UN Fact-Finding Inquiry Commissions for Assassinations of Prominent Individuals

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Abstract
UN Fact-Finding Inquiry Commissions established for assassination of prominent individuals are unique fact-finding commissions not only because of their international nature but also because they are investigating a crime that could be prosecuted. These commissions resemble domestic inquiry commissions but do not have the same investigative powers as domestic commissions. The role of fact-finding commissions is limited to an investigation of facts; they do not adjudicate issues and determine civil or criminal liability. The commissions investigating assassinations do not replace criminal investigations that would be conducted prior to prosecution to the crime. Such commissions must be cognizant of the impact of the procedures they use to obtain information on the admissibility of evidence at the criminal trial. The increase in the creation of fact-finding inquiry commissions is part of the efforts to end impunity.
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Chapter 1
Introduction

Fact-finding inquiry commissions at the domestic level are “simply one genre of administrative tribunals”\(^1\), which are created for diverse reasons and which perform diverse functions and have a unique feature that they are established for a specific purpose and then they cease to exist. As Justice Lamer of the Supreme Court of Canada stated: “[t]here is no doubt that commissions of inquiry at both the federal and provincial levels have played an important role in the regular machinery of government …[and] … in particular serve to supplement the activities of mainstream institutions of government.”\(^2\) Justice Decary of the Federal Court of Appeal held that commissions of inquiry have become “an integral part of our democratic culture.”\(^3\)

International organizations, generally, lack enforcement mechanisms and even when they theoretically have them, they are reluctant to invoke them. Instead, international organizations quite frequently resort to fact-finding. Fact-finding inquiries at the international level could similarly be characterized as administrative in nature in that they, like domestic inquiries, do not have an adjudicative element rather they have as their primary purpose investigation and reporting of facts. Fact-finding inquiries invoke broadly recognized normative standards and typically examine data, hear testimony, and consider contextual circumstances. The fact-finders produce a report at the end of their inquiry which “serves to clarify misconceptions, absolve or embarrass the investigated party, influence public opinion, and where appropriate, facilitate

further expressions of community disapprobation. These are just some of the myriad of the possible impacts of a properly publicized report.

Given the nature of the world order, it has been held that fact-finding is a potentially significant weapon in the armoury of the world order and its increased use has shown that this has in fact been the case. Fact-finding inquires under the auspices of the United Nations (“UN”) have been conducted since as early as 1946. While the frequency of such inquiries has varied, in part due to the political realities of the cold war, in more recent years following the end of the cold war there has been a marked increase in the creation of fact-finding commissions to investigate a myriad of situations including, grave human rights violations, torture, genocide, and acts of terrorism causing the death of prominent individuals.

At the heart of UN fact-finding inquiry commissions, like domestic inquiry commissions, is the pursuit of justice and a search for the truth, and they could have many objectives including, creating an accurate record of the past, ending impunity and holding those culpable accountable, making policy and institutional reform recommendations. At the UN, the inquiry commissions from their creation to their ultimate success, measured in part by the report, the procedures followed during the investigation and the resultant follow-up, have implications for the credibility and legitimacy of the United Nations. It is imperative that there be certain minimum standards of due process to control both the way the facts are established and what is done with them afterwards. If that is not done, then there is a risk that the facts found will be solely for

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5 ibid at 308
propaganda purposes and to support generally pre-conceived political views on the situation investigated, and the fact-finding will be of limited usefulness.

The creation of the International Criminal Court having jurisdiction over mass crimes (genocide, war crimes, crimes against humanity) has resulted in an alternate prosecuting body at the international level that works on the principle of complementarity with domestic courts. UN inquiry commissions that investigate facts surrounding mass crimes, could result in the crimes being prosecuted by the ICC, subject of course, to the ICC having jurisdiction by virtue of the State in question having accepted jurisdiction or by way of a referral from the UN Security Council. However, the prosecution of individuals following the assassination of prominent individuals as a result of acts of terrorism squarely falls upon the State as the International Criminal Court specifically does not have the jurisdiction to deal with terrorism, unless of course, the UN establishes an independent tribunal, as it did following the assassination of former Lebanese Prime Minister Rafik Hariri.

In this paper I will begin by providing an overview of domestic inquiry commissions in Canada and international inquiry commissions conducted under the auspices of the UN. In this paper, I will restrict the discussion to two recent UN commissions of inquiry into the assassination of prominent individuals, former Lebanese Prime Minister Rafik Hariri and former Pakistani Prime Minister Benazir Bhutto as they highlight the underlying tension between international fact-finding inquiries and criminal investigations and prosecutions at the domestic and international level. In the following section, I will provide the background to the creation of and discuss the salient findings and recommendations of the two Inquiry Commissions set up by the UN following the assassinations of former Prime Ministers Rafik Hariri of Lebanon and
Benazir Bhutto of Pakistan. In the next section I will discuss three aspects of inquiry commissions namely, the commission’s investigative powers including the commission’s access to information, the investigative powers of the commission to obtain documents and subpoena individuals, and information sharing by the commission with the public and the government. In discussing these three areas I will compare domestic commission of inquiry to international commissions. An underlying theme of this paper will be the relationship of commissions of inquiry with prosecutions at the domestic or international level.

In the next section I will examine the implications of inquiry commissions as well as the implications of the recommendations. I will argue that fact-finding inquires by the United Nations are inherently political but especially inquiries into the assassination of prominent individuals. While certain procedures can be followed to ensure the actual and perceived independence of the commission there is an inherent risk that remains that an unsuccessful report would be damaging to the credibility and legitimacy of the United Nations.

The differences between domestic and international commissions will demonstrate that while UN inquiry commissions may be called “inquiry commissions” and while they may have the same objectives as domestic inquiry commissions; they are unlike domestic inquiry commissions and are in fact, unique bodies, which because of their international nature have no investigative powers and rely completely upon state cooperation and in that regard rely upon other states and the UN to encourage states to cooperate and have no means to force states to comply. This limitation on the powers of UN inquiry commissions may be theoretically significant however, practically, domestic inquiry commissions also generally rely on state
cooperation and do not frequently use the powers to compel evidence and witnesses due to a variety of constraints including the impact on future prosecution.
Chapter 2
Overview of Inquiry Commissions

2.1. Domestic Commissions of Inquiry – Canada

Commissions of Inquiry have a long history with the first commissions of inquiry being established by the British Monarchs to assist the King as early as between 1080 and 1086.  

Commissions of Inquiry in Canada are established by Statute, federally under the Inquiries Act or provincially under corresponding legislation. They are established by the government in response to a particular event or a situation that requires investigation to ascertain what occurred and the inquiry commission reports and make recommendations.

The Law Reform Commission of Canada drew a distinction between two types of commissions those that primarily advise and those that primarily investigate:

Broadly speaking, commissions of inquiry are two types. There are those that advise. They address themselves to a broad issue of policy and gather information relevant to that issue. And there are those that investigate. They address themselves primarily to the facts of a particular alleged problem, generally a problem associated with the functioning of government. Many inquiries both advise and investigate….But almost every inquiry primarily either advises or investigates.

However, both types of Commissions will have an element of each of these functions.

The investigative function involves fact-finding that focuses on specific events and the related

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conduct of individuals. Such inquiries may appear more “court-like” as individual conduct is at issue. In conducting an inquiry it is imperative that procedural fairness be respected. Often the proceedings will involve procedures that are commonly found in court proceedings such as pre-hearing disclosure of information, legal representation at the hearings, and cross-examination of adverse witnesses that assist in ensuring procedural fairness. While the inquiry commissions may appear similar to court proceedings, it is important to bear in mind that inquiry commissions may only report and recommend and they cannot adjudicate disputes or determine rights. Commissions of inquiry can serve many functions and can have an important role to play. The Law Reform commission of Ontario identified six principal functions of commissions of inquiry:

i) they enable the government to secure information as a basis for developing or implementing policy;

ii) they serve to educate the public or legislative branch;

iii) they provide a means to sample public opinion;

iv) they can be used to investigate the judicial and administrative branches;

v) they permit the public voicing of grievances; and

vi) they enable final action to be post-poned.

Underlying all these functions is fact-finding which is one of the primary functions of an inquiry commission. As Justice Peter Cory in *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)* stated:

One of the primary functions of public inquiries is fact-finding. They are often convened, in the wake of public shock, horror, disillusionment, or skepticism, in order to uncover “the truth”…In times of public questioning, stress and concern they provide the means for Canadians to be apprised of the conditions pertaining

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8 *Supra note 1* at 14-15.
9 *Supra note 1* at 11.
to a worrisome community problem and to be a part of the recommendations that are aimed at resolving the problem.”

There are a number of factors that determine the success of an inquiry commission. Inspiring public confidence has been identified as a key factor. Ed. Ratushny presents certain features of an inquiry commission that inspire public confidence. Though inquiry commissions are established by the government, a primary feature is their independence; with the commissioner having no vested interest in the outcome. Other features include the effectiveness of the commission to “get to the bottom” of the problem, the mandate of the commission in terms of the questions to be answered and the issues to be addressed, and also, the commission’s transparency in terms of the transparency of the proceedings. Ratushny postulates that open and public hearings are an important component to inspire public confidence.

