

The Effectiveness of Fact-Finding Mechanisms in the Progressive Development of International Law

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Article Received: 13 Sept 2024,

Revised: 28 Oct 2024,

Accepted: 08 Nov 2024

Abstract: Fact-finding, according to the United Nations Declaration on the Maintenance of International Peace and Security, is any activity that seeks to obtain accurate information about the facts of any dispute or situation that the United Nations bodies need in order to be effective in carrying out their duties in relation to the maintenance of international peace and security. Fact-finding is not only a legal issue in the field of human rights and humanitarian law, but also, considering other dimensions of the issue such as violence, psychological, social and political effects, their role in resolving conflicts is very colorful. By investigating acute human rights issues by countries and the challenges facing the United Nations, the role and importance of fact-finding committees are very evident. In this research, we have tried to study a collection of human rights documents such as treaties, declarations, resolutions, case law, doctrine, and also examine the reports of the rapporteurs of the United Nations Fact-Finding Commission with a descriptive-analytical method and with a re-examination approach in the form of interpretation and analysis of discourse, considering the increasing importance of fact-finding and its use as a non-litigation mechanism in various international institutions, to examine the role and effectiveness of fact-finding mechanisms, including the impartial determination of violations of human rights and humanitarian law, reporting on events that occurred and the responsibility of states for their actions, and determining the reasons for violations of obligations in line with the progressive development of international law.

Keywords: Progressive development of international law, human rights, humanitarian law, soft law, fact-finding

1.1. INTRODUCTION

- 1.2. The effectiveness of international fact-finding institutions (commissions of inquiry/truth-finding panels) lies in designing a clear mission with defined goals and objectives, as well as their prioritization. Based on the main objectives of the mission, alternative processes and structures should be considered and the goals and processes should be adapted to maximize this effectiveness. The purpose of conducting fact-finding is to achieve goals and objectives, including establishing a historical record, encouraging domestic accountability, strengthening peace and reconciliation, and preventing future abuses.
- 1.3. The mission of fact-finding is to investigate serious violations of human rights and humanitarian law and has a significant impact on subsequent criminal prosecutions for war crimes and other international crimes, which in turn will affect the victims of these crimes. Today, the most important issue in the development and development of international law is the establishment of the truth in matters related to human rights and humanitarian law and the prevention of their violations. The main objectives of establishing facts in international law include establishing a basis for the peaceful settlement of international disputes, monitoring the implementation of international agreements, and providing the information needed for decision-making at the international level in accordance with Article 34 of the Charter of the United Nations. The challenges of the United Nations with member states due to serious violations of human and humanitarian rights, both outside their borders with other countries and within their borders with their citizens, necessitate this research, to the extent that with the progressive development of international law, no ruler considers himself superior to international law and can never act to violate human rights and humanitarian law.
- 1.4. Given that in its conduct, a collection of legal documents such as treaties, resolutions, declarations, as well as the opinions issued by international courts and the reports of fact-finding institutions have been examined and studied,

this research will seek to answer the question of what role and impact do fact-finding mechanisms play in the progressive development of international law using a descriptive-analytical method and a re-examination approach in the form of discourse interpretation and analysis.

