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Quality Control in Fact-Finding

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Front cover: *Mr. Renzo Scarpelli of Florence at work, one of the leading pietre dure craftsmen and artists in the world. He displays the utmost quality control in his selection of motive, types of stone, their preparation, combination, and finish. In his field, Mr. Scarpelli epitomizes the idea of quality control, as illustrated by this picture. As such, he symbolizes the craftsman-like sense of quality that should be exercised in the establishment and operation of non-criminal justice fact-finding mandates. Photograph: © TOAEP 2012.*

Back cover: *A centuries old, hand-made brick taken from the wall during the restoration of the CILRAP Bottega or office in Florence. Quality control entails immediate engagement with the matter before us, seeking to alleviate hollowness or weak foundation through a hands-on approach. Photograph: © TOAEP 2020.*

Non-Criminal Justice Fact-Work in the Age of Accountability

Marina Aksenova, Morten Bergsmo and Carsten Stahn *

1.1. Quality Control in Fact-Finding: Questions and Definitions

The recent years have seen an increase in the number of international fact-finding commissions and other mandates that look into allegations of serious violations of international criminal, humanitarian or human rights law.¹ In 2012, the United Nations ('UN') Secretary-General stressed the growing importance of international commissions of inquiry or fact-finding missions to enhance human rights protection and combat impunity.² The same point was reiterated by the UN High Commissioner for Human Rights in 2015.³

The mounting reliance on fact-finding in international law can be explained by several factors, including generally increased expectations of

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¹ See, for example, the International Fact-Finding Mission on the Israeli Settlements in the Occupied Palestinian Territory, (UN Human Rights Council, Israeli Settlements in the Occupied Palestinian Territory, Including East Jerusalem, and in the Occupied Syrian Golan, UN Doc. A/HRC/RES/19/17, 10 April 2012 (<https://www.legal-tools.org/doc/c23d72/>); the Fact-Finding Mission on Syria, UN Human Rights Council, The Current Human Rights Situation in the Syrian Arab Republic in the Context of Recent Events, UN Doc. A/HRC/RES/S-16/1, 4 May 2011 (<https://www.legal-tools.org/doc/37fa81/>); and the Independent International Fact-Finding Mission on the Conflict in Georgia, Council of the European Union, Council Decision 2008/901/CFSP, 2 December 2008 (Report, vol. 1: <https://www.legal-tools.org/doc/b6be61/>; vol. 2: <https://www.legal-tools.org/doc/d0e020/>; vol. 3: <https://www.legal-tools.org/doc/c273c2/>).

² UN General Assembly, Strengthening and Coordinating United Nations Rule of Law Activities, UN Doc. A/67/290, 10 August 2012, para. 19.

³ OHCHR, "Commissions of Inquiry and Fact-finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice", HR/PUB/14/7, 11 February 2015.

accountability and some limitations in the existing international criminal justice system.⁴ International adjudication focuses primarily on individual criminal responsibility on the basis of charges in specific indictments. Adjudication tends to take considerably longer than non-criminal justice fact-finding, so the latter may therefore serve advocacy needs better in some situations. Furthermore, there is an inherent selectivity in international prosecutions insofar as they may only reveal parts of the story and not necessarily the whole pattern of violations. This leaves space for other mechanisms designed to ensure accountability and compliance with international obligations, non-criminal justice fact-finding being one of them.⁵

For our purposes, the terms ‘fact-finding’ and ‘inquiry’ refer to the methods of ascertaining facts used in international relations for differing purposes.⁶ These methods include several types of work on facts or alleged facts, including work-processes to identify, locate, obtain, verify, analyse, corroborate, summarise, synthesise, structure, organise, present and disseminate these facts. The novel term ‘fact-work’ is used in this chapter and throughout the book to capture all such work-processes.⁷ This term was coined in the conceptualisation of the 2013 LI Haopei Seminar on which this anthology is based, and it has been used in CILRAP’s Quality Control Project more widely.

Traditionally, there are three main purposes of establishing facts in international law: to create the basis for peaceful settlement of disputes between two or more States; to supervise the execution of international agreements; and to supply the information required for the making of de-

⁴ Antonio Cassese, “Fostering Increased Conformity with International Standards: Monitoring and Institutional Fact-Finding”, in Antonio Cassese (ed.), *Realizing Utopia: The Future of International Law*, Oxford University Press, 2012, p. 295.

⁵ Antonio Cassese mentions fact-finding and monitoring as such mechanisms (*ibid.*). The report prepared as a result of the workshop co-organised by the Permanent Mission of Portugal to the United Nations and the United Nations Office for the Coordination of Humanitarian Affairs mentions, in addition to individual criminal responsibility, fact-finding and reparations as methods of ensuring accountability for violations of humanitarian and human rights law (“Accountability and Fact-finding Mechanisms for Violations of International Humanitarian Law and Human Rights Law: The Role of the Security Council – Past and Future”, 1 November 2011).

⁶ Karl Josef Partsch, “Fact-Finding and Inquiry”, in Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law*, North-Holland, Amsterdam-London, 1981, vol. 1, p. 61.

⁷ Unless otherwise indicated by the contributors.

cisions at an international level pursuant to Article 34 of the United Nations Charter.⁸

The first purpose is a narrow one, and refers to the inquiry as a specific procedure in cases where differences of opinion on factual matters underlie a dispute between parties.⁹ Provisions for such inquiries were first elaborated in the 1899 Hague Conference, and were subsequently developed by the 1907 Hague Conference.¹⁰ The mechanism was designed to address relationships between States. It is based on the notions of sovereignty and reciprocity – the features that hindered the following use of this dispute settlement mechanism.¹¹ In 1967, the UN General Assembly rejected a proposal by the Netherlands to establish a permanent commission of inquiry, and instead requested the Secretary-General to prepare a list of experts.¹² In the same vein, as expounded by Professor Charles Garraway in Chapter 15 below, the International Fact-Finding Commission established under Article 90 of Additional Protocol I of 1977 has only been activated once by States, despite its formal existence.¹³

The second function of fact-finding – supervising the execution of international agreements – serves to secure the performance of international obligations. The UN Specialized Agencies as well other global or regional bodies engage in this type of fact-finding.¹⁴ This function has grown in the past decades to include more general fact-finding aimed at

⁸ Karl Josef Partsch, 1981, p. 61, *supra* note 6. See also Larissa van den Herik, “An Inquiry into the Role of Commissions of Inquiry in International Law: Navigating the Tensions between Fact-Finding and Application of International Law”, in *Chinese Journal of International Law*, 2014, vol. 13, p. 507.

⁹ Malcolm Shaw, *International Law*, Cambridge University Press, 2008, pp. 1019–1020.

¹⁰ *Ibid.*

¹¹ Cassese, 2012, p. 297, *supra* note 4.

¹² UN General Assembly, Question of Methods of Fact-Finding, UN Doc. A/RES/2329(XXII), 18 December 1967 (<https://www.legal-tools.org/doc/0d9e66/>); Cassese, 2012, p. 298, *supra* note 4.

¹³ *Ibid.*

¹⁴ Karl Josef Partsch, 1981, p. 61, *supra* note 6. For example, fact-finding activity by the World Trade Organization in the context of dispute resolution. For more on this topic, see Michelle T. Grandt, *Evidence, Proof, and Fact-Finding in WTO Dispute Settlement*, Oxford University Press, 2009.

establishing the violations of human rights and humanitarian law contained in multiple treaties and customary international law.¹⁵

Finally, there is fact-finding for the purposes of Article 34 of the UN Charter – the provision confirming the power of the Security Council to investigate any situation or dispute that may endanger international peace and security. In reality, the Security Council is reluctant to use this provision explicitly and, instead, relies heavily on its implied powers of investigation.¹⁶ Moreover, the Security Council is not the only UN organ sanctioning fact-finding inquiries.¹⁷ The UN General Assembly and the UN Secretary-General sometimes exercise fact-finding powers, despite the UN Charter’s silence on the matter.¹⁸ Consequently, instead of a single specialised fact-finding body within the UN system, the practice has evolved in the direction of a plethora of different fact-finding strategies originating from the variety of sources.¹⁹

The establishment of the Commission of Experts for the former Yugoslavia pursuant to United Nations Security Council Resolution 780 (1992) served as a catalyst for later developments. It denoted the beginning of an era, in which fact-finding is used in a broader context as a

¹⁵ For example, African Commission on Human and Peoples’ Rights, Resolution on Darfur, ACHPR/Res.68 (XXXV) 04, 4 June 2004, to deploy a fact-finding mission in Sudan; and Council of the European Union, Decision 2008/901/CFSP, 2 December 2008, concerning an independent international fact-finding mission on the conflict in Georgia, *supra* note 1.

¹⁶ Bruno Simma *et al.* (eds.), *The Charter of the United Nations: A Commentary*, second edition, Oxford University Press, 2002, p. 516; James G. Devaney, “Killing Two Birds with One Stone: Can Increased use of Article 34(2) of the ICJ Statute Improve the Legitimacy of UN Commissions of Inquiry & the Court’s Fact-finding Procedure?”, *STALS Research Paper N. 2/2013*, p. 5. For the examples of the mandates authorised by the Security Council, see *infra* Section 1.2.1.

¹⁷ Devaney, p. 5, *ibid.*

¹⁸ For example, UN General Assembly, Situation of Human Rights in Cambodia, UN Doc. A/RES/52/135, 27 February 1998 (<https://www.legal-tools.org/doc/6e9a5f/>); Letter Dated 4 May 2009 from the Secretary-General Addressed to the President of the Security Council, UN Doc. A/63/855-S/2009/250, 15 May 2009, establishing United Nations Headquarters Board of Inquiry to review and investigate nine incidents in the Gaza Strip and southern Israel that occurred between 27 December 2008 and 19 January 2009; Letter Dated 18 December 2009 Addressed to the President of the Security Council by the Secretary-General, UN Doc. S/2009/693, 18 December 2009 (<https://www.legal-tools.org/doc/c5939f/>), regarding the establishment of an international Commission of Inquiry to investigate the violence that took place in Conakry on 28 September 2009.

