SIRACUSA GUIDELINES FOR INTERNATIONAL, REGIONAL AND NATIONAL FACT-FINDING BODIES
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International Institute of Higher Studies in Criminal Sciences

Edited by M. Cherif Bassiouni and Christina Abraham
Siracusa Guidelines for International, Regional and National Fact-finding Bodies
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ABBREVIATIONS

COI – Commission of Inquiry
HRC – Human Rights Council
HRTD – Human Rights Treaties Division
ICC – International Criminal Court
ICTR – International Criminal Tribunal for Rwanda
ICTY – International Criminal Tribunal for the former Yugoslavia
MRF – Monitoring, Reporting and Fact-finding
NGO – Non-governmental Organization
OHCHR – Office of the High Commissioner for Human Rights
UDHR – Universal Declaration of Human Rights
UNDPKO – United Nations Department of Peacekeeping Operations
UN – United Nations
UNSG – United Nations Secretary-General
UNGA – United Nations General Assembly
UNSC – United Nations Security Council
Preface

Fact-finding bodies have been and continue to be established in different contexts by a variety of mechanisms. They may be established by the UN, treaty monitoring bodies, regional organizations, governments or national institutions, or NGOs, whether working alone or in collaboration with another body. As a result, the mandates that establish fact-finding bodies include political considerations, but more importantly they lack the specificity related to the professional nature of these bodies’ missions. The objectives established for these fact-finding bodies, and more importantly how they function, the expertise of their personnel, the professionalism of their methods, and the resources they have at their disposal, vary significantly. Because each fact-finding situation is sui generis, the mixture of objectives and benefits of fact-finding bodies will differ from situation to situation or from country to country, but most importantly the difference will also be in the manner in which these bodies function. Very often the sui generis nature of fact-finding bodies also leads to ad hoc approaches to their operations. Fact-finding bodies may be purely investigatory, quasi-judicial, or have a truth and reconciliation component attached. Whatever the mechanisms of accountability, the first necessary step is always fact-finding, and these guidelines are concerned primarily with the issue of how to conduct a professional investigatory operation irrespective of what the ultimate purpose is of the data collected, or how the analysis made will be used. This is indispensable to ensure the professionalism of fact-finding operations, the reliability of the data obtained, its credibility, all of which are essential for any subsequent determination of whatever action may be contemplated. It is also the only way in which a comparison can be made of different situations that are the subject of fact-finding inquiries.

Many fact-finding bodies are created to investigate allegations of human rights violations. These fact-finding bodies allow international and national institutions to obtain information on a given situation and may provide advice on actions or remedies that should be taken to avert further conflict, restore stability, promote accountability or support adherence to the rule of law. They have also been useful in establishing a basis for future criminal investigations and prosecutions, whether internationally or nationally,
sometimes working alongside domestic and international criminal justice mechanisms. This is in line with the UN General Assembly’s Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Human rights fact-finding bodies also provide an important mechanism for bringing closure to the victims of human rights abuse, which is a necessary component of achieving reconciliation, and promoting the right to truth. Finally, fact-finding bodies may also have a monitoring role: to establish whether any breaches of law (whether international humanitarian law, international human rights law, international criminal law or domestic law) have occurred, and investigating and publicizing the facts surrounding those breaches. Fact-finding bodies can also minimize ongoing violations of human rights and enhance compliance with national and international law.

Human rights fact-finding has increasingly become recognized as an important exercise to strengthen and support the rule of law in certain contexts. For example, UN General Assembly Resolution 67/1 emphasized the importance of fact-finding, “including those that investigate patterns of past violations of international human rights law and international humanitarian law and their causes and consequences” as “important tools that can complement judicial processes.” Further, the UN Secretary-General has recognized fact-finding as an effective tool to “draw out facts necessary for wider accountability and transitional justice efforts.”

Because the political objectives of fact-finding bodies vary from mission to mission, each fact-finding body produces different results. It is therefore difficult to compare the work products of these different missions because each one relies on different financial and human resources, adopts different methodologies, and therefore produces different results. The implication of this is that the work products of these fact-finding bodies cannot necessarily be relied upon by international or national judicial mechanisms such as the International Criminal Court or international and mixed-model tribunals. Also, very often human rights fact-finding bodies do not take into account parallel work conducted by historical or prosecutorial commissions, UN Special Procedures or the fact-finding work conducted within the Treaty Body System. The lack of coordination among these different bodies and inconsistencies in approaches and methodologies may lead to duplicated work and unreliable results. Perhaps an effective way of dealing with this would be to create a permanent body or pool of experts from which individuals could be selected to serve as Commissioners on these human rights fact-finding bodies. Such a system may help guarantee that fact-finding bodies are led by qualified experts, while at the same time ensure a
degree of flexibility for mandating bodies to select the experts that best fit each unique situation.