- 1.5. .1The concept of progressive compilation and development of international law and their relationship to each other
- 1.6. .1.1The concept of progressive compilation and development of international law
- 1.7. Codification plays a major role in the development and evolution of international law. In international law, like other legal disciplines, compilation is the scientific transformation and conversion of customary rules into a set of written rules that have been systematically categorized, and the development of law is an act that confirms or allocates new rules based on existing law. Article 15 of the Statute of the International Law Commission seeks to make a clear distinction between codification and development of international law. The term “progressive development of international law” means the preparation and drafting of treaties on subjects that are not yet regulated in international law or in which cases the law is not yet sufficiently developed in the practice of States, and the term codification means the correct and systematic codification of international rules in areas where there is already a rational national practice, precedent and doctrine.
2. .1.9The relationship between the formulation and progressive development of international law
3. In implementing Article 13, paragraph 1, part a, of the Charter of the United Nations, the United Nations General Assembly has taken specific steps towards the formulation and progressive development of international law. At present, the activities of several organs within the United Nations are somehow related to the process of the gradual development and formulation of international law. In the meantime, the International Law Commission, as a subsidiary drafting body under the authority of the United Nations General Assembly, which is of particular importance, will be examined, and then the role of the organs that directly deal with the formulation and progressive development of international law and are divided into permanent and temporary organs will be discussed.
4. A) International Law Commission: The United Nations General Assembly established the Commission on November 11, 1947, and since 1949, the Commission has officially begun its activities in line with the objectives set out in the Statute, which are the gradual development and formation of texts that international law has not yet addressed or the functioning of governments in them has not yet been developed to the desired extent. The International Law Commission has approved the following projects in the General Assembly in order to formulate and develop international law: 1- Conventions in force based on the Commission's projects, such as the four Geneva Conventions of 1958 relating to the Law of the Sea, the Vienna Conventions of 1961 and 1963 on Diplomatic and Consular Law, and the Vienna Convention of 1969 on the Law of Treaties; 2- Inactive conventions based on the projects of the International Law Commission; 3- Projects approved by the International Law Commission that are under consideration by the General Assembly. The main characteristic and common feature of the initial drafts of these conventions is giving priority to the drafting, and the International Law Commission, in cooperation with the Sixth Committee of the General Assembly, which is responsible for examining the reports of the Commission, follows the process of accelerating the adoption of the drafts in the General Assembly and with the welcome of the member states.
5. b) Permanent organs of the United Nations: 1- The Commission on Human Rights, which was a subsidiary body of the Economic and Social Council and was replaced by the Human Rights Council in 2006. It has played a significant role in the development and drafting of human rights by preparing reports on the situation of human rights in various countries. Among the important achievements of this body is the preparation of the draft of the Universal Declaration of Human Rights, which was adopted by the General Assembly in 1948. 2- The Commission on International Trade Law, which was established by the General Assembly in 1966 to provide maximum coordination in the regulations governing international trade transactions. 3- The Committee on the Peaceful Uses of Outer Space, which was established by the General Assembly in 1958 after the launch of the first spacecraft by the Soviet Union, Sputnik, in 1957. In order to formulate and develop international law, this committee drafted five international treaties in the aforementioned committee: 1- Outer Space Treaty (1967) 2- Salvage Agreement (1968) 3- Liability Convention (1973) 4- Registration Convention (1976) 5- Moon Treaty (1979).

6. c) Temporary organs of the United Nations: the Third Committee on the Peaceful Uses of the Seabed and Subsoil of Areas Under National Jurisdiction of 1968 and the conventions adopted by the General Assembly itself, which acts as a diplomatic conference, including the Convention on the Privileges and Immunities of the United Nations of 1946, the Convention on the Suppression of Genocide of 1948, and the Convention on the Protection of the United Nations and its Affiliated Agents of 1994. Other methods of formulating and developing international law include the formulation and adoption of declarations that often expand on the fundamental principles of the Charter of the United Nations, which are carried out by the ad hoc Committee of the Charter of the United Nations, known as the Charter Committee. Such as the Declaration on the Settlement of Disputes (Manila Declaration of 1982), the Declaration on the Prevention and Remedy of Disputes and Situations Endangering Peace and Security (Preventive Diplomacy of 1988), and the Declaration on the Activities of Fact-Finding Commissions of 1991.
7. The United Nations as a whole plays a very important role in the formulation and development of international law. It should be noted that, in addition to the aforementioned issues, the Security Council and the International Court of Justice have played a very important role in this regard. The Security Council, by issuing resolutions during various wars, especially the Second Persian Gulf War and the Haitian and Somali crises, has been considered a turning point in the formation of the concept of humanitarian intervention and the establishment of rules governing international conflicts. The rulings issued by the International Court of Justice in disputes related to the delimitation of maritime areas, especially the continental shelf, have been very effective in developing rules to achieve fair solutions, as stated in the 1982 Convention on the Law of the Sea.

