

**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**



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## **Preamble**

### ***Member States of the Regional Commission,***

Fully aware of the fact that complex and traumatic events from the recent past of the nations living on the territory of the former Socialist Federal Republic of Yugoslavia (SFRJ), and especially the events from the last decade of the twentieth century and the very beginning of the twenty first century are often subject to manipulation;

Fully aware of the fact that conflicting historical records pertaining to the events from World War Two have been used to justify the new cycle of violence and that it is necessary to prevent the events from the 1990s to be used for the same purpose;

Reminding that the wars on the territory of the former SFRJ waged in the period 1991 - 2001 have been characterized by widespread heinous crimes and serious human rights violations;

Realizing that the trials held before the International Criminal Tribunal for the Former Yugoslavia (ICTY) and before national war crimes trial chambers, although contributing significantly to punishing war crimes perpetrators, do not fully satisfy victims' need for justice and are insufficient for the creation of conditions necessary for achieving a lasting peace in the region;

Recognizing that a regional initiative, which advocates open dialogue, investigation, and analysis of the facts, is the most efficient way to achieve a comprehensive historical record of the crimes committed in the period 1991-2001 and the role that national elites, institutions, and individuals played in those traumatic events;

Expressing sympathy with innocent victims from all national communities living on the territory of the former SFRJ, and standing up to the manipulation of victims for political and other purposes;

Determined to help to the best of their ability to establish the fate of a large number of individuals who are still missing;

Determined to jointly contribute to the process of dealing with the past by helping their citizens accept the facts about war crimes and other serious human rights violations committed against all victims and by helping restore confidence between individuals, nations, and states in the region;

In order to enforce democracy, the rule of law, and a culture of respect for human rights;

### ***Pronounce***

***the Establishment of the Regional Commission Tasked with Establishing the Facts about All Victims of War Crimes and Other Serious Human Rights Violations Committed on the Territory of the Former Yugoslavia in the period from 1991-2001.***

## Comment:

*Just a few words with respect to the **time period of the duration of the mandate of RECOM** – I want to point out certain **inconsistencies**: in the preamble it is stated that the time period which will be investigated by RECOM is “the period from 1991 until 2001”. Maybe it is a mistake in the Macedonian translation of the Draft Statute – maybe it should not say “until”, because that excludes the year 2001. (Margarita Nikolovska, Human Rights Institute, Skoplje, Macedonia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).*

## PART I - EXPLANATION OF TERMS USED IN THIS STATUTE

### Article 1

#### *Explanation for Terms in this Statute*

“**member of the Commission**” is any person elected by the head of the member state in an election procedure stipulated in Part VII of the Statute;

“**Commission**” is the Regional Commission Tasked with Establishing the Facts about All Victims of War Crimes and Other Serious Human Rights Violations Committed on the Territory of the Former Yugoslavia in the period from 1991-2001(RECOM);

“**Minister for Human Rights**” implies this function in a state where such a position exists and in other states implies the Justice Minister or Minister for Communities and Returns;

“**war or other forms of armed conflict**” implies the use of armed forces between states or a prolonged armed violence between governments and organized armed groups, i.e. between organized armed groups within one state;

“**war crime**” implies the meaning of the term “war crime” as defined in international humanitarian law, genocide, and crimes against humanity;

“**parliamentary body in charge of human and minority rights**” implies, depending on the name in different member states, parliamentary committees or commissions in charge of human and minority rights;

“**Socialist Federal Republic of Yugoslavia (SFRJ)**” is the state that was comprised of six republics: Bosnia and Herzegovina, Montenegro, Croatia, Macedonia, Slovenia, and Serbia; and two autonomous provinces – Kosovo and Vojvodina. It officially existed from November 29, 1943 until it *de facto* fell apart in 1991 during the armed conflict in Slovenia and Croatia, changing its name several times in the meantime;

“**serious human rights violations**” include: murder, enslavement, illegal detention, torture, forced disappearance, deportation and forced relocation of populations, and other human rights violations listed in international human rights treaties and other international human rights acts signed by all member states and deemed by the Commission to be “serious human rights violations”;

“**perpetrator**” is a person who committed a criminal act of war crimes, crimes against humanity, the crime of genocide, or any other crime that constitutes a serious human right violation and it refers to perpetrators, co-perpetrators, and accomplices in the criminal act;

“**victims**” *are persons who individually or collectively suffered damages, including physical and mental damages, emotional suffering, economic loss, or a significant limitation of their basic human rights through acts or failures to act which represent a serious violation of internationally recognized human rights standards or serious violations of international humanitarian law. When it is appropriate and when in it is in compliance with domestic laws,*

*the term “victim” also includes members of the immediate family of a victim or persons who were a victim’s dependant at the time of the event.*