¹⁹ Richard B. Lillich *et al.* (eds.), *International Human Rights: Problems of Law, Policy, and Practice (Casebook)*, Aspen Publishers, 2006, p. 981.

mechanism for securing better compliance with international standards – a structure that is divorced from the will of particular States.²⁰ This trend includes extensive truth-seeking at the international level through international commissions of inquiry and fact-finding missions.²¹

Over the past two decades, there has been a strong turn towards the establishment of accountability through fact-finding mandates.²² The UN has created more than 20 international commissions of inquiry ('COI') with mandates to investigate serious violations of human rights, of international humanitarian law and of international criminal law.²³ These commissions have a hybrid nature. They are neither classical fact-finders nor formal criminal bodies. Their role is not only to establish the facts and circumstances underlying human rights violations, but also to provide legal characterisations of facts and to explore possible avenues of responsibility of States and individuals. They serve as a forum to collect information and material underlying crimes and violations, or at times even as a gateway to formal criminal investigation or prosecution. Some commissions provide a frame of reference to determine what the relevant facts are in relation to early warning or mapping of violations. Others have a more investigative focus, mandating them to look at incidents, specific categories of crime, or even individual perpetrators of crime.²⁴ Certain commissions (for instance, COI Myanmar) have decided to publicly list suspects by name, while others have provided them in a confidential annex to the report (for instance, COI Darfur). In 2018, the Conference of States Parties of the Organization for the Prohibition of Chemical Weapons ('OPCW') took an unprecedented decision to "put in place arrangements to identify the perpetrators of the use of chemical weapons in the Syrian

²⁰ Cassese, 2012, p. 303, *supra* note 4.

²¹ UN Human Rights Council, Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, UN Doc. A/HRC/24/42, 28 August 2013, para. 21 (<https://www.legal-tools.org/doc/209022/>).

²² See generally Christian Henderson (ed.), *Commissions of Inquiry: Problems and Prospects*, Hart/Bloomsbury, 2017.

²³ See Catherine Harwood, *The Roles and Functions of Atrocity-Related United Nations Commissions of Inquiry in the International Legal Order*, Martinus Nijhoff, 2019.

²⁴ For a typology, see Carsten Stahn and Dov Jacobs, "The Interaction Between Human Rights Fact-Finding and International Criminal Proceedings", in Philip Alston and Sarah Knuckey (eds.), *The Transformation of Human Rights Fact-Finding*, Oxford University Press, 2016, p. 255, pp. 258-259.

Arab Republic”.²⁵ The point is thus no longer to find facts *per se*, but to frame and qualify them, or to make findings on individual responsibility.

The turn towards accountability and individualisation comes with a juridification of working methods.²⁶ It is necessary to identify investigative standards, thresholds of proof, protective mechanisms for witnesses and victims, or fairness protection for suspects, in particular when commissions ‘name and shame’ individuals publicly. Commissions may need to offer suspects an opportunity to reply when determinations on individual responsibility are made in a public report.²⁷ This may conflict with the short time span for which commissions are established.

Difficult questions also arise in relation to the application and interpretation of international law. Not every serious human rights violation qualifies as an international crime. The Rome Statute has become a standard point of reference in practice. However, human rights accountability mechanisms may interpret notions and elements of crimes differently than criminal courts. This may cause risks of fragmentation. A number of commissions have adopted extensive readings of crimes in order to bring violations within their mandate (for instance, COI Democratic People’s Republic of Korea). Other commissions (for instance, COI South Sudan) have focused particularly on crimes that are subject to universal jurisdiction, such as torture or enforced disappearance, in order to strengthen the prospects of enforcement. In this way, choices on enforcement guide the focus of inquiry.

The relationship with criminal investigations is complex. In more and more contexts, UN fact-finding intersects with the International Criminal Court’s (‘ICC’) situations (for instance, the Central African Republic, Libya, Guinea and Myanmar).²⁸ While accountability-related fact-finding

²⁵ See OPCW, Conference of the States Parties, Decision Addressing the Threat from Chemical Weapons Use, C-SS-4/DEC.3, 27 June 2018, para. 10 (<https://www.legal-tools.org/doc/lmqyd4/>).

²⁶ Christine Schwöbel-Patel, “Commissions of Inquiry: Courting International Criminal Courts and Tribunals”, in Henderson, 2017, p. 145, *supra* note 22.

²⁷ Ilya Nuzov and Mark Freeman, “Principle 7”, in Frank Haldemann and Thomas Unger, *The United Nations Principles to Combat Impunity: A Commentary*, Oxford University Press, 2018, p. 114.

²⁸ Mutoy Mubiala, “The ICC’s Interplay with UN Fact-Finding Commissions in Preliminary Examinations”, in Morten Bergsmo and Carsten Stahn (eds.), *Quality Control in Preliminary Examination: Volume 2*, Torkel Opsahl Academic EPublisher, Brussels, 2018, p. 411 (<http://www.toaep.org/ps-pdf/33-bergsmo-stahn>).

work may provide useful leads for international criminal courts and tribunals, or feed into analysis of preliminary examinations at the ICC, it cannot replace independent investigations. International courts often have to start from scratch, in light of the different methodologies and standards in formal criminal proceedings. Findings on context, patterns of violations or organisational structures in the work of the commissions of inquiry may be more useful for international or domestic courts than perpetrator-specific material. In some cases, the work of human rights fact-finders may complicate witness statements and evidence-gathering by formal criminal bodies. It is thus essential to avoid harm to criminal investigations in the documentation and collection of information for accountability purposes ('no harm principle').

The focus on accountability in inquiry may have structural drawbacks. The strength of less judicialized fact-finding lies in its ability to understand accountability in a broader sense than criminal prosecution. It may provide a broader historical context, trace structural violence, or identify socio-economic violations. An atrocity crime-based orientation may marginalise these dimensions. Cynically, the establishment of a commission of inquiry with an accountability mandate may be used by States as an excuse to avoid more burdensome investigations and prosecution or the establishment of an international criminal court or tribunal.

These developments pose novel issues from the perspective of quality control. Is quality control only a matter of enhanced work-processes, or does it also bear on issues such as the formulation of mandates, personnel composition of fact-finding mechanisms, independence and impartiality, and public relations? Should non-criminal justice fact-work be made more similar to the work-processes in criminal jurisdictions? To which extent do resource constraints affect quality control in non-criminal justice fact-work? Can information technology enhance quality control in non-criminal justice fact-work? Is there a need to strengthen legal capacity in such fact-work? Would increased transparency about the human resources involved in relevant fact-work reinforce a sense of accountability and, by that, quality in the work-processes?

The need for greater quality control has led to new initiatives to provide guidance on mandating and working methods of fact-finding bodies. In 2015, the Office of the High Commissioner for Human Rights ('OHCHR') issued a "Guidance and Practice" document for UN fact-finding and investigative bodies, which shares existing experiences and

UN practices. It identifies nine core principles (no harm, independence, impartiality, transparency, objectivity, confidentiality, credibility, visibility and integrity) and elaborates working methods, including different standards of proof used by commissions in UN practice.²⁹ The Siracusa Guidelines for International, Regional and National Fact-Finding Bodies, established through an expert process under the guidance of the late M. Cherif Bassiouni, provide a framework to ensure greater clarity and consistency in the framing of mandates, working practices, standards and reporting.³⁰ The Harvard Program on Humanitarian Policy and Conflict Research ('HPCR') established a HPCR Practitioner's Handbook on Monitoring, Reporting and Fact-Finding, which addresses key methodological issues and practical guidance.³¹ These soft law instruments signal a shift in attitude in the professional community, namely a move from an *ad hoc* culture in fact-finding towards a more systemic framework, grounded in principle, pragmatism and bounded discretion.

Generally, there have been at least two important institutional trends since the First Edition, which change the broader context in which fact-finding takes place. They are, first, the increased role of private actors in investigations,³² and, second, the establishment of novel investigative mechanisms, which complement fact-finding initiatives.

The documentation and tracing of violations by non-State actors, including through open source information³³ and methods of investigative journalism, has become an important part of the accountability architecture. This is not only done by non-governmental organisations ('NGOs'), but also by professional bodies. Mechanisms like the Commission for International Justice and Accountability ('CIJA') in Syria highlight a turn to privatised investigative models, sponsored by States, in cases where classical multilateral options fail to reach support, and public institutions are unable or unwilling to investigate. Such types of private investigation can

²⁹ OHCHR, 2015, pp. 33 ff., *supra* note 3.

³⁰ M. Cherif Bassiouni and Christina Abraham, *Siracusa Guidelines for International, Regional and National Fact-finding Bodies*, Intersentia, 2013.

³¹ See Rob Grace and Claude Bruderlein (eds.), *HPCR Practitioner's Handbook on Monitoring, Reporting and Fact-Finding*, Cambridge University Press, 2017.

³² Alexander Heinze, "Private International Criminal Investigations", in *Zeitschrift für Internationale Strafrechtsdogmatik*, 2019, vol. 2, p. 169.

³³ See generally Sam Dubberly, Alexa Koenig and Daragh Murray, *Digital Witness*, Oxford University Press, 2020.

be attractive to States, because they may be less costly, less formalised, and more flexible in their operations. They can get the ‘dirty work done’, as some would say. CIJA provided, *inter alia*, documentary evidence relating to the arrest of Anwar Raslan and Eyad Ghareeb in Germany.³⁴ However, at the same time, private international criminal investigations pose novel ethical and legal dilemmas. They raise challenges in relation to impartiality (for example, donor-driven approach towards investigative targets), admissibility of evidence, accountability, or the protection of information-providers or staff. For instance, CIJA has been criticised for its exclusive focus on regime crimes in Syria.

In some cases, private investigative methods are faster than investigations by public bodies. A good example is Bellingcat’s online investigation in the context of the aerial incident of the flight MH17. Bellingcat used open source information, including geolocation techniques, links on Facebook and other social media to identify the missile launcher that downed the aircraft and trace members of the organisations involved in the attack.³⁵ This method may have innovated fact-finding. The material was used by the Dutch Prosecution in the MH17 proceedings after verification of Bellingcat’s investigative processes.³⁶

Visual evidence, gained from open sources, is transforming the culture of investigations and prosecutions. This makes international courts and tribunals even more dependent on collaboration by private actors, such as NGOs or social media providers. For instance, in the *Al-Werfalli* case, the evidence collected through social media supported the issuance of an arrest warrant by the ICC which relied strongly on video footage.³⁷ This opens new opportunities. Open source derived material can be used to corroborate evidence, provide leads or establish context. As Emma Irving has noted, it may be the “beginning of what will be a long, and likely

³⁴ Alexander Heinze, “Private Investigators Helped Germany Arrest Two Former Syrian Secret Service Officers”, *EJIL Talk!*, 26 February 2019. See his comprehensive chapter “Private International Criminal Investigations and Integrity”, in Morten Bergsmo and Viviane Dittrich (eds.), *Integrity in International Justice*, Torkel Opsahl Academic EPublisher, Brussels, 2020 (forthcoming).

³⁵ See Bellingcat Investigation Team, “MH17: The Open Source Investigation Three Years Later”, 17 July 2017 (available on its web site).

³⁶ Netherlands Public Prosecution Service, “Status of the Investigation and Position on the Progress of the Trial – Part 1 (10-3-2020)” (available on its web site).

³⁷ See ICC, *Prosecutor v. Al-Werfalli*, Warrant of Arrest, 15 August 2017, ICC-01/11-01/17-2 (<https://www.legal-tools.org/doc/881fb6/>).

complex, relationship between open source evidence and international criminal justice”,³⁸ as further elaborated in her chapter in this Second Edition. But it also creates risks. Visual evidence remains highly dependent on the narratives that surround the images.³⁹ It may affect the equality of arms to the detriment of the defence. For example, the first cognitive or affective impression created through the production of images is often difficult to reverse.

