



OXFORD PROGRAMME ON
INTERNATIONAL PEACE
AND SECURITY

September 18, 2020

Esteemed Colleague,

The Oxford Programme on International Peace and Security (IPS) and the Oxford Institute for Ethics, Law, and Armed Conflict (ELAC), welcome you to our first virtual convening of a series focusing on **Anchoring Accountability for Mass Atrocities: Providing the Support Necessary to Fulfil International Investigative Mandates.**

As part of our namesake [project](#), our Programme, alongside its partners at the International Bar Association, and the Simon Skjoldt Center for the Prevention of Genocide, is convening a series of in-depth, technical workshops aimed to provide **policy-oriented, evidence-backed, and realistic recommendations** to advise on the permanent support needed to fulfil international investigative mandates.

One of the most significant developments in international criminal justice in the past four years has been the establishment of a new generation of UN accountability mechanisms, e.g. [the International, Impartial and Independent Mechanism for Syria \(IIIM\)](#), the [International Independent Mechanism for Myanmar \(IIMM\)](#), and the [UN Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL \(UNITAD\)](#). Significant differences in mandate, jurisdiction, resources, and operational realities distinguish these novel investigative mechanisms (which we refer to as **NIMs**) from one another. Yet, all three share an explicit (and innovative) mandate to collect, collate and analyse evidence of international crimes (committed in Syria, Myanmar, and Iraq by Daesh/ISIL respectively) according to criminal justice standards, and make this evidence available for domestic or international prosecutions.

The establishment of these mechanisms marks the culmination of a significant trend, in the past ten or so years, that we have defined an '[accountability turn in UN fact-finding](#)'. Indeed, over the past ten years, there has been an increased willingness of States to support resolutions within several bodies of the United Nations (among them, the Human Rights Council, which set up the IIMM, and most existing and past UN Fact-Finding Missions (FFMs) and Commissions of Inquiry (CoIs); the General Assembly, which set up the IIIM, and the Security Council, which set up UNITAD) to establish entities to investigate situations where there appear to have been serious violations of international human rights (IHRL), humanitarian (IHL), and criminal law (ICL).

This 'accountability turn' has meant that most [mandate holders \(MHs\) supported by the Office of the High Commissioner for Human Rights](#) (OHCHR) are now not only tasked with their traditional human rights investigations and reporting but also (as can be seen in the respective mandates of the CoIs on [Syria](#), [Libya](#), [Venezuela](#), [Burundi](#), [North Korea](#), [South Sudan](#); the [Group of Eminent Experts on Yemen](#); and the [Myanmar FFM](#), among others) with '**identifying those responsible**' and **laying the foundation for future criminal accountability**.

Our research asks:

1. *How can the novel mechanisms be best supported to continue their important work? What challenges do they continue to encounter?*
2. *What more can and should States do to enable and facilitate their work?*
3. *But also, how can we build on the momentum generated by their creation to seize upon and anchor the progress achieved, so that all UN human rights inquiries, when conferred such mandates, are equipped to fulfil them?*

As part of our methodology, we are **engaging with stakeholders across the board**. These include the ‘end-users’ of the evidence generated by UN mandates (ie, domestic and international prosecutorial and judicial authorities, which we refer to as **PAs**); ‘suppliers’ of much of the information being collected and analysed by UN mandate holders (ie. civil society groups conducting documentation of atrocities, which we refer to as ‘evidence providing organisations, **EPOs**); **mandates’ leadership** (current and previous); **mandates staff** (current and previous); as well as **States and donors**. This is to be sure that our work is thorough and comprehensive, but also in tune with realities on the ground.

Organisations such as the International Commission of Jurists, Justice Rapid Response and the Eurojust Network for the Prosecution of Atrocity Crimes are close collaborators in our consultations, alongside relevant international organizations such as the International Criminal Court (ICC). We also seek the input of the UN Office of the High Commissioner for Human Rights (OHCHR) and regularly brief the Office on our progress.

With the support of the University of Oxford, we are committed to approaching these questions with the **utmost academic rigor**, to be sure whatever guidance and recommendations we will provide are rooted in the **best evidence available** to us. We hope that this **meticulous research can inform** anyone who has an interest in pushing to ‘hardwire’ the progress made to date, and do so in a way that **strengthens, rather than weakens, the current architecture of international justice**.

We will be publishing a series of blog posts to keep anyone interested in this work abreast of our progress and findings. The final outcome of our study will be published in a **final report later in 2020 with our recommendations**. The objective of our study is to develop evidence-based, realistic recommendations that meet these challenges while having a reasonable prospect of being accepted by States.

To kick off our convening series, on September 17, 2020, we co-hosted with the International Bar Association War Crimes Committee a public event focusing on the **Challenges and opportunities for a new generation of accountability mechanisms**, which is available to be viewed [here](#).

We are grateful to all supporting this research and providing input and expertise, and invite everyone interested to follow our work, and be in touch with us.



Ambassador Stephen J. Rapp
Senior Visiting Fellow of Practice
Oxford Programme on International
Peace and Security
Blavatnik School of Government



Federica D'Alessandra
Executive Director
Oxford Programme on International
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OXFORD PROGRAMME ON
INTERNATIONAL PEACE
AND SECURITY

Virtual Convening

ANCHORING ACCOUNTABILITY FOR MASS ATROCITIES

Providing the Support Necessary to Fulfil International Investigative Mandates

18 September 2020

This Workshop is organised by the Oxford Institute for Ethics, Law and Armed Conflict's Programme on International Peace and Security. It is part of a research project being carried out in partnership with the **International Bar Association**, and the **US Holocaust Memorial Museum's Center for the Prevention of Genocide**. The views expressed in the background papers, presentations, and discussions do not necessarily reflect the position of our partners.

PROGRAMME AND LIST OF PARTICIPANTS

PROGRAMME

This discussion will take place under [Chatham House rules](#).