Ratushny classifies inquiry commissions into five categories: investigative inquiries that inquire into specific events and the related conduct of those involved; policy/advisory commissions that examine broader societal issues and advise government on how these should be addressed through public policy; wrongful conviction inquiries that inquire into the factors that resulted in the conviction of an innocent person; inquiries that investigate crimes; and ongoing inquiry bodies that are not commissions of inquiry but have similar powers to conduct inquiries on an ongoing basis.

\[12\] *ibid* at para. 62.
\[13\] *Supra* note 1 at 17-18.
\[14\] *Supra* note 1 at 34 -35.
One of the purposes is fact finding and in this regard they investigate and report. Commissions of inquiry will frequently make recommendations, however, these recommendations are not binding on the government. In their fact-finding, commissions of inquiry may reach conclusions about whether an individual’s conduct was improper, however, they are not adjudicators and they do not have the authority to make findings of criminal or civil liability. While that may be the case, a commission’s finding of improper conduct by an individual could have serious repercussions for an individual. It is, therefore, imperative that the commission conduct it’s inquiry in full compliance of the legal requirements and the principle of fairness in this regard must always be at the forefront.\textsuperscript{15}

An inquiry commission is established by the government by statute. Each inquiry commission has its own terms of reference and will adopt its own rules of procedure that will govern how it will conduct the inquiry. The inquiries proceed by way of hearings that bear resemblance to court proceedings. The hearings are public and are a means of enhancing public confidence.\textsuperscript{16}

For the purposes of this paper the two relevant types of commissions of inquiry are inquires investigating crimes and investigative inquiries. Ratushny explains that inquiries investigating crimes are a thing of the past as they encroach on prosecutorial investigations. There is, however, a fine line between inquiries into misconduct that may, incidentally be criminal and inquires investigating criminal conduct.\textsuperscript{17} A commission of inquiry must be

\begin{flushright}
\textsuperscript{15} Supra note 1 at 27.
\textsuperscript{16} Supra note 1 at 163.
\textsuperscript{17} Supra note 1 at 85 -86.
\end{flushright}
cognizant of this line and should be careful not cross it. In the event, that an inquiry commission is perceived to have crossed the line Courts may intervene.

The majority in the Supreme Court of Canada decision in *Starr v. Houlden* cited Estey J. in *Attorney General (Que.) and Keable v. Attorney General (Can.)* that the province in conducting an inquiry may not act in a way to violate the sanctity of the right to remain silent during what is in effect a criminal investigation. At pages 254-55 Estey J. states:

> The investigation of the incidence of crime or the profile and characteristics of crime in a province, or the investigation of the operation of provincial agencies in the field of law enforcement, are quite different things from the investigation of a precisely defined event or series of events with a view to criminal prosecution. The first category may involve the investigation of crime generally and may be undertaken by the invocation of the provincial enquiry statutes. The second category entails the investigation of specific crime, the procedure for which has been established by Parliament and may not be circumvented by provincial action under the general enquiry legislation any more than the substantive principles of criminal law may be so circumvented. ¹⁸

Further, the majority in *Starr v. Houlden* endorsed the Ontario Court of Appeal’s observation in *Re Nelles and Grange* ¹⁹ at page 215 – 216 that:

> A public inquiry is not the means by which investigations are carried out with respect to the commission of particular crimes. . . Such an inquiry is a coercive procedure and is quite incompatible with our notion of justice in the investigation of a particular crime and the determination of actual or probable criminal or civil responsibility. ²⁰

In Canada, given the division of powers between the federal and provincial governments, the responsibility for conducting criminal investigations rests with the provinces, while the Criminal Code is a federal statute that provides procedures and protections for suspects and the

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²⁰ *Supra* Note 2.
accused. The provinces do not have the authority to alter the criminal investigation process and tamper with the protections that have been guaranteed in the Criminal Code. In *Starr v. Houlden*, Lamer J. writing for the majority held that:

> [T]he inquiry process cannot be used by a province to investigate the alleged commission of specific criminal offences by named persons. The use of the inquiry process in that way, having regard for the ability to coerce those named individuals to testify, would in effect be circumventing the criminal procedure, which is within the exclusive jurisdiction of Parliament.  

The powers of the inquiry commission to compel evidence differ from the powers of the police in conducting a criminal investigation and the Courts have held that the use of these powers to determine criminal responsibility by bypassing the protections afforded by the Criminal Code and the Charter would be *ultra vires* of a province.

Certain situations that are the subject of a commission of inquiry may also warrant a criminal investigation, which may proceed concurrently or follow the inquiry’s investigation. Where there is both a criminal investigation and a commission of inquiry the issue of timing arises. There are consequences that flow from the timing of when each process occurs. So as to not impede the prosecution and prevent the violation of the rights of suspects or the accused, the criminal investigation and prosecution should occur prior the commission of inquiry. However, time is lost if the inquiry is to wait for the completion of the criminal prosecution and the mandate of the inquiry may also be limited. There may be situations with the two can occur concurrently. In *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*,
the Supreme Court of Canada held a commission of inquiry could proceed concurrently with a
criminal proceeding if there is a compelling public interest.23

There are compelling reasons pertaining to the rights of the accused that may necessitate
that the inquiry take place after the criminal investigation and even after the trial given that the
inquiry commission has broad investigative powers to compel the testimony of witnesses and for
the production of documents. Criminal investigations differ from inquiry commissions in two
central respects; they are conducted in private and do not have the power to compel testimony
and the production of documents.

The relationship between inquiry commissions and criminal prosecutions has been the
subject of court decisions. Courts have clearly established that there must be limits on such
inquiry commissions to ensure that they do not cross the line and become criminal investigations
and thereby, infringe on the rights of the individuals by encroaching on the protections
guaranteed by the Charter of Rights and Freedom and Criminal Code.

In this regard the mandate of the inquiry commission is of fundamental importance and
can limit the scope of the inquiry. The purpose and effect of the inquiry commission determines
whether it has crossed the fine line and become a criminal investigation. The Supreme Court of
Canada in Starr v. Houlden clearly stated that “the pith and substance of a commission must be
firmly anchored to a provincial head of power, and that it cannot be used either purposely or

22 Supra Note 11.
23 Supra Note 1 at 122.
through its effect, as a means to investigate and determine the criminal responsibility of specific individuals for specific offences.”

Commissions of inquiry play an important role in studying and investigating matters of public importance and can assist in ascertaining facts, airing public grievances, and making policy recommendations. They must however, not become a means by which the government can circumvent the criminal due process protections.

2.2 UN Fact-finding Inquiry Commissions

The United Nations has engaged in fact-finding since 1946. At the UN commissions of inquiry may be established by the Security Council, the General Assembly, the Human Rights Council (formerly Commission on Human Rights), the Sub-commission on the Prevention of Discrimination and Protection of Minorities, the Treaty-bodies and the Secretary General. However, there is a lack of a comprehensive standardized procedure or criteria for the inquiry commissions. Each one of these appointing organs or bodies relies on a separate formula, uses a different label, provides for different operational methods, and offers different levels of support and resources.

By their very nature inquiry commissions whether international or domestic are ‘ad hoc’ and are created in response to a particular situation. Since many of the UN organs, bodies, and agencies can establish a fact-finding inquiry, the mandates are at times overlapping and almost always *ad hoc*. As a result of the ad hoc issuance of these mandates there is no predictability as

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24 *Supra* Note 2.
to the situations that will warrant issuance of such mandates; the decisions to issue, extend, amend and terminate these mandates seem essentially contingent upon political and extraneous circumstances; and there is not always follow up once the fact-finding is concluded.\textsuperscript{25}

In 2012, the UN Special Rapporteur on torture and cruel, inhumane or degrading treatment or punishment, Juan E. Mendez, in his Report examined the scope and role of Commissions of Inquiry in the international context. He stated that the primary objective of commissions of inquiry is “to discover, clarify and formally acknowledge the causes and consequences of past violations in order to establish accountability.”\textsuperscript{26} He elaborated that in this capacity commissions of inquiry are fact-finding missions that aim to establish an accurate record of the past. Additional objectives that commissions of inquiry could address include:

a. To contribute to accountability of perpetrators;

b. To respond to the needs of victims;

c. To identify institutional responsibility and propose institutional, legal and personnel reforms;

d. To promote reconciliation.\textsuperscript{27}

He also recognized that while the objective of commissions of inquiry is the pursuit of justice, the establishment of the missions is frequently politically motivated.

Of the three organs of the UN, the Secretary-General has been by far the most active in


\textsuperscript{26} Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UNHRCOR, 19\textsuperscript{th} Sess, UN Doc A/HRC/19/61, (2012) at para. 25.

\textsuperscript{27} ibid at para. 26.
this field, both by fulfilling various mandates entrusted to him by other UN organs and by undertaking fact-finding activities on his own initiative.\(^\text{28}\)

Fact-finding initiatives by the Secretary-General are derived, in most cases, from his implicit powers under Article 99 of the UN Charter\(^\text{29}\) to bring certain matters to the Security Council's attention. Article 99 reads:

> The Secretary-General may bring to the attention of the Security Council any matter, which in his opinion may threaten the maintenance of international peace and security.

Trygve Lie, the UN's first Secretary-General, provided a foundation for the extensive practice of fact-finding on the initiative of the Secretary-General by giving a broad but practical interpretation of Article 99:

> I hope that the Council will understand that the Secretary-General must reserve his right to make such enquiries or investigations as he may think necessary, in order to determine whether or not he should consider bringing any aspect of this matter to the attention of the Council, under the provisions of the Charter.\(^\text{30}\)

Thirty-six years after Trygve Lie's expansive interpretation of Article 99, Secretary-General Javier Perez de Cuellar announced his intent to expand further the Secretary-General's fact-finding capabilities:

> In order to avoid the Security Council becoming involved too late in critical situations, it may well be that the Secretary-General should play a more forthright role in bringing potentially dangerous situations to the attention of the Council within the general framework of Article 99 of the Charter. My predecessors have done this on a number of occasions.