## **PART II – GENERAL PROVISIONS**

### **Article 2**

#### *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.
2. The abbreviated name of this commission is RECOM.

#### **Comment:**

*What languages are going to be the official languages of the Commission? If all of the languages we have mentioned here are going to be the official languages of the Commission, I think we may have a problem, because these languages don’t necessarily have the same meaning for certain concepts. For that reason, I think it is best to include English as a neutral language, as an additional language that can help us avoid possible misunderstandings.* (Docent Dr. Milan Brglez, Faculty of Social Sciences, University of Ljubljana, Slovenia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*If it is going to be an international organization, where is the Assembly of Member States?* (Docent Dr. Milan Brglez, Faculty of Social Sciences, University of Ljubljana, Slovenia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*It is very precisely stated here that RECOM is “an international organization founded by this legal act”. Having in mind the existing international legal standards on the establishment of international organizations, you must know that **such an international organization cannot be established by a statute** (...) I think that this formulation must be removed and maybe included in the **international agreement**, which would be the founding legal act for RECOM.* (Ibro Bulić, Office of the War Crimes Prosecutor of Bosnia and Herzegovina, BiH, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*(...) the original text should be written in English, as is the case with most international agreements.* (Margarita Nikolovska, Human Rights Institute, Skoplje, Macedonia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*The question here is whether an international organization can be founded by such an act? Secondly, if it is founded, who underwrites this legal act, having in mind the fact that a number of states appear as founders? So, in my opinion, the entire founding process should be at least **ratified by national parliaments**.* (Margarita Nikolovska, Human Rights Institute, Skoplje, Macedonia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*(...) it is possible to use a statute for the establishment of an international organization such as, let's say, the Charter of the United Nations or the Rome Statute of the International Criminal Court.* (Docent Dr. Milan Brglez, Faculty of Social Sciences, University of Ljubljana, Slovenia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*Why can't we establish a sui generis international organization - something similar to Interpol? I think that national movements for RECOM, in cooperation with the executive branches of their governments, should establish this kind of an international commission. Such a commission then makes agreement with all member states and is allowed to operate on the territory of all of those states.* (Docent Dr. Milan Brglez, Faculty of Social Sciences, University of Ljubljana, Slovenia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

### **Article 3**

#### *Symbol and Logotype*

RECOM decides on its own visual identity, including its symbol, logotype, and seal.

### **Article 4**

#### *Main Office and Executive Secretariat*

1. RECOM's Main Office is in Sarajevo, Bosnia and Herzegovina.
2. Support for the work of the Commission's members is provided by the Executive Secretariat, which is located at RECOM's Main Office.

### **Article 5**

#### *Legal Status*

1. The Commission is a legal subject.
2. The Commission adopts Rules of Procedure and Codes of Procedure regulating the operation of the organization and the implementation of its assignments in compliance with this Statute.
3. The Commission will conclude a separate agreement with the Government of Bosnia and Herzegovina – the host state.

### **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.

## **Article 7**

### *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:**

*I think that it would be a good idea to give more information regarding **when, in what cases and what exactly can be the reasons for the commission to be represented by someone other than the Chairperson of the Commission, as well as who makes that decision and how.*** (Amir Kulagić, the Coordination Council of the Coalition for RECOM, BiH, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

## **Article 8**

### *The Use of Language*

1. The Commission will equally use Albanian, Bosnian, Croatian, Macedonian, Montenegrin, Slovenian, and Serbian languages as well as the Latin and Cyrillic alphabets.
2. The use of language and alphabet by the Commission will be further regulated by the Rules of Procedure, while demonstrating regard for the principle of efficiency and prudence.
3. In communication with the Commission each individual/organization can use their preferred language and alphabet.
4. During public hearings participants will use their own language.
5. In the Commission's offices in member states, the official language will be the language of that member state.

## **Article 9**

### *The Right to Contribute to the Work of the Commission*

Each person, in compliance with the Statute of the Commission, has the right to make a contribution to the work of the Commission if such participation is deemed by the Commission to be contributing to the achievement of goals of the Commission.

## **Article 10**

### *Principles of the Work of the Commission*



Members and personnel of the Commission are required to apply the following values and principles in their work:

- (a) Respect for human dignity;
- (b) Independence and impartiality;
- (c) Dedication to truth;
- (d) Respect for human rights and freedoms and nurturing of the principle of equality;
- (e) Responsibility, accessibility, and openness;
- (f) Careful investigation of the facts and use of fair procedure;
- (g) Integrity, determination, and upholding of the highest standards of professional ethics;
- (h) Special care in providing protection for victims of sexual abuse as well as persons who were underage during the period investigated by the Commission;
- (i) Protection of confidentiality.

**Comment:**

*(...) for me personally, **this is not a principle, for me this can only represent a goal or an assignment of the Commission.*** (Margarita Nikolovska, Human Rights Institute, Skoplje, Macedonia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

## **PART III – MANDATORY COOPERATION OF STATES WITH THE COMMISSION**

### **Article 11**

#### *Mandatory Cooperation of States with the Commission*

1. All 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 requests to take statements from representatives of state institutions and conduct field investigations, unless it violates the law on protection of classified information of the member state in question. 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 classified or secret.
3. If a member state believes that disclosure of a document or a piece of information requested by the Commission violates the law on protection of classified information, all reasonable measures will be taken to overcome the situation by a joint effort on behalf 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) 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 the application of other confidentiality and protection measures.

**Comment:**

*Information and documents never have any goals. Information and documents are what they are and they can be used to cover up certain events and so on. So, it requires a different formulation.* (Miroslav Alimpić, High Court in Novi Sad, Serbia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 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;
- (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.

**Comment:**

*Let's establish the facts, and the truth about the beginning of the war and about the consequences should be left to some other commission to establish, a commission of historians or philosophers, or someone else.* (Dr. Zdravko Grebo, the Faculty of Law of the University in Sarajevo, BiH, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*I think that the term "elite" is inappropriate, and I think instead of "political elites" we should use "political leadership".* (Branislav Radulović, Association of Law Professionals of Montenegro, Montenegro, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*My suggestion here would be that this sentence should read: "To help make the societies in the member states accept the facts about war crimes and human rights violations", without the term "political elites". I think that by giving them too much importance, we simply put them in a position to continue making decisions about our lives, while we continue to play the role of bystanders.* (Siniša Štimac, lawyer, Croatia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

(...) someone has already mentioned political elites. I also don't like that phrase and I think that a much **better phrase** is the one used in the preamble of the Draft Statute: **“national elites”**. Maybe even **“political structures”**... (Miroslav Alimpić, High Court in Novi Sad, Serbia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

(...) *the word “destiny” should be used in its plural form.* (Branislav Radulović, Association of Law Professionals of Montenegro, Montenegro, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*This is intended for a general public and I think it should read: “**acknowledge injustices inflicted upon victims in order to build strategies for developing a sense of compassion and solidarity with victims**”.* (Branislav Radulović, Association of Law Professionals of Montenegro, Montenegro, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