*All times are in British Summer Time

18 September 2020

TIME	SESSION	MODERATORS/LEADS
	Plenary - 40 mins	
12 - 12.40 pm*	<p>Welcome and Framing Discussion</p> <ul style="list-style-type: none"> • First, the Oxford team will present the background of our project, methodology, etc., and some of our preliminary findings. • Subsequently, we will hear from Justice Michael Kirby, former mandate holder (MH) as Chair of the UN Commission of Inquiry on the DPRK, who will reflect on lessons learned. • Following that, we will hear from Catherine Marchi-Uhel, Head of the IIIM (one of the mechanisms that we refer to as NIMs) concerning how they have moved to tackle head-on some of the challenges we have mapped. 	<p>Federica D’Alessandra University of Oxford</p> <p>Ambassador Stephen Rapp University of Oxford</p> <p>Justice Michael Kirby IBA Human Rights Institute Former Chair, UN DPRK CoI</p> <p>Catherine Marchi-Uhel IIIM Syria</p>
	Virtual Break Out Rooms – 45 mins	
	<p>Break-out rooms will be accessible by invitation-only. Participants will be assigned by conveners to each group at the convening.</p>	
12.40-13.25	<p><u>Break out room 1:</u></p> <ul style="list-style-type: none"> • Challenges and recommendations on the interface of mandate holders (MHs) with <u>domestic prosecutorial authorities</u>. 	Kirsty Sutherland University of Oxford
12.40-13.25	<p><u>Break out room 2:</u></p> <ul style="list-style-type: none"> • Challenges and recommendations on the interface of MHs with domestic <u>evidence-providing organisations</u>. 	Sareta Ashraph University of Oxford
12.40-13.25	<p><u>Break out room 3:</u></p> <ul style="list-style-type: none"> • Mandates and state support 	Federica D’Alessandra University of Oxford

13.25-13.30	Virtual break – 5 mins	
13.30-14.25	Plenary – 55 mins	
	Presentation of working groups findings + discussion	Break out room moderators (presenting)
14.25-14.30	Conclusions and next steps	Ambassador Stephen Rapp Federica D'Alessandra

LIST OF PARTICIPANTS

1. Abbott, Kingsley, International Commission of Jurists
2. Akerson, David, UNODC
3. Aptel, Cecile, The Fletcher School
4. Ashraph, Sareta, University of Oxford
5. Callamard, Agnes, UN SR on Extrajudicial, Summary or Arbitrary Executions
6. Coster van Voorhout, Jill, UvA
7. D'Alessandra, Federica, University of Oxford
8. Davis, Mary, former UN Commission of Gaza
9. De Souza Dias, Talita, University of Oxford
10. Eiermann, Joern, IIIM Syria
11. Emonet, Sam, Justice Rapid Response, *Observer*
12. Gavshon, Daniela, Public Interest Advocacy Centre, *Observer*
13. Goldston, Jim, Open Society Justice Initiative
14. Gosnell, Chris, UNITAD
15. Graham, Alistair, International Criminal Court
16. Iqbal, Zara, IBA Human Rights Institute, *Observer*
17. Jarvis, Michelle, IIIM Syria
18. Jayawardane, Sashini, IIIM Syria
19. Jelacic, Nerma, Commission on International Justice and Accountability
20. Khan, Karim, UNITAD
21. Kikoler, Naomi, USHMM Center for Prevention of Genocide
22. Kirby, Michael, IBA Human Rights Institute
23. Lyons, Perri, IBA Human Rights Institute, *Observer*
24. Mandel-Anthony, David, Georgetown University
25. Marchi-Uhel, Catherine, IIIM Syria
26. Michel, Valérian, FDFA Switzerland
27. Naqvi, Yasmin, OPCW
28. Pezdir, Matevž, EU Genocide Network, Eurojust
29. Poulsen, Signe, UN OHCHR
30. Radhakrishnan, Akila, Global Justice Centre
31. Rapp, Stephen, University of Oxford; USHMM Center for Prevention of Genocide
32. Roth, Robert, University of Geneva
33. Saxon, Dan, Kosovo Tribunal
34. Scott, Ken, former UN Commission on Human Rights in South Sudan
35. Sunga, Lyal, Raoul Wallenberg Institute
36. Sutherland, Kirsty, University of Oxford
37. Suomalainen, Nina, Justice Rapid Response
38. Warren, Mayee, UNODC
39. Wenaweser, Christian, UN Ambassador, Lichtenstein (New York)
40. Wiley, Bill, Commission on International Justice and Accountability
41. Zarifi, Sam, International Commission of Jurists

Annex I. Background readings

1. Anchoring Accountability for Mass Atrocities: Providing the Support Necessary to Fulfil International Investigative Mandates

Federica D'Alessandra¹, Ambassador Stephen J. Rapp²

[This blog post describes [new research being carried out at the University of Oxford around the question of whether some form of permanent support – or even a permanent investigative mechanism – should be created to fulfil international investigative mandates](#). This post, which is part of a series of eight, addresses contextual aspects of our research, how it came about, our research methods, and some of the most salient issues being studied by our team].

One of the most significant developments in international criminal justice in the past four years has been the establishment of a new generation of UN accountability mechanisms, e.g. [the International, Impartial and Independent Mechanism for Syria \(IIIM\)](#), the [International Independent Mechanism for Myanmar \(IIMM\)](#), and the [UN Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL \(UNITAD\)](#). Significant differences in mandate, jurisdiction, resources, and operational realities distinguish these novel investigative mechanisms (NIMs) from one another. Yet, all three share an explicit (and innovative) mandate to collect, collate and analyse evidence of international crimes (committed in Syria, Myanmar, and Iraq by Daesh/ISIL respectively) according to criminal justice standards, and make this evidence available for domestic or international prosecutions.

The establishment of these mechanisms marks the culmination of a significant trend, in the past ten or so years, that we have defined an '[accountability turn in UN fact-finding](#)'. Indeed, over the past ten years, there has been an increased willingness of States to support resolutions within several bodies of the United Nations (among them, the [Human Rights Council, which set up the IIMM](#), and [most existing and past UN Fact-Finding Missions \(FFMs\) and Commissions of Inquiry \(CoIs\)](#); the [General Assembly, which set up the IIIM](#), and the [Security Council, which set up UNITAD](#)) to establish entities to investigate situations where there appear to have been serious violations of international human rights (IHRL), humanitarian (IHL), and criminal law (ICL).