\(^{29}\) Charter of the United Nations, 26 June 1945, Can TS 1945 No. 7.

\(^{30}\) FN 20 in Supra Note 28 at 647. 1 UNSCOR (70th mtg.) at 404 (1946).
occasions, but I wonder if the time has not come for a more systematic approach .... The Secretary-General's diplomatic means are, however, in themselves quite limited. In order to carry out effectively the preventive role foreseen for the Secretary-General under Article 99, I intend to develop a wider and more systematic capacity for fact-finding in potential conflict areas.\textsuperscript{31}

Since then the role of the Secretary-General in this area has strengthened. The Secretary-General’s increased and active role in establishing fact-finding inquiry commissions can be explained by the need for a quick response to situations as they arise. Given the political nature of the UN, decision-making at the UN has been the subject of criticism for its slow response to situations. After the cold war there has been a shift that has enhanced the role to be played by the UN in world affairs. States may not necessarily agree on the need for a fact-finding inquiry commission or the specific terms of the inquiry commission however, it is necessary for the Secretary-General to remain apprised of situations in the world and be in a position to bring them to the attention of the Security Council. The dynamic at the UN Security Council with the permanent five having veto power render it ineffective at times. Rather than waiting for the Security Council to make a decision, the Secretary General using the residual powers under Article 99 can establish fact-finding inquiry commissions that will assist him in presenting situations to the Security Council that may warrant Security Council action.

The political realities of the operation of the UN were addressed in the 1988 Declaration on the Prevention and Removal of Disputes and Situations which May Threaten International Peace and Security and on the Role of the United Nations in this Field (the "1988 Declaration") which called for an enhancement of the fact-finding capabilities of the Security Council, the

\textsuperscript{31} FN 21 in Supra Note 28 at 647 The Secretary-General expressed his intent in his first annual report to the General Assembly. UNGAOR, 37, Supp. No. 1, UN Doc. A/37/1 (1982). at 3,
General Assembly, and the Secretary-General. Paragraph 22 specifically called for a greater role to be played by the Secretary-General in this regard:

[T]he Secretary-General should, where appropriate, consider making full use of fact-finding capabilities, including, with the consent of the host State, the sending of a representative or fact-finding missions to areas where a dispute or a situation exists; where necessary, the Secretary-General should also consider making the appropriate arrangements.\(^{32}\)

There is little guidance provided by the UN in terms of criteria that could serve as a basis for the establishment, operation and evaluation of a fact-finding inquiry commission. The Economic and Social Council and the General Assembly have adopted the sparsest of pointers' while the Human Rights Council has adopted a code for its Special Procedures\(^{33}\) that includes limited provisions with respect to fact-finding visits.\(^{34}\)

In 1990, the General Assembly passed the “Declaration on Fact-finding by the United Nations in the field of the Maintenance of International Peace and Security”, which provides some guidance regarding fact-finding missions. Fact-finding, for the purposes of the Declaration was defined as “any activity designed to obtained detailed knowledge of the relevant facts of any dispute or situation which the competent United Nations organs need in order to exercise effectively their functions in relation to the maintenance of international peace and security.”\(^{35}\)


\(^{33}\) HRC Res 5/2, HRC (2007)


The Declaration further states at paragraph 3 that “Fact-finding should be comprehensive, objective, impartial and timely.”\textsuperscript{36} Regarding the purposes of fact-finding missions, according to the Declaration the sending of a mission signals “the concern of the Organization and should contribute to building confidence and defusing the dispute or situation while avoiding any aggravation of it.”\textsuperscript{37}

The Declaration specially encourages the use of fact-finding as a tool to facilitate the fulfillment of their responsibilities for the maintenance of international peace and security by the Security Council, General Assembly and the Secretary General.\textsuperscript{38} The Secretary General is specifically tasked with the responsibility of using fact-finding missions at an early stage so as to try to prevent disputes and situations.\textsuperscript{39} The Secretary General’s power to establish a fact-finding mission on his own initiative or at the request of the concerned States is clearly recognized.\textsuperscript{40} The Secretary General is tasked with the responsibility of maintaining lists of experts in various fields who would be available for fact-finding missions. Further, he is given the task of garnering resources and capabilities to undertake emergency fact-finding missions.\textsuperscript{41}

The Declaration clearly enumerates that the fact-finding mission should have “a clear mandate” and “precise requirements to be met by its report.” Also, the mission’s role as a finder

\begin{footnotesize}
\textsuperscript{36} ibid at para. 3.
\textsuperscript{37} Supra Note 35 at para. 5.
\textsuperscript{38} Supra Note 35 at paras. 7 – 13.
\textsuperscript{39} Supra Note 35 at para. 12.
\textsuperscript{40} Supra Note 35 at para. 13.
\textsuperscript{41} Supra Note 35 at paras 14, 28 – 29.
\end{footnotesize}
of facts and not an adjudicator is emphasized that the report “should be limited to a presentation of the findings of a factual nature.”

Given the nature of the world order, the Declaration recognizes the sovereignty of States and the need for state cooperation in successfully completing a mission and provides that, “[t]he sending of a United Nations fact-finding mission to the territory of any State requires the prior consent of that State, subject to the relevant provisions of the Charter of the United Nations.” Thus, leaving open the possibility for UN Security Council resolutions. It further provides that “States should endeavor to follow a policy of admitting United Nations fact-finding missions to their territory” and in the event that it decides not to do so, it must provide reasons in a timely manner. The Declaration provides that states should cooperate with the mission to ensure that the mission is able to fulfill its mandate by providing the mission with all immunities and facilities, “in particular full confidentiality in their work and access to all relevant places and persons, it being understood that no harmful consequences will result to these persons.”

Recent commissions of inquiry established by the United Nations include commissions established by the Security Council by resolution, for example, Darfur in 2004, Lebanon as well as commissions established by the Secretary-General, for example, Côte d’Ivoire, Timor-

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42 Supra Note 35 at para. 17.
43 Supra Note 35 at para. 6.
44 Supra Note 35 at para. 21.
45 Supra Note 35 at para. 20.
46 Supra Note 35 at para. 23.
48 SC Resolutions 1595 (2005), 1636 (2005) and 1644 (2005)
49 S/2004/384
Leste\textsuperscript{50}, Guinea\textsuperscript{51} and Pakistan.\textsuperscript{52} The Human Rights Council has also created commissions on the Gaza conflict\textsuperscript{53} and most recently, for the Syrian Arab Republic.\textsuperscript{54}

In comparing UN fact-finding inquiry commissions to domestic inquiry commissions, their purpose and function is similar. The primary objective is to ascertain the facts; it is not to assign criminal or civil responsibility.

Inquiry commissions established by the UN typically deal with crimes, be they mass crimes or crimes targeting specific individuals, and in ascertaining the facts it is difficult not to ascribe responsibility of the acts to organizations and/or individuals. The line between an investigation that investigates criminal misconduct and investigative inquiry into misconduct that may incidentally be criminal at the international level is blurred.

In fact the Special Rapporteur on torture and cruel, inhumane or degrading treatment or punishment in his 2012 report specifically stated that one of the objectives of Inquiry Commissions is “to contribute to accountability of perpetrators”. In numerous instances, the Inquiry Commission’s report has been the first step that has resulted in prosecution of those culpable by an international or hybrid tribunal. However, there have been instances where no further steps have been taken by the United Nations towards prosecution and prosecution is left to the State.

\textsuperscript{50} SC Resolution 1690 (2006)  
\textsuperscript{51} S/2009/693  
\textsuperscript{52} S/2010/191  
\textsuperscript{53} A/HRC/12/48 (2009)  
\textsuperscript{54} A/HRC/18/53 (2012)
The Special Rapporteur speaking specifically about torture and related issues, noted that “a commission of inquiry is never sufficient to fully satisfy a State’s obligations under international law…Commissions of inquiry should…be considered complementary to other mechanisms, including criminal investigations and prosecution of perpetrators…”\textsuperscript{55} This also applies to other situations. He further stated that in addition to providing a clear picture of the policies at play, “[t]he information gathered by a commission of inquiry can also orient the investigative and prosecutorial strategies without substituting them.”\textsuperscript{56} Further, “the findings and recommendations of commissions of inquiry can help to fill gaps in the protection of human rights in the future, without prejudice to the determination of individual guilt or innocence, which only courts can make.”\textsuperscript{57}

Cognizant of the relationship between commissions of inquiry and criminal prosecutions, the Special Rapporteur cautioned that in all instances, “certain steps must be taken to ensure that the activities of a commission of inquiry do not jeopardize criminal due process standards, including importantly, the rights of potential criminal defendants. Commissions of inquiry should not identify individuals as being criminally responsible for acts described in the final report if doing so violates the rights of the identified individuals, who should be presumed to be innocent, and may inject additional bias into any subsequent official criminal investigation or prosecution.”\textsuperscript{58}

\textsuperscript{55} \textit{Supra} Note 26 at paras. 69 -70.
\textsuperscript{56} \textit{Supra} Note 26 at para. 70.
\textsuperscript{57} \textit{Supra} Note 26 at para. 70.
\textsuperscript{58} \textit{Supra} Note 26 at para. 72.
Given the lack of investigative power to compel evidence the danger of infringing on an individual’s rights such as to not give self-incriminating evidence, right to silence, are perhaps not as pervasive in UN fact-finding inquiry commissions as in domestic inquiry commissions. However, the inquiry commissions must always be aware of the potential infringement on the rights of a possible accused.