Objectives and Mechanisms of Fact-Finding in the Progressive Development of International Law

.7.1 The Concept of Fact-Finding

The concept of fact-finding, as it is clearly and explicitly inferred from its wording, is to clarify the hidden and latent dimensions of what has happened and also to obtain detailed and direct information about events and disputes. Now, this issue and the incident that has occurred may be related to the internal issues of countries and the behavior of governments and rulers towards citizens or it may be related to international issues and the behavior of governments and countries towards each other. It should be noted that there is a difference between fact-finding and criminal investigations. As mentioned, the fact-finding report is to clarify the facts and is not collected for the issuance of judicial opinions in international courts, therefore it does not have binding force, but criminal investigations have binding judicial power. In the field of international law, considering the range of events, crimes, and violations of human rights and humanitarian law by rulers and governments towards other countries or towards their own citizens, as well as terrorist acts by groups and militias, and the disregard for the rights of women, children, and other citizens within the borders under their control, or the invasion of the territory of other countries, and the carrying out of terrorist acts and the killing of women and children, which are clear examples of genocide, war crimes, and crimes against humanity, the concept and correct understanding of fact-finding, in view of its sublime goal of preventing violations of human rights and humanitarian law, and also in line with the main goal of the United Nations Charter, which is to maintain international peace and security, can be explained as follows: Any activity that the United Nations and its competent institutions carry out to obtain accurate and clear information about the facts that have occurred at the level of the international community and that is needed.

.7.2 Objectives and Functions of Fact-Finding

Fact-finding and investigation are methods of establishing facts in international law to achieve various goals, which include various types of work on facts or alleged facts, including the processes of identifying, locating, obtaining, verifying, summarizing, combining, structuring, organizing, presenting and disseminating these facts. The main objectives of establishing facts in international law: 1- Establishing a basis for the peaceful settlement of international disputes 2- Monitoring the implementation of international agreements 3- Providing the information needed for decision-making at the international level in accordance with Article 34 of the Charter of the United Nations.

The first objective is a limited objective and refers to investigation as a specific procedure in cases where disagreements on factual issues give rise to a dispute between the parties. The regulations relating to such investigations were first formulated at the Hague Conference of 1899 and subsequently developed by the Hague

Conference of 1907. This mechanism is designed to address relations between States. The second purpose of fact-finding is to monitor the implementation of international agreements in order to ensure the implementation of international obligations. Specialized agencies of the United Nations, as well as other global or regional bodies, are involved in this type of fact-finding. This function has expanded in recent decades to include more general fact-finding aimed at establishing violations of human rights and humanitarian law as enshrined in various treaties and customary international law. Finally, there is fact-finding for the purposes of Article 34 of the Charter of the United Nations, which confirms the power of the Security Council to investigate any situation or dispute that may threaten international peace and security.

.8How fact-finding mechanisms can be effective in the progressive development of international law

Fact-finding is playing an increasing role in the international community's efforts to establish disputed facts and investigate violations of international law, in particular human rights and humanitarian law. The proliferation of truth-finding institutions, especially in the context of disputed events or complex situations, has highlighted the issue of the selection of members and has raised serious debates about the independent, impartial and impartial nature of these truth-finding institutions. Without truth-finding mechanisms, the implementation of human rights norms would be as futile as a tree without roots. Since the 1990s, many truth-finding institutions have been established to assess some of the most serious violations of human rights and humanitarian law around the world: in Yugoslavia, Darfur, Lebanon, Guinea, Georgia, Israel and occupied Palestine.

International investigations have provided vital elements for judicial procedures, and they have done so in the investigations of ad hoc international tribunals and the International Criminal Court. Many have addressed the roots of violence and rights violations and have established transitional justice mechanisms that address the right to truth, justice, reparation and guarantees of non-repetition, thereby contributing to more sustainable efforts to build peace and reconciliation and contributing to the political resolution of conflicts. In carrying out their mandates, truth-seeking institutions often review mechanisms, and their recommendations focus on strengthening regulations and institutions to improve accountability for past violations at the national or international level and to provide redress for victims. In some cases, specific domestic accountability mechanisms have been established to address violations reviewed by the institutions and implement their recommendations.

