∼

Introduction

CLAUDE BRUDERLEIN

This book is the product of a multi-annual research project undertaken by the Program on Humanitarian Policy and Conflict Research (HPCR) at Harvard University. Building on its experience in the development of interpretive guidelines and professional manuals,[1] HPCR launched this initiative in 2011 in response to concerns expressed by practitioners engaged in monitoring, reporting, and fact-finding (MRF) about the fragmentation of this professional domain and the lack of institutional memory that would capture the challenges, dilemmas, and strategies of past missions. In line with HPCR's mission to apply scientific research to address recurring policy dilemmas related to humanitarian assistance and protection, this project has entailed in-depth research on the operations and impacts of MRF initiatives, as well as extensive professional engagement with leading practitioners involved in MRF work.

HPCR began its work on this subject by undertaking a systematic analysis of the domain of MRF as a whole. At the time, no such study had been undertaken. Instead, existing literature reflected the fragmented nature of this domain: case studies had been produced analyzing individual missions, but little comparative analysis had been conducted on the respective experiences of different missions. As part of this study, HPCR constructed an online database that aggregated mandates and reports for over one hundred MRF missions implemented since the end of World War II.[2] Using this database as a research tool, and drawing from extensive interviews that HPCR conducted with MRF practitioners, HPCR concluded that a demand exists among practitioners for research into key areas of methodological concern, the continued development of tools of

---

[1] See generally Program on Humanitarian Policy and Conflict Research at Harvard University, *HPCR Manual on International Law Applicable to Air and Missile Warfare* (New York: Cambridge University Press, 2013).

[2] See "HPCR Digital Library of Monitoring, Reporting, and Fact-Finding," Program on Humanitarian Policy and Conflict Research, accessed June 7, 2015, http://www.hpcrresearch.org/mrf-database/.

1

practical guidance, and the creation of forums geared toward professional exchange.

Recognizing the need to directly involve MRF practitioners in the continuation of the research process, HPCR convened the HPCR Group of Professionals on Monitoring, Reporting, and Fact-Finding, a team of high-level practitioners in this domain who have served on recent missions in various capacities.[3] This esteemed collection of professionals played a key role in shaping the direction of HPCR's research and the elaboration of a practical handbook.

Through deliberations between HPCR and members of the Group of Professionals, the decision was made to conduct an assessment of fifteen specific MRF missions implemented over the past decade.[4] Drawing on the experience cumulated over the course of these missions, HPCR collaborated with the Group in elaborating a research agenda that proceeded in four steps. First, a desk analysis was undertaken of each of these missions' mandates and reports, as well as of relevant secondary literature. Second, HPCR conducted extensive interviews with high-level practitioners who served on these missions in various capacities. Third, based on the desk analyses and the interviews, HPCR analyzed trends in strategies and techniques of decision making in a series of six working papers produced over the project's period. Fourth, HPCR worked with the Group of Professionals to adapt the working papers into a format suitable for a practical, user-friendly document: the *HPCR Advanced Practitioner's Handbook on Commissions of Inquiry*. This process entailed a series of on-site meetings of the Group that HPCR convened between 2012 and 2014. This book presents the outcome of this exercise.

Structure and Overview of the Book

Part I   HPCR Advanced Practitioner's Handbook on Commissions of Inquiry

In this part of the book, readers will find a practical methodological approach to key issues that are emblematic of the policy challenges that MRF practitioners face. Given the research methodology described above, this *Handbook* reflects not only HPCR's assessment of the fifteen

---

[3] See Appendix A of this book for the names of the members of the Group of Professionals.
[4] Information about the fifteen selected missions, as well as a detailed explanation of the criteria used for selecting these missions, can be found in Appendix B.

selected missions but also the particular professional experiences and perspectives of the members of the Group of Professionals, who worked collaboratively with HPCR on structuring, drafting, and editing the document. Each section of the *Handbook* consists of four subsections designed to guide practitioners through the cumulated research and experiences:

I. *Background*: Provides information about the context within which the issue of the section emerges.
II. *Practical Steps*: Presents a systematic method for approaching the issue at hand.
III. *Explanation*: Offers detailed information, examples from past practice, and additional commentary regarding the practical steps to be taken.
IV. *Final Observations*: Summarizes the key methodological considerations detailed in the section and highlights particularly challenging issues.

