Towards a Truth and Reconciliation Commission for the former Yugoslavia

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Abstract

The purpose of this article is to elaborate on the need for, and the prospect of, establishing a Truth and Reconciliation Commission for the former Yugoslavia. The *ratio* for such a commission has much to do with the failings of the Yugoslav Tribunal to realize its didactic purposes to its fullest potential, a consequence of anti-Tribunal propaganda and the inability to generate a form of truth that would serve as an adequate basis for post-conflict reconciliation. Following the outlining of these shortcomings, this paper shall assess some of the past and more recent attempts aimed towards the formation of a Truth and Reconciliation Commission within the former Yugoslav states.

1. Introduction

When the Yugoslav conflict broke out in the early nineties, the UN Security Council, determined to put an end to what it saw as a threat to international peace and security,[1] responded by passing Resolution 827. This resolution led to the establishment of the, unfortunately titled, "International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991" (hereinafter "ICTY" or simply "Tribunal").[2] Now, 26 years and 161 indictments later,[3] the ICTY is no more. Its place has been assumed by the "UN International Residual Mechanism for Criminal Tribunals" (better known as the "MICT"), with the objective to try the remaining cases and preserve the legacy of its predecessors.[4]

Speaking of legacy, it is generally uncontested that the ICTY delivered major contributions to international justice by bringing those most responsible to stand trial for their alleged misconduct, while simultaneously catalyzing the development of international criminal law.[5] However, the situation is not quite so clear-cut when we shift to the issue of legitimacy[6] and facilitation of post-conflict reconciliation. Throughout the proceedings, which took place thousands of kilometers away from their intended audiences, defendants such as Slobodan Milošević and Vojislav Šešelj managed to significantly diminish the didactic effects of their

[1] UN SC. 1993. Security Council resolution 827, International Criminal Tribunal for the former Yugoslavia (ICTY), S/RES/827, p. 2

[2] Some authors have argued that the expression "persons responsible", used in the official name of the Tribunal, negates the presumption of innocence, See: Škulić, Milan. 2005. International Criminal Court: Jurisdiction and Procedure, (Dosije: Law Faculty Belgrade), p. 68-70

[3] See: http://www.icty.org/en/cases/key-figures-cases

[4] See: http://www.irmct.org/en/about/functions

[5] See for example: Shahabuddeen, Mohamed. 2012. International Criminal Justice at the Yugoslav Tribunal: A Judge's Recollection, (Oxford: OUP), p. 20-21

[6] By which I am primarily referring to the acceptance of the Tribunal's judicial decisions as being the 'authoritative truth' by the people of the former Yugoslav states.

trials by calling on the Tribunal's alleged anti-Serb agenda, thereby inflating the distrust felt by their compatriots towards the distant judicial entity. Tellingly, a look into the most recent opinion polls conducted in the former Yugoslav states shows the extent to which Milošević *et al.* were successful in their endeavors. To borrow the expression of one author, "denialism and revisionism […] are thriving".[7]

Indeed, many former Yugoslavs were disinclined to accept the forensic truth engraved in ICTY judgments at face value; instead, they have opted to devise their own mutually excluding versions of truth, which aim to portray their own ethnic group as the greatest martyr, while vigorously denouncing the possibility of there being any truth in the accusations aimed towards members of their own group. These developments suggest that international criminal trials, notwithstanding their capital role in combating impunity and strengthening the rule of law, serve as inadequate instruments of transitional justice. In other words, owing to external as well as internal factors, international trials end up being insufficient tools for the genesis of an authoritative and undisputed truth that can serve as the foundation for reconciliation. This raises the question whether a non-judicial body, that is, a Truth and Reconciliation Commission (hereinafter "TRC"), would be able to mend the shortcomings of the ICTY.

The purpose of this article is to elaborate on the efforts undertaken thus far for the purpose of establishing a Truth and Reconciliation Commission for the former Yugoslavia. Before doing so, I shall briefly address what I observe as the main factors that have diminished the Tribunal's didactic performance.

