The Role of UN Commissions of Inquiry in Developing Global Human Rights: Prospects and Challenges

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In international human rights issue areas, investigation has been increasing exponentially in last 20 years, not just in the international realm but also in domestic politics, and not just by official governments but also by many non-governmental civil society actors. The most representative trend is the increase of UN commissions of inquiry within the UN Human Rights Council. This paper is devoted to explaining the meaning and context of the recent rise and diffusion of UN commissions of inquiry, and I attempt to answer the following two questions. First, why is the number of UN commissions of inquiry increasing? In other words, what is the context under which UN commissions of inquiry increase and diffuse? Second, how can we evaluate the activities of these UN commissions? What are their achievements and what problems and challenges remain? I argue that the rise of UN commissions of inquiry can be understood within the context of the diffusion and development of global investigative norms in the field of human rights. Despite some diversity and limitations of the activities of these commissions, these activities represent the rise of global investigative norms and this new trend contributes to the development of human rights.

Key Words: UN commission of inquiry, human rights, international norms, diffusion

In the spring of 2015, Saudi Arabia with eight other states began a military intervention in Yemen in the midst of a civil war between the Houthi insurgent group and the Hadi government. The military intervention, mainly in the form of air strikes against Houthi rebel strongholds, was carried out at the request of

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President Abdu Rabbu Mansour Hadi in exile. In the ongoing fighting, more than 2,000 civilians have been killed and 4,000 wounded both by the Saudi-led coalition and by the Houthi rebels (Cumming-Bruce 2015a). In September 2015, the United Nations (UN) High Commissioner for Human Rights, Zeid Ra'ad al-Hussein, called for an independent inquiry into human rights violations, especially focusing on air strikes by the Saudi-led coalition and shelling by the Houthis. It is believed that both the Saudi-led coalition and the Houthi rebels were evenly responsible for the number of death and injury of civilians in Yemen, and several human rights activists further suspect that the recent violations might amount to war crimes. In response, the Netherlands, with support from a group of western countries, submitted a resolution to initiate an international investigation of the issue. Immediately, the Dutch proposal was criticized by Saudi Arabia and its Arab allies who started a lobbying campaign in the UN Human Rights Council and prepared an alternative resolution in support of a national, rather than international, investigation led by the exiled Yemeni government focusing mainly on those human rights violations committed by the Houthi rebels. Eventually, the Netherlands withdrew its original resolution in October and other Western countries – mainly the United States, Britain, and France – supported the proposal for a national commission of inquiry led by the Hadi government.

This recent event represents an increasingly heated debate and political maneuvering surrounding international human rights investigations led by the UN Human Rights Council. The Yemen case is the most recent but certainly not the only case representing the tension and dynamics involving human rights inquiries. A similar process has been observed in the case of Sri Lanka, which recently proposed the creation of a national truth and reconciliation commission to address past human rights violations – mainly the widespread killing, disappearance, and torture of civilians – during the 26-year civil war against the Tamil Tigers (Cumming-Bruce 2015b). Here, tensions arose between the Sri Lankan government, whose priority was to achieve reconciliation through investigation, and the international community, whose aim was to attain accountability through investigation, particularly in the form of creating a hybrid special human rights court where not only local judges and lawyers, but also international judges and lawyers, were represented.

In addition, it is not only governments and intergovernmental organizations (IGOs) that are making claims for and against human rights investigations. Nongovernmental organizations (NGOs) also make calls for human rights investigations. For example, in response to the mistaken American bombing of a hospital in Afghanistan, Doctors Without Borders called for an independent investi-

gation of the Kunduz hospital incident by the International Humanitarian Fact-Finding Commission in order to find out “what happened in Kunduz, how it happened, and why it happened” (Shear and Sengupta 2015). The mere listing of what happened in September and October 2015 suggests that human rights investigations have become an important locus of politics among the three major actors in world politics: governments, IGOs, and NGOs. Inquiries or investigations of human rights violations have become an important practice in global politics. The number of cases exponentially increases if we consider the increase of national human rights inquiries of human rights violations occurred in domestic settings. Furthermore, an interesting new phenomenon is the increase in domestic investigations of human rights violations on foreign soil. France, for example, recently opened an inquiry into torture cases in Syria based upon photographs of torture victims taken by a Syrian defector (Nossiter 2015).

Figure 1 provides an interesting snapshot of the increase in human rights inquiries over the last 30 years. The bar graph shows the number of news articles in the international section of *The New York Times* each year, which address either human rights investigations or human rights inquiries. Although there are fluctuations, the figure shows that the number of articles addressing human rights investigations since 1980 has increased. Importantly, there has been a spike in the number of articles since 2009, which showed a dramatic increase in news reports.

Figure 1. The Number of *New York Times* Articles on Human Rights Investigations

Source: *The New York Times* (2015)

The change is more dramatic if we focus on the rise of UN commissions of inquiry. So far, the United Nations has created nine such commissions to investigate serious human rights violations in Darfur (2004), East Timor (2006), the conflict in the Gaza Strip (2009), Libya (2011), Syria (2013), North Korea (2013), Eritrea (2014), Sri Lanka (2014), and the 2014 Gaza conflict. The fact that five out of nine commissions were created in the years 2013 and 2014 demonstrates a recent surge in human rights investigations.