Chapter 3
UN Fact-finding Inquiry Commissions for the Assassinations of Prominent Individuals

3.1. Rafik Hariri Fact-finding Mission

3.1.a. Overview

On 14 February 2005 a large explosion in downtown Beirut killed 23 people, including the former Lebanese prime minister, Rafik Hariri, and injured approximately 100 people. There was swift national and international condemnation of the explosion. UN Secretary General Kofi Annan the same day condemned the attacks. On 15 February 2005 the United Nations Security Council President issued a statement condemning the attack, calling on the Lebanese government to bring to justice the perpetrators, organizers and sponsors of this heinous terrorist act in compliance with its commitments and urging all states, in accordance with its Resolutions 1566 (2004) and 1373 (2001), to cooperate fully in the fight against terrorism. In this regard, the President also requested the Secretary General to monitor the situation and report to the Security Council. The President stated: “The Security Council requests the Secretary-General to follow
closely the situation in Lebanon and to report urgently on the circumstances, causes and consequences of this terrorist act.”

The UN Secretary-General, Kofi Annan, sent a Fact-finding Mission to Beirut to enquire into the causes, circumstances and consequences of the attack (the “Mission”). The Mission led by Peter Fitzgerald, a former Deputy Commissioner of the Irish Police, arrived in Beirut on 25 February 2005 and delivered its report on 24 March 2005.

The Mission in its report made various recommendations and in response to the recommendations in the report, in April 2005, the UN International Independent Investigation Commission (“UNIIIC”) was established by UN Security Council Resolution 1595. The purpose of UNIIIC was to gather evidence and to assist the Lebanese authorities in their investigation of the attack of 14 February 2005. The UNIIIC's mandate was later expanded to include the investigation of other assassinations that took place before and after the Hariri attack. UNIIIC was quite unique as the UN does not typically conduct investigations and has left this task to the prosecuting authorities, be they international or hybrid tribunal prosecutors or domestic authorities.

On 13 December 2005, following a series of other killings and bombings in Lebanon, the Lebanese government requested that the UN create a tribunal of "international character". The UN Security Council gave the Secretary-General a mandate to negotiate an agreement with the Lebanese government on 26 March 2006.

59 Statement of President of Security Council (S/PRST/2005/4) of 15 February 2005
The UN and the Lebanese government signed an agreement for the Special Tribunal for Lebanon ("STL") on 23 January 2007. The agreement was handed to the Lebanese parliament to ratify but the speaker of parliament refused to convene parliament to hold a vote on its ratification. The Lebanese sent a petition signed by a majority of MPs to the UN Secretary General requesting that the Security Council form the tribunal.

The Special Tribunal for Lebanon was established in 2007 by Resolution 1757 under Chapter VII of the UN Charter, which permits the SC to make decisions that are binding upon member states. The tribunal opened on 1 March 2009 in Leidchendam, near The Hague, the Netherlands. It is an independent, judicial organisation.

The primary mandate of the STL is to hold trials for the people accused of carrying out the attack of 14 February 2005 which killed 23 people, including the former prime minister of Lebanon, Rafik Hariri, and injured many others.

The UN International Independent Investigation Commission (UNIIIC) and the STL are separate organisations. The UNIIIC's mandate ended on 28 February 2009. Jurisdiction was transferred to the STL and the information gathered was handed over to the STL's Office of the Prosecutor.60

The UN Fact-finding mission was the genesis of the UNIIIC, which was an independent investigative commission. The procedures followed by UNIIIC in conducting its investigation and gathering evidence could be an area of further examination but are beyond the scope of this paper.

3.1.b. Findings and Recommendations

The Mission was unable to “reliably” assert the specific causes for the assassination of Hariri however, in its report it concluded that it was “clear that the assassination took place in a political and security context marked by acute polarization around the Syrian influence in Lebanon and the failure of the Lebanese State to provide adequate protection for its citizens.”

The report traced the history of the relationship between Lebanon and Syria and the continued Syrian military presence in Lebanon since 1976 with the consent of the Lebanese Government. The opposition to Syrian military presence became vociferous after the withdrawal of Israeli forces from Southern Lebanon in 2000. Hariri’s term in office as Prime Minister from 2000 to 2004 was marked by the strained relationship between the Prime Minister and the President Emil Lahoud who was an ardent supporter of continued Syrian involvement. With the support of Syria, Lahoud sought to amend the constitution to obtain an extension of his term in office, despite Hariri’s efforts to convince President Assad of Syria to not extend his term.

62 ibid at para. 6-7
Syria’s continued support of Lahoud confirmed Syria’s lack of support for Hariri and was a clear message to him that he had to go.\textsuperscript{63}

On September 2, 2004, the Security Council adopted a resolution, which, among other things, called for all remaining forces to withdraw from Lebanon.\textsuperscript{64} The following day, the amendment to the constitution was passed, with Hariri and his bloc, except for three ministers, voting in favour of it, and Lahoud’s term was extended for 3 years. On September 9, Hariri announced his resignation.\textsuperscript{65}

Political tensions reached new heights and one of the three ministers who voted against the amended narrowly escaped an assassination attempt. This assassination attempt shocked Lebanon and further polarized the situation. The Mission found that this was a period of fear by the opposition to Syrian presence in Lebanon and Hariri, himself, feared for his life.\textsuperscript{66}

In the time leading up to the elections, the opposition consolidated and emerged as a bloc that was independent from, if not hostile to, Syrian influence and seemed confident of winning the elections. The opposition enjoyed the support of key international players. The Mission found that “[a]t the centre of this power bloc one man stood as its perceived architect: the former Prime Minister Rafik Hariri. On February 14, 2005, he was assassinated.”\textsuperscript{67}

\textsuperscript{63} Supra Note 61 at paras. 7-10
\textsuperscript{64} Security Council Resolution 1559 (2004)
\textsuperscript{65} Supra Note 61 at para. 11
\textsuperscript{66} Supra Note 61 at paras. 12 – 14.
\textsuperscript{67} Supra Note 61 at para. 14.
The report also examined the provision of security services and the level of protection provided to Hariri. At the time of Hariri’s assassination “his protection was ensured almost entirely by his private security team.”\textsuperscript{68} The Mission concluded that “the Lebanese security apparatus failed to provide proper protection for Mr. Hariri and therefore provided a convenient context for his assassination.”\textsuperscript{69}

The Mission examined the circumstances of the assassination of Hariri and in this regard, the Mission identified the last movements of Hariri immediately before the assassination took place, determined the origin of the explosion and the type and weight of the explosive used, and reviewed the main avenues of the investigation undertaken by the Lebanese authorities based on accepted international standards. In this regard, the Mission reviewed aspects of the investigation including management of the crime scene; the preservation of evidence; the investigation of the claim of responsibility for the attack broadcast on the television network Al-Jazeera; the investigation of the suspect bomber; the investigation of the suspect vehicle.\textsuperscript{70}

In the report, the Mission concluded that the primary responsibility for the lack of security, protection, and law and order lay with the Lebanese security services and the Syrian Military Intelligence. The Lebanese security services had demonstrated “serious and systematic negligence” in carrying out its duties and had “failed to provide the citizens with an acceptable level of security” and therefore, had “contributed to the propagation of a culture of intimidation.

\textsuperscript{68} Supra Note 61 at para. 20.
\textsuperscript{69} Supra Note 61 at para. 22.
\textsuperscript{70} Supra Note 61 at paras. 23 – 47.
and impunity." The Mission also found that the Syrian Military Intelligence shared "this responsibility to the extent of its involvement in running the security services in Lebanon."

In the report, the Mission reached a politically charged conclusion that the Syria also bore primary responsibility for the political tension the preceded the assassination of Hariri. The Mission found that Syria had "exerted influence that went beyond the reasonable exercise of cooperative or neighbourly relations" and that it had "interfered with the details of the governance in Lebanon in a heavy handed and inflexible manner".

With respect to the criminal investigation conducted by Lebanese authorities, the report made critical findings that there was a serious disconnect between the senior members of the local security investigation team; there was a lack of coordination between the security forces investigation team and the investigating judges; there was a lack of focus and control by the senior management responsible for the overall investigation of the crime; there was a lack of professionalism in the overall crime investigation techniques employed; there was a total absence of intelligence information and little or no exchange of information among the various agencies engaged in the investigations; and there was an absence of both technical capability and equipment necessary for such an investigation. The Mission also found that the investigation lacked commitment to investigate the crime effectively and the investigation was not carried out in accordance with acceptable international standards. The Report concluded that Mission was of the view that the local investigation had neither the capacity nor the commitment to succeed.

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71 Supra Note 61 at para. 60.
72 Supra Note 61 at para. 61.
The Mission also noted that the local investigation did not have the confidence of the local population.\textsuperscript{73}

In summary, the local investigation was wholly inadequate and therefore, the Mission recommended the establishment of an independent international investigation into the attack, which could be assisted by and advised by Lebanese legal resources without prejudice to its independence. The Mission expressed skepticism about the likelihood of the investigation team being able to complete its task successfully as it would not receive the necessary cooperation from the local authorities as long as the current leadership of the Lebanese security services remained in office.\textsuperscript{74}

In addition, the report recommended reform to the security apparatus for the further security and stability of the country. The Mission identified six areas as priorities for security reform: (a) decoupling security from politics and establishing a professional service; (b) nationalizing the security apparatus by disentangling it from external influence and by raising it above sectarianism; (c) establishing a democratic police service, with special attention to the rule of law and human rights; (d) establishing clear lines of reporting; (e) capacity-building; and (f) introducing clear mechanisms for accountability and judicial oversight.

