



POLICY BRIEF

RECOM ROADMAP



RECOM ROADMAP

Policy Brief

May 2018



This document was published with the financial assistance of the European Union.
The contents of this document are the sole responsibility of Coalition for RECOM
and do not necessarily reflect the view of the European Union.

RECOM Roadmap

Policy Brief

PUBLISHED BY:
Coalition for RECOM
May 2018

EDITOR:
Nataša Kandić

AUTHOR:
Ana Marjanović Rudan

DESIGN:
Todor Cvetković

RECOM ROADMAP

WITHOUT CLARITY ABOUT WAR VICTIMS ANY REGIONAL COOPERATION IS FRAGILE

Almost two decades after the armed conflicts in former Yugoslavia, only a portion of the facts about war crimes and grave human rights violations committed during the wars has been established. In result – the sufferings of the victims and their rights remain unrecognized and the fates of the missing persons remain unknown.

This lack of clarity about the facts signifies lack of respect for the victims and prevents the post-Yugoslav societies from coming to terms with their past and building a culture of solidarity. What is more, the lack of clarity about the war victims is wind in the sails for the resurging nationalism in the Balkans. As the events of the 1990's have shown, conflicted interpretations of the past can quickly destroy relations built over decades of economic and social exchange. Hence, in order to advance reconciliation in the Western Balkans, improve neighbourly relations and sustain regional security, the space for inflammatory nationalistic narratives must be narrowed. For these reasons, an agreement between the formerly warring parties regarding the facts about war victims will be decisive for long-term stability, but also a pre-requisite for sustainability of economic and other forms of cooperation in the region, and crucial for educational reforms in those parts of the post-Yugoslav countries' curricula dealing with recent history.

Such an agreement about the facts can only be reached through a fact-finding and truth-telling endeavour undertaken jointly by the formerly warring parties. However, the effect that the institutionalisation of this effort within an intergovernmental commission can have on the reconciliation process cannot be substituted by civil society actions (even less can it be compensated for by economic cooperation or youth exchanges). With this in mind, since 2008 the Coalition for RECOM (which gathers together more than 2,000 organisations and prominent individuals from the former Yugoslavia) has been advocating for the setting up of an extrajudicial, intergovernmental institution – the Regional Commission for Establishing the Facts about War Crimes and other Gross Violations of Human Rights Committed on the

Territory of the Former Yugoslavia (RECOM) – and this initiative has been supported by more than half a million citizens from across the region.

THE TIME TO ACT IS RUNNING OUT

However, the regional fact-finding and truth-telling body – RECOM – has yet to be set up and assume its mission. The postponement in the launching of this unique transitional justice instrument is due to the opportunistic reluctance of a number of post-Yugoslav decision-makers, both incumbent and former. Although the individual commitments of the executive leaders holding offices did converge in 2014, when Special Presidential Envoys from Bosnia and Herzegovina (BiH)¹, Croatia, Kosovo, Macedonia, Montenegro and Serbia jointly harmonised the Draft Statute of the future RECOM², the changes brought about by the subsequent elections put the institutionalisation of RECOM on hold. This is unfortunate, as the lapse of time makes fact-finding more difficult and sometimes impossible, thus jeopardising the prospects of the entire endeavour.

At the moment when this text is being written, commitment to move the institutionalisation of RECOM forward has been demonstrated by the presidents of Serbia, Macedonia, Montenegro, and Kosovo, and by the Bosniak Member of the BiH Presidency. Alongside this, the necessity of setting up such a regional commission has been officially recognized by the European Commission (EC), which envisages in Measure 6.1 of its Action Plan (annexed to the EC Communication about enhanced EU engagement with the Western Balkans³) support to transitional justice and reconciliation, including RECOM. If planned carefully, the implementation of this measure could be decisive for the establishment of RECOM.

¹ Bosniak Presidency Member. -

² Previously developed through a 4-year-long consultative process led by the Coalition for RECOM, which included more than 6,700 representatives of civil society, including human rights organizations, victims, families of victims and missing persons, refugees, veterans, former inmates, lawyers, artists, writers, journalists and other prominent individuals.

