

## **The UN Human Rights Council: Commissions of Inquiry Conference brief**

### **Annex 1: Table Fact-finding missions and Commissions of Inquiry**

### **Annex 2: Conference programme**

#### ***Background***

The Academic Platform Switzerland UN in partnership with the Geneva Academy of International Humanitarian Law and Human Rights co-organised their 2011 annual conference to mark Human Rights Day. The conference, entitled *The UN Human Rights Council: Commissions of Inquiry*, brought together high-level experts including academics, diplomats and international civil servants to share experiences, analyse and discuss all aspects of commissions of inquiry. This brief report highlights topics discussed and conclusions made during the conference.

#### ***National Commissions of Inquiry***

National commissions of inquiry are a useful tool and should be considered early on when allegations of human rights abuse are made. One panellist emphasised that it is the primary responsibility of national authorities to investigate allegations of human rights abuses and, where such abuses are found to exist, bring those responsible to justice. If a State fails effectively to do this, an international commission of inquiry should be established. To be effective, national commissions of inquiry must be transparent, independent and well resourced. However, the danger that such commissions may be misused should not be underestimated.

#### ***The format of an International Commission of Inquiry***

International Commissions of Inquiry can be used to investigate human rights situations with or without IHL implications. There is no single format for commissions of inquiry to follow. Historically, commissions of inquiry have had a broad range of mandates and have been established to investigate both a single incident as well as ongoing situations.

#### ***Purposes of Commissions of Inquiry***

The common objectives of any commission of inquiry are numerous and include: to establish impartially whether violations of human rights law and/or humanitarian law have occurred; to investigate whether or not violations are systematic and widespread; to report on a State's ability to deal with the violations; to highlight the root causes of the situation; to suggest ways of moving forward; and to produce a historical record of events that have occurred. It was said that every commission of inquiry's primary

objective should be to establish accountability for violations that have taken place, ensuring that those responsible for violations are brought to justice.

An important task of any commission of inquiry is to analyse facts on the ground with regard to applicable law. Thus, it is crucial that a commission can independently and freely conduct investigations on the ground to establish the facts for itself. One panellist highlighted that it is essential to a commission's ability to carry out such investigations that it is given a sufficient timeframe to work in.

With regard to whether a commission will look at either, or both, human rights law and humanitarian law, the point was made that the two areas of law are complementary and inter-related. It would be hard in a situation of armed conflict, if not impossible, to look at one and not the other. Thus, most commissions of inquiry will look at both, although the mandate, which is key to everything, may dictate what should specifically be looked at.

A commission of inquiry's report should describe facts, qualify acts, clearly state where violations have occurred, include a section on accountability of State and non-State actors and should make recommendations from which follow-up mechanisms should be established. It should also define the applicable standard of proof.

### ***Major challenges to effective Commissions of Inquiry***

The mandate of a commission of inquiry can itself be a major challenge to the commission. The mandate may be too broad or too narrow. To overcome this challenge, commissions must be able to interpret their mandate in a flexible way.

Access and cooperation are both extremely important. Security Council mandates, established under Chapter VII, have proven more likely to gain access and State cooperation, compared with commissions established by the Human Rights Council, which often face challenges in this regard.

As emphasised by a number of panellists, the protection of sources, witness and victims is a primary concern for all commissions of inquiry. As one panellist put it, every commission is deployed 'to do no harm', and commissioners are always anxious to ensure this principle is upheld.

The funding of commissions of inquiry is an ever-increasingly important issue as the use of commissions of inquiry is becoming more common. States were reminded that there is nothing to stop them from contributing financially to the Office of the High Commissioner for Human Rights. In this regard it has been mentioned, however, that financing commissions of inquiry by the regular UN budget is a guarantee for their impartiality.

A commission of inquiry may be working on the same issue, at the same time, as other inquires or judicial investigations. Where this occurs there is always the danger of victims and witnesses being interviewed multiple times.

