

Appraising UN Justice-Related Fact-Finding Missions

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Shakespeare wrote that a rose by any other name is still a rose. But in the United Nations (UN), a fact-finding mission, notwithstanding its name, is not necessarily a fact-finding mission.¹

The UN is a political organization consisting of several organs, bodies, and agencies that deal with different matters; exercise varying levels of authority and prerogatives; fulfill different or subordinate functions; operate with somewhat different methods; and—with the exception of the UN organs and bodies, the UN agencies, and treaty-bodies—have their own budgets.² All of them are process-driven, subject to the United Nations Charter (Charter) and the rules the different organizations may adopt. They rigidly observe the principle of coequal sovereignty from which flows the all important internal procedural rule of equitable geographic representation. What they have most in common, other than the political characteristics mentioned above, is the system's bureaucracy.

The UN system resembles a spaghetti bowl in which some

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1. With respect to human rights fact-finding, see HANS THOOLEN & B. VERSTAPPEN, *HUMAN RIGHTS MISSIONS: A STUDY OF THE FACT-FINDING PRACTICE OF NON-GOVERNMENTAL ORGANIZATIONS* (1987); Thomas M. Franck & H. Scott Fairley, *Procedural Due Process in Human Rights Fact-Finding by International Agencies*, 74 AM. J. INT'L L. 308 (1980); David Weissbrodt & James McCarthy, *Fact-Finding by International Human Rights Organizations*, 22 VA. J. INT'L L. 1 (1981).

2. A critical observation whose implication goes far beyond what it appears is the resort by the United Nations to state-funding through voluntary trust funds and direct funding of projects, as well as indirect funding through NGOs and state-contributed personnel. These different funding techniques frequently become the tail that wags the dog in that they determine policies and priorities, but may have conflicting or counter-productive characteristics. Mostly, however, they are unnecessarily competitive, searching for public and media recognition, short-term, and limited in scope. The foregoing adds up to *ad hoc* practices that produce haphazard and limited results while giving the appearance of a significant contribution to the overall goals of justice-related fact-finding missions.

spaghetti may be long on mandate but thin on substance, while other may be short on mandate and thick on substance, with everything else somewhere in between. Some commentators attribute this condition to the nature of the beast; others blame it on the bureaucracy; and still others conclude that when you seek a synthesis of the diversities inherent in the world's governmental systems, you are likely to get the worst along with the best, though the latter is less frequent. To paraphrase Charles Dickens, it is, at once, the best of all things and the worst of all things.³

Whatever the diagnosis, and notwithstanding chronic symptoms of institutional and bureaucratic problems, some components of the system have on occasion accomplished extraordinary results, and others have made significant strides. The worst rightfully can be blamed on the political motive of the organization, its bureaucracy, management processes, and lack of resources due essentially to unpaid U.S. dues and assessments. Yet it is concerned governments and dedicated staffers that make up the best of what the UN system offers. As is frequently said, if the UN did not exist, we would need to invent it. But it can be improved, particularly when it comes to justice-related fact-finding missions.

The United Nations is a vast organization whose multiple processes bring about fact-finding missions.⁴ Some of these processes

3. CHARLES DICKENS, *A TALE OF TWO CITIES* (Norman Paige ed., Charles E. Tuttle 1994) (1859).

4. As stated by this writer:

The range and extent of violations of internationally and regionally protected human rights vary extensively. They may occur either on a sporadic individual basis or they may be more widespread. In some instances, they are the product of deliberate state policy and conducted with some degree of openness by agents of the state. In other instances they are condoned by state policy or its practices. Most of the time they appear to be spurred by the "abuse of power" of public officials which are carried out in a concealed or secret fashion as in the case of torture.

Experience indicates that whenever public opinion, both national and international, focuses on these policies and practices, enough pressure is brought to bear on governments to cause the cessation, or at least the significant reduction in the number of these violations or their intensity.