Many scholars and experts have also considered the role of fact-finding institutions in resolving political and international conflicts and consider them to be like judicial officers whose goal is to collect information and discover the truth and identify the perpetrators of war crimes or widespread repression and political assassinations, and on the other hand, to submit reports and collected documents related to human rights and humanitarian law violations to competent international authorities for consideration. Today, most of the focus of these institutions is on narrative truths, meaning that they involve the parties involved in the truth-finding process and the goal is to mitigate and mitigate the psychological effects of violence and emotional consequences. A legitimate international fact-finding mission should provide impartial facts to the United Nations so that better policies and actions can be designed. They should also provide reports to international courts and tribunals, thereby facilitating consideration and judgment in the aforementioned courts. Given their vital role, fact-finding reports require accuracy, independence and impartiality. In the absence of such features, the international community risks relying on reports that have no clear criteria for reliability and may be detrimental to the pursuit of human rights. The approval and acceptance of fact-finding reports by decision-makers requires standardization and improvement of the United Nations. An important issue in international fact-finding is the separation of their missions and activities from politics, as well as impartial fact-finding, which should never be seen as a political or diplomatic tool to achieve geopolitical goals.

.7.1Importance and necessity of fact-finding

The importance of fact-finding is to protect human rights and prevent their violations. The work of fact-finding institutions is to strengthen the protection of human rights, and this is important in several ways. Fact-finding institutions can provide a record of serious violations of human rights and international humanitarian law and influence changes in law and practice to advance human rights. They help ensure accountability for serious violations, which is highly effective in preventing future violations, promoting the rule of law, and providing avenues for justice and reparation for victims. International human rights investigations provide vital elements for

judicial procedures, and they have done so in the investigations of international ad hoc tribunals and the International Criminal Court. Many of them have addressed the roots of violence and rights violations and have set in place transitional justice mechanisms that address the rights to truth, justice, reparation and guarantees of non-repetition, thereby contributing to more sustainable efforts to build peace and reconciliation and contributing to the political resolution of conflicts. In carrying out their mandates, truth-seeking institutions often review judicial and other accountability mechanisms, and their recommendations focus on strengthening laws and regulations to improve accountability for past violations at the national or international level and to provide redress for victims. Specific domestic accountability mechanisms have been established to address violations investigated by the institutions and to implement their recommendations.

The establishment of fact-finding institutions and the dispatch of officers to different parts of the world to visit and investigate what has happened or is happening. These measures have been the basis for the adoption of resolutions and the issuance of declarations by the United Nations and other international institutions in the past, in line with respect and observance of human rights and humanitarian law. The change in approaches at the level of international communities, given the transformation and new view of people towards their rights, requires international decision-making organizations to formulate appropriate laws and regulations, which is in the direction of the progressive development of international law. Today, with all the advances made in all fields at the international level, as well as information and communication technology, which have caused more awareness among people around the world, we are witnessing violations of the most important international regulations at every moment, including war crimes, widespread violations of human rights, crimes against humanity, genocide, ethnic-racial discrimination, religious pressures against groups, disappearances and state terrorism, which are among the peremptory rules of international law "a rule that is recognized by the international community of states as a rule that no violation is permitted and can only be changed by a subsequent rule of the same nature".

.7.2 International Fact-Finding and Investigation Institutions

Fact-finding missions have been established by different institutions and under different circumstances, diverse and numerous, with geographical dispersion. These missions are assessed based on various criteria, including the institution that authorized their establishment, the scope of the mission and its outcome. United Nations bodies are the main source of international fact-finding processes.

- 7.1. The UN Security Council engages in fact-finding through the exercise of its implied powers, such as the investigations into the situations in the former Yugoslavia, Burundi, Rwanda, Somalia, Sierra Leone and Darfur.
- 7.2. The Security Council sometimes requests the UN Secretary-General to initiate fact-finding inquiries, and the Secretary-General has appointed a Commission of Experts to investigate the prosecution of serious human rights violations in East Timor, an international commission of inquiry into the assassination of former Pakistani Prime Minister Benazir Bhutto, a panel of experts on the illegal exploitation of natural resources in the Congo, and a panel of inquiry into the 2010 small ship incident off Gaza. The UN Secretary-General may rely on other international organizations in carrying out his fact-finding activities. For example, the Secretary-General, after consulting with the World Health Organization and the Organization for the Prohibition of Chemical Weapons, dispatched a panel to Syria to investigate allegations of chemical weapons use.
- 7.3. The Security Council and the Secretary-General sometimes undertake joint fact-finding activities, such as the inquiry into the management of the United Nations Oil-for-Food Programme.
- 7.4. The United Nations Commission on Human Rights, and subsequently the Human Rights Council, are responsible for a large number of fact-finding initiatives: the Commission on Human Rights led the Independent Commission of Inquiry into Post-Election Human Rights Violations in East Timor, and also produced a report following the mission of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples to Chile.
- 7.5. The Human Rights Council has also undertaken several fact-finding initiatives, such as the Commission of Inquiry on Lebanon, the United Nations Fact-Finding Mission on the Gaza Conflict, and the Fact-Finding Mission to the Syrian Arab Republic.
- 7.6. It is common for the Office of the United Nations High Commissioner for Human Rights to undertake fact-finding missions as part of its mandate. For example, Mary Robinson's visit to Chechnya in 2000 to investigate the human rights situation.