... *“to acknowledge injustices” – this will happen automatically once the commission establishes the facts – because point a) of this Article reads: “to establish the facts”. And what will we gain by establishing the facts and who do we think of when we say “to acknowledge injustices”? Does the commission itself establish that, or should all those who suffered injustices or caused injustices come forward and present their case or admit that they inflicted an injustice, so that we can proceed to build a culture of solidarity and compassion?.* (Margarita Nikolovska, Human Rights Institute, Skoplje, Macedonia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

(...) *when we start establishing circumstances and causes, then what would be a good idea, a goal in a positive sense – would be the support, or the reinforcement, of peace and of course the dignity and the respect of human rights.* (Ivo Grga, lawyer, Croatia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

... *about the goals of the commission (...) we say – “to help clarify the fate of the missing” – it only focuses on one element, and we have other elements, as well, some of which are, as I have mentioned already, forced displacement, and so on. So, we will either focus on listing all kinds of injustices or we should find a general term to depict various forms of suffering.* (Margarita Nikolovska, Human Rights Institute, Skoplje, Macedonia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

## **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;
- (d) 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.

**Comment:**

*(...) I would like the commission **only to focus on war crimes**, and the fact is that war crimes are the most serious form of human rights violation.* (Ibro Bulić, Office of the War Crimes Prosecutor of Bosnia and Herzegovina, BiH, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*(...) “to demonstrate patterns of human rights violations” – I am afraid that in the Macedonian language it does not mean anything (...) it even opens up the possibility to interpret it as “arbitrary”.* (Margarita Nikolovska, Human Rights Institute, Skoplje, Macedonia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*“...to compile a register of human losses” – I don’t think it is an appropriate term. To make a register of the losses, without personalizing each victim, seems inhuman to me and it certainly isn’t why victims and victims’ families want such a mechanism (...) For that reason I would like to replace this with the word “review” but to have in mind that we want all victims to be **individually identified**.* (Amir Kulaglič, the Coordination Council of the Coalition for RECOM, BiH, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*I just wanted to make one intervention here, a style intervention that has more psychological than legal meaning. In Article 13, point c), “the civilians who lost their lives” – I think a more appropriate phrasing would be, when speaking about the victims – “**the civilians who were killed or executed**”.* (Robert Adrić, the County Court in Osijek, Victim/Witness Counselling Department, Croatia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*Point c) of the same Article, “to collect information on all detention locations” – I am talking about the Macedonian language again, when it is put like this, it does not really mean anything, we need to say **who was detained**. We need to point to the individuals who were victims of illegal detention, that’s the bottom line.* (Margarita Nikolovska, Human Rights Institute, Skoplje, Macedonia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*(...) we have to consider **Option A** more carefully, and we must not be so strict in setting the year 1980 as the starting year of the investigation, because it is still unclear what criteria we have used in determining the limitations of the period to be investigated.* (Branislav Radulović, Association of Law Professionals of Montenegro, Montenegro, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*(...) I am personally in favour of a broader approach – **to deal with specific causes without any time limitations**.* (Docent Dr. Milan Brglez, Faculty of Social Sciences, University of Ljubljana, Slovenia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*(...) I would like to vote for **Option A**. In order to better understand why such terrible things happened in this region, we must look at the historic, societal, and political aspects, and I think that imposing limitations in the period of interest is wrong because it significantly narrows down the space for investigation.* (Amir Kulaglič, the Coordination Council of the Coalition for RECOM, BiH, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*I also support **Option A**, but I would like to say that I think we should start with a few years before 1991, but no earlier than 1980.* (Nikola Bešenski, the County Court in Vukovar, Croatia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*(...) this is a very ambitious idea, to explore all the political, societal and other circumstances that directly led to the armed conflict. That is basically the same as establishing the causes of the war. It’s an assignment that was given to various institutions and **I am not sure if the commission should be tasked with such a serious assignment**. Also, I am not sure I understand what it means only to explore those circumstances. Maybe the commission will be able to establish or rather identify the political and societal circumstances, and some other institution will then deal with it in an analytical way.* (Miroslav Alimpić, High Court in Novi Sad, Serbia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*I think a much better idea would be to divide it into **two separate points**, and then to re-write it to read: **point one should read: “to recommend measures to be taken with respect to the repetition of human rights violations”, and point two should read: “to recommend measures to be taken in providing reparations for the victims of war crimes”**. I think that these two institutes should be separated.* (Branislav Radulović, Association of Law Professionals of Montenegro, Montenegro, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

(...) “reparations for the victims” should be a separate point, even before point g). (Nikola Bešenski, the County Court in Vukovar, Croatia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

## PART V – COMPETENCIES OF THE COMMISSION

### Article 14

#### *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:

*Article 14, paragraph 1) – just briefly – is integrally contained in Article 12, point a) and those offered alternatives, options are also integrally contained in Article 13, point e), and it is quite redundant to have them in two places.* (Branislav Radulović, Association of Law Professionals of Montenegro, Montenegro, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*Personally,, I would like to give my support to **Option A**, because it does not merely depict the minute before the first gun was fired in this region.* (Zlatko Kulenović, the Supreme Court of Republika Srpska, BiH, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*(...) I personally think that **Option A** is more comprehensive because it gives an opportunity for a more extensive and at the same time specific understanding of events.* (Margarita Nikolovska, Human Rights Institute, Skoplje, Macedonia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*(...) **Option B** is much clearer.* (Xhevdet Elshani, the District Court in Prizren, Kosovo, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

### Article 15

#### *Competencies of the Commission*

[OPTION A: The Commission establishes the facts concerning crimes against humanity and against international humanitarian law, as well as the facts concerning other forms of serious human rights violations.]

