From “Is” to “Ought”: The Development of Normative Powers of UN Investigative Mechanisms

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Abstract

This article analyses the normative powers conferred on and exercised by 69 Investigative Mechanisms, including UN Commissions of Inquiry, Fact-Finding Missions and Independent Investigative Mechanisms established between 1963 and 2020. Relying on a dataset collected by the author including all their mandates (78) and reports (121), the article introduces an analytical framework and uses it to (i) identify the specific normative powers conferred on Investigative Mechanisms, (ii) the evolution and main step changes in these powers between 1963 and 2020, and (iii) their specific expression in actual practice in matters such as the use of terminology (violations/abuses of human rights by non-State actors), the determination of the standard of proof, the characterization of primary norms, the development of integrated accountability strategies, and the internalization of functions usually entrusted to prosecutorial mechanisms.

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I. Introduction

1. In the last decade, a substantial body of literature has explored the increasingly frequent resort to UN Commissions of Inquiry (CoIs), Fact-Finding Missions (FFMs), Independent Investigative Mechanisms (IIMs) and other similar UN bodies (collectively described as “Investigative Mechanisms” or “IMs”) to provide some measure of accountability for widespread violations of human rights, international humanitarian law and international criminal law. The extent to which these mechanisms can provide accountability heavily depends on their powers, not only to prepare a factual record which may (or may not) be subsequently used in criminal prosecutions but, more controversially and interestingly, also on their “normative” powers. One important line of argument is, indeed, that such bodies interpret their mandates making inroads into legal analysis, such as identifying the applicable legal framework, discussing the relevant norms and characterizing the facts in their light. The

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1 See e.g. Catherine Harwood, The Roles and Functions of Atrocity-Related United Nations Commissions of Inquiry in the International Legal Order (2020); Federica D’Alessandra, The Accountability Turn in Third Wave Human Rights Fact-Finding, 33 Utrecht JI&EL (2017), 61; on the diversity of contemporary CoIs, see Patrick Butchard and Christian Henderson, A Functional Typology of Commissions of Inquiry, in: Christian Henderson (ed.), Commissions of Inquiry—Problems and Prospects (2017); Philip Alston and Sarah Knuckey (eds.), The Transformation of Human Rights Fact-Finding (2016); Larissa Van den Herik, An Inquiry into the Role of Commissions of Inquiry in International Law: Navigating the Tensions between Fact-Finding and Application of International Law, 13 Chinese JIL (2014), 507; Philip Alston, The Criminalization of International Human Rights Fact-Finding, Key Note Address, Conference on Fact-finding on gross violations of human rights during and after conflicts, Oslo, Norwegian Centre for Human Rights (17-18 November 2011); Christian Henderson, Commissions of Inquiry: Flexible Temporariness or Permanent Predictability?, 45 Netherlands YIL (2014), 287.

2 See Micaela Frulli, Fact-Finding or Paving the Road to Criminal Justice?, 10 Journal of International Criminal Justice (2012), 1323; Dov Jacobs and Catherine Harwood, ‘International Criminal Law Outside the Courtroom: The Impact of Focusing on International Crimes for the Quality of Fact-Finding by International Commissions of Inquiry’, in: Morten Bergsmo (ed.), Quality Control in Fact-Finding (2013), 325-359; Larissa van den Herik and Catherine Harwood, Sharing the Law: The Appeal of International Criminal Law for International Commissions of Inquiry, in: Philip Alston and Sarah Knuckey, above n.1, 234-247; Christine Schwöbel-Patel, ‘Commissions of Inquiry: Courting International Criminal Courts and Tribunals’, in: Christian Henderson, above n.1, 65-87.
focus of these contributions is, however, on a specific mechanism, or on some selected examples or, still, on some general features of the phenomenon, particularly the interplay between IMs and international criminal prosecution, the “criminalization” of commissions of inquiry or their impact.

3 See Hala Khoury-Bisharat, The Unintended Consequences of the Goldstone Commission of Inquiry on Human Rights Organizations in Israel, 30 EJIL (2019), 877; Mohamed S. Helal, Two Seas Apart: An Account of the Establishment, Operation and Impact of the Bahrain Independent Commission of Inquiry (BICI), 30 EJIL (2019), 903; Eliav Lieblich, At Least Something: The UN Special Committee on the Problem of Hungary, 1957–1958, 30 EJIL (2019), 843; Alex Whiting, An Investigation Mechanism for Syria: The General Assembly Steps into the Breach, 15 Journal of International Criminal Justice (2017), 231; Christian Wenaweser and James Cockayne, Justice for Syria? The International, Impartial and Independent Mechanism and the Emergence of the UN General Assembly in the Realm of International Criminal Justice, 15 Journal of International Criminal Justice (2017), 211; Rob Grace, Lessons from two regional missions: Fact-finding in Georgia and South Sudan, in: Christian Henderson, above n.1, 65-87; David Re, Fact-Finding in the Former Yugoslavia: What the Courts Did, in: Morton Bergsmo, above n.2, 279-325; Larissa Van den Herik, Accountability through Fact-Finding: Appraising Inquiry in the Context of Srebrenica, 62 Netherlands ILR (2015), 295; James G. Stewart, The UN Commission of Inquiry on Lebanon: A Legal Appraisal, 5 Journal of International Criminal Justice (2007), 1039; Philip Alston, The Darfur Commission as a Model for Future Responses to Crisis Situations, 3 Journal of International Criminal Justice (2005), 600.

4 Triestino Mariniello, The Impact of International Commissions of Inquiry on the Proceedings Before the International Criminal Court, in: Christian Henderson, above n.1, 171; Dov Jacobs and Catherine Harwood, above n.2; based on a variety of examples, see Larissa Van den Herik and Catherine Harwood, above n.2; Christine Schwöbel-Patel, above n.2.

5 See e.g. Catherine Harwood, above n.1; Morton Bergsmo, above n.2; Micaela Frulli, above n.1; Lara Talsma, U.N. Human Rights Fact-Finding: Establishing Individual Criminal Responsibility, 24 Florida JIL (2012), 383.

6 Philip Alston and Sarah Knuckey, The Transformation of Human Rights Fact-Finding, in: Philip Alston and Sarah Knuckey, above n.1, 4-19; Antonio Cassese, Fostering Increased Conformity with International Standards: Monitoring and Institutional Fact Finding, in: A. Cassese, Realizing Utopia: The Future of International Law (2012), 302-303; Larissa Van den Herik, above n.1; Christian Henderson, Commissions of Inquiry: Flexible Temporariness or Permanent Predictability?, 45 Netherlands YIL (2014), 287; Cecilie Hellestveit, International Fact-Finding Mechanisms: Lighting Candles or Cursing Darkness, in: Cecilia Marcela Bailliet and Kjetil Mujezinovic Larsen (eds.), Promoting Peace through International Law (2015), 368; Dov Jacobs and Catherine Harwood, above n.2, 325; Christine Schwöbel-Patel, above n.2, at 145; Shiri Krebs, The Legalization of Truth in International Fact-Finding, 18(1) Chicago JIL (2017), 83.

7 Michael A. Becker and Sarah Nouwen, International Commissions of Inquiry: What Difference Do They Make? Taking an Empirical Approach, 30 EJIL (2019),
2. Yet, an overall study of the normative powers of IMs taken as a whole has not yet been attempted. This is complex because, aside from the substantial volume of documents (mandates and reports) that need to be examined, the expression “normative prerogatives” or “normative powers” encompasses a grey area between mere powers to gather facts and clearly conferred powers to judge a conduct and derive its legal consequences with binding effect. IMs clearly have the former and clearly do not have the latter. But it remains unclear whether they have some powers in-between, of a nature that transcends the “factual”, the “is”, but does not reach the level of an acknowledged conferral of the “normative”, the “ought”. As the literature shows, that can be done at the level of one or more specific IMs, through in-depth and comparative case-studies of a small number of mechanisms. But a study of the phenomenon in general, i.e. of a much wider body of IMs and of the nature, extent and evolution of their normative powers over time, can only be systematically conducted on the basis of a conceptual framework which allows for analysis and comparability. This article introduces an analytical framework to chart the aforementioned grey area between “is” and “ought” and then relies on it to conduct a structured analysis of (i) the mandates of 69 IMs established between 1963 and 2020 and (ii) 121 reports from these IMs published in the same period of time (Appendix A). The analysis charts the specific normative powers conferred in their mandates, identifying changes over time, and patterns in their practical implementation.

3. The dataset includes only bodies created by the UN, i.e. the General Assembly (“UNGA”), the UN Human Rights Council (“HRC”), the UN Commission on Human Rights, the UN High Commissioner for Human Rights, the UN Secretary General (“UNSG”), and the UN Security Council (“UNSC”), leaving out IMs established by other international organizations or UN specialized agencies. The term “Investigative Mechanism” is a broadly 819–841, who present different typology of ways in which the impact of COIs might be assessed. In a comprehensive study, Harwood analyses the identification of the applicable legal framework and law-application in the inquiry context, 158-203 and 203-257 respectively; Rob Grace, An Analysis of the Impact of Commissions of Inquiry, in: Rob Grace and Claude Bruderlein, HPCR Practitioner’s Handbook on Monitoring, Reporting, and Fact-Finding: Investigating International Law Violations (2017); Dov Jacobs and Catherine Harwood, above n.2, examine the impact of the international criminal law-focus on the technical quality of fact-finding, at 334-346; Lara Talsma, above n.5, looks at the standard of proof, admissibility of evidence, witnesses or the right of the suspect, 407-420; Triestino Mariniello, above n.4.
understood as including international bodies tasked with fact-finding, inquiry, investigative or advisory missions, which share certain features: they have been established by international bodies; they have a temporary or extended mandate; they gather facts about a situation or investigate on human rights violations in a specific country or region, often engaging with international legal issues; they are non-judicial bodies and their findings and recommendations are not binding.

4. The article begins by explaining the methodology and the analytical framework developed to analyze the aforementioned mandates and reports dataset (Part II). It then moves from the “static” description of normative powers to a “dynamic” description of their development over time (Part III). On the basis of an analysis of IMs’ mandates (Appendix B), the article identifies major and stable expansions of IMs’ powers over time. The main step changes are generally consistent with those identified in the case-based or more general literature, but the analysis is offered as confirmation of prior findings through a structured and systematic examination of mandates over time. Part IV offers a general assessment of the evolution of IMs’ normative powers pointing to several possible extensions of the research.

II. Methodology
II.A. From “is” to “ought”

5. Writing in the 18th Century, Scottish philosopher David Hume famously observed that it is not possible deduce “ought” (a norm) from “is” (fact). In Hume’s own words:

“[i]n every system of morality, which I have hitherto met with, I have always remarked, that the author proceeds for some time in the ordinary way of reasoning, and […] makes observations concerning human affairs; when of a sudden I am surprized to find, that instead of the usual copulations of propositions, is, and is not, I meet with no proposition that is not connected with an ought, or an ought not. This change is imperceptible; but is, however, of the last consequence. For as this ought, or ought not, expresses some new relation or affirmation, it is necessary that it should be observed and explained; and at the same time that a reason should be given, for what seems altogether inconceivable, how this
new relation can be a deduction from others, which are entirely different from it.”

6. Hume’s famous observation provides a short-cut to locate the context within which the analysis in this article unfolds, the “grey area” between “is” and “ought”, and the “imperceptible” transition from one to the other in discourse. Of course, Hume makes this point specifically to emphasize that, in rigour, such transition is not possible. For Hume, norms cannot be derived from bare facts, although discourse, then and now, so often moves “imperceptibly” from one to the other. The observation thus points to a tension. Whereas, conceptually, there is a stark discontinuity between is and ought, in discursive practice such discontinuity is often ignored or simply blurred.

7. For present purposes, this observation offers a useful and well-known dichotomy (“is/ought”) to locate the “grey area” of discursive practice which the article aims to chart in the specific context of IMs’ mandates and reports. Such instruments are not a “system of morality”, but they do display the conferral and/or exercise of normative powers. As noted in the introduction, there is a clear line between certain factual powers that are expressly conferred on IMs and certain normative powers that IMs do not possess. IMs can clearly gather facts, but they cannot formally compare a factually established conduct to an existing primary norm of conduct and, in case of violation, derive the legal consequences defined by secondary norms (whether general or specifically provided for in a court’s Statute) with binding effect. However, the space between these two extremes of the spectrum is wide, and much can be done within it that entails some measure of normative power. For example, do the facts gathered command authority in subsequent prosecutions? Can the IM itself define the standard whereby such fact-gathering exercise commands authority or borrow one from judicial practice and state that its report has met it? Can the IM compare the facts thus established to a primary norm of conduct, thereby selecting the norm (which implies taking position on its general applicability to the facts in question) and possibly interpreting its very terms?

8 David Hume, A Treatise of Human Nature: A Critical Edition, D.F. Norton and Mary J. Norton (eds.) ([1739] 2007), Book III, Part I, Section 1 (last paragraph).

9 Some IMs very clearly indicate in their reports that the methods they follow and outcome of investigations are not those of a court and do not determine legal liabilities. See for instance, Report of Investigative Mechanisms: on Cambodia, A/53/850-S/1999/231, 16 March 1999, para.205; on Darfur, S/2005/60, 1 February 2005, para.15; DRC Mapping Report, August 2010, para.7.
Can the IM make a formal finding arising from this comparison of norm and fact and flesh out the relevant consequences, even if such determinations do not have binding effect? Some of these powers are expressly conferred in the mandates of IMs and/or asserted in practice, as shown in their reports. The purpose of this article is not to take a position on the legitimacy or legality of such exercise. It is, instead, to chart the overall phenomenon of IM’s normative powers as systematically and specifically as possible, as a pre-condition for the conduct of such other assessments.

8. IMs may be conferred normative powers more or less explicitly in their mandates. Mandates take the form of a specific instrument (a resolution) adopted by a constituting UN body. Mandates may rest on one or more resolutions, typically when the mandate is renewed or extended and new functions are conferred. This article studies the mandates conferred to 69 IMs in a slightly larger (78) number of resolutions (Appendix A). Such mandates provide the starting-point for the charting of IMs’ normative powers. It must be noted that the broader question of whether a mandate confers a power which the constituting entity is not entitled to confer is not studied in this article. 10 Constituting entities are diverse. The UN Security Council would be entitled to confer powers that the Human Rights Council would not. Differences in the scope of powers that can be legally conferred may also stem from whether a concerned State has given its consent to the IM or not. The establishment of an IM as such does not require such consent, but the performance of certain functions (e.g. in-country visits) requires either consent or an overriding authorisation (e.g. the UN Security Council’s powers acting under Article VII of the UN Charter). This set of issues is acknowledged here but the focus of the article is elsewhere, namely on charting the normative powers conferred in the mandates and/or exercised in the practice of IMs.

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10 On the general treatment of the question of delegation of powers, see Dan Sarooshi, The United Nations and the Development of Collective Security: The Delegation by the UN Security Council of its Chapter VII Powers (1999). The issue was particularly debated when the UN Security Council created the first International Tribunal in the early 1990s, see Gaetano Arrangio-Ruiz, On the Security Council’s “Law-Making”, 83 Rivista di Diritto Internazionale (2000), 722; see also Susan Lamb, Legal Limits to United Nations Security Council Powers, in: Guy S. Goodwin-Gill & Stefan Talmon (eds.), The reality of international law: essays in honour of Ian Brownlie (1999), 363. On the specific context of Investigative Mechanisms and lack of consent by the parties to be investigated, see Rob Grace, ‘On the Hybrid Nature of Monitoring, Reporting, and Fact-Finding Missions’, in: Rob Grace and Claude Bruderlein, above n.7, 81, 87.
9. Even though IMs do not possess normative powers akin to those of international judicial bodies, the expansion of such powers has been affirmed in various scholarly works. However, a systematic analysis of the overall phenomenon and its evolution over time has not yet been attempted. A precondition for such an endeavour is the construction of a conceptual framework enabling analysis and comparability across the mandates and reports of all 69 IMs as well as over time. The next section introduces the analytical framework proposed and applied in this article.

II.B. Mapping normative powers

10. In order to chart the nature, extent and evolution over time of the normative powers conferred on and exercised by IMs, it is first necessary to clarify what are such powers. This, in turn, requires a systematic examination of their mandates, constitutive instruments and legal bases for each mission. For a broad dataset of 69 IMs between 1963 and 2020 (Appendix A), such pattern induction exercise must be guided by preliminary criteria which are projected into the data. The selection of these criteria is intended to cover the grey area investigated in this article.