\textsuperscript{73} Supra Note 61 at paras. 48 -49.
\textsuperscript{74} Supra Note 61 at para. 62.
3.2 Benazir Bhutto Inquiry Commission

3.2.a. Overview

On December 27, 2007, former Prime Minister of Pakistan, Benazir Bhutto, head of the Pakistan People’s Party, was assassinated as she was leaving a campaign rally for the federal election in Rawalpindi in the province of Punjab. In the attack, 24 other people were killed and 91 injured.75

In May 2008, the Government of Pakistan with the Pakistan People’s Party forming the government requested the Secretary-General of the United Nations, Ban Ki-moon, to establish an international commission to investigate the assassination of Ms. Bhutto. After consultations the Secretary-General decided to accede to the request by the Pakistani government and appointed a three member Commission of Inquiry to determine the facts and circumstances of the assassination of the former Prime Minister, Benazir Bhutto (“Bhutto Inquiry”).76

The Secretary-General informed the Security Council of his decision to establish a Commission of Inquiry by letter dated February 3, 2009 and advised that the Commission’s mandate was limited to conducting a fact-finding mission but not a criminal investigation as set out in the terms of reference which were annexed to the letter. It was clearly established from the outset that the duty of carrying out a criminal investigation, finding the perpetrators and bringing

them to justice, would remain with the Pakistani authorities.\textsuperscript{77} The President of the Security Council responded on 3 February 2009 and took note with appreciation of the intention stated in the Secretary-General’s letter. \textsuperscript{78}

The Secretary-General appointed Ambassador Heraldo Munoz, the Permanent Representative of Chile to the United Nations as the head of the Commission. Marzuki Darusman, a former Attorney-General of Indonesia and Peter FitzGerald, a former Deputy Commissioner of the Irish Police who had headed the fact-finding mission into the assassination of former Lebanese Prime Minister Rafik Hariri, were appointed as the other commissioners.

3.2.b. Findings and Recommendations

The Bhutto Inquiry report examined the political and security context of Ms. Bhutto’s assassination. The Inquiry Commission also examined the security arrangements made for her protection by the Pakistani authorities and her own political party; in addition, the report considered the criminal investigations and actions by the Pakistani Government and police in the aftermath of her assassination.

The Report found that Ms. Bhutto’s assassination could have been prevented if adequate security measures had been taken. There was a failure to provide such security by all levels of government: federal, provincial and district, despite having the knowledge that she faced urgent security risks. There has been an assassination attempt on October 18, 2007 just two months


\textsuperscript{78} Letter from President of Secretary General dated February 3, 2009. S/2009/68 Annex to Bhutto Inquiry \textit{Supra} Note 75.
prior to her assassination on December 27, 2007. The Report also held that the federal
government failed to communicate vital information pertaining to the security risks to her and to
provincial authorities and did not take steps to either neutralize the risks or provide her with
adequate security commensurate to the threats. The Report was also critical of the security
measures provided by her own party in that there was a lack of leadership, they were inadequate
and poorly executed.

The Report’s criticized the district police’s actions and omissions following the
assassination of Ms. Bhutto that included the hosing of the crime scene, failure to collect and
preserve evidence not only hampered the investigation but it also demonstrated a lack of
commitment to identify and bring all the perpetrators to justice.

Despite the fact that the genesis of the report was a request by the Pakistani Government,
the Commission was confronted by a lack of cooperation by certain high-ranking Pakistani
government authorities and the commission wrote “[t]he commission was mystified by the
efforts of certain high-ranking Pakistani government officials to obstruct access to military and
intelligence sources, as revealed in their public declarations.” In addition, some senior
officials did not speak to the Commission despite requests by the Commission. The Commission
claimed that it was “satisfied that this did not hinder its ability to establish the facts and
circumstances of the assassination.” The Commission also noted that “[p]ertinent information
from these sources, including on threats to Ms Bhutto, nevertheless, was already in the

79 Supra Note 75 at 1.
80 Supra Note 75 at 1.
possession of Pakistani authorities and *eventually came to be known to the Commission.*”

(emphasis added)

With respect to the criminal investigation, the Commission noted that an effective or active criminal investigation had not been conducted of either the Karachi or Rawalpindi attacks. There was no attempt by the Rawalpindi police to seal the crime scene despite considerable police deployment. The criminal investigation was hampered by the decision to hose the crime scene, which effectively destroyed evidence, which made it impossible to gather further DNA evidence. The police had gathered only 23 pieces of evidence when such an attack should have resulted in the collection of thousands of pieces of evidence. The Commission noted that the decision to wash the scene was not made by the CPO in charge of the scene. Rather there was suggestion that some higher authorities were involved in the decision-making. There was a failure to preserve the evidence that has been collected in particular the vehicle in which Ms. Bhutto rode which further hampered the investigation. The absence of an autopsy also damaged the investigation. The doctors alleged that the officer in charge refused to permit them to conduct an autopsy. It was claimed that the officer in charge did not refuse to allow the autopsy. The Commission rejected this assertion and stated that “it is unlikely that a police officer of his level could make such a significant and ultimately destructive decision on his own and wield such power.” The Commission also found that there was a lack of coordination

81 *Supra* Note 75 at para 6.
82 *Supra* Note 75 at para. 239.
83 *Supra* Note 75 at para 240.
84 *Supra* Note 75 at para. 241.
85 *Supra* Note 75 at para. 242.
between the Karachi police investigating the Karachi attack and the Rawalpindi police despite the need for “full communication and cooperation in these linked complex cases.”

Further, the Commission expressed concern that its existence had slowed the criminal investigation process despite the fact that Ms. Bhutto’s own party, the Pakistan People’s Party was in government. The Commission reiterated that the “commission’s efforts to determine the facts and circumstances of Ms. Bhutto’s assassination is not a substitute for an effective, official criminal investigation.” The criminal investigation should have occurred concurrently and the Commission found it “surprising” that a government headed by her party had delayed the investigation.

The Commission’s recommendations pertaining to criminal investigations called for the perpetrators of the assassination to be brought to justice and recommended that the Pakistani authorities should not only conduct a full investigation but also undertake police reform to ensure accountability for protecting the rights of the individual. The Commission, based on its findings of the backdrop of political violence that has occurred with impunity, recommended the establishment of a transitory, fully independent Truth and Reconciliation Commission to investigate political killings, disappearances and terrorism in recent years which would also provide reparations to the victims.

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86 Supra Note 75 at para. 246.
87 Supra Note 75 at para. 247.
88 Supra Note 75 at para. 247.
89 Supra Note 75 at para. 260.
90 Supra Note 75 at para. 262.
The terms of reference for the Bhutto Commission clearly established that it would not be conducting a criminal investigation. Unlike the case of Hariri, the prosecution of the perpetrators remained the responsibility of the Pakistani authorities.

Chapter 4
Selected Issues

4.1. Access to Information

The investigative powers of domestic inquiry commissions in Canada depend on a statutory grant of authority. There are no powers that exist in common law similar to those that the courts would have. While domestic inquiry commissions have court like powers granted by Statute their powers are subject to challenge on a jurisdictional basis before a supervisory court. The powers of inquiry commissions are also investigative in nature, which limits the scope of their application.91

While domestic inquiry commissions have investigative powers, they do not typically use these powers. Inquiry Commissions usually are met with cooperation and willingness, on the part of all concerned, to furnish the information necessary for the Commission to complete its mandate. The cooperation received by the Commission has its roots in the genesis of the Commission, which is public opinion and in the knowledge that the Commission has these investigative powers.

There have, however, been instances where the Commission has not received the necessary cooperation to such an extent that it hampered the ability of the Commission to complete its mandate.

The starkest example is the Somalia Commission where the commission was confronted with lack of cooperation from the military and government. The Somalia Commission was established in March 1995 to inquire into aspects of the deployment of Canadian troops on a peacekeeping mission to Somalia in 1993. There were essentially two events that precipitated the establishment of the Commission. On March 4, 1993 two Somalis entered the Canadian compound in an apparent attempt to steal supplies. They were discovered and one of them shot and killed at point-blank range. On March 16, 1993, a Somali youth was tortured and murdered on the compound and no one did anything despite the youth’s scream being heard for hours in the compound.\(^92\) The mandate of the Somalia Commission was broad and called for an examination of in essence the entire deployment of Canadian forces in Somalia. Its terms of reference included “the chain of command system, leadership within the chain of command, discipline, operations, actions and decisions of the Canadian Forces and the actions and decisions of the Department of National Defence in respect of the Canadian Forces deployment in Somalia.” In addition, the terms of reference required the commission to address nineteen more focused, but still broad issues.

\(^92\) Supra Note 1 at 47
The Commission in its report noted the problems encountered in obtaining documentation, which made it difficult for the Commission to fulfill its mandate to establish an accurate record of what occurred. The Commission stated:

Perhaps the most troubling consequence of the fragmented, dilatory and incomplete record furnished to us by DND is that, when this activity is coupled with the incontrovertible evidence of document destruction, tampering and alteration, there is a natural and inevitable heightening of suspicion of a cover-up that extends into the highest reaches of the Department of National Defence and Canadian Forces.  

The Commission also noted that many of the documents that the government and military agreed to provide were deliberately late or in incomplete form or not received at all. All these problems led to significant delays and ultimately, to the shutting down of the inquiry.

While the Commissioner has the power to summon documents and also to subpoena witnesses to testify as to why documents have not been provided and to explain the efforts that have been made to produce them, Ratushny notes that such a confrontational approach is usually not practically possible within the inquiry’s limited lifespan.  

Usually, knowledge of these powers encourages cooperation and the Commission can take certain steps to further “encourage cooperation through preparation, focused requests, and persistence on the part of the commission counsel and staff.” However, in the case of the Somalia Commission cooperation was not forthcoming.