Classical fact-finding has been supported by new types of investigative mechanisms. The lack of agreement on international justice in Syria has prompted the establishment of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Crimes in Syria (‘IIIM’) by the UN General Assembly. This mechanism fills in an important gap, namely a missing link in the accountability landscape between human rights investigations and domestic criminal jurisdiction. It bridges fact-finding and prosecution. It is vested with the formal legal mandate to collect and preserve evidence as well as to prepare files for trials in national and/or international courts. As such, it must abide by international criminal law standards.⁴⁰ It is not a criminal jurisdiction *per se*, but has a ‘quasi-prosecutorial’ function. It serves as a central repository of potential evidence and information and as a gateway towards domestic jurisdictions, including States exercising universal jurisdiction, or towards a future criminal body.⁴¹ It has placed the emphasis on structural investigation, in order to support and encourage the exercise of universal

³⁸ Emma Irving, “And So It Begins... Social Media Evidence in an ICC Arrest Warrant”, *Opinio Juris*, 17 August 2017.

³⁹ Keith Hiatt, “Open Source Evidence on Trial”, in *Yale Law Journal Forum*, 2016, vol. 125.

⁴⁰ See UN General Assembly, International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, UN Doc. A/RES/71/248, 11 January 2017, para. 4 (<https://www.legal-tools.org/doc/fecaf0/>). See Christian Wenaweser and James Cockayne, “Justice for Syria? The International, Impartial and Independent Mechanism and the Emergence of the UN General Assembly in the Realm of International Criminal Justice”, in *Journal of International Criminal Justice*, 2015, vol. 15, p. 211.

⁴¹ See Report of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, A/72/764, 28 February 2018, para. 7 (<https://www.legal-tools.org/doc/42c191/>).

jurisdiction by States, as evidenced by the trial of Anwar Raslan and Eyad Ghareeb before the Higher Regional Court in Koblenz.⁴²

The IIIM was followed by the lesser known Independent Investigative Mechanism for Myanmar, established by the Human Rights Council.⁴³ It is, *inter alia*, mandated to prepare case files, based on the information collected by the Independent International Fact-Finding Mission on Myanmar. It has an open-ended mandate. The replication marks a structural move towards a multi-layered fact-finding structure, in which non-criminal investigation work becomes, at least institutionally, more clearly distinguishable from formal criminal investigations. This may provide a healthy safeguard against judicial overreach by commissions of inquiry or classical fact-finding missions. As Nicholas Koumjian, the Head of the Mechanism, stated, the mere presence of investigative mechanisms is intended to provide a message on deterrence and prevention: “We are watching and will work to ensure that those who commit crimes will be brought to account”.⁴⁴ However, it is still an open question to what extent investigative mechanisms do successfully strengthen domestic investigations and prosecutions or the exercise of international justice. They rely heavily on State co-operation and the work of other information-providers, and need to build trust in their work, in order to serve as a gateway to prosecutions. One challenge is the prevailing uncertainty about the ‘end user’:

[B]uilding a prosecutable criminal case requires presenting credible evidence that proves each element of the crime to the high evidentiary standards required in various jurisdictions for a criminal conviction.⁴⁵

Overall, international criminal justice thus appears to move towards a multi-layered system of fact-finding and investigation. In situations of

⁴² See Caroline Fehl, “The Partial Return of Universal Jurisdiction: Syrian Torturers on Trial in Germany”, *Global Policy*, 12 May 2020.

⁴³ UN Human Rights Council, Situation of Human Rights of Rohingya Muslims and Other Minorities in Myanmar, UN Doc. A/HRC/RES/39/2, 3 October 2018 (<https://www.legal-tools.org/doc/0917d7/>).

⁴⁴ Statement to the Human Rights Council by Mr. Nicholas Koumjian, Head of the Independent Investigative Mechanism for Myanmar, 9 September 2019 (available on the UN’s web site). On the role of messaging and communication in international criminal justice more generally, see Carsten Stahn, *Justice as Message*, Oxford University Press, 2020.

⁴⁵ Report of the Independent Investigative Mechanism for Myanmar, UN Doc. A/HRC/42/66, 7 August 2019, para. 46.

ongoing conflict, where justice is hampered by politics, developments point towards a dual structure, according to which ‘public’ inquiry and investigation is complemented by different forms of privatised inquiry, fact-finding or criminal investigation. This ‘public-private’ model is followed by the exercise of criminal jurisdiction, either internationally, in a hybrid form, or through universal jurisdiction.⁴⁶

We must, however, remain cognizant at all times that the international criminal justice system is based on the principle of complementarity, so no stone should be left unturned in trying to strengthen ability and will to national investigation and prosecution in the jurisdiction where alleged violations have occurred. Those concerned with building international criminal justice should also endeavour to contribute to national criminal justice – the former cannot be detached from the latter.

But this anthology focuses on quality control in international fact-finding. Such fact-finding may be undertaken within the UN human rights system, in the context of truth and reconciliation processes, through international or regional organisations in connection with challenges to international peace and security; or through non-governmental organisations.⁴⁷ To orient the reader through a large number of international fact-finding commissions and mandates, the next section of this chapter (Section 1.2.) provides their brief overview and classification. The list of the mandates presented in Section 1.6. at the end of the chapter supplements the description. Section 1.3. summarises individual contributions to this anthology, and Section 1.4. indicates challenges for further research and analysis in the area of international fact-finding.

⁴⁶ Caroline Fehl and Eliška Mocková, “Chasing Justice for Syria: Roadblocks and Detours on the Path to Accountability”, Peace Research Institute Frankfurt Spotlight 5/2017, 28 September 2017.

⁴⁷ For the purposes of this chapter, the term ‘core international crimes’ is used for the categories war crimes, crimes against humanity, acts of genocide, and crimes of aggression. As such, the term includes all serious violations of international human rights law which may amount to core international crimes, not only violations against life, physical integrity and personal liberty, but also non-physical violations that can constitute, for example, persecution as a crime against humanity. ‘Criminal justice for core international crimes’ is used – rather than ‘international criminal justice’ – in order not to exclude internationalised or national criminal justice for core international crimes from the discussion. The frequently inflated term ‘international criminal justice’ is narrower and therefore not used here.

1.2. Overview of Fact-Finding Mandates

The annex in Section 1.6. contains a list of the international fact-finding mandates from the last decades.⁴⁸ This record is not exhaustive, but provides a good overview of the events happening in international fact-finding between 1992 and 2020. A brief glance at the list is sufficient to see that the fact-finding missions are diverse, plentiful, geographically dispersed, and established by different bodies and under different circumstances. One may catalogue the mandates according to different criteria, including the body that authorised its establishment, the scope of the mandate, and the result of the fact-finding mission. The present section provides a short description of the mandates according to these classifications.

1.2.1. Sanctioning Body

The organs of the United Nations remain the main source of international fact-finding processes. The UN Security Council engages in fact-finding through the exercise of its implied powers. Investigations into the situations in the former Yugoslavia,⁴⁹ Burundi,⁵⁰ Rwanda,⁵¹ Somalia,⁵² Sierra Leone,⁵³ and Darfur⁵⁴ are examples of this activity by the Security Council. The Security Council also occasionally requests the UN Secretary-General to initiate fact-finding. The Secretary-General appointed the Commission of Experts to review the prosecution of serious violations of human rights in Timor-Leste;⁵⁵ the international commission to investi-

⁴⁸ See *Annex: International fact-finding mandates 1992–2020*.

⁴⁹ UN Security Council, Resolution 780 (1992), UN Doc. S/RES/780 (1992), 6 October 1992 (<https://www.legal-tools.org/doc/cdc5ad/>).

⁵⁰ UN Security Council, Resolution 1012 (1995), UN Doc. S/RES/1012 (1995), 28 August 1995 (<https://www.legal-tools.org/doc/80c1a0/>).

⁵¹ UN Security Council, Resolution 935 (1994), UN Doc. S/RES/935 (1994), 1 July 1994 (<https://www.legal-tools.org/doc/1594bd/>).

⁵² UN Security Council, Resolution 885 (1993), UN Doc. S/RES/885 (1993), 16 November 1993 (<https://www.legal-tools.org/doc/6e9cc7/>).

⁵³ UN Security Council, Resolution 1306 (2000), UN Doc. S/RES/1306 (2000), 5 July 2000 (<https://www.legal-tools.org/doc/c9aea8/>).

⁵⁴ UN Security Council, Resolution 1564 (2004), UN Doc. S/RES/1564 (2004), 18 September 2004 (<https://www.legal-tools.org/doc/1ba770/>).

⁵⁵ Letter Dated 24 June 2005 from the Secretary-General Addressed to the President of the Security Council, UN Doc. S/2005/458, 24 June 2005 (<https://www.legal-tools.org/doc/e0807f/>).

gate the assassination of the former Prime Minister of Pakistan, Mohtarma Benazir Bhutto;⁵⁶ an expert panel on the illegal exploitation of natural resources in Congo;⁵⁷ and a Panel of Inquiry on the flotilla incident that occurred in 2010 outside Gaza.⁵⁸ The UN Secretary-General may rely on other international organisations in conducting its fact-finding activities. For instance, the Secretary-General deployed the mission to Syria to investigate the alleged use of chemical weapons after consultations with the World Health Organization and the Organization for the Prohibition of Chemical Weapons.⁵⁹ The Security Council and the Secretary-General sometimes undertake joint fact-finding activities such as the inquiry into the management of the UN Oil-for-Food Programme.⁶⁰ Despite being less active than the Security Council or the Secretary-General in fact-finding, the UN General Assembly may still request an appointment of a fact-finding mission. It did so in respect of the past serious violations of national and international law in Cambodia.⁶¹

The UN Commission on Human Rights and, subsequently, the UN Human Rights Council are responsible for a large number of fact-finding initiatives. The former body, for instance, led the establishment of the independent Fact-Finding Commission for Post-Ballot Human Rights Violations in East Timor,⁶² and prepared a report as a result of the official visit to Chile by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people;⁶³ while the latter established

⁵⁶ Letter Dated 24 March 2005 from the Secretary-General to the President of the Security Council, UN Doc. S/2005/203, 24 March 2005.

⁵⁷ Statement by the President of the Security Council, UN Doc. S/PRST/2000/20, 2 June 2000.

⁵⁸ Statement by the President of the Security Council, UN Doc. S/PRST/2010/9, 1 June 2010 (<https://www.legal-tools.org/doc/356fb8/>).

⁵⁹ Letter Dated 22 March 2013 from the Secretary-General Addressed to the President of the Security Council, UN Doc. S/2013/184, 25 March 2013.

⁶⁰ UN Security Council, Resolution 1538 (2004), UN Doc. S/RES/1538 (2004), 21 April 2004 (<https://www.legal-tools.org/doc/89711b/>).