11. The article relies on three broad types of powers relating, respectively, to the establishment of facts, the assessment of primary norms, and determinations at the level of secondary norms, to guide the more granular survey of the dataset. The distinction between “primary” and “secondary” norms, widely used in the law of State responsibility, refers here to the intuitive categories of norms prescribing or prohibiting certain conducts and norms defining legal consequences in case a norm of conduct is not observed. Secondary norms may cover matters relating to actual consequences (forms of reparation) but also to process, broadly understood to include not only interest to act, justiciable and procedural dimensions, but also matters relating to the powers of a prosecutorial body (e.g. jurisdiction). Such broader understanding of secondary norms is useful to capture the connections between the accountability strategies organized at the international level through IMs and domestic prosecutorial bodies. These preliminary criteria or “types of powers” are sufficiently precise to “guide” the pattern induction effort and sufficiently broad not to pre-determine its findings. The induction effort led to the identification of sub-types of powers within each type. Such sub-types were extracted from a

11 See above n.1.
12 See UN GA resolution 46/59, December 9, 1991, para.25.
careful survey of the mandates and the reports so as to encompass in the induction effort both the conferral instruments and the actual practice of IMs. Finally, for analytical purposes, these sub-types were organized in order of increasing reach and scope, within each cluster. The latter organization is useful to assess whether there has been an expansion of the normative powers of IMs over time.

12. On the basis of this methodology, it is possible to identify three macro types of normative powers, each with its scale of sub-types. This are summarised in Figure 1:

13. This cartography can be applied to provide an initial descriptive overview of the normative powers expressly conferred on IMs in their mandates. Appendix B of this article presents the results of this initial analysis. In all cases, powers fall short of the outright conferral of the power to characterize conduct as in breach of a primary norm and derive the ensuing legal consequences in a binding manner. This is beyond the “grey area”. As for basic powers about facts, whereas sub-type A1 power is shared by all IMs, mandates go beyond the formulation of that basic mission and structure factual powers in more specific ways, discussed briefly in this part and in more detail in Part III. As all models, this cartography is a conceptual construct to help specify, analyze and compare IMs’ powers across entities and over time.

14. Under the first type of normative power, namely powers relating to facts (A), we can identify three distinct sub-types of powers: (A1) the power to gather facts about a situation; (A2) the power to gather facts about a situation which has been pre-characterized in (A2a) a non-legal or (A2b) a legal manner in the mandate of the situation; and (A3) the power to gather facts about not just a situation but about specific conducts with a legal pre-characterization.
Sub-type (A1) includes mandates that confer on the relevant IM the power to “ascertain”,13 “inquire”,14 “examine”,15 “observe”,16 “gather information”17 or “assess”18 the human rights situation, or on its “evolution”,19 in a specific country or area. A good illustration is provided by the Ad Hoc Working Group set up in 1975 by the Commission on Human Rights to “inquire into the present situation of human rights in Chile”.20 By contrast, sub-type (A2) comprises mandates that recognize the power to investigate specific events pre-characterized in evaluative but non-legal terms, such as “massacres”21 or “assaults”22 (A2a), or in clearly legal terms, such as “grave breaches of the Geneva Conventions and other violations of international humanitarian

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13 UN Fact-finding mission to South Viet-Nam to ascertain the facts of the situation in that country as regards relations between the Government of the Republic of Viet-Nam and the Viet-Namese Buddhist community, South Vietnam, UNGA 1234th meeting, A/PV.1239.
14 Ad Hoc Working Group to inquire into the situation of human rights in Chile, CHR Res. 8 (XXXI) (27 February 1977) in E/5635, at 66-67, para.1.
15 SC Commission concerning Israeli settlements in Arab territories occupied since 1967, including Jerusalem, SC resolutions 446 (1979) of 22 March 1979, para.4.
16 Mission to Cuba to observe the human rights situation, Commission on Human Rights decision 1998/106 of 10 March 1988, in E/1988/12, at 168.
17 OHCHR mission to Western Sahara and refugee camps in Tindouf, 2006.
18 High-level Mission on the situation of human rights in Darfur, HRC decision S-4/101 of 13 December 2006 (in A/62/53, at 87); UN Commission on Human Rights in South Sudan, HRC resolution 31/20 of 23 March 2016.
19 Mission to Guatemala, Commission on Human Rights resolution 1997/51 of 15 April 1997 (in E/1997/23, at 167). Similarly, see OHCHR Fact-finding mission on the situation of human rights in Mali, HRC resolution 22/18 of 21 March 2013 (in A/68/53, at 59-61).
20 Ad Hoc Working Group to inquire into the situation of human rights in Chile, CHR Res. 8 (XXXI) (27 February 1977) in E/5635, at 66-67, para.1.
21 CoI on the reported massacres in Mozambique, UNGA 3114 (XXVIII) (12 December 1973), at 98; Preparatory fact-finding mission to Burundi to investigate the coup d’état of 21 October 1993, the assassination of President Melchior Ndadaye, and the subsequent massacres, Secretary-General at the request of the Government of Burundi, UN SC S/26757 (16 November 1993) and International CoI for Burundi, UN SC resolution 1012 (1995) of 28 August 1995; Joint investigative mission to investigate allegations of massacres and other issues affecting human rights which arise from the situation prevailing in Eastern Zaire (now Democratic Republic of the Congo) since September 1996, Commission on Human Rights resolutions 1997/58 of 15 April 1997 (in E/CN.4/1997/150, at 194-198).
22 High-level fact-finding mission to Beit Hanoun, HRC resolution S-3/1 of 15 November 2006 (in A/62/53, at 85-86, para.7).
law”\(^\text{23}\) or “human rights violations”.\(^\text{24}\) An example is provided by the power conferred in 2006 to the International CoI on East Timor “to gather and compile systematically information on possible violations of human rights and acts which may constitute breaches of international humanitarian law committed in East Timor since the announcement in January 1999 of the vote”\(^\text{25}\).

15. Mandates with sub-type (A3) powers go a step further and confer the power to investigate specific conducts and, thus, to identify those responsible. One of the first clear examples of this sub-type of power can be found in the 2004 Security Council resolution establishing the International CoI on Darfur, vested with the power “to investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable”\(^\text{26}\).

16. Under the second type of normative powers, namely those related to primary norms (B), we can identify three further sub-types of normative powers. The first, which we shall call sub-type (B4), is the power to take a position on enabling (normative) conditions, such as (B4a) on the very possibility for armed non-state actors (ANSAs) to be bound by and hence capable of formally breaching a norm of international law or (B4b) the determination of the required standard of proof. These two issues are the main illustrations that emerge in the mandates of what could more generally be called “threshold matters” for (B4a) and “standards” or “tests” for (B4b). A much more

\(^{23}\) The first example can be found in the mandate of the Commission of experts to investigate situation in the former Yugoslavia, Yugoslavia, UNSC Res.780 (6 October 1992), para.2.

\(^{24}\) The first example can be found in the mandate of the Fact-finding mission to investigate human rights violations in Abkhazia, Republic of Georgia, UNSG (S/26795), SC resolution 876 (1993) of 19 October 1993.

\(^{25}\) Commission on Human Rights resolution S-4/1 of 27 September 1999 (in E/1999/23/Add.1, at 4-8), International CoI on East Timor, para.6.

\(^{26}\) SC resolution 1564 (2004) of 18 September 2004, International CoI on Darfur. Previously, see also Panel of Inquiry on Liberia, Statement by President of the SC S/25918 of 9 June 1993; SC resolution 935 (1994) of 1 July 1994, Group of experts for Rwanda; GA Res 52/135 of 12 December 1998, Group of experts for Cambodia; Commission on Human Rights resolution S-5/1 of 19 October 2000 (in E/2000/112, at 4-7), CoI to gather and compile information on violations of human rights and acts which constitute grave breaches of international humanitarian law by the Israeli occupying Power in the occupied Palestinian territories.
granular analysis focusing on one or a few case-studies would normally be capable of identifying several other issues falling under (B4a) or (B4b), some possibly requiring the introduction of one or more new categories (c, d, etc). The second sub-type, called sub-type (B5), concerns the power to define or interpret the specific content of a relevant primary norm. Finally, sub-type (B6) is the power to characterize a certain conduct as a specific violation, much like an international tribunal would do, but without binding effect. Illustrations of sub-type (B4) powers include mandates that confer the power to prepare a report on “violations and abuses of human rights” committed by all parties, including ANSAs (B4a), such as those of the OHCHR Investigation mission to Iraq, established in 2014 “to investigate alleged violations and abuses of international human rights law committed by the so-called Islamic State in Iraq and the Levant and associated terrorist groups”, 27 or the OHCHR Fact-finding mission set up with the task “to prepare a report on violations and abuses of human rights and atrocities committed by the terrorist group Boko Haram in the States affected by such acts with a view towards accountability”. 28 Under sub-type (B4), we can also include recent mandates that specify the standards to be followed during the investigation or in the preparation of criminal files (B4b). In this case, mandates typically clarify that the relevant IM has the power to “prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards” 29 or determine facts in accordance with

27 OHCHR Investigation mission to Iraq, HRC resolution S-22/1 of 1 September 2014 (in A/69/53/Add.1, at 7-9), OHCHR Investigation mission to Iraq. Previously, see Panel of Inquiry on Liberia, Statement by President of the SC S/25918 of 9 June 1993; Col on Syria, HRC resolution 21/26 of 28 September 2012 (in A/67/53/Add.1, at 67-70); International Col to investigate events in the Central African Republic since 1 January 2013, SC Res 2127 (2013) of 5 December 2013, 3; OHCHR investigation on Sri-Lanka, HRC resolution 25/1 of 9 April 2014 (in A/69/53, at 14-17),

28 OHCHR Fact-finding mission to investigate atrocities committed by the terrorist group Boko Haram and its effects on human rights in the affected States [Cameroon, Chad, the Niger, Nigeria], HRC resolution S-23/1 of 1 April 2015 (in A/70/53, at 149-151).

29 International, Impartial and Independent Mechanism (IIIM) to assist in the Investigation and Prosecution of those Responsible for the Most Serious Crimes under International Law committed in the Syrian Arab Republic since March 2011 (“IIIM for Syria”), GA Res 71/248 of 21 December 2016, Terms of Reference in A/71/755 (Annex). Only one additional mandate includes this specific normative power: Independent Investigative Mechanism (IIM) for Myanmar, HRC resolution 39/2 of 27 September 2018.
“international law standards.” Moving to sub-type (B5) powers, they can be illustrated by mandates that confer the broad power to investigate assess or “analyse evidence of violations of international humanitarian law and human rights violations and abuses,” leaving the mechanism with a broad range of interpretative powers with regard to primary norms. This type of normative power is implicitly but clearly conferred on the mechanism and rarely spelt out in the mandate. Finally, sub-type (B6) powers are found in mandates that empower the relevant IM to characterize a certain conduct as a specific violation, but without binding effect. Several UN mandates recognize sub-type (B6) powers, which normally go hand-in-hand with the conferral of the power to gather facts about not just a situation but about specific conducts with a legal pre-characterization (sub-type (A3)). One of the first illustrations is the 2000 mandate conferred by the Commission on Human Rights which established the CoI “to gather and compile information on violations of human rights and acts which constitute grave breaches of international humanitarian law by the Israeli occupying Power in the occupied Palestinian territories.”

17. Under the third type of normative power, namely the powers relating to secondary norms (C), it is possible to distinguish three further sub-types of powers: (C7) after having characterized the conduct of a collective subject, such as a state or ANSAs, the relevant mechanism has the power to make recommendations of (C7a) general or (C7b) specific nature; (C8) after having characterized the conduct of an individual as a violation or abuse of the law, the IM has the power to make recommendations of (C8a) general or (C8b) specific nature; (C9) after having characterized the conduct as a violation, the
IM can derive, in legal terms, the consequences of a breach of the law, although in a non-binding manner. Regarding sub-type (C7), several mandates task the relevant IM with the mandate to investigate a situation of a collective entity and make recommendations of a general nature (C7a). One of the first examples of this type of normative power is found in the mandate of the High-level fact-finding mission to Beit Hanoun, charged with the following tasks: to “(a) assess the situation of victims; (b) address the needs of survivors; and (c) make recommendations on ways and means to protect Palestinian civilians against any further Israeli assaults”.33 Similarly, the UN Independent Investigation on Burundi was entrusted in 2015 with the power inter alia “to make recommendations on the improvement of the human rights situation and on technical assistance to support reconciliation and the implementation of the Arusha Agreement; […] To engage with the Burundian authorities and all other relevant stakeholders […] in particular with a view to help the State to fulfil its human rights obligations, to ensure accountability for human rights violations and abuses, including by identifying alleged perpetrators, to adopt appropriate transitional justice measures and to maintain the spirit of the Arusha Agreement”.34 Sub-type (C8) powers appear in mandates that generally (C8a) recognize the powers 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 by identifying those responsible. A clear illustration is the 2011 mandate of the International CoI on Libya, which conferred the power “to identify those responsible, to make recommendations, in particular, on accountability measures, all with a view to ensuring that those individuals responsible are held accountable”.35 Many UN

33 High-level fact-finding mission to Beit Hanoun, HRC resolution S-3/1 of 15 November 2006 (in A/62/53, at 85-86, para.7). Previously, there are also very few other examples: Panel of Inquiry on Liberia, Statement by President of the Security Council S/25918 of 9 June 1993; CoI to gather and compile information on violations of human rights and acts which constitute grave breaches of international humanitarian law by the Israeli occupying Power in the occupied Palestinian territories, Commission on Human Rights resolution S-5/1 of 19 October 2000 (in E/2000/112, at 4-7); CoI on Lebanon, Human Rights Council resolution S-2/1 of 11 August 2006 (in A/61/53, at 108-110).

34 UN Independent Investigation on Burundi, HRC resolution S-24/1 of 17 December 2015.

35 International CoI on Libya HRC resolutions S-15/1 of 25 February 2011 (in A/66/53, at 25-27) and 17/17 of 17 June 2011 (in A/66/53, at 170-171).
mandates recognize this power, which normally is conferred together with powers to gather facts about specific legally pre-characterized conduct (subtype A3) and to characterize a certain conduct as a specific violation, but without binding effect (subtype B6). Finally, subtype (C9) refers to the normative power to draw the consequences of a violation. Although there is no mandate expressly conferring this power, some come close by entrusting the mechanism with the power to “prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes”. In this example, the IM is given the power to assess some procedural and prosecutorial aspects emerging from their own assessment of a violation of a primary norm, but the conferral falls short of vesting in the IM the power to derive the specific legal consequence (punishment, reparation, etc.).

18. The analytical cartography of IMs’ normative powers described so far can be used not only to provide a static description of mandates (Appendix B) but, more interestingly, also a dynamic description of their evolution over the period between 1963 and 2020. The next section undertakes this analysis in order to identify major stepping-stones or step changes introduced by certain mandates. In turn, this analysis prepares the more complex survey of the practice of the 69 IMs in the dataset, which moves from a focus on “mandates” to a focus on actual “practice”, as embodied in the reports issued by the relevant IMs.

III. The development of normative powers

III.A. Mandates and IMs’ normative powers: from 1963 to 2020

19. The above framework can be used to investigate which mandates have introduced “step changes”, understood as an expansion of the normative powers granted to an IM as compared to previous ones, which subsequently consolidates a new baseline for future IMs, even when the process of consolidation presents some discontinuity. This is because some subsequent IMs may remain confined to a less advanced model even after more far-reaching mandates have been adopted for other contexts.

20. To avoid confusion, it is important to note that a step change does not necessarily mean to move from normative power of type A (over facts) to type

36 See above n.29.
B (over primary norms) to type C (over secondary norms). Although the move from IM mandates entirely confined to basic factual powers under type A to some measure of normative powers under types B and C is indeed a form of power expansion, the charting exercise must also be conducted at the more granular level of sub-types. Indeed, a step change may find expression only within type A through the addition of a sub-type power, e.g. the move from sub-type A1 (the power to gather facts about a situation) to A2 (the power to gather facts about the situation with a non-legal or legal pre-characterization in the mandate of the situation). However, step changes can also take place synchronously within more than one type. This is because stepping up powers under one type requires, or at least implies, stepping up powers under the other types.

21. With these considerations in mind, Figure 2 summarizes the results of applying the analytical framework to understand major step changes in the mandates of 69 IMs established between 1963 and 2020. Figure 2 is a summary of a much more granular analysis of the specific normative powers conferred by each mandate, which appears in Appendix B. Dark grey quadrants represent newly introduced normative powers, i.e. powers not conferred to any previous IM, whereas light grey quadrants represent powers previously conferred to IMs. The latter are included to better mark the trajectory and avoid the impression that new IMs have only the newly conferred power. But the step change is represented by dark gray quadrants only. More advanced sub-types (e.g. sub-types A3, B6 and C9) could potentially be considered to imply powers in less advanced sub-types, but Figure 2 does not depict such reasoning by implication. Both Figure 2 and its source (Appendix B) are rigorously limited to what is clearly stated in the mandate. Even so, the broad-brush trajectory from a sole focus on factual powers to a synchronous focus on two (A+B and A+C) and then all three types of powers emerge clearly, as does the move from less to more far-reaching sub-types of normative powers within each overall type.

