, 2010).

5. The initial six members of the Election Panel are nominated, i.e. elected based on points 3 and 4 of this Article, no later than 45 days after the last parliament has ratified the Agreement on the establishment of the Commission.

6. The Human and Minority Rights Minister or the Justice Minister proclaims the election of the initial six members of the Election Panel and advertises open positions for the remaining three members of the Election Panel.
7. The first six elected members of the Election Panel will make every reasonable attempt to elect the remaining three members by consensus, if possible, or by majority vote.
8. The Human and Minority Rights Minister or the Justice Minister, the Coalition for RECOM, and members of the Election Panel elected based on points 3 and 4 of this Article, will ensure that at least one third of members of the Panel are women/men and will ensure that one third of members of the Panel are representatives of victims' associations, including victims' associations outside of the Coalition for RECOM, who have been registered for at least three years before the Agreement on the establishment of the Commission was signed.
9. The Human and Minority Rights Minister or the Justice Minister pronounces when the Election Panel is fully staffed and provides the conditions for its activity.
10. The Election Panel is chaired by the oldest member of the Election Panel, who schedules the Constitutional Session of the Election Panel no later than 45 days from the day that the open positions for the remaining members of the Election Panel were advertised.

Article 26

Election of Candidates Nominated by the Election Panel for Membership on the Commission

1. No later than eight (8) days after the Constitutional Session, the Election Panel will advertise the open positions for members of the Commission, which will be open for 30 (thirty) days.
2. No later than eight (8) days after the application deadline, on the Internet website of the Ministry, identified in Article 26 point 3, the Election Panel will publish the following information:
 - (a) The total number of received applications;
 - (b) The list of the names of candidates whose applications were dismissed as incomplete (did not contain all required information as stipulated in Article 23 of this Statute);
 - (c) The list of names of candidates whose applications will be considered.
3. The Election Panel can decide to interview all candidates or individual candidates. Interviews will be open to the public.
4. The Election Panel can request information on any candidate from the authorities and public institutions, who have an obligation to provide urgent access to requested information.

Comment:

It is not clear what "information committee" is implied here because there is a committee within the Election Panel already, so it is not clear. (Maja Mičić, Youth Initiative for Human Rights, Serbia, Seventh Regional Forum on Transitional Justice, Working Group: "Composition and Election of RECOM members", Zagreb, Croatia, October 16, 2010).

5. The Election Panel will try to make all decisions unanimously and when a consensus is impossible to reach, the 5 vote majority will decide.
6. The Election Panel evaluates all applications taken into consideration and creates a shortlist of candidates two or three times larger than the number of members of the Commission which are to be elected in that member state.
7. No later than 40 (forty) days after the application deadline, the Election Panel will publish a short list of candidates for the Commission and submit it to the head of state or to the presidency that very day of publication.

Article 28

The Constitutional Session

1. The oldest member of the Commission schedules the Constitutional Session, to be held at the Commission's Main Office no later than 15 days from the day all members have been elected, and chairs the Commission until the Chairperson of the Commission is elected.
2. The official, introductory part of the Constitutional Session, which is open to the public, is attended by the heads of state or the Presidency of member states.
3. In the introductory part of the Constitutional Session members of the Commission sign a copy of the Statute and read aloud and sign the following statement: "I hereby swear on my honour that I will conduct my duties as a member of the Commission in a dedicated, impartial, and independent way, and that I will strive to justify the confidence bestowed upon me while attempting to give my contribution to the implementation of the goals of the Commission."

Comment:

*(...) as for the Commission itself, it is mentioned here that a Constitutional Session will be held, but **it does not say anything about the decision-making process**, except that it is necessary to secure a decision-making quorum. Will the Commission make decisions during sessions, but it is quite possible that it may be regulated by the Rules of Procedure of the Commission. Do members need to be physically present at the session to be able to vote?* (Maja Mičić, Youth Initiative for Human Rights, Serbia, Seventh Regional Forum on Transitional Justice, Working Group: "Composition and Election of RECOM members", Zagreb, Croatia, October 16, 2010).

Article 30

Quorum and Decision Making

1. The working and decision making quorum is 14 members of the Commission.
2. The Commission will attempt to make all decisions unanimously, and when a consensus is impossible to reach, the 14 vote majority will decide.

Comment:

Just a suggestion with respect to Article 30, paragraph 2 – “The Commission will make every attempt to make all decisions unanimously, and when a consensus is impossible to reach, a minimum of 14-vote-majority will decide”. (Vesna Teršelič, Documenta, Croatia, Seventh Regional Forum on Transitional Justice, Working Group: “Composition and Election of RECOM members”, Zagreb, Croatia, October 16, 2010).