This 'accountability turn' has meant that most [mandate holders \(MHs\) supported by the Office of the High Commissioner for Human Rights \(OHCHR\)](#) are now not only tasked with their traditional human rights investigations and reporting but also (as can be seen in the respective mandates of the CoIs on [Syria](#), [Libya](#), [Venezuela](#), [Burundi](#), [North Korea](#), [South Sudan](#); the [Group of Eminent Experts on Yemen](#); and the [Myanmar FFM](#), among others, which we

¹ Executive Director, Oxford Programme on International Peace and Security, Institute for Ethics, Law, and Armed Conflict (ELAC), Oxford Blavatnik School of Government; immediate past Co-Chair & Advisory Board, IBA War Crimes Committee; Council, IBA Section on Public and Professional Interest & Human Rights Institute. She can be reached at: federica.dalessandra@bsg.ox.ac.uk.

² Senior Visiting Fellow of Practice, Oxford Programme on International Peace and Security, Blavatnik School of Government; Distinguished Fellow, Simon Skjodt Center for the Prevention of Genocide, US Holocaust Memorial Museum; Advisory Board, IBA War Crimes Committee and Human Rights Institute; Chair, Commission on International Justice and Accountability; former US Ambassador-at-Large for Global Criminal Justice (2009-2015). He can be reached at: stephen.rapp@bsg.ox.ac.uk

collectively refer to as UN HRIs) with **‘identifying those responsible’** and **laying the foundation for future criminal accountability**.

These mandates can represent the only opportunity (and sometimes material effort) by the international community to collect valuable testimony and physical evidence that might otherwise be lost or compromised. Given the additional requirements and challenges set in motion for UN mandates by the ‘accountability turn’, this reason alone would have justified (and warranted), alongside more robust mandates, a considerable investment by States in support of these entities’ expertise, operations, and capacity. Yet, until the creation of the NIMs, very few MHs have been provided the resources and bandwidth to fulfil these additional requirements.

At the same time, it also appears more and more likely that the same situations of mass violence probed by UN MHs will eventually become “crime scenes” where full-fledged criminal investigations will be carried out by the prosecution authorities of international or national courts. Syria and Myanmar are, perhaps, the most illustrative examples of this, with Syria simultaneously being probed by the UN CoI, the IIM, and domestic authorities in [Sweden](#), [Germany](#), and [France](#); and Myanmar being probed by the IIMM, the [International Criminal Court](#), and also the [International Court of Justice](#). While human rights reporting and criminal investigations are, in several respects, different processes, it is essential that human rights inquiries and criminal investigations that seek witnesses to the same events and gather information in the same places conduct their work in ways that maximize benefits and minimize harms to both sides. Yet, the Hague and Geneva-led processes have all too often remained isolated from each other.

Even prior to the birth of this new generation of NIMs, a [Group of Practitioners on Fact-Finding and Accountability](#) (in which we both participated, and which was [chaired by Ambassador Rapp](#)) had been convened by the USHMM Simon-Skjodt Center for the Prevention of Genocide (CPG) and The Hague Institute for Global Justice to make [recommendations](#) to OHCHR on how existing practices of OHCHR-supported inquiries could be improved, and how the criminal justice and accountability aspects of their mandates could be better achieved. The very first recommendation of the group, finalized on January 6, 2017, was to:

Establish a small, specialized Support Team (ST) in the Office of the High Commissioner for Human Rights (OHCHR). The ST would assist in the prompt recruitment and deployment of effective and well-resourced teams as required for human rights inquiries (HRIs). It would serve as a repository of institutional memory and achieve efficiencies by standardizing the preparatory processes and drafting investigative plans for each HRI. The ST would support the HRIs in the following areas: budget preparation, administration, staff recruitment and training, identification of experts, and information management. It would also include capacity for the management of information and archives, including for HRIs that have completed their work, and for liaison between HRIs and UN bodies and other entities in order to make and respond to requests for information and other assistance.

The recommendation for the creation of a Support Team was then seen as ambitious but it was incorporated in a personnel budget proposal presented by High Commissioner Zeid Ra’ad al Hussein. This proposal was blocked by the UN’s Advisory Committee on Administrative and Budget Questions (ACABQ) and the initiative shifted to the priority of achieving adequate funding for the IIM. Nevertheless, thanks to the group’s engagement and inclusion of key actors, a number of its process recommendations were incorporated in the [Terms of Reference \(ToR\) of the IIM](#), which had just been established, and subsequently included in the [ToRs of UNITAD](#) and [IIMM](#).

Recommendations lay dormant until, after the subsequent creation of UNITAD and the IIMM, some calls arose for the establishment of a permanent investigative body (see [here](#), [here](#), and [here](#)). In light of these calls, and especially the challenges set out above, there is a need to provide evidence-based, realistic and cost-effective recommendations on how the international community may improve efficiencies and maximise outputs against a background of scarce resources and competing priorities. Furthermore, the birth of a new generation of NIMs has not extinguished the need for a more comprehensive solution. To the contrary, many new and especially old MHs continue to face the same challenges, including structural issues, drawn-out recruitment procedures, and challenges in interfacing with judicial authorities, and in outreach to the civil society. For this reason, interest in achieving a more comprehensive solution will likely grow in the future.

To meet this need, [the Oxford Programme on International Peace and Security \(IPS\), in partnership with the International Bar Association and the USHMM Center for the Prevention of Genocide has launched a research project to scrutinise these issues to the highest academic standards, and develop viable solutions.](#)

Besides comprehensively mapping existing challenges, the project analyses and studies a number of approaches to increasing their investigative capacity, including the creation of a permanent investigative support unit to assist all ad-hoc MHs; the establishment of a permanent global investigative mechanism; or the development of special teams that could quickly be deployed to aid inquiries and mechanisms where needed. Furthermore, we are investigating how any of such solutions would be mandated and funded; in what type of situations they would become involved; what type of technological and structural apparatus would support them; and how they would interact with other international justice actors such as ICC and domestic jurisdictions; as well as its relationship with the civil society.