International and regional organizations do not have the machinery, personnel, and resources needed to monitor all suspected, reported or known incidences of such violations. Furthermore the deeply entrenched concepts of sovereignty and acute senses of national pride have only grudgingly permitted international intervention in the internal legal order. Even so, however, direct international intervention without the

are established by norms; others by custom and practice, but many of the processes are ad hoc. The courses of these processes are not always linear, consistent, or predictable, and frequently they will take unexpected turns. Scholars, observers, and UN staffers provide explanations that frequently rationalize such unforeseen and sometimes unexplainable turns in order to preserve the system's appearance of legitimacy, even if it comes at the cost of truth and other fundamental values. These explanations provide a *leitmotif* of variations on the theme of *Marbury v. Madison*,⁵ whereby the critique is exercised on the implicit condition of legitimizing or rationalizing the processes' departure from the established or expected course.

Because the UN system is process-driven, not, to say, process-oriented, concentration is drawn to the processes while attention is deflected from their substantive outcomes. Indeed, the time-honored, though not always honorable, technique of substituting processes for outcomes and of using processes to generate outcomes contrary to those expected has been perfected within the UN system. This characteristic hinders substantive accountability. With respect to justice-related fact-finding missions, the contrast, and at times the conflict, between *realpolitik* and the values of justice is frequently at issue.

The UN was established as a political organization, and, as such, it is largely governed by political considerations. Unlike individuals who may be motivated by enduring values, governments are motivated by shifting interests. The political nature of the organization is evidenced by the allocation of prerogatives to the General Assembly and the Security Council. More particularly, it

consent of the affected state is not yet of international reality. Thus there are no established international or regional mechanisms for the identification and appraisal of human rights violations except for some modalities and procedures which permit complaints to reach certain international and regional bodies which can, in varying degrees of legal authority, hear, consider, or adjudicate these complaints. These structures vary. Within the United Nations there is no adjudicative system, only some opportunities for presentation of complaints by states or individuals and eventual finding by means of reports or resolutions are the outcome. The legal authority, competence, procedures, and processes of these structures differ.

M. Cherif Bassiouni, *Human Rights Mission: A Study of the Fact-Finding Practice of Non-Governmental Organizations*, 6 N.Y.L. SCH. J. HUM. RTS. 469, 469-70 (1989) (book review).

5. 5 U.S. (1 Cranch) 137 (1803).

explains why the Security Council is unbridled in its determination of peace and security issues. These considerations are elevated above judicial or other forms of review, although always subject to self-review whenever considerations of power and interest require it.

The human rights component of the UN system reflects the values of justice, while systemically it functions as a political process, thus conditioning the upholding of these values to political oversight. In past decades, what Secretary-General Kofi Annan frequently refers to as the “international civil society” compelled *realpolitik* to take into account the values of justice. It is not for the sake of these values but rather to offer persons pursuing political ends utility in the form of conflict management and conflict settlement. Seen from this perspective, justice becomes another card for the *realpolitician* to play and eventually barter away, in a mostly hidden manner, when in pursuit of achieving a political goal. This reality, more than anything else, impacts upon the effectiveness and impartiality of fact-finding missions.

Assessing the establishment, methods, goals, and outcomes, fact-finding missions—which includes investigations of situations requiring the determination, albeit relative, of truth and justice—must take into account the above-described context. Thus, the establishment, methods, and goals of fact-finding missions depend essentially on the following factors:

1. the organ, body, or agency that establishes it and determines its subject matter, scope, and political authority and influence over the bureaucracy;
2. the mandate given to it, which determines the scope of the mission and its duration, as well as its political authority; and⁶
3. the degree of political support from the permanent five members and, more particularly, from the three Western ones, which determines its real authority and effectiveness.

While these factors are not necessarily present in all cases and

6. This factor will depend on whether the mandate is politically intended to be carried out as enunciated or not. Sometimes what appears is not what is contemplated.

certainly vary in degree and mixture with respect to each mission, they are determinative of the outcome of these missions.

Because the values of truth and justice have become part of the tools of *realpolitik*, nothing can be done to overtly contradict these values. Consequently, less than obvious ways must be devised to ensure that these missions will, when politically convenient, give only the appearance of pursuing these values while at the same time not generating politically unwanted results. This is essentially, but not exclusively, accomplished in three ways:

1. appointing compliant and understanding non-UN staff persons as heads and members of these missions;
2. relying on a politically-sensitized and cooperative staff; and
3. using the financial resources and bureaucracy to guide the work and outcomes of these missions.