⁶¹ UN General Assembly, Situation of Human Rights in Cambodia, para. 16, *supra* note 18.

⁶² UN Commission on Human Rights, Situation of Human Rights in East Timor, UN Doc. 1999/S-4/1, 27 September 1999 (<https://www.legal-tools.org/doc/653b45/>).

⁶³ UN Commission on Human Rights, Human Rights and Indigenous Issues, UN Doc. E/CN.4/RES/2003/56, 24 April 2003.

the Commission of Inquiry on Lebanon,⁶⁴ the UN Fact-Finding Mission on the Gaza Conflict,⁶⁵ the Fact-Finding Mission for the Syrian Arab Republic,⁶⁶ and the Independent Investigative Mechanism for Myanmar.⁶⁷ It is common for the Office of the UN High Commissioner for Human Rights to undertake fact-finding missions as a part of its mandate. This was the case with the visit of Mary Robinson to Chechnya in 2000 to investigate the situation of human rights.⁶⁸

Organisations of a regional character – in particular those specialising in the protection of human rights and the promotion of peace and security – also play an important role in modern fact-finding. The African Commission on Human and Peoples' Rights takes up an active role in the region. Among its initiatives are the fact-finding missions to Zimbabwe and Sudan.⁶⁹ Another regional body conducting fact-finding missions in the region is the Economic Community of West African States that dispatched the fact-finding mission to Mali.⁷⁰ In Europe, the Council of the European Union and the Organization for Security and Cooperation in Europe are among the organizations that initiate fact-finding. The former was responsible for the mission to investigate the conflict in Georgia in 2008,⁷¹ and the latter for the fact-finding mission to the occupied territo-

⁶⁴ UN Human Rights Council, The Grave Situation of Human Rights in Lebanon Caused by Israeli Military Operations, UN Doc. A/HRC/RES/S-2/1, 11 August 2006 (<https://www.legal-tools.org/doc/9e7f9b/>).

⁶⁵ UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the Implementation of Human Rights Council Resolutions S-9/1 and S-12/1, Addendum: Concerns Related to Adherence to International Human Rights and International Humanitarian Law in the Context of the Escalation between the State of Israel, the de Facto Authorities in Gaza and Palestinian Armed Groups in Gaza that Occurred from 14 to 21 November 2012, UN Doc. A/HRC/22/35/Add.1, 6 March 2013.

⁶⁶ UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in the Syrian Arab Republic, UN Doc. A/HRC/18/53, 15 September 2011 (<https://www.legal-tools.org/doc/5bf068/>).

⁶⁷ UN Human Rights Council, Situation of Human Rights of Rohingya Muslims and Other Minorities in Myanmar, UN Doc. A/HRC/RES/39/2, 3 October 2018.

⁶⁸ UN High Commissioner for Human Rights, Statement on Chechnya, 4 April 2000.

⁶⁹ African Union, Decision on 17th Annual Activity Report of the African Commission on Human and Peoples' Rights, Assembly/AU/Dec.56 (IV), 30–31 January 2005 (<https://www.legal-tools.org/doc/92fe98/>); Resolution on Darfur, 2004, *supra* note 15.

⁷⁰ ECOWAS, Statement on the Situation in the North of Mali, Communiqué N°: 065/2012, 19 March 2012.

⁷¹ Council of the European Union, Council Decision 2008/901/CFSP, 2 December 2008 concerning an independent international fact-finding mission on the conflict in Georgia.

ries of Azerbaijan surrounding Nagorno-Karabakh in 2005.⁷² The Union of South American Nations is the Latin American regional organisation that conducts fact-finding activities in the region.

Fact-finding by non-governmental organisations becomes more and more widespread. The International Federation for Human Rights ('FIDH'), for example, is a Paris-based NGO that specialises in human rights fact-finding. One of its missions was to Angola to analyse the context in which human rights defenders were operating in the country.⁷³ Another example of NGO work is the Independent Civil Society Fact-Finding Mission to Libya, established by the Arab Organization for Human Rights in co-operation with the Palestinian Centre for Human Rights.⁷⁴ This undertaking served as an alternative to the UN Fact-Finding Mission in investigating allegations of the widespread violations of international law committed in Libya since 15 February 2011.⁷⁵ CIJA, mentioned in the previous section, is yet another illustration of a privately led investigative initiative. It was established in May 2012 as an NGO listed in the Netherlands.⁷⁶

Finally, fact-finding missions may originate from within the State. This is usually the case with truth and reconciliation commissions established by domestic parliaments.⁷⁷ There are other instances when domestic organs sanction fact-finding. The King of Bahrain, for example, set up the Bahrain Independent Commission of Inquiry to report on the violations of human rights law during the protests that occurred in Bahrain

⁷² Report of the OSCE Fact-Finding Mission to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh, 28 February 2005 (<https://www.legal-tools.org/doc/b08893/>).

⁷³ Lillich *et al.* (eds.), p. 981, *supra* note 19; FIDH, "ANGOLA: From Theory to Practice It's Time to Guarantee the Capacity of Human Rights Defenders to Act" (available on its web site).

⁷⁴ Report of the Independent Civil Society Fact-Finding Mission to Libya, 31 January 2012 (<https://www.legal-tools.org/doc/c4f71a/>).

⁷⁵ UN Human Rights Council, Report of the International Commission of Inquiry on Libya, UN Doc. A/HRC/19/68, 8 March 2012 (<https://www.legal-tools.org/doc/a7b7ee/>).

⁷⁶ Michelle Burgis-Kasthala, "Entrepreneurial Justice: Syria, the Commission for International Justice and Accountability and the Renewal of International Criminal Justice", in *European Journal of International Law*, 2019, vol. 30, no. 4.

⁷⁷ For example, see Truth and Reconciliation Commission of South Africa established by The Promotion of National Unity and Reconciliation Act, No. 34 of 1995 (assented to 19 July 1995) (<https://www.legal-tools.org/doc/42cdab/>).

from February-March 2011.⁷⁸ The President of Kyrgyzstan initiated the creation of the Independent International Commission of Inquiry into the Events in southern Kyrgyzstan in 2010.⁷⁹ The Danish Immigration Service dispatched a fact-finding mission to Colombo to investigate the human rights and security situation for Tamils in Sri Lanka.⁸⁰

1.2.2. Scope of the Mandate

The diversity of fact-finding missions manifests itself not only in the variety of the bodies that sanction such missions, but also in the scope of their mandates, which can be formulated in very broad or very narrow terms. There are fact-finding endeavours aiming at monitoring the fulfilment of a particular international obligation such as compliance by Iraq with its disarmament obligations imposed after the Gulf War,⁸¹ or non-violation by Syria of the prohibition to use chemical weapons.⁸² The scope of the mandate can be even narrower and focus on the investigation of a particular event – such as the assassination of a political leader (Rafiq Hariri or Benazir Bhutto),⁸³ or specific attacks on UN personnel.⁸⁴ Some other missions are temporarily, rather than substantively, limited. This is usually the case with the reports prepared by the Office of the UN High Commissioner for Human Rights as part of its investigative mandate. For example, the mission of Mary Robinson to look into the situation of human rights in Chechnya lasted only five days.⁸⁵ These types of missions are not focused

⁷⁸ See the Royal Order No. 28 of 2011 attached as annex to the Report of the Bahrain Independent Commission of Inquiry, 23 November 2011.

⁷⁹ Report of the Independent International Commission of Inquiry into the Events in Southern Kyrgyzstan, 4 May 2011 (<https://www.legal-tools.org/doc/5e0afc/>).

⁸⁰ Danish Immigration Service, “Human Rights and Security Issues concerning Tamils in Sri Lanka”, 6/2010 ENG, October 2010.

⁸¹ UN, Security Council, Resolution 1284 (1999), UN Doc. S/RES/1284 (1999), 17 December 1999 (<https://www.legal-tools.org/doc/92dfbe/>).

⁸² Letter Dated 22 March 2013 from the Secretary-General Addressed to the President of the Security Council, UN Doc. S/2013/184, 25 March 2013.

⁸³ UN Security Council, Resolution 1595 (2005), UN Doc. S/RES/1595 (2005), 7 April 2005 (<https://www.legal-tools.org/doc/4a0623/>); and Letter Dated 2 February 2009 from the Secretary-General to the President of the Security Council, UN Doc. S/2009/67, 2 February 2009.

⁸⁴ UN Security Council, Resolution 885 (1993), *supra* note 52.

⁸⁵ Report of the UN High Commissioner for Human Rights and Follow up to the World Conference on Human Rights: Situation of Human Rights in Chechnya in the Russian Federation, 5 April 2000 (<https://www.legal-tools.org/doc/68d31e/>). See also Report of the High

on collecting facts as much as they serve to show the responsiveness of the international community to the situations that require its immediate attention.⁸⁶ The scope of the mission's mandate may be limited to the establishment of particular facts. For example, the OSCE's Fact-Finding Mission to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh aimed at determining the existence of settlements in the area.⁸⁷

However, it is often the case that the mandate of the mission is broad and requires its members to make normative assessments of the violations of human rights and humanitarian law in the region. For example, the UN Human Rights Council dispatched a mission to Syria to investigate “*all* alleged violations of international human rights law”.⁸⁸ Likewise, the mandate of the Independent Investigative Mechanism for Myanmar is to “collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011”.⁸⁹ The Independent International Fact-Finding Mission on the Conflict in Georgia sanctioned by the EU Council in Georgia investigated “the origins and the course of the conflict in Georgia, including with regard to international law, humanitarian law and human rights, and the accusations made in that context”.⁹⁰ The report of the Fact-Finding Mission on the Gaza Conflict conducted by the UN Human Rights Council considered “any actions by all parties that might have constituted violations of international human rights law or international humanitarian law”.⁹¹ However, this report explicitly stated that the mission did not attempt to identify the individuals responsible for the commission of offences.⁹² This is in contrast with the work of the UN Commission of Ex-

Commissioner for Human Rights on the Situation of Human Rights in Kosovo, UN Doc. E/CN.4/2000/32, 31 May 1999.

⁸⁶ M. Cherif Bassiouni, “Appraising UN Justice-Related Fact-Finding Missions”, in *Journal of Law and Policy*, 2001, vol. 5, no. 35, p. 45.

⁸⁷ Report of the OSCE Fact-Finding Mission to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh, *supra* note 72.

⁸⁸ UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in the Syrian Arab Republic, para. 4 (emphasis added), *supra* note 66.

⁸⁹ OHCHR, “Independent Investigative Mechanism for Myanmar” (available on its web site).

⁹⁰ Council Decision 2008/901/CFSP, *supra* note 71.

⁹¹ Report of the United Nations Fact-Finding Mission on the Gaza Conflict, UN Doc. A/HRC/12/48, 25 September 2009, para. 11 (<https://www.legal-tools.org/doc/ca9992/>).