It was emphasised that a commission of inquiry has no use unless followed up at the national level. Its recommendations must be followed. Ensuring this happens is a

challenge, not only for the commission and the body that established the commission, but also the international community.

### ***Standards of Proof***

The challenge with regard to the standard of proof is to ensure that a balance is struck to allow not only flexibility but also to ensure that findings are credible. It is essential that findings can stand up to scrutiny.

The criminal law standard of proof ‘beyond reasonable doubt’ has no place in commissions of inquiry, whose function is not to establish individual criminal responsibility. Rather, the starting point should be the standard of the balance of probabilities. Several panellists agreed that commissions are not obligated to apply only one form of standard of proof. Various degrees of standard of proof can be applied on a sliding scale, the highest tier of which is that of ‘overwhelming probability’.

The timeframe a commission of inquiry has to work within will affect the standard of proof it can employ. The shorter the time the commission has to complete its work, the less rigorously the facts can be tested or established, and a lower standard of proof may have to be employed.

With regard to identifying individuals accused of perpetrating human rights abuses, a clear and convincing standard must be applied if individuals are going to be publically named. The reasons for this are two fold, both for the protection of the individual concerned and to avoid accusations of politicising an issue.

One question raised was whether more serious crimes, such as torture, warrant a higher standard of proof: or whether a lower standard of proof should be adopted because the allegations are more serious. No conclusion was reached on this point, but it was agreed that there is merit in both arguments.

### ***Lack of use of the International Humanitarian Fact-Finding Commission***

To date the services of the International Humanitarian Fact-Finding Commission (IHFFC) have not been called upon. It was suggested that the reason for this is that there has to be a trigger involving an armed conflict between any parties to Additional Protocol I to the Geneva Conventions of 1949 that have made the relevant declaration.

The benefits to States of using the IHFFC were listed to include: true objectivity, since the IHFFC does not have any political agenda; the IHFFC’s highly qualified commissioners; the flexibility of the procedure, since terms of reference can be negotiated; and the confidentiality of the procedure, in which there is no naming and shaming, although States are free to opt out of confidentiality by agreement and publish the IHFFC’s findings.

It was suggested that States may not be willing to use the IHFFC because they want to have legal conclusions to disputes. However, one panellist raised the point that if States require legal conclusions the IHFFC can provide this.

## **Lessons learnt from Previous Commissions of Inquiry**

All panellists, speaking from previous experience, underscored that access to the State in question is key to a commission's success. Governmental cooperation can determine whether a commission of inquiry will succeed or fail. Examples were given where the lack of constructive conduct by government officials inhibited the ability of a previous commission of inquiry to conduct investigations freely and independently, resulting in the inquiry becoming untenable.

One panellist highlighted the negative effect foreign interference can have on commissions of inquiry, particularly where the State being investigated is resource-rich. Foreign pressure on commissions of inquiry should always be avoided as it hinders the ability of a commission to function independently and impartially, both elements of which are crucial to a commission being successful. Furthermore, international political cooperation can also be necessary, not only to the success of an inquiry, but also to the ability to bring to justice those who were responsible.

Interestingly, one panellist commented that the high profile nature of a UN commission of inquiry can itself be a disadvantage. States under investigation focus their attention on controlling the movements and investigatory powers of a UN commission, whilst other low profile investigations, for example those carried out by NGOs, 'can slip under the net' and conduct investigations freely, gaining access to areas a UN commission might not be able to reach.

The relationship between commissions of inquiry with NGOs and regional groups was highlighted as an important one. The point was made that it is rare that a commission itself will find evidence of human rights abuses, rather it will be led by NGOs, who have been working in the area and cataloguing events, to evidence of abuses. NGOs and regional groups are also able to provide access to sources and witnesses that a commission might otherwise not be able to reach.