³ Annex to the European Commission *COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS -- A credible enlargement perspective for an enhanced EU engagement with the Western Balkans*, February 6, 2018.

HOW TO GET RECOM OFF THE GROUND?

THE THREE ASSUMPTIONS OF THE PROPOSAL OF THE ACTION PLAN FOR RECOM

The Proposal of the Action Plan for RECOM (annexed to this document) was devised as a roadmap – as guidance for the process of setting up RECOM and starting its operations. The plan proceeds from the following assumptions:

- (1) Because the lapse of time diminishes the chances for the establishment of the facts about victims, **the setting up of RECOM and the beginning of its work can no longer be postponed.**
- (2) As the four presidents are willing to move forward with the setting up of RECOM and as the European Commission is willing to support it, **the current favourable momentum for starting the process of the establishment of the RECOM should not be missed.**
- (3) The requirement for the participation in RECOM of all the formerly warring parties of the former Yugoslavia should not lead to any further postponement of the start of the RECOM setting up process. Because the prevailing and unquestionable interest of all the formerly conflicted countries is to directly participate in the establishment of the facts about the victims, missing persons and places of detention, **it is safe to assume that the currently reluctant countries will at a later time join RECOM.**

Therefore, instead of hoping that at some point in the future all the countries' leaders will agree at the same time to establish RECOM, the process of the setting up of RECOM should start with the "willing" countries, and with the support of the European Commission. However, the process of getting RECOM off the ground must be accompanied with a strong advocacy campaign aimed at getting the remaining countries aboard.

With this in mind, the Proposal of the Action Plan annexed to this document maps out the necessary steps and their actors, anticipates the risks and proposes the mitigation measures, and indicates the milestones by which to monitor the progress.

THE ELEMENTS OF THE PLAN

The **goal** of the Proposal of the Action Plan reflects the recommendation of Coalition for RECOM that the intergovernmental, extrajudicial regional commission (RECOM) be set up in order to establish the facts about war crimes and other gross violations of human rights, acknowledge the injustices inflicted upon the victims, contribute to the realisation of victims' rights, help the political elites and societies of the countries of the former Yugoslavia to come to terms with the past, clarify the fate of missing persons, prevent any recurrence and contribute to the educational curricula. The plan is projected for the period leading up to the day when RECOM is established, and when all other necessary steps have been completed so that the commission can start its mission.

Eight measures will implement this recommendation: 1. The Countries of the former Yugoslavia ("Parties") sign a Declaration on the establishment of RECOM, 2. The Parties agree on the final text of the Statute, 3. The Parties sign the Statute of RECOM, 4. The Statute enters into force, 5. The RECOM Commissioners are selected, 6. The constituent session of the Regional Commission (RECOM) is held, 7. The Chairperson is selected and the Rules of Procedure are adopted, and 8. All preparations are completed, and **deadlines** were set for each of the measures. While the timing, the order and the content of measures 1-3 (leading to the Parties signing the RECOM Statute) are projected in view of the current political circumstances, measures 4-8 (required for commencement of the RECOM work) reflect the provisions of the existing Draft Statute.

The **activities and the actors responsible** for implementing the eight measures were projected, as well as the **milestones** to facilitate the monitoring of the plan's progress. Next to each activity the **risks to its implementation** were listed, and the possible **measures for their mitigation**. The plan also indicated the eight **critical points** of the plan, whereby delay or non-occurrence would call for revision of the entire plan.

THE PROJECTED COURSE

The Action Plan starts with activities aimed at securing the political commitment of the countries of the former Yugoslavia (“the Parties”) to begin the process of setting up RECOM. The commitment is to be expressed by signing the Declaration on RECOM, which will stipulate that the necessary measures be undertaken by each Party in order to establish the Commission (to sign the RECOM Statute) by June 2020. The plan envisages that the Declaration is signed at a high-level meeting – during the London Summit of the Berlin Process in July 2018, or, alternatively, on the occasion of another subsequent meeting of the Parties – by the four Parties presently willing to go ahead; and that the remaining parties join the Declaration by July 10, 2019⁴. The latter process will require elaborate and intensive advocacy campaigning aimed at inducing the necessary political will and is to be carried out by regional and EU think tanks, activist organisations and media, as well as by explicit communications of support for the setting up of RECOM from the European Commission and other EU institutions, and from the governments of the member states.