⁹² *Ibid.*, para. 25.

perts for the former Yugoslavia, which collected information regarding the persons individually responsible for crimes against humanity and grave breaches of international humanitarian law.⁹³

There are also missions with a narrowly framed mandate, which still engage in normative assessments of the violations of human rights and humanitarian law. For instance, the FIDH organised a mission to analyse the human rights situation in the Mapuche communities in Chile as related to forest exploitation and the Ralco project.⁹⁴ Another example is the UN Board of Inquiry to review and investigate nine incidents in the Gaza Strip and southern Israel that occurred between 27 December 2008 and 19 January 2009. It assessed the deaths of civilians in accordance with the rules and principles of international humanitarian law.⁹⁵

1.2.3. Outcome of the Mission

The classification of fact-finding missions based on their outcome is a less straightforward exercise than categorising on the basis of the sanctioning body or the scope of their mandates. The result of the mission may not always be easily foreseeable. This is because fact-finding missions operate in a highly politicised context, and the outcome depends, among other things, on the degree of political support from the Security Council, as well as the authority that established the mission.⁹⁶ The other reason for the lack of predictability is the fact that the mandates operate on an *ad hoc* basis, without proper continuity or institutional memory.⁹⁷

There are a number of potential outcomes of the fact-finding missions, depending on the scope of their respective mandates and political will. First, factual investigations conducted by the relevant body may result in the establishment of a court or tribunal. This strategy allows for the initiation of individual prosecutions of those responsible on the basis of

⁹³ Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), UN Doc. S/1994/674, 27 May 2004, para. 4 (<https://www.legal-tools.org/doc/3a3ae2/>).

⁹⁴ FIDH, Report on International Investigative Mission in Chile – The Mapuche People: Between Oblivion and Exclusion, No. 358/2, 22 August 2003.

⁹⁵ Letter dated 4 May 2009 from the Secretary-General Addressed to the President of the Security Council, para. 28, *supra* note 18.

⁹⁶ Bassiouni, 2001, p. 38, *supra* note 86.

⁹⁷ *Ibid.*, p. 48.

the information collected by the fact-finding mission.⁹⁸ Examples of such missions are the Commission of Experts for the former Yugoslavia,⁹⁹ the International Commission of Inquiry concerning Rwanda,¹⁰⁰ the Group of Experts for Cambodia,¹⁰¹ and the International Independent Investigation Commission to assist in investigation of all aspects of the assassination of the former Prime Minister of Lebanon, Rafiq Hariri.¹⁰²

Secondly, some missions, short of providing the basis for international prosecutions, may come up with a list of recommendations of a humanitarian character addressed to the State concerned or the international community as a whole. For example, the Commission of Inquiry on Lebanon advised the UN Human Rights Council to enhance humanitarian assistance and reconstruction, to assess the legality of some weapons and to address and promote legal means for individuals to redress.¹⁰³ The Independent International Fact-Finding Mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory called upon Israel to cease all settlement activities without preconditions, initiate a process of withdrawal of all settlers from the Occupied Palestinian Territory, and put an end to the human rights violations that are linked to the presence of settlements.¹⁰⁴

⁹⁸ There are fact-finding limitations in the work of international tribunals which fall outside the scope of this chapter. For the treatment of the topic, see Nancy Amoury Combs, *Fact-Finding Without Facts: The Uncertain Evidentiary Foundations of International Criminal Convictions*, Cambridge University Press, 2010.

⁹⁹ Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), UN Doc. S/1994/674, 27 May 1994, para. 3.

¹⁰⁰ Final Report of the Commission of Experts established pursuant to Security Council Resolution 935 (1994), UN Doc. S/1994/1405, 9 December 1994, para. 3 (<https://www.legal-tools.org/doc/361096/>).

¹⁰¹ Report of the Group of Experts for Cambodia Established Pursuant to General Assembly Resolution 52/135, 15 March 1999 (<https://www.legal-tools.org/doc/7dbb86/>).

¹⁰² Report of the Secretary-General on the Establishment of a Special Tribunal for Lebanon, UN Doc. S/2006/893, 15 November 2006 (<https://www.legal-tools.org/doc/0bf8d5/>).

¹⁰³ Report of the Commission of Inquiry on Lebanon pursuant to Human Rights Council Resolution S-2/1, UN Doc. A/HRC/3/2, 23 November 2006, para. 31 (<https://www.legal-tools.org/doc/c58b38/>).

¹⁰⁴ Report of the Independent International Fact-Finding Mission to Investigate the Implications of the Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights of the Palestinian People throughout the Occupied Palestinian Territory, including East Jerusalem, UN Doc. A/HRC/22/63, 7 February 2013, paras. 112–113 (<https://www.legal-tools.org/doc/4047e2/>).

Thirdly, the fact-finding mission may lead to further institutional developments, such as the establishment of a more permanent body with a wider mandate. The conclusions of the Human Rights Council fact-finding mission for the Syrian Arab Republic about the existence of patterns of human rights violations in the country resulted in the establishment of a body with a wider mandate and an additional task of identifying those responsible with a view of holding them accountable – an independent international commission of inquiry.¹⁰⁵

Fourthly, the deployment of the fact-finding mission may result in the expression of public outcry and concern in response to the security and humanitarian situation in a certain region. The ECOWAS Fact-Finding Mission in Northern Mali in 2012 resulted in the call for cease-fire.¹⁰⁶ This particular outcome corresponds to the public outreach role of human rights organisations.

Fifthly, the missions may aim at broader goals such as contributing to truth, justice and reconciliation in the respective region. This is usually the case with truth and reconciliation commissions (‘TRCs’).¹⁰⁷ Finally, the mission may be context-based and strive to achieve a particular political aim. This was the case with the Security Council’s fact-finding mission to Kosovo prior to its declaration of independence.¹⁰⁸

1.3. Chapter Contributions

Chapters 2 and 3 open this anthology with the analysis and observations based on the professional experience of the authors. Chapter 2 by Richard J. Goldstone offers an insider’s look into the fact-finding missions and inquiries in South Africa and internationally. Goldstone participated, *inter alia*, in the Standing Commission on Political Violence and Intimidation in South Africa (the Goldstone Commission), the Oil-for-Food Inquiry, and the UN Fact-Finding Mission on Gaza. He provides an authoritative

¹⁰⁵ Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, UN Doc. A/HRC/S-17/2/Add.1, 23 November 2011, paras. 1, 4 (<https://www.legal-tools.org/doc/925e44/>).

¹⁰⁶ ECOWAS, Statement on the Situation in the North of Mali, Communiqué, *supra* note 70.

¹⁰⁷ See, for example, Final Report of the Truth and Reconciliation Commission for the Republic of Liberia, vol. I: Findings and Determinations, 30 June 2009, p. 6 (<https://www.legal-tools.org/doc/306448/>).

¹⁰⁸ UN News Centre, “Security Council Told that Kosovo Remains Calm but Tense”, 10 May 2007.

and insightful account of the challenges inherent in fact-finding missions and the lessons that he has learned with regard to the quality control of such missions. Goldstone's particular recommendations on how to improve the quality control of fact-finding missions include enhancing its actual and perceived independence, clearly stipulating the terms of reference, paying attention to the language of the report, and ensuring the security of the mission members.

In Chapter 3, Martin Scheinin draws on his experience as a member of the UN Human Rights Committee and as Special Rapporteur of the Human Rights Council in his critical assessment of the independent fact-finding by the UN human rights machinery. Scheinin contends that not all 'fact-finding' shares the same purpose or should be guided by the same standards. In particular, the procedures aiming at establishing the responsibility of a State for human rights violations should not be subjected to evidence requirements typical for determining individual criminal accountability. Scheinin also encourages applying caution when using the material obtained through fact-finding in criminal investigation.

In Chapter 4, the author Simon De Smet focuses on quality control and the theory of fact-finding. He points out that modern international fact-finding is unsatisfactory due to the lack of awareness of the basic epistemic principles that are at play. De Smet discusses a few epistemological concepts relevant to international fact-finding in an attempt to sharpen the understanding of the process of fact-finding and its limitations. In particular, he emphasises the relevance to international fact-finding of the two different methods of justifying beliefs: the probabilistic method and the relative plausibility theory.

Chapter 5 by LIU Daqun discusses quality control in truth and reconciliation processes, recognising truth-seeking as an important post-conflict goal in its own right, which exists either alongside trials or as an alternative. He explores various aspects that are vital for the functioning of the truth and reconciliation commissions: composition of the commission, applicable standard of proof, resources, and the production of the final report. He stresses the significance of having a clear mandate for conducting the investigations in conformity with four principles: fairness, credibility, impartiality and independence. He maintains that the ability of commissioners to shape policy and resolve ambiguity in the commission's mandate is another vital consideration for effective truth-seeking.

Chapters 6 and 7 look into the specific issue of the formulation of the mandates of international fact-finding commissions. In Chapter 6 FAN Yuwen aspires to contribute to the improvement of the quality of fact-finding by formulating criteria for the mandates. The author proposes a layered approach to the formulation and implementation of the mandates, whereby the best result is achieved by balancing conflicting considerations on a step-by-step basis. Among these issues are the tension between accuracy and flexibility, breadth and specificity, and impartiality and neutrality. Isabelle Lassée argues in Chapter 7 for a new approach to the design and implementation of the mandates of international fact-finding missions. She identifies two main problems with the mandates: first, they are not always timely or contextually relevant; and second, the work of the missions often lacks methodology. Lassée offers a solution to these problems through the enhancement of the external and internal coherence of the mandates. External coherence refers to the formulation of the mandate in precise terms by the sanctioning body, while the internal coherence denotes the overall methodology adopted by the commission itself.

Chapter 8 explores another crucial aspect of international fact-finding: the selection of the members of the mission. In this chapter, WU Xiaodan reflects on the importance of the composition of the mission for the credibility, legitimacy and effectiveness of the mandate. She outlines some concerns stemming from the lack of a uniform procedure for selecting the members of UN-mandated fact-finding missions. In particular, WU focuses on the questions of impartiality, legal expertise and management skills of mission members. She concludes that the UN needs to develop and standardise a uniform set of rules for fact-finder selection to further legitimise the process of international fact-finding.

In the following Chapter 9, Dan Saxon proceeds with the quest for improvement of the quality of fact-finding endeavours. Saxon argues that it is of utmost importance to clarify the purposes of international fact-finding missions. He points out that while the missions are often set up to report on the violations of international human rights and humanitarian law, the legal perspective may ignore the political context in which the mandate operates. This confusion leads to the lack of clear understanding of the objectives of international fact-finding missions. Saxon recommends de-coupling mission activities from politics to the greatest extent possible.