This paper is devoted to explaining the meaning and context of the recent rise and diffusion of UN commissions of inquiry. I ask the following two questions. First, why do we more recently observe the increase in the number of UN commissions of inquiry? In other words, what are the contexts under which UN commissions of inquiry increase and diffuse? Second, how can we evaluate the activities of these UN commissions? What are their achievements and what problems and challenges still remain? I argue that the rise of UN commissions of inquiry can be understood within the context of the diffusion and development of a global investigative norm in the field of human rights. Despite some diversity and limitations of the commissions' activities, the activities of these UN commissions represent the rise of a global investigative norm, and this new trend is contributing to the development of human rights.

This paper proceeds as follows. In the first section, I explore the activities of UN commissions of inquiry in detail focusing on six commissions: Darfur, East Timor, the 2009 Gaza conflict, Libya, Syria, and North Korea. In the second part, I introduce a theoretical framework for my argument based on sociological institutionalism and provide empirical evidence of the rise of norms supporting domestic and international investigations of human rights violations that focus on the rise of truth commissions, various UN processes, government-led processes, and NGO-initiated domestic and international inquiries. In the third section, I compare the structure and processes of the six commissions of inquiry and explore their achievements, challenges, and prospects.

UN COMMISSIONS OF INQUIRY

Of the nine UN commissions of inquiry, I will briefly introduce six commissions in this section: Darfur, East Timor, the 2009 Gaza conflict, Libya, Syria, and North Korea. The other three commissions involved investigations into human rights abuses in Eritrea, Sri Lanka, and during the 2014 conflict in the Gaza Strip. Briefly, the Commission of Inquiry on Human Rights in Eritrea was created in June 2014 with three commissioners to investigate atrocities in Eritrea for a peri-

od of one year. The commission released its final report in June 2015 and confirmed that torture, extrajudicial killings, disappearances and sexual violence were widespread in Eritrea. Similarly, a commission of inquiry was instituted to investigate widespread human rights violations during the 26 years of civil war in Sri Lanka. In June 2014, three commissioners were appointed and the commission recently released its report in September 2015. Since commissions on Eritrea, Sri Lanka, and 2014 conflict in Gaza have only recently finished their work, I will focus on the six previous commissions.

THE INTERNATIONAL COMMISSION OF INQUIRY ON DARFUR (2004)

The International Commission of Inquiry on Darfur was established for a period of three months from October 2004 to January 2005 in order (1) to investigate violations of international humanitarian law and human rights law in Darfur by all parties; (2) to determine whether acts of genocide had occurred; and (3) to identify the perpetrators and suggest means of ensuring accountability (International Commission of Inquiry on Darfur 2005, 2). In Darfur, political instability and environmental degradation led to land disputes, which erupted into hostilities between myriad forces, the most well-known of which were the ‘Janjaweed.’ All parties involved in the violence were regarded as potentially being responsible for human rights violations. The commission used interviews, site visits and documentation to investigate, and the investigation team was composed of two female investigators specializing in gender violence, four forensic experts from the Argentine Forensic Anthropology Team, and two military analysts. The commission interviewed approximately 300 eyewitnesses and others in northern and western Darfur.

The commission found that the government and the Janjaweed were both responsible for serious human rights violations, such as the killing of civilians, indiscriminate attacks, disappearances, torture, destruction of villages, rape, pillaging and forced displacement (Ibid., 3). The commission identified a number of individual perpetrators including “government figures, members of militia forces, members of rebel groups, and certain foreign army officers acting in their personal capacity” (Ibid., 4). The commission declined to publicize the names of perpetrators but provided the names in a sealed envelope to the UN Security Council to be handed over to “a competent prosecutor” in the future (Ibid., 5). The commission strongly recommended that the UN Security Council immediately refer the situation of Darfur to the International Criminal Court (ICC).

II INDEPENDENT SPECIAL COMMISSIONS OF INQUIRY FOR TIMOR-LESTE (2006)

In 2006, East Timor requested the UN to “establish an independent special inquiry commission” to review the incidents in April and May 2006 “which contributed to the crisis” (OHCHR 2006, 10). In June, three commissioners were appointed to investigate the incident, clarify responsibility, and recommend measures to ensure accountability (Ibid., 10-11). The commission decided that the standard of proof was acknowledged to be below that required for a criminal court, and that the commission had to operate with a standard of reasonable suspicion. The commission examined all the information in various reports and documents made by other investigative bodies, such as the Timorese armed forces and police, the Australian police and military, and other intergovernmental organizations and NGOs. The commission then went on to conduct 200 interviews so it could get a sense of how truthful was the information in the reports. The commission interviewed witnesses, officials and other people in authority, people in police custody or detained in prison, and conducted by-site visits where incidents allegedly took place. The commission also received over 1,000 documents relevant to the investigation.

