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"If he has a conscience he will suffer for his mistake. That will be punishment-as well as the prison."(Dostoyevsky 2000, 226)

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**Afraid to Cry Wolf: Human Rights Activists' Conundrum to Define Narratives of Justice and Truth in the Former Yugoslavia<sup>1</sup>**

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**Abstract**

Throughout the 1990s the state of Yugoslavia dissolved, ravaged by horrendous conflict. Since, several retributive and restorative mechanisms to cope with past atrocities have been attempted. In these processes social activists and civil society organizations have increasingly gained ground. Employing concepts of sociology of spaces, which focuses on the creation of spaces through action and the interdependence of action on spatial structures, I argue that activists move between different spaces constituted by narratives of justice and truth. Different NGOs across the region run trial monitoring and/or witness support programs—examples of activist involvement in legal spatiality. Recent fact-finding and documenting projects, such as the regional RECOM initiative, illustrate the creation and expansion of so-called truth spaces by activists. In the constitution phase of these spaces, i.e. the consultation meetings to establish the mandate for commissions or other investigative bodies, stakeholders (i.e. activists, practitioners, representatives and experts) rely on tangible and practicable legal instruments. A phenomenon I refer to as the legalization of truth spaces. Despite the symbiotic relationship between human rights activists and judicial practitioners this phenomenon illustrates the continuous political struggle of the former to institutionalize alternative transitional justice mechanisms. While their work focuses on personal narratives instead of grand narratives—creating a space for multiple narratives of victimhood—such a strategy bears several challenges vis-à-vis victims groups and broader reconciliatory processes.

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## Introduction

In the 1990s the Socialist Republic of Yugoslavia broke up, engulfed by violence across the region. Amidst flaring conflict, the International Criminal Tribunal for the former Yugoslavia (ICTY) was created with the aim to push for accountability for past war crimes and human rights violations. Over the years, the ad hoc UN Tribunal's work has led to a spillover effect of international criminal law into domestic judicial systems in the region (Teitel 2010; Martin-Ortega and Herman 2010), and civil society actors have supported these retributive justice efforts participating and/or running different programs, including witness protection and trial monitoring.<sup>2</sup> Recent research on this topic affirmed that civil society actors, as a result, expanded their influence and impact—reaching beyond the initial judicial support, in which NGOs have been invited to participate by state actors—and created a deliberative space to increase victims' voices in society, so-called 'invented spaces' (Jeffrey 2011). Such scholarly insight is important, as several past restorative justice attempts across different countries in the region resulted in limited success (Jouhanneau 2010; Grodsky 2009; Jelena Pejic 2001). Notwithstanding, social activists and civil society organizations have incrementally increased their role and reach in transitional justice processes.<sup>3</sup> In this article, I discuss the ongoing 2008-transnational truth-seeking initiative, called Coalition for RECOM, to elucidate the sociopolitical struggle of coalition members to advocate for alternative models to cope with mass atrocity in the former Yugoslavia.

Drawing on concepts of sociology of spaces—based on the study of establishing spaces through action and the interdependence of action on spatial structures (Urry 2000)—I illustrate how activists move between different spaces constituted by narratives of justice and truth. The study is based on over two dozen semi-structured interviews with key actors, such as human rights activists, representatives of domestic and international judicial institutions, and international organizations, among others.<sup>4</sup> While early on, human rights organizations in the region acted primarily within the legal space—they contributed to improving domestic war crimes prosecutions by providing support to witnesses and victims, some of who were initially exposed to intimidation and death threats due to the absence of anonymous testimonies in the court room during hearings and the lack of media responsibility<sup>5</sup>—subsequent projects were (and still are) an attempt to expand their space from domestic justice-oriented activities to regional truth-finding efforts.

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<sup>2</sup> Other authors and reports have criticized the effectiveness of this justice cascade. See for instance (Subotić 2009) and annual activity reports of NGOs, such as Documenta and Humanitarian Law Center, among others.

<sup>3</sup> Several authors have addressed the question of human rights activism in transitional justice processes and in particular highlighting the important impact of local NGOs in different regions (Roht-Arriaza 2005; Collins 2006; Burt 2009).

<sup>4</sup> Additionally, the study draws from various reports and other documentation.

<sup>5</sup> See "Transitional Justice in the Balkans—Judicial Transparency and Media Responsibility," conference organized by the Balkan Investigative Reporting Network (BIRN), Sarajevo, BiH, September 1-3, 2009.