The next task will be that the Parties agree about the final text of the RECOM Statute, the document establishing the regional commission. As noted, the Draft Statute of RECOM has already been prepared by the Coalition for RECOM and harmonised by the Special Presidential Envoys in 2014. It describes in detail the objectives, the functions, the competencies, the powers and the structure of the future commission, and elaborates the procedures for the selection of commissioners and personnel and their rights and obligations. This Draft should be the document to build on in the process of finalising the text of the RECOM Statute. If the political commitment to start RECOM is secured by July 10, 2019, the final text of the RECOM Statute should be agreed by the Expert Presidential Envoys by the end of 2019. Considering the political sensitivity of this document, advocacy efforts will have to maintain their high intensity at this phase as well.

Once the text of the RECOM Statute is agreed upon, within the period of the following five months (i.e. by May 31, 2020) the Presidents should meet at a formal event to

⁴ This solution was inspired by a recent example of Bosnia and Herzegovina joining the Treaty on Transport Community signed at the Trieste Summit of the Berlin Process.

sign the Statute of RECOM, by which this commission will be established. The signed RECOM Statute will then be deposited with the Regional Cooperation Council (RCC). Following this formal event, for the Statute to enter into force, it will be required to be ratified or adopted by the Parties. Each Party is to decide on the adequate procedure (adoption or ratification) within one month (by the end of June, 2020), and the adoptions or ratifications are to be completed within the next six months (by December 31, 2020). Obviously, the involvement of the representative bodies may create divisions in the respective countries, which will be addressed pre-emptively through the above-mentioned comprehensive advocacy campaigning.

The subsequent steps will enable RECOM to start its operations: according to the Draft Statute provisions, as a start of the process of the selection of RECOM Commissioners, members of selection panels will be appointed by each Party; after the constituent sessions of the selection panels, the available Commissioners' positions will be advertised and associations, educational institutions, citizens' groups and others will place their nominations for the future Commissioners. The candidates will be shortlisted and the final selection will be made by the Parties' Presidents, after consultations with their counterparts. The selection of the RECOM Commissioners should be completed by October 2021. Within the next fifteen days, the constituent session of RECOM should be held and the Rules of Procedure adopted. The remaining preparations, which will include the activities to secure funding from donations, will have to be completed within the next half year. Considering that the key political challenges will have lessened once the Statute has been ratified, the advocacy campaigning may relax somewhat at this phase, but should nevertheless continue to be sustained at a certain level, in order to prevent delays and blockages. Finally, RECOM should start its operations on April 16, 2022. This will make possible the completion of its mission by the end of the 2025.

ACTORS AND THEIR ROLES

As RECOM will be an intergovernmental body, the key actors in its setting up and subsequent operations will be the governments of the Parties and their officials. At the early stages of the process, these will include the Presidents, their offices and their Envoys, as well as the Prime Ministers who will sign the Declaration at

the London Summit or at another high-level event gathering of post-Yugoslav counterparts. Later phases will also include the Parties' central governments and, in the case of ratification, the Parliaments; and later again, the Presidents and their offices, during the selection of Commissioners.

The role of the European Commission and of EU member states may be decisive. Firstly, the special importance that the EC's Action Plan⁵ attaches to reconciliation and good neighbourly relations, and the support to RECOM envisaged in measure 6.1, should be translated into incentives related to progress in the process of the setting up and setting to work of RECOM. The deadlines indicated for each of the eight implementation measures can be defined as benchmarks for progress in the execution of measure 6.1, and their successful completion can be encouraged by various incentives (which should be defined by the EC during the development of the content of measure 6.1). Also, in addition to this possible structured support, the regular official communications coming from Brussels and from the member state governments regarding RECOM should reflect their general support for RECOM and communicate concrete messages in this respect. This will be of particular importance up until the moment when the RECOM Statute is ratified.