As part of our methodology, we surveyed stakeholders such as domestic and international prosecutorial and judicial authorities (**PAs**), evidence producing organizations in the civil society (**EPOs**), and engaged with mandate holders (**MHs**), and ‘**funders**’ (States, donors). Organisations such as the International Commission of Jurists, Justice Rapid Response and the European Genocide Network are close collaborators in our consultations, alongside relevant international organizations such as the ICC and OHCHR. In particular, we are grateful to OHCHR for enabling the circulation of an **anonymized survey of the staff of relevant MHs** to obtain their perspective on these challenges.

To guide and support this research, we have also convened an **Advisory Group of practitioners** with experience in UN fact-finding and accountability, including current and former UN commission members, and international prosecutors. In addition, a series of **high-level stakeholder meetings**, convened by Oxford and partners, are scheduled to take place through the Fall, starting this week to discuss some of our preliminary findings.

We aim to publish seven more blogs in which we will discuss publicly some trends emerging from our data, as well as some of the most crucial issues we are encountering. The final outcome of our study will be published in a **final report later in 2020** with our recommendations. The objective of our study is to develop evidence-based, realistic **recommendations that meet these challenges while having a reasonable prospect of being accepted** by States. We believe that, even if no permanent mechanism will ever be set out, it is crucial that the international community considers how, in 5-10 years, this ‘accountability-turn’ will affect the mandates of UN MHs. Crucially, any recommendations should be aimed to strengthen rather than weaken the current architecture of international justice.

We invite you to follow our work, get in touch with us for more information, and to learn how you can support our research in the months ahead.

2. Anchoring Accountability for Mass Atrocities: Perspectives from the Civil Society

Federica D'Alessandra,³ Ambassador Stephen J Rapp,⁴ and Kirsty Sutherland⁵

[This blog post addresses [new research being carried out at the University of Oxford around the question of whether some form of permanent support – or even a permanent investigative mechanism – should be created to fulfil international investigative mandates](#). This post, which is part of a series of eight, addresses some general observations emanating from our research, as well as the preliminary findings of our interviews with civil society groups that are documenting atrocity crimes for accountability purposes].

In a recent post, we introduced a research project we are carrying out at the University of Oxford, in partnership with the International Bar Association and the US Holocaust Memorial Museum Simon Skjodt Center for the Prevention of Genocide, that seeks to understand how UN mandate holders (**MHs**) with a focus on accountability can be better supported. (These include monitoring, fact-finding (FFMs) and inquiry commissions (CoIs) established to prepare reports on serious human rights violations, and ‘new investigative mechanisms’ (**NIMs**) created to build case files to achieve accountability for atrocity crimes committed in [Syria - IIM](#) and [OPCW IIT](#), Iraq - [UNITAD](#), and [Myanmar, IIMM](#)). For a sampling of MHs challenges, see [here](#), and [here](#). Our project seeks to provide evidence-based, realistic and cost-effective recommendations with a view to improve efficiencies and maximise outputs, against a background of scarce resources and competing priorities.

As part of our research methodology, we are we engaging, among others, with stakeholders such as ‘end users’ of evidence (domestic and international prosecutorial and judicial authorities, referred to as **PAs**), and ‘suppliers’ of such evidence (ranging from civil society groups that operate at or near the crime scenes, to major international human rights NGOs that have the resources to retain regional experts with networks of local contacts, all referred to as **EPOs**).

Over the course of May, June and July 2020, Ambassador Stephen Rapp, on behalf of our team, conducted **57 virtual interviews** of leading suppliers as well as end-users of information relevant to determining responsibility for atrocity crimes. These included representatives of 34 EPOs, and 23 representatives of PAs, including investigators and prosecutors at the

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⁴ Senior Visiting Fellow of Practice, Oxford Programme on International Peace and Security, Blavatnik School of Government; Distinguished Fellow, Simon Skjodt Center for the Prevention of Genocide, US Holocaust Memorial Museum; Advisory Board, IBA War Crimes Committee and Human Rights Institute; Chair, Commission on International Justice and Accountability. Former US Ambassador-at-Large for Global Criminal Justice (2009-2015). He can be reached at: stephen.rapp@bsg.ox.ac.uk

⁵ Research Consultant; Oxford Programme on International Peace and Security; MPP, Blavatnik School of Government; Officer, IBA War Crimes Committee; Barrister, 9 Bedford Row International. She can be reached at: kirsty.sutherland@bsg.ox.ac.uk.

International Criminal Court (ICC), and in the 13 national jurisdictions that are the most active in trying alleged perpetrators of atrocity crimes.

Interviews focused on the direct relationship between the EPOs and PAs, as well as on relationship of each with MHs, to which EPOs often supply information, and from which the PAs seek information and analysis that is relevant to their cases. In this blog post, we discuss the preliminary findings of our interviews with EPOs. Another post will follow suit in which we discuss the preliminary findings of our interviews with PAs.

The landscape of international criminal investigations

In many current investigations of international crimes, PAs do not have direct access to the crime scenes, witnesses, or documentary material. For this reason, PAs must often rely on EPOs who collect (and sometimes analyse) the evidence, and either send it either directly to PAs, or channel it through MHs, which also do their own collection and analysis before making some of their evidence available to PAs.

The first finding of our research is that many actors increasingly think of a **landscape where streams of information originate with EPOs, pass through and are processed by UN MHs (particularly the NIMs), and arrive in some form to PAs.**

At a time of increased resistance to international criminal justice and human rights, the activities of EPOs and UN MHs have energised a continued commitment to pursuing accountability for international crimes. The case of Myanmar, where the activities of the ICC, the IIMM (before it the [Myanmar FFM](#)), the [International Court of Justice](#), and many civil society groups currently intersect, might be the most illustrative example.

At the same time, this proliferation of activities around the same crime scenes also carries significant risks. In extreme cases, these can include the loss of probative value of evidence, or the re-traumatisation of victims and witnesses. As more international justice actors operate around the same situations of mass violence **greater coordination is essential.**

EPOs' perspective on the current landscape of accountability

Of the 34 EPOs interviewed, 20 stated that criminal accountability measures are their highest priority, and 14 that they are 'very important.' This **overwhelming focus on accountability** (including from major NGOs more traditionally concerned with human rights advocacy) is reflected in an apparent growing focus on gathering and providing evidence in accordance with criminal procedural standards. The **EPOs appear universally keen for the mechanisms to be more than a depository of information**, but also to proactively pursue cases and engage with authorities, using their evidence and providing investigative guidance where appropriate.