22. More specifically, Figure 2 shows three important lines of development of IMs’ normative powers. First, as early as 1963, the mandate of the UN Fact-finding mission to South Viet-Nam conferred, for the first time, normative powers over facts (A), and, more specifically, the power to gather facts (sub-type A1). It recognized the power “to ascertain the facts of the situation

37 UN Fact-finding mission to South Viet-Nam, UNGA 1234th meeting, A/PV.1239 (4 October 1963) paras.170-174, at 18.
in that country as regards relations between the Government of the Republic of Viet-Nam and the Viet-Namese Buddhist community.” Between 1973 and 1992, we see an expansion of normative powers over facts, i.e. across sub-types within type A. In 1973, the mandate establishing the CoI on Mozambique, conferred the normative power to gather facts about the situation with non-legal pre-characterization of the situation (sub-type A2a), i.e. the power “to carry out an investigation of the reported atrocities”.\(^\text{38}\) In 1992, instead, the mandate establishing the Commission of experts (CoE) to investigate the situation in the former Yugoslavia included the power to gather facts about the situation with a legal pre-characterization in the mandate of the situation (sub-type A2b): the mandate clarified that the CoE had to provide “the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law (‘IHL’) committed in the territory of the former Yugoslavia”.\(^\text{39}\) This mandate also recognizes, for the first time, the normative power to gather facts about not just a situation but about specific conducts that may amount to specific crimes (sub-type A3).

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\(^{38}\) CoI on Mozambique, UNGA 3114 (XXVIII) (12 December 1973), at 98.

\(^{39}\) CoE to investigate situation in the former Yugoslavia, UNSC Res. 780 (6 October 1992), para.2.
23. The year 1992 constitutes a turning point in the history of mandates also regarding normative powers over primary norms (type B). The same mandate of the CoE to investigate the situation in the former Yugoslavia conferred the normative power to characterize a certain conduct as a specific violation (sub-type B6). With respect to this specific normative power, we notice that over time, mandates further clarified its wording (see Appendix B to track its increasing presence in mandates).

24. We can also locate in 1995 the first express conferral of normative powers relating to secondary norms (type C). In particular, the mandate of the International CoI for Burundi recognized the normative power to characterize the conduct of an individual as a violation/abuse and make general recommendations (sub-type C8a). It conferred for the first time the power “to recommend measures of a legal, political or administrative nature, as appropriate, after consultation with the Government of Burundi, and measures with regard to the bringing to justice of persons responsible for those acts”. Although the mandate establishing the Panel of Inquiry on Liberia (1993) used similar language, it did not clearly confer a sub-type C8a power. For this reason, we can consider the 1995 mandate of the International CoI for Burundi as the first clear conferral of this sub-type of normative power.

25. After 2000, mandates show an expansion of powers relating to secondary norms. The 2000 mandate of the CoI in the occupied Palestinian territories for the first time conferred the power to characterize the conduct of a collective subject (state or ANSA) and generally make recommendations (a combination of sub-types B6 and C7a). It tasked the CoI with the power to “gather and compile information on violations of human rights and acts which constitute grave breaches of international humanitarian law by the Israeli occupying Power in the occupied Palestinian territories and to provide the Commission with its conclusions and recommendations, with the aim of preventing the repetition of the recent human rights violations”. As for the

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40 International CoI for Burundi, SC resolution 1012 (1995) of 28 August 1995.
41 The mandate reads: “request the S-G to commence immediately a thorough and full investigation of the massacre, including any allegations as to the perpetrators whoever they may be”, see Panel of Inquiry on Liberia, Statement by President of the SC S/25918 of 9 June 1993. For this reason, in Appendix B it is considered and shown that implicitly this normative power was assigned to the Panel.
42 CoI to gather and compile information on violations of human rights and acts which constitute grave breaches of international humanitarian law by the Israeli occupying Power in the occupied Palestinian territories, Commission on Human Rights resolution S-5/1 of 19 October 2000 (in E/2000/112, at 4-7).
more advanced sub-type C9, it is only (sparingly) found in mandates adopted from 2016 onwards and, as noted earlier in this article, only to a partial extent. The IIIM for Syria received the normative power to “prepare files in order to facilitate and expedite fair and independent criminal proceedings [...] in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law.”

26. It is also noteworthy that the limited conferral of normative powers relating to primary norms (type B) in mandates adopted in the 1990s undergoes a significant expansion in those adopted after 2012. The latter increasingly address an aspect that had previously remained implicit, namely the power to take a position on enabling (normative) conditions, such as the status of ANSAs in international law (under sub-type B4a) or the standard of evidence to be adopted (under sub-type B4b). In 2012, the mandate of the CoI on the Syrian Arab Republic entrusted the Commission with the power to investigate “abuses and violations of international law, with a view to hold to account those responsible for violations and abuses, including those that may amount to crimes against humanity and war crimes”.

27. Despite the broad wording of the mandate, it clearly conferred on the CoI a specific power to take a stance on the threshold question of the status of ANSAs acting in Syria, assessing possible violations of human rights perpetrated by them (sub-type B4a). In 2016, the mandate of the IIIM for Syria combined the express normative power to decide the applicable legal standard (sub-type B4b), specifically to proceed “in accordance with international law standards”, with the aforementioned expansion of normative powers relating to secondary norms (sub-type C9), namely to “prepare files in order to facilitate and expedite fair and independent criminal proceedings [...]”.

43 IIIM for Syria, above n.29.
44 CoI on Syria, HRC resolution Human Rights Council resolution 21/26 of 28 September 2012 (in A/67/53/Add.1, at 67-70).
45 IIIM for Syria, above n.29, para.4. This normative power was also explicitly assigned to the IIM for Myanmar, above n.29, para.22.
a broad view of the overall evolution of IMs’ normative powers since 1963. However, in order to gain a more granular understanding of this phenomenon, it is necessary to move from the analysis of mandates to that of actual practice as embodied in over a hundred reports adopted by the 69 IMs studied here.

III.B. Patterns from practice

28. Certain discernable patterns can be inducted from the practice of IMs in relation to the exercise of normative powers, whether such powers are expressly conferred to them in their mandates or not. The following assessment of this practice is based on the application of the analytical framework introduced earlier (Figure 1) to a dataset including all 121 reports published since 1963 by the 69 IMs included in this study (Appendix A). Given the volume of the documentary basis, the analysis focuses on a subset of the “grey area” where normative powers are at play, namely powers relating to primary and secondary norms. This focus is justified by three main considerations. First, normative powers of type B and C are closer to the functions of international judicial bodies; in other words, they are the beating heart of what constitutes the “grey area”. Secondly, mandates are less specific when it comes to the nature and scope of type B and C powers, some of which have not been expressly conferred yet (sub-types B5, C7b and C8b) or only partially so (sub-type C9). Thirdly, in order to chart the exercise of not-expressly conferred powers, whether IMs deemed them implicit in their mandates or otherwise claim them in practice, a much deeper dive is required and therefore also a narrower focus.

29. Overall, two main patterns emerge from the analysis of the 121 reports from the perspective of type B and C powers, namely (a) the display of evaluative reasoning, related to primary norms; (b) the display of prosecutorial reasoning, with regard to secondary norms. The expressions of evaluative reasoning found in practice are diverse, but they all share a common core, the assessment of conduct in the light of a prescription/prohibition derived from international law. As for prosecutorial reasoning, again, despite significant diversity, IMs tend to go beyond establishing facts or evaluating conduct and seek to prepare the stage for next steps in the chain of accountability processes.

30. All in all, we see a clear expansion over time, which partly reflects powers expressly conferred in mandates and partly goes beyond them. Going
beyond does not mean acting beyond authority, as some of the powers exercised can be reasonably inferred from the relevant mandates. Yet, as noted earlier in this article, my purpose is not to evaluate or criticize a possible power grab by IM, but to only to chart the exercise of “grey area” normative powers as rigorously and comprehensively as possible. The analysis of practice both adds texture and granularity to the understanding of these normative powers and illustrates another way of using the analytical framework proposed in this article to analyze them.

III.B.i. Evaluative patterns
31. With regard to normative powers relating to primary norms (type B powers), there is substantial practice on the clarification of enabling conditions, such as threshold matters, standards and tests (sub-types B4a and B4b powers) as well as, to a lesser extent, regarding the interpretation and definition of specific terms relevant for the application of primary norms (sub-type B5 powers). In the next paragraphs, I review this practice focusing on the main examples that emerge from it, namely the application of human rights law to ANSAs, the determination of the standard of proof and the characterization of different types of armed groups. These are only some of the examples that could be derived from a survey of the dataset.

1. Sub-type B4a: ANSAs and human rights
32. One interesting feature of the power to clarify enabling conditions is that it is seldom explicitly conferred in mandates of those IMs which, in practice, do exercise it. Also, in those cases where the power is expressly recognized, IMs tend to further clarify it in order to align it with international legal criteria or language. An important example concerns the treatment of ANSAs in the IMs’ reports. The evaluation of whether an entity recognized as having legal personality under international law, bound by certain specific obligations, and therefore capable of violating such obligations, implies determinations regarding such personality, the applicability and content of certain primary norms, and the conditions for it to be formally “violated” or “breached”. Such determinations can be seen as “threshold” matters, in that it is only if an ANSA is deemed to have some measure of international legal personality that it can be potentially be bound by this or that specific primary norm, and hence also be capable of “violating it”. Determinations on threshold matters can be explicit in the reasoning of an IM or, more frequently, implicit in the reference to
international legal norms as applicable to them or in the use of certain terminology (e.g. “violation” or “breach” instead of “abuse”).

33. A discernible pattern in the display of evaluative reasoning by IMs concerns the selection of terms to express the inconsistency of ANSAs’ behaviour with international human rights law (“IHRL”). In few reports, approximately only one tenth of them, such inconsistency is designated with the term “abuses”, whereas the term “violations” is reserved to inconsistency between the conduct of States and IHRL. 46 In all these cases, the mandates of the relevant mechanisms conferred the normative power to gather facts or investigate all alleged violations and “abuses” of international human rights, 47 similarly to few other mandates. 48 For example, the CoI of Burundi used, in its 2017 report, the terminology of “violations” to refer to the conduct of States and that of

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46 See Reports of Investigative Mechanisms on Burundi, A/HRC/36/54, 11 August 2017; Boko Haram, A/HRC/30/67, 9 December 2015; Investigation by the OHCHR on Libya, A/HRC/31/47, 15 February 2016; on Syria, A/HRC/19/69, 22 February 2012, A/HRC/33/55, 11 August 2016; FFM on Myanmar A/HRC/39/CRP.2, 17 September 2018.

47 Col on human rights in Burundi, HRC resolution 33/24 of 30 September 2016, renewed by resolutions 36/19 of 29 September 2017, 39/14 of 28 September 2018, 39/14 of 27 September 2019, and also UN Independent Investigation on Burundi, HRC resolution S-24/1 of 17 December 2015; OHCHR Fact-finding mission to investigate atrocities committed by the terrorist group Boko Haram and its effects on human rights in the affected States [Cameroon, Chad, the Niger, Nigeria], HRC resolution S-23/1 of 1 April 2015 (in A/70/53, at 149-151); OHCHR Investigation mission to Libya, Human Rights Council resolution 28/30 of 27 March 2015 (in A/70/53, at 128-132); CoI on Syria, HRC resolution 21/26 of 28 September 2012 (in A/67/53/Add.1, at 67-70), resolution 25/23 of 28 March 2014 (in A/69/53, at 190-194), resolution 31/17 of 23 March 2016, resolution S-25/1 of 21 October 2016; Independent international FFM on Myanmar, Human Rights Council resolution 34/22 of 24 March 2017, decision 36/115 of 29 September 2017 and IIM for Myanmar, above n.29.

48 UN Commission on Human Rights in South Sudan, HRC resolution S-26/1 of 14 December 2016, resolution 34/25 of 24 March 2017, renewed by resolution 34/25 of 24 March 2017, 37/31 of 23 March 2018, 40/19 (22 March 2019), resolution 43/27 of 22 June 2020; Group of Eminent Experts on Yemen, HRC resolution 36/31 of 29 September 2017; mandate renewed by resolutions 39/16, 42/2; Team of international experts on the situation in Kasai (Democratic Republic of the Congo), HRC resolution 35/33 of 23 June 2017; IIIM for Syria, above n.29; OHCHR Investigation mission to Iraq, HRC resolution S-22/1 of 1 September 2014 (in A/69/53/Add.1, at 7-9); OHCHR investigation on Sri-Lanka, HRC resolution 25/1 of 9 April 2014 (in A/69/53, at 14-17); International CoI to investigate events in the Central African Republic since 1 January 2013, SC resolution 2127 (2013) of 5 December 2013.
“abuses” for ANSAs. Similarly, the report of the OHCHR mission on Libya covered “patterns of violations and abuses”, applying the term “abuse” to conduct of non-State actors, including armed groups, tribal armed groups as well as smugglers. The same applies to the report on Boko Haram, which referred to human rights “abuses” committed by this ANSA, without expressly identifying the violated rights. In such cases, ANSAs are “simply being appealed to on a moral plane”. By contrast, a larger number of reports (over half of them) refer to inconsistency between ANSAs conduct and IHRL as “violations”. For example, the OHCHR assessment mission and the Commission on Human Rights in South Sudan used the term “violation” when describing inconsistent conduct of both States and ANSAs. Another example is provided by the practice of the CoI on Syria, which, again, uses the term “violation” for both ANSAs and the State. The CoI on Gaza reported in June 2015 “serious violations” of IHL and IHRL by Israel and Palestinian armed groups. Importantly, this analysis also shows that the term “violation” being used to characterize the conduct of ANSAs even in cases where mandates refer to the term “abuse”, as in the

49 Report of the Col on Burundi, A/HRC/36/54, 11 August 2017, paras.29-64.
50 Report of the Investigation by the OHCHR on Libya, A/HRC/31/47, 15 February 2016, Chapter V, at 20-74.
51 Ibid., at 74-78, in particular see para.308.
52 Report on Boko Haram, A/HRC/30/67, 9 December 2015, paras.20-52.
53 Andrew Clapham, Human rights obligations for non-state actors: where are we now?, in: Fannie Lafontaine and François Larocque (eds.), Doing Peace the Rights Way (2019), 18.
54 See, for instance, Reports of the Investigative Mechanisms on: Iraq, A/HRC/28/18, 27 March 2015; 2014 Gaza Conflict, A/HRC/29/52 5 June 2015, and Gaza, A/HRC/12/48, 25 September 2009; CAR, S/2014/928, 22 December 2014, S/2014/373, 26 June 2014 and A/HRC/24/59, 12 September 2013; Syria, A/HRC/19/69, 22 February 2012; A/HRC/27/60, 13 August 2014; and, more recently, A/HRC/43/57, 28 January 2020; Mali, A/HRC/23/57, 26 June 2013; Cote d’Ivoire, A/HRC/17/48, 6 June 2011; Secretary-General’s Panel of Experts on Accountability in Sri Lanka, 31 March 2011; South Sudan, A/HRC/31/49, 22 April 2016, A/HRC/31/CRP.6, 10 March 2016, A/HRC/37/71, 13 March 2018; A/HRC/43/56, 31 January 2020; Libya, A/HRC/19/68, 2 March 2012, and A/HRC/17/44, 12 January 2012; OHCHR investigation on Sri-Lanka, A/HRC/30/CRP.2, 16 September 2015.
55 Most recently, see Report of the Col on South Sudan, A/HRC/43/56, 31 January 2020.
56 See, for instance, Reports of the Col on Syria, the first, A/HRC/19/69, 22 February 2012, and the most recent, A/HRC/43/57, 28 January 2020.
57 Report of the Col on the 2014 Gaza Conflict, 24 June 2015, A/HRC/29/52, para.74.
case of mandates of the CoIs on Syria, Iraq and South Sudan.\textsuperscript{58} Thus, practice goes beyond at least the terminological scope of the mandate and, in doing so, it implicitly makes threshold determinations as to the status and obligations of ANSAs under international law.