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94 Supra Note 1 at 243.
95 Supra Note 1 at 243.
Unlike domestic inquiry commissions, international inquiry commissions established by the UN do not have the powers to compel the production of documents and the testimony of witnesses and rely solely on the cooperation of States. This aspect of UN inquiries could be viewed as a weakness. I will argue that while UN inquiries lack the power to compel evidence they do not in practical terms differ from domestic commissions that also in most instances rely on cooperation to gather information.

Respecting UN inquiry commissions, the debate of compliance in international law is relevant to this issue. In this debate the very existence of international law has been put into questions by some, mostly political scientists, who argue that the lack of enforcement renders it ‘merely epiphenomenal’ or in other words, irrelevant. In the horizontal structure of international law, there is no higher authority that can force a State to comply with its obligations. It has been argued that enforcement is only one of means of promoting compliance. It has been postulated by many theorists that despite the lack of an enforcement mechanism, States will, for the most part, comply with their international obligations. In most instances, a State’s obligations arise as a result of the State agreeing to undertake those obligations by signing an agreement or treaty.

A component of compliance at the international level is consent. In discussing how international law is created, Arend argues that the concept of pact sunt servanda – the notion that

97 ibid at 4.
promises should be kept is a principle that exists in international law. States are reticent to agree to undertakings and then not fulfilling them. Realists would argue that a State would only agree to enter into an agreement if it was in its interest to do so. However, over time its interest may change. Realists would argue that States only act in their interests and if it was no longer in their interest to comply the State would not do so. Rationalist institutionalists postulate that States act to maximize their interests and they create institutions and regimes that can play significant roles in the behavior of States.

Chayes and Chayes are proponents of the “managerial” approach to compliance and argue for a “cooperative, problem-solving approach” to compliance. They argue that the process of formulating international agreements is designed to ensure that there is accommodation of the interests of all the negotiating parties. Non-compliance by states is more often a result of ambiguities or capacity limitations than deliberate disregard for the commitments made by the States. The treaty making process is not purely consensual and negotiations are heavily affected by the structure of the international system in which the power dynamic between States differs.

99 ibid at 121.
101 ibid at 4.
102 Supra Note 100 at 10 – 15.
103 Supra Note 100 at 4.
The same applies to negotiation of an international agreement, be it between States or between a State and the UN. States, however, do not negotiate agreements with the idea that they will not comply with them. However, at the compliance stage they may have reasons to try to escape their obligations but they do not negotiate an agreement with the idea that they will not comply if compliance becomes “inconvenient”.\footnote{Supra Note 100 at 5.}

According to Chayes, the issue of compliance goes to the structure of the world order and the relationship between States. Traditionally, sovereignty was conceived as complete autonomy of the State without legal limitation by any superior entity. In reality complete autonomy has perhaps never been the case especially, considering the dynamics of international relations. Today’s world has extenuated the limitations on sovereignty as there are an increasing number of multilateral organizations that seek to engage and direct State behavior in a particular direction. In the contemporary international system that is interdependent, sovereignty can no longer consist of freedom of States rather it is the maintenance of membership in good standing in international regimes.\footnote{Supra Note 100 at 28.} Chayes’ articulate a new conception of sovereignty that is defined in terms of a State’s position in the international community and state, “Sovereignty, in the end, is status – the vindication of the state’s existence as a member of the international system. In today’s setting, the only way most states can realize and express their sovereignty is through participation in the various regimes that regulate and order the international system.”\footnote{Supra Note 100 at 27.}
Critics of the managerial school emphasize the significance of incentives and disincentives in influencing State behaviour. George Downs, a leading proponent of the enforcement school, argues for a broad range of measures that create costs and reduce benefits. \(^ {107}\) Downs argues that sanctions are not always required to ensure cooperation however, sanctions or the threat of punishment are necessary where states have a strong incentive to not comply. This will usually be in situations where States are expected to act in ways that they would not have normally acted. \(^ {108}\)

All member states of the UN, by virtue of their membership, are bound by the UN Charter, which is the founding document of the UN, that place certain obligations on the member State that are relevant for UN Inquiry Commissions. UN Inquiry Commissions are established to fulfill the purposes of the UN as articulated in Article 1 of the Charter with maintenance of international peace and security being the penultimate purpose set out in Article 1.1, which reads that the purposes of the UN Nations are:

1.1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

Article 104 of the UN Charter states:

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.


Further, Article 105 of the UN Charter states:

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.
2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization.
3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

The Commissioners while independent should be viewed as officials of the Organization and as such member States have an obligation to provide privileges and immunities to enable them to exercise their functions.

Article 105(3) of the UN Charter gives the General Assembly authority to make recommendations to determine the details of the application of paragraph 1 and 2. Conceivably, the Declaration on Fact-finding made by the General Assembly would fall within the ambit of Article 105(3).

Paragraph 22 of UN Fact-finding declaration clearly provides that States should cooperate with the UN fact-finding missions, it states:

States should cooperate with United Nations fact-finding missions and give them, within the limits of their capabilities, full and prompt assistance necessary for the exercise of their functions and the fulfillment of their mandate.

The language of the declaration is not permissive but is obligatory. The use of the word “should” connotes that States ought to cooperate with the UN Fact-finding missions and they are obligated to do so.
Further, paragraph 23 of the UN Fact-finding declaration states:

Fact-finding missions should be accorded all immunities and facilities needed for discharging their mandate, in particular full confidentiality in their work and access to all relevant places and persons, it being understood that no harmful consequences will result to these persons. Fact-finding missions have an obligation to respect the laws and regulations of the State in which they exercise their functions, such laws and regulations should not however be applied in such a way as to hinder missions in the proper discharge of their functions. (emphasis added)

In this regard, the genesis of the UN Fact-finding mission will be central to the level of cooperation that the UN fact-finding mission will receive. The establishment of a UN fact-finding mission by the Secretary-General has as a prerequisite the consent of the member State. The member State must not only agree to the UN fact-finding mission but must also agree to the terms of reference, which will include provisions for cooperation and access to information by the mission. It would be expected that the State having consented to both would have a greater willingness to cooperate. However, despite the explicit agreement to cooperate by the Government in power, as demonstrated by the Bhutto inquiry, the internal machinations within a State may present a situation where one organ of the State may not be willing to cooperate.

Further, UN Fact-finding missions are frequently sent to member States where there the State is not fully functioning and there may be a power struggle between different groups with the end result that the UN Fact-finding mission may not have the same level of cooperation from the different players. As is the case of the Bhutto Inquiry where the Report noted that some senior high-level officials were unwilling to speak to the Commission. The high level officials included officials from the Inter-Services Intelligence of Pakistan, the intelligence agency of Pakistan, which is viewed as part of the “Establishment” of Pakistan and a powerful player in the domestic politics in Pakistan. While in the case of the Bhutto inquiry the Commission held that
the lack of cooperation did not jeopardize the Commission’s ability to fulfill its mandate and obtain the information it needed to complete its report, it is clear that in addition to the specific terms of reference that obliged the Government of Pakistan to cooperate with the Commission there are broader standards of cooperation that are expected of member States that Pakistan failed to meet.

Had the commission been unable to fulfill its mandate due to the lack of cooperation from the State or institutions or individuals within the member State, there was no way for the commission to compel production of documents or testimony. The Commission would have to report to the Secretary General in this case, who would in turn report to the Security Council. Politics would then come into play to encourage the State to cooperate.

An UN inquiry commission established by the Security Council would report to the Security Council in terms of its progress and instances of non-cooperation. The Security Council can use its powers to provide incentives or impose sanctions to encourage cooperation by the State in question.

**4.2. Interviewing and Subpoenaing Individuals**

Domestic inquiry commissions proceed by way of hearings resembling court proceedings. The hearing provides an opportunity for witnesses to present their evidence and for all parties to examine the witnesses to ascertain the veracity of evidence. In preparation for the hearing, commission counsel will interview potential witnesses and prepare detailed witness statements. The interviews help identify witnesses and provide counsel with the overall context
necessary to proceed expeditiously with the hearing. Further, there are no surprises at the hearing and this will facilitate and expedite the hearing.\textsuperscript{109}

If the commission is confronted with a situation where an individual does not cooperate with the commission, the commission has the power, granted by the \textit{Inquiries Act} or the corresponding provincial statute, to subpoena an individual to appear as a witness at the hearing or be questioned under oath or affirmation at the commission office.

In most instances, given the paucity of time due to the limited mandate granted to an inquiry commission subpoenas are not issued and inquiry commissions rely upon cooperation from individuals to come forward and give evidence.

Using subpoena powers the commission may be infringing on the rights of an individual who may be a suspect or an accused in a criminal prosecution. The Courts have warned against the use of commissions as “coercive investigations”. The protections granted to an individual under the Constitution and the Criminal Code should not be infringed by the commission.

In contrast to domestic inquiry commissions, UN inquiry commissions do not the power to compel individuals to give evidence; they do not have subpoena powers and rely completely upon the cooperation of the State and individuals who may have information.

\textsuperscript{109} \textit{Supra} Note 1 at 248.
Paragraph 23 of the UN Fact-finding declaration, as set out above, specifically states that fact-finding missions should be accorded all immunities and facilities needed which includes access to all relevant persons.

Cooperation in this regard is required at two levels. First, the State must cooperate and make individuals available for questioning. It would seem reasonable that if the government asks an individual to speak to the commission, if the person is part of the government the person would cooperate. However, where information is needed from private individuals there is no compulsion for the individual to cooperate with the commission despite the request from the state. There is no mechanism available for either the State or the UN inquiry commission to compel the individual to cooperate with the UN inquiry commission.