Understandably, there are differences in the goals and missions of different fact-finding bodies, which are reflected in their mandates. Ongoing fact-finding in connection with UN Special Procedures and other mechanisms that fall within the meaning of Special Procedures have developed since the establishment of the United Nations, first under the Commission on Human Rights and the sub-commission on the Prevention of Discrimination and Protection of Minorities, and as of 2005 under the Council on Human Rights. But these are not the only UN bodies that have dealt with fact-finding processes, some like the Security Council Commission established pursuant to Resolution 780 (1992) was probably the most extensive fact-finding operation the United Nations undertook since its establishment. The Commission's two-year work resulted in the longest report published as a Security Council document (3,500 pages with 72,000 documents attached, 300 hours of video tape material, and 3,000 pictures). The work of the Commission resulted in the establishment of the ICTY as noted in the preamble of UN Security Council Resolution 827. As noted in the study made of these different bodies, An Empirical Analysis of United Nations Commissions of Inquiry: Toward the Development of a Standardized Methodology, available in this publication, there have been 30 fact-finding bodies established by various United Nations bodies, distinguishable from the continued work of the Special Procedures and Treaty Body System. The way in which these and other bodies conducting human rights fact-finding differ from one another is explored in the study Identification of Issues in Relation to UN Fact-finding Mechanisms, also available in this publication. What both of these studies evidence is the differences that exist both among UN Commissions of Inquiry, and between UN Commissions of Inquiry and other UN fact-finding bodies and procedures. This diversity cannot be explained in professional terms, only in political ones. What these two studies reveal is that there is definitely a need for enhanced professionalization of these fact-finding bodies, notwithstanding the diversity of their origin and the differences in their mandates. Having had the privilege of Chairing and being a member of four official fact-finding bodies, three established by the United Nations for the Former Yugoslavia, Afghanistan, and Libya (of which I was first Chair and then Member), and Chair of the Bahrain Independent Commission of Inquiry (BICI), a national commission, and also head of a private project in Iraq which compiled the oral history of over 5,000 victims of the Saddam regime, I can attest to the problems and
difficulties encountered in each one of these fact-finding bodies for the reasons discussed in the two studies contained in this publication.

In developing the Siracusa Guidelines, various best practice documents and training manuals were also reviewed, such as the Chicago Principles on Post-Conflict Justice, the Lund-London Guidelines, the Brahimi Report, the Belgrade Minimum Rules of Procedure for International Human Rights Fact-Finding Visits, the University of Nottingham’s Guiding Principles for Human Rights Field Officers Working in Conflict and Post-conflict Environments, the OHCHR Training Manual on Human Rights Monitoring, the Manual of Operations of the Special Procedures of the HRC, and the Institute for International Criminal Investigations’ Investigators Manual, among a number of other materials. The results of the research studies identified above and the review of other best practice documents were used to prepare the first draft of the Guidelines.

ISISC then organized a Meeting of Experts to review the draft Guidelines. This Meeting brought together over 70 international judges and prosecutors, UN officials, academics and other experts to review the Guidelines and provide comments. After the conclusion of the Meeting, a Drafting Committee composed of highly experienced academics, jurists and legal practitioners met to review the comments made by experts and deliberate upon the draft Guidelines. A subsequent draft of the Siracusa Guidelines was circulated to participants of the Meeting of Experts. Their comments were received by the Drafting Committee, who then adopted a final draft of the Guidelines. The experts and Drafting Committee members have contributed to this endeavor in their personal capacities. Although nothing in this undertaking is attributable to any government, UN agency, or institution with which any of the participants are affiliated, their input has been of immense value in developing the Guidelines.

The Siracusa Guidelines seek to promote an effective approach to human rights fact-finding based upon compliance with international best practices. The Guidelines have been developed as a practical guide for establishing and operating a fact-finding body investigating human rights violations. The Guidelines are intended to aid a mandating body in establishing a mandate and selecting Commissioners, as well as to aid Commissioners and staff in effectively carrying out their mandate. They are therefore designed to address the three main phases of the life of a fact-finding body: 1) establishment; 2) investigation; and 3) reporting and follow-up.

The structure of the Guidelines recognizes that each mission operates within different contexts. The effectiveness of any fact-finding body requires that it consider this context in its establishment and operation. As such,
the Guidelines contain a degree of flexibility, and all guidelines may not apply in all situations equally. Because of the variety of different contextual possibilities, the applicability of each Guideline may not be reflected in the text; however, compliance with the Guidelines will result in enhanced credibility and effectiveness for missions. The Siracusa Guidelines have been developed keeping in mind the experiences of UN and other fact-finding bodies, including the BICI, which reviewed other fact-finding body experiences before establishing its mandate and internal rules and procedures. The Guidelines are therefore intended, amongst other things, to ensure that the positive elements and lessons learned from these fact-finding bodies are preserved and readily accessible for future missions.

ISISC and I extend our deepest appreciation to the participants of the Meeting of Experts and to the Drafting Committee, whose names follow.

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