[OPTION B: War crimes and other serious human rights violations investigated by the Commission include but are not limited to:

- (a) Genocide;
- (b) Persecution;
- (c) Murder;
- (d) Enslavement;
- (e) Illegal Detention;
- (f) Torture;
- (g) Forced Disappearance;
- (h) Deportation and Forceful Dislocation of Civilian Population;
- (i) Rape and Other Forms of Serious Sexual Abuse;
- (j) Confiscation and Large Scale Property Destruction;
- (k) Hostage Taking;
- (l) Destruction of Religious and Cultural-Historical Monuments;
- (m) Use of Civilians and Prisoners of War as “Human Shield”;

The commission is mandated to investigate facts concerning crimes against humanity and international humanitarian law, as well as the facts concerning other forms of serious human rights violations.

**Comment:**

***When speaking about persecution (...) I would ask you to add persecution out of the country.*** (Sabit Maliqi, lawyer, Kosovo, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*There is an inconsistency in establishing the competencies of the commission. It is either war crimes and serious human rights violations or crimes against humanity and international humanitarian law. So it should be entered very consistently in all places where necessary. It seems to me that from a legal point of view it is a much better idea to use the previously accepted term **crimes against humanity and international humanitarian law**. The reason being, it encompasses a broader aspect, because this second option, Option B, enumerates a dozen criminal acts but it is not limited to them – there can be 15 or more. So it seems to me that Option A is a much better solution for this.* (Miroslav Alimpić, High Court in Novi Sad, Serbia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*(...) I am not so much in favour of individual enumeration as stipulated in Option B, because I can immediately detect that some criminal acts, some crimes against humanity and the [international] humanitarian law have been omitted, and it is very important for the very idea of RECOM to encompass all crimes against humanity and humanitarian law. I think that this wording, **Option A, depicts all forms of war crimes in their entirety.*** (Ibro Bulić, Office of the

War Crimes Prosecutor of Bosnia and Herzegovina, BiH, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*Article 15, paragraph 1, does not mention war crimes at all. It is not there, it is not even mentioned in the section speaking about consequences, and in paragraph 2 there is a definition that is clearly not a legal definition – “war crimes and other serious human rights violations the commission is dealing with include but are not limited “. (...) This commission is an organ that must have a precise specification of its competencies and this article must be re-written.* (Branislav Radulović, Association of Law Professionals of Montenegro, Montenegro, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

Mr. Bulić told us that Option B does not list all the crimes that can be considered under international humanitarian law. I personally would like to **keep Option B, but to edit it to include all other crimes that can be considered crimes against humanity and serious human rights violations.** (Amir Kulaglič, the Coordination Council of the Coalition for RECOM, BiH, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*(...) Option A presents all kinds of possibilities.* (Nikola Bešenski, the County Court in Vukovar, Croatia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*(...) I suggest that in Article 15 we stick to **Option B, which lists all criminal acts that are listed as the competency of the commission, and that this article also keeps violations of human rights, and not only war crimes. Also, in addition to this, in our opinion the definition of human rights should include the following words: “a systematic, arbitrary, or illegal deprivation of citizenship or denying individuals access to citizenship, or preventing individuals to exercise their right to permanent residency.*** (Neža Kogovšek, Peace Institute, Slovenia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*(...) I think that this other combination, although seemingly more precise, is a lot more unspecified than the first one. However, I would like to go on and **make a change in the first one.** It reads that the commission establishes the facts related to – **and we should add here: “all crimes against humanity and international humanitarian law”, period.** The rest is redundant, in my opinion, of course, unless our intention is to go into all imaginable forms of human rights violations, including the rights of people who lost their savings in the banks.* (Munib Halilović, Office of the Prosecutor of Bosnia and Herzegovina, BiH, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*(...) I think that **Option A is more comprehensive and I think we should go with that.*** (Mira Smajlović, the Court of Bosnia and Herzegovina, BiH, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*(...) as for Article 15, I can see that there are many opinions here. For that reason I have made a compilation (...) “the commission establishes the facts with respect to crimes against humanity and humanitarian law as well as the facts concerning other serious human rights violations”*



***and now I would add: “but not limited to” and then I would list all these crimes.*** (Margarita Nikolovska, Human Rights Institute, Skoplje, Macedonia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 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, 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. 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 invites witnesses from point 1 of this Article to testify in accordance with the Criminal Procedure Law of the member state(s) in which the individual resides. As proposed 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 the individual, 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 private individuals to testify and in securing their presence.
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.

**Comment:**

Please note, “Each person invited to testify before the Commission must give a statement to the Commission”. **Can we really use the Statute to establish the rights and obligations of certain individuals? If we suppose that we can do it, I think it is very difficult. What is the legal sanction if they don’t abide by them? We know the answer to this question when it comes to classified information, but what do we do if a person simply does not want to testify and his or her knowledge is not considered classified information?** (Branislav Radulović, Association of Law Professionals of Montenegro, Montenegro, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

If we try to influence witnesses to testify one way or another, to testify about certain events, it will be a little bit more difficult to do, because a witness is under no obligation to answer any questions. This article says: “Each person invited to testify before the Commission must give a statement to the Commission” – please, be realistic, **this is even more strict in its demands than any criminal code I know of (...) I think we need to focus more on motivating individuals to come forward voluntarily and testify before the commission. We should either eliminate the idea of legal sanction or reduce it to an acceptable form.** (Miroslav Alimpić, High Court in Novi Sad, Serbia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

In criminal proceedings, where you have mechanisms in place to bring an unwilling witness to the stand, it often happens that you don’t get any valuable information at all. Not only in war crimes trials, but generally, an unwilling witness does not do you any good in the courtroom (...) **we should focus more on the principle of voluntarism.** (Nikola Bešenski, the County Court in Vukovar, Croatia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