The five particular areas that the *Handbook* addresses sequentially follow the planning and implementation of a mission.

Section 1. Mandate Interpretation presents the elements included in MRF mandates and details available modes of interpretation to determine the scope of the mission's activities. This section also addresses the extent and limits of the interpretive power of the practitioners leading the mission, and the importance of transparency in mandate interpretation.

Section 2. Establishing Facts and Applying the Law presents methodological considerations for approaching the interrelated processes of establishing facts, employing a standard of proof, and drawing legal conclusions. This section addresses the array of legal frameworks employed by MRF missions in order to make determinations on allegations of violations of international humanitarian law, international human rights law, international criminal law, and domestic law.

Section 3. Protection of Witnesses and Victims addresses the mission's responsibilities for mitigating risks to witnesses and victims that result from their exposure to the mission. It explains how practitioners can responsibly strike a balance between professional perspectives regarding an MRF mission's protective responsibilities, rooted in the notion that practitioners should *do no harm* to witnesses and victims, and the complex realities of on-the-ground implementation. To this end, this section presents the most favored practices articulated by practitioners, the challenges of implementing those practices, and practical considerations for grappling with these challenges.

Section 4. Public Communication focuses on the level of information that should or can be publicly communicated during the mission. This section presents a framework for a strategic approach to public communication while mitigating unintended negative repercussions for security and/or perceptions of the mission.

Section 5. Report Drafting offers considerations for report drafters regarding the presentation of information about the origins and operations of the mission, the mission's factual and legal findings, and the mission's recommendations. For each of these topics, this section seeks to assist in identifying the outputs to be included in the report, presenting the content, and planning the drafting process.

Part II   Selected Writings on Monitoring, Reporting, and Fact-Finding

The second part of the book supplements the *Handbook* by offering a selection of scholarly analyses of key issues undertaken by individual researchers and practitioners, based primarily on an assessment of the fifteen selected missions but incorporating lessons from other missions as well, when relevant. These chapters draw on the working papers prepared by HPCR, members of the Group of Professionals, and outside experts as part of the research efforts that led to the finalization of the *Handbook*.

Chapter 1. On the Hybrid Nature of Monitoring, Reporting, and Fact-Finding Missions, by Rob Grace, examines tensions and dilemmas that arise from the fact that MRF missions are mandated by political entities but implemented by legal and investigative professionals. As this chapter describes, many methodological issues arise in terms of design and planning from the hybrid political-technical nature of MRF missions.

Chapter 2. Selecting and Applying Legal Lenses in Fact-Finding Work, by Théo Boutruche, offers an assessment of how past missions have approached the process of selecting and applying legal frameworks. Through this analysis, the chapter demonstrates the risks that flawed or unclear legal reasoning and confused legal language can adversely impact an MRF report's credibility.

Chapter 3. Finding the Facts: Standards of Proof and Information Handling in Monitoring, Reporting, and Fact-Finding Missions, by Stephen Wilkinson, focuses on how past missions have grappled with adopting a standard of proof and handling and assessing information in order to draw factual conclusions. The chapter emphasizes the important role that articulating a standard of proof plays in clarifying the level of certainty of

a report's findings, and in demonstrating the soundness of the mission's methodological approach to information analysis.

Chapter 4. Protecting Witnesses, Victims, and Staff: Sources and Implications of Professional Responsibilities, by Cynthia Petrigh, provides an in-depth examination of the sources of responsibility to protect witnesses, victims, and staff in the context of MRF missions. The chapter also analyzes the operational difficulties of realizing these responsibilities due to the typically limited capacity of MRF missions to appropriately mitigate security risks, as well as other factors.

Chapter 5. Professional Dilemmas in Public Communication and Report Drafting, by Luc Côté and Rob Grace, focuses on public communication and report drafting. The chapter analyzes both of these issues together as different manifestations of the same methodological question: how to make decisions about what to reveal publicly, and through what means, about an MRF mission's operations, composition, and findings.

Chapter 6. An Analysis of the Impact of Commissions of Inquiry, by Rob Grace, concludes this volume by offering an assessment of the impact of the fifteen selected missions by tracing the outcomes of recommendations offered in these missions' final reports.

Acknowledgments