3. The Commission can decide that in order to adopt a specific procedural decision it is necessary to secure a simple majority vote of its members.

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2. All government bodies in member states will respond to the Commission's requests to provide timely access to information, including the option for the Commission to take statements and conduct field investigations.
[OPTION A: in compliance with the legal provisions of that member state] or
[OPTION B: unless it violates legal regulations of the member state concerning the confidentiality of information or if it jeopardizes a criminal prosecution. Information or documents marked as classified for the purpose of protecting perpetrators of war crimes or other serious human rights violations cannot be considered a state, military, or official secret.]

Comment:

(...) I think it is a very bad idea to carry on with option B because in that case state organs could always step in and say – please, we cannot give you access to such and such data because it may jeopardize criminal proceedings which are underway. (Nataša Kandić, Humanitarian Law Center, Serbia, Seventh Regional Forum on Transitional Justice, Working Group: “The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).

3. In case a member state believes that disclosure of a document or a piece of information requested by the Commission would jeopardize its national interests or national security, all reasonable measures will be taken to overcome the situation by a joint effort of the Commission and the member state in question. These measures may include:
 - (a) A statement issued by the Commission explaining the relevance of the required document or information;
 - (b) An explanation or alteration of the request;
 - (c) The consideration of possible other sources for obtaining the same information, or considering requesting a different form of the same document or information;
 - (d) Reaching an agreement with the member state in question concerning the conditions of information disclosure, including, among other things, a partial disclosure of the contents of the document, restrictions with respect to publishing the information, and/or application of other confidentiality and protection measures.

Comments:

*I think that it would be wise for the Commission **not to cooperate directly with individual state organs**, courts, and other bodies who have data at their disposal, but instead, to request the states – by a clause contained in the international agreement – to **form a body**, an office for the cooperation with the Commission maybe, or something like that, someone who will be **able to secure faster accesses to required information**. (Žarko Marković, Belgrade Center for Human Rights, Belgrade, Seventh Regional Forum on Transitional Justice, Working Group: “The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).*

*(...) **the cooperation of state bodies with the Commission must be mandatory**, even if they are threatened by the use of sanctions. (Gabriela Banić, lawyer, Croatia, Seventh Regional Forum on Transitional Justice, Working Group: “The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).*

*(...) **certain sanctions should be stipulated by the law for state institutions if they fail to cooperate with the Commission...** (Nikola Bešenski, judge, County Court of Vukovar, Croatia, Seventh Regional Forum on Transitional Justice, Working Group: “The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).*

***State institutions should communicate with the Commission in writing and provide the requested information because you don't want to drag their heads of departments and question them about the information they have at their disposal.** (Jasminka Biloš, lawyer, Croatia, Seventh Regional Forum on Transitional Justice, Working Group: “The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).*

PART VI – AUTHORISATION OF THE COMMISSION

Comments:

*One of the most important authorizations to be given to RECOM with respect to the authority of national judiciaries is, very specifically said, to prepare all assumed situations in which it is possible to **secure a guilty plea**. That may require, in some very specific situations of course, that both the victim and the perpetrator of the war crime in question come to the same table, and try to find a way for a perpetrator to agree to enter a guilty plea. Such an agreement reached on the level of the Commission would not be a done deal in terms of legal validity, but it would represent a very serious and respectable proposal made to the war crimes prosecutor in charge of that case to accept and formally conclude that agreement. (Ibro Bulić, Office of the War Crimes Prosecutor of Bosnia and Herzegovina, BiH, Seventh Regional Forum on Transitional Justice, Working Group: “The*

Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).

(...) it is important to authorize RECOM to be able to conduct face-to-face confrontation of victims and perpetrators. Such confrontations should be conducted before authorized RECOM organs and proper documentation must be generation for each such event. (Ibro Bulić, Office of the War Crimes Prosecutor of Bosnia and Herzegovina, BiH, Seventh Regional Forum on Transitional Justice, Working Group: “The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).

Article 15

Deposition-Taking

1. The Commission takes statements concerning war crimes and serious human rights violations in the area of its competence from victims, witnesses, and perpetrators of such crimes, and other persons deemed by the Commission to be able to provide relevant facts about those events.
2. Each person invited to testify before the Commission must give a statement to the Commission. Victims are under no obligation to testify about their own suffering or the suffering of their family members.