The commission found violence in the form of shootings, looting, destruction of public property, murder, fighting and generalized violence were present during the events of April-May. The commission found that both civilians and officials of the state (police, security services and government officials) were responsible. The commission also found that the events were more than a series of violent acts but rather reflected the “deep-rooted problems inherent in fragile state institutions and a weak rule of law” (Ibid., 74). As such, the commission believed the findings were not the end of the process, but rather should be used to launch the rebuilding of state institutions. The commission was particularly concerned to protect witnesses and not expose victims to any further trauma. The commission found that individuals within government and the security services were responsible for the events and recommended that they be prosecuted by the criminal justice system. The commission recommended a hybrid court with two international judges and one local judge. The commission also recommended a public apology and acknowledgement by certain institutions of their role in the events.

UN FACT-FINDING MISSION ON THE 2009 CONFLICT IN GAZA

The UN Fact Finding Mission on the Gaza Conflict was established to “investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military

operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009” (UN Human Rights Council 2009, 13). There were a number of decisions relating to the interpretation of the mandate. The commission interpreted the mandate as requiring it to place the civilian population at the center of its concerns regarding violations of international law. To implement its mandate, the commission decided that it was required to consider any actions by all parties in the entire area of occupied Palestinian territory and Israel. The commission conducted 188 interviews, viewed 30 videos, and reviewed 1,200 photographs. In addition, the commission reviewed 300 reports, submissions and other documentation either researched of its own accord or sent in by outside parties. The commission also used a wide variety of information sources, such as satellite imagery, medical records of victims, and forensic analysis of weapons and ammunition remnants collected at incident sites (Ibid., 15). However, the commission stated it preferred to rely on information gathered first hand, and the use of other information was primarily for the purpose of corroboration.

The commission found that Israeli forces had engaged in the use of human shields; weapons not recommended (and prohibited in some cases relating to proportionality) under international law (white phosphorous, flechettes, heavy metal); killing of civilians; failure to take reasonable precautions to avoid loss of civilian life; arbitrary detention; and wanton destruction of property. Before and after the conflict, Israel was accused of using excessive force during demonstrations and detention, withholding resources (by use of a blockade), and violating freedom of movement. Palestinian groups were charged with failing to distinguish between military and civilian populations when firing rockets intended to terrorize the people of southern Israel, and these attacks were also found to have damaged property and eroded the economic and cultural life of Israelis in the south. The commission recommended that the UN Human Rights Council refer the report to the UN Security Council, which in turn should require Israel to launch investigations. In addition, the commission made a list of recommendations to Israel to improve the human rights situation of Palestinians in Gaza and the West Bank. On the other hand, Palestinian armed groups were asked to release Gilad Shalit and stop launching attacks on Israeli civilians. The Palestinian authorities also received a number of human rights recommendations in relations to their security forces. Both Israeli and Palestinian authorities were requested to afford women greater rights in society. The UN Office of the High Commissioner for Human Rights (OHCHR) was asked to monitor the situation of persons who have cooperated with the commission to ensure their safety and to pay attention to the recommendations.

INTERNATIONAL COMMISSION OF INQUIRY ON LIBYA (2011-2012)

In 2011, the UN Human Rights Council adopted a resolution creating the commission to investigate human rights violations in Libya and to identify perpetrators and recommend accountability measures. The commission decided to consider actions by all parties in Libya and to cover violations committed during the demonstrations in February 2011 and the subsequent armed conflict, which continued during the commission's operations. The period of investigation was initially for three months but was extended to cover the continued violations of human rights (UN Human Rights Council 2012, 2). The methods employed by the commission were primarily the use of interviews (400 cases) and observations (unspecified amount) from site visits. The commission was also provided with photographs (2,000 items), documents (5,000 items) and videos (600 items).

The commission listed a number of crimes of which it found the regime guilty: excessive use of force, unlawful killings, arbitrary detention, torture and other forms of ill-treatment, sexual violence and other attacks on civilians, civilian objects, protected persons and objects, pillaging, the use of mercenaries, prohibited weapons and the use of child soldiers (Ibid.). The commission found that Gaddafi troops were guilty of both crimes against humanity and war crimes, in that the crimes listed above were conducted within the context of "widespread and systematic attack" (Ibid., 20). The commission also found that the rebels were guilty of war crimes and crimes against humanity on the same grounds, and that they continued to occur in a climate of impunity. The commission recommended that the new Libyan state implement changes to its national justice system and bring perpetrators of crimes to justice. The commission recommended that the international community, North Atlantic Treaty Organization (NATO), the UN Human Rights Council, and the UN Secretary General ensure that Libya meet the recommendations laid out in the report. The commission also emphasized the role of regional organizations, such as the League of Arab States and the African Commission on Human and People's Rights, assist and monitor the implementation of recommendations.