- 7.7. Regional organizations, especially those specializing in the protection of human rights and the promotion of peace and security, also play an important role in modern fact-finding. The African Commission on Human and Peoples' Rights plays an active role in the region, and among its initiatives is the fact-finding mission to Zimbabwe and Sudan. Another regional organization conducting fact-finding missions in the region is the Economic Community of West African States, which sent fact-finding officers to Mali. In Europe, the Council of the European Union and the Organization for Security and Cooperation in Europe are also among the organizations that are initiating fact-finding. The Council of the European Union was responsible for the fact-finding mission to the conflict in Georgia in 2008. The Organization for Security and Cooperation in Europe was responsible for the fact-finding mission to the occupied territories of Azerbaijan around Nagorno-Karabakh in 2005.
- 7.8. The Union of South American Nations is a regional organization in Latin America that carries out fact-finding activities in the region. Fact-finding by non-governmental organizations is becoming more widespread. For example, the International Federation for Human Rights is a Paris-based non-governmental organization that specializes in human rights fact-finding. One of its missions was to Angola to analyze the context in which human rights defenders operate in that country. Another example of NGO action is the Independent Civil Society Fact-Finding Mission to Libya, established by the Arab Organization for Human Rights in cooperation with the Palestinian Center for Human Rights. The mission served as an alternative to the United Nations Fact-Finding Mission to investigate allegations of widespread violations of international law in Libya since 15 February 2011. Fact-finding missions may sometimes originate within the state. This is usually the case with commissions of inquiry and reconciliation established by domestic parliaments. There are also cases where domestic bodies authorize fact-finding, for example, the King of Bahrain established the Bahrain Independent Commission of Inquiry to report on human rights violations during the protests that took place in Bahrain from February to March 2011. The President of Kyrgyzstan established an independent international commission of inquiry into the events in southern Kyrgyzstan in 2010. The Danish Migration Service sent a fact-finding mission to Colombo to investigate the human rights and security situation of Tamils in Sri Lanka.

.7.9 Scope of mandate of fact-finding missions

Fact-finding missions approved by different institutions are formulated in a broad or narrow form, reflecting the diversity of these institutions, with their scope of tasks and mandate being formulated in a broad or narrow form. Fact-finding missions have also varied considerably depending on the situation under investigation, the nature of the violations and the purpose of the investigation, with some covering an entire country, such as Libya or the Syrian Arab Republic, and others covering only a part of it, such as Darfur.

Fact-finding efforts are aimed at monitoring the implementation of a specific international obligation, such as Iraq's compliance with its disarmament commitments made after the Gulf War, or Syria's non-violation of the ban on the use of chemical weapons. The scope of a mission can be even more limited, examining a specific event, such as the assassination of a political leader (Rafiq Hariri or Benazir Bhutto) or specific attacks on United Nations personnel. Others are limited in scope, temporarily rather than substantively, such as Mary Robinson's mission to Chechnya, which lasted only five days. Other fact-finding missions may be limited to establishing specific facts, such as the OSCE fact-finding mission to the occupied Azerbaijani territories around Nagorno-Karabakh to determine the existence of settlements in the area.