Interestingly, however, the expansion of so-called truth spaces poses myriad challenges. The attempt of establishing a truth-seeking body for the former Yugoslavia has faced different types of opposition, ranging from internal disapproval by certain of its members to external (in)direct critique and politicization across the region. With the aim of creating a broad regional truth-finding initiative, the Coalition for RECOM also grapples with different types of victims (including families of victims, prisoners, and veterans, among others) who have, sometimes, conflicting needs and/or demands. Moreover, the dominance of legal concepts in institutionalizing truth-seeking measures raises questions about the influence and consequences of hard justice (such as retributive mechanisms) on soft justice (such as restorative tools, including truth commissions). In this article, I refer to this trend as the legalization of truth spaces. In fact, with the current legalization of truth spaces activists not only increase their 'invented' space to foster deliberative spaces of justice for civil society, but also attempt to embed their newly created space in the space originally provided by state institutions to depoliticize transitional justice efforts in the region. I argue, however, that their goal of legal-oriented depoliticization of restorative justice processes remains nonetheless highly political.

This article is organized in three sections. First, I describe the continuous struggle of human rights activists to create a transnational extra-legal space to deal with the past across the former Yugoslavia. I particularly focus on internal and external obstacles the movement faces. Second, I discuss issues of multiple narratives of victimhood, partly because of the transnational character of the restorative justice efforts. In order to do so, I draw on several different cases. Third, I examine the challenges of the legalistic influence on truth seeking. In particular, I analyze the ongoing political battle to institutionalize alternative transitional justice mechanisms.

### **The RECOM Initiative: Struggling Efforts to Create Extra-Judicial Space**

Several authors have explored the sociopolitical role of NGOs in society using a sociology-of-space perspective in order to illustrate their active involvement in shaping policy processes (Miraftab and Wills 2005).<sup>6</sup> Drawing on Miraftab's and Wills' notion of invited spaces—i.e. state institutions provide opportunities for civil society to participate actively in certain problem areas—Alex Jeffrey recently analyzed the creation of space (invented spaces) by Bosnian human rights organizations to allow for deliberate conceptions of justice that go beyond legal institutions and processes (Jeffrey 2011). His study defies a legalist approach, illustrating how activists who initially cooperated with the judiciaries have established alternative ways to implement transitional justice in post-conflict settings. While I employ these concepts to investigate regional transitional justice NGO activities in the former Yugoslavia in this paper, I concentrate on the difficulties human rights activists are confronted with during the creation of regional restorative justice efforts.

The recent attempts of institutionalizing an interstate fact-finding body—to account for past human rights violations and war crimes in the Balkans—emerged as a response to the rising critique of international and domestic war

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<sup>6</sup> For an extensive discussion on time and space, see (Urry 2000).

crimes prosecutions in the region. In fact, retributive justice mechanisms to cope with the past, such as ICTY, despite its great global impact on and model character for human rights and criminal law, has only partially fulfilled its mandate to help war-torn and post-conflict societies in the region transition (Subotić 2009). Some of the issues include: the geographical distance of the court in the Netherlands and the crime scene sites—which has often been criticized by victims/witnesses; the trial of selective cases only (both on the international as well as domestic level); and the politicization of cooperation processes between countries of the former Yugoslavia and the UN tribunal in The Hague (Teitel 2005). Victims, and society in general, felt alienated by international and domestic accountability efforts.

Increasing critique from victim associations and human rights organizations thus helped launch an alternative process to improve the relationship between law and society. The idea was that progress does not lie in more personnel, better strategies, and on-site presence of the judiciary system, but in the way that those who suffered most during the conflicts are integrated into projects to cope with the past. The activities of several non-profit organizations—many of which often started working at the outbreak of violence in the early 1990s<sup>7</sup> or shortly after—demonstrate the increasing efforts to raise victims' voices in transitional justice processes in the Balkans. In fall 2005, three established non-profit organizations in the region, the Humanitarian Law Center (Serbia), Documenta (Croatia), and the Research and Documentation Center (Bosnia and Herzegovina),<sup>8</sup> discussed the prospects of an independent regional commission that investigates and discloses the facts about war crimes and other serious human rights violations on the territory of the former Yugoslavia.<sup>9</sup> A few years later, these organizations had gained enough momentum and launched the Coalition for RECOM with over 100 NGOs from the region in Priština, Kosovo (Coalition for RECOM 2009). Due to the still highly politicized landscape of war-crime-related issues in the region, the founders of the initiative stressed the importance of establishing a platform offering victims an opportunity to express themselves and put a damper on the relativization of any crimes against humanity by local and national authorities or justification of “crimes committed against opposing sides in the conflict” (Coalition for RECOM 2010). The initiative comes hence as a response to other transitional justice

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<sup>7</sup> Cf. for instance the activities of the Humanitarian Law Center in Belgrade, Serbia, that documents war crimes in the former Yugoslavia and promotes victims rights, based on various initiatives, at <http://www.hlc-rdc.org/stranice/Linkovi-modula/About-us.en.html> (accessed 5 December 2009).