**RECOM should not resort to using any sort of force. The government can use force through the judiciary, and the point is that RECOM needs to do the things judiciary is unable to do. That can only be achieved by adhering to the principle of voluntarism, sincerity, and field work (...)** for that reason, I urge you to remove any notion of using force from the Statute. Please understand that a person’s experience when court-subpoenaed is not the same as when invited to testify by a non-governmental organization or a victim organization. **If proper field work is conducted, individuals from that area will be more willing to cooperate.** (Mira Smajlović, the Court in BiH, BiH, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

Article 16, paragraph 6 is **in contradiction with**, if not all other criminal procedure codes, **then at least with the Criminal Procedure Code applicable on the territory of Bosnia and Herzegovina.** (Daniela Milovanović, the District Court in Banja Luka, BiH, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

(...) the problem occurring when inviting individuals to testify, with repressive measures if an individual refuses to testify, will have to be solved most probably **by signing a memorandum between RECOM and the State-Attorney’s office in each member state. They will then**

*incorporate those memorandums in their existing statutes and allow RECOM to act accordingly. I think that is the only way to overcome this situation.* (Željko Horvatić, the County Court in Zagreb, Croatia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*Article 16, with respect to the role of courts, I think this can't fly. In Bosnia and Herzegovina it would be the Court of Bosnia and Herzegovina. You cannot even think about making the highest court in the country act as a service for a commission.* That simply can't happen. (Munib Halilović, Office of the Prosecutor of Bosnia and Herzegovina, BiH, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*(...) the commission cannot authorize the court to do something. The court can only be authorized by the law.* (Margarita Nikolovska, Human Rights Institute, Skoplje, Macedonia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*This is now going even deeper (...:) the question now is what kind of criminal procedure codes exist in those third countries. Is Article 16, paragraph 6, going to be applicable in that situation?* (Daniela Milovanović, the District Court in Banja Luka, BiH, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*(...) I think we should add this sentence – “in cases like this, the commission will address the request to the Ministry of Justice in that particular member state to designate a court which will be competent in ruling on our request, but only in cases when it is impossible to reach an agreement with the Embassy of that particular member states in other member states”.* (Sabit Maliqi, lawyer, Kosovo, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

## **Article 17**

### *Collecting Documentation and Other Sources of Information*

1. The Commission collects relevant printed, electronic, and other material sources such as:
  - (a) Documentation from international and domestic institutions and organizations collected for the purpose of documenting war crimes, disclosing perpetrators, clarifying the fate of the missing, or for any other purposes;
  - (b) Foreign and domestic printed documents and electronic sources (including, but not limited to documentation owned by governments, parliaments, presidencies, local and territorial self-governments, public and privately owned companies, the army, police, and security services);
  - (c) Court decisions, transcripts, court documents, and documents of the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia (ICTY), national courts, offices of prosecutors in member states, and other courts that have processed war crimes committed on the territory of the former Yugoslavia based on universal jurisdiction;
  - (d) Other archive materials;
  - (e) Print and electronic media sources;

- (f) Photo, video, and audio recordings;
  - (g) Other sources relevant to the subject of the investigation;
  - (h) Written opinions of experts and representatives of institutions and organizations, prepared following invitation by the Commission, or at the initiative of the authors.
2. In case a person or state organ refuses to submit requested documentation to the Commission, invoking their legal right to protect confidential information, provisions contained in Article 11, point 3 and 4 of this Statute, will be applied.

**Comment:**

*“The Commission collects relevant printed, electronic, and other material sources” – well, all the other ones are material sources, too. We should not say “electronic, printed, and material”, because they are all material sources.* (Branislav Radulović, Association of Law Professionals of Montenegro, Montenegro, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

**Article 18**

*Field Investigations and Visits to Crime Locations*

1. The Commission establishes relevant facts by visiting 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.
2. The Commission can sign memorandums of understanding with competent state organs concerning visits to said locations.
3. The Commission can visit crime locations and mass graves locations in order to pay respects to victims.

**Article 19**

*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 the psychological and physical integrity of individuals.
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:**

*Why: “the suffering of their family members”? Why can’t victims talk about other victims who are not their family members if they have information on the suffering of that individual? There are many people who shared the same suffering and who were not related at all.* (Branislav Radulović, Association of Law Professionals of Montenegro, Montenegro, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*(...) the state cannot order a public service TV station what live coverage to air.* (Branislav Radulović, Association of Law Professionals of Montenegro, Montenegro, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

**Article 20**

*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.

**Article 21**

*Rules of Procedure of the Commission*

The Commission adopts various Rules of Procedure in order to regulate a unique methodology for:

- (a) Taking depositions;
- (b) Collecting documentation;
- (c) Regulating public hearing procedures;
- (d) Regulating themed sessions;
- (e) Other issues relevant to the work of the Commission;

**Comment:**

*After paragraph d), I would like to add “regulating themed sessions” and I would like to add another point, point e) – to compile Rules of Procedure regulating the compilation of the register of human losses.* (Amir Kulaglič, the Coordination Council of the Coalition for RECOM, BiH, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

## **PART VII – ELECTION PROCEDURE OF MEMBERS OF THE COMMISSION**

### **Article 22**

#### *Composition of the Commission*

The Commission has 20 (twenty) members:

- (a) Five members are elected in Bosnia and Herzegovina;
- (b) Three members are elected in Croatia, in Serbia, and in Kosovo;
- (c) Two members are elected in Montenegro, in Macedonia, and in Slovenia.

### **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 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;
  - (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.

#### **Article 24**

##### *Application of the Same Election Criteria in all Countries for Members of the Commission*

Each member state will elect members of the Commission in an identical procedure stipulated by this Statute.