INDEPENDENT COMMISSION ON THE SYRIAN ARAB REPUBLIC (2013-2014)

The Independent International Commission of Inquiry on the Syrian Arab Republic was established in March 2011 to investigate human rights violations, especially of war crimes and crimes against humanity. The commission was mandated to investigate human rights violations and to identify those accountable. The commission has now made a total of seven reports as its mandate continues to be extended in light of the ongoing violence in Syria. The commission used

interviews, conducted by telephone and Skype to assess the situation. Since September 2011, more than 2,600 interviews have been collected and the results reported. The commission has also used an unspecified number of photographs, videos, satellite imagery and documents (government and non-governmental sources, academic analyses, media reports and UN reports, including medical records) to form its opinions. The commission also met with member states from all regional groups, regional organizations (including the Organization of Islamic States and the League of Arab States), NGOs, human rights defenders, journalists and other experts. A public call was made to all interested parties to submit relevant information and documentation that would help the commission's investigation.

The main obstacle for the commission has been the lack of cooperation from the Syrian government, which has meant that the commission has not been able to conduct site visits or use observational research. The commission thus far has found that the government was "responsible for all acts committed by its officially sanctioned agents, in breach of its international treaty obligations" (OHCHR 2013, 23). However, both anti-government and government troops have been found guilty of a vast array of crimes, the most egregious being crimes against humanity, war crimes and massacres, though the term 'genocide' has not been used. Both parties committed war crimes, including summary executions, torture, rape and sexual violence, recruiting and using children in hostilities, and forcibly replacing and targeting civilians (OHCHR 2013). The commission also found widespread use of sarin gas but could not establish the perpetrators to the level of an appropriate evidentiary threshold.

COMMISSION OF INQUIRY ON HUMAN RIGHTS IN NORTH KOREA (2013-2014)

In 2013, the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea (DPRK) was created to investigate "systemic, widespread and grave violations of human rights"± in North Korea for a period of one year (UN Human Rights Council 2013, 2). The commission was mandated to investigate nine areas of human rights violations, including (1) the right to food; (2) abuses associated with prison camps; (3) torture and inhumane treatment; (4) arbitrary arrest and detention; (5) discrimination; (6) freedom of expression; (7) the right to life; (8) freedom of movement; and (9) enforced disappearances (Ibid.). The UN Human Rights Council specifically mandated the commission to investigate the abuses with a view toward "ensuring full accountability, in particular where these violations may amount to crimes against humanity" (Ibid., 3). The commission had three core tasks: (1) to investigate and document human rights vio-

lations in North Korea; (2) to examine the issues of institutional and personal accountability; and (3) to examine whether violations amounted to crimes against humanity.

Commissioners consistently requested access to visit North Korea for the purposes of investigation and invited representatives to participate in the investigation process but with no success (UN Human Rights Council 2014, 8-9). The commission, without any cooperation from or access to North Korea, obtained first-hand testimony through public hearings in Seoul (August 20-24, 2013), Tokyo (August 29-30, 2013), London (October 23, 2013) and Washington (October 30-31, 2013), where around 80 witnesses and experts publicly testified. The commission obtained further information by conducting 240 confidential interviews with victims and other witnesses and also from a vast array of primary and secondary sources. The commission confirmed that “systemic, widespread and gross human rights violations have been and are being committed by the DPRK” and further found that the violations of human rights in the DPRK constituted crimes against humanity (Ibid.) The commission further recommended that the international community accept its responsibility to protect the people of the DPRK and, more specifically, urged the UN to hold those responsible for crimes using either a UN Security Council referral to the ICC or the creation of an ad hoc tribunal like the International Criminal Tribunal for the former Yugoslavia.

THE THEORETICAL AND EMPIRICAL CONTEXTS OF THE RISE OF UN COMMISSIONS OF INQUIRY

Why do we recently observe an increase in the number of UN commissions of inquiry? In other words, what are the theoretical and empirical contexts under which UN commissions of inquiry are increasing and their areas of focus diffusing? The rise of these types of UN commissions has to be understood in the context of the rise and diffusion of investigative norms in the field of human rights. In human rights areas, investigation has increased exponentially in last 20 years, not just in the international realm but also in the arena of domestic politics, and not just by official governments but also by many non-governmental civil society actors. Table 1 provides a typology of investigative activities based on the level, whether domestic or international, and also on the initiating subject, whether official attempts by projects pursued by governments, IGOs, nongovernmental organizations, grassroots organizations, or civil society groups.

Table 1. Typology of Investigative Activities on Human Rights

Initiated by	Level	Domestic	International
Governments/IGOs		Truth Commissions Human Rights Reporting	UN Commissions of Inquiry Various UN Processes (Special Procedures, Universal Periodic Review)
Civil Society/NGOs		Unofficial Truth Projects	Human Rights Reporting Human Rights Investigation Unofficial Truth Projects

THEORETICAL CONTEXT

It was sociological institutionalism that took the investigation process seriously in explaining the diffusion of ideas and institutions. Sociological institutionalism investigates the resemblance (isomorphism) among diverse organizations – social groups, firms, and even states – and focuses on the process by which these organizations achieving conformity (Powell and DiMaggio 1991; Drori, Meyer, and Hwang 2006). Examples are plenty. Almost all states have defense ministries, even when there is no imminent security threat, or all states have a “tripartite military structure, with an army, air force, and navy – even landlocked states” (Finnemore 1996, 337). For sociological institutionalism, the prime mover of this process is world culture, which produces modern institutions and actors who ritualistically mimic those actions, structures, and processes of their peers under uncertainty. This process is often accelerated by the presence of coercion, such as peer pressure, comparison, or the rating or working of a community of self-styled experts, i.e. professionals (Powell and DiMaggio 1991).