<sup>8</sup> These various organizations have as their core mission to document and disclose facts about the human rights violations and war crimes committed during the 1990s to educate society and create a voice for victims. Various forms of implementing this mission exist. Documenta, for instance, among other things, engages in commemorative culture, history teaching, and dealing with the past initiatives, thus emphasizing the interactive dialogue with society. The Research and Documentation Center, concentrates its work on documenting missing persons, and has published a comprehensive account of all the war victims in Bosnia and Herzegovina, *The Bosnian book of the dead* (2009), as well as an interactive Google map that shows location, nature of the crime and number of victims. The Humanitarian Law Center, despite its involvement in commemorative culture, is known for its strong legal activities, providing support for victims in court and vis-à-vis state institutions.

<sup>9</sup> The International Center for Transnational Justice (ICTJ) and other prominent NGOs in the region also participated in this discussion.

mechanisms, such as international and domestic courts, which have proven to be limited in their success to cope with the violent past in the region.<sup>10</sup>

RECOM aims at creating a space for victims to be heard in society, fueling sympathy and understanding, particularly from perpetrator groups. According to its advocates, RECOM is to provide a mechanism that takes into account the context of the past conflict. With over half a dozen of countries involved in the breakup of the former Yugoslavia, dealing with past war crimes issues does not stop at national borders, but goes beyond the sovereign territory of the current states. Additionally, RECOM coalition members plan on creating a comprehensive database of victims to end the perpetual politicization of the number of victims in the region. RECOM also aspires to help war crimes prosecutors with evidence material, witness handling and search of the missing. The initiative's ambitious goals, however, are tainted by internal disagreements of different coalition members.

Since the official constitutional meeting of the RECOM coalition in Priština in 2008 the initiative has faced internal politicking and difficulties. The driving coalition partners of RECOM, such as Documenta and the Humanitarian Law Center, in particular, have grappled with mobilizing coalition partners from Bosnia and Herzegovina, after the head of the Bosnian RDC, for different reasons, refused to give his official support to the coalition at one of the meetings in winter 2008.<sup>11</sup> Void of an essential member—BiH constitutes a symbolic member country due to its weighty history during the 1992-1995 conflict—HLC director, Nataša Kandić, managed to fill the gap created by the loss of the influential RDC by partnering with the Association of BiH Journalists.<sup>12</sup> Yet, the fact that this organization does not essentially concentrate on war crimes reporting has affected its legitimacy within the coalition, according to a prominent member of the initiative.<sup>13</sup> Critique has also come from participating organizations that have deplored the lack of transparency in RECOM's decision-making process (B92 2011). Moreover, the uncertain outcome of whether the commission will be created and the long process in rallying financial and political support—both of which have been fluctuating and vague—has also led to a RECOM fatigue with each of the main partner organizations focusing their energy and resources on domestic and local programs in their respective home countries.<sup>14</sup> In addition to internal obstacles, the initiative's institutionalization process has faced difficulties fueled by other political and international actors in the region.

Although the political and institutional context in the former Yugoslavia has become more favorable for the RECOM initiative in recent years, numerous obstacles still impede the creation of a fact-finding body. In the following I describe the fragile political progress across the region and outline some of the inherent problems. The first important political wave of change in

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<sup>10</sup> See reports published by human rights organizations, including Documenta, the Humanitarian Law Center, Human Rights Watch, Amnesty International, among others.

<sup>11</sup> See interview with Mirsad Tokača, director of the Research and Documentation Center in June 2011.

<sup>12</sup> See interview with Nataša Kandić, director of the Humanitarian Law Center, in May 2011.

<sup>13</sup> See interview with official member of Coalition for RECOM in Zagreb in February 2011.

<sup>14</sup> See supra note 13. See also programs by Documenta, <http://www.documenta.hr> or the Humanitarian Law Center <http://www.hlc-rdc.org> (accessed 23 November, 2010).

the former Yugoslavia occurred in the early 2000s. Tudjman's death in 1999 allowed the conservative nationalist era to end in which the narrative of the glorious homeland war to defend the young nation didn't leave any room for discussion of war crimes and human rights violations. Serbia's notorious leader Milošević was booted out of power after his 2000 electoral defeat and rising protest from the streets after he attempted to unilaterally remain in power (Ramet 2010, chap. 12 and 13). This tabula rasa with the past, however, was only the tip of the iceberg of a long process that is still ongoing.