34. Such implicit determinations can also be illustrated by reference to the specific grounds for considering ANSAs capable of committing violations of human rights. Such grounds are never clarified in IMs mandates. In practice, however, IMs derive ANSAs’ human rights obligations from three main bases, namely: (i) ANSAs’ exercise of \textit{de facto} control over a territory, when it affects or not the population; (ii) peremptory norms, treaty law and customary law; and (iii) the commitments undertaken by the armed group itself. The exercise of \textit{de facto} control over the territory or over persons constitutes the main ground for asserting ANSAs’ responsibility under IHRL in IMs’ reports.\textsuperscript{59} Most reports in which this “test” was applied used the terminology of IHRL “violations” rather than “abuses” for ANSAs. There are however slight variations in how the test was formulated, and, consequently applied. The most common formulation reads as follows: “where non-State groups exercise \textit{de facto} control over territory, they must respect fundamental human rights of persons in that territory”.\textsuperscript{60} Other reports refer to ANSAs’ conduct affecting the human rights of “persons under their control,”\textsuperscript{61} particularly in cases of torture.\textsuperscript{62}

\textsuperscript{58} Reports of the Investigative Mechanisms on Syria, A/HRC/19/69, 22 February 2012, A/HRC/27/60, 13 August 2014, A/HRC/43/57, 28 January 2020; and Iraq, A/HRC/28/18, 27 March 2015; South Sudan, A/HRC/31/49, 22 April 2016, A/HRC/31/CRP.6, 10 March 2016, A/HRC/37/71, 13 March 2018.

\textsuperscript{59} See for instance, Reports of IMs on: South Sudan, A/HRC/31/49, 22 April 2016, A/HRC/31/CRP.6, 10 March 2016, A/HRC/34/63, 6 March 2017 and A/HRC/37/71, 13 March 2018; Mali, A/HRC/23/57, 26 June 2013; Syria, A/HRC/18/53, 15 September 2011; Libya, A/HRC/19/68, 28 January 2014, A/HRC/19/68, 2 March 2012 and A/HRC/17/44, 12 January 2012; Sri Lanka Panel of Experts, 31 March 2011; Israel/Palestine, A/HRC/15/50, 23 September 2010.

\textsuperscript{60} See for instance, Reports of IMs on Libya, A/HRC/17/44, 12 January 2012, para.62; see also Gaza, A/HRC/29/CRP.4, 24 June 2015, para.45; with the same wording, see also FFM on Myanmar A/HRC/39/CRP.2,17 September 2018, paras.49 and 326; Sri Lanka Panel of Experts, 31 March 2011, para.188; CAR, S/2014/928, 22 December 2014, para.107; Iraq, A/HRC/28/18, 27 March 2015, para.48.

\textsuperscript{61} Reports of the CoI on Gaza, A/HRC/29/CRP.4, 24 June 2015, para.45; South Sudan, A/HRC/31/CRP.6,10 March 2016, para.34; South Sudan, A/HRC/27/CRP.2, 23 February 2018, para.109.

\textsuperscript{62} Reports of the CoI on South Sudan, A/HRC/37/CRP.2, 28 February 2018, paras.109-120.
Peremptory norms, treaty and customary law constitute today a fairly common ground to assess ANSAs’ obligations under IHRL. The CoI on Syria has consistently identified in its reports IHRL “violations” committed by ANSAs and requested that they respect IHRL and international law. In the earlier reports, the Commission emphasised that ANSAs must be bound by peremptory international law (jus cogens) and by the fundamental human rights under customary international law where they exercise de facto control, such as in Eastern Aleppo city. Moreover, the Commission recommended that ANSAs comply with customary international law, and that all warring parties comply with IHRL and IHL. In 2013 and 2014, the CoI on Syria reported on IHRL violations perpetrated by ANSAs, such as violations of children’s rights by reference to the Optional Protocol to the Convention on the Rights of the Child, which by its terms applies to non-State actors. The existence of a direct undertaking by an ANSA to implement human rights has also been deemed a basis for obligation. For example, the report of the mission

63 See, for instance, Reports of the CoI on Syria, A/HRC/19/69, 22 February 2012, para.110; A/HRC/27/60, 13 August 2014, para.95; A/HRC/37/72, 1 February 2018, at 1 and para.81; A/HRC/43/57, 28 January 2020, para.102.

64 See, for instance, Reports of the CoI on Syria, A/HRC/31/68, 22 February 2016, para.157; A/HRC/33/55, 11 August 2016, para.142; A/HRC/30/48, 13 August 2015, paras.178 and 180; A/HRC/28/69, 5 February 2015, para.143; A/HRC/27/60, 13 August 2014, paras.142 and 144.

65 See, for instance, Reports of the CoI on Syria, A/HRC/19/69, 22 February 2012, para.106; see also FFM on Myanmar, A/HRC/39/CRP.2, 17 September 2018, para.49.

66 See, for instance, Reports of the CoI on Syria, A/HRC/34/64, 2 February 2017, Annex I, para.5; A/HRC/21/50, 16 August 2012, Annex II, para.10.

67 Report of the CoI on Syria, A/HRC/22/59, 5 February 2013, para.85; A/HRC/36/55, 8 August 2017, para.89.

68 See, for instance, Report of the CoI on Syria, A/HRC/22/59, 5 February 2013, para.177(a); A/HRC/27/60, 13 August 2014, para.142; A/HRC/30/48, 13 August 2015, para.180; A/HRC/31/68, 22 February 2016, para.157; A/HRC/33/55, 11 August 2016, para.142; A/HRC/34/64, 2 February 2017, para.106(a); A/HRC/36/55, 8 August 2017, para.89(a). Recommendations have been addressed to “all parties” to the conflict also in Report of the CoI on Syria, A/HRC/33/55, 11 August 2016, para.140; A/HRC/31/68, 22 February 2016, para.155; A/HRC/30/48, 13 August 2015, para.178; A/HRC/28/69, 5 February 2015, para.143; A/HRC/27/60, 13 August 2014, para.140.

69 Report of the CoI on Syria, A/HRC/27/60, 13 August 2014, para.92, see also paras.90-97. See also A/HRC/24/46, 16 August 2013, paras.106-110; A/HRC/23/58, 18 July 2013, paras.96-102.
on the Occupied Palestinian Territory noted that Hamas “is determined to […] promote the […] respect for human rights”.70

2. Sub-type B4b: Standard of proof

35. Another discernible pattern in how IMs display normative powers on threshold matters concerns the determination of the standard of proof. As other threshold matters, standards of proof are almost never clarified in the mandates, with very few recent exceptions.71 Yet, between 1963 and 2020, the practice of IMs on this matter has moved from either silence or reference to *ad hoc* non-technical categories to an increasingly legalised and formal definition of the standard, with convergence of methodology.

36. The first explanation of the standard of proof can be found in the 1963 UN Fact-finding mission to South Viet-Nam, which referred to “ample” and “convincing proof”.72 Despite its rather informal nature, such reference is remarkable in an early IM. The 1974 report of the CoI on Mozambique made no clear reference to the standard of proof, although it expressly rejected the use of second-hand evidence.73 Almost two decades later, the 1991 Commission on the Truth for El Salvador specifically described its working methodology and standards of proof (in the report’s terms, “degrees of certainty”).74 The 1992 Commission of experts to investigate the situation in the former Yugoslavia referred, instead, to a “reasonable degree of certainty”75 and to a “no doubt” standard in examining the available evidence.76 The standard implied a balance of probabilities or reasonableness criterion, although an overarching standard was not explicitly laid down. The Commission used

70 Report of the CoI on in the Occupied Palestinian Territory, A/HRC/29/CRP.4, 24 June 2015, para.45.
71 See IIIM for Syria, above n.29; IIM for Myanmar, above n.29.
72 Report of the UN FFM to South Viet-Nam, A/5630, 7 December 1963, paras.22 and 15 respectively.
73 Report of the CoI on Mozambique, A/ 9621, 22 November 1974, para.113.
74 UN Commission on the Truth for El Salvador, From Madness to Hope: The 12-Year War in El Salvador: Report of the Commission on the Truth for El Salvador, (15 March 1993), at 24 (under methodology).
75 Report of the Col on the former Yugoslavia 1992, S/1994/674 (27 May 1994), para.209, referring also to “prima facie case”, paras.208-209 (emphases added).
76 Ibid., paras.109, 290, 295, 315. See also Preliminary Report of the Col on the CAR, S/2014/373, 26 June 2014, para.108; on the Occupied Palestinian territories, E/CN.4/2001/121, 16 March 2001, paras.11, 40; Report of the Secretary-General’s Investigative Team in the DRC, S/1998/581, 29 June 1998, para.71.
wording such as “reasonable to conclude”, 77 “reasonable to presume”, 78 or a “reasonable degree of certainty”. 79 A decade later, the 2005 report of the CoI on Darfur clarified that “the most appropriate standard was that requiring a reliable body of material consistent with other verified circumstances, which tends to show that a person may reasonably be suspected of being involved in the commission of a crime”. 80

37. More recently, this initial divergence has subsided, with IMs more deliberately following a common approach based on the “reasonable-grounds” standard. Importantly, the majority of the mechanisms tend to adopt the same definition of “reasonable grounds to believe”, 81 explaining that it entails

77 Ibid., paras.201-202.
78 Ibid., para.205.
79 Ibid., para.209. See also Report of the Secretary-General’s Investigative Team in the DRC, S/1998/581, 29 June 1998, para.76.
80 Report of the CoI on Darfur, S/2005/60, 1 February 2005, para.15 (emphasis added). See also Reports IMs on: Mapping Exercise on DRC between March 1993 and June 2003, August 2010, para.7 (hereinafter “DRC Mapping Report”); on Syria, A/HRC/S- 17/2/Add.1, 23 November 2011, para.5, but see also at 1, paras.92, 94; on Timor-Leste, 2 October 2006, para.12. As an exception, see Report of the SG’s Panel of Inquiry on the 31 May 2010 Flotilla Incident, September 2011, para.125 (assessment based on “satisfaction” of the Palmer Commission).
81 Reports of IMs on: on Myanmar, A/HRC/42/CRP.3, 5 August 2019, paras.6, 11, 17, 49, 61, 82, 100, 102, 105, 128, 129, 133, 136, 137, 139-141, 167, 171, 174, 180; on the protests in the Occupied Palestinian Territory, A/HRC/40/CRP.2, 18 March 2019, paras.16-24; A/HRC/29/CRP.4, 24 June 2015, para.19; on Yemen, A/HRC/42/17, 9 August 2019, para.5; see also A/HRC/39/43, 17 August 2018, para.10; on South Sudan, A/HRC/37/71, 13 March 2018, para.11; see also A/HRC/40/69, 18 February 2019, para.11; A/HRC/43/56, 31 January 2020, para.11; on Iraq in the light of abuses committed by ISIS and associated groups, A/HRC/28/18, 27 March 2015, para.16, 23, 44, 50, 60, 65; on Sri Lanka, A/HRC/30/61 28 September 2015, paras.24, 25, 32-37, 41, 42, 48-55; on Eritrea, A/HRC/29/42, 4 June 2015, para.21; see also A/HRC/32/47, 9 May 2016, para.13; on the Democratic People’s Republic of Korea, A/HRC/25/CRP.1, 7 February 2014, para.22; on the CAR, S/2014/373, 26 June 2014, para.17; on the CAR, S/2014/928, 22 December 2014, para.16; on Côte d’Ivoire, A/HRC/17/48, 1 July 2011, para.118; on Syria, A/HRC/19/69, 22 February 2012, paras.10, 87, 100; A/HRC/21/50, 16 August 2012, para.11; A/HRC/22/59, 5 February 2013, para.10; A/HRC/23/58, 18 July 2013, para.9; A/HRC/24/46, 16 August 2013, para.10; A/HRC/25/65, 12 February 2014, para.6; A/HRC/27/60, 13 August 2014, para.6; A/HRC/28/69, 5 February 2015, para.100; A/HRC/30/48, 13 August 2015, para.6; A/HRC/31/68, 11 February 2016, para.6; A/HRC/33/55, 11 August 2016, para.6; A/HRC/34/64, 2 February 2017, para.7; A/HRC/36/55, 8 August 2017, para.5; A/HRC/37/72, 1 February 2018, para.5; A/HRC/39/65, 9 August 2018,
the collection of “a body of reliable and consistent information on the basis of which a reasonable and ordinarily prudent person would have reason to believe that an incident or pattern of conduct had occurred.” 82 The CoI on Guinea, in its 2009 report, clarified what the phase of corroboration of information involves, namely that “the information received must be checked against independent sources, preferably eyewitness accounts, and independently verified evidence assembled to demonstrate that a person may reasonably be suspected of having participated in the commission of a crime.” 83 On this basis, the Commission, when it publicly named individuals purportedly involved in the massacre, articulated degrees of certainty in relation to those accused of being involved directly or indirectly in the perpetration of crimes. 84 Similarly, in its 2009 report, the CoI on Gaza relied on corroboration of fact and a general standard of “sufficient credible and reliable information” to justify its findings. 85

38. Significantly, the “beyond reasonable doubt” standard has found more and more place in the methodology of UN IMs. The first example is found in the report of the Ad Hoc Working Group to inquire into the situation of human rights in Chile. 86 More recently, there have been two important developments. In 2016, the UNGA established the IIIM for Syria. 87 This is the first time that an IM’s mandate specifically requires the preparation of case files following the necessary standard of proof with the aim to facilitate and expedite prospective, fair and independent criminal proceedings in national or

82 Reports of IMs on: Burundi, A/HRC/36/54, 11 August 2017, para.7; see also A/HRC/39/63, 8 August 2018, para.7; A/HRC/42/49, 6 August 2019, para.8; the Occupied Palestinian Territory, A/HRC/40/CRP.2, 18 March 2019, paras.16-17; on Myanmar, A/HRC/39/64, 12 September 2018, para.6; on Libya, A/HRC/31/CRP.3, 15 February 2016, para.11.
83 Guinea Report, para.22 (emphasis added); see also paras.152 and 165.
84 Ibid., paras.215-252.
85 Report of the FFM on the Gaza Conflict, A/HRC/12/48, 12 September 2009, para.24 and see references to this standard also in paras.465, 501, 509, 593, 721, 739, 775, 796, 918, 1007, 1348, 1372, 1635. On the phase of corroboration, see also Report of the detailed findings of the independent commission of inquiry established pursuant to HRC resolution S-21/1, A/HRC/29/CRP.4, 24 June 2015, para.19.
86 Report of the Ad Hoc Working Group on Chile, A/33/331, 25 October 1978, paras.309-345. See also para.166.
87 See IIIM for Syria, above n.29.
international courts. The Mechanism has thus “an explicit nexus to criminal investigations, prosecutions, proceedings and trials”, a “quasi-prosecutorial function”, that is instead outside the mandate of the CoI on Syria. It “must make its own assessment of the inferences to be drawn from the material collected by others, applying criminal law standards of proof.” Introducing evidence into court that has been obtained from a formally mandated entity operating in line with criminal law standards is clearly “advantageous in many national systems”. Extending this approach, in September 2018, the HRC established the IIM for Myanmar (also “IIMM”). Like the IIM for Syria, the IIMM has been vested with the mandate “to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011” and, in order to do so: “strategies will be developed on how to conduct investigations that would result in files meeting the high standards for criminal prosecution, while still being effective and efficient: essentially, situations whereby the evidence, if tested in fair and credible trials meeting international standards, would be capable of proving the guilt of the accused beyond a reasonable doubt.”

3. Sub-type B5: Interpreting terms relevant for the application of primary norms

Another manifestation of the display of normative powers by IM concerns the interpretation of terms relevant for the application of primary norms. As noted earlier, this normative power is never explicitly conferred in mandates. However, in practice, IMs have been naturally led to exercise it as part of their analysis of primary norms.

One noteworthy example is offered by the definition of a range of ANSAs. Neither the OHCHR guidance nor the mandates of IMs provide

88 Ibid., Operative Paragraph (“OP”), at 4.
89 Report of the Secretary–General, Implementation of the Resolution establishing the IIM to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, A/71/755, 19 January 2017, para.31-32 (hereinafter “UNSG IIM Report”).
90 Report of the IIM on Syria, A/73/295, 3 August 2018, para.60; see also Ibid., A/73/741, 13 February 2019, para.9.
91 Ibid., A/74/313, 22 August 2019, para.21.
92 IIM for Myanmar, above n.29.
93 Ibid., para.22.
94 See Report of the IIM for Myanmar, A/HRC/42/66, 7 August 2019, para.14 (see also para.15).
any specific definition of the term “ANSAs”. This is understandable, considering that a strict definition may constitute a serious limit to the mission in the implementation of its mandate, especially in light of the diversity of ANSAs with different characteristics, acting, at times, even in the same geographical area. For instance, in the context of Palestine, there are two main armed groups involved: the al-Aqsa Brigades, the armed group of Fatah, and the al-Qassam Brigades, the armed group of Hamas. ANSAs involved in the ongoing conflict in Syria include the Islamic State of Iraq and the Levant, the Syrian Democratic Forces, which has also affiliated groups, as well as terrorist groups. Such diversity is a common feature of IMs work. As noted by the CoI on Libya: “[i]t is apparent that armed groups are divided along various lines, such as tribal, or ideological, or by geographic affiliation. Some armed groups pursue specific political agendas, others operate as local security, while others might be characterised as being focused on criminal enterprises.” Yet, lack of characterization of this fluid reality may have significant consequences for the selection of the applicable primary norm, the determination of effective control, the attributability of the conduct to the State or even the characterization of the conflict (including as a condition for the definition of an international crime).