The mandate and authority of fact-finding missions are sometimes broad, requiring their members to conduct normative assessments of human rights and humanitarian law violations in the region. For example, the UN Human Rights Council sent a mission to Syria to investigate all alleged violations of international human rights law. The Independent International Fact-Finding Mission on the Conflict in Georgia also examined the conflict in Georgia, including its relationship to international human rights and humanitarian law, and the allegations made in that context. The report of the Fact-Finding Mission on the Gaza Conflict, commissioned by the UN Human Rights Council, considered any actions by all parties that may constitute violations of international human rights law.

Sometimes the mandate and powers of fact-finding missions are limited and they still deal with normative assessments of human rights and humanitarian law violations, for example, the International Federation of Human Rights Societies organized a mission to analyze the human rights situation in Mapuche communities in Chile in relation to forest exploitation and the Ralco project, or the United Nations Commission of Inquiry to investigate

and investigate nine incidents in Gaza and southern Israel that occurred between 27 December 2008 and 19 January 2009, which assessed the deaths of civilians in accordance with the rules and principles of international humanitarian law.

.7.10 Outcomes of fact-finding missions and their impact on the development and evolution of international law

Fact-finding missions, depending on the scope of their mandate and the relevant political will, have a number of potential outcomes that have had a positive impact on the development and evolution of international law. Fact-finding missions sometimes refer only to international humanitarian law, while others, in situations of armed conflict, have also referred to international humanitarian law. The UN Secretary-General, when launching an investigation into the killings of 28 September 2009 in Guinea, referred only to alleged gross violations of human rights, while the UN fact-finding mission into the Gaza conflict examined all cases of violations of international humanitarian law and international humanitarian law. Fact-finding institutions, by carrying out missions and discovering facts, seek a goal beyond criminal prosecutions, which is accountability. For example, in Darfur 2004 there was no definition of accountability, but the report focused on the justice and reparations element of accountability and spoke of commissions that had collected information that allowed them to take the first step in ensuring accountability for crimes committed in Darfur, by referring to the relevant prosecutorial and judicial authorities who deserve a full investigation. The report also noted the need for measures to provide relief and reparation to victims to complete the accountability process. The 2010 Sri Lanka report included explicit statements on the Panel's understanding of accountability, guided by relevant international norms; victims of crimes under international law have three fundamental rights: the right to the truth, the right to justice and the right to reparation through guarantees of non-repetition. The report also stated that accountability goes beyond the investigation and prosecution of serious crimes committed and addresses the political, legal and moral responsibility of individuals and institutions for violations of human rights and human dignity:

First: Fact-finding missions may lead to the establishment of a court or tribunal, which allows for the initiation of legal proceedings against those responsible based on the information gathered by the fact-finding mission. Examples of such missions include the Commission of Experts on the Former Yugoslavia, the International Commission of Inquiry on Rwanda and the Group of Experts on Cambodia, as well as the Independent International Commission of Inquiry to assist in the investigation into all aspects of the assassination of former Lebanese Prime Minister Rafik Hariri.

Second: Fact-finding missions may, in addition to providing the basis for international prosecutions, make a list of humanitarian recommendations addressed to the government concerned or to the international community at large. For example, the Commission of Inquiry on Lebanon recommended to the UN Human Rights Council to increase humanitarian assistance and reconstruction, assess the legality of certain weapons, and address and promote legal means of redress for individuals, as well as an independent fact-finding mission to investigate the consequences of settlements.

Israel's violation of the civil, political, economic, social and cultural rights of the Palestinian people in the occupied Palestinian territories, called on Israel to halt settlement activities without any preconditions and begin the process of withdrawing all settlers from the occupied Palestinian territories, as well as to end the human rights violations related to the existence of the settlements.

- 7.9. Third: Fact-finding missions may lead to further institutional developments, such as the creation of a more permanent body with broader mandates. The conclusions of the Human Rights Council fact-finding mission to the Syrian Arab Republic on the existence of patterns of human rights violations in that country led to the creation of an institution with broader mandates and the additional task of identifying those responsible with a view to holding them accountable (the Independent International Commission of Inquiry).
- 7.10. Fourth: The deployment of a fact-finding mission may lead to a tool of public protest and concern in response to the security and humanitarian situation in a particular region. The fact-finding mission to northern Mali in 2012 led to calls for a ceasefire.
- 7.11. Fifth: Fact-finding missions may pursue broader objectives, such as contributing to truth, justice and reconciliation in the region concerned, as is usually the case with truth and reconciliation commissions.