These factors are interrelated in that the heads and other appointees to these missions are politically determined; the bureaucracy has a large influence in the making of these choices; the bureaucracy needs to please the influential member-states because they determine budgets and impact on promotions and staff assignments; appointees are rewarded by the bureaucracy for compliance with their guidance through greater cooperation, which is necessary for the success of the given mission; and present appointees receive support from the bureaucracy for prospective appointments. This explains in part why there is such a recurrence of the same appointees to these missions and why certain members are assigned to work and guide them. The latter factor may also be positive, in that the selection of recurring staff to support these missions provides for more experience and expertise, thereby contributing to the success of the mission.

There is one last significant factor. UN appointments to such missions are lucrative by most national standards, particularly when they are likely to be short-term and thus supplemental of the income of the appointees. For many appointees to these missions, this is something worth pursuing, and many governments are anxious to provide these positions to some of their nationals as rewards for their services. Consequently, governments insist on equitable geographic

and political representation in respect to all UN appointments. Because of the political nature of the organization, this criterion is more important than competence, specific expertise, and appropriateness of choice. As a result, the level of expertise that heads and other appointees bring to these missions varies significantly and often depends on the expertise and efficiency of the UN staff. It is also significant that UN staff appointments are likewise made on the basis of equitable geographic representation. For this reason, member-states are reluctant to accept voluntary contributions of personnel that do not respect the balance of equitable geographic representation. But what this rule ignores is that all member-states do not have the capability of contributing personnel with the expertise required for these missions.

Within the human rights arena, there is an almost incestuous tendency to reappoint the same experts to the missions and the same UN staffers to support them. More frequently than not, the reports produced are designed to please the influential Geneva-based non-governmental organization (NGO) community and certain governments, particularly the three Western permanent members and a number of Western European countries that champion human rights. Consequently, other states feel less influential in the process, and, at times, they even feel targeted by the process and its outcomes.

One need not look for hidden conspiracies to explain certain strained or unexplainable outcomes; rather, they can be explained by the political dynamics of a system that is fueled by political considerations, personal ambition, venality, and other human frailties. The foregoing also explains why certain efficacy measures that would greatly enhance the accomplishment of these missions are not put in place. If they were, they would help clarify what is at times intended to be murky. One example is illustrative of this regrettable situation. After fifty years, there is no standard operating procedure for fact-finding missions. Admittedly, any standard operating procedure needs to be tailored to the situation. But no manual exists to describe how an investigation should be conducted and there is no standard, though adaptable, computer program to input collected data. Worst of all, there is no continuity. In short, there is nothing to guide, instruct, or assist the heads and appointees to these missions of how to better carry out their mandates. It strains one's belief that in

fifty years the most elementary aspects of standardized organization, planning, documentation, and reporting have not been developed. Thus, each mission has to reinvent the wheel and, in an organizational sense, has to reinvent itself as a mission. The results are usually poor or mediocre performance, except where particularly competent persons are appointed to these missions, and in these rare cases it is their entrepreneurial and other qualities that bring about the mission's success. But the contributions of dedicated and hard-working UN staffers should not be overlooked in assessing the success of these missions. This situation also means that there is little consistency and predictability as to the methods and outcomes. Thus, there is no way of comparing the results of different, though substantively similar, missions. This principle applies equally well to ongoing missions that produce multiple reports, where it is at times difficult to compare working methods pursued during the mission and the results they produce.

The lack of standardized methods, particularly as to empirical research and field investigation, means that there is no basis to test the validity of the research in order to assess the plausibility of the conclusions. It is safe to say that no scientific research methodology would consider the above-described approach as anything but selective, insufficient, unreliable, and, at best, anecdotal. It should also be noted that portions of mandates issued by UN organs, bodies, and agencies are at times overlapping and almost always ad hoc. Among the results of these partially overlapping mandates are:

1. confusion as to the boundaries of the overlapping mandates;
2. potential contradictions in the conclusions; and
3. potential mutual reliance of these missions in reporting on the overlapping areas, thus creating a false impression of confirmation and reliability.