The situation faced by the Bhutto inquiry is a classic example of the inability of the government to compel senior officials in the military and intelligence service to speak to the UN inquiry commission. The commission claimed that its inability to access these individuals did not impact the report in this instance. However, clearly this is a significant weakness and undoubtedly restricts the ability of an inquiry commission to have full access to the information that it may need to present an accurate report.

At the international level, criminal proceedings also provide protection to individuals against self-incrimination and prohibit the use of evidence obtained through coercive means.
International standards and procedures established by the ICTY, ICTR and now the ICC have enshrined procedural fairness standards for the accused to protect against such abuses.¹¹⁰

Given this balancing act between obtaining evidence to present a complete fact-finding report and successful prosecution, the latter should take precedence. For this reason in addition to time constraints, domestic inquiry commissions are reticent to use subpoena powers and mostly, rely on cooperation to obtain information. What on the surface appears to be a shortcoming of UN inquiry commissions and a major difference between domestic and international inquiry commissions, when examined, at a practical level, does not have much significance.

4.3. Information sharing by the Commission with the Public and the State

There are two aspects of information sharing that will be considered in this section. First, the sharing of information obtained by the commission from non-state actors with the public and/or the State and second, the sharing of information obtained from the State by the Commission, which the State claims should be held confidential from the public.

The essence of a domestic inquiry commission is about enhancing public confidence. Openness and public accessibility is an integral feature of the commissions.¹¹¹ As much as possible information obtained by the commission is made available to the public and the State.

¹¹⁰ See for example, Articles 55, 66, 67, 69.7 of the ICC Statute
¹¹¹ Supra Note 1 at 329.
There are two ways in which public access to information can be restricted in domestic inquiries. Like in court proceedings, the commission can hold part of the hearing in camera. In this way, the public and some or all of the parties could be precluded from attending the hearing. Another way to restrict public access to information is by an order of the commissioner banning the publication of specific information.  

In making a determination of whether there should be a publication ban or there should be in camera hearing, the commissioners employ the same test as domestic courts.

There may be instances where confidential information is obtained from the State that is not disclosed to the public for security reasons. Where it is anticipated that the commission would deal with such information, specific terms on how to deal with the information can set out in the terms of reference.

Theoretically, the Air India Inquiry provides a good illustration of how the commission can receive confidential information that is necessary for the inquiry in camera. In the Air India Inquiry the Commissioner adopted rules that reflected his terms of reference, which required him to prevent disclosure of information that could be injurious to international relations, national defence, or national security. A process was established for the Commissioner to receive information in camera that had been identified by the government as having national security confidentiality. The commissioner would review the information and then make a ruling. The

\[112\] Supra Note 1 at 331.

government could then institute a court challenge if it did not agree with the Commissioner’s ruling.

However, practically, this meant that the Commissioner was forced to announce that it was impossible for him to continue and the hearing had to be adjourned. The Prime Minister intervened and arrangements were made for the hearings to be completed. 114

In the case of the Arar inquiry the terms of reference included similar provisions respecting national security confidentiality. The commissioner adopted rules to deal with the information that had been classified by the government under this category. He would convene in camera hearings to address the claims and rule on them. In order to keep the public apprised he prepared summaries of the in camera evidence. The government challenged the first set of summaries and the issue went before the Federal Court on appeal. The commissioner had to reconsider his approach and ended up hearing most of the RCMP and CSIS evidence in camera. In the end the commissioner was able to complete his mandate. 115

In his report, the commissioner was very critical of the government for “over claiming” national security confidentiality and thereby, depriving the public of the full hearing process. The commissioner expressed concern that the lack of transparency promotes public suspicion and cynicism about how legitimate the claims really are and it also exacerbates the problems of procedural fairness for the parties. 116

114 Supra Note 1 at 337 – 338.
115 Supra Note 1 at 338.
116 Supra Note 1 at 339.
In contrast to domestic inquiry commissions, confidentiality is the hallmark of UN fact-finding missions. The UN fact-finding declaration emphasizes the need for States to provide full confidentiality to the mission in their work. Further, the declaration specifically provides that the UN fact-finding mission must keep all information received by the commission completely confidential even after completing its mission. Paragraph 25 of the UN fact-finding declaration states:

Fact-finding missions have an obligation to act in strict conformity with their mandate and perform their task in an impartial way. Their members have an obligation not to seek or receive instructions from any Government or from any authority other than the competent United Nations organ. They should keep the information acquired in discharging their mandate confidential even after the mission has fulfilled its task. (emphasis added)

The guidance provided by the UN Fact-finding declaration contrasts with the UN Special Rapporteur on torture, and other cruel, inhuman or degrading treatment or punishment’s recommendation in his 2012 report where he suggests that the process of achieving accountability can be facilitated by the sharing of information and names collected by the commission of inquiry with the prosecuting authorities. He argues that the information gathered by the commission may not be admissible in a court of law due to the lower standards of evidence used by commissions, however, such information may be useful in providing the necessary background information as well as provide further evidentiary leads. This recommendation directly contravenes Paragraph 25 of the UN Declaration on Fact-finding that requires the Commission to keep in the information gathered confidential even after the completion of the mandate.

117 Supra Note 26 at para. 25.
The initial fact-finding report in the Hariri case did not disclose the names of those that the commission interviewed. The Hariri report specifically noted that some individuals wished to remain anonymous.\(^\text{118}\) The Bhutto Inquiry report also does not provide names of those interviewed. Specific names of officials were however, referenced.

The non-disclosure of information and names of those that provided information also has implications for States to be able to test the veracity of report and therefore, on the credibility of the report. As domestic inquiries are conducted like court hearing, there is opportunity for the witness’ evidence to be tested through cross-examination. Further, additional information respecting for example, the character and reputation of the witnesses or past conduct, if relevant can be put before the Commission. The benefits of these aspects of a hearing are not available to UN Inquiry Commissions, unless they conduct hearings. The UN Inquiry Commission must independently test an individual’s testimony and ascertain for itself the truthfulness of the information provided by an individual.

Protection of the witnesses is of fundamental importance to UN Inquiry Commissions. UN Inquiry Commissions do not have any mechanisms or resources to ensure the protection of witnesses. While an assurance from the government provides some comfort it is by no means a guarantee that witnesses will be protected. Knowing that their identity and the specific information that they provide to the commission will remain confidential likely provides some assurance and incentive for witnesses to come forward. In order to complete its mandate, an

\(^{118}\) Supra Note 35 at para. 3.
Inquiry Commission cannot and should not put at risk the lives of those that assist it to fulfill its mandate.

Chapter 5
Implications

5.1. Credibility and Accountability

The efficacy of fact-finding rests largely on credibility and credibility emanates primarily from the process and procedures followed. There are five key indicators that have been identified in this regard: (1) choice of subject, (2) choice of fact-finders, (3) terms of reference, (4) procedures for investigation, and (5) utilization of product. ¹¹⁹

The establishment of a fact-finding mission is essentially a political decision. There are no guidelines that have been established to guide the selection of situations that warrant UN intervention by way of a fact-finding mission. This selectivity is a source of criticism and goes to the credibility of the UN.

For the purposes of this paper however, I will not discuss this issue in detail except to say that the decision to establish fact-finding missions for the assassination of the Hariri and Bhutto were unprecedented and did not fit into the usual types of situations that have been the subject of fact-finding missions in the past that typically involved mass crimes.

¹¹⁹ Supra Note 4 at 310 – 311.
In terms of the fact-finders, the commissioners are selected as independent experts who have established credentials and recognition. “Fact-finders should be, and should be seen to be, free of any commitment to a preconceived outcome.” 120 In both the Hariri and Bhutto inquiries the credibility and qualifications of the experts were not questioned.

The terms of reference should not include conclusory language that predetermines the outcome of the report. Terms of reference should distinguish between “(1) the gathering and weighing of facts; (2) the performance of other activities such as drawing of inferential conclusions of law, that is, deciding whether the evidence amounts to a violation of established norms; and (3) the drafting of remedial recommendations.” 121 The Hariri commission was established on the basis of the statement by the President of the Security Council on February 5, 2005, which asked the Secretary General “to follow closely the situation in Lebanon and to report urgently on the circumstances, causes and consequences of this terrorist act”. 122 The terms of reference for the Bhutto Inquiry called upon the Commission “to determine the facts and circumstances of the assassination of the former Prime Minister”. 123

Fair procedures in fact-finding are important for at least two reasons. First, they enhance the credibility of the report and second, they can assist in securing the cooperation of the State. Given that fact-finders generally do not have the benefit of testing the veracity of the information provided by witnesses through court like procedures such as cross-examinations, unless they

120 Supra Note 4 at 313.
121 Supra Note 4 at 316.
122 Supra Note 59.
123 Terms of reference of the Commission of Inquiry, Annex to Bhutto Inquiry Supra Note 75.
conduct hearings, it is necessary to have in place procedures to test the facts. There are no specific rules of procedure that fact-finding missions follow. It is uncertain what procedures were followed by the Hariri and Bhutto commissions and whether there were clearly established procedures.

Finally, the presentation of the report has a bearing on how States and the public perceives the mission’s report. The language of the report and how the facts are presented are of critical importance. Further, how the report is publicized and used also impacts the credibility of the report.\(^1\)

The independence of the fact-finding mission from the UN and member States is also key to the success of the fact-finding mission. The independence of an Inquiry Commission at the domestic level from the government is important for at least three reasons: for the protection of individual rights, to protect the integrity of the recommendations of the inquiry, and to protect the instrument of the inquiry itself.\(^2\) These reasons equally apply to UN fact-finding missions.