2. The Didactic Purposes of International Criminal Trials

One significant way in which international criminal trials aim to promote post-conflict reconciliation is by emphasizing the educative or "didactic" effects of criminal prosecutions.[8] First of all, International Criminal Tribunals (hereinafter "ICTs") assist the reconciliation process by focusing their efforts on individuals considered most responsible for atrocity crimes, thereby precluding the 'collectivization of guilt'.[9] Once the "individual face" has been associated with the crime, the didactic objective compels the judges to take upon themselves

[7] Milanović, Marko. 2016. The Impact of the ICTY on the Former Yugoslavia: An Anticipatory Post-Mortem, American Journal of International Law, (Available at https://ssrn.com/abstract=2755505), p. 4

[8] Cryer, Robert et al. 2014. An Introduction to International Criminal Law and Procedure: Third Edition (Cambridge: CUP), p. 29-30

[9] Safferling, Christoph. 2012. International Criminal Procedure (Oxford: OUP), p. 75. Safferling observes that "putting individual faces to the crimes" helps former belligerents re-establish peace and mutual respect.

the task of articulating resonating condemnation towards egregious human rights violations in the context of criminal proceedings.[10] By scrutinizing the accused's conduct in a two-party adversarial-based system, the criminal process elucidates the truth, and when dire human rights violations become evident, the judges are expected to step in and perform their "socio-pedagogic" role.[11] This role can be observed as the exercise of the judges' moral authority, the dissemination of ethical messages in the aspiration that they will bolster human rights culture by reaching those 'on the ground'. It is beyond the scope of this article to question Damaška's assertion that the didactic objective should serve as the primary goal of international criminal trials; my thesis is simply that two factors, anti-tribunal propaganda and the limitations of judicial truth, impair ICTs in their didactic aspirations, thereby hampering their ability to connect to the local communities and facilitate genuine reconciliation.

2.1. Anti-Tribunal Propaganda

Two modalities of anti-Tribunal propaganda, which I shall term internal and external, have considerably reduced the credibility of the ICTY. By internal anti-Tribunal propaganda, I am referring to the Machiavellian conduct of recalcitrant (self-represented) defendants that have stood trial before the ICTY. External anti-Tribunal propaganda indicates the antagonistic stance taken towards the Tribunal by the political elites and local media in the former Yugoslav states.

Self-represented defendants[12] have demonstrated the potential to compromise attempts at achieving reconciliation by means of adopting the 'defender of the nation' persona, discrediting the Tribunal and injecting deplorable political narratives into their defenses. Indeed, the concept of individual criminal responsibility appeared to be a matter of negligible importance for many *pro se* defendants. Slobodan Milošević, for example, observed how the indictments brought against him "accuse Serbia and the Serbs" for the Yugoslav fallout and aim to "proclaim the victim as the culprit".[13] In a similar fashion, while elaborating upon what he perceived to be an unfair advantage given to the Prosecution, Milošević commented:

[10] See: Damaška, Mirjan. 2008. What is the Point of International Criminal Justice?, (Available at: http://digitalcommons.law.yale.edu/fss_papers/1573), p. 347. Damaška suggests that the didactic function should serve as the "central mission" of international criminal trials.
[11] *Ibid*. at 358
[12] *Self-represented* or *pro se* defendants are accused persons who have chosen to rely on their right to defend themselves in person, meaning that they have renounced the benefits of professional legal counsel. This in turn allows the defendant total control over the presentation of the defense case.
[13] Transcript, Milošević IT-02-54-T (29 October 2001), p. 40-41

> What do I have on my side? I only have a public telephone in my prison. That is all I have to fight a terrible libel against my country, my people and me.[14]