A few practical notes were raised, including the particular logistical and security challenges of conducting a commission of inquiry during an armed conflict. It was suggested that commissions made up of three commissioners tend to work better than those with five. It was also said, however, that a commission composed of five members is better for "counter-weighting" the power of the president.

One panellist highlighted that, disappointingly, not all commission reports have led to follow-up action and that perpetrators of grave human rights violations have been left unaccountable. With regard to accountability, the point was made that a balance between justice and truth and reconciliation needs to be made. Truth and reconciliation commissions have an important role. However, serious crimes cannot be simply forgiven and forgotten, so that the perpetrators of such crimes must be prosecuted.

In sum, drawing on past experiences, the key characteristics of a successful commission of inquiry were listed as: transparency; impartiality; flexible mandate; field-orientated; with goals of truth and reconciliation alongside accountability.

December 2011

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## UN HUMAN RIGHTS COUNCIL: OVERVIEW OF FACT-FINDING MISSIONS AND COMMISSIONS OF INQUIRY (2006-2011)

Title	Participants	Results
<p><b>I. Fact-finding mission headed by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967</b></p> <p>As constituted following Human Rights Council (HRC) Resolution S-1/1 (2 July 2006)</p> <p><b>Mandate:</b></p> <p>“the fact-finding mission was established to examine the factual situation in Gaza following the commencement of “Operation Summer Rains” by the Israel Defense Forces and to report on violations of human rights in the course of this Operation.” Para 1, A/HRC/4/116</p>	<p>•Mr. John Dugard</p> <p><b>Members:</b></p> <ul style="list-style-type: none"> <li>•a military security officer</li> <li>•an expert in public health</li> </ul>	<p><b>Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard, on the non-implementation of Human Rights Council resolution S-1/1</b></p> <p>1) first report : A/HRC/4/116 (20 December 2006) 2) second report : A/HRC/5/11 (8 June 2007). Note also;</p> <p>-HRC Res 6/18</p>
<p><b>II. Commission of Inquiry on Lebanon</b></p> <p>As constituted following HRC Res S-2/1 (11 August 2006)</p> <p><b>Mandate:</b></p> <p>‘(a) to investigate the systematic targeting and killings of civilians by Israel in Lebanon; (b) to examine the types of weapons used by Israel and their conformity with international law; and (c) to assess the extent and deadly impact of Israeli attacks on human life, property, critical infrastructure and the environment.’</p>	<ul style="list-style-type: none"> <li>•Mr. Stelios Perrakis</li> <li>•Mr. Mohamed Chande Othman</li> <li>•Mr. João Clemente Baena Soares</li> </ul>	<p><b>Report of the Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1</b></p> <p>A/HRC/3/2 (23 November 2006).</p>
<p><b>III. High-Level Fact-Finding Mission to Beit Hanoun</b></p>		<p><b>Reports of the high-level fact-finding mission to Beit Hanoun established under Council resolution S-3/1</b></p>

<p>As constituted following HRC Res S-3/1 (15 November 2006)</p> <p><b>Mandate:</b></p> <p>‘to assess the situation of victims; address the needs of survivors; and make recommendations on ways and means to protect Palestinian civilians against any further Israeli assaults.’</p>	<ul style="list-style-type: none"> <li>•Archbishop Desmond Tutu</li> <li>•Prof. Christine Chinkin</li> </ul>	<p>1) Interim Report: A/HRC/5/20 2) Final Report : A/HRC/9/26 (1 September 2008).</p>
<p><b>IV. High-Level Mission on the situation of human rights in Darfur.</b></p> <p>As constituted following HRC Res S-4/10 (13 December 2006)</p> <p><b>Mandate:</b></p> <p>‘to assess the human rights situation in Darfur and the needs of the Sudan in this regard, comprising five highly qualified persons, to be appointed by the President of the Human Rights Council following consultation with the members of the Council; as well as the Special Rapporteur on the situation of human rights in the Sudan.’</p>	<ul style="list-style-type: none"> <li>•Prof. Jody Williams (Head of Mission),</li> <li>•Prof. Bertrand Ramcharan,</li> <li>•Hon. Martin Nutt</li> <li>H.E. Ambassador Makarim Wibisono</li> <li>•H.E. Ambassador Patrice Tonda</li> <li>•Special Rapporteur on the situation of human rights in the Sudan Dr. Sima Samar</li> </ul>	<p><b>Report of the High-Level Mission on the situation of human rights in Darfur pursuant to Human Rights Council decision S-4/101</b></p> <p>A/HRC/4/80, (9 March 2007).</p>
<p><b>V. United Nations Fact Finding Mission on the Gaza Conflict</b></p> <p>As constituted following HRC Res S-9/1 (12 January 2009)</p>	<ul style="list-style-type: none"> <li>•Justice Richard Goldstone, (Head of Mission)</li> <li>•Prof Christine Chinkin,</li> <li>•Ms. Hina Jilani</li> <li>•Colonel Desmond Travers</li> </ul>	<p><b>Report of the United Nations Fact Finding Mission on the Gaza Conflict</b></p>