#### **Article 25**

##### *Nomination of Prospective Candidates for the Commission*

1. Associations of citizens, educational institutions, scientific institutions, religious communities, unions, or groups of at least 30 citizens from each member state can nominate a candidate as member of the Commission upon obtaining the approval of the prospective candidate.
2. The nomination procedure and the primary screening of candidates in member states is conducted by the Election Panel of each member state.

#### **Article 26**

##### *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 politicians, public officials, or individuals who held such positions during the period which is subject to Commission's investigation.
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 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.
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. Six previously appointed, i.e. 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, who are appointed and 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 at least one third of members of the Panel are representatives of victims' associations, including victims' associations outside of the Coalition for RECOM as long as they 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 27**

### *Election of Candidates Nominated by Election Panels for Membership on the Commission*

1. No later than eight (8) days after the Constitutional Session, the Election Panel of each member state 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 and as identified in Article 26 point 3, the Election Panel will publish the following information:
  - (a) The total number of applications received;
  - (b) The list of the names of candidates whose applications were dismissed as incomplete (i.e., did not contain all required information as stipulated in Article 23 of this Statute);
  - (c) The list of the 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 the requested information.
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 which is 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 of the short list..

## **Article 28**

### *Election of Members of the Commission by the Head of State / Presidency of Member States*



1. Heads of state or the Presidency of member states make the final decision on the members of the Commission to be elected in that member state from the shortlist that was submitted to them by the Election Panel.
2. Heads of state or the Presidency of member states inform each other about their choices on the thirtieth day from the day they received the short lists of candidates from the Election Panels, and they will inform each other before informing the public about their decisions.
3. Heads of state or the Presidency of member states publicly announce the names of the members of the Commission on the fifteenth day from the day all member state parties, as determined in point 2 of this Article, are informed thereof.

## **Article 29**

### *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 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."

## **Article 30**

### *Election of the Chairperson and Adoption of Rules of Procedure*

1. Members of the Commission elect the Chairperson and adopt the Rules of Procedure regulating the work of the Commission no later than 60 (sixty) days after the day of the Constitutional Session.
2. Members of the Commission can decide to limit the position of the Chairperson to a particular time period.

## **Article 31**

### *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.
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.

## **Article 32**

### *Termination of the Mandate of Members of the Commission*

1. The mandate of members of the Commission expires upon the termination of the Commission's mandate and in the following cases:
  - (a) When a member submits a written resignation;
  - (b) In the case of death;
  - (c) In the case of commencement of a legally binding decision limiting or prohibiting the member's business ability;
  - (d) In the case of commencement of a legally binding unconditional prison sentence, and
  - (e) Under a decision to expel a member of the Commission.
2. The Commission notes the expiration of the mandate of a member of the Commission in cases listed in paragraph 1, points (a), (b), (c), and (d) of this Article and informs the Head of State or the Presidency of the Member State in question about it. The Head of State or the Presidency of the Member State shall within 15 days elect a new member from the short list adopted by the Election Panel during the initial election procedure of the Commission's members.
3. Members of the Commission can be relieved of their duty in the case of a failure to fulfil the duties set forth in Article 34 and Article 36, or in the case of the commencement of a legally binding sentence for a criminal act which is detrimental to the integrity and credibility of the member of the Commission.
4. The Commission makes a decision to relieve of duty a member of the Commission without the presence of that member and submits a motion to the Head of State or the Presidency of the member state in question. Before the motion to relieve of duty a member of the Commission, that member will be informed about all evidence corroborating the offence, and the member will be given an opportunity to present evidence in his or her defence.
5. No later than 15 days after the motion has been submitted the Head of State or the Presidency of the Member State makes a decision on whether the member is going to be relieved of duty, and if so, elects a new member from the short list adopted by the Election Panel during the initial election procedure of the Commission's members.

## **Article 33**

### *Temporary Suspension of the Mandate of Members of the Commission*

If a member of the Commission is being investigated on suspicion of conducting a criminal act detrimental to the integrity and credibility of the Commission, if the Commission learns about other circumstances seriously damaging the integrity and credibility of the Commission, or if the member of the Commission is unable to perform his or her duties because of their mental, emotional, or physical condition, the Commission may decide to temporarily suspend that member until the Commission establishes the validity of such allegations or until the condition disappears.

## **Part VIII – RIGHTS AND OBLIGATIONS OF RECOM MEMBERS AND PERSONNEL**

### **Article 34**

#### *The Conscientiousness, Independence, and Impartiality of the Members of the Commission*

1. Members and all other employees of the Commission have an obligation to act in accordance with provisions of this Statute, and other acts adopted by the Commission, and perform their duty in a conscientious and impartial manner, acting independently from interests of any political party, government, government institution, interest group, or individual.
2. Members and other employees of the Commission are not allowed to perform any other activity which may prevent them from performing their duties on the Commission or threaten their independence and impartiality. Members and other employees of the Commission have an obligation to report to the Commission any existing or potential conflicts of interest.
3. If the Commission finds that a member or an employee of the Commission has a conflict of interest, the Commission will motion for the exemption of that member in deciding on issues concerning the conflict of interest or will undertake measures for the termination of the mandate of that member or employee or for his or her temporary suspension.
4. If the Commission is not informed in a timely manner about the circumstances that may point to the conflict of interest of a member or an employee of the Commission, and if that individual participated in the decision-making process or executed other activities pertaining to the issue involving the conflict of interest, the Commission will, as soon as it becomes aware of the existence of such a conflict of interest, order a repeated vote on that issue without the presence of that individual.