By strategically placing "his country" and "his people" at the forefront, while relegating himself to the background of his rather ironic claim, the accused aspired to communicate to the audience back home that the entire Serb nation, rather than himself, stood trial. In a similar fashion, defendants Vojislav Šešelj and Radovan Karadžić employed collective narratives in their respective defenses.[15] By portraying the Tribunal as the judicial extension of NATO, Šešelj[16] and Karadžić[17] aimed to win domestic support by re-opening the wounds inflicted upon the Serbian people by the NATO led bombing campaign of 1999. Such cunning invocations certainly dealt a blow to ICTY credibility, upon which its ability to exercise didactic goals is heavily dependent. Finally, albeit not self-represented, defendants such as Esad Landžo[18] and, perhaps more notably, Slobodan Praljak[19] managed to affect the credibility of the ICTY in Bosnia-Hercegovina and Croatia in a considerable manner. Conclusively, by relying on an *argumentum ad passiones,* many ICTY defendants attempted to devise a justification for their deplorable deeds. By drawing the attention of their compatriots away from the victims and the heinous atrocities for which they stood trial, they diminished the didactic effects of international criminal justice and succeeded in broadening the chasm dividing former belligerents. Ironically, by tolerating such trial usurpation in the name of upholding international fair trial standards, the ICTY inadvertently hampered its own educational objectives.

As if the pressure exerted by unruly defendants was not formidable enough, the ICTY has faced longstanding barrage from the local media and politicians. Firstly, it should be noted that Tribunal judgments encompass thousands of pages and very often involve technical legal

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[14] Rotella, Sebastian. 2002. "Milosevic Says He's the Victim", Los Angeles Times, (Available at: http://articles.latimes.com/2002/feb/15/news/mn-28153), (Accessed on 28, April 2018)

[15] Steflja, Izabela. 2017. The production of the war criminal cult: Radovan Karadžić and Vojislav Šešelj at The Hague, Nationalities Papers, 46:1, 52-68, (Available at: https://doi.org/10.1080/00905992.2017.1354365), p. 6-7

[16] Transcript, Šešelj IT-03-67 (5 June 2007), p. 1213. The accused stated: "this International Tribunal is an instrument in the hands of Serb enemies, the United States of America, all the member states of NATO, and the EU".

[17] Transcript, Karadžić IT-95-5/18 (2 April 2009), p. 158. While explaining why he believed that the process against him could not be fair, Karadžić noted: "NATO waged war against us… all three of your countries [referring to the Judges] are NATO members… I have to defend myself in a NATO-country language".

[18] Landžo argued that the decision to prosecute him was born out of discriminatory considerations- the Prosecutor needed to bring charges against a "token Bosnian-Muslim" in order to disperse allegations of 'anti-Serb' bias. This claim was later dismissed by the Appeals Chamber. See: Zahar, Alexander and Sluiter, Göran. 2008. International Criminal Law: A Critical Introduction, (Oxford: OUP), p. 441-442

[19] Moments after having his sentence upheld by the Appeals Chamber, Praljak, a former Bosnian-Croat general, denounced the appellate ruling and proceeded to drink poison. Following his death, the accused was hailed as a hero by many in Croatia. See: Verovšek, Peter J. 2018. The Lessons of the ICTY for Transitional Justice, (Available at: https://www.eurozine.com/the-lessons-of-the-icty-for-transitional-justice/), p. 2

language and doctrines. It would be unreasonable to expect non-lawyers to have enough time and expertise to closely examine these rulings. It is precisely here that the media adopts a crucial role, as it stands between the jurists and local audiences and is expected to objectively report on the factual determinations produced at the Hague. This has not been the case in the former Yugoslav states. Quite the contrary, print and electronic media have been known to exacerbate inter-ethnic animosity by providing rather shallow and selective reports on the Tribunal and its judicial activities.[20] On the other hand, considerable media attention has been given to grandiose celebrations dedicated to returning ICTY defendants.[21] Tellingly, the way these "homecoming" events have been portrayed largely depends on whether the nationality of the returning defendant corresponds to the national and political affiliation of the media outlet.[22] Conclusively, reliability and impartiality are far from being the order of the day.