Indeed, current political leaders in both countries, Ivo Josipović the president of the Republic of Croatia (who began his first term in February 2010), and Boris Tadić the president of the Republic of Serbia (in his second term, which started in February 2008), have both made important strides to foster a climate of rapprochement in the region. They represent a new political generation that has not been personally involved (be it directly or indirectly) in war crimes or the human rights violations of the 1990s conflicts.<sup>15</sup> In 2007, for instance, Tadić released a statement on Croatian national TV on the eve of Croatia's 16<sup>th</sup> independence anniversary, June 24, 2007, apologizing for crimes committed against the Croats by members of the Serbian population.<sup>16</sup> While then-president of Croatia, Stjepan Mesić welcomed the remarks, nationalist hardliners at home, such as Aleksandar Vučić, secretary general of the Serbian Radical Party, ferociously criticized him as a national traitor (Popovic 2007). Already in 2004, the Serbian president has made similar remarks while on a visit to Sarajevo, Bosnia and Herzegovina.<sup>17</sup> More recently, on November 4, 2010, Tadić apologized for the massacre that took place 19 years ago in Vukovar, a town in Northeastern Croatia.<sup>18</sup> He said that "[b]y acknowledging the crime, by apologizing and regretting, we are opening the way for forgiveness and reconciliation"; yet not everyone received him with wide open arms, as several mothers of those killed in Vukovar turned their backs while he gave his speech (Associated

<sup>15</sup> In the 1980s, Josipović was a member of the League of Communists of Croatia, playing a key role in the democratic transformation of this party as the author of the first statute of the Social Democratic Party of Croatia (SDP) after Croatia's independence. He left politics in the mid-1990s, pursuing his academic career as a law professor at the University of Zagreb and only reentered the political realm in 2003, when Ivica Račan, then acting Prime Minister, invited him to join the government. Serbia's president, Boris Tadić, a trained psychologist, was part of the Democratic Opposition of Serbia, which was key in overthrowing Milošević in 2000. Politically part of the Democratic Party, he has made multiple symbolic reconciliatory public statements that are a sign of collaboration and understanding of both countries.

<sup>16</sup> The rising wave of apologies in the region of the former Yugoslavia is not limited to Serbia and Croatia. In November 2010, Bakir Izetbegovic, Bosniak member of Bosnia-Herzegovina's tripartite presidency, apologized for deaths caused by his ethnic group among other ethnicities. This trend started in 2000 with Montenegrin President Milan Djukanovic, when he apologized for the 1991 shelling of the Croatian coastal city of Dubrovnik in which his country was involved. Since, the Serbian and Croat heads of state have apologized in 2003, and Tadić apologized to Bosnians in Sarajevo in 2004 for Serbian atrocities committed there. Additionally, Josipović has apologized at Jasenovac, a World War II concentration camp, where tens of thousands of people were killed during World War II. Public apologies are not the only trend, as there have been political and judicial conciliation as well. The Parliament of Serbia, for instance, voted on a resolution on the 1995 Srebrenica massacre, while Croatia is assisting Serbia in its bid to join the EU (Nenad Pejic 2010)

<sup>17</sup> See "Tadić se izvinio građanima Hrvatske," *B92*, 24 June 2007.

<sup>18</sup> Vukovar is situated close to the Serbian border and a war site where Serbian forces took over 200 hospitalized Croats to a nearby pig farm in Ovčara and massacred them in November 1991.

Press 2010). Both of these examples illustrate how the political landscape equals a minefield, as not only right-wing nationalist veterans feel betrayed, but also victims express their discontent with political symbolism that does not go far enough in their eyes. Tadić's Croatian counterpart, Josipović, reciprocated these symbolic steps, and during the November 4, 2010 ceremony in Vukovar, he laid down a wreath in commemoration of over a dozen Serbs that had been killed in a nearby village (Ibid.).<sup>19</sup> Both leaders have also expressed their political backing of the RECOM initiative, in fall 2010 when RECOM members solicited them to publicly ask for their support (Andrić and Hadžović 2011).

However, in spite of the symbolic gestures and discourses by head of states in both of these countries (and across the region) institutional drawbacks remain—ranging from the lack of investigations of war crimes involving high-profile Croatian politicians, such as the former speaker of the parliament, Viktor Šeks (Amnesty International 2010), to the appointment by the current Serbian government of Zoran Stanković as head of the Serbian Ministry of Health who is a crony of indicted war criminal, Bosnian Serbian General Ratko Mladić (Radio Free Europe/Radio Liberty 2011a).

Interestingly, support from international organizations to create RECOM's institutional framework also remains limited and further complicates human rights efforts to account for war crimes. While the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe (CoE) has released a report expressing its support for regional reconciliatory justice mechanisms among states of the former Yugoslavia, such as the regional truth-seeking initiative RECOM (Marcenaro 2011), other organizations, including the United Nations Development Program (UNDP) and the European Union (EU), among others, avoid public statements that engage in political or financial support of RECOM.<sup>20</sup> Politicking among Coalition members and the lack of external support, however, are not the only challenges the RECOM initiative has to overcome. During the creation of this truth space a debate about the meaning of victims has emerged, producing different opposing narratives of victimhood.