For sociological institutionalism, a systemic change occurs when states try to enhance their legitimacy by approximating the ideal models that international norms suggest. Ever since norms related to international human rights were created, international society has never stopped proposing a more complete and perfect realization of universal human rights. Different ways to achieve universal human rights, such as the process of Universal Periodic Review (UPR), have been proposed and institutionalized, and new rights – such as rights regarding women, children, and indigenous groups – were suggested and promoted, while old rights were frequently violated. Governments have committed to new duties, such as Responsibilities to Protect, while existing duties have remained unfulfilled. In sum, there has been a conscious push from the creation of international norms towards states, individuals, and domestic and international NGOs to better institutionalize and enforce those suggested international standards.

This process has been captured by sociological institutionalism’s concept of ‘theorization,’ a process which mediates state behavior through the institutional-

ization of international norms. Under the pressure of international norms, international actors “theorize,” which is to say they engage in a “self-conscious development and specification of abstract categories and the formulation of patterned relationships such as chains of cause and effect” (Strang and Meyer 1993, 492). Theorization is a process “under which expanded social relationships lead to rapid diffusion” (Ibid., 490). The comparison between ideals and reality leads to the production of intellectual results ranging from “simple concepts and typologies to highly abstract, complex, and rich models” (Ibid., 493). Scientists, policy analysts and professionals who are understood as “culturally legitimate theorists,” not only “construct models but are able to promote vigorously” these international norms (Ibid., 493-494). Theorization could occur at two levels: first, at the problem level and second, at the solution level. Theorizing a problem creates the impetus for change, whereas theorizing a solution provides concrete direction and ideas about the nature of that change. The rise of UN commissions can be understood as a process of theorization between principled ideas – universal human rights, in this case – and the practices of diverse actors within world politics.

EMPIRICAL CONTEXT

Various national truth commissions, government-led inquiries, and investigations led by domestic and international NGOs exist alongside UN’s efforts to investigate human rights. As we have seen in the case of Sri Lanka, these efforts sometime are in conflict with international efforts but most of the time the various attempts are complementary. With the globalization of human rights norms, investigations are ever-increasing and the clearest evidence of this is the increasing number of truth commissions around the globe. A truth commission is an official government body temporarily set up to investigate a past history of human rights violations and to submit an official report (Hayner 2002). Famous examples are the National Commission on the Disappearance of Persons in Argentina (1983) and the Truth and Reconciliation Commission in South Africa (1995). However, there are lesser known truth commissions. Truth commissions usually have a mandate of six months to two years and that mandate is set in advance with the possibility of an extension. The commissions tend to be headed by one or more commissioners and are composed of staff members. Truth commissions can be established by a president, a legislature, or through peace accords. Some truth commissions are empowered with certain rights and privileges, such as the powers to subpoena, search and seize evidence, or provide witness protection, and all are endowed with resources and independent legal status (Dancy, Kim and Wiebelhaus-Brahm 2010, 45). Between 1982 and 2014, 41 countries have

established truth commissions to investigate past histories of state violence and human rights violations (Transitional Justice Database Project 2015). That number increases if countries like Uruguay, Chile, South Africa and South Korea, which have established more than one commission, are additionally considered. Uruguay established truth commissions both in 1985 and in 2002, and the Korean government has established around a dozen such commissions. Scholars additionally have identified a couple of countries considering establishing truth commissions (e.g., Kenya, Mexico, Poland, and Bosnia and Herzegovina). The sheer number of truth commissions and countries considering their adoption reveals the increasing importance of investigation in the area of human rights (Hirsch 2014, 810).

These developments in the investigation of human rights are not only limited only to cases of the formation of truth commissions. Human rights reporting is recognized as being an effective tool for promoting human rights by finding new and unknown facts and disseminating information of gross and systemic human rights violations (Sikkink 2004). Human rights reports are an important source of information both for the target government to assess its own situation and for other states and NGOs to determine the direction of future policies. The reports can go in both directions, reporting both human rights abuses and also improvements to human rights in a country. In the case of human rights violations, gathering sufficient information is critical for putting the norm-violating state on the international agenda (Risse, Ropp and Sikkink 1999). Although many NGOs and research centers occasionally publish press releases and short reports on individual cases, most comprehensive and systematic reports have so far been published either by government organizations – mostly the U.S. Department of State – or international human rights NGOs, such as Human Rights Watch and Amnesty International (Cohen 1996, 517). Human rights investigations have been regarded as an important tool of strategy for international NGOs to promote human rights. For example, information politics, which is an ability to quickly and credibly generate politically useful information and move it to where it will have the most impact, is one of four important campaign strategies for NGOs (Keck and Sikkink 1998, 16).