Perhaps most importantly, media outlets have served as sources of disinformation by way of disseminating ill-considered statements made by influential politicians who tend to discredit and misinterpret the Tribunal's work. A good example of the latter concerns the alleged exoneration of the former Serbian and Federal Republic of Yugoslavia (hereinafter "FRY") president Slobodan Milošević. By calling upon specific paragraphs of the Karadžić trial judgment, the foreign minister of Serbia was quick to observe how "there is no guilt on Milošević's part […] the lies about genocide and war crimes which were the basis for punishing Serbia and the Serbs are nullified".[23] In all actuality, it seems rather farfetched to call upon a judicial decision rendered in a completely separate trial in order to assess individual criminal responsibility of the deceased Milošević.[24] To exemplify the former, the Croatian President has exercised undue pressure on ICTY judges by stating that the Tribunal would "lose all of its credibility" in Croatia were it to affirm its trial decision on appeal.[25]

[20] Take for example: "Investigation: Why hasn't the Hague addressed crimes against the Serbs", (Blic, 24 November 2017), (Available at: https://www.blic.rs/vesti/republika-srpska/istrazujemo-zasto-hag-nije-kaznio-i-zlocine-nad-srbima/vn5yvx4), (Accessed on 23 January 2019), The author grounds his critique of the ICTY by focusing on how it has, *in toto*, sentenced ethnic Serb defendants to more than a thousand years in prison, without specifying any of the crimes for which they were convicted.

[21] See generally: Trbovc, Jovana Mihajlović. 2018. Homecoming from "The Hague": Media Coverage of ICTY Defendants after Trial and Punishment, International Criminal Justice Review, (Available at: https://doi.org/10.1177/1057567718766222)

[22] *Ibid*. at 11

[23] "Dačić: Hague judgment confirms that Milošević and Serbia are not guilty", (N1info, 13 August 2016), (Available at: http://rs.n1info.com/Vesti/a184916/Dacic-Hag-presudom-Karadzicu-priznao-da-Milosevic-i-Srbija-nisu-krivi.html), (Accessed on 23 January 2019)

[24] See "Milošević 'Exonerated'?: War-Crime Deniers Feed Receptive Audience", (Radio Free Europe Radio Liberty, 9 August 2016), (Available at: https://www.rferl.org/a/milosevic-war-crime-deniers-feed-receptive-audience/27910664.html), (Accessed on 24 January 2019)

[25] "Grabar-Kitarović: The Hague in the case of Croats of Bosnia-Herzegovina loses credibility", (Al Jazzera Balkans, 11 September 2017), (Available at: http://balkans.aljazeera.net/vijesti/grabar-kitarovic-hag-u-slucaju-bh-hrvata-gubi-kredibilitet), (Accessed on 23 January 2019)

Following the confirmation of the trial judgment, President Kitarović attempted to mitigate the guilt of the convicted Bosnian-Croats by calling upon "Greater-Serbia aggression" and the legitimacy of the so called "homeland war" fought against the "Serb aggressors".[26]

2.2. On the Limitations of Judicial Truth

One of the main purposes of criminal procedure is to establish the truth.[27] Without engaging the Sisyphean task of elaborating on the enigmatic concept of truth and its many interpretations,[28] I shall focus on the most relevant variant for the topic at hand, commonly referred to as 'judicial' truth. Zappala states that this form of truth represents the final product of the implementation of procedural rules that are used to determine guilt or innocence in an (adversarial) criminal trial.[29] Indeed, the basic assumption is that the confrontation of opposing hypotheses (presented by the prosecution and defense) enables the impartial, and largely passive, judges to ascertain the truth.