<p><b>Mandate:</b></p> <p>‘to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after.’</p>		<p>A/HRC/12/48 (23 September 2009).</p> <p>Note also;          -HRC Res 10/21 (26 March 2009)          -HRC Res 12/1 (16 October 2010)          -HRC Res 13/9 (24 March 2010)          -HRC Res 16/20</p>
<p><b>VI. Technical assistance to the Government of the Democratic Republic of the Congo and urgent examination of the situation in the east of the country</b></p> <p>As constituted following HRC Res S-8/1 (1 December 2008)</p> <p><b>Mandate:</b></p> <p>“to urgently examine the current situation in the east of the Democratic Republic of the Congo with a view to providing a comprehensive report to the Council at its tenth session on how best to assist technically the Democratic Republic of the Congo in addressing the situation of human rights, with a view to obtaining tangible improvements on the ground, taking also into account the needs formulated by the Government of the Democratic Republic of the Congo”;</p>	<ul style="list-style-type: none"> <li>•Special Rapporteur (SR) on violence against women</li> <li>•Representative of the Secretary-General on the human rights of internally displaced persons</li> <li>•SR on the independence of judges and lawyers</li> <li>•SR the right of everyone to the enjoyment of the highest attainable standard of physical and mental health</li> <li>•SR on the situation of human rights defenders</li> <li>•Special Representative of the Secretary-General (SRSG) on the issue of human rights and transnational</li> </ul>	<p><b>Combined report of seven thematic special procedures on technical assistance to the Government of the Democratic Republic of the Congo and urgent on in the east of the country:</b></p> <p>A/HRC/10/59 (5 March 2009).</p> <p>Note also:          HRC Res 7/20 (27 March 2008)</p>

	<p>corporations and other business</p> <ul style="list-style-type: none"> <li>•SRSG for children and armed conflict</li> </ul>	
<p><b>VII. International fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance.</b></p> <p>As constituted following HRC Res 14/1 (2 June 2010)</p> <p><b>Mandate:</b> ‘to investigating the facts and circumstances surrounding the boarding by Israeli military personnel of a flotilla of ships bound for Gaza and to determine whether in the process violations occurred of international law, including international humanitarian and human rights law.’</p>	<ul style="list-style-type: none"> <li>•Judge Karl T. Hudson-Phillips, Q.C (head of mission)</li> <li>•Sir Desmond de Silva, Q.C</li> <li>•Ms. Mary Shanthi Dairiam</li> </ul>	<p><b>Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance:</b></p> <p>A/HRC/15/21 (27 September 2010)</p> <p><b>Note also:</b> HRC Res 15/1 (6 October 2010)</p>
<p><b>VIII. UN Independent Commission of Inquiry on Libya</b></p> <p>As constituted following HRC Res S-15/1 (25 February 2011)</p> <p><b>Mandate:</b></p> <p>“to investigate all alleged violations of international human rights law in Libya, to establish the facts and circumstances of such violations and of the crimes perpetrated, and , where possible identify those responsible to</p>	<ul style="list-style-type: none"> <li>•Judge Philippe Kirsch (Chair)</li> <li>•Prof. Cherif M. Bassiouni</li> <li>•Ms Asma Khader</li> </ul>	<p><b>Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya: A/HRC/17/44 (1 June 2011)</b></p> <p><i>The Human Rights Council extended the mandate of the Commission (resolution A/HRC/17/17) and requested it present an oral update in September 2011 and its final report in March 2012.</i></p> <p>Oral up-date available on <a href="http://www.ohchr.org">www.ohchr.org</a></p>