- 7.12. 7.9 Impartial determination of human rights and humanitarian law violations and their causes
- 7.13. Fact-finding institutions should strive to avoid any political, biased and biased view in line with the development of international law and take steps within the framework of the objectives of the United Nations Charter and the maintenance of international peace and security and respect for the dignity of human beings. Fact-finding institutions are obliged to investigate gross violations of human rights and humanitarian law in the context of armed conflicts or internal unrest. Also, considering the evolution of international law along with the changing nature of conflicts for various reasons, the need for fact-finding institutions is increasingly necessary. The misdevelopment of the doctrine of the responsibility to protect increases the need for primary and accurate information about the nature of the violations committed in order to facilitate decision-making by UN institutions and other stakeholders. On the other hand, the increase in internal unrest, accompanied by severe state repression that sometimes turns into civil war, has also justified the need for official fact-finding missions. This is because conflicts are characterized by limited access of international observers to the conflict zone, resulting in a severe lack of objective and accurate information, often exacerbated by persistent and sophisticated propaganda from both sides of the conflict.
- 7.14. Commissions of inquiry are established by United Nations organs to help maintain peace and security by protecting human rights. The importance of fact-finding for the maintenance of peace and security has been recognized in several declarations and reports, for example, the General Assembly has long recognized that providing a basis for impartial fact-finding can make an important contribution to the peaceful settlement of disputes and the prevention of such disputes. International organizations and in bilateral and multilateral conventions likewise recognize that international peace and security depend to a large extent on obtaining accurate knowledge of the true circumstances of any dispute or situation the continuance of which may threaten the maintenance of international peace and security. This important function of international fact-finding has also been emphasized by UN Secretary-General Boutros-Ghali in his report entitled *In larger freedom, towards development, security and human rights for all*. The UN Charter explicitly or implicitly grants fact-finding powers to the General Assembly, the Security Council and the Secretary-General for the maintenance of peace and security. These powers may be exercised through the establishment of subsidiary bodies, usually commissions of inquiry. The General Assembly, the Security Council and the Secretary-General have increasingly resorted to fact-finding to investigate gross violations of human rights and humanitarian law, and this is because the protection of human rights and the fight against impunity fall under the general heading of maintaining peace and security. In addition, UN bodies with specific human rights mandates also resort to investigation and investigation, including the Commission on Human Rights and, subsequently, the UN Human Rights Council, which has established working groups and special rapporteurs and mandated ad hoc commissions of inquiry. The Office of the United Nations High Commissioner for Human Rights also resorts to investigation. The objective of the impartial fact-finding investigations of the United Nations into gross violations of human rights and humanitarian law is therefore to promote the protection of human rights and this is a purposeful activity. Professor Bertrand G. Ramcharan states that the task of establishing the facts is certainly a (quasi-judicial) task that must be carried out in an impartial manner and with the aim of revealing the real and tangible situation. This does not mean that fact-finding is a neutral and non-binding activity, but rather an act carried out in the public interest and in the light of the objectives and principles of the organization that provides the investigation mechanism.

Reporting on events and the responsibility of states for their actions

For some human rights violations foreseen in the Statute of the International Criminal Court, international responsibility is directed at individuals (such as the crime of genocide or crimes against humanity). In other cases, responsibility is directed at states. However, for violations of humanitarian rights, international responsibility is directed at both individuals (war crimes in the Statute of the International Criminal Court) and states or international organizations (non-criminal responsibility).

For violations of human rights in the law of international responsibility (non-criminal), stipulated in the draft articles on the responsibility of states, the consequences are: restoration of the previous situation (Article 35), satisfaction of the injured party (Article 37), countermeasures (Articles 49 to 54), payment of compensation (Articles 36, 38 and 39). In sum, none of the above cases will prevent the claim for material damages. The rule of restitution: has a fundamental and deep-rooted importance in the field of international responsibility of States.