However, judicial truth is not absolute.[30] Firstly, its limits are drawn by concepts such as court jurisdiction and prosecutorial discretion.[31] Indeed, due to the limitations placed upon its (personal) jurisdiction, ICTY judges would not be able to, for example, inquire into the potential criminal responsibility of legal persons involved in the Yugoslav wars. Similarly, it would not be possible to elucidate human rights violations pertaining to a specific situation unless the prosecutor decides to bring forth an indictment against the alleged perpetrator/s.[32] Therefore, the two-abovementioned concepts limit the scope of judicial truth *ab initio.*

Additionally, judicial truth undergoes further circumscription by numerous procedural guarantees and rights (for example, the right to silence) given to the defendant in the criminal

[26] "The President talks about Praljak: His act has deeply reached the heart of the Croatian people", (Večernji List, 30 November 2017), (Available at: https://www.vecernji.hr/vijesti/kolinda-grabar-kitarovic-presuda-haag-1211104), (Accessed on 23 January 2019)
[27] Safferling, Supra n. 9, p. 62
[28] For an account of different modalities of truth See: Drakić, Dragiša. 2016. Fundamental Considerations of Truth- In General and in Criminal Law, (Faculty of Law Novi Sad), (Available at: doi:10.5937/zrpfns50-10625)
[29] Zappala, Salvatore. 2003. Human Rights in International Criminal Proceedings, (Oxford: OUP), p. 248
[30] *Ibid.*
[31] Gaynor, Fergal. 2012. Uneasy Partners- Evidence, Truth and History in International Trials, Journal of International Criminal Justice 10, 1257-1275, p. 1263-1266
[32] For example: Following the advice of a review committee, the ICTY prosecutor decided not to investigate war crimes allegedly committed by NATO during the 1999 bombing campaign of the FRY. See: Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia, 8 June 2000, (Available at: http://www.icty.org/x/file/Press/nato061300.pdf), para. 90-91

process.[33] Were it not for these guarantees it would be possible to implement various degrading and inhumane methods of 'truth-extraction', such as torture and narco-analysis tests, in order to bring judicial truth closer to 'absolute' truth.[34] These methods are not in accordance with the values associated with a liberal model of criminal procedure and are, therefore, prohibited. Furthermore, in cases where the accused chooses to admit guilt, the court will, for reasons of trial expeditiousness, limit its scope of inquiry and focus on determining the facts most important for the determination of an appropriate sanction.[35] In such instances the criminal process becomes 'simplified' and it is questionable to what extent such 'abbreviated truth' aids post-conflict reconciliation and the didactic functions of criminal proceedings. Finally, factors such as state co-operation, the uneasy relationship between the common and civil law systems, the inability to exert direct control over the prosecution's disclosure obligations and the difficulties associated with translation further hamper the truth-seeking function of ICTs.[36] Conclusively, the trial framework narrows down the judges' ability to formulate a comprehensive record of past events that may be of crucial importance for victims and the overall aim of facilitating reconciliation. This is not surprising since ICTs primarily aim to establish case-specific facts while aspiring to guarantee the accused, whose innocence is at stake, a fair trial. That these facts comprise a valuable narrative in the battle against denialism constitutes an important but nonetheless derivative result of criminal proceedings.

Therefore, even though they are an important tool for generating an authoritative account of past occurrences,[37] ICTs are, by themselves, imperfect agents of transitional justice. Accordingly, it would be prudent to ponder the possibility of supplementing their truth-telling function with that of non-judicial mechanisms, such as TRCs- that would not be bound by similar restraints.

3. The Road Towards a Truth and Reconciliation Commission: A Rough Start Followed by a Promising Future

[33] See Ilić, Goran P. 2013. Nature, Importance and Limits of Finding the Truth in Criminal Proceedings, (Law Faculty Belgrade), (Available at: http://scindeks.ceon.rs/article.aspx?artid=0003-25651303082I). The author argues that it would be unreasonable to observe truth-determination as the ultimate goal of the criminal process, and that it is necessary to harmonize this objective with other values implicated in the trial.