Public perception and confidence in the inquiry instrument can be preserved if the inquiry is not seen as simply a tool for political manipulation. The same reasons apply at the international level with the added reason to preserve the credibility of the UN as an institution.

\(^1\) Supra Note 4 at 321.
Another element of the success of a report is its impact and the follow-up. Both the Hariri and Bhutto inquiries made recommendations for both the UN and the Government. The Hariri mission in comparison to the Bhutto inquiry has perhaps been more successful as the UN established an independent investigative inquiry and subsequently an independent tribunal to prosecute the perpetrators of the crimes. The Bhutto inquiry made various reform recommendations and also that the Pakistani authorities conduct a criminal investigation and prosecute those culpable. The report noted that the police forces had performed in a manner that was unprofessional and below accepted international standards. The report was also critical of the delay on the part of the Pakistani authorities to conduct a criminal investigation. The recommendation that the Pakistani authorities now conduct a criminal investigation seems hollow and unlikely to produce substantial results. The institutional reform recommendations require follow up as well as the dedication of resources by the international community to ensure that there is follow through on the recommendations.

The confidentiality of the sources restricts the challenges to the report. The Hariri report generated controversy as Syrian involvement in Lebanon was cited as one of the primary causes of Hariri’s assassination. The Syrian government perceived this finding as an attempt by the western powers to discredit and isolate Syria – to make it a pariah in the international community. Given the need for confidentiality it is vital that each fact-finding inquiry commission follow fair procedures and produce reports that will enhance the credibility of the United Nations and fact-finding missions conducted under its auspices.
5.2. Ending Impunity

There has been a shift in international law from state responsibility to individual responsibility. An increased emphasis on human rights has expanded the scrutiny of States from what was originally a concern respecting the interaction of between states to a scrutiny of the treatment of individuals by State actors and other non-state actors and the role of the State in influencing, facilitating, condoning and condemning the actions. The resultant shift has seen a breakdown of the absolute sovereignty of States to a conception of a state where the State has a responsibility to protect its citizens.

One of the objectives of UN inquiry commissions into the assassination of prominent individuals is to uncover the facts that would ultimately facilitate ending impunity for political violence by holding perpetrators accountable. The relationship between the commission and the prosecution differs in the Hariri and Bhutto case with the former having a UN established hybrid court that is independent of the State while in the Bhutto case the responsibility for the prosecution lies with the State of Pakistan.

Given the emphasis on confidentiality the inquiry commission will not provide information to the State authorities other than what is included in the report. The level of assistance the commission can provide to State authorities is therefore, limited. The information obtained by the Hariri mission was provided to the UNIIC, which then conducted an independent investigation and passed on the evidence it gathered to the Tribunal.

The use that can be made of the information gathered by an inquiry commission at the domestic level is limited by the manner in which is it collected. The protections that are available
in the Constitution and the Criminal Code render certain evidence inadmissible in court proceedings. Similar restrictions apply to evidence that is obtained by international fact-finding missions.

Fact-finding commissions, in the words of the Special Rapporteur speaking with reference to torture, “play a very important role in establishing a more comprehensive and nuanced picture of policy decisions (whether adopted publicly or in secrecy) that have resulted in patterns of torture and other forms of ill-treatment.”[^126] Applied to fact-finding commissions generally, they serve to unearth facts that provide a complete picture of the situation. Since they are not concerned with individual liability they are able to examine the overall broader picture.

**Chapter 6
Conclusion**

Fact-finding inquiry commissions are increasingly being used at both the domestic and international level to investigate situations. The purpose and objective of fact-finding inquiry commissions are varied; they have elements of investigation, with the view of uncovering the truth and achieving justice, and reform recommendations with the objective of ensuring that such situations do not arise in the future. Fact-finding inquiry commissions can be one of the mechanisms that can be employed to achieve greater accountability.

Generally, UN fact-finding inquiry commissions bear strong resemblance to domestic fact-finding commissions. There is one key difference between domestic and international

[^126]: Supra Note 26 at Para. 70.
inquiry commission. Domestically, fact-finding inquiry commissions proceed in a manner similar to court hearings. Internationally, fact-finding inquiry commissions do not generally conduct public hearings. The difference in procedure is a balancing of interests. While court hearings are open to the public and there is cross examination of witnesses, international inquiry commissions are concerned about the safety and security of witnesses and therefore, do not reveal the identities of the sources of information. Unlike domestic inquiry commissions, UN inquiry commissions keep their information confidential even after the completion of their mandate. This critical difference requires that the UN fact-finding commissions carefully test the veracity of the information themselves to ensure that public confidence in such commissions established by the UN is maintained. Public perception and building public confidence is an integral aspect of inquiry commissions.

Theoretically, UN fact-finding commissions lack investigative powers that domestic inquiry commissions have, however, practically the reliance on state cooperation is the predominant modus operandi for both types of inquiry commissions.

In circumstances where criminal prosecutions are necessary, the timing of the inquiry commission will determine the utility of the commission. It is important to bear in mind that an inquiry commission’s role is to investigate and not to adjudicate. They do not make determinations of civil or criminal liability. Inquiry commissions are also not a replacement for criminal investigations.

The Hariri inquiry commission occurred after an initial criminal investigation had been conducted by the Lebanese authorities. In the report the commissioner noted that the criminal
investigation was inadequate and it did not have the capacity or the commitment to reach a credible conclusion. The report therefore, recommended that there be an independent international criminal investigation, which was established by the UN and that subsequently resulted in the creation of the international tribunal for the prosecution of those responsible for the assassination.

In the case of the Bhutto inquiry, the Pakistani authorities had established a Joint Investigation Team comprised of the intelligence agencies and the police to investigate the assassination. The Bhutto report found that the Joint Investigation Team investigation was ineffectual, it lack direction, was slow to act, and did not follow even the most basic police procedures. It was clear to the Commission that the Joint Investigation Team did not work cooperatively and was not motivated to bring the perpetrators to justice. The Commission noted that the inquiry does not replace a full criminal investigation and was surprised by the delay on the part of the Pakistani authorities to conduct a full criminal investigation especially since Bhutto’s party was in power in the country.

The Report correctly pointed out an inquiry commission does not replace a criminal investigation. While an inquiry commission may provide useful background information or leads that may facilitate the criminal investigation it is not a replacement for a criminal investigation.

Domestic inquiry commissions in particular must also be cognizant of the impact their use of their investigative powers could have on criminal prosecutions. Since international commissions do not have the power to compel production of documents or to subpoena witnesses, there is less possibility of a detrimental impact on criminal prosecution on the grounds
of information obtained by international commissions. However, both types of commissions
must be careful in conducting the inquiry and in preparation of the reports, if they occur prior to
the completion of the criminal prosecutions to ensure that they do not infringe on the rights of
suspects or the accused and do not negatively impact the criminal prosecution.

As part of an effort to achieve greater accountability, there is a greater emphasis on
criminal prosecutions to hold individuals accountable both at the international and domestic level
and this marks a move towards ending impunity. In the event, an international inquiry occurs
prior to a criminal prosecution there is a question as to whether the criminal prosecutions should
be conducted domestically or internationally. The International Criminal Court has limited
jurisdiction and operates on the principle of complementarity. Should a crime fall within its
jurisdiction, it may prosecute, alternatively, the prosecution would be done by the domestic
courts, which poses a problem as the criminal justice system in many countries does not operate
according to internationally acceptable standards. While UN Fact-finding inquiry commissions
may be seen as contributing to the objective of achieving justice, their role is limited. It is the
criminal investigation and prosecution that are critical to the achievement of the objective.

The experience of the Bhutto and Hariri inquiry commissions and the resultant efforts to
conduct criminal investigations and prosecutions highlights the difficulties in this regard. In both
situations, the UN fact-finding inquiry commissions commented on the ineffectual criminal
investigations and in the aftermath it has become clear that the criminal prosecution of those who
are ultimately responsible for ordering the assassination will be difficult despite the UN
establishing an independent tribunal to prosecute individuals responsible for the assassination of
Hariri.
Therefore, while the UN inquiry commissions for the assassination of individuals may reveal background information and shed light on the causes its impact is limited by the fact that the criminal investigation and prosecution of those culpable is not within the control of the UN or any other international court unless the UN establishes a special tribunal as in the case of Hariri. The criminal investigation and prosecution of these crimes fall upon the State. Frequently the States where such crimes occur have criminal justice systems which require reform as noted in the both the Hariri and Bhutto reports. In order for there to be an end to impunity for such political crimes, it will be necessary for resources to be directed to conduct institutional reforms to improve the criminal justice systems in States so that they are able to properly investigate and effectively prosecute.

With regards to the level of cooperation received by the UN commissions from States, as the world becomes more entwined, State reliance on other States and multi-lateral organizations increases. The relationship of dependence plays a role in determining the level of State cooperation with UN established fact-finding missions. If the UN inquiry commission has been established with the consent of the State, the State is more likely to cooperate as it will not want to be seen as reneging on its commitments. However, there may be instances when State cooperation may not be forthcoming for example in situations where there may be a power struggle between the different institutions within the State as was the case in the Bhutto inquiry.

Domestically and internationally, the discourse on human rights and the increased importance ascribed to human rights has served to drive forward the need for hold governments accountable, not just for their actions but also for their inaction that result in violations of human
rights of individuals. The most fundamental rights of the right to life and security of person underlie many of the fact-finding inquiry commissions, which are a starting point towards ending impunity.
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