### **Article 35**

#### *Benefits and Immunity for the Commission*

1. In order to preserve the independence of the Commission and to ensure its uninterrupted operation, during their mandate members and employees of the Commission shall enjoy the following benefits and immunities:
  - (a) Immunity from detention and confiscation of personal luggage;
  - (b) Immunity from all sorts of legal proceedings with respect to their stated opinions and activities made in good faith, within the scope of their duty;
  - (c) Exemption from any limitation to move freely for the purpose of conducting the work for the Commission to and from the state in which the member conducts his/her duty.
2. Immunity as stipulated in point 1. (b) of this Article [OPTION B: with respect to their stated opinion] remains the privilege of the member of the Commission even after his/her mandate with the Commission is terminated or after the engagement with the Commission is complete.

3. The Commission has an obligation to cancel immunity for members and/or employees of the Commission if it is in any way obstructing the justice and compromising the confidence of the public in the Commission.

**Comment:**

*Immunity from detention is not an absolute right. I am wondering what happens in the case of a member of RECOM caught performing a criminal act.* (Margarita Nikolovska, Human Rights Institute, Skoplje, Macedonia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

**Article 36**

*Protection of Sources and Confidential Information*

Members of the Commission, as well as all employees of the Commission, have an obligation to protect the confidentiality of all information they come across while performing their duties with the Commission and they are not allowed to use this information for personal reasons until the Commission releases such information in the form of an official press release. This obligation does not refer to common-knowledge facts.

**Article 37**

*Status of Members and Employees of the Commission*

1. Members and other employees of the Commission are engaged on a full time basis.
2. The payment of wages and compensation to members and employees of the Commission is regulated by the Financial Rules of Procedure of the Commission.

## **Part IX – STRUCTURE OF THE COMMISSION**

**Article 38**

*Executive Secretariat and Themed Departments of the Commission*

1. The Commission establishes its Main Office, i.e. the Executive Secretariat, whose primary task will be to offer technical, administrative, and operational support to members of the Commission and to coordinate the work of the Commission between the different offices and themed departments established by the Commission.
2. The Commission appoints the Executive Secretary and heads of the themed departments and decides on the termination of their mandates.
3. Employees and associates in the Executive Secretariat and themed departments of the Commission are hired regardless of their citizenship.

## **Article 39**

### *Offices of the Commission in Member States*

1. The Commission establishes offices in member states and appoints and fires their leaders as suggested by the Executive Secretariat.
2. Offices in member states have the right to establish, based on an agreement with the Executive Secretary, mobile investigative teams and local offices in other towns on the territory of that member state and to appoint leaders of these mobile investigative teams and local offices.
3. As suggested by the Executive Secretary, the Commission will be allowed to establish a mobile investigative team which will be authorized to collect information in any member state.
4. Employees and associates in the offices of the Commission in member states and in mobile investigative teams are engaged regardless of their citizenship.

## **Article 40**

### *Archives of the Commission*

1. The Executive Secretariat establishes the Archiving and Database Department of the Commission, which will define the archiving and digitalization methodology for collected documents.
2. After defining the archiving and digitalization methodology, as stipulated in point 1 of this Article, the Archiving and Database Department of the Commission will, no later than six months after it has been established, become the Archives and Database of the Commission, and will be tasked with archiving and digitalizing all collected documentation.
3. Each member state office has an obligation to establish its own archive and database department tasked with archiving and digitalizing all collected documents. These departments will, no later than six months after they have been established, become the Archives and Databases of the member state office.
4. The Archives and Database of the Commission in Sarajevo will be integrated with the Archives and Database departments in member states no later than three months prior to the expiration of the mandate of the Commission.
5. No later than 15 days after the expiration of its mandate, the Commission will submit to the state archives of each member states and/or to institutions with proper archiving capacity copies of the integrated archived materials and databases.
6. Upon the expiration of the mandate of the Commission the archive material and the database material of the Commission will be available without limitation to all interested institutions and individuals, except for that documentation which is classified.

## **Part X – FINANCING OF THE COMMISSION**

### **Article 41**

#### *Financing of the Commission*

1. The commission will be financed by funds provided by member states and by donations.
2. Funds provided by member states will come from annual budgetary contributions for the duration of the Commission's mandate.
3. Donations will be received from various sources, i.e. from international organizations and domestic legal subjects.

### **Article 42**

#### *Financial Reporting*

1. In compliance with financial Codes of Procedure, the Executive Secretariat will prepare annual financial reports on the implementation of the basic budget.
2. In compliance with financial Codes of Procedure and in accordance with the specific requests of donors, the Executive Secretariat will prepare reports on the use of donated funds.
3. An independent auditor conducts an independent annual audit of the use of basic budget funds and contributions received from member states and other donors. Following a specific procedure, and along with the comments made by the Commission, the Final Audit Report will be made public.
4. The reports from points 1 and 2 of this Article will be subject to revision by an independent auditor.

## **Part XI – FINAL REPORT OF THE COMMISSION**

### **Article 43**

#### *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.

## Article 44

### *Contents of the Final Report*

1. The Final Report includes an introduction, relevant facts about war crimes and serious human rights abuses, the register of human losses, a list of missing persons, a list of detention locations, and recommendations.
2. Recommendations refer to but are not limited to:
  - (a) Further steps to be taken by member states in view of advancing confidence among the states and communities on the territory of the former Yugoslavia;
  - (b) Appropriate forms of financial and symbolic reparations, proposed institutional reform models, and mechanisms which will help integrate the established facts into educational systems of member states;
  - (c) Ways to monitor the implementation of recommendations of the Commission, which may include a proposal to form a separate mechanism for that purpose.

## Article 45

### *Findings on Perpetrators*

1. The Commission is mandated to indicate in its Final Report, which is based on the established facts, whether an individual committed a war crime or a serious human rights violation. Such a finding will have no court decision effect nor will it prejudice a court ruling if that individual is criminally prosecuted.
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. [OPTION A: With respect to cases processed in the presence of the accused by an international or domestic court, in its Final Report the Commission will recommend an appropriate sentence.]  
[OPTION B: In the case of criminal prosecution in the presence of the accused, the Commission can in its Final Report make suggestions on an appropriate sentence.]