[34] Škulić, Milan. 2011. War Crimes and other basic institutes of International Criminal Law, (ATC Belgrade), p. 276

[35] *Ibid.* at 278

[36] See: Schomburg, Wolfgang. 2009. Wahrheitsfindung im Internationalen Gerichtssaal, VN Vereinte Nationen, (Available at: doi: 10.5771/0042-384X-2009-1-3)

[37] For example, the judgment in the *Tadic* case has produced a solid account of events pertaining to the fallout of the Yugoslav state, See: Wilson, Richard Ashby. 2016. Propaganda and History in International Criminal Trials, Journal of International Criminal Justice 14, 519-541, p. 524

Following the cessation of hostilities, separate TRC initiatives took place within the post-Yugoslav republics. However, these early attempts have been largely unsuccessful. Therefore, this chapter shall begin by looking at some of the detriments inherent to these inceptive initiatives and, from there, move on to the assessment of the most recent, and promising, TRC project.

3.1. Past Initiatives

In 2001, the then FRY President Vojislav Koštunica established the "Yugoslav Truth and Reconciliation Commission" (hereinafter "Yugoslav Commission") by way of a presidential decree.[38] The Yugoslav Commission set out to investigate factors that led to the dissolution of the Yugoslav state, inform the domestic and international public of its work and collaborate with similar entities in neighboring states.[39] From the onset, the Yugoslav Commission faced considerable criticism. Firstly, it has been noted that its mandate failed to include the examination of egregious human rights violations that took place during the wartime period, a trait that set it apart from similar TRCs.[40] Moreover, it has been criticized for the way in which it has been brought into existence,[41] as well as its lack of diversity and impartiality.[42] In any case, following the disbanding of the FRY in 2003, which then became the state union of Serbia and Montenegro, the Yugoslav Commission, without producing a single report, simply ceased to exist.[43]

In neighboring Bosnia-Herzegovina, attempts to set up a national TRC predated those of the FRY. As early as 1997, civil-society organizations began advocating for a "Bosnian TRC", to be entrusted with the responsibility of formulating an authoritative and comprehensive account of the hardships inflicted upon the Bosnian people during the 1992-1995 conflict.[44] From the very beginning, the project faced significant hindrances, both external and internal.

[38] Decision on the establishment of a Truth and Reconciliation Commission, Presidential Decree issued by president Koštunica, (March 30, 2001) FRY Official Gazette No. 15/01, 59/02
[39] *Ibid.*
[40] Pejić, Jelena. 2001. The Yugoslav Truth and Reconciliation Commission: A Shaky Start, Fordham International Law Journal Volume 25, Issue 1, p. 12
[41] Freeman, Mark. 2004. Serbia and Montenegro: Selected Developments in Transitional Justice, International Center for Transitional Justice, (Available at: https://www.ictj.org/publication/serbia-montenegro-selected-developments-in-transitional-justice), p. 7. Observing that passing a presidential decree is not the typical way of establishing a TRC,
[42] Pejić, Supra n. 40, p. 9, See also: "We are very far from Reconciliation in the Western Balkans", (Justiceinfo.net, 12 September 2016), (Available at: https://www.justiceinfo.net/en/tribunals/icty/29020-%E2%80%98we-are-just-at-the-end-of-beginning%E2%80%99-the-non-reconciliation-process-in-the-western-balkans.html), (Accessed on 29 January 2019)
[43] Freeman, Supra n. 41, p. 8
[44] Soso, Jana Dragović. 2016. History of a Failure: Attempts to Create a National Truth and Reconciliation Commission in Bosnia and Herzegovina, 1997-2006, International Journal of Transitional Justice, 0, 1-19, p. 6-7

Firstly, major opposition came from the ICTY (unsurprisingly, as the TRC aimed to project itself as an 'alternative' to the Tribunal); moreover, there appeared to be a glaring lack of support from victim associations and many of the locals.[45] Indeed, while the former complained of their lack of involvement, the latter simply failed to comprehend the need for a TRC.[46] Ultimately, these factors proved to be an unsurmountable obstacle on the way towards a Bosnian TRC, and the project failed to materialize.