41. In this casuistic and complex context, IMs reports have been naturally led to exercise sub-type B5 interpretive powers, thereby providing important clarifications of ANSAs’ features, ranging from those with strong links to the State to those unconnected to it. Several classifications can be inferred from the many reports. First, the concept of pro-government militia is understood as armed groups acting alongside government forces in security and military operations. An example is provided by the Shabbiha in Syria, the main government militia which participated in operations against civilian protestors.

95 See OHCHR Report 2018 and OHCHR Report 2015.
96 Report of the UN FFM on the Gaza Conflict, A/HRC/12/48, 25 September 2009, para.215.
97 See, for instance, Report of the CoI on Syria, A/HRC/28/69, 5 February 2015, para.28.
98 See, for instance, Reports of the CoI on Syria, A/HRC/37/72, 1 February 2018, para.45; A/HRC/36/55, 8 August 2017, para.16.
99 See, for instance, Report of the CoI on Syria, A/HRC/34/64, 2 February 2017, para.61.
100 Report of the CoI on Libya, A/HRC/31/CRP.3, 15 February 2016, para.54.
101 Report of the CoI on Syria, A/HRC/S-17/2/Add.1, 23 November 2011, para.20.
since 2011.102 Although the CoI on Burundi was not able to infer “complete dependence” of the Imbonerakure on the State, it emphasised its alignment with the government policy and even identified specific cases in which “effective control” of the State over Imbonerakure agents was established.103 Second, civilian vigilantes are characterized as local self-defence groups operating with tacit approval of national security forces.104 They do not necessarily have a political purpose, but rather aim to defend themselves against other armed forces. An example is provided by the Civilian Joint Task Force or Kato da Gora, fighting against Boko Haram in Northeast Nigeria.105 Third, paramilitary groups are understood as irregular combat units that do not have any official links to State forces but receive direction and assistance from security forces.106 An example is constituted by the Karuna group in Sri Lanka. They were originally part of the LTTE, but later formed a separate paramilitary group with ongoing support from the government to fight against LTTE.107 Fourth, anti-government armed groups encompass a broad category of ANSAs which fight against the government. Examples of this type of ANSA are the Free Syrian Army,108 or, in Libya, the Free Libyan Army and the National Libyan Army.109 Importantly, the ANSAs involved in the armed conflict in South Sudan included both groups directly opposed to the government and militia groups which supported the government.110 Lastly, rebel groups also fight against State forces. There are three examples from the Central African Republic (“CAR”) fighting against President Bozizé, namely l’Armée populaire pour la restauration de la république et de la démocratie, the Union des forces démocratiques pour le rassemblement and the Front démocratique du peuple centrafricain.111

102 Reports of the CoI on Syria, A/HRC/18/53, 15 September 2011, para.32; A/HRC/S-17/2/Add.1 23 November 2011, para.20.
103 Report of the CoI on Burundi, A/HRC/36/54, 11 August 2017, paras.24-27.
104 Report on Boko Haram, A/HRC/30/67, 29 September 2015, paras.64-69.
105 Ibid., para.65.
106 Report of the OHCHR Investigation on Sri Lanka, A/HRC/30/CRP.2, 16 September 2015, para.139.
107 Ibid.
108 Report of the CoI on Syria, A/HRC/23/58, 18 July 2013, paras.24-27.
109 Report of the CoI on Libya, A/HRC/17/44, 12 January 2012, para.46.
110 See, for instance, Report of the CoI on South Sudan, A/HRC/37/71, 13 March 2018, paras.18-22.
111 Report of the CoI on the CAR, S/2014-373, 26 June 2014, para.37. In Syria, an example is Jabhat Al-Nusra, see CoI on Syria, A/HRC/23/58, 18 July 2013, para.29.
42. IMs regularly undertake such characterizations *in concreto*, for the specific needs of their work, mainly the identification of the main groups, the allocation of the acts investigated to one or more of them, and the assessment of their conduct in the light of primary norms. In so doing, the boundary between the factual and legal characterization is blurry. For example, saying that a group is affiliated to the State may entail several consequences, such as attribution, State and/or individual responsibility, conflict characterization and possibly also crime characterization. Thus, the definition of a group as being affiliated to the State and, further along the way, the characterization of the link of affiliation has significant implications from a legal standpoint.

**IV.B.ii. Prosecutorial patterns**

43. With regard to normative powers about secondary norms, IMs go, in practice, well beyond establishing facts or evaluating conduct and seek to prepare the stage for next steps in the chain of accountability processes, whether this is expressly envisioned in their mandate or not. Over the past decade, several IMs have made recommendations on measures to held accountable both collective (States, ANSAs) and individual subjects, in line with the normative powers identified as sub-types C7 and C8.

44. Interestingly, within the relevant body of IM practice, two cross-cutting patterns are discernible: the first recommending criminal prosecutions before the national courts of the territorial states; the second, calling instead for international responses, namely before courts of other states exercising universal jurisdiction and/or before the ICC or other ad hoc criminal tribunals. Most recent reports present an integrated approach which combines both levels of recommendations. This approach is presented first, by reference to the

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112 Report of the CoI on Syria, A/HRC/31/CRP.3, 15 February 2016, para.54 (“The term ‘affiliated’ has been used generically to refer to a relationship of support, even if the precise parameters of the relationship, including any command and control aspects, are not known and require further examination.”)

113 Reports of IMs on: Libya, A/HRC/19/68, 28 January 2014, para.95; Lebanon, A/HRC/3/2, 23 November 2006, para.348; Darfur, E/CN.4/2005/3, 7 May 2004, para.104 (g); Côte d’Ivoire, S/2003/90, 24 January 2003, para.154 (1); on the Occupied Palestinian territories, E/CN.4/2001/121, 16 March 2001, para.120, which also calls upon the Commission of Human Rights to monitor compliance with IHRL in paras.133-134.

114 See for instance, Reports of IMs on: Mozambique, A/9621, 22 November 1974, paras.175-177; on Côte d’Ivoire, A/HRC/17/48, 1 July 2011, para.127 (a); Mali, A/HRC/23/57, 26 June 2013, para.69 (b); on the situation in Kasai, A/HRC/38/31, 3 July 2018, para.11 (a) (c) and 112.
practice of the IMs on Syria, South Sudan and Myanmar. The analysis then focuses on the power to draw specific consequences from the characterization of a violation.

1. Sub-types C7 and C8: Integrated Approaches

45. Since its establishment, the CoI on Syria has addressed an increasing number of recommendations at the international level. In its first reports in 2011 and 2012, the Commission recommended that the Syrian Arab Republic initiate “investigations under both domestic and international law to end impunity, ensure accountability and bring perpetrators to justice”. It also recommended that the Syrian people “on the basis of broad, inclusive and credible consultations, should determine, within the framework provided by international law, the process and mechanisms to achieve reconciliation, truth and accountability for gross violations occurring since March 2011”. In its subsequent report it directly recommended the government to “investigate all violations of IHRL and IHL” to ensure that those responsible “are held to account”, and it also directed a recommendation to anti-Government armed groups to “hold perpetrators of abuses to account”. In 2014, the Commission instead recommended all parties to “ensure that those who have committed or are otherwise responsible for violations of human rights and IHL are brought to justice”.

46. Since 2013, due to the evolving situation on Syria and to the scale of crimes reported in the country, the Commission has expanded the addressees of its recommendations to include the international bodies and to the international community. By way of illustration, the Commission has recommended the HRC to “address the issue of accountability of those responsible for international crimes by countering the phenomenon of impunity and through referral to justice at the national and international levels”. It has also called on the international community to consider implementing the jurisdiction of

115 Report of the CoI on Syria, A/HRC/S-17/2/Add.1, 23 November 2011, para.112 (b).
116 Ibid., para.137.
117 Report of the CoI on Syria, A/HRC/19/69, A/HRC/21/50, 16 August 2012, para.153(a); see also A/HRC/22/59, 5 February 2013, para.176 (d).
118 Ibid., para.154(a); see also A/HRC/22/59, 5 February 2013, para.177(d).
119 A/HRC/27/60, 13 August 2014, para.142 (e); see, in similar wording, A/HRC/30/48, 13 August 2015, para.178 (a); A/HRC/37/72, 1 February 2018, para.81 (f).
120 Report of the CoI on Syria, A/HRC/22/59, 5 February 2013, para.179 (c).
suitable international justice mechanisms. From 2013 until 2017, the Commission also urged the SC to take action and commit to human rights and the rule of law by referring perpetrators to justice, possibly to the ICC or to an *ad hoc* international tribunal. In 2015 it also recommended the UNGA to “adopt a resolution in which it requests the SC to refer the situation to justice”. The UNGA decided on December 2016 to bypass the UNSC and establish an IIIM for Syria, with the objective of ensuring justice for international crimes “through appropriate, fair and independent investigations and prosecutions at the domestic or international level”. On 19 January 2017, the UNSG submitted a report on its implementation and the Commission subsequently called on the international community to support the establishment of the IIIM for Syria, in accordance with the resolution.

47. Another example of an integrated approach is provided by the practice of the CoI on South Sudan. In its 2017 report, the Commission recommended the Government of South Sudan to cooperate with the African Union in the speedy establishment of the hybrid court for South Sudan and comply with its obligations under both national and international law to ensure that those responsible are held accountable. In its 2018 and 2019 reports, instead, the Commission recommended that the African Union, the UN and the Intergovernmental Authority on Development “immediately

121 Ibid., para.139; see also A/HRC/28/69, 5 February 2015, para.145 (a); A/HRC/31/68, 11 February 2016, para.159 (f); A/HRC/34/64, 2 February 2017, para.109 (a); A/HRC/36/55, 8 August 2017, para.90 (c).
122 Ibid., para.180 (b); A/HRC/23/58, 18 July 2013, para.171 (c); A/HRC/24/46, 16 August 2013, para.2016 (d); A/HRC/25/65, 12 February 2014, para.163 (b); A/HRC/27/60, 13 August 2014, para.142 (c); A/HRC/28/69, 5 February 2015, para.146 (b), the first to mention a referral to an “an ad hoc international tribunal”; A/HRC/30/48, 13 August 2015, para.184 (c); A/HRC/31/68, 11 February 2016, para.161 (d); A/HRC/33/55, 11 August 2016, para.147 (c).
123 A/HRC/28/69, 5 February 2015, para.147 (a).
124 IIIM for Syria, above n.29.
125 Ibid., OP 1.
126 Ibid., see OP 5 and 8.
127 A/HRC/34/64, 2 February 2017, para.109 (a); A/HRC/36/55, 8 August 2017, para.90 (c).
128 Report of the CoI on South Sudan, A/HRC/34/63, 6 March 2017, para.93 (a) and (b); see also A/HRC/37/71, 13 March 2018, para.135 (b).
establish the hybrid court for South Sudan.” The Commission’s 2020 report then urged the Government to “strengthen the independence and capacity of the judiciary and national justice institutions”, to become a party to the Rome Statute of the ICC, to “establish special courts and conduct impartial investigations to hold perpetrators to account” and, importantly, to “ensure that all serious violations and abuses are properly investigated, that those responsible are prosecuted, and that victims are provided with effective remedies.” It also recommended states parties to exercise “their jurisdiction to hold perpetrators of violations and abuses of human rights and violations of IHL to account”.

48. Moving to the FFM on Myanmar, in its 2018 report, the mission noted that “[j]ustice has remained elusive for victims in Myanmar for decades, with the authorities systematically failing to condemn, investigate and prosecute perpetrators,” and that “the impetus for accountability must come from the international community”. For this reason, it recommended three broad streams of international action. First, it recommended the UNSC to ensure accountability for crimes under international law committed in Myanmar, by referring the situation to the ICC or, alternatively, creating an ad hoc international criminal tribunal. It also added that the UNSC should “adopt targeted individual sanctions, including travel bans and asset freezes, against those who appear most responsible for serious crimes under international law” and should also “impose an arms embargo on Myanmar.” Second, the mission also urged that, until then, the UNGA, or alternatively the HRC, should create an independent, impartial mechanism to collect, preserve and analyse evidence of violations of IHL and violations and abuses of IHRL, preparing criminal files. Thirdly, it urged member states to exercise jurisdiction to

129 Report of the CoI on South Sudan, A/HRC/37/71, 13 March 2018, para.137 (a); see also, in similar wording, A/HRC/40/69, 18 February 2019, para.135; A/HRC/43/56, 31 January 2020, para.84 (b).
130 Report of the CoI on South Sudan, A/HRC/43/56, 31 January 2020, respectively, para.82 (d), (h), (j), (q) and (v).
131 Ibid., para.83.
132 Report of the FFM on Myanmar, A/HRC/39/64, 12 September 2018, para.95.
133 Ibid., para.98.
134 Ibid, para.105.
135 Ibid. See also A/HRC/42/CRP.3, 5 August 2019, para.187 (a).
136 Ibid, para.106.
investigate and prosecute alleged perpetrators of serious crimes under international law committed in Myanmar.137

49. Interestingly, the most recent reports from IMs show an additional trend in the recommendations addressed to the international community: they call UN member states and the international community to assert their right to react against un-remedied breaches of IHRL and IHL. In its 2019 reports, the CoI on the protests in the Occupied Palestinian Territory and the FFM on Myanmar recommended UN members “to consider imposing individual sanctions, such as a travel ban or an assets” freeze, on those identified by the Commission as responsible for violations.138 The FFM on Myanmar also recommended to implement arms transfer sanctions,139 adding further recommendations directed to investors and businesses,140 consumers,141 financial institutions.142 Reports have also included recommendations which demand states to refrain from supplying arms that could be used to perpetrate violations of human rights. For example, in 2013, the CoI on Syria recommended the international community to “counter the escalation of the conflict by restricting arms transfers, especially given the clear risk that the arms will be used to commit serious violations of IHRL or IHL”.143 One year later, it recommended to “impose an arms embargo and curb the proliferation and supply of weapons”.144 Similarly, in 2018, the Group of Experts on Yemen and the FFM on Myanmar recommended the international community to “refrain from providing arms that could be used in the conflict in Yemen”.145

137 Ibid., para.116.
138 Report of the CoI on the Occupied Palestinian Territory, A/HRC/40/CRP.2, 18 March 2019, paras.802-803. Previously, see also Guinea Report, paras.272-273; Report of the FFM on Myanmar, A/HRC/42/CRP.3, 5 August 2019, para.188 (a)-(b).
139 Ibid., para.188 (d).
140 Ibid., para.189.
141 Ibid., para.190.
142 Ibid., para.191.
143 Report of the CoI on Syria, A/HRC/23/58, 18 July 2013, para.164 (d); see also A/HRC/25/65, 12 February 2014, para.153.
144 Report of the CoI on Syria, A/HRC/27/60, 13 August 2014, para.146 (a).
145 Group EE Yemen, A/HRC/39/43, 17 August 2018, para.112 (b); see also A/HRC/42/17, 9 August 2019, para.99 (b); Report of the FFM on Myanmar, A/HRC/39/64, 27 August 2018, para.114; also A/HRC/39/CRP.2, 18 September 2018, paras.1666 and 1709; see also A/HRC/42/CRP.3, 5 August 2019, paras.8, 12, 188 (a).
2. **Sub-type 9: Drawing specific consequences**

Some reports also display a pattern of prosecutorial reasoning by drawing consequences from the characterization of a specific conduct. This is a normative power that has not been fully granted in any mandate; only partially so in the mandates of the IIIM for Syria and the IIM for Myanmar. By specifically preparing case files in accordance with international law standards, these mechanisms facilitate fair and independent criminal proceedings in national, regional or international courts that have, or may in the future have, jurisdiction. They show that the “internalization” of the preparation of criminal files, rather than a reliance on the traditional “externalization” to judicial bodies, is a new step forward by UN mandates in the promotion of accountability. As noted earlier, this falls short of expressly granting the power to derive legal consequences at the level of substantive secondary norms (type of punishment, complicity, aggravation, compensation, etc.) but the specific preparation of the files to be used for the prosecution of specific individuals goes beyond the mere level of recommendation (sub-types C7 and C8) and brings the role of these IMs closer to that of an investigating judge or prosecutor, who sets the facts, the indictment, and the requested legal consequences.