As a result of the ad hoc issuance of these mandates:

1. there is no predictability as to the situations that will warrant issuance of such mandates;
2. the decisions to issue, extend, amend and terminate these

mandates seem essentially contingent upon political and extraneous circumstances; and

3. there is infrequent continuity in follow-up on missions that have reached the end of the mandates.

These observations are evident in the workings of mandates issued by the Security Council, the General Assembly, the Commission on Human Rights, the Subcommission on the Prevention of Discrimination and Protection of Minorities, and the Treaty-bodies. Each one of these appointing organs or bodies relies on a separate formula, uses a different label, provides for different operational methods, and offers different levels of support and resources. However, they have common powers: to establish and terminate the mandate; to define its scope and duration; to appoint its heads and other members; and to determine or condition its operational capabilities.

The Commission on Human Rights has rapporteurs and independent experts; the Subcommission has special rapporteurs; the Security Council has Commissions, and the Secretary-General has Personal Representatives. Most of the Commission and Subcommission fact-finding missions have limited resources, sometimes none at all, and are supported by one or, at best, two staffers, mostly on a part-time basis. These missions seldom have the resources or the ability to do effective field work or empirical research. Consequently, they rely heavily on the NGOs, government reports, and the media. Many rapporteurs, or whatever their actual designation may be, produce reports even though they never set foot in the territory where their investigation takes place. Thus, the experts who over the years had to investigate human rights violations in South Africa during the *apartheid* regime, Iran, Iraq, and Israel were not allowed into these countries, yet they still reported on them.

The Security Council may establish a Commission because it sees the need, at that time, for that issue to go through a particular process. The Rwanda Commission was one such case,⁷ whose mandate and duration were limited. It lasted three months and made a single one-

7. S.C. Res. 935, U.N. SCOR, 49th Sess., 3400th mtg. at 1, U.N. Doc. S/RES/935 (1994).

week visit to Rwanda. Its function was essentially window dressing. At the time, the Security Council wanted to follow its precedent of the Yugoslavia Commission⁸ that preceded the International Criminal Tribunal for the Former Yugoslavia (ICTY)⁹ and that called for its establishment as stated in Resolution 808.¹⁰ Thus, it seemed to the Security Council more suitable, before establishing the International Criminal Tribunal for Rwanda (ICTR),¹¹ to have a commission that would call for it. But there was another reason: It was necessary to gain time before the Security Council established the ICTR in order to work out the logistics of the prospective tribunal.

Regrettably, the ICTR's beginnings were fraught with mismanagement and minor corruption. Because of the "closed society" mentality of the UN system and its aversion to admit error, the cover-up lasted for almost two years, until the Inspector General produced a scathing report.¹²

While the Yugoslavia Commission model, which preceded the establishment of the ICTY, was deemed procedurally to be the appropriate one, the substantive work that it did in two years was not deemed desirable for the Rwanda Commission, principally because of the UN's failure to act to prevent genocide there.¹³ That failure to act was not based on ignorance of the facts, as Secretary-General Annan's subsequent report on Rwanda admitted.¹⁴ Instead, it was the

8. S.C. Res. 780, U.N. SCOR, 47th Sess. at 2, U.N. Doc. S/RES/780 (1992).

9. Statute of the International Criminal Tribunal for the Former Yugoslavia, S.C. Res. 808, U.N. SCOR, 48th Sess., 3175th mtg., U.N. Doc. S/RES/808 (1993), *annexed to Report of the Secretary-General pursuant to Paragraph 2 of Security Council Resolution 808 (1993)*, U.N. Doc. S/25704 & Add. 1 (1993).

10. S.C. Res. 808, U.N. SCOR, 48th Sess., 3175th mtg. at 1, U.N. Doc. S/RES/808 (1993) [hereinafter Res. 808].

11. Statute of the International Criminal Tribunal for Rwanda, S.C. Res. 955, U.N. SCOR, 49th Sess., 3453d mtg., Annex, U.N. Doc. S/RES/955 (1994).

12. *Report of the Office of Internal Oversight Services on the Audit and Investigation of the International Criminal Tribunal for Rwanda, annexed to Report of the Secretary-General on the Activities of the Office of Internal Oversight Services*, U.N. Doc. A/51/789 (1997).