3.2. The Initiative for RECOM

In contrast to the abovementioned 'national' TRC projects, the most recent initiative aims towards the formation of a transitional justice mechanism that would foster the engagement and co-operation of all post-Yugoslav successor states.[47]. The Coalition for RECOM, a chain of civil society organizations formed in late 2008, serves as the primary advocate for the creation of a "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 from 1 January 1991 to 31 December 2001" (hereinafter "RECOM" or "Regional Commission"). The Coalition's primary task is to design an appropriate model for the Regional Commission, which shall then be delivered to the parliaments of former Yugoslav states for consideration.[48] The Coalition aspires to secure governmental support for the RECOM project by having the countries of the former Yugoslavia sign a "Declaration on the establishment of RECOM" by June 2020.[49]

3.2.1. The Conceptualization of RECOM: Scope, Objectives and Powers

The Preamble of the RECOM Statute evaluates the efforts of the ICTY as insufficient for the fulfillment of victims' needs and the genesis of a "lasting peace in the region", thus rationalizing the need for a regional TRC.[50] The Regional Commission shall be comprised of twenty Commissioners,[51] who shall be persons of high moral integrity and expertise.[52] The

[45] *Ibid,* at 11-17
[46] *Ibid.* Less then a fifth of the population of Republika Srpska (the Bosnian-Serb entity of Bosnia-Herzegovina) supported the idea.
[47] See: http://recom.link/about-recom/what-is-recom/
[48] Parliament session of the Coalition for RECOM. 2010. Statute of the Coalition for RECOM, (Available at: http://recom.link/the-statute-of-the-coalition-for-recom-2/), Art. 3
[49] Coalition for RECOM. 2018. Proposal of the Action Plan for RECOM: Annex to "RECOM Roadmap" Policy Brief, (Available at: http://recom.link/wp-content/uploads/2018/06/Annex-Action-Plan-ff.pdf), p. 3
[50] See: Coalition for RECOM. 2014. Amendments of the RECOM Statute, (Available at: http://recom.link/izmene-statuta-rekom-28-oktobar-2014/), Preamble
[51] *Ibid*. at Art 23. Five from Bosnia-Herzegovina, three from Croatia, Kosovo and Serbia, and two from Macedonia, Montenegro and Slovenia.
[52] *Ibid.* at Art 24-1

candidates shall be nominated by non-governmental entities (such as associations of citizens and educational institutions) and elected by a "selection panel" of each state-party.[53] RECOM's life span is determined to be precisely three years,[54] albeit the Statute foresees the possibility of extending this period for the sake of goal completion.[55] Its financial needs shall be entirely met through (inter-)national donations and funds provided by international organizations.[56]

As for its goals, RECOM's primary objective is of an investigatory, 'truth-seeking' nature. Indeed, RECOM aims to establish facts about war crimes and other gross violations of human rights (material scope of inquiry) committed on the territory of the former Yugoslavia (territorial scope of inquiry) in the period from 1 January 1991 to 31 December 2001 (temporal scope of inquiry).[57] Moreover, much like the failed 2001 Yugoslav Commission, RECOM is endowed with the task of investigating the (political and societal) circumstances that led to the commission of acts comprising its material scope of inquiry.[58] Objectives such as the acknowledgment of victims' suffering, the fulfillment of victims' rights and the clarification of the fate of missing persons[59] are of a 'restorative' character, while preventing the recurrence of war crimes and other gross violations of human rights[60] constitutes an objective aimed at achieving deterrence. Lastly, the aspirations to "help political elites and societies… accept the facts" and "contribute to the development of educational curricula", compose RECOM's 'educative' function.[61]

RECOM's powers aim towards the fulfillment of its manifold objectives. These powers can be divided into two groups. The first group includes powers of a fact-finding character, such as the capacity to take statements from victims, witnesses as well as perpetrators, concerning its material scope of inquiry.[62] This function is supplemented by the ability to compile documentation including (non-)governmental documents, ICTY judgments and transcripts,