Another theme emerging from the data collected is the important role the mechanisms can play in **conducting open source investigations to support the work being done by those on the ground**, which will require a novel staffing profile as well as cutting-edge technology and expertise to verify material of this nature. A recurrent refrain concerned the modernisation of UN bodies such that they are truly able to handle the digital revolution.

The predominant issues identified with regard to providing evidence to the mechanisms centre on **witness security**, and the **security of transmitting material**. Focus must be given to overcoming these concerns.

Beyond good relations, everyone stands to benefit from proactive relationships between the mechanisms and the EPOs on which they rely. Perhaps most clearly, **many organisations**

emphasised the role the mechanisms could play in building capacity on the ground, through training, constructive feedback, logistical support and funding. Given the technological resources available to the mechanisms, it is hoped that they can play an important role in **verifying digital material and corroborating witness and physical evidence**.

The view was also expressed that mechanisms could **provide straight-forward training in best practices** to ensure that the probative value of the evidence collected is maximised (witness identification, consent to be interviewed; metadata storage), coordination and joint strategies for case prioritisation, material and expert support where possible and necessary.

Similarly, it was expressed that **focusing on legal capacity building** would promote post-conflict resolution and rule of law and allow local justice sectors to handle legal processes as and when circumstances permit. Although, it remains questionable whether this particular form of training can and should be provided by UN MHs.

3. Anchoring Accountability for Mass Atrocities: Perspectives from Prosecutors

Ambassador Stephen J Rapp,⁶ Federica D'Alessandra,⁷ and Kirsty Sutherland⁸

[This blog post addresses [new research being carried out at the University of Oxford around the question of whether some form of permanent support – or even a permanent investigative mechanism – should be created to fulfil international investigative mandates](#). This post, which is part of a series of eight, addresses the preliminary findings emerging from our interviews with national and international investigative and prosecutorial authorities].

In a recent post, we introduced a research project we are carrying out at the University of Oxford, in partnership with the International Bar Association and the US Holocaust Memorial Museum Simon Skjodt Center for the Prevention of Genocide, that seeks to understand how UN mandate holders (**MHs**) with a focus on accountability can be better supported. (These include monitoring, fact-finding (FFMs) and inquiry commissions (CoIs) established to prepare reports on serious human rights violations, and ‘new investigative mechanisms’ (**NIMs**) created to build case files to achieve accountability for atrocity created to build case files to achieve accountability for atrocity crimes committed in [Syria - IIIM](#) and [OPCW IIT](#), Iraq - [UNITAD](#), and [Myanmar, IIMM](#)). For a sampling of MHs challenges, see [here](#), and [here](#)). Our project seeks to provide evidence-based, realistic and cost-effective recommendations with a view to improve efficiencies and maximise outputs, against a background of scarce resources and competing priorities.

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As part of our research methodology, we are engaging, among other stakeholders, with domestic and international prosecutorial and judicial authorities (**PAs**), and ‘evidence-producing organisations’ (**EPOs**) ranging from small civil society groups that operate at or near the crime scenes, to major international human rights NGOs that have the resources to retain regional experts with networks of local contacts. In our last post (2/8), we discussed the preliminary findings from our interviews with 34 EPOs, and some general observations emerging from our research.

In this post, we will discuss the preliminary findings emerging from interviews conducted by Ambassador Stephen Rapp, on behalf of our team, with 23 representatives of PAs, including investigators and prosecutors at the International Criminal Court (ICC), and in the 13 national jurisdictions that are the most active in trying alleged perpetrators of atrocity crimes.

Interviews focused on the direct relationship between the EPOs and PAs, as well as on relationship of each with MHs, to which EPOs often supply information, and from which the PAs seek information and analysis that is relevant to their cases.

An evolving landscape

In our last post, we reported that many actors increasingly think of a landscape where information flows in streams that originate with the EPOs, pass through and are processed by the MHs (particularly the NIMs), and arrive in some form at the PAs.

In particular, with the **rise of ‘service-oriented’ EPOs**, the ecosystem is evolving towards **greater reliance of both MHs and PAs on the work of EPOs**, an increase in the direct relations between the EPOs and PAs, and an **increasingly symbiotic relationship** between EPOs, MHs, and PAs. This has been facilitated by an increasing focus by EPOs on information that meets forensic investigative standards, and more reliable, useful material for use in courtrooms.

Of course, challenges remain. Some PAs noted, for example, that advocacy efforts and published findings by EPOs have at times caused significant problems at trial (including the reversal on appeal of a conviction and life sentence for international crimes due to an NGO’s premature public reporting). Furthermore, almost all PAs commented on the **importance of professionally conducted witness interviews, and the challenges of EPOs taking testimony**.

Nevertheless, many of the EPOs and PAs indicate that they will continue these direct relations in the future, but they **uniformly recognise the value of UN MHs for consolidating, verifying, and analysing information from all sources** and for facilitating the successful pursuit of the most impactful cases by the PAs. All of them were looking to NIMs, among MHs, to help achieve these ends.

PAs’ perspectives on EPOs

PAs recognise EPOs’ work as essential to foreign authorities without access to crime sites. We observed a definite trend towards greater collaboration and mutual trust. Furthermore, EPOs that have invested and benefitted from stronger technical support and operational capacity are seen by PAs as much more responsive and professional than in the past, and as sharing the same accountability goals of national authorities. This alignment of goals has led

to greater cooperation between EPOs and PAs, with an emphasis being put by PAs on the **quality of information gathered by EPOs rather than quantity**.

In particular, PAs were full of praise for EPOs that helped them find verifiable documents ([Commission on International Justice and Accountability](#)) and digital data ([Bellingcat](#)) that link crimes and alleged perpetrators, as well those that assist them in identifying suspects ([Syria Center for Media and Freedom of Expression](#), and the [Association Study of War Crimes](#)) and accessing victims and witnesses ([European Center for Constitutional and Human Rights](#) and [Civitas Maxima](#)) for investigations and trials. (A range of other local EPOs that were commended by PAs for their professionalism and contributions to investigations are not named here for their security.)