13. PHILIP GOUREVITCH, WE WISH TO INFORM YOU THAT TOMORROW WE WILL BE KILLED WITH OUR FAMILIES: STORIES FROM RWANDA 147-71 (1998); GÉRARD PRUNIER, THE RWANDA CRISIS: HISTORY OF A GENOCIDE 276-80 (1995); José E. Alvarez, *Crimes of State/Crimes of Hate: Lessons from Rwanda*, 24 YALE J. INT'L L. 365, 390-91 (1999).

14. *Report of the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda* (Dec. 15, 1999), at http://www.un.org/News/oss/rwanda_report.htm (last visited Apr., 2000).

system's failure in the face of the Clinton Administration's decision against military action. Legal and moral responsibility in this case clearly falls on the Clinton Administration, but the question troubled the Secretary-General enough to issue a report accepting part of the moral responsibility.¹⁵ Considering that the UN was imperiled by the United States' nonpayment of arrears in dues and its hopeful expectations that the United States will meet its obligations at some time, it would not have been politically advisable to have a commission of independent experts investigating that tragedy, to evidence how it happened and who stood in the way of preventing the genocide's occurrence. But in this case, the United States was not the only state needing a cover-up. France also needed one, as it had armed and trained the Hutus in Rwanda, and some of the French military advisers reportedly were in place while the genocide occurred. Subsequently, France sent a military force to protect the Hutus retreat against advancing Tutsis.

Thus, the Rwanda Commission had to be limited in scope and duration, and its members could not be activists who would pursue truth. The final report was essentially drafted by the UN staff and did not allude to any of these facts. The Rwanda Commission did not do any fact-finding though it was deemed of a fact-finding nature.

The Security Council also established a Commission for the Great Lakes region which went to the Congo, was shunned by President Lawrence Kabila's protests and, after a period of waiting, was recalled by the Secretary-General, never to be heard of again.¹⁶ The Cambodia Commission produced a brief report that, due to the expertise of one of its members, proved useful.¹⁷ However, its recommendations were not followed. The formula for the so-called "tribunal" for the crimes committed in that country is yet to see the

15. *Id.*

16. GOUREVITCH, *supra* note 13, at 332-36.

17. *Report of the Group of Experts for Cambodia Established Pursuant to General Assembly Resolution 52/135* (Feb. 18, 1999), annexed to *Letters from the Secretary-General, to the President of the General Assembly and the President of the Security Council* (Mar. 15, 1999), 53d Sess., Agenda Item 110(b), U.N. Docs. A/53/850 and S/1999/231 (1999). That member was Professor Steve Ratner. See STEVEN R. RATNER & JASON S. ABRAMS, ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW (1997).

light of day. Another instance was that of East Timor.¹⁸ So far no significant fact-finding report has been published, probably because none was actually undertaken.¹⁹

Fact-finding missions also come in other high-level processes. The Secretary-General may appoint a Personal Representative to undertake such a mission, as does the High Commissioner on Human Rights and the High Commissioner on Refugees. These High Commissioners may themselves go out on such missions.²⁰ But these missions are not real fact-finding missions. They are political missions that need a more neutral or acceptable label to pursue what is essentially a laudable effort to reduce tensions, cause violence to abate, or help restore and preserve peace. Sometimes they are designed to simply show responsiveness to public outcry in certain egregious situations. In these cases they are more akin to public-relations missions.²¹

Fact-finding and investigation are a means to an end. With respect to the values of truth and justice, the end is accountability of the perpetrators, particularly the leaders of *jus cogens* crimes of genocide, crimes against humanity, war crimes, torture, slavery and slave-related practices, and apartheid.²² But accountability has yet to be clearly established as one of the goals of fact-finding missions.