[53] *Ibid.* at Art 26
[54] This period seems unusually long, as most TRCs limit their work to a period of 1.5-2 years. Freeman, Mark. 2007. Speech held at the Second Regional forum on Transitional Justice titled "Determining the truth about war crimes and conflicts", (Available at: http://recom.link/bs/predavanja-i-studije-o-iskustvima-drugih/), (Accessed on 30 January 2019)
[55] Coalition for RECOM, Supra n. 50, Article 6
[56] *Ibid.* at Art 41
[57] *Ibid.* at Art 13-a
[58] *Ibid.*
[59] *Ibid.* at Art 13-b, c, e
[60] *Ibid.* at Art 13-f
[61] *Ibid.* at Art 13-d, g
[62] *Ibid*. at Art. 17-1

newspaper articles, audio-visual material and expert opinions.[63] Additionally, the Regional Commission has the capacity to inspect crime sites, places of confinement and mass graves as well as other locations of relevance for its fact-finding mission.[64] The second group of powers encompasses activities of an educative nature. For example, RECOM is authorized to conduct broadcasted, public hearings of victims, perpetrators and witnesses, who are given the opportunity to speak of their suffering and other experiences.[65] Lastly, the Regional Commission may conduct televised "thematic sessions" focusing on the role of various institutions (political, cultural, religious etc.) before and during the Yugoslav wars.[66]

3.3. Preliminary Conclusion

Unlike past TRC initiatives, which have been plagued by a glaring lack of legitimacy and international support, the RECOM project demonstrates two notable advantages. Firstly, it appears to enjoy considerable domestic[67] as well as foreign[68] backing. Secondly, the regional character of RECOM precludes the danger of having separate TRCs producing multiple, and possibly contrasting, variants of truth concerning the Yugoslav conflicts.

Despite these assets, there appears to be a lack of political will amongst the leaders of post-Yugoslav states, clearly embodied in their failure to offer genuine backing to the initiative.[69] Although it is difficult to foresee what the future holds for RECOM, it is safe to assume that its realization greatly depends on the extent to which the establishment of a regional TRC becomes part of EU-accession talks and other international arrangements.

4. Final Remarks

This paper has attempted to rationalize the establishment of a Truth and Reconciliation Commission for the former Yugoslavia by examining two major factors held to be chiefly responsible for the diminution of ICTY's pedagogic functions and ability to foster reconciliation. Moreover, it has scrutinized former TRC initiatives and outlined the mandate

[63] *Ibid.* at Art. 18
[64] *Ibid.* at Art. 19-1
[65] *Ibid.* at Art. 20
[66] *Ibid.* at Art. 21
[67] As of march 2017, around 580.000 citizens of various former-Yugoslav republics have signed the petition for the establishment of RECOM, See: http://recom.link/sign-the-petition-6/
[68] The EU Parliament has expressed its support for the RECOM project on at least two different occasions, See: European Union: European Parliament, European Parliament resolution of 19 January 2011 on the European integration process of Serbia, P7_TA (2011) 0014, para. 34, and European Union: European Parliament, European Parliament resolution of 14 June 2017 on the 2016 Commission Report on Serbia (2016/2311(INI)), P8_TA-PROV (2017) 0261, para. 31
[69] See: http://recom.link/london-summit-without-the-declaration-on-recom/

of the most recent regional transitional-justice mechanism. The author contends that although it is impossible to predict the impact of a TRC mechanism in the post-Yugoslav setting, a task complicated by frequent upsurges in nationalism and denialism in the region, it is to be hoped that the 'bottom-up' formation of a regional, non-judicial entity may mend the shortcomings of international criminal justice and lead to genuine reconciliation amongst the former Yugoslavs by way of offering an authoritative and shared narrative of past occurrences.

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