Comments:

*From my own personal experience as a prosecutor, I can tell you that not much can be expected from an unwilling witness. If the witness is brought to my office by police, if I keep summoning one witness who is trying to avoid testifying, when such witnesses comes to my office, their usual answers are “I don’t know”, “I don’t remember”, “I’m not sure” and so on. We have to make sure that the witnesses we deal with here are **willing to testify, who will volunteer to testify, because they will give high quality statements** which will be relevant as far as RECOM is concerned as well as in terms of criminal prosecution.* (Ibro Bulić, Office of the War Crimes Prosecutor of Bosnia and Herzegovina, BiH, Seventh Regional Forum on Transitional Justice, Working Group: “The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).

*(...) I am a little worried that **if we don’t make the cooperation with the Commission mandatory, people will not take it seriously.** (...) and on the other hand, in the three years of the mandate of the Commission, three, three and half, or four years if the mandate is extended, it will not be possible to publicize the Commission so that it becomes a household name well accepted by the general public, ordinary people – in other words potential witnesses.* (Ivan Jovanović, OSCE Mission to Serbia, Serbia, Seventh Regional Forum on Transitional Justice, Working Group: “The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).

(...) *“each person invited by the Commission to testify – I would insert a comma here, with the exception of victims, another comma, “must respond to that invitation” – full stop. That would be the end of it. “Victims are under no obligation to testify...” I think this is redundant, and if you look at the form of legal documents, law texts, you will see that paragraphs don’t have full stops. They consist of one sentence, one paragraph is one sentence.* (Velija Murić, Montenegro Lawyers’ Committee for Human Rights, Montenegro, Seventh Regional Forum on Transitional Justice, Working Group: “The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).

(...) I would leave the clause **“testifying in a public hearing is voluntary” because when it sounds good then it can have a positive effect.** The other stuff simply has no effect. I think, it is clear that victims can be under no obligation to testify, but you can invite anyone, and those who want they will come to your public hearing session and help you discover something, but those who don’t want to testify, they will come and they will tell you that they don’t remember or that they don’t know. (Jasminka Biloš, lawyer, Croatia, Seventh Regional Forum on Transitional Justice, Working Group: “The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).

(...) I think that the principle **of voluntarism must remain in the place for witnesses, too.** (Nikola Bešenski, judge, County Court of Vukovar, Croatia, Seventh Regional Forum on Transitional Justice, Working Group: “The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).

(...) individuals should only be invited to testify on a voluntary basis, no forms of coercion should be applied in terms of applying the provisions of criminal procedure codes, penalization, and so on – so, it is important that they come forward voluntary, that they really want to participate in this and that they have a motive to help, to tell the truth, to give a part of themselves. (Gabriela Banić, lawyer, Croatia, Seventh Regional Forum on Transitional Justice, Working Group: “The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).

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 10, point 2 and 3 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 answering certain questions and to the release of responsibility to testify, and other issues concerning the questioning of witnesses that have not been regulated by the Statute of the Rules of Procedure of the Commission.
5. Identity protection measures can be offered at the personal request of those testifying.
6. The Commission invites witnesses to testify in accordance with the Criminal Procedure Law of the member state(s) in question. As requested by the Commission the competent court of jurisdiction, in an urgent procedure, decides on the measures to be used for the

purpose of securing the presence of a witness, including using procedural sentencing for a failure to respond to the invitation of the Commission, as stipulated by the Criminal Procedure Law of the member state where the witness was invited to testify. The Commission can sign special agreements with member states with respect to cooperation with governmental organs in matters of inviting witnesses to the Commission and in securing their presence.

Comment:

*(...) where did you see that someone can order a court what to do? Isn't it in contradiction with the function of the court, the role the court has as stipulated in the constitution? We must not allow things like that to slip away because if we start debating a possibility to hold **parallel criminal proceedings**, that can create serious animosity with respect to the Commission.* (Siniša Štimac, lawyer, Croatia, Seventh Regional Forum on Transitional Justice, Working Group: "The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).

7. 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 if is not possible for victims, witnesses, or other persons to give statements in the embassies and consular offices of member states at these locations.

Comments:

(...) I am asking you – is the Commission going to accept statements, relevant statements of witnesses if court proceedings are over? (Safet Muratagić, UG *Ključ budućnosti/ Key to the Future*, BiH, Seventh Regional Forum on Transitional Justice, Working Group: "The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).

It is only logical to say that **we should depose those witnesses whose statements were used as the foundation of a court decision.** (Nataša Kandić, Humanitarian Law Center, Serbia, Seventh Regional Forum on Transitional Justice, Working Group: "The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).