The Western Balkans and EU think tanks and activist organisations, in an interaction with the media, will be instrumental in bringing the issue of reconciliation and RECOM back into the public discourse. The topic has been slipping from the agenda of post-Yugoslav politicians in the past couple of years, and in order to increase the pressure of the public on the decision-makers, it should find its way back.

The role of the Coalition for RECOM will pertain to initiating, monitoring and implementing the advocacy activities; but it is likely to decrease after the Statute is ratified, and be reduced to that of monitoring, evaluation and consultancy.

KEY RISK: THE LACK OF POLITICAL WILL

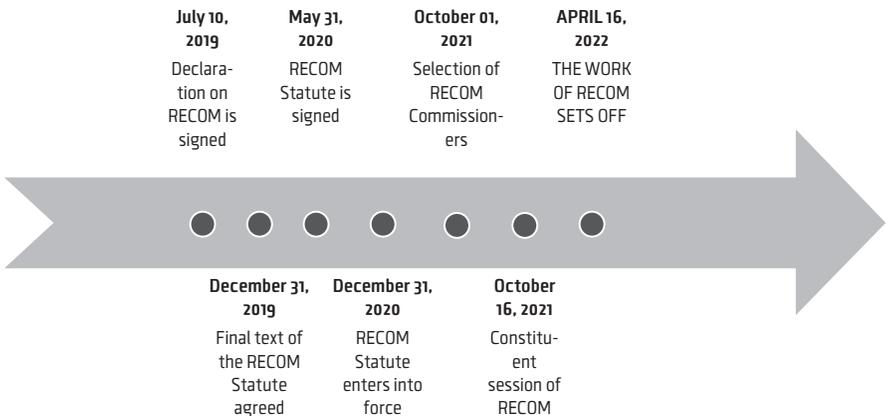
There are different ways in which the plan could be thwarted – delays, blockages in decision-making processes, or plain lack of action. They can all be boiled down to

⁵ Annexed to the Communication about enhanced EU engagement with the Western Balkans

political opposition to the work of RECOM. The causes of this opposition are either rooted in the desire not to unveil the facts and circumstances about victims, missing persons and places of detention, or stem from the distancing of the political elites in power from their Yugoslav past, and from the region as a whole.