The investigation of human rights by a neutral and independent body has become an interesting trend worldwide. It started with the truth commissions to investigate past wrongs of authoritarian governments but is now widely used to investigate any past crimes in many countries, including such developed countries as the United States, Australia, and Germany. For example, in the United States, the citizens of Greensboro set up a grassroots body to investigate murders by Ku Klux Klan members in the 1960s. What happened in Australia is also inter-

esting in terms of looking back to the past and investigating past human rights abuses. In 1989, Australia's Labour Government under Prime Minister Bob Hawke established the Royal Commission into Aboriginal Deaths in Custody to investigate the deaths in custody of ninety-nine indigenous people. The remit of the Royal Commission, however, was much broader in mandate as it also was tasked with examining "the underlying social, cultural and legal issues behind the deaths in custody." It started with a commission to investigate aboriginal issues in Australia, but the institutional format of the independent commission of inquiry has dramatically gained in popularity in terms of exposing corruption, sex abuses of Catholic priests and school teachers, as well as uncovering abuses related specifically to aboriginal issues. In Germany, with the rise of norms of accountability, there has been an increase in the number of lawsuits against aging ex-Nazi officials who previously had not been held accountable in the court. With these new cases, and new testimony, there has been a development of new technologies to simulate what prison guards could and could not have seen from their posts. Courts working through the pre-trial process conducted these investigations by themselves or in cooperation with universities.

This pattern represents what Bickford (2007, 994) refers to as unofficial truth projects (UTPs). These projects either take place at the sub-state level or are carried out by civil society organizations, both of which make them unlike the official truth-seeking initiatives discussed in this article. Examples of UTPs include not only Brazil's *Nunca Mais* and Uruguay's *Service Peace and Justice*, but also Guatemala's *Recovery of Historical Memory*, Zimbabwe's *Breaking the Silence*, Northern Ireland's *Ardoyne Commemoration Project*, and the *Greensboro, North Carolina Truth and Reconciliation Commission*. The presence of UTPs demonstrates a growing demand for investigation. In the cases of Aceh, East Timor and the Solomon Islands, new local and customary measures were developed in the aftermath of the conflicts to investigate past atrocities (Jeffery and Kim 2014).

Increasingly, bodies acting under the auspices of the UN have also started to investigate human rights violations around the world. For example, the UN Human Rights Council has an investigation process, called special procedures, that is a regular mechanism designed to address either a specific country's human rights situation or thematic issues such as freedom of religion or human trafficking. It is an official investigation either by individual experts, called special rapporteurs, or by working groups. Currently, there are 37 thematic mandates and 14 country mandates in existence. Since 2006, the Human Rights Council has instituted a UPR process where all UN member states are obliged to go through the review process. Despite limitations, the new process is a significant develop-

ment from the previous treaty monitoring process, since the UN Human Rights Council reviews comprehensive reports made by governments and issues recommendations. For example, in 2009, North Korea submitted a report to the UPR. In response, the UN Human Rights Council issued a report with 167 recommendations, of which North Korea accepted none. However, in a more recent second round of the UPR process in 2013, North Korea made the conciliatory gesture of agreeing to consider 185 out of 268 recommendations forwarded by the UN Human Rights Council.

In sum, the investigation process is occurring across different levels, such as at the level of the state, and the subnational, regional, and international levels, both officially and unofficially. All these processes are another means by which human rights are expanded and intensified. Therefore, the recent increase in the number of UN commissions of inquiry is not an isolated or unique phenomenon that is only occurring at the level of the UN Human Rights Council. The rise and diffusion of UN commissions of inquiry must be understood in this context of the global diffusion of an investigative norm in the area of human rights. Therefore, despite some worries and criticisms, this trend in the UN is not going to go away easily, but rather is expected to continue unabated.

UN COMMISSIONS OF INQUIRY: CHALLENGES AND PROSPECTS

So far, there has been more diversity than convergence among the different UN commissions of inquiry. In this section, I compare six commissions along with four areas: (1) duration (period of inquiry) and period under investigation; (2) mandates, crimes under investigation, and accountability; (3) methods of investigation; and (4) standards of proof.

DURATION (PERIOD OF INQUIRY) AND PERIOD UNDER INVESTIGATION

Earlier commissions of inquiry, such as Darfur and East Timor, lasted a relatively short period of three months. However, later commissions, with the exception of the commission on Syria, had at least one year to investigate. (Syria is an exception since it originally had six months but the mandate increased over time since the crisis was ongoing. Similarly, the Libyan commission had its mandate extended owing to its inability to collect data under conditions of war.) Thus, with the more frequent creation of commissions, they increasingly have been mandated with longer tenures for investigation, which is a positive sign. Nevertheless, com-

missions often have had less than one year to investigate due to the administrative procedures they have to go through, such as appointing commissioners and staff members, establishing regional offices, and soliciting information and reports from relevant parties. For example, the commission on North Korea had a one-year period of investigation but essentially only six months was used to investigate and draft the report.