Article 17

Field Investigation and Visits to Crime Locations

1. The Commission establishes relevant facts by means of field investigation, visits to crime locations, detention locations, mass grave locations, and all other locations relevant to establishing the facts about war crimes and other serious human rights violations, in cooperation with the competent governmental bodies of the member state where the investigation is conducted.

Comment:

(...) “in cooperation with the competent governmental bodies” (...) this wording is not good, RECOM must be independent in its investigations, i.e. field investigations.

(Nataša Kandić, Humanitarian Law Center, Serbia, Seventh Regional Forum on Transitional Justice, Working Group: “The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).

2. The Commission can visit crime locations and mass graves locations in order to pay respects to victims.

Article 18

Public Hearing of Victims and Other Persons

1. The Commission holds public hearings in order to provide a platform for victims to speak about their suffering and the suffering of their family members.
2. Public hearings may also include perpetrators who committed war crimes or serious human rights violations, witnesses, as well as those individuals who helped victims.
3. Testifying in a public hearing is voluntary.
4. The Commission may decide to apply identity protection measures during public hearings, as well as other measures to protect psychological and physical integrity.
5. State-owned electronic media, i.e. public services, on the territory of the former Yugoslavia are required to air public hearings. Commercial electronic media can air public hearings under the same terms and conditions as the state-owned media, i.e. public services.
6. Public hearings can be held in different locations.

Comment:

(...) we cannot invite perpetrators for questioning, or for deposition taking without the presence of their defenders.

(Ibro Bulić, Office of the War Crimes Prosecutor of Bosnia and Herzegovina, BiH, Seventh Regional Forum on Transitional Justice, Working Group: “The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).

Article 19

Holding Themed Sessions

1. The Commission can hold sessions about the activity of state institutions, political organizations, cultural and scientific institutions, churches and religious communities, and the media before and during the war or other form of armed conflict with respect to their role in the commitment of war crimes and other serious human rights violations.
2. State-owned electronic media, i.e. public services, on the territory of the former Yugoslavia are required to air themed sessions. Commercial electronic media can air public hearings under the same terms and conditions as the state-owned media, i.e. public services.
3. Themed sessions can be held in different locations.

Comment:

(...) for “themed sessions”, too – I think that the principle of voluntarism should also be applied there, because if an unwilling witness shows up, he or she may partially admit a wrongdoing – which, of course means nothing to you, or they may even be very stubborn and keep denying any wrongdoing. (Nikola Bešenski, judge, County Court of Vukovar, Croatia, Seventh Regional Forum on Transitional Justice, Working Group: “The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).

Part XI – FINAL REPORT OF THE COMMISSION

Article 42

Compilation and Publication of the Final Report

1. Shortly before the expiration of its mandate, the Commission will make its Final Report public.
2. The Commission will submit its Final Report to the Heads of State / Presidencies of member states and publish it at the same time in all official languages of the member states.
3. The Commission has an obligation to make public a short version, i.e. an abstract, of the Final Report at the same time that the complete version is made public.

Comment:

*(...) if we add a new paragraph to Article 42, stating that **the Final Report should be submitted to the public prosecutor**, to relevant state institutions in charge of criminal prosecution and so on, that is fact a criminal complaint, a finger-pointing situation, so to speak. In that case, Article 44 should be removed in its entirety because we can no longer say: “Such finding will have no impact on court decisions”.* (Veliija Murić, Montenegro Lawyers’ Committee for Human Rights, Montenegro, Seventh Regional Forum on

Transitional Justice, Working Group: “The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).

Article 44

Findings on Perpetrators

1. The Commission is mandated to indicate in its Final Report based on established facts whether an individual committed a criminal act of war crime or serious human rights violation. Such finding will have no impact on court decisions.

Comments:

(...) I am asking you – what if the Commission makes one of its findings on perpetrators public, the individual is tried on charges contained in the finding of the Commission, and the court finds the defendant not guilty of said charges (...) What happens then? Can we allow ourselves to violate basic human rights even if we are acting in the best interest of human rights?

Who will act on behalf of the Commission, who will be the competent individual to decide if the facts we have collected point to the criminal responsibility of an individual? Well, even judges find it hard to make such a call and they are experienced in doing exactly that. So, I think it is better if we leave it up to the judges to make such decisions. (Jasminka Biloš, lawyer, Croatia, Seventh Regional Forum on Transitional Justice, Working Group: “The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).

I think that RECOM must absolutely have it in its mandate to be able to indicate in the Final Report that an individual may have committed a war crime. Because if RECOM is only allowed to make a compilation of victims’ testimonies, the results of its work will be insignificant. (Ivan Jovanović, OSCE Mission to Serbia, Serbia, Seventh Regional Forum on Transitional Justice, Working Group: “The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).