Chapters 10 and 11 offer two distinct case studies of fact-finding missions, one in Nepal, and one in the former Yugoslavia. Christopher B. Mahony, in Chapter 10, considers security implications linked to the establishment of the Commission on Investigation of Disappeared Persons, Truth and Reconciliation in Nepal in the spring of 2013. Mahony focuses on the commission's anticipated inability to provide adequate protection to the witnesses; which may lead, in turn, to the delay (and potential denial) of truth and justice. The author identifies a number of areas where the work on witness protection can be improved. These fields include funding allocation, personnel training, and the management of the programme.

In Chapter 11, David Reponders reasons why the reports prepared by the fact-finding missions in the former Yugoslavia had comparatively little effect on either the evidence presented at trial or the factual findings of the judgements themselves. Re concludes that there is an overlap in gathering material (or 'evidence' if it gets to the court) for the purposes of fact-finding and international criminal justice, and the credibility of the courts and fact-finding missions increases only with improving the accuracy and reliability of the information on which they rely. In this regard, the fact-finding organisations should learn from how criminal courts scrutinise their reports.

Chapter 12 provides a different perspective on the same subject matter. It questions the impact of international criminal law on international fact-finding. Dov Jacobs and Catherine Harwood reflect on the ambiguity of the international criminal law-focused fact-finding: on the one hand, it improves the quality of the final product by requiring rigorous methodology that enhances the credibility of the reports, but on the other hand, it unnecessarily reduces the scope and the outcome of the fact-finding mission. The authors track the migration of international criminal law concepts from the courtroom into fact-finding commissions, while questioning the use of these concepts as a point of reference. They conclude that international criminal law outside the courtroom might not actually be international criminal law.

The discussion about the interplay between international criminal law and international fact-finding continues in Chapter 13, where Lyal Sunga offers his view as to whether the information from the UN human rights sources could be admitted as direct evidence in an international criminal trial. He answers the question in the positive, suggesting that the urgency of international criminal justice for victims, survivors, and affect-

ed communities demands that international criminal investigators and prosecutors take into account the information available to them despite the obstacles posed by the different standards of proof and *modus operandi* of various fact-finding missions.

Wolfgang Kaleck and Carolijn Terwindt focus in Chapter 14 on the fact-finding work by NGOs. They take a step back from the general debate about the need to create a uniform standardised methodology for NGO fact-work and assess critically the role of the NGO's position *vis-à-vis* the communities with which they work. It is frequently the case that NGO fact-work plays a role in courtroom proceedings. However, this path, often adopted by the NGOs as given and without further considerations, requires more reflection.

Chapter 15 highlights the challenges specific to the humanitarian law fact-finding. In this contribution, Charles Garraway, a former Vice-President of the International Humanitarian Fact-Finding Commission, identifies different legal regimes that shape the process of modern fact-finding and determine its parameters. Garraway reflects on the future of the Commission that, despite having been called into action only once in the past, offers some distinct advantages for the future. Among these benefits are its legitimacy as a permanent institution established pursuant to an international mandate and its efficiency in processing confidential enquiries.

Chapter 16 by Iliia Utmelidze contains reflections on methodological challenges involved in processing large quantities of information in the context of international fact-finding and possibilities of using information technology. The author discusses the quantitative and qualitative challenges involved in international fact-finding, with the primary focus on methodology-based technological tools that could make fact-work more effective and accurate as well as support knowledge-based technology and methodology.

The new Chapter 17 by Geoffrey Robertson examines key ethical and legal dilemmas of fact-finding, based on his rich experience in human rights practice. He stresses the important need to ensure accuracy and impartiality in working practices and to protect sources. He argues that courts should respect the confidentiality obligations of human rights fact-finders and their commitment not to expose informants, when summoned to testify in court. He shows that the House of Lords has developed a

“public interest defence” for the media against libel actions, which “should cover the publication of most human rights reports”.

The new contribution by Emma Irving (Chapter 18) analyses the opportunities and challenges of the turn to social media in inquiry and investigation processes. She clarifies both the vulnerabilities and the contributions of digital-derived evidence to the work of human rights fact-finding bodies, based on the examples of Myanmar and Palestine. She concludes that “it is too soon” to draw “broad ranging conclusions on how the quality of human rights fact-finding is affected by the turn to social media”. She argues that different types of fact-finding bodies should learn from each other, in order to make fact-finding more effective.

Growing involvement of non-State actors has become part and parcel of the international justice landscape, particularly in situations of ongoing atrocity as Syria. Chapter 19 by William H. Wiley addresses the trend towards a privatisation of fact-finding and investigations, based on the CIJA model. He pleads for public-private partnership in international criminal justice. He argues that public fact-finders or investigators are “untroubled by the partial shift of responsibility for criminal justice to the private sector which is implied by the CIJA model”. He concludes that the absence of “private-sector participation” would entail imply a “loss of the hard-won progress made since 1993”.

1.4. Further Research Agenda

This book shows that there are several issues pertaining to non-criminal justice fact-finding commissions and inquiries that can benefit from further research. Such analysis could contribute to increasing the quality of their fact-work. The improvements can be both substantial and procedural.

1.4.1. Substantive Issues

From the substantive point of view, one of the most decisive challenges in fact-finding is the formulation of the mandate. It is essential to pose realistic objectives that fact-finding missions are able to achieve. The current trend is overexpansion of the scope of the mission.¹⁰⁹ It appears that in many instances fact-finding drifts away from the fact-work towards defining the law.¹¹⁰ In other cases, one observes an ambitious attempt to un-

¹⁰⁹ Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, para. 94, *supra* note 21.

¹¹⁰ Dapo Akande and Hannah Tonkin, “International Commissions of Inquiry: A New Form of

derstand comprehensively root causes, circumstances, factors, context and motives of countrywide situations of repression or violence.¹¹¹ The fact-finding commissions with widely defined, open-ended objectives may struggle to meet the expectations, especially when funding is inadequate or the available time is limited.¹¹² Consequently, there is a high demand for the formulation of the discreet specific functions that have the potential of being met in practice.¹¹³

Another substantive research issue pertaining to international fact-finding concerns the intertangling of factual conclusions and legal assessments. Some reports prepared by the fact-finding commissions go beyond factual conclusions and make legal pronouncements. This peculiarity gives fact-finding missions a normative flavour. The task of ascertaining the facts is certainly to be performed in an impartial manner.¹¹⁴ This does not mean, however, that fact-finding is a neutral activity.¹¹⁵ As one of the legal commentators put it back in 1973, fact-finders “cannot afford an attitude of neutrality”.¹¹⁶ The solution may be to work on devising procedures separating to the largest extent possible questions of fact from questions of law, while respecting the boundaries of the mission as defined by the mandate.

Another issue for further research is defining the purposes of fact-finding. As discussed extensively in several chapters of the anthology, the commissions differ from judicial organs in that they are not bound by the ‘beyond reasonable doubt’ standard of proof, the principle of equality of arms, or the principle of individual criminal responsibility. The question that arises is that of procedural fairness or lack thereof in handling the information obtained by the mission.¹¹⁷ If the mission’s objective is to establish patterns of violations as opposed to assessing individual conduct for

Adjudication?”, *EJIL:Talk!*, 6 April 2012.

¹¹¹ Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, para. 40, *supra* note 21.

¹¹² *Ibid.*, para. 97.

¹¹³ *Ibid.*, para. 102.

¹¹⁴ Bertrand G. Ramcharan, *International Law and Fact-Finding in the Field of Human Rights*, Martinus Nijhoff, 1982, p. 7.

¹¹⁵ *Ibid.*

¹¹⁶ Theo van Boven, “Fact-Finding in the Field of Human Rights”, in *Israel Yearbook on Human Rights*, 1973, vol. 3, no. 93, p. 106.

¹¹⁷ Akande and Tonkin, *supra* note 110.

criminal trial purposes,¹¹⁸ does it have to elaborate on the standard of proof used in the report?¹¹⁹ The answer to this question has to be influenced by an additional consideration that the reports of the commissions often become authoritative statements about the situation and are frequently used to back the decisions of the political bodies.¹²⁰ There are particular difficulties attached to determining violations of norms of international humanitarian law due to their specific characteristics, such as, for example, the relevant state of mind of the attacker and his or her evaluation of the situation *before* the attack.¹²¹

Finally, the broader turn to private international criminal investigations requires further scrutiny. As a result of advances in technology, non-State actors play an ever-growing role in fact-finding. However, significant doubts remain as to what extent human rights actors should serve as private criminal investigators. There is an important qualitative difference between documentation, fact-finding and criminal investigation. Well-meaning civil organisations may easily underestimate the complexity of investigative processes. While standards are gradually built in the UN system, the private sector is much more diffuse and less regulated. It is important to clarify to what extent private actors should be bound by minimum standards, in order not to inflict harm or compromise the work of public bodies, and how compliance with such standards can be monitored. Risks relating to physical and digital security must be addressed. There is a need to analyse more thoroughly how private-public partnerships can ensure effective investigation and prosecution. Existing experiences at the ICC have shown that the ‘outsourcing’ of work by public institutions to private investigative bodies carries significant risks. A critical question is how collaborative ties may be strengthened without compromising the integrity or development of public sector institutions, and whether professional private investigative bodies should be seen as a viable model for the future, rather than as an option of last resort. Syria will be a historic test case to assess to what extent private inquiry and investigation may

¹¹⁸ Théo Boutruche, “Credible Fact-Finding and Allegations of International Humanitarian Law Violations: Challenges in Theory and Practice”, in *Journal of Conflict and Security Law*, 2011, vol. 16, no. 1, p. 114.

¹¹⁹ *Ibid.*, p. 114.

¹²⁰ Akande and Tonkin, *supra* note 110.

¹²¹ Boutruche, p. 124, *supra* note 118.

stimulate greater exercise of domestic jurisdiction, including universal jurisdiction.

1.4.2. Procedural Issues

In addition to the substantive challenges, there are a number of procedural issues ingrained in international fact-finding that require a closer look because they have the potential of influencing the outcome of the mission. For example, it is advisable to look into improving logistical support for fact-finding missions because practical problems such as access to the country under examination, availability of information, or security concerns for the mission's members may impede fact-finding processes. It would be beneficial to further explore ways of securing State consent to allow access to classified military information, which is essential in determinations on some questions of international humanitarian law.¹²² This was the case with Israel's refusal to fully co-operate with the UN Fact-Finding Mission on the Gaza Conflict. Israel declined to provide the members of the mission with access to Gaza.¹²³ Fact-finding could benefit from exploring alternative mechanisms of obtaining information in the instances when the physical access of mission members to the territory in question is limited by the State under scrutiny. Open source investigation is one possible solution to this challenge, even though other problems may arise linked to collecting data from publicly available sources, such as, for instance, the reliability of evidence and its verification.¹²⁴

Logistical issues are particularly pressing in the case of fact-finding by non-governmental organisations. The fact-finding work of the most prominent human rights NGOs tends to focus on issues of physical integrity (such as torture), extrajudicial executions, and arbitrary detention.¹²⁵ This data is often in the exclusive control of States, which are not keen on disclosure.¹²⁶ Further analysis of the nature and impact of challenges such as those described above could make a significant contribution.