Periods under investigation vary across cases, since commissions on East Timor investigated an event that lasted only for a month while other cases have ranged from one year (Darfur) to seventy years (North Korea). One interesting trend in terms of periods under investigation is that increasingly commissions are investigating longer spans of time and sometimes their temporal mandates also are not clearly defined. These trends are most apparent for later commissions, such as the ones for Libya (2011), Syria (2013), and North Korea (2013). In the cases of the commissions on Libya and North Korea, no specific time period was predetermined for the investigation and, for the commission on Syria, no specific end date was given. This suggests that the later commissions have much longer periods of human rights violations to investigate, and oftentimes the UN Human Rights Council leaves the decision to the commission's discretion. In sum, commissions increasingly have longer time spans to investigate and are mandated with longer tenures for investigation. This is one piece of evidence that commission activities are taken more seriously since longer tenures for commission's means a greater contribution of the UN Human Rights Council's resources and manpower to investigate.

MANDATES, CRIMES UNDER INVESTIGATION, AND ACCOUNTABILITY

Table 2. Comparison of Mandates of Six Commissions of Inquiry

Commissions	Year	Mandates
Darfur	2004	1) Violations of International Humanitarian Law (IHL) and International Human Rights Law (IHRL); (2) determine whether acts of genocide have occurred; (3) identify perpetrators of such violations, (4) with a view to ensuring that those responsible are held accountable.
East Timor	2006	1) Establish facts of events; 2) clarify responsibility for said acts; 3) recommend measures for accountability; and 4) report findings to UNOHCHR.
Gaza Conflict	2009	1) Violations of IHRL; and 2) violations of IHL.
Libya	2011	1) Violations of IHRL; and 2) violations of IHL.
Syria	2013	1) Violations of IHRL; 2) to hold those responsible accountable; and 3) to investigate potential for crimes against humanity
North Korea	2013	1) Violations of IHRL; 2) to investigate whether the violations amount to crimes against humanity; 3) to hold those responsible; and 4) to make recommendations

Table 2 compares the mandate, crimes under investigation, and accountability in six different commissions of inquiry. The objectives of these commissions were all described as being designed to assess whether human rights violations had occurred. The number of specific objectives listed in the mandates, however, differed across commissions, but the common objectives were usually to investigate, to establish facts, and to find and hold those accountable for violations. All the commissions certainly based their analyses on existing international human rights laws. Depending on the situation, however, international humanitarian laws were referred to in situations where civil war was involved. Some commissions were mandated to investigate specific crimes, such as genocide or crimes against humanity (Darfur, Syria, North Korea), but others such as Libya and the conflict in Gaza had a mandate to investigate whether or not there had been violations of human rights and humanitarian law. The Libya Commission found that, during different phases of the conflict, different legal regimes predominated. During the period of armed conflict, the importance of humanitarian law and human rights law was balanced, and after the conflict, international humanitarian law took precedence.

With regard to the specific crimes mentioned, there was an interesting trend. For various human rights violations, only the Darfur Commission mandated commissioners to investigate crimes of genocide, and none of five later commissions explicitly mentioned investigating genocide. The Darfur Commission, however, did not conclude that the government or rebels had committed genocide because they could not find evidence of intent to annihilate one group on the basis of racial, ethnic, national or religious grounds. For almost a decade, no specific crimes were mentioned in the mandates of the commissions until crimes against humanity appear in 2013 in the commissions on Syria and North Korea. Both commissions specifically mentioned that they were empowered to investigate whether human rights violations occurring in those countries amounted to crimes against humanity. The lack of 'genocide' referenced in the mandate of later commissions meant that there was caution on the part of international investigative bodies to adjudicate on such crimes as genocide; crimes in which it would be difficult to prove intent and also would require immediate action from states and international organizations to prevent and punish perpetrators. It also reflected a change in several international judicial practices, where crimes against humanity have frequently been referred to the ICC, International Criminal Tribunal for the former Yugoslavia, International Criminal Tribunal for Rwanda, or the Special Court for Sierra Leone.

All of the commissions were asked to investigate and identify perpetrators and establish recommendations for accountability. Accountability included finding

specific perpetrators, chains of command, and state organizations that were responsible, as well as the individuals within those institutions. However, an emphasis on accountability also brought about severe criticism of the commissions. For example, Heller (2013) claimed that the Libya Commission was predisposed towards finding guilt upon commencement. Heller (2013) discovered a pre-determined bias in the Libyan Commission, which was created by a UN Human Rights Council (2011, 3) resolution that expressed “deep concern with the situation in Libya...strongly condemns the recent gross and systematic human rights violations committed in Libya, including indiscriminate armed attacks against civilians, extrajudicial killings, arbitrary arrests, detention and torture of peaceful demonstrators, some of which may amount to crimes against humanity.”