### **Multiple Conflicting Narratives of Victimhood**

Recent scholarship has grappled with the question of victimhood in post-authoritarian regimes. Drawing on interviews and news sources with the confessions of perpetrators in post-conflict settings in Argentina, Brazil, Chile and South Africa, for instance, Leigh Payne analyzes the behavior of perpetrators (in terms of remorse, heroism, denial, or sadism, or through lies or betrayal) and the reaction of victim groups (Payne 2008). In the case of the former Yugoslavia, denial still remains an important phenomenon in society. Partly, as we will see in the following, because state institutions have sustained certain political discourses—such as the foundational myth of the Croatian Homeland War 1991-1995. In this context, veterans have enjoyed

<sup>19</sup> In spring 2010, when giving a talk in front of the Bosnian Parliament, Josipović also apologized for crimes committed against Bosnians by the Croatian people. See "Josipović apologizes for Croatia's role in war in Bosnia," *Croatian Times*, 15 April 2010.

<sup>20</sup> See interview with United Nations Development Program and European Union officials in Sarajevo in May 2011.



privileges guaranteed and provided by the state.<sup>21</sup> On the contrary, state institutions across the region have often ignored the fate of war victims and their families. During the RECOM consultation process participating victims association have therefore stressed the need to define the meaning and status of a victim, illustrating RECOM initiators' conundrum of integrating different narratives of the region's looming past.

As a member of a local victim association from Zvornik, a town in northeastern Bosnia from which nearly all Muslims were expelled during the 1992-1995 war, underlined:

Persecution of the civilian population can't be compared to the persecution of those who bore rifles and were members of a military formation. Today, these numbers are being made equal. It is impossible to make a balance in this war: they are trying to make it up with the previous war. (...) This means that a civilian is a civilian, a soldier should not be mentioned because after all he was a member of the army, those are separate issues. However, here we exclusively speak about civilians, people who were taken and killed at their doorsteps or a bit further depending on where one was killed (Cited in Coalition for RECOM 2009, 8).

This narrative, however, stands in opposition with the RECOM members' goal to establish facts about human rights violations and war crimes of *all* victims.<sup>22</sup> And indeed, in some cases, the meaning of victim includes social groups that do not match the Zvornikan's above definition but include former members of the armed forces. Although the Coalition for RECOM counts only six veterans associations versus well over one hundred victim associations, this situation demonstrates the inherent predicament of RECOM's leading members to draw bridges among different local and regional civil society organizations during their consultation meetings.

In local and regional consultation meetings, such as in Vukovar in summer 2010 and in Skopje in winter 2010, for instance, members of different branches of the Association of Underage Volunteers of the Homeland War also participated in the discussion.<sup>23</sup> These organizations have been created for persons, who at the time of the war were not considered adults, yet fought in the 1991-1995 Croatian war. As underage participants in the hostilities, however, the Croatian state does not provide any veteran pensions for these categories.<sup>24</sup> Hence, the concerns of one of their representatives with regards to RECOM's task of registering human losses stands in contrast with the statement given by the member of the Zvornika victims association:

I am in favour of a register of all losses, which would include both civilians and military men, and that list must inevitably include foreign nationals who participated in those conflicts. How are we going to register them? We should include them in the same register, together with the members of international forces. And a separate register should be created for victims, primarily victims of war crimes.<sup>25</sup>

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<sup>21</sup> Veterans in Bosnia and Herzegovina, for instance, have also benefitted from financial and political support by their respective governments. See (Popić and Panjeta 2010).

<sup>22</sup> The final draft of the statute was adopted on the fourth Coalition for RECOM Assembly Meeting on 26 March 2011 in Belgrade. The draft is available at <http://www.zarekom.org/documents/Proposed-RECOM-Statute.en.html>, accessed on 2 May 2011.

<sup>23</sup> See reports of the consultation meetings at <http://www.zarekom.org/Consultations.en.html>, accessed on 11 February 2011.

<sup>24</sup> See informal interview with Documenta director Vesna Teršelić in Vukovar on 14 July 2010.

<sup>25</sup> Supra note 23.

RECOM's policy strategy thus does not necessarily receive the approval from its main target and support groups of war victims. As a result of its holistic approach some victims organizations, such as the Mothers of Srebrenica, do not participate officially as a member of the RECOM coalition because their members insisted on the exclusive definition of noncombatants (Coalition for RECOM 2009, 8).<sup>26</sup> Narratives by political actors and state institutions also complicate RECOM's mission to establish a regional commission.