<p>make recommendations, in particular, on accountability measures, all with a view to ensuring that those individuals responsible are held accountable, and to report to the Council at its seventeenth session, and calls upon the Libyan authorities to fully cooperate with the Commission”</p>		
<p><b>IX. Mission to the Syrian Arab Republic to investigate all alleged violations of international human rights law and to establish the facts and circumstances of such violations and of the crimes perpetrated.</b></p> <p>As constituted following HRC Res S 16/1 (29 April 2011).</p> <p><b>Mandate:</b>  ‘to dispatch urgently a mission to the Syrian Arab Republic to investigate all alleged violations of international human rights law and to establish the facts and circumstances of such violations and of the crimes perpetrated, with a view to avoiding impunity and ensuring full accountability, and to provide a preliminary report and oral update on the situation of human rights in the Syrian Arab Republic to the Human Rights Council at its seventeenth session, and to submit a follow-up report to the Council at its eighteenth session, and also requests the High Commissioner to organize an interactive dialogue on the situation of human rights in the Syrian Arab Republic during the eighteenth session of the Council;”</p>	<p>OHCHR:  HRC Res 13/9  •Ms. Kyung-wha Kang, Deputy High Commissioner (Head)  •+ 13 members  (The members of the mission included officials with substantive, technical and administrative expertise in the relevant fields, including human rights investigation, public order issues, forensic expertise and country knowledge.)</p>	<p><b>Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Syrian Arab Republic</b></p> <p>A/HRC/18/53 (15 September 2011).</p>
<p><b>X. International commission of inquiry to investigate the facts and circumstances surrounding the allegations of serious abuses</b></p>	<p>•Prof. M. Vitit Muntarbhorn (President of the Commission)</p>	<p><b>Rapport de la Commission d’enquête internationale indépendante sur la Côte d’Ivoire</b></p>

<p><b>and violations of human rights committed in Cote d'Ivoire following the presidential election of 28 November 2010.</b></p> <p>As constituted following HRC Res 16/25 (25 March 2011).</p> <p><b>Mandate:</b></p> <p>“to investigate the facts and circumstances surrounding the allegations of serious abuses and violations of human rights committed in Côte d'Ivoire following the presidential election of 28 November 2010, in order to identify those responsible for such acts and to bring them to justice, and to present its findings to the Council at its seventeenth session, and calls upon all Ivorian parties to cooperate fully with the commission of inquiry”</p>	<ul style="list-style-type: none"> <li>•Ms Reine Alapini Gansou</li> <li>•M. Suliman Baldo</li> </ul>	<p>A/HRC/17/48 (14 June 2011)</p> <p>Note also HRC Res 17/21 ( 19 July 2011)</p>
<p><b>XI. Independent international commission of inquiry investigate all alleged violations of international human rights law since March 2011 in the Syrian Arab Republic.</b></p> <p>As constituted following HRC Res S-17/1 (22 August 2011).</p> <p><b>Mandate:</b></p> <p>“to investigate all alleged violations of international human rights law since March 2011 in the Syrian Arab Republic, to establish the facts and circumstances that may amount to such violations and of the crimes perpetrated and, where possible, to identify those responsible with a view to ensuring that</p>	<ul style="list-style-type: none"> <li>•Prof. Sergio Pinheiro (head of Commission)</li> <li>•Ms. Yakin Erturk</li> <li>•Ms. Karin Abu Zeid</li> </ul>	<p><b>Report of the independent international commission of inquiry on the Syrian Arab Republic</b></p>

perpetrators of violations, including those that may constitute crimes against humanity, are held accountable”.