Furthermore, PAs stated a high interest in **receiving documentary and digital information** together with indicia of its reliability from EPOs, in part because of a preference for this kind of evidence over witness testimony. They also communicated a need for increased training of EPOs in best practices.

As expected, PAs raised **concerns with regard to EPOs taking witness statements directly**, and stated a preference for EPOs' identification of potential witnesses by their presence at a particular crime scene, and willingness to assist, with an overwhelming interest in means for PAs to contact directly EPOs witnesses present in places relevant to the investigations.

PAs' perspectives on MHs, including NIMs

Awareness of UN bodies appears to be increasing amongst national prosecuting authorities. While many of those interviewed expressed **dissatisfaction with the timeliness, efficiency, and cooperativeness of older UN mandate holders**, they almost unanimously emphasised **increasing satisfaction with the focus** of the 'novel investigative mechanisms' (NIMs), that is the IIM, IIMM, and UNITAD.

In particular, the IIM's proactive engagement with states received significant attention, with one senior prosecutor commending the **proactive supplementation of information** without request. The **IIM currently stands out for gaining a reputation for its cooperative, 'solution-oriented' approach**, marking a shift from the disobliging, bureaucratic reputations of some older UN MHs.

A very clear issue that arose for all PAs was the **integrity of evidence collected by some MHs**, including 'unprofessional' statement-taking and the consequences for use at trial. PAs have expressed general frustration with obtaining information from more traditional MHs, citing convoluted processes, heavy redactions that undermine utility (even when witnesses have consented to material being shared), low quality of information, poor interview techniques (including leading questions), disorganised archiving leading to difficulties in locating material, and failures to implement basic chain of custody procedures. It has been repeatedly noted that **the IIM marks a sharp improvement**. It is **anticipated that other NIMs will continue** to remedy these concerns.

National investigators also emphasised the need for solid witness evidence (i.e. properly recorded and with consent to be shared with authorities), and a **preference for contact details**

of witnesses or reliable individuals in-country being provided by MHs, such that PAs could organise and perform the interviews themselves.

Interviewed PAs also expressed **interest in analysis of context, available material, organisational information, and ‘on the ground intelligence’** being prepared by MHs to a judicial standard.

Understandably, all PAs shared a **clear desire for linkage evidence**, especially **documentary and digital** evidence that has been **subject to rigorous forensic examination and verification**. For cases arising out of Syria, Iraq, and Myanmar, all of the PAs were looking to the NIMs (IIM, UNITAD, and IIMM) to help achieve these ends.

Annex II. Recommendations of the previous group of practitioners

*Group of Practitioners in
Fact-Finding & Accountability
6 January 2017*

Bridging The Hague – Geneva Divide: Recommendations to Maximize Benefit and Minimize Harm for Human Rights Inquiries and Criminal Investigations at the Same Scenes of Mass Violence

Preamble

Acknowledging that Commissions of Inquiry and Fact-Finding Missions (CoIs and FFM, here together referred to as Human Rights Inquiries or HRIs) are increasingly established in response to the perpetration of mass atrocities and with the expectation that they will contribute to the prevention of impunity for these acts,

Recognizing that while HRIs are expressly mandated to make findings as to whether there have been violations or abuses under international human rights law (IHRL), they are often also asked to determine whether the same acts violate international humanitarian law (IHL) and international criminal law (ICL), to identify individuals who are suspected of responsibility, and to recommend measures to promote accountability,

Noting that a wealth of guidance for improving the effectiveness of HRIs has been developed by many organizations and groups, including the Minnesota Protocol on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions; the Istanbul Protocol on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Protocol on the Investigation of Sexual Violence in Conflict; the London-Lund Guidelines on International Human Rights Fact-Finding; the Siracusa Guidelines on International, Regional and National Fact-Finding Bodies; the HPCR Advanced Practitioners Handbook for Commissions of Inquiry; the Handbook on Civil Society Documentation of Serious Human Rights Violations; and the verification handbook and manual of Guidance and Practice for Commissions of Inquiry and Fact-Finding Missions published by the United Nations Office of the High Commissioner for Human Rights (OHCHR),

Observing that while the fundamentals of information gathering are similar, the nature, scope, and purpose of HRIs differ from other accountability mechanisms, and that none of the previously cited guidance has been sufficiently directed toward assisting them in resolving issues at the intersection of IHRL, IHL and ICL,

Finding that to be fully effective in fulfilling their mandates in situations of mass violence, including preventing impunity for the violations that they have documented, HRIs require additional resources, administrative support, technical expertise and practical guidance,

And concluding that this can be efficiently achieved through the implementation of recommendations in these areas: provision of administrative, budgetary and human resources; adoption of guidance for the resolution of legal issues; and promotion of best practices for making findings on factual matters.

I. Recommendations on Administrative, Budgetary & Personnel Matters

The necessary resources, expertise, and assistance could best be provided to HRIs through the implementation of the following res:

1. Support Team. *Establish* a small, specialized Support Team (ST) in the Office of the High Commissioner for Human Rights (OHCHR). The ST would assist in the prompt recruitment and deployment of effective and well-resourced teams as required for HRIs. It would serve as a repository of institutional memory and achieve efficiencies by standardizing the preparatory processes and drafting investigative plans for each HRI. The ST would support the HRIs in the following areas: budget preparation, administration, staff recruitment and training, identification of experts, and information management. It would also include capacity for the management of information and archives, including for HRIs that have completed their work, and for liaison between HRIs and UN bodies and other entities in order to make and respond to requests for information and other assistance.
2. Budgetary and Human Resources. *Provide* each HRI with the budgetary and human resources necessary to carry out its work in a timely and effective manner. To this end the ST should seek a cooperative understanding with the relevant UN bodies for the accelerated preparation, consideration, and approval of budgets. The regular budget of the OHCHR should include an emergency fund that would enable the deployment by HRIs of quick-reaction teams to collect vital information when it might otherwise be lost during the period of budgetary consideration.
3. Information Technology. *Equip* each HRI with sufficient expertise and technical capacity necessary to access, analyze, and store relevant information. Given the volume of relevant digital material available from open sources this will generally require the retention of an information specialist with the skills to capture online videos and the associated metadata and render expert opinions as to time and place of origin and possible alterations.