2. In its Final Report, the Commission cannot indicate that an individual committed a criminal act of war crime or serious human rights violation if it failed to take all reasonable measures to:
 - (a) Inform that individual of its intention to publish the unfavourable finding;
 - (b) Present to that individual the content of the finding, information that led to the conclusion contained in the finding, and arguments on which the finding was based;
 - (c) Offer that individual the possibility to respond to the finding within a reasonable period of time.
3. With respect to cases processed in the presence of the accused by an international or domestic court, in its Final Report the Commission may recommend an appropriate sentence.

Part XII – MISCELLANEOUS

Article 46

Criminal Acts and Sanctions

1. Each individual proven to have:
 - (a) deliberately provided false information to the Commission, i.e. to an individual acting on the Commission's behalf;
 - (b) used threats, force, or promises of personal gain, with the purpose of coercing another individual to give false information or refuse to give information to the Commission;
 - (c) destroyed a document or a piece of physical evidence in order to prevent the Commission from conducting an investigation, or
 - (d) made public a piece of information the Commission received on condition of confidentiality (as stipulated in Article 35 of this Statute)

will be considered responsible for the commitment of a criminal act punishable under the law by a maximum one year prison sentence or by a fine up to EUR 5,000.

2. Sanctions described in point 1 of this Article will be applied to officials who refuse to respond to a request submitted by the Commission, i.e. to an individual acting on the Commission's behalf.
3. If an individual refuses to respond to the invitation of the Commission or refuses to give a statement to the Commission, provisions from Article 15, point 6 of this Statute will be applied.

Comments:

RECOM cannot anticipate penal sanctions for those who give false testimonies, but a bypass can be created between the international agreement signed between member states and the law of the state in question and forward the issue to the state judiciary, opening up a possibility to penalize untruthful witnesses. (Velija Murić, Montenegro Lawyers' Committee for Human Rights, Montenegro, Seventh Regional Forum on Transitional Justice, Working Group: "The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).

(...) there is absolutely no room for this in this act ... because we cannot define a criminal act. Criminal acts have already been defined by the law. (Velija Murić, Montenegro Lawyers' Committee for Human Rights, Montenegro, Seventh Regional Forum on Transitional Justice, Working Group: "The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).

I would incorporate the term "false testimony", in other words, I would raise this contract to the law level and I would definitely provide for a possibility to reach an agreement with perpetrators enabling them to enter a guilty plea (...) so that it is possible to (...) apply legal provisions of relevant laws of member states in situations such as court expertise, issuing subpoenas, etc. (Velija Murić, Montenegro Lawyers' Committee for Human Rights, Montenegro, Seventh Regional Forum on Transitional Justice, Working Group: "The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).

(...) the Statute of RECOM, as an international, inter-state agreement, should be allowed to give a definition of a new criminal act. (Ivan Jovanović, OSCE Mission to Serbia, Serbia, Seventh Regional Forum on Transitional Justice, Working Group: “The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).

Article 47

The Role of the Commission in the Criminal Prosecution of War Crimes Perpetrators

The Commission is authorized to make suggestions in the following situations:

- (a) if an individual seriously suspected to have committed a war crime or a serious human rights violation shares with the Commission information relevant to the disclosure of locations containing bodily remains of missing persons, or information relevant to identifying other war crimes perpetrators, the Commission may advise the trial chamber to consider it as an extenuating situation in determining a sentence in the case of criminal prosecution of that individual;
- (b) propose a partial pardon for a sentenced war crimes/serious human rights violation perpetrator who shares with the Commission information relevant to the disclosure of locations containing bodily remains of missing persons or information relevant to identifying other war crimes perpetrators, if it is not in contradiction with the legal provisions of that particular state; and
- (c) propose an extraordinary sentence reduction for a convicted perpetrator, if it is not in contradiction with the legal provisions of that particular state, if he/she shares with the Commission information relevant to the disclosure of locations containing bodily remains of missing persons or information relevant to identifying other war crimes perpetrators.

Comment:

*(...) I think that in point c) should read: “bodily remains of missing persons **and** information relevant” instead of “bodily remains of missing persons **and/or** information relevant”.* (Mirsad Dizdar, Association of Former Detention Camp Inmates, Jajce, BiH, Seventh Regional Forum on Transitional Justice, Working Group: “The Mandate of RECOM and its Authority with Respect to the Authority of National Judiciaries, Zagreb, Croatia, October 16, 2010).