### **Comment:**

*I absolutely believe that **no one in this world, except for the courts, is authorized to do such things - not even the United Nations can form a commission mandated to establish individual criminal responsibility (...)** if the commission obtains information connecting an individual to the committing of a criminal act, such information should be forwarded to the office of the prosecutor in charge, but it does not have to be entered into the Final Report. (Munib Halilović,*

Office of the Prosecutor of Bosnia and Herzegovina, BiH, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

#### **Article 46**

##### *Obligations of Parliaments and Governments to Consider the Final Report*

1. Following the publication of the Final Report, the Head of State or the Presidency of a member state submits a copy of the Final Report to the Speaker of Parliament, who schedules a special parliamentary session of the Parliament no later than 30 (thirty) days upon receiving the Final Report, for the purpose of analysing the findings and recommendations from the Report. One or more members of the Commission will attend the session.
2. In the six-month period following the publication of the Final Report of the Commission, governments of all member states will adopt and publish in their national Official Gazettes their opinions on ways to implement recommendations of the Commission.
3. Following the response of the government, the Speaker of Parliament of each member state schedules another special parliamentary session for the purpose of analysing the response of the government and considering the possible engagement of Parliament in the process of implementing the recommendations of the Commission.

#### **Comment:**

It is a very serious and important document and the natural course of things would be to submit it, in addition to **the President of the Parliament, to the State-Attorney or the Prosecutor's Office**, because these are the most competent authorities for prosecution of war crimes perpetrators. (Željko Horvatić, the County Court in Zagreb, Croatia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

## **Part XII – MISCELLANEOUS**

#### **Article 47**

##### *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 the 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.

**Comment:**

*The fact is that it says here that a fine of EUR 5,000 can be imposed, but there is no figure for a minimum fine - in fact, it is not quite clear if EUR 5,000 is a minimum or a maximum fine.*

(Sabit Maliqi, lawyer, Kosovo, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*If the Statute proscribes punishable criminal acts, it is hardly going to be accepted in the parliaments of the member states, because we have to have in mind that all parliaments have to accept it.*

(Nikola Bešenski, the County Court in Vukovar, Croatia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*It is impossible for a statute to proscribe criminal acts.* (Daliborka Knežević, lawyer, Montenegro, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*A new criminal Act has been introduced here, but the question remains – do we really need it? Because this list here includes many criminal acts, and my recommendation would definitely be to apply adequately the criminal code of member states.*

(Munib Halilović, Office of the Prosecutor of Bosnia and Herzegovina, BiH, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*This Statute was originally intended for determining the rules for the internal operation of an international body, and now we are attempting to use it for proscribing criminal acts – well, that is absolutely impossible (...) “Criminal Acts and Sanctions” – that cannot be regulated by this legal act (...) we need to apply national judiciaries in the part concerning a criminal-legal sanction for those who refuse to testify and to apply it adequately. Why don't we say, ‘appropriate application of a criminal-legal sanction’?”*

(Branislav Radulović, Association of Law Professionals of Montenegro, Montenegro, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*(...) we can't use this Statute to determine what a criminal act is, what a sanction is, or who pronounces sanctions. Article 6 of the European Convention on Human Rights should be also kept in mind. Why do I say this? If someone is convicted in this manner, then this person goes directly to Strasbourg, and then it becomes a question of detailed investigation as to what this Statute is and whether we can use it to punish those who don't comply with its provisions. Also, it*

*poses another question – is the court authorized by the Statute or is it authorized by the law?* (Margarita Nikolovska, Human Rights Institute, Skoplje, Macedonia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*(...) we should change it to imply that national laws of member states should be applied.* (Sabit Maliqi, lawyer, Kosovo, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

## **Article 48**

### *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 the bodily remains of missing persons and/or information relevant to identifying other war crimes perpetrators or other crimes, the Commission may advise the trial chamber to consider it as an extenuating circumstance 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 the bodily remains of missing persons and/or information relevant to identifying other war crimes perpetrators or other crimes; 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 the bodily remains of missing persons and/or information relevant to identifying other war crimes perpetrators and other crimes.

### **Comment:**

*Why would anyone incriminate themselves, why would anyone help write a criminal complaint against themselves that will send them to jail? The whole idea is (...) that you can offer something to those who want to admit their sins – and that is **amnesty**. I don't see that you have that mechanism here (...) what is the guarantee that if we reach an agreement with the states (...) how do we know that those people are really going to be granted amnesty?* (Dr. Zdravko Grebo, Faculty of Law of the University in Sarajevo, BiH, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

*(...) it says here “**partial pardon**” and a little further it says “**extraordinary sentence reduction**”: (...) this is a legal remedy that can only be used by the accused party. That is in their best interest. The Commission can uphold a recommendation for a pardon and give their opinion as to why it is good to do so, but the commission cannot make recommendations. If the commission is allowed to do that, what are we going to have? We will have a proposal that is*

*going to be rejected. And what did we do? Nothing. There is no legal interest in it. However, the commission has the right to make such a recommendation based on all of those facts. The commission has its reasons for making a recommendation for a partial pardon or sentence reduction.* (Margarita Nikolovska, Human Rights Institute, Skoplje, Macedonia, Regional Consultation on the Draft RECOM Statute, Belgrade, Serbia, November 4, 2010).

## **Part XIII – FINAL PROVISIONS**

### **Article 49**

#### *Expiration of the Mandate of the Commission*

1. The mandate of the Commission will expire no later than three months after the Final Report of the Commission has been published.
2. In the three-month period following the publication of the Final Report, the Commission will undertake measures to systemise, distribute, and preserve the Archives of the Commission, to rearrange its property, to fulfil its obligations with respect to third parties, to distribute and present the Final Report, and to compile final financial reports.