18. *United Nations Inquiry into Possible Human Rights Violations in East Timor Sought by Economic and Social Council*, Press Release ECOSOC/5879 (Nov. 15, 1999) ("The Economic and Social Council endorsed the call for the Secretary-General to establish an international commission of inquiry to gather information on possible human rights violations in East Timor . . ."). Cf. GENOCIDE IN CAMBODIA: DOCUMENTS FROM THE TRIAL OF POL POT AND LENG SARY (Howard J. De Nike et al. eds., 2000); POL POT PLANS THE FUTURE: CONFIDENTIAL LEADERSHIP DOCUMENTS FROM DEMOCRATIC KAMPUCHEA, 1976-1977 (David P. Chander et al. eds. & trans., 1988); THE UNITED NATIONS AND CAMBODIA: 1991-1995 (1995).

19. The goal in East Timor was to stop the violence and then transition that region into independence from Indonesia. See S.C. Res. 1272, U.N. SCOR, 54th Sess., 4057th mtg. at 1, U.N. Doc. S/RES/1272 (1999) (establishing United Nations Transitional Administration in East Timor).

20. High Commissioner Mary Robinson went to Chechnya from March through April, 2000 on a designated "fact-finding mission" and presented her report to the Commission on Human Rights on April 5, 2000.

21. This was the case when the High Commissioner for Human Rights sent an expert, then a few UN staffers to Kosovo in 1999.

22. M. Cherif Bassiouni, *The Need for International Accountability*, in 3 INTERNATIONAL CRIMINAL LAW 3 (M. Cherif Bassiouni ed., 2d ed. 1999).

Indeed, to date the UN has not promulgated guidelines for accountability.²³

Probably the most significant fact-finding operation in UN history was the work of the Commission established by the Security Council pursuant to Resolution 780 in 1992 to investigate war crimes in the Former Yugoslavia.²⁴ The Commission worked for two years, during which it conducted thirty-five field investigations, established the most extensive database for gathering evidence and information about violations of international humanitarian law, identified over 800 places of detention, estimated 50,000 cases of torture and 200,000 deaths, estimated two million displaced persons as a result of ethnic cleansing that was documented in connection with some 2,000 towns and villages where the practices took place, and conducted the world's first and most extensive investigation into systematic rape. The latter produced over 500 affidavits of victims who identified their perpetrators. Interviews were conducted with 223 victims and witnesses; gathered information led to the identification of close to 1,500 cases; and other information revealed the possibility of an additional 4,500 or so victims.²⁵

Most significantly, the Commission, which received from the Security Council the broadest mandate since the establishment of the International Military Tribunal at Nuremberg, received no funding from the UN to conduct its investigations. The funding had to be raised from states' voluntary contributions, states' contributed personnel, private sources of funding, and ultimately the support of DePaul University, which gave this author the space, overhead costs, and staff to establish the database in Chicago. Over a period of two years, over 140 lawyers and law students worked at the database that produced close to 80,000 documents and 300 hours of videotapes. It was on that basis that the Commission was able to produce its Final

23. M. Cherif Bassiouni, *Searching for Peace and Achieving Justice: The Need for Accountability*, 59 LAW & CONTEMP. PROBS. 9 (1996), reprinted in 14 NOUVELLES ÉTUDES PÉNALES 45-78 (1998).

24. *Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)*, U.N. SCOR, Annex, U.N. Doc. S/1994/674 (1994).

25. M. Cherif Bassiouni, *The Commission of Experts Established Pursuant to Security Council Resolution 780: Investigating Violations of International Humanitarian Law in the Former Yugoslavia*, 5 CRIM. L.F. 279 (1994).

Report and Annexes. The report exceeded 3,300 pages and was the longest report made by the Security Council. The history of the Commission was tormented and difficult, as it faced opposition by some governments and those in the UN bureaucracy who wanted to advance the political agendas of those governments. That explains the lack of resources that the UN allocated for the investigation, though it did provide the costs of some staff and some limited space at the UN Headquarters in Geneva.²⁶

Ultimately, however, it was the Commission's work that gave the Security Council the basis to establish the ICTY.²⁷ The politics of justice continued in the Security Council's selection of the ICTY prosecutor.²⁸ It was also reflected in the early administrative termination of the Commission, even though the Security Council never adopted a resolution to that effect.²⁹ Nevertheless, if it had not been for the work of the Commission, the ICTY Prosecutor who took office almost fourteen months after the establishment of the Tribunal would not have been able to start his work as fast and as efficiently.