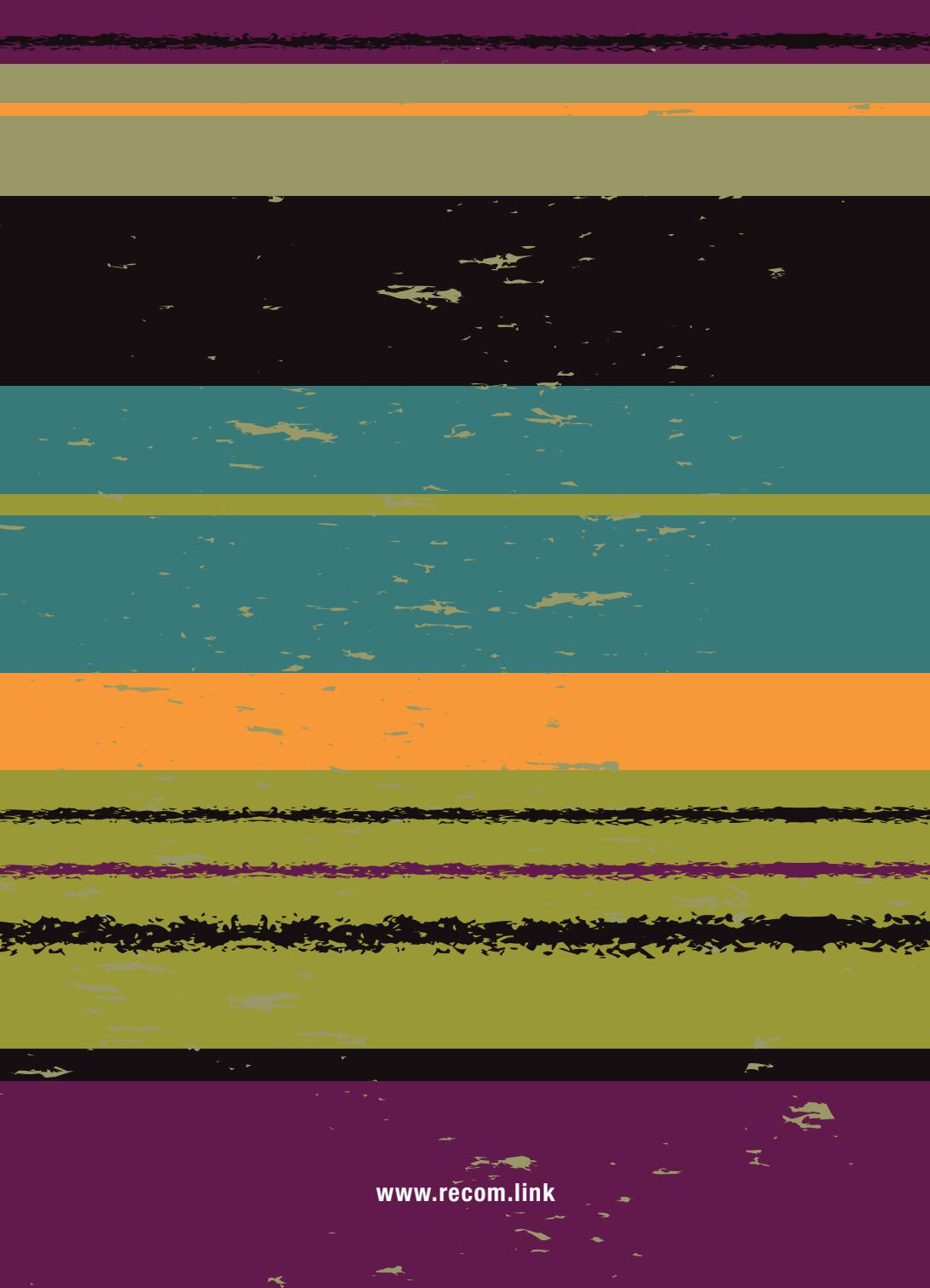
The only way to counter the opposition to RECOM and to persuade the post-Yugoslav countries to proceed with the setting up of RECOM is through **advocacy**. The advocacy should simultaneously generate public pressure on the decision-makers – via public communications – and direct concrete appeals to decision-makers with requests that they undertake the particular steps of the Proposal of the Action Plan. The current advocacy efforts of the Coalition for RECOM should be intensified, and the advocacy should also involve the regional civil society and media, as well as institutional actors from the European Union and the member states.

THE TIMELINE



RECOMMENDATIONS

- (1) To the post-Yugoslav countries (the “Parties”)
 - The Declaration on RECOM should be signed by the Prime Ministers of Serbia, Kosovo, Macedonia and Montenegro in July 2018, at the London Summit of the Berlin Process
 - The Declaration on RECOM should be signed by Bosnia and Herzegovina, Croatia and Slovenia by July 10, 2019, and the necessary steps towards setting up RECOM by June 2020 should be undertaken by all the Parties
 - Following the signing of the Declaration, the Parties should follow the steps indicated in the Coalition for RECOM’s Proposal of the Action Plan with full commitment.
- (2) To the European Commission
 - In developing the content of the Action Plan Measure 6.1 (from the Annex to EC Communication about enhanced EU engagement with the Western Balkans), the timeframe should be extended, and the measure projected to mid-2022
 - The activities implementing the measure should correspond to the activities as listed in the Proposal of the Action Plan for RECOM, put forward by the Coalition for RECOM.
 - The deadlines for the particular phases of the setting up of RECOM and of the beginning of its work should be benchmarks linked to incentives to be envisaged by the European Commission.
- (3) To the European Commission, the European Parliament and the European External Action Service, and to the Governments of the Member States
 - The support for the setting up of RECOM and for the fulfilment of its mission should be clearly and regularly communicated to the post-Yugoslav decision-makers.
- (4) To the Western Balkans think tanks, activist organisations and media:
 - The issue of reconciliation should be brought back into focus
 - The importance of transitional justice, and specifically of its fact-finding and truth-telling instrument, should be clearly and frequently communicated to various audiences
 - The necessity of setting up of RECOM and the relevance of its mission to regional security and overall cooperation should be clearly communicated.



www.recom.link