51. The mandate of the IIIM for Syria, the first to expressly include such power, sheds light on how the process of internalization has been originally framed. The personal, geographical and temporal scope of the IIIM mandate is very broad, as it covers the investigation of facts and crimes by all parties since 2011 in the entire country. More specifically, pursuant to paragraph 4 of Resolution 71/248, the mandate of the Mechanism encompasses two main tasks: to collect, consolidate, preserve and analyse evidence of violations of IHL and human rights violations and abuses; and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law. The broad personal scope of the investigation, which covers actions by all parties to the conflict, is essential to preserve the independence and impartiality of the Mechanism, at the heart of its mandate. Moreover, the Mechanism has been uniquely qualified as a

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146 See IIIM for Syria, above n.29.
147 Ibid., OP 4.
“quasi-prosecutorial” body: the UNGA has created an office that will complete essential preparatory work, following criminal law methodologies, to then facilitate the criminal justice process in available jurisdictions and assist other actors in criminal proceedings. Following the same rationale, the CoI on South Sudan collects information and preserves evidence with a view to channel them to all transitional justice mechanisms. Similarly, the IIM for Myanmar is mandated to collect evidence of the most serious international crimes and violations of international law and prepare files for criminal prosecution, making use of the information handed over to it by the Independent FFMM.

52. The quasi-prosecutorial powers conferred in these mandates could be exercised in more or less expansive ways. As noted above, the more the activity of the IM resembles that of an investigating judge or a prosecutor, the fuller the use of sub-type C9 powers. The practice of these IMs is not yet ripe enough to draw clear conclusions as to their scope, but we reach here the border area with acknowledged prosecutorial powers held by domestic and international courts and tribunals.

IV. Assessment

53. The preceding analysis shows that IMs, although they do not have the power to characterize the violation of a primary norm and derive the associated legal consequences with binding effect, exercise a wide range of normative powers, some of which come very close to what judicial bodies do. In many ways, this was already known from the case-specific literature as well as from wider studies focusing on some general features of the phenomenon. This study confirms that overall assessment on the basis of a systematic analysis of 69 IMs, operating between 1963 and 2020, and their 121 published reports. It also goes a step further in specifically identifying these normative powers (three types, each with several sub-types), when they were first introduced in IM mandates, and how they have been used in practice. Despite the inherent limitations of any conceptual cartography, the framework introduced...
in this article sheds light on the nature, scope and evolution of IMs’ normative powers.

54. Relying on it, the article showed that, whereas between 1963 and 1992 IMs’ mandates conferred mostly powers over facts (type A), in 1992 they began recognizing broad powers relating to primary norms (type B) and then, from 2000 onwards, also to secondary norms (type C). There are clear interconnections between these powers, both as conferred and as effectively exercised. The expansion of type C powers in IM mandates is linked in the dataset to a subsequent further expansion of type B powers, after 2012. However, the article did not conduct an analysis of the factors driving the emergence of either a new sub-type of powers or the expansion of a broad type. But it charts the field for selecting specific mandates and moments in the overall topography for such much more granular studies to be undertaken.

55. The analysis also unveils that some specific powers not expressly conferred in the mandates have been exercised in practice. This phenomenon is mostly visible with respect to powers relating to primary norms (type B) and, more specifically, sub-types B4a, B4b and B5, which amount to clarifying the enabling conditions and application of primary norms. Such powers are not (or very rarely) expressly conferred in mandates, and yet, they are widely exercised through the selection of specific language with deep legal implications (e.g. “violations” rather mere “abuses” of IHRL by ANSAs), the determination of the legal standard of proof used by the IM or the characterization of armed groups. The identification of this mismatch between mandates and practice must not be equated to the assertion of a power grab or some other illegitimate maneuvering from IMs. This article does not take position on that question. But, again, it provides a comprehensive and systematic scan of the practice which identifies which areas would be good places to begin such other investigations.

56. More fundamentally, the assessment conducted in this article also confirms a more basic trend, namely the increasing number of IMs set up by the UN since 1963. In the three decades between 1963 and 1991, we see the establishment of only five mechanisms. Then, in less than a decade (between 1992 and 1999), more than twice that number are set up (13 mechanisms). The phenomenon further accelerates between 2000 and 2010, with 20 mechanisms. And there is literally a surge in newly established IMs between 2010 and 2020, with 31 new mechanisms, which take the total number to 69 IMs between 1963 and 2020. The important role of the Human Rights Council
in this development is well-known. As the analysis in this article demonstrates, such involvement has been accompanied by an increasing recognition of additional normative powers to newly established IMs, as compared to their predecessors from the 1960s or 1970s. As Van den Herik has shown in an earlier contribution published in this *Journal*, “the main difference between traditional and contemporary commissions is [...] the underlying purposes of their mission”.\textsuperscript{152} As this article suggests, a systematic analysis of UN mandates of all IMs (including CoIs) established since 1963 confirms that this difference is also embodied in the more expansive normative powers conferred on or exercised by more recent IMs.

57. Going back to the “grey area” between “is” and “ought” mentioned at the beginning of this article, this analysis shows that this area has been increasingly populated by a wide range of normative powers conferred on entities which, at their origin, were only concerned with facts. Given the surge in the number of IMs since 1963 and, particularly, after the creation of the HRC, an important question would be whether, in fact, international criminal justice is moving not from “is” to “ought”, but possibly from “ought” (international criminal tribunals) to “is” (IMs). Whatever the answer to this other question may be, it lies, again, in a careful consideration of the normative powers of IMs and their evolution.

\textsuperscript{152} Larissa van den Herik, above n.1, 536.
| Year | Mechanism | Mandates/Resolutions | Reports |
|------|-----------|----------------------|---------|
| 2020 | UN CHR in South Sudan | HRC resolution 43/27 of 22 June 2020 | A/HRC/42/66 (7 Aug. 2019) |
| 2019 | FFM on the Bolivian Republic of Venezuela | HRC res. 42/25 (27 Sept. 2019) | Oral presentation made at Human Rights Council, 40th session, 19 Mar. 2019 (French only) |
| 2018 | Independent Investigative Mechanism for Myanmar | HRC, resolution 39/2 of 27 Sept. 2018 | (1) Report A/HRC/40/74 (6 Mar. 2019) |
| 2018 | International Team of Experts on the Kasai region (Democratic Republic of the Congo) | Human Right Council resolution 38/20 of 6 July 2018 | (2) Report A/HRC/40/CPR.2 (18 Mar. 2019) |
| 2018 | Col on the 2018 protests in the Occupied Palestinian Territory. | HRC resolution S-28/1 of 18 May 2018 | (1) A/HRC/39/43 (17 Aug. 2018), (2) A/HRC/42/17 (9 Aug. 2019) |
| 2017 | Group of Eminent Experts on Yemen | HRC resolution 36/31 of 29 Sept. 2017; mandate renewed by resolutions 39/16, 42/2 | (1) A/HRC/38/CRP.1 (Français) (29 June 2018) |
| 2017 | Team of international experts on the situation in Kasai (Democratic Republic of the Congo) | resolution 55/33 of 23 June 2017 | (2) A/HRC/38/31 (3 July 2018) |
| 2017 | FFM on Myanmar | HRC resolution 34/22 of 24 Mar. 2017, decision 36/115 of 29 Sept. 2017 | (1) Report of the mission of 3 Feb. 2017 |
| 2017 | OHCHR mission to Bangladesh to interview Rohingyas who had entered Bangladesh from northern Rakhine State (Myanmar) in the aftermath of the 9 October 2016 attacks | OHCHR (2017) | Report of the mission of 3 Feb. 2017 |
| 2017 | UN CHR in South Sudan | HRC resolution 34/25 of 24 Mar. 2017, renewed by resolution 34/25 of 24 Mar. 2017, 37/31 of 23 Mar. 2018, 40/19 (22 Mar. 2019) | (1) A/HRC/34/63 of 6 Mar. 2017 |
| 2017 | Col on Syrian Arab Republic | HRC resolutions 34/26 of 24 Mar. 2017, 43/28 of 22 June 2020 | (2) A/HRC/37/71 of 14 Mar. 2018 |
| 2017 | IIIM in Syria | UNGA resolution 71/248 (21 Dec. 2016) | (3) A/HRC/40/69 (18 Feb. 2019), (4) A/HRC/43/56 (31 Jan. 2020) |
| 2016 | Col on human rights in Burundi | HRC resolution 33/24 of 30 Sept. 2016, renewed by resolutions 36/19 of 29 Sept. 2017, 39/14 of 28 Sept. 2018, 39/14 of 27 Sept. 2019 | (1) A/HRC/37/72 (1 Feb. 2018) |
| 2016 | IIIM in Syria | UNGA resolution 71/248 (21 Dec. 2016) | (2) A/HRC/39/65 (9 Aug. 2018), (3) A/HRC/40/70 (31 Jan. 2019) |
| 2016 | IIIM in Syria | UNGA resolution 71/248 (21 Dec. 2016) | (4) A/HRC/42/51 (15 Aug. 2019), (5) A/HRC/43/57 (28 Jan. 2020) |
| 2016 | Col on human rights in Burundi | HRC resolution 33/24 of 30 Sept. 2016, renewed by resolutions 36/19 of 29 Sept. 2017, 39/14 of 28 Sept. 2018, 39/14 of 27 Sept. 2019 | (1) A/HRC/36/CRP.1/Rev.1 (Français) |
| 2016 | Col on human rights in Burundi | HRC resolution 33/24 of 30 Sept. 2016, renewed by resolutions 36/19 of 29 Sept. 2017, 39/14 of 28 Sept. 2018, 39/14 of 27 Sept. 2019 | (2) A/HRC/36/54 of 11 Aug. 2017 and Corr.1 (4 Oct. 2017) |
| 2016 | Col on human rights in Burundi | HRC resolution 33/24 of 30 Sept. 2016, renewed by resolutions 36/19 of 29 Sept. 2017, 39/14 of 28 Sept. 2018, 39/14 of 27 Sept. 2019 | (3) A/HRC/39/63 (8 Aug. 2018) |
| 2016 | Col on human rights in Burundi | HRC resolution 33/24 of 30 Sept. 2016, renewed by resolutions 36/19 of 29 Sept. 2017, 39/14 of 28 Sept. 2018, 39/14 of 27 Sept. 2019 | (4) Detailed final report A/HRC/39/CRP.1 (Français) (12 Sept. 2018) |
| Year       | Mechanism                                                                 | Mandates/Resolutions                                                                 | Reports                                    |
|-----------|----------------------------------------------------------------------------|--------------------------------------------------------------------------------------|--------------------------------------------|
| 2016      | UN CHR in South Sudan                                                       | resolution 31/20 of 23 Mar. 2016 and resolution S-26/1 of 14 Dec. 2016               | (5) A/HRC/42/49 (6 Aug. 2019)             |
| 2016      | Col on Syrian Arab Republic                                                | HRC resolution S-25/1 of 21 Oct. 2016                                               | A/HRC/34/64 of 2 Feb. 2017                |
| 2016(2017)| Col on Syrian Arab Republic                                                | HRC resolution 31/17 of 23 Mar. 2016                                               | (1) A/HRC/31/68 of 22 Feb. 2016           |
| 2015      | UN Independent Investigation Burundi                                      | HRC resolution S-24/1 of 17 Dec. 2015                                               | A/HRC/33/37 (20 July 2016)                |
| 2015      | OHCHR Assessment mission to improve human rights, accountability and reconciliation for South Sudan | HRC resolution 29/13 of 2 July 2015 (in A/70/53, at 186-190, para.14(a))           | (1) A/HRC/31/CRP.6 (10 Mar. 2016)         |
| 2015      | FFM to investigate atrocities committed by the terrorist group Boko Haram and its effects on human rights in the affected States | HRC S-23/1 of 1 Apr. 2015 (in A/70/53, at 149-151, para.9)                         | A/HRC/30/67 of 9 Dec. 2015                |
| 2015      | OHCHR Investigation mission to Libya                                       | HRC resolution 28/30 of 27 Mar. 2015 (in A/70/53, at 128-132)                      | A/HRC/31/CRP.3 of 15 Feb. 2016            |
| 2015      | Col on Syrian Arab Republic                                                | HRC resolution 28/20 of 27 Mar. 2015 (in A/70/53, at 13-17)                        | (1) A/HRC/28/69 of 5 Feb. 2015            |
| 2014      | FFM to Iraq                                                                | HRC resolution S-22/1 of 1 Sept. 2014 (in A/69/53/Add.1, at 7-9)                    | (2) A/HRC/30/48 of 15 Aug. 2015           |
| 2014      | Col on the 2014 Gaza Conflict                                               | HRC resolution S-21/1 of 23 July 2014 (in A/69/53, at 224-227)                     | (1) A/HRC/29/52 of 24 June 2015           |
| 2014      | Col to investigate all alleged violations of human rights in Eritrea        | HRC resolution 26/24 of 27 June 2014 (in A/69/53, at 194-198), extended             | (2) Detailed findings A/HRC/29/CRP.4 of 24 June 2015 |
| 2014      | OHCHR investigation on Sri-Lanka                                           | HRC resolution 25/1 of 9 Apr. 2014 (in A/69/53, at 14-17)                          | (1) A/HRC/29/CRP.1 of 16 June 2015 (Advance version) |
| 2014      | Col on Syrian Arab Republic                                                | HRC resolution 25/23 of 28 Mar. 2014 (in A/69/53, at 190-194)                      | (2) A/HRC/29/42 of 4 June 2015            |
| 2013      | Col on Central African Republic since 1 January 2013                       | SC resolution 2127 (2013) of 5 Dec. 2013                                           | (3) A/HRC/32/47 of 9 May 2016             |
| 2013      | Col on Syrian Arab Republic                                                | HRC resolution 23/1 of 29 May 2013 (in A/68/53, at 122-123)                        | (1) A/HRC/22/59 of 5 Feb. 2013            |
| 2013      | OHCHR FFM on the situation of human rights in Mali                         | HRC resolution 22/18 of 21 Mar. 2013 (in A/68/53, at 59-61)                        | A/HRC/23/57 of 26 June 2013               |
| 2013      | OHCHR FFM to Central African Republic                                      | HRC resolution 23/18 of 13 June 2013 (in A/68/53, at 168-170)                      | A/HRC/24/59 of 12 Sept. 2013              |
| 2013      | Col on Human Rights in the Democratic People's Republic of Korea           | HRC resolution 22/13 of 21 Mar. 2013 (in A/68/53, at 49-51)                        | (1) A/HRC/25/CRP.1 and (2) A/HRC/25/63 of 7 Feb. 2014 |
| 2012      | Col on Syrian Arab Republic                                                | HRC resolution HRC resolution 21/26 of 28 Sept. 2012 (in A/67/53/Add.1, at 67-70, para.10) | (1) A/HRC/21/50 of 16 Aug. 2012           |
|           |                                                                            |                                                                                      | (2) A/HRC/19/69 of 22 Feb. 2012           |
### Appendix A  Continued