4. Investigative Expertise. *Include* on the deployed teams persons experienced in situations similar to those as to which the HRI will need to make findings. When confronted by mass atrocities, this means hiring persons who have been successful in interviewing victims of such situations, including children and those who have suffered sexual and gender-based violence, and in responding sensitively to psycho-social trauma. While human rights inquiries differ from criminal investigations, fact-finding in situations of deadly violence may benefit from the participation of persons experienced in criminal investigative techniques and forensic analysis.
5. Experienced Legal Counsel. *Recruit* legal expert(s) with substantial experience in all relevant areas of law as part of the staff of each HRI. This is essential when the mandate requires determinations as to whether violations are crimes, findings as to criminal responsibility, or recommendations of measures to promote accountability.
6. Immediately Deployable Experts. *Develop* and *maintain* relationships with UN and treaty bodies and with independent organizations that can provide the immediately deployable experts who could most effectively assist in situations where HRIs are likely to be created.
7. Information Management and Information Sharing. *Facilitate* the processes for obtaining and sharing information from other UN bodies and outside entities and for responding to requests for information sharing from national and international authorities. To this end, the ST should include the capacity to manage information, including that of past HRIs, and to assist with requests for information and assistance between HRIs and UN offices and missions, as well as outside entities.
8. Use of Documents and Data. *Allow* and *encourage* HRIs to take custody and make appropriate use of relevant non-testimonial information gathered by third parties unless it is determined that the information was obtained in a manner that would undermine the integrity of the fact-finding process. Make all reasonable efforts to gather and preserve such evidence consistent with norms applicable to criminal proceedings.
9. Witness Protection. *Negotiate* arrangements that would permit referral of high-value, at-risk witnesses to the protection services of willing States. *Encourage* the development of a program, managed by independent experts, to raise and distribute funds to support the temporary protection and subsistence of such witnesses when the threat against them cannot be otherwise mitigated.
10. Security and Logistics. *Ensure* that each HRI is provided with security, logistics and other necessary support. To this end the ST should develop processes for requesting the required assistance from relevant UN entities, consistent with the frequent need for prompt action.

II. Recommendations for Resolution of Legal Issues

The ST should prepare guidelines for HRIs to assist them in making the legal determinations that may be necessary given their mandates and the situations that are the subject of their inquiries. This may require them to look to international humanitarian law (IHL) and international criminal law (ICL). The guidelines should include the following:

1. Accountability – *Remember* that justice for IHRL and IHL violations is not achieved solely by judicial processes. Depending on their mandates, HRIs may recommend measures to establish truth, provide redress to victims and survivors, and prevent recurrence of the criminal conduct. HRIs may provide information relating to whether one or more relevant national systems have adequate capacity and independence so that justice may be delivered closer to the victims and affected communities. HRIs may thus recommend specific measures to augment the capacity and independence of national systems. HRIs may provide information relevant to whether an international court or tribunal, such as the International Criminal Court (ICC), could be an appropriate judicial forum. As an example, because the ICC’s jurisdiction only applies to situations that are of sufficient gravity and where states are found to be unwilling or unable to carry out genuine investigations or prosecutions themselves, the inquiry may set forth specific findings as to those issues.
2. Standard of Proof – *Apply* a standard of proof that is consistent with requirements of the relevant legal regime. Findings that violations/abuses of international human rights law or that international crimes may have been committed should be based on a clear standard of proof, explicitly articulated in the report. In future, this this standard should ideally be “reasonable grounds to believe,” which is similar to what is required at the accusatory phase of criminal justice processes. If the proof as to contextual elements of international crimes, such as the “existence of a widespread or systematic attack directed against a civilian population,” is so strong as to meet a higher level of certainty, then a finding can be made that this higher standard was satisfied.
3. Elements of Violations/Abuses and of International Crimes and Supporting Information – *Ensure* that there is sufficient information on each essential element required to be established under the applicable body of law for the relevant violation, abuse, or crime. An individual can be listed as a suspect if there are reasonable grounds to believe that his or her conduct fit within the recognized forms or modes of liability and satisfied the elements of the crime. HRIs should *secure* all relevant supporting information relevant to the finding that a specific individual is allegedly responsible for a violation or crime, and do it in a manner so that the connections will be apparent to others analyzing the material in the future. Any subsequent sharing of the information should only be done with consent of the source and with due regard for his or her safety and security.
4. Statutes and Customary Law – *Cite* the legal basis for findings as to the commission and responsibility for crimes under international criminal law. The Rome Statute of the

International Criminal Court (“ICC”) and the ICC’s “Elements of Crimes” may generally be used as guides for determining the elements that must be satisfied for findings that an international crime has been committed and that individual(s) are responsible, but customary international law and the jurisprudence of the *ad hoc* tribunals are also useful.

5. The Existence of an Armed Conflict – *Apply* international humanitarian law if it is necessary to determine the existence and status of an armed conflict. HRIs should endeavor at all times to indicate clearly and consistently, to the extent possible, the existence and type of armed conflict, the time frames and the parties thereto. They should base their finding on information that they have reasonable grounds to believe satisfies the elements set forth in the Geneva Conventions and their Additional Protocols or in customary international law. In defining the elements, they may be guided by the commentaries to the Geneva Conventions and their Protocols.
6. Notice to Superiors – *Notify* persons having apparent control over military units or armed groups that are reasonably believed to be responsible for criminal acts. The notice should describe the specific conduct and include a citation of the provisions of international criminal law that render superiors criminally responsible for the acts of their subordinates if they fail to take action to prevent or punish the conduct. This may cause such persons to take the required action, thus deterring further criminal conduct. If they do not, the notice can assist in establishing the “knowledge” element necessary for conviction as a responsible superior.

III. Recommendations of Best Practices for Making Findings on Factual Matters

The ST should assist HRIs by providing investigative guidance setting forth best practices for gathering and evaluating information in order to make findings on factual matters. The guidance prepared by the ST for the HRIs should include the following:

1. Methodology – *Provide* HRIs with methodology for the identification of human rights violations/abuse, patterns and context, as well as information that links violations and abuses to suspects. Generally the methodology should include best practices for preventing damage to or loss of information or materials of potential relevance to accountability processes, preserving the integrity of the information, and effectively interacting with and interviewing sources of information. Specific examples of the guidance that should be considered for inclusion in the methodology are set forth below.
2. Information as to Potential Responsibility – For cases in which HRIs are mandated to identify potential suspects, *include* examples of the types of information that may be relevant to such determinations in judicial proceedings.