¹²² *Ibid.*, p. 121.

¹²³ Report of the United Nations Fact-Finding Mission on the Gaza Conflict, *supra* note 91, para. 144.

¹²⁴ Hiatt, 2016, *supra* note 39.

¹²⁵ Diane Orentlicher, "Bearing Witness: The Art and Science of Human Rights Fact-Finding", in *Harvard Human Rights Journal*, 1990, vol. 3, p. 94.

¹²⁶ *Ibid.*, p. 95.

The substantive outcome may also be affected by the mere lack of visibility of the mission. Fact-finding cannot be perceived as a process that ends with the production of a written document. It is only a part of the process whereby the mission achieves its objectives. Research into outreach activities, such as public communication in connection with the submission of the final report, is essential to increase the impact of the mission and, hence, its efficiency. It is advisable to involve different stakeholders in the discourse related to the report after it has been released. This is an area that requires further analysis.

There is also room for further study of how there could be improvement in the composition of fact-finding missions, their organisation, and the resources made available to them. The anthology contributes to this discussion in Chapters 5 and 8. These issues strongly affect the quality and impartiality of fact-finding processes. For example, the appointment of non-UN staff associated with certain political agendas as heads or members of such missions might prejudice the final outcome.¹²⁷ Structuring financial issues pertaining to fact-finding can also release undue pressure and uncertainty.

Research effort could also be directed to enhancing the key work-processes in international fact-finding, including the writing of reports and conclusions. The mediocre performance of some fact-finding missions may be explained by the lack of rigorous methodology and quality control, which may, in turn, be caused in part by the lack of continuity in international fact-finding.¹²⁸ In this regard, some consider it unfortunate that the attempts to establish a permanent commission of inquiry with its own terms of reference, composition and procedure, failed.¹²⁹ The methodology of fact-finding is a particularly serious challenge for non-governmental organisations. The credibility of NGO reports is often subjected to enhanced scrutiny by the international community, with suggestions that NGOs lack objectivity or that the output suffers from low quality. This criticism could stem in part from the lack of generally recognised methodological standards guiding substantial fact-finding endeavours by the NGOs and guarding it against distortions.¹³⁰ Given that some of the larg-

¹²⁷ Bassiouni, p. 39, *supra* note 86.

¹²⁸ *Ibid.*, p. 41.

¹²⁹ Partsch, 1981, p. 62, *supra* note 6.

¹³⁰ Orentlicher, p. 135, *supra* note 125.

est NGOs do not even have internal manuals for their fact-finding work, reaching broader agreement among such organisations would seem rather ambitious at this stage of their professionalisation. This is an area that invites critical research.

1.5. Conclusion

Since the 1990s, non-criminal justice international fact-finding has come to enjoy wide recognition as a corollary and, in many cases, an alternative to international criminal justice as a mechanism for achieving accountability for violations of humanitarian and human rights law. Such fact-finding often has the capacity to surpass international criminal justice in accomplishing the objectives of setting the historical record and contributing to national reconciliation. Despite its mounting importance, the topic of non-criminal justice, international fact-finding receives considerably less attention in scholarly literature than various issues related to international criminal law. The present anthology seeks to remedy this situation and contribute to a deeper understanding of the challenges inherent to non-criminal justice fact-finding. Its specific focus – quality control in fact-finding – embraces different aspects of the process. The quality of the mandate, independence, methodology, and reporting practices determine the utility, efficacy and legitimacy of fact-finding commissions and inquiries. Different legal regimes and standards of reporting make the final outcome of the mission less predictable absent proper quality control.

Increasing the awareness and understanding of quality control may enhance the value of non-criminal justice fact-finding to relevant stakeholders, including, ultimately, the victims and, indirectly, taxpayers who make it possible for the governments to support such commissions. More refined quality control mechanisms can make the success of international fact-finding less dependent on the individual composition of any given commission. The leadership of fact-finding processes remains, however, of the utmost importance to foster a culture of quality control, in which the will of individual fact-finders to professionalise is nurtured by example and not only by peers. Being mandate-centred helps fact-finders to sharpen their awareness of quality control. Quality control can contribute to the substantive independence of the fact-finders' assessment of allegations of serious violations of international criminal, humanitarian or human rights law.

1.6. Annex: Some International Fact-Finding Mandates 1992–2020

The data in the table below are largely taken from the International (ised) Fact-Finding Mandates Collection in the ICC Legal Tool Database, a Collection which, at the time of the release of this edition, contained 1,535 documents on fact-finding mandates concerning 37 countries.

Name:	Date of establishment:	Legal basis/ Establishing body:
UN Fact-finding mission to South Vietnam	11 October 1963	UN General Assembly at the request of the Government of Vietnam
Commission of inquiry on the reported massacres in Mozambique	12 December 1973	General Assembly resolution 3114 (XXVIII)
Ad Hoc Working Group to inquire into the situation of human rights in Chile	27 February 1977	UN Commission on Human Rights Resolution 8 (XXXI)
Security Council Commission concerning Israeli settlements in Arab territories occupied since 1967, including Jerusalem	22 March 1979	UN Security Council Resolution 446 (1979)
Commission of Inquiry under Resolution 496 (1981) in connection with the Republic of the Seychelles	15 December 1981	UN Security Council Resolution 496 (1981)
Security Council Commission of Investigation established in pursuance of Resolution 571 (1985)	20 September 1985	UN Security Council Resolution 571 (1985)
Mission to Cuba to observe the human rights situation	10 March 1988	Commission on Human Rights Decision 1998/106
Special Rapporteur on the situation of Human Rights in Iraq	6 March 1991	UN Commission on Human Rights Resolution 1991/74
Commission of Experts for the former Yugoslavia	October 1992	UN Security Council Resolution 780 (1992)

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Special Rapporteur on the situation of human rights in Cambodia	19 February 1993	UN Commission on Human Rights Resolution 1993/6
Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967	19 February 1993	UN Commission on Human Rights Resolution 1993/2 A
Independent Expert on the situation of human rights in Somalia	10 March 1993	UN Commission on Human Rights Resolution 1993/86
Panel of Inquiry on Liberia to conduct a thorough and full investigation of the massacre of the civilians, which occurred near Harbel, Liberia on the morning of 6 June 1993	9 June 1993	UN Security Council via Statement by President of the Security Council S/25918
Fact-finding mission to investigate human rights violations in Abkhazia, Republic of Georgia	October 1993	UN Secretary-General
Commission of Inquiry concerning Somalia	16 November 1993	UN Security Council Resolution 885 (1993)
Preparatory fact-finding mission to Burundi to investigate the coup d'état of 21 October 1993, the assassination of President Melchior Ndadaye, and the subsequent massacres	March 1994	UN Secretary-General
Commission of Experts to investigate violations of international humanitarian law during the Rwandan Genocide	July 1994	UN Security Council Resolution 935 (1994)
Truth and Reconciliation Commission of South Africa	19 July 1995	Parliament
International Commission of Inquiry concerning Burundi	28 August 1995	UN Security Council Resolution 1012 (1995)

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International Commission of Inquiry concerning Rwanda to investigate reports relating to the sale or supply of arms and related material to former Rwandese Government Forces	7 September 1995	UN Security Council Resolution 1013 (1995)
Joint Mission to investigate allegations of massacres and other human rights violations occurring in Eastern Zaire (now the Democratic Republic of the Congo) since September 1996	15 April 1997	UN Commission on Human Rights Resolution 1997/58
UN Secretary-General's Investigative team charged with investigating serious violations of human rights and international humanitarian law in the Democratic Republic of the Congo	15 July 1997	UN Secretary-General
Group of Experts for Cambodia	18 February 1999	UN General Assembly Resolution 52/135
Report of the High Commissioner for Human Rights on the situation of human rights in Kosovo, Federal Republic of Yugoslavia	13 April 1999	UN Commission on Human Rights
UN Inquiry into Possible Human Rights Violations in East Timor	September – November 1999	UN Commission on Human Rights resolution 1999/S-4/1; Economic and Social Council decision 1999/293
Monitoring, Verification and Inspection Commission to verify compliance by Iraq with its disarmament obligations imposed after the Gulf War	17 December 1999	UN Security Council Resolution 1284 (1999)

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Mission of Mary Robinson, High Commissioner for Human Rights to investigate the situation of human rights in Chechnya in the Russian Federation	March-April 2000	Mandate of a High Commissioner for Human Rights
Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo	2 June 2000	UN Secretary General
Panel of Experts appointed pursuant Security Council Resolution 1306 (2000), paragraph 19, in relation to Sierra Leone	5 July 2000	UN Security Council Resolution 1306 (2000)
Commission of inquiry to investigate violations of human rights and humanitarian law in the occupied Palestinian territories after 28 September 2000	19 October 2000	UN Commission on Human Rights Resolution S-5/1
La Commission d'enquête internationale pour la Côte d'Ivoire	15 January 2001	UN Secretary-General
The official visit to Chile by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, which took place between 18 and 29 July 2003	24 April 2001	UN Commission on Human Rights
African Commission on Human and Peoples' Rights Fact-Finding Mission to Zimbabwe, 24–28 June 2002	April-May 2001	29th Ordinary Session of the African Commission on Human and Peoples' Rights of the African Union

Truth and Reconciliation Commission/Informe Final de la Comisión de la Verdad y Reconciliación (Peru)	June 2001	Interim President
International investigative mission in Chile – The Mapuche People: Between Oblivion and Exclusion	Early 2002	International Federation for Human Rights ('FIDH')
The Special Rapporteur's third fact-finding mission to Myanmar undertaken in October 2002 and information received by him up to 10 December 2002	25 April 2002	UN Commission on Human Rights
OHCHR fact-finding mission to Côte d'Ivoire	20 December 2002	UN Secretary-General
Commission of Inquiry on the events connected with the march planned for 25 March 2004 in Abidjan	2 April 2004	UN Secretary-General
Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea	15 April 2004	UN Commission on Human Rights Resolution 2004/13
Independent Inquiry Committee into the United Nations Oil-for-Food Programme	April 2004	UN Secretary General and Security Council
Mission of the African Commission on Human and Peoples' Rights to Sudan	July 2004	African Commission on Human and Peoples' Rights Resolution, 35th Ordinary Session May-June 2004
International Commission of Inquiry on Darfur	18 September 2004	UN Security Council Resolution 1564 (2004)
Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste (then East Timor) in 1999	January 2005	Letters between the Secretary-General and the President of the Security Council S/2005/96 and S/2005/97