| Year | Mechanism | Mandates/Resolutions | Reports |
|------|-----------|-----------------------|---------|
| 2012 | FFM to investigate the implications of the Israeli settlements on Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem | HRC resolution 19/17 of 22 Mar. 2012 (in A/67/53, at 50-53) | A/HRC/22/63 of 7 Feb. 2013 |
| 2011 | Col on Syrian Arab Republic | HRC resolution S-17/1 of 23 Aug. 2011 (in A/66/53, at 29-31) | A/HRC/8-17/2/Add.1 of 23 Nov. 2011 |
| 2011 | Col Libya | HRC resolutions S-15/1 of 25 Feb. 2011 (in A/66/53, at 25-27) and 17/17 of 17 June 2011 (in A/66/53, at 170-171) | (1) A/HRC/17/44 of 28 Jan. 2014  
(2) A/HRC/19/68 of 28 Jan. 2014  
(3) A/HRC/19/CRP.1 of 28 Jan. 2014 |
| 2011 | Col on the Situation of Human Rights in Côte d’Ivoire | HRC resolution 16/25 of 25 Mar. 2011 (in A/66/53, at 9-11) | A/HRC/17/48 of 1 July 2011 |
| 2011 | OHCHR FFM to the Syrian Arab Republic | HRC resolution S-17/1 of 23 Aug. 2011 (in A/66/53, at 29-31) | A/HRC/18/53 of 15 Sept. 2011 |
| 2010 | Committee of independent experts to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side | HRC resolutions 13/9 of 25 Mar. 2010 (in A/66/53, at 101-103); 15/6 of 29 Sept. 2010 (in A/66/53/Add.1, at 24-27) | (1) A/HRC/15/50 of 23 Sept. 2010  
(2) A/HRC/16/24 of 5 May 2011 |
| 2010 | International FFM to investigate Israeli attacks on the flotilla of ships carrying humanitarian assistance to Gaza | HRC resolution 14/1 of 2 June 2010 (in A/66/53, at 160-161, para.8) | A/HRC/15/21 of 27 Sept. 2010 |
| 2010 | Secretary-General’s Panel of experts on accountability in Sri Lanka | UNSG resolution SG/SM/12967 of 22 June 2010 | Report of 31 Mar. 2011 |
| 2009 | OHCHR Mission on situation of human rights in Honduras since the coup d’état on 28 June 2009 | HRC resolution 12/14 of 1 Oct. 2009 (in A/65/53, at 30) | A/HRC/13/66 of 3 Mar. 2010 |
| 2009 | FFM on the Gaza conflict | HRC resolution S-9/1 of 12 Jan. 2009 (in A/64/53, at 153-156) | A/HRC/12/48 of 25 Sept. 2009 |
| 2009 | Col on Guinea | UN Secretary-General S/2009/556 of 28 Oct. 2009, para.2 | S/2009/693 of 18 Dec. 2009 |
| 2009 | Nepal Conflict Mapping | OHCHR (2009) | Nepal Conflict Report (2012) (www.ohchr.org/Documents/Countries/NP/ OHCHR_Nepal_Conflict_Report2012.pdf) |
| 2008 | Mapping exercise - Democratic Republic of the Congo between March 1993 and June 2003 | UN Secretary-General S/2006/390 of 13 June 2006, para.54 | Report Aug. 2010 (www. ohchr.org/Documents/Countries/CD/DRC_ MAPPING_REPORT_FINAL_EN.pdf) |
| 2008 | FFM to Kenya | OHCHR (2008) | ‘Report from OHCHR FFM to Kenya, 6-26 February 2008’ (www. ohchr.org/documents/pres/ohchrkenyrepor.pdf) |
| 2006 | High-level mission Darfur | UNHRC decision S-4/101 of 13 Dec. 2006 (in A/62/53, at 87) | A/HRC/4/80 of 9 Mar. 2007 |
| 2006 | FFM Beir Hanoun | UNHRC resolution S-3/1 of 15 Nov. 2006 (in A/62/53, at 85-86, para.7) | (1) A/HRC/5/20 of 18 June 2007 and  
(2) A/HRC/9/26 of 1 Sept. 2008 |
| 2006 | OHCHR mission to Western Sahara and refugee camps in Tindouf | OHCHR (2006) | Not published as an UN official document |
| 2006 | Col on Lebanon | HRC resolution S-2/1 of 11 Aug. 2006 (in A/61/53, at 108-110, para.6) | A/HRC/3/2 of 23 Nov. 2006 |
| 2006 | Col for Timor-Leste | UN Secretary-General upon request of Minister for Foreign Affairs of Timor-Leste, S/2006/383 of 13 June 2006 | Not published as an UN official document |
| 2005 | OHCHR FFM to Togo | OHCHR (2005) | Report submitted 29 Aug. 2005 (not available) |
| 2005 | OHCHR mission to Kyrgyzstan to investigate serious violations of human rights | OHCHR (18 May 2005) | E/CN.4/2006/119 of 1 Feb. 2006 |

*Continued*
### Appendix A Continued

| Year | Mechanism | Mandates/Resolutions | Reports |
|------|-----------|-----------------------|---------|
| 2004 | Col on Côte d’Ivoire | SC/PRST/2004/17 of 25 May 2004 | Report not published as an official document |
| 2004 | Col on Darfur | SC resolution 1564 (2004) of 18 Sept. 2004 | (1) E/CN.4/2005/3 of 7 May 2004 (FFM)  
(2) S/2005/60 of 1 Feb. 2005 (Col) |
| 2004 | Col on events connected with march in Abidjan | UN Secretary-General request, 2 Apr. 2004 (see S/2004/384, para.1) | S/2004/384 of 13 May 2004 |
| 2002 | OHCHR FFM to Côte d’Ivoire | UN Secretary-General request, S/PRST/2002/42 | S/2003/90 of 24 Jan. 2003 |
| 2000 | Col on Côte d’Ivoire | Secretary-General upon the request of the Government of Côte d’Ivoire | DPI/2221 (2001) (in French only) |
| 2000 | Col occupied Palestinian territories | CHR resolution S-5/1 of 19 Oct. 2000 (in E/2000/112, at 4-7) | |
| 2000 | Col on Togo | Established jointly by the UN Secretary-General and the Secretary-General of African Unity upon request of the Government of Togo E/2001/121 of 16 Mar. 2001 | |
| 1999 | Col on East Timor | CHR resolutions S-4/1 of 27 Sept. 1999 (in E/1999/23/Add.1, at 4-8) | A/54/726-S/2000/59 of 31 Jan. 2000 |
| 1999 | OHCHR Investigative team for Afghanistan | GA resolution 54/185 of 17 Dec. 1999, para.13 | Report was not published as an official document. For related information, A/54/536, para.62, 16 Nov. 1998 |
| 1998 | Group of experts Cambodia | UNGA Res. 52/135 (12 Dec. 1998) + + A/53/850 | A/53/850-S/1999/231 of 16 Mar. 1999 |
| 1998 | OHCHR Exploratory mission to Afghanistan to determine the feasibility of an investigation into allegations of serious violations of human rights and international humanitarian law committed in Afghanistan in the course of 1997 | SC resolution 1193 (1998) (of 28 Aug. 1998) requests the Secretary-General to continue investigations | (1) A/53/695-S/1998/1109 of 25 Nov. 1998 and  
(2) A/54/536, para.62, 16 Nov. 1998 |
| 1997 | DRC Investigative team | UN Secretary-General S/1997/617 (6 Aug. 1997). | S/1998/581 of 29 June 1998 |
| 1997 | Eastern Zaire Investigative Mission | CHR resolutions 1997/58 of 15 Apr. 1997 (in E/CN.4/1997/150, at 194-198) + + 2000/15 of 18 Apr. 2000 (in E/2000/23, at99-105); 2001/19 of 20 Apr. 2001 (in E/2001/23, at 114-121); 2002/14 of 19 Apr. 2002 (in E/2002/23, at 73-78) | E/CN.4/1998/64 of 23 Jan. 1998 |
| 1997 | UN Mission to Guatemala | CHR resolution 1997/51 of 15 Apr. 1997(in E/1997/23, at 167) | E/CN.4/1998/93 of 13 Feb. 1998 |
| 1995 | Col Burundi | UNSC Res 1012 (28 Aug. 1995), para.16(b) | (1) S/1996/8 of 5 Jan. 1996  
(2) S/1996/682 of 22 Aug. 1996 |
| 1994 | CoE Rwanda | UNSC 935 (1 July 1994). | (1) S/1994/1125 of 4 Oct. 1994 and  
(2) S/1994/1405 of 9 Dec. 1994 |
| 1993 | FFM Burundi | UN SC S/26757 (16 Nov. 1993) | S/1995/157 of 24 Feb. 1995 |
| 1993 | FFM Georgia | UNSG (S/26795) + UNSC Res. 876 (19 Oct. 1993) | S/26795 of 17 Nov. 1993 |
| 1993 | Panel of Inquiry on Liberia | Statement by President of the SC S/25918 of 9 June 1993 | Report “The Carter camp massacre: results of an investigation by the Panel of Inquiry appointed by the Secretary-General into the massacre near Hazel, Liberia, on the night of June 5/6, 1993, submitted to the United |
## Appendix A  Continued

| Year | Mechanism | Mandates/ Resolutions | Reports |
|------|-----------|-----------------------|---------|
| 1992 | CoE Yugoslavia | UNSC Res.780 (6 Oct. 1992), para.2 | (1) S/25274 of 10 Feb. 1993  
(2) S/26545 of 6 Oct. 1993  
(3) E/CN.4/1994/130 of 10 Mar. 1994  
(4) S/1994/674 of 27 May 1994  
(5) S/1994/674 of 27 May 1994  
(6) S/1994/674/Add.1 of 31 May 1995  
(7) S/1994/674/Add.2 (Vol.I) of 31 May 1995  
(8) S/1994/674/Add.2 (Vol.II) of 28 Dec. 1994  
(9) S/1994/674/Add.2 (Vol.III) of 28 Dec. 1994  
(10) S/1994/674/Add.2 (Vol.IV) of 28 Dec. 1994  
(11) S/1994/674/Add.2 (Vol.V) of 28 Dec. 1994 |
| 1988 | Mission to Cuba | CHR decision 1998/106 of 10 Mar. 1988, in E/1988/12, at 168 | E/CN.4/1989/46 of 21 Feb. 1989 and Corr.1 |
| 1979 | SC Comm. Israeli settlements in Arab territories occupied since 1967 | SC resolutions 446 (1979) of 22 Mar. 1979, para.4 | (1) S/13450 of 12 July 1979  
(2) S/13679 of 4 Dec. 1979  
(3) S/14268 of 25 Nov. 1980  
(4) A/10285 (Spanish) of 7 Oct. 1975  
(5) E/CN.4/1188 of 4 Feb. 1976  
(6) A/31/253 of 8 Oct. 1976  
(7) A/32/227 of 29 Sept. 1977  
(8) A/33/331 of 25 Oct. 1978 |
| 1975 | Working Group on Chile | CHR Res. 8 (XXXI) (27 Feb. 1977) in E/5635, at 66-67, para.1 | |
| 1973 | Col on Mozambique | UNGA 3114 (XXVIII) (12 Dec. 1973), at 98 | A/5621 (GA Official Records, Supplement 21, 1974) |
| 1963 | UN FFM to South Viet-Nam | UNGA 1234th meeting, A/PV.1239 (4 Oct. 1963) paras.170-174, at 18 | A/5630 of 7 Dec. 1963 |
### Appendix B IMs Mandates and Normative Powers

| Year       | Mechanism                                      | Mandates/Resolutions | NORMATIVE POWERS                                                                 |
|------------|------------------------------------------------|----------------------|---------------------------------------------------------------------------------|
|            |                                                |                      | Powers about Facts | Powers about Primary Norms | Powers about Secondary Norms |
|            |                                                |                      | 1. Gather facts | 2. Gather facts about the situation with a pre-characterization in the mandate | 3. Gather facts on specific conducts with a with a legal pre-characterization | 4. Set enabling conditions | 5. Set a specific term or interpret of a relevant primary norm | 6. Characterize a certain conduct as a specific violation (without binding effect) | 7. Characterize the conduct of a collective subject and issue recommendations of a relevant primary norm | 8. Characterize the conduct of an individual as a violation/abuse, recommend specific next steps | 9. Characterize the conduct as a violation and derive legal consequences |
|            |                                                |                      | a. Non-Legal | b. Legal | a. NSA | b. Standard of proof | a. General | b. Spec. | a. General | b. Spec. |
| 2020       | UN CHR in South Sudan                           | HRC resolution 43/27 of 22 June 2020 | x | x (4a) | x | x (7a) | x (8a) |
| 2019       | FFM on the Bolivian Republic of Venezuela      | HRC resolution 42/25 of 27 Sept. 2019 | x |  | x | x | x (8a) |
| 2018       | Independent Investigative Mechanism for Myanmar | HRC resolution 39/2 of 27 Sept. 2018 | x | x (4a) | x (4b) | x | x | x (7a) | x (8a) | x |
| 2018       | International Team of Experts on the Kasai region (Democratic Republic of the Congo) | HRC resolution 38/20 of 6 July 2018 |  |  |  |  | x (7a) |
| 2018       | Col on the the 2018 protests in the Occupied Palestinian Territory. | HRC resolution S-28/1 of 18 May 2018 | x | x | x (7a) | x (8a) |
| 2017       | Group of Eminent Experts on Yemen              | HRC resolution 36/31 of 29 Sept. 2017, mandate renewed by resolutions 39/16, 42/2 | x | x (4a) | x | x (7a) | x (8a) |
| Year | Event Description | Relevant Resolutions | Notes |
|------|------------------|----------------------|-------|
| 2017 | Team of international experts on the situation in Kasai (Democratic Republic of the Congo) | HRC resolution 35/33 of 23 June 2017 | x x (4a) x (4b) x x (7a) x (8a) |
| 2017 | FFM on Myanmar | HRC resolution 34/22 of 24 March 2017, decision 36/115 of 29 Sept. 2017 | x x (4a) x x (7a) x (8a) |
| 2017 | OHCHR mission to Bangladesh to interview Rohingyas who had entered Bangladesh from northern Rakhine State (Myanmar) in the aftermath of the 9 October 2016 attacks | OHCHR | x (2b) |
| 2017 | UN CHR in South Sudan | HRC resolution 34/25 of 24 March 2017, renewed by resolution 34/25 of 24 March 2017, 37/31 of 23 March 2018, 40/19 (22 March 2019) | x x (4a) x x (7a) x (8a) |
| 2016 | III M in Syria | UNGA resolution 71/248 (21 December 2016) | x x (4a) x (4b) x x (7a) x (8a) x |
| 2016 | Col on human rights in Burundi | HRC resolution 35/24 of 30 September 2016, renewed by resolutions 36/19 of 29 September 2017, 39/14 of 28 September 2018, 39/14 of 27 September 2019 | x x (4a) x x (7a) x (8a) |

Continued
| Year          | Mechanism                          | Mandates/Resolutions                                                                 | NORMATIVE POWERS                                                                 |
|--------------|------------------------------------|--------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
|              |                                    |                                                                                      | **Powers about Facts**                                                          |
|              |                                    |                                                                                      | 1. Gather facts                                                                |
|              |                                    |                                                                                      | 2. Gather facts about the situation with a pre-characterization in the mandate |
|              |                                    |                                                                                      | 3. Gather facts on specific conducts with a legal pre-characterization          |
|              |                                    |                                                                                      | 4. Set **enabling conditions**                                                   |
|              |                                    |                                                                                      | 5. Set a **specific term or interpretation** of a relevant primary norm          |
|              |                                    |                                                                                      | 6. Characterize a specific conduct as a specific violation (without binding effect) |
|              |                                    |                                                                                      | 7. Characterize the conduct of a **collective subject** and issue recommendations |
|              |                                    |                                                                                      | 8. Characterize the conduct of an **individual** as a violation/abuse, recommend specific next steps |
|              |                                    |                                                                                      | 9. Characterize the conduct as a violation and derive legal consequences         |
|              |                                    |                                                                                      |                                                                                  |
|              |                                    |                                                                                      | **Powers about Primary Norms**                                                   |
|              |                                    |                                                                                      |                                                                                  |
|              |                                    |                                                                                      |                                                                                  |
|              |                                    |                                                                                      | **Powers about Secondary Norms**                                                 |
|              |                                    |                                                                                      |                                                                                  |
|              |                                    |                                                                                      |                                                                                  |
| 2016         | UN CHR in South Sudan               | resolution S-26/1 of 14 Dec. 2016                                                    | x                                                                                |
|              |                                    | resolution 31/20 of 23 Mar. 2016                                                      | x (2b)                                                                          |
| 2016         | Col on Syrian Arab Republic        | HRC resolution S-25/1 of 21 Oct. 2016                                                 | x                                                                                |
| 2016         | Col on Syrian Arab Republic [2017] | HRC resolution 31/17 of 23 Mar. 2016                                                 | x                                                                                |
|              |                                    | [requests of updates: HRC resolutions 34/26 of 24 Mar 2017, 43/28 of 22 June 2020] | x                                                                                |
| 2015         | UN Independent Investigation Burundi| HRC resolution S-24/1 of 17 Dec. 2015                                                 | x                                                                                |
| 2015         | OHCHR Assessment mission to improve human rights, accountability and reconciliation for South Sudan | HRC resolution 29/13 of 2 July 2015 (in A/70/53, pp. 186-190, para 14(a)) | x (2b)                                                                          | x (7a) | x (8a) | a. General | b. Spec. | a. General | b. Spec. |
| Year | Mechanism | Resolution | Investigative Objectives | Effects on Human Rights |
|------|-----------|------------|--------------------------|-------------------------|
| 2015 | FFM to investigate atrocities committed by the terrorist group Boko Haram and its effects on human rights in the affected States | HRC S-23/1 of 1 April 2015 (in A/70/53, pp. 149-151, para 9) | x (4a) | x (8a) |
| 2015 | OHCHR Investigation mission to Libya | HRC resolution 28/30 of 27 Mar. 2015 (in A/70/53, pp. 128-132) | x | x (8a) |
| 2015 | Col on Syrian Arab Republic | HRC resolution 28/20 of 27 Mar. 2015 (in A/70/53, pp. 13-17) | x | x (7a) x (8a) |
| 2014 | FFM to Iraq | HRC resolution S-22/1 of 1 Sep. 2014 (in A/69/53/Add.1, pp. 7-9) | x (4a) | x (8a) |
| 2014 | CoI on the 2014 Gaza Conflict | HRC resolution S-21/1 of 23 July 2014 (in A/69/53, pp. 224-227) | x | x (7a) x (8a) |
| 2014 | Col to investigate all alleged violations of human rights in Eritrea | HRC resolution 26/24 of 27 June 2014 (in A/69/53, pp. 194-198) extended with HRC resolution 29/18 of 2 July 2015 (in A/70/53, pp. 203-207) | x (2b) | |
| 2014 | OHCHR investigation on Sri Lanka | HRC resolution 25/1 of 9 Apr. 2014 (in A/69/53, pp. 14-17) | x (4a) | x (7a) x (8a) |
| 2014 | Col on Syrian Arab Republic | HRC resolution 25/25 of 28 Mar. 2014 (in A/69/53, pp. 190-194) | x (4a) | x (7a) x (8a) |
### Appendix B  Continued