3. Non-testimonial information – Non-testimonial information includes both documentary information and physical objects. Documentary information includes hard copy and digital forms, as well as video and audio recordings. Open-source information may be relevant to human rights fact-finding mandates. *Make* copies or *take* pictures of the non-testimonial information, and create a detailed record of all circumstances surrounding the collection of this information, including as to the source. *Keep* this record together with the copy of the information. Where exceptional circumstances require that the fact-finder take the original, in addition to the detailed information referenced above, *develop* protocols outlining proper methods to preserve and store these originals. Exceptional circumstances may include, for example, where non-testimonial information may be damaged or lost if not collected at the time, or where copying or other processing of the information might result in loss of relevant information, or where the capacity to copy the information is not readily at hand.
4. Site Visits – In situations where it may be possible to visit the scenes of alleged violations, *conduct* these visits without unduly exposing the team or others to danger (including biological and chemical hazards), and without affecting the integrity of the information or physical objects. Whenever possible, *make* a record of the site, including taking panoramic and close-up photographic and/or video images, noting coordinates, making drawings and maps, etc., describing in full how the site was found, in what condition, what artifacts were present, and whether there were any human remains. Only collect these items if a risk exists that they might be destroyed or otherwise become unavailable, with such collection following recognized standards and procedures geared toward minimizing any contamination and maximizing the preservation of such information. *Provide* training and field materials on the fundamentals of information-gathering methodologies as part of the pre-deployment briefings of team members.
5. Chain of custody – Where exceptional circumstances require that the fact-finder collect the original documentary information or physical object, it is essential to maintain an accurate chain of custody. In such an instance, *use* a chain of custody form to record all details surrounding the circumstances of collection, including the original location, condition and handling of the piece of information. In addition, *record* on the form all people who handled that information and the purpose for which they handled it.
6. Verification of information – HRIs should not refuse to accept relevant information from any source, but they should make reasonable efforts to *verify* the information according to recognized standards, and *assess* its relevance and credibility. HRIs should *identify* the standard used to verify the information included in their reports
7. Interviews – *Identify* risks connected to the interaction of the interviewee with the inquiry, and take all necessary precautions. *Use* the PEACE method⁹—or other

⁹ **P** – Preparation and planning; **E** – Engage and explain; **A** – Account; **C** – Closure; **E** – Evaluate.

recognized standards in interviews. To the extent possible, only persons necessary to the conduct of the interview should be present in the interview room. Such persons include the interviewer and his or her colleague, the interviewee, an interpreter if required, and a support person if requested by the interviewee. *Address* issues surrounding informed consent and the continued presence of the interviewee in the affected community. *Share* information about available resources and referral processes with the interviewee. Unless the interviewer and interviewee are fluent in the same language/s, *use* an experienced interpreter. Thoroughly *discuss* with the interpreter the ground rules for the conduct of the interview. To the extent possible, *document* and *preserve* information relating to injuries. *Include* in the appended investigator's notes any limitations as to matters not raised or insufficiently discussed.

8. Special Category Interviewees – *Be alert* to the prospect of sexual and gender-based violence (SGBV) against any person or of violence against children, and ask the appropriate questions to maximize the chance of eliciting this information during interviews. *Develop* indicators for situations where there is an increased risk of these violations, such as in prison settings, at checkpoints or roadblocks, during violent expulsion campaigns, or as part of the recruitment of child soldiers. *Include* persons with the appropriate experience and expertise on teams that will be meeting with victims and survivors to *gather* information effectively, to *minimize* the risk of re-traumatization and to *respond* to interviewee preferences. *Give* special attention to other particularly vulnerable individuals, including those advanced in age, persons with disabilities, and displaced persons.
9. Informed Consent – Informed consent is required for any sharing of information from a source, including sharing of identifying information. *Request* and *record* the informed consent. *Obtain* consent after the source is clearly told who would be the potential recipients of the information, and how the information may be used, including its potential use by international and/or national authorities, and indicate if such authorities would be able to provide appropriate protective measures. In addition, clearly *inform* the source of his or her options (i.e., no sharing, sharing only non-identifying information, sharing all information) subject to any conditions that the source attaches to such disclosure.
10. Sharing of information – There is a presumption in favor of sharing information, subject always to UN privileges and immunities. The ST should maintain a system to *respond* to requests for information sharing. Where the source has not consented to sharing the information, the ST should seek to *contact* the source to ask if the original non-consent can be modified to allow disclosure subject to appropriate protective measures and conditions. In addition to the information identified in paragraph 9 above, the HRI should also *discuss* with the source: specific risks associated with information sharing, as well as any risks associated with the broader context; and the level of such risk relative to each category of potential recipient (e.g., an international prosecutor in contrast to a national prosecutor of a state associated with one side in the conflict).

Where the source displays the capacity to understand and exhibits a clear comprehension of the potential risk involved, the presumption is that it is for the source to determine whether to share information, with whom, and for what purpose, subject to UN privileges and immunities.

11. Forensic Analysis – Where an HRI has access to physical objects or documentary material, including digital data that could, by forensic analysis, reveal information relevant to its mandate, *provide* the necessary forensic capacity. In situations where this might not be possible or feasible, *document* the existence of such physical objects or other material, using recognized standards.
12. Information management – *Establish* a secure user-friendly information management system before commencing fact-finding. This includes hard copy documentary information, electronic information in all its forms (i.e. digital or analog), and physical objects. *Prepare* policies, protocols, and tools for all stages of the information management cycle: creation/acquisition, data capture (including indexing and cataloguing), maintenance, synthesis/analysis, use and re-use, retrieval, publication/sharing, preservation, archiving and disposal.
13. Security – Security is a critical component of all aspects of fact-finding. *Develop* and *utilize* appropriate standards to ensure the security of persons and information, including electronic and digital data, as well as the security of communications. *Conduct* periodic information and technology security audits. *Train* fact-finders on appropriate security standards and practices.