According to Article 35 of the International Law Commission, restitution is “the re-establishment of the situation that existed before the commission of the wrongful act”. The existing doctrine in this field also states that in the event of serious damage caused by international crimes, restitution takes on a mandatory and non-negotiable aspect and renders all agreements and contracts between the responsible State and the injured State that prevent the implementation of this principle ineffective. For example: On December 8, 2003, the United Nations General Assembly, based on Article 96 of the Charter, in a resolution requesting the issuance of an advisory opinion by the International Court of Justice on the legal effects of the construction of the wall by Israel in the occupied Palestinian territories based on the rules and principles of international law. Also, according to the report submitted to the Court, the Palestinian government has requested that “restitution be given special consideration, as long as it violates the peremptory norms of international law, such as the prohibition of the use of force, the prohibition of annexation, the right to self-government and the fundamental rules of international humanitarian and humanitarian law.” Israel should also take steps to ensure the right of return of people, land, and property, which cannot be compensated in financial terms. It seems that this position was accepted by the Court. In this case, in paragraph 153, the Court states that if material restitution is impossible, Israel is obliged to pay compensation to the persons affected by the actions of this State. In the opinion of the Court, Israel must compensate all the natural and legal persons caused by the construction of this wall in accordance with the rules of international law relevant to this issue. In paragraph 629 of its report to the Court, Palestine recalls that reparation should include all damage that cannot be compensated for by the return to the original situation.

CONCLUSION

Fact-finding mechanisms, depending on the scope of their mandate and the political will involved, have a positive impact on the development and evolution of international law. These mechanisms, in fact-finding missions adopted by fact-finding institutions, have had an impact on the progressive development and elaboration of international law in various ways. Sometimes these missions refer only to international humanitarian law, while others, related to situations of armed conflict, have also referred to international humanitarian law. Fact-finding missions may also lead to the establishment of a court or tribunal, which would allow the initiation of legal proceedings against those responsible on the basis of the information gathered. In addition to providing the basis for international prosecutions, fact-finding missions may also provide a list of humanitarian recommendations addressed to the State concerned or to the international community as a whole. Sometimes fact-finding missions may lead to further institutional developments, such as the creation of a more permanent institution with broader powers. Also, fact-finding missions may sometimes pursue broader objectives, such as contributing to truth, justice, and reconciliation in the region concerned, and this is usually the case with truth and reconciliation commissions.

The effectiveness of fact-finding mechanisms is also demonstrated through the provision of impartial reports on violations of human rights and international humanitarian law. The formation of missions and the dispatch of officers to different parts of the world to visit and examine what has happened or is happening. These actions have been the basis for the issuance of resolutions and the development of competent and appropriate regulations by the United Nations and other international institutions in line with respect for human rights and humanitarian law. The importance of examining the role of the fact-finding committee is not hidden from anyone, because the United Nations has been facing challenges with member states in some way in relation to acute human rights issues in the past few decades. Today, the right to truth is manifested in the form of commissions of inquiry in order to encourage governments to respect fundamental human rights. On the other hand, the importance that fact-finding attaches to public opinion has also faced it with certain problems. When a government experiences injustices and violations of civil rights, governments react to fact-finding with political approaches and dimensions and taking into account their interests. At such times, international protection of human rights can be very necessary.

Another effectiveness of fact-finding mechanisms is realized through various methods of human rights institutions that seek to prove the responsibility of governments for human rights violations. They should not be subject to the usual evidentiary requirements for determining individual criminal responsibility, nor should they be subject to the secondary goal of collecting evidence for parallel or future criminal trials. Responsible for human rights violations for some human rights, which is also foreseen in the Statute of the International Criminal Court,

international responsibility is directed to natural persons (such as the crime of genocide or crimes against humanity). In other cases, responsibility is directed to states. However, for violations of humanitarian rights, international responsibility is directed both at individuals (war crimes in the Statute of the International Criminal Court) and at states or international organizations (non-criminal responsibility).

International fact-finding institutions, especially the United Nations fact-finding institutions, strive to provide a historical record of violations of human rights or humanitarian law and, with the support and pressure of international institutions, to make changes in the domestic laws of countries in favor of strengthening human rights. Fact-finding institutions strongly seek to ensure accountability and responsibility of human rights violators in different countries and try to help promote respect for human rights, strengthen the justice system, and compensate victims while preventing further violations.

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