**OTHER RELATED COMMITTEE:**

<p><b>Committee of independent experts in international humanitarian and human rights laws</b></p> <p>As constituted following HRC Res 13/9 (14 April 2010)</p> <p><b>Mandate:</b></p> <p>“to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, in the light of General Assembly resolution 64/254, including the independence, effectiveness, genuineness of these investigations and their conformity with international standards;</p>	<ul style="list-style-type: none"><li>•Prof. Christian Tomushat</li><li>•Judge Mary McGowan Davis</li><li>•Mr. Param Cumaraswamy</li></ul>	<p><b>Report of the Committee of independent experts in international humanitarian and human rights laws to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, in the light of General Assembly resolution 64/254, including the independence, effectiveness, genuineness of these investigations and their conformity with international standards</b></p> <p><b>A/HRC/15/50 (23 September 2010)</b></p>
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# Human Rights Day Conference The UN Human Rights Council: Commissions of Inquiry

1 DECEMBER 2011

*The House of Parliaments – Chemin du Pommier 5 – Grand-Saconnex  
Bus 5, 28, 53 or F from Gare Cornavin to Grand-Saconnex-Place or Bus 3 from Bel-Air-Pont to Maison des Parlements*

*To participate please RSVP to [celine.glutz@graduateinstitute.ch](mailto:celine.glutz@graduateinstitute.ch) until 28 November*

2.00. p.m. Welcome / Coffee

2.30 p.m. Opening remarks **Laurence Boisson de Chazournes**, Professor, University of Geneva Law School, President of Academic Platform Switzerland UN  
**Alexandre Fasel**, Ambassador, Chief, Multilateral Division, Permanent Mission of Switzerland to the UN, Geneva

2.45 p.m. **Fact-finding missions and Commissions of Inquiry: questions of authority, mandate, standard of proof, witness protection, archives, reporting, budget and follow-up**

**Moderation: Alexandre Fasel**, Ambassador, Chief, Multilateral Division, Permanent Mission of Switzerland to the UN, Geneva

***Presentation of the topic from an academic and institutional point of view***

**Mona Rishmawi**, Chief, Rule of Law, Equality and Non-discrimination Branch, Office of the UN High Commissioner for Human Rights (OHCHR)

**Steven Wilkinson**, Researcher, author of the report "Standards of Proof in International Humanitarian Law and Human Rights Fact-Finding "

**Jonathan Somer**, Legal Advisor, Geneva Call

**Michael Bothe**, Professor, President of the International Humanitarian Fact-Finding Commission

4.00 p.m. Coffee break

4.30 p.m. **Round-table with members of Commissions of Inquiry**

**Moderation: Andrew Clapham**, Professor, Director Geneva Academy of International humanitarian law and human rights

**Reed Brody**, Counsel and Spokesperson for Human Rights Watch in Brussels, member of the UN Commission of Inquiry on the Democratic Republic of Congo, 1997

**Philippe Kirsch**, Former President of the International Criminal Court, Head of Commission of Inquiry appointed by the Human Rights Council to investigate human rights violations in Libya

**Vitit Muntarbhorn**, Professor, Head of Commission of Inquiry appointed by the Human Rights Council on Côte d'Ivoire

5.50 p.m. **Concluding remarks** **Laura Dupuy Lasserre**, Ambassador, President of the Human Rights Council, Permanent Representative of the Eastern Republic of Uruguay to the UN, Geneva

6.00 p.m. Distribution of the Award 2011

6.10 p.m. Cocktail