The Commission's task was enormous. A war was going on; there was no precedent to guide its work; it had almost no resources available, and it lacked the political backing or the political will of a unified Security Council to which the UN bureaucracy is responsible. More importantly, at the time, the world was emerging from almost a half-century of the Cold War, punctured by many regional and internal conflicts of different dimensions and scope. The idea of impartial, effective, politically independent, and fair international criminal justice was not even on the radar screen of most governments. In a sense, there was a psychological iron curtain that prevented even the consideration of such a system of international criminal justice. The Commission's work tore down this psychological iron curtain. Since then, international criminal justice has become part of the values of the international community, though it is still confronted by the exigencies of *realpolitik*.³⁰

26. *Id.*

27. Res. 808, *supra* note 10, pmb1.

28. M. CHERIF BASSIOUNI & PETER MANIKAS, THE LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA 210-12 (1996).

29. Bassiouni, *supra* note 25, at 336-38.

30. M. Cherif Bassiouni, *Combating Impunity for International Crimes*, 71 U. COLO. L.

On a more practical level, extraordinarily, the UN has not yet developed a system, despite the experience of the Commission and what followed in the area of fact-finding. Thus, every new Commission, fact-finding body, or mandate for individual fact-finding is ad hoc. There is no institutional memory, and there is no system by which the experiences of the past can be used to benefit the future. It is beyond logical explanation to find that the UN has established no model or standard database and that no model or standard process for field investigations exist, including no protocols for mass grave exhumations or reconstruction of events, and no large-scale interviews of victims and witnesses.

The Commission had established all of that, and while it surely could have been improved, it was simply overlooked and nothing of any systematic nature was ever done. One explanation, of course, is that the lack of existing systems and processes, as well as standardized methods of operation, are certain to delay the work of any fact-finding body or individual, except when there is a political will to give such fact-finding greater momentum. In these cases, interested governments provide the resources, the evidence, and contribute personnel. Thus, fact-finding is held hostage to the political will of major governments. The means to accomplish that end are financial and bureaucratic. The absence of systems, procedures, methods of operation, and funding all contribute not only to delay, but to the inability to achieve the purposes of justice-related fact-finding.

One of the fundamental struggles of civilization is to put an end to these crimes. One way of accomplishing this is to put an end to impunity. But to do so we must ensure that the processes of discovering truth and achieving justice, albeit relative, is not politically compromised as to its impartiality, fairness, and effectiveness. Suffice it to recall that the Former Republic of Yugoslavia was recently reinstated by the General Assembly, ignoring that its new government formally announced that it regarded the ICTY as illegitimate and that it would not surrender its indicted

REV. 409 (2000) [hereinafter Bassiouni, *Combating Impunity*]; M. Cherif Bassiouni, *Searching for Justice in the World of Realpolitik*, 12 PACE INT'L L. REV. 213 (2000) [hereinafter Bassiouni, *Searching for Justice*].

criminals, particularly its former head of state Slobodan Milosevic.

Regrettably, we are still at the stage of historical development where these processes have not, except in a few cases, been free from the compromising encumbrances of *realpolitik*.³¹ In some cases we have only a façade, or “Potemkin justice”—props that look as good from the outside as Hollywood stage sets. However, in some cases we have made substantive progress and significant inroads, such as what the ICTY and ICTR have now accomplished. In these cases, we must acknowledge the accomplishments while we seek to correct the weaknesses. International justice, like national justice, can never be held to the standards of perfection. Our expectations should not be to seek the best, for it is frequently the enemy of the good.

There is no better conclusion than the following:

*If you see a wrong right it;
With your hand if you can, or
With your words, or
With your stare, or
In your heart, and that is the weakest of faith.*
—Prophet Mohamed, from a *Hadith*

If you want peace, work for justice.
—Pope Paul VI

*The world rests on three pillars: on truth, on
justice, and on peace.*
—The Talmud

*The three are really one, if justice is realized,
truth is vindicated and peace results.*
—A Talmudic commentary

31. See, e.g., Bassiouni, *Combating Impunity*, *supra* note 30; Bassiouni, *Searching for Justice*, *supra* note 30.