Nationalist discourses generated by (particularly populist) political actors across the region still pose an impediment to the successful creation of truth spaces by human rights activists. As a case in point, after the arrest of Ratko Mladić on 26 May 2011, the Serbian Radical Party organized a rally consisting of about 10,000 nationalist protestors who rallied—with a small amount of participants rioting—in front of the Serbian parliament in Belgrade to demonstrate against Mladić's extradition to The Hague (Erlanger 2011). Earlier, in the spring, Croatia faced a similar fate with nationalists and veterans mobilizing large part of Croatian society across the region in order to protest against the ICTY verdict in the General Ante Gotovina case (Radio Free Europe/Radio Liberty 2011b). The verdict was handed down two days before the initial start date of the RECOM signature in Croatia. Given the very tense political climate in the country, human rights activists postponed the launch of the signature campaign to a later date in order to prevent violence among their campaign volunteers and demonstrators.<sup>27</sup> Drawing on the latter case, I will explore the question of state victimhood, as an institutional hurdle to the constitution of truth spaces in society—in addition to the differing narratives of victims mentioned above—and which further exacerbates the work of NGO activists in the field.

Political symbolism has a very strong effect on the community if it is grounded in lived experience (Bellamy 2003, 1-6). Not surprisingly, the foundational myth of former Croatian army member, Gotovina—who has risen to an emblematic war hero figure in Croatian society, and who has incarnated the ontological core of the nation's nascent identity in a fight of good (Croatia) against evil (Serbia)—has sparked ferocious criticism at the intersection between international and national politics. Despite the Croatian government's international cooperation which led to his arrest and transfer to the ICTY in December 2005, the normative shift in favor of international humanitarian law in the endlessly dragging—and politically highly explosive—extradition issue of Gotovina was incomplete. In fact, during the entire period, politicians carefully open debate on Croatia's national foundational myths (Pavlaković 2008). After the verdict, the Croatian government even took the necessary steps to initiate an appeals process and provide sufficient legal and financial assistance to Gotovina's defense team in The Hague (Croatian Times 2011).

Moreover, however, comparing judicial institutional practices with the above discursive practices in politics highlights how identity shifts and collective memory are more difficult to change. As a case in point, recent war crimes prosecutions, such as the Medak Pocket case before the Zagreb County Court in 2008—a trial in which two former Croatian generals were

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<sup>26</sup> Supra note 13.

<sup>27</sup> See interview with Signature Campaign officials of the Coalition for RECOM in May 2011.

accused of crimes against ethnic Serbian civilians during a military operation in the fall of 1993 in the south-central region of Croatia—highlight the judiciary’s reluctance to apply practices in compliance with international transitional justice norms.<sup>28</sup> Human rights organizations monitoring trials have criticized the prosecution’s lack of interest “in identifying and punishing other commanders and direct perpetrators in the Medak Pocket case, in spite of evidence pointing to certain persons, members of certain military formation” (Kandić 2009, 131). These drawbacks within national judicial institutions are not exceptions, but a trend in how transitional justice is struggling to move from the international to the national level (Lazić, Jahić, and Kruhonja 2009, 18-24; Subotić 2009, 101-6; Pavlaković 2009, 17). It is unsurprising then, that human rights activists have geared up to provide alternative spaces of deliberation for victims in society. Paradoxically, however, with the aim to confront the issue of politicization of accountability efforts, their activities are influenced by and rely on a legalistic perspective, which in turn poses a number of problems.

### **The Legalization of Truth Spaces and Challenges**

At the beginning of this article I introduced a trend I refer to as the legalization of truth spaces—basically describing the phenomenon how activists, practitioners, representatives and experts employ tangible and practicable legal instruments during consultation meetings in order to establish the mandate for the regional commission. In the following section I will discuss the phenomenon, because this juridification of truth-seeking bodies bears its roots in a broader law-society development. It describes the interactions between legal experts—i.e. elite, academic and professional networks—and their relationship to society in diverse sociopolitical contexts. Though not applied on the legalization of mechanisms that deal with past mass atrocities, Yves Dezalay and Bryant Garth have studied this trend in a more general international and regional context. Drawing on Latin America, they have explored the export of globalized legal knowledge by Western elites and their relationship to local elites educated in the West in order to scrutinize the emergence of specific rule of law trends in this region (2002). The conceptual underpinning of their study can also be applied to the current analysis of the RECOM fact-seeking initiative.

Indeed, the institutionalization of truth-seeking bodies raises questions about the influence of hard justice, such as retributive mechanisms, on soft justice, such as restorative tools, including truth commissions. The former is based on measurable results, notably the number of processed cases and rendered verdicts, whereas the latter, at least initially, have relied on outcomes which seem, at first, less quantifiable. Yet, sociologist and director of the Truth-Seeking Program at the International Center for Transitional Justice, Eduardo Gonzalez—who has consulted and participated in many different local, national and regional initiatives around the world to set up commissions and bodies that deal with the past<sup>29</sup> —has stressed the need to

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<sup>28</sup> In an unpublished manuscript, “Croatia: Parody of Justice, Case Đermanović,” (2010), Mia Psorn highlights the problematic rule of law situation in Croatian county courts.

