

HPCR PRACTITIONER'S HANDBOOK ON MONITORING, REPORTING, AND FACT-FINDING

Investigating International Law Violations

This book offers a portrait of the practice of monitoring, reporting, and fact-finding in the domain of human rights, international humanitarian law, and international criminal law. By analyzing the experiences of fifteen missions implemented over the course of the past decade, the book illuminates the key issues that these missions face and offers a roadmap for practitioners working on future missions. This book is the result of a five-year research study led by the Program on Humanitarian Policy and Conflict Research at Harvard University. Based on extensive interviews conducted with fact-finding practitioners, this book consists of two parts. Part I offers a handbook that details methodological considerations for the design and implementation of fact-finding missions and commissions of inquiry. Part II – which consists of chapters written by scholars and practitioners – presents a more in-depth, scholarly examination of past fact-finding practices.

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Edited by Program on Humanitarian Policy and Conflict Research, Rob Grace, Claude Bruderlein

Frontmatter

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PREFACE

PHILIPPE KIRSCH

The increase in international efforts invested in monitoring, reporting, and fact-finding (MRF) on violations of human rights and humanitarian law over the recent decades starting in the 1990s and into the 2000s has been a welcome development. As international, regional, and national actors have sought to respond more robustly to allegations of violations of international law, commissions of inquiry and fact-finding missions have multiplied and played a significant role in addressing allegations of particular concern to the international community.

However, this development has also brought forth several challenges: interpreting ambiguous and sometimes politically charged mandates; developing a sound methodology for establishing and legally qualifying facts; devising means to mitigate security risks incurred by witnesses and victims due to their cooperation with an inquiry mission; adopting a strategic approach to public communication; and effectively drafting the mission's final report under tight resource, personnel, and time constraints. Lessons learned on past missions regarding these issues have not been effectively carried forward. Instead, practitioners often have had a sense of "reinventing the wheel" from mission to mission.

This state of affairs derives largely from the ad hoc nature of these missions. Typically, the team of commissioners, legal experts, and investigators is assembled on short notice so that the mission can promptly begin its work in the field and disbands once the mission has been completed. This scenario leaves little opportunity for building institutional memory or peer-to-peer professional exchanges. The current environment, which is not propitious to the use by governments of a permanent fact-finding entity, suggests that the ad hoc nature of this field is likely to persist.

In response, several initiatives have been undertaken to develop some guidance for members and staff of future commissions of inquiry on the basis of past and current experience, enabling them to operate more effectively within this ad hoc framework. The "Guidelines on International Human Rights Fact-Finding Visits and Reports" (also known as the

“Lund-London Guidelines”), updated in 2016 by the International Bar Association and the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, address the needs of nongovernmental fact-finding efforts and are also relevant, in part, to missions mandated by governmental or intergovernmental entities. The 2013 *Siracusa Guidelines for International, Regional and National Fact-Finding Bodies* articulate rules and principles applicable to different types of fact-finding endeavors. “Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice,” published by the Office of the High Commissioner for Human Rights in 2015, provides important information about standard operating procedures and guidelines relevant to each stage of commissions of inquiry and fact-finding missions mandated by the United Nations Human Rights Council.

Nevertheless, an in-depth and specific assessment of the wealth of past MRF experiences was still needed to inform future methodological decision making. This book aims to fill this gap, building on the various efforts mentioned above but adopting a different approach. Rather than exhaustively addressing the full process of conducting MRF missions, it focuses on a select number of particularly challenging methodological issues, based on the assessment of leading practitioners and experts in this field. This exercise rests on the observations collected through a five-year research project that surveyed, in a systematic manner, over one hundred past MRF missions and reviewed most established professional standards, in order to equip current and future practitioners with the ability to draw on best professional practices.

My hope is that practitioners, researchers, and trainers engaged in the field of MRF will draw useful observations and reflections from this exercise. While this book constitutes a snapshot of the field of MRF at this particular point in time, this domain continues to evolve, and there is a need for efforts to analyze and learn lessons from past practice on an ongoing basis. Given the important role that MRF missions have come to play in responses to allegations of violations of international law, maximizing the potential impact of future missions by devoting energy to a continued assessment of MRF work will be crucial. This book is an important step in this ongoing process.