| Year | Mechanism | Mandates/Resolutions | Year | Mechanism | Mandates/Resolutions |
|------|-----------|-----------------------|------|-----------|-----------------------|
|      |           | **NORMATIVE POWERS**  |      |           | **NORMATIVE POWERS**  |
|      |            | Powers about Facts    |      |            | Powers about Primary Norms |
|      |            | 1. Gather facts       |      |            | 4. Set enabling conditions |
|      |            | 2. Gather facts about the situation with a pre-characterization in the mandate | | | 5. Set a specific term or interpretation of a relevant primary norm |
|      |            | 3. Gather facts about specific conducts with a legal pre-characterization | | | 6. Characterize a certain conduct as a specific violation (without binding effect) |
|      |            | 4. Set enabling conditions |      |            | 7. Characterize the conduct of a collective subject and issue recommendations |
|      |            | 5. Set a specific term or interpretation of a relevant primary norm | | | 8. Characterize the conduct of an individual as a violation/abuse, recommend specific next steps |
|      |            | 6. Characterize a certain conduct as a specific violation (without binding effect) | | | 9. Characterize the conduct as a violation and derive legal consequences |
|      |            | 7. Characterize the conduct of a collective subject and issue recommendations | | | |
|      |            | 8. Characterize the conduct of an individual as a violation/abuse, recommend specific next steps | | | |
|      |            | 9. Characterize the conduct as a violation and derive legal consequences | | | |
|      |            | **Powers about Secondary Norms** | | | |
|      |            | 1. Gather facts | | | |
|      |            | 2. Gather facts about the situation with a pre-characterization in the mandate | | | |
|      |            | 3. Gather facts about specific conducts with a legal pre-characterization | | | |
|      |            | 4. Set enabling conditions | | | |
|      |            | 5. Set a specific term or interpretation of a relevant primary norm | | | |
|      |            | 6. Characterize a certain conduct as a specific violation (without binding effect) | | | |
|      |            | 7. Characterize the conduct of a collective subject and issue recommendations | | | |
|      |            | 8. Characterize the conduct of an individual as a violation/abuse, recommend specific next steps | | | |
|      |            | 9. Characterize the conduct as a violation and derive legal consequences | | | |

| Year | Mechanism | Mandates/Resolutions | Year | Mechanism | Mandates/Resolutions |
|------|-----------|-----------------------|------|-----------|-----------------------|
| 2013 | Col on Central African Republic since 1 January 2013 | SC resolution 21/27 (2013) of 5 Dec. 2013 | 2013 | Col on Syrian Arab Republic | HRC resolution 23/1 of 29 May 2013 (in A/68/53, pp. 122-123) |
| 2013 | OHCHR FFM on the situation of human rights in Mali | HRC resolution 22/18 of 21 Mar. 2013 (in A/68/53, pp. 59-61) | 2013 | OHCHR FFM to Central African Republic | HRC resolution 23/18 of 15 June 2013 (in A/68/53, pp. 168-170) |
| 2013 | Col on Human Rights in the Democratic People's Republic of Korea | HRC resolution 22/13 of 21 Mar. 2013 (in A/68/53, pp. 49-51) | 2013 | Col on Syrian Arab Republic | HRC resolution 21/26 of 28 Sep. 2012 (in A/67/53/Add.1, pp. 67-70, para 10) |

| Year | Mechanism | Mandates/Resolutions | Year | Mechanism | Mandates/Resolutions |
|------|-----------|-----------------------|------|-----------|-----------------------|
| 2013 | Col on Central African Republic since 1 January 2013 | SC resolution 21/27 (2013) of 5 Dec. 2013 | 2013 | Col on Syrian Arab Republic | HRC resolution 23/1 of 29 May 2013 (in A/68/53, pp. 122-123) |
| 2013 | OHCHR FFM on the situation of human rights in Mali | HRC resolution 22/18 of 21 Mar. 2013 (in A/68/53, pp. 59-61) | 2013 | OHCHR FFM to Central African Republic | HRC resolution 23/18 of 15 June 2013 (in A/68/53, pp. 168-170) |
| 2013 | Col on Human Rights in the Democratic People's Republic of Korea | HRC resolution 22/13 of 21 Mar. 2013 (in A/68/53, pp. 49-51) | 2013 | Col on Syrian Arab Republic | HRC resolution 21/26 of 28 Sep. 2012 (in A/67/53/Add.1, pp. 67-70, para 10) |
| Year | Event | HRC Resolution(s) | Implications | Country | Details |
|------|-------|------------------|--------------|--------|---------|
| 2012 | FFM to investigate the implications of the Israeli settlements Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem | HRC resolution 19/17 of 22 Mar. 2012 (in A/67/53, pp. 50-53) | x | | |
| 2011 | Col on Syrian Arab Republic | HRC resolution S-17/1 of 23 Aug. 2011 (in A/66/53, pp. 29-31) | x | | |
| 2011 | Col Libya | HRC resolution S-15/1 of 25 Feb. 2011 (in A/66/53, pp. 25-27) and 17/17 of 17 June 2011 (in A/66/55, pp. 170-171) | x | | (8a) |
| 2011 | Col on the Situation of Human Rights in Côte d'Ivoire | HRC resolution 16/25 of 25 Mar. 2011 (in A/66/53, pp. 9-11) | x | | |
| 2010 | OHCHR FFM to the Syrian Arab Republic | HRC resolution S-17/1 of 23 Aug. 2011 (in A/66/53, pp. 29-31) | x | | (8a) |
| 2010 | Committee of independent experts to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side | HRC resolutions 13/9 of 25 Mar. 2010 (in A/65/53, pp. 101-103); 15/6 of 29 Sep. 2010 (in A/65/53/Add.1, pp. 24-27) | x | | (2b) |
| 2010 | International FFM to investigate Israeli attacks on the flotilla of ships carrying humanitarian assistance to Gaza | HRC resolution 14/1 of 2 June 2010 (in A/65/53, pp. 160-161, para 8) | x | | |

Continued
### Appendix B  Continued

| Year | Mechanism | Mandates/ Resolutions | NORMATIVE POWERS |
|------|-----------|------------------------|------------------|
|      |           |                        | Powers about Facts | Powers about Primary Norms | Powers about Secondary Norms |
|      |           |                        | 1. Gather facts | 4. Set enabling conditions | 7. Characterize the conduct of a collective subject and issue recommendations |
|      |           |                        | 2. Gather facts about the situation with a pre-characterization in the mandate | 5. Set a specific term or interpretation of a relevant primary norm | 8. Characterize the conduct of an individual as a violation/abuse, recommend specific next steps |
|      |           |                        | 3. Gather facts on specific conducts with a legal pre-characterization | 6. Characterize a certain conduct as a specific violation (without binding effect) | 9. Characterize the conduct as a violation and derive legal consequences |
|      |           |                        | a. Non-Legal | a. NSA | a. General |
|      |           |                        | b. Legal | b. Standard of proof | b. Spec. |
| 2010 | Secretary-General’s Panel of experts on accountability in Sri Lanka | UNSG resolution SG/SM/12967 of 22 June 2010 | x (2b) | | |
| 2009 | OHCHR Mission on situation of human rights in Honduras since the coup d’Ostat on 28 June 2009 | HRC resolution 12/14 of 1 Oct. 2009 (in A/65/53, p. 30) | x (2b) | | |
| 2009 | FFM on the Gaza conflict | HRC resolution S-9/1 of 12 Jan. 2009 (in A/64/53, pp. 153-156) | x | x | x (7a) |
| 2009 | Col on Guinea | UN Secretary-General S/2009/ 556 of 28 Oct. 2009, para 2 | x | x | x (8a) |
| 2009 | Nepal Conflict Mapping | OHCHR (2009) | x (2b) | | |
| 2008 | Mapping exercise - Democratic Republic of the Congo between March 1993 and June 2003 | UN Secretary-General S/2006/ 390 of 13 June 2006, para. 54. | x (2b) | | |
| 2008 | FFM in Kenya | OHCHR (2008) | x (2b) | | |
| Year | Mission/Resolution | Code | Location/Context | Source |
|------|-------------------|------|------------------|--------|
| 2006 | High-level mission to Darfur | | | |
| 2006 | FFM Beit Hanoun | S-3/1 of 15 Nov. 2006 | | |
| 2006 | OHCHR mission to Western Sahara and refugee camps in Tindouf | | | |
| 2006 | Col on Lebanon | HRC resolution S-2/1 of 11 Aug. 2006 | | |
| 2006 |Col for Timor-Leste | UN Secretary-General upon request of Minister for Foreign Affairs of Timor-Leste, S/2006/383 of 13 June 2006 | | |
| 2005 | OHCHR FFM to Togo | OHCHR (2005) | | |
| 2005 | OHCHR mission to Kyrgyzstan to investigate serious violations of human rights in Andijan, Uzbekistan in May 2005 | | | |
| 2004 | Col on Côte d’Ivoire | SC/S/PST/2004/17 of 25 May 2004 | | |
| 2004 | OHCHR Darfur | SC resolution 1564 (2004) of 18 Sep. 2004 | | |

Continued
### Appendix B Continued

| Year               | Mechanism                          | Mandate/ Resolution                  | NORMATIVE POWERS |
|--------------------|------------------------------------|--------------------------------------|------------------|
|                    |                                    | Powers about Facts                  |                  |
|                    |                                    | 1. Gather facts                      |                  |
|                    |                                    | 2. Gather facts about the situation  |                  |
|                    |                                    | with a pre-characterization in the mandate |              |
|                    |                                    | 3. Gather facts on specific conducts with a legal pre-characterization |                  |
|                    |                                    | 4. Set enabling conditions          |                  |
|                    |                                    | 5. Set a specific term or interpret. of a relevant primary norm or directly recommend customary rule |                  |
|                    |                                    | 6. Characterize a certain conduct as a specific violation of a relevant norm |                  |
|                    |                                    | 7. Characterize the conduct of an individual as a specific violation of a relevant norm (without binding effect) |                  |
|                    |                                    | 8. Characterize the conduct of a collective subject as a specific violation of a relevant norm and derive legal consequences  |                  |
|                    |                                    | 9. Characterize the conduct as a violation of a relevant norm (with binding effect) |                  |
|                    |                                    |                                    |                  |
|                    |                                    | a. Non-Legal                        |                  |
|                    |                                    | b. Legal                            |                  |
|                    |                                    | x (2b)                               |                  |
| 2004               | Col on events connected with Al-Hajj | General request, 23 April 2004, UN Security Council, S/2004/311 |                  |
|                    |                                    | x (2b)                               |                  |
| 2002               | OFCHRFM to Côte d’Ivoire            | UN Security Council Request, 29 June 2002, S/PRST/2002/42 |                  |
|                    |                                    | x (2b)                               |                  |
| 2000               | Col on Côte d’Ivoire                | Secretary-General upon the request of the Government of Côte d’Ivoire |                  |
|                    |                                    | x x x (7a)                           |                  |
| 2000               | Col on occupied Palestinian territories | General resolution S/RES/1367 of 8 October 2001, in E/2000/112, pp. 4-7 |                  |
|                    |                                    | x (2b)                               |                  |
| 2000               | Col on Côte d’Ivoire                | Secretary-General established jointly by the UN and the Secretary-General of African Union upon request of the Government of Côte d’Ivoire |                  |
|                    |                                    | x (2b)                               |                  |
| Year | Initiative/Resolution | Description |
|------|----------------------|-------------|
| 1999 | CoI on East Timor CHR resolutions | S-4/1 of 27 Sep. 1999 (in E/1999/23/Add.1, pp. 4-8) (para 6, p. 8) |
| 1999 | OHCHR Investigative team for Afghanistan | GA resolution 54/185 of 17 Dec. 1999, para 13 (para 13) |
| 1998 | Group of experts for Cambodia | UNGA Res. 52/135 (12 Dec. 1998) + A/53/850x (2b) |
| 1998 | OHCHR Exploratory mission to Afghanistan | SC resolution 1193 (1998) of 28 Aug. 1998 requests the Secretary-General to continue investigations (para 6, p. 8) |
| 1997 | DRC Investigative team | UN Secretary-General S/1997/617 (6 Aug. 1997) |
| 1997 | Eastern Zaire Investigative Mission | CHR resolutions 1997/58 of 15 Apr. 1997 (in E/1997/150, pp. 194-198) 2000/15 of 18 Apr. 2000 (in E/2000/15, pp. 200-205) 2001/19 of 20 Apr. 2001 (in E/2001/23, pp. 114-121) |

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## Appendix B  Continued

| Year | Mechanism | Mandates/Resolutions | NORMATIVE POWERS |
|------|-----------|-----------------------|------------------|
|      |           |                       | Powers about Facts | Powers about Primary Norms | Powers about Secondary Norms |
|      |           | 1. Gather facts       | 4. Set enabling conditions | 7. Characterize the conduct of a collective subject and issue recommendations | 9. Characterize the conduct as a violation and derive legal consequences |
|      |           | 2. Gather facts about the situation with a pre-characterization in the mandate | 5. Set a specific term or interpret of a relevant primary norm | 6. Characterize a certain conduct as a specific violation (without binding effect) | 8. Characterize the conduct of an individual as a violation/abuse, recommend specific next steps |
|      |           | 3. Gather facts on specific conducts with a with a legal pre-characterization |  |  |  |
|      |           | a. Non-legal, b. Legal | a. NSA, b. Standard of proof | a. General, b. Spec. | a. General, b. Spec. |

| Year | Mechanism | Mandates/Resolutions | NORMATIVE POWERS |
|------|-----------|-----------------------|------------------|
| 2002 | CoE Rwanda | UNSC Res 955 (28 Aug. 1995) | x (2b) (legal) | x | x |
| 1997 | UN Mission to Guatemala | CHR resolution 1997/51 of 15 Apr. 1997 (in E/1997/223, p. 167) | x (2a) | x | x |
| 1995 | CoE Rwanda | UNSC Res 1012 (28 Aug. 1995), para 1(a)(b) | x | x | x |
| 1993 | FFM Burundi | | x (2a) | x | x |
| 1997 |  | |  | | |

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| Year | Event | Document Reference | Resolution/Decision | Notes |
|------|-------|---------------------|---------------------|-------|
| 1993 | FFM Georgia | UNSC S/26757 (16 Nov. 1993) | x (2b) | (legal) |
| 1993 | Panel of Inquiry on Liberia | UNSG S/26795 and UNSC Res. 876 (19 Oct. 1993) | x x (4a) x x (7a) x (8a) | |
| 1992 | CoE Yugoslavia | UNSC Res. 780 (6 Oct. 1992) para 2 | x (2b) x x | |
| 1992 | Mission to Cuba | CHR decision 1998/106 of 10 Mar. 1988, in E/1988/12, p. 368 | x | |
| 1979 | SC Comm. Israeli settlements in Arab territories occupied since 1967 | SC resolutions 446 (1979) of 22 Mar. 1979, para 4 | x | |
| 1975 | Working Group on Chile | CHR Res. 8 (XXXI) (27 Feb. 1977) in E/5655, pp. 66-67, para 1 | x | |
| 1973 | Col on Mozambique | UNGA 3114 (XXXVII) (12 Dec. 1973), p. 98 | x (2a) | |
| 1963 | UN FFM to South Viet-Nam | UNGA 1234th meeting, A/1239 (4 Oct. 1963) paras 170-174, p. 18 | x | |