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OSCE Fact-Finding Mission to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh	January 2005	Mandate of the Organization for Security and Co-operation of Europe ('OSCE') Fact-Finding Mission as agreed by the parties
Truth and Reconciliation Commission of Liberia	12 May 2005	National Transitional Legislative Assembly of the National Transitional Government of Liberia
International Independent Investigation Commission to assist in investigation of all aspects of the assassination of the former Prime Minister of Lebanon, Rafiq Hariri, along with 22 others in Beirut on 14 February 2005	7 April 2005	UN Security Council Resolution 1595 (2005)
Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation Murambatsvina	May 2005	UN Special Envoy on Human Settlements Issues in Zimbabwe
The Liberian Truth and Reconciliation Commission ('TRC')	May 2005	National Parliament
United Nations Independent Special Commission of Inquiry for Timor-Leste	12 June 2006	UN Secretary-General
Commission of Inquiry on Lebanon	11 August 2006	UN Human Rights Council Resolution S-2/1
High-Level Fact-Finding Mission to Beit Hanoun	15 November 2006	UN Human Rights Council Resolution S-3/1
Colombia Fact-Finding Mission	March 2007	International Bar Association's Human Rights Institute

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UN Security Council Kosovo Fact-Finding Mission	April 2007	Security Council fact-finding mission to Kosovo requested by Russia to inform the vote on Kosovo's independence
Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003	8 May 2007	UN Secretary-General
The Commission of Inquiry on Post-Election Violence	22 May 2008	President of Kenya
Truth, Justice and Reconciliation Commission	2008	Parliament
African Union Fact-Finding Team for Darfur	November 2008	African Union authorization
Fact-Finding Mission to Kenya	6–28 February 2008	OHCHR
Independent International Fact-Finding Mission on the Conflict in Georgia	2 December 2008	Council of the European Union Decision 2008/901/CFSP
Commission of Inquiry into the Benazir Bhutto assassination	3 February 2009	Letters between the Secretary-General and the President of the Security Council
United Nations Headquarters Board of Inquiry to review and investigate nine incidents in the Gaza Strip and southern Israel that occurred between 27 December 2008 and 19 January 2009	11 February 2009	UN Secretary General
UN Fact-Finding Mission on the Gaza Conflict	3 April 2009	UN Human Rights Council Resolution S-9/1

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The Independent Expert on the Situation of Human Rights in the Sudan	18 June 2009	UN Human Rights Council Resolution 11/10
International Commission of Inquiry mandated to establish the facts and circumstances of the events of 28 September 2009 in Guinea	28 October 2009	UN Secretary-General
OHCHR monitoring mission in Guinea	26 March 2010	UN Human Rights Council resolution 13/21
International Fact-Finding Mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance	2 June 2010	Human Rights Council in resolution 14/1
Danish Immigration Service's Fact-Finding Mission to Colombo, Sri Lanka	19 June – 3 July 2010	Danish Immigration Service
Panel of Experts on Accountability in Sri Lanka	22 June 2010	UN Secretary-General
Panel of Inquiry on the 31 May 2010 Flotilla Incident (the Palmer Committee)	2 August 2010	UN Secretary-General
Fact-Finding Missions of the United Nations Joint Human Rights Office into the Mass Rapes and Other Human Rights Violations Committed by a Coalition of Armed Groups along the Kibua-Mpofi Aix in Walikale Territory, North Kivu, from 30 July to 2 August 2010	August 2010	United Nations Joint Human Rights Office; The United Nations Organization Stabilization Mission in the Democratic Republic of the Congo

Independent International Commission of Inquiry into the Events in southern Kyrgyzstan	September 2010	An initiative from the Nordic countries; the President of the Kyrgyz Republic; OSCE; UN
OSCE Minsk Group Co-Chairs conducted a Field Assessment Mission to the seven occupied territories of Azerbaijan surrounding Nagorno-Karabakh	7–12 October 2010	Organization for Security and Cooperation of Europe
African Union Fact-Finding Mission in Côte d'Ivoire	February 2011	African Union
International Commission of Inquiry on Libya	25 February 2011	UN Human Rights Council Resolution S-15/1
Special Rapporteur on the situation of human rights in the Islamic Republic of Iran	24 March 2011	UN Human Rights Council Resolution 16/9
International Commission of Inquiry on Côte d'Ivoire	25 March 2011	UN Human Rights Council Resolution 16/25
Fact-Finding Mission to Syria	March 2011	International Bar Association's Human Rights Institute
Fact-Finding Mission for the Syrian Arab Republic	29 April 2011	UN Human Rights Council Resolution S-16/1
Independent Expert on the situation of human rights in Côte d'Ivoire	17 June 2011	UN Human Rights Council resolution 17/21
Bahrain Independent Commission of Inquiry	29 June 2011	The King of Bahrain
Fact-Finding Mission to Zimbabwe	June 2011	International Bar Association's Human Rights Institute
OHCHR Assessment Mission to Yemen	June-July 2011	OHCHR

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Independent International Commission of Inquiry on the Syrian Arab Republic	22 August 2011	UN Human Rights Council Resolution S-17/1
Fact-finding mission in Kenya to identify perpetrators of killings and cattle raiding in a conflict-prone border region.	August 2011	Intergovernmental Authority on Development (Conflict Early Warning and Early Response Unit)
UNASUR Fact-Finding Mission in Bolivia to investigate a clash in the Pando province in September 2008	December 2011	Union of South American Nations
National Truth Commission/Comissão Nacional da Verdade (Brasil)	Late 2011	President and Senate
Independent Civil Society Fact-Finding Mission to Libya	2012	Arab Organization for Human Rights; Palestinian Centre; International Legal Assistance Consortium
ECOWAS Commission Fact-Finding mission to the Republic of Mali	16–18 March 2012	Economic Community of West African States
International Fact-Finding Mission on Israeli Settlements in the Occupied Palestinian Territory	22 March 2012	UN Human Rights Council Resolution 19/17
Fact-Finding Mission to Georgia	April 2012	International Bar Association's Human Rights Institute
Special Rapporteur on the situation of human rights in Belarus	28 June 2012	UN Human Rights Council Resolution 20/13
Special Rapporteur on the situation of human rights in Eritrea	17 July 2012	UN Human Rights Council Resolution 20/20
OAS Fact-Finding Mission to Paraguay	July 2012	Organization of American States

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Commission of inquiry on human rights in the Democratic People's Republic of Korea	21 March 2013	UN Human Rights Council Resolution 22/13
Independent Expert on the situation of human rights in Mali	21 March 2013	UN Human Rights Council Resolution 22/18
UN Fact-Finding Mission to investigate allegations of the reported use of chemical weapons in Syria	March 2013	UN Secretary General after the consultations with the World Health Organization and Organization for the Prohibition of Chemical Weapons
Fact-finding mission in Angola to analyse the context in which human rights defenders are operating in the country	April 2013	International Federation for Human Rights and the World Organization Against Torture ('OMCT')
Commission on Investigation of Disappeared Persons, Truth and Reconciliation in Nepal	2 April 2013	Parliament
OHCHR Fact-finding Mission to the Central African Republic	13 June 2013	UN Human Rights Council Resolution 23/18
Independent Expert on the human rights situation in the Central African Republic	27 September 2013	UN Human Rights Council Resolution 24/34
International Commission of Inquiry on the Central African Republic	5 December 2013	UN Security Council Resolution 2127 (2013)
Panel of Experts on Yemen	26 February 2014	UN Security Council Resolution 2140 (2014)
OHCHR Investigation on Sri Lanka	27 March 2014	UN Human Rights Council Resolution 25/01
OPCW Fact-Finding Mission in Syria	29 April 2014	Director-General of OPCW
Commission of Inquiry on Human Rights in Eritrea	27 June 2014	UN Human Rights Council Resolution 26/24

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Independent Commission of Inquiry on the 2014 Gaza Conflict	23 July 2014	UN Human Rights Council Resolution S-21/1
OHCHR mission to Iraq to investigate alleged violations and abuses of international human rights law committed by the so-called Islamic State in Iraq and the Levant	1 September 2014	UN Human Rights Council Resolution S-22/1
OHCHR Investigation on Libya	27 March 2015	UN Human Rights Council Resolution 28/30
OHCHR Fact-finding mission to investigate atrocities committed by the terrorist group Boko Haram and its effects on human rights in the affected States	1 April 2015	UN Human Rights Council Resolution S-23/1
OHCHR Assessment mission in South Sudan	2 July 2015	UN Human Rights Council Resolution 29/13
OPCW-UN Joint Investigative Mechanism	7 August 2015	UN Security Council Resolution 2235 (2015)
United Nations Independent Investigation on Burundi	17 December 2015	UN Human Rights Council Resolution S-24
Commission on Human Rights in South Sudan	23 March 2016	UN Human Rights Council Resolution 31/20
Commission of Inquiry on Burundi	30 September 2016	UN Human Rights Council Resolution 33/24
International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011	21 December 2016	UN General Assembly Resolution 71/248

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OHCHR Mission to Bangladesh to interview Rohingyas fleeing from Myanmar since 9 October 2016	January 2017	OHCHR
Independent international fact-finding mission on Myanmar	24 March 2017	UN Human Rights Council Resolution 34/22
Team of international experts on the situation in Kasai	23 June 2017	UN Human Rights Council Resolution 35/33
Group of Eminent Experts on Yemen	29 September 2017	UN Human Rights Council Resolution 36/31
The United Nations Commission of Inquiry on the 2018 protests in the Occupied Palestinian Territory	18 May 2018	UN Human Rights Council Resolution S-28/1
The Independent Investigative Mechanism for Myanmar	27 September 2018	UN Human Rights Council Resolution 39/2
Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela	27 September 2019	UN Human Rights Council Resolution 42/25

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Quality Control in Fact-Finding

Morten Bergsmo and Carsten Stahn (editors)

This book discusses how fact-finding mechanisms for alleged violations of international human rights, humanitarian and criminal law can be improved. There has been a significant increase in the use of international(ised) and domestic fact-finding mechanisms since 1992, including by the United Nations human rights system, international commissions of inquiry, truth and reconciliation commissions, and NGO fact-finding. They are analysed and assessed in detail by 22 authors under the common theme 'Quality Control in Fact-Finding'. The authors include Richard J. Goldstone, Martin Scheinin, LIU Daqun, Charles Garraway, David Re, Simon De Smet, FAN Yuwen, Isabelle Lassée, WU Xiaodan, Dan Saxon, Christopher B. Mahony, Dov Jacobs, Catherine Harwood, Lyal S. Sunga, Wolfgang Kaleck, Carolijn Terwindt, Ilia Utmelidze and Marina Aksenova. This Second Edition includes new chapters by Geoffrey Robertson QC, Emma Irving and William H. Wiley, as well as a new foreword by Mads Andenæs QC.

The book considers how the quality of every functional aspect of fact-finding can be improved, including work processes to identify, locate, obtain, verify, analyse, corroborate, summarise, synthesise, structure, organise, present and disseminate facts. Emphasis is placed on the nourishment of an individual mindset and institutional culture of quality control. This book concerns fact-work outside criminal justice systems. It is supplemented by *Quality Control in Preliminary Examination: Volumes 1 and 2* and *Quality Control in Criminal Investigation* in the same Series.

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