<sup>29</sup> He also consulted the RECOM members during meetings in Serbia and Kosovo in spring and summer 2010.

think differently when it comes to implementing successful strategies for truth commissions.<sup>30</sup>

The reason why judicial mechanisms are able to produce a quicker, and often, in terms of output (i.e. number of verdicts), more successful track record, is because law, i.e. the rules generally accepted by a community and that regulates the actions of its members and in case of a breach may be enforced by the imposition of penalties, has turned the notion of justice into something tangible and applicable despite its disputable value and impact on a subject, in time and in space. The notion of truth, however, cannot easily be quantifiable or be constrained in a body of legal texts.<sup>31</sup> Nonetheless, RECOM coalition members have set out the goal of creating a large database, tracking cases and human losses across the region.<sup>32</sup> This project thus adopts policy strategies implemented by the UN ad hoc court—which has a large electronic database of its cases—and local institutions, such as the Bosnian state court, which has one of the most state of the art databases to document its cases and help coordination between different judiciaries on the entity level in BiH.<sup>33</sup>

Despite the meticulous and ongoing attempts to fit the mandate of a regional commission neatly into a legal document, the statute, the strengths of this initiative might lie elsewhere. Various efforts—e.g. numerous congressional bodies of inquiry on specific massacres or death squads—have for instance preceded the Peruvian truth commission, which was put in place in the early 2000s and delivered an 8000-page report at the end of 2003. In fact, the institutionalization of RECOM—no matter how desirable by its proponents—is far from being a *fait accompli*. Many factors, ranging from the regional political climate to internal consensus of the coalition members demonstrate that this initiative still requires ample support from within and outside. Notwithstanding, according to a member of the RECOM draft statute advisory board, even if all these efforts would not result in the creation of the commission, many positive side effects will remain in the region. The legacy includes strengthening local grass roots efforts, improving a commemorative culture, and inciting transnational cooperation between governments and civil society, among others.<sup>34</sup>

The efforts put into setting up RECOM, however, are a proof that stakeholders (including activists, practitioners and lawmakers), are learning from past mistakes—such as merely copying a fact-finding body that is modeled on the concept of the South African truth commission—as every context, conditions and objectives are unique for each case. Hence, to cope with the dominant influence of legal experts in shaping an adequate body for dealing with mass atrocities in the Balkans, RECOM members have tried to expand the range of consultants and experts that the future commission will draw from. Similar to the Peruvian truth commission—which had political

<sup>30</sup> See interview with Eduardo Gonzalez on 10 September 2010 in Belgrade, Serbia.

<sup>31</sup> Retributive justice mechanisms, however, have also a truth-disclosing component and therefore are considered by some as history-setting institutions. For a discussion on the history-defining capacity of the ICTY cf. (Wilson 2005).

<sup>32</sup> See interview with RECOM coalition members in June 2011.

<sup>33</sup> See interview with Sven Marius Urke, secondee of the Norwegian Foreign Ministry and currently international advisor at the Bosnian High Judicial and Prosecutorial Council in May 2011.

<sup>34</sup> See interview with Vjeran Pavlaković, historian (University of Rijeka) and member of RECOM for overview of human rights activism in Croatia. September 2010.

scientists, anthropologists, sociologists, psychologists and historians, among others—the Coalition for RECOM has invited scholars, practitioners and experts from different fields that range from history to psychology.<sup>35</sup> While the ratio of non-legal experts remains still relatively low, this trend highlights the attempt to tackle political and institutional challenges differently. Each of the experts brings a unique set of assets and knowledge to the discussion table, which—notably for the preparation and consultation to define the mandate of the commission—was very crucial. While psychoanalysts will be able to evaluate or address questions related to victims and how they deal with trauma in certain forms of testimonies or public hearings, forensic anthropologists can help define practical parameters when it comes to determining the role of RECOM in mass grave discoveries, and historians prove useful to delineate the historical period for which the commission should be designed for. Although it is too early to assess the impact of one choice over another, these developments emphasize the increasing role of civil society in a dynamic and experimental transitional justice space in the former Yugoslavia. This experience can also serve as a very helpful example in the context of other regional post-conflict settings.

Moreover, the section of RECOM's draft mandate that addresses the issue of national war crimes prosecutions calls for a brief reflection on critically embedding truth seeking in a legal and/or judicial space. According to the draft statute, institutionally, RECOM will be an official body endorsed by the various governments of the former states of Yugoslavia, but will function independently. In order to emphasize the institutionalized grassroots effort, a signature campaign was launched to collect over one million signatures across the region. The idea was to generate enough public support and buttress lobbying efforts with respect to introducing legislation in each of the RECOM member countries to establish the official institutional structure.<sup>36</sup> It will only be in place for a relatively short period of time (two years with a six months preparation period) with its mandate expanding to the territory of the states where crimes have been committed in the past. In theory, the body has a non-judicial character, however, the consequences of certain powers exerted by the members was a touchy bone of contention in numerous consultation and workshop meetings between coalition members who discussed the mandate and role of the commission in view of finalizing the draft statute.<sup>37</sup> This issue illustrates the problematic character of truth commission mandates in general. On the one hand, their objective is to disclose facts about human rights violations by providing victims a space to raise their voice—a form of soft justice to deal with the past. On the other hand, their goal is also to account for violence and war crimes, which, in many cases, require some form of retributive justice.<sup>38</sup> In the case of the RECOM statute, article 49, 'The role of the Commission in criminal

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<sup>35</sup> Supra note 34, and informal conversations with Vesna Teršelić in August 2010.

<sup>36</sup> Supra note 13. Currently, the campaign collected over 500,000 signatures and now continues to collect signatures online.

<sup>37</sup> Supra note 22.

<sup>38</sup> While Rwandan Gacaca courts have dealt with mass atrocities on a local scale (including shaming and other forms of sanctions for less grave crimes), the Peruvian truth commission cooperated with the domestic judiciary to prosecute perpetrators.

prosecution,' has repeatedly been discussed in multiple consultation sessions.<sup>39</sup>

Article 49 of the RECOM draft statute comprises three articles relative to the role of RECOM with respect to alleged perpetrators that participate in, e.g. public hearings and reveal "information leading to the discovery of a mass grave location or information significant for discovering other perpetrators." While paragraph one stipulates a suggestive power to RECOM vis-à-vis a war crimes court to recommend mitigating circumstances if any information is obtained from an alleged perpetrator that could lead to either the discovery of missing persons in mass graves or other perpetrators, paragraphs two and three propose pardons if the collected information from an alleged (paragraph two) or sentenced (paragraph three) perpetrator lead to further discoveries that help the overall fact-finding mission about past atrocities. Prima facie, this discussion seems purely legal, concerning the definition of the roles between the judiciary and RECOM. This issue, however, when examined more closely, reveals a set of problems that range from defining the scope of amnesties—which in the case of RECOM have a conditional character—to the current judicial system's effectiveness in the region, thus turning the scope of legal issues into political challenges.<sup>40</sup>

## Conclusion

This article has examined the recent regional restorative justice mechanisms in the former Yugoslavia, the so called Coalition for RECOM, which is currently taking shape and finished its consultations process and meetings to define its mandate and the institutional character of its body. After the violent disintegration of Yugoslavia in the 1990s, the region has witnessed several retributive and restorative mechanisms to cope with the past, including war crimes tribunals—on the international and (to a lesser, but still noticeable extent) national level—and truth-seeking and fact-finding initiatives. During these processes human rights activists have occupied an important intermediary function, communicating and interacting between spaces constituted of varying justice and truth narratives. The aim of this article was to analyze these different, intersecting spaces and the role of civil society within these spaces to help understand recent practices to establish a transnational truth-seeking mechanism. In the beginning, the study addressed the ongoing internal and external struggle of human rights activists to establish an extra-legal space to deal with the past across the former Yugoslavia. In this context, I also analyzed the conflicting impact of different victim groups' narratives that accompanied the institutionalization process. Finally, I examined the consequences of legal concepts that influence the institutionalization of truth-seeking measures—a trend, which I refer to as the legalization of truth spaces. Activists thus managed to increase their 'invented' space to foster deliberative spaces of justice for civil society.

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<sup>39</sup> The following information is based on the statute from 26 March 2011. Supra note 22.

<sup>40</sup> Several case studies discuss the legal problems of amnesties, elaborating on the political difficulties of amnesties to foster democratic transition and arguing that that amnesties or pardons should only be considered in exceptional cases as to not jeopardize the retributive justice efforts and only if other forms of justice mechanisms, such as restorative instruments, are in place (Stahn 2005; Gibson 2002).

Paradoxically, however, I also demonstrated that despite their goal of legal-oriented depoliticization of restorative justice processes, transitional justice efforts in the region remain nonetheless highly political. The road to a sustainable transition in the region is still long and will require human rights activists to continue their grass-roots projects and establish a dialogue between different victim groups across the former Yugoslavia. Yet, at the same time, they also need to invest in their technical expertise in order to secure additional external funding to maintain and expand their restorative justice efforts.

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