METHODS OF INVESTIGATION

In terms of methods of investigation, all six commissions used interviews and documents as their primary sources of information. In some cases, videos and photographs, satellite imagery, and medical records were also used as evidence. Interestingly, only in the conflict in Gaza were forensic investigations of the weapons used to corroborate the facts and events. Most commissions had the consent and cooperation of the government of the countries they were investigating, except in the cases of Syria and North Korea. In the case of conflict in Gaza, the situation was complex because commissioners obtained partial consent from the authorities. The commission had the cooperation of the Palestinian Authority and had the cooperation of the authorities in Gaza, but the Israeli government refused to cooperate. This enabled staff to conduct some fieldwork and on-site visits. The commission conducted three field visits, two to the Gaza Strip and one to Amman. The main problem for the Gaza Commission, however, was that Israel refused to cooperate and the commission was not allowed into Israel or the West Bank. This meant the commission was also unable to meet members of the Palestinian Authority in the West Bank. However, Egypt facilitated the opening of the Rafah crossing into Gaza, thus enabling the commission to conduct site visits and interviews.

The main problem encountered by some commissions was a lack of access to sites owing to continued fighting. In the case of the Libya Commission, the conflict situation prevented a return to the field from June until October 2011, and later the commission stated that no substantive investigations were possible before December 2011. The commission also faced difficulties in accessing places and individuals of interest. In the second period of investigation, the commission was better able to access information because the Gaddafi regime had been removed and witnesses were therefore more confident to speak. Accountability

was considered important by the commission. The commission found that it was possible to hold individuals accountable by tracing their actions through observations and first hand accounts. The commission established direct contact with the government of Libya and the National Transitional Council, as well as with representatives of civil society and individuals throughout the country.

One novel aspect of the commissions of inquiry was their use of public hearings, first adopted by the Gaza Commission. That commission made use of public hearings that were broadcast live, and these were held in Gaza on June 28-29, and in Geneva on July 6-7, 2009. The purpose of the hearings were to “enable victims, witnesses and experts from all sides to the conflict to speak directly to as many people as possible in the region as well as in the international community” (UN Human Rights Council 2009, 15). However, subsequent to the public hearings in Geneva, the commission was informed that a Palestinian participant had been arrested and detained by Israeli security forces when returning to the West Bank.

The use of public hearing in case of the North Korean commission also is notable. The commission, without any cooperation from or access to North Korea, obtained firsthand testimony through public hearings. In order to conduct inquiries in the absence of cooperation from North Korea, the commission held public hearings to document and record testimony from victims, witnesses, and experts. Public hearings served two main functions in collecting and evaluating information in the absence of North Korea’s cooperation. The commission held hearings not only to collect new information but also to hold the commission’s actions and reporting accountable by encouraging “members of the public to study the recordings and transcripts in order to form their own opinions of the reliability and consistency of the witness testimony” (UN Human Rights Council 2014, 10). However, despite the effectiveness of this strategy of transparency, witness protection became a key issue for the North Korea Commission following the incident with the Gaza Commission.

STANDARDS OF PROOF

Another interesting aspect of the commissions was the diversity in the standards of proof they adopt. What was common to all six commissions was the fact that none adopted the criminal court’s standards of proof, which was the highest level of proof, but instead chose a standard a few steps below it. However, each commission differed in their standards and there were no unified or consistent criteria, which could have been a serious weakness of the commissions of inquiry as an institution within the UN Human Rights Council. For example, the Darfur Commission used what it termed “a reliable body of material consistent with other verified circumstances, which tends to show that a person may reasonably

be suspected of being involved in the commission of a crime” (International Commission of Inquiry on Darfur 2005, 4). The Libya Commission used a “balance of probabilities” to determine whether or not a violation had occurred. That commission noted that it was taking a “cautious” approach to all evidence that it viewed as varied in “accuracy and reliability” (UN Human Rights Council 2012, 20).

Later commissions were more explicit about their standards of proof. The Syria Commission, for example, considered standards of proof met when the commission had “reasonable suspicion” to believe something had occurred. In the case of North Korea, the commission adopted a “reasonable grounds” standard of proof in making factual determinations (UN Human Rights Council 2014, 16). According to the commission, this meant that the commission was satisfied that “it has obtained a reliable body of information, consistent with other material, based on which a reasonable and ordinary prudent person has reason to believe that such incident or pattern of conduct has occurred.” It is customary in international law, if a court is available then this is the standard of proof that prosecutors can use to determine whether prosecution is possible. To meet this standard, the commission decided that for individual cases, “at least one credible source of first-hand information” should be “corroborated by at least one other credible source of information” (UN Human Rights Council 2014, 16).

CONCLUSION

The diffusion of international norms is a central focus in political science and international relations research today (Finnemore and Sikkink 1998; Acharya 2004; Graham, Shipan, and Volden 2012; Soligen 2012). Scholars have conducted extensive and intensive research on the origins and development of international human rights norms (Vincent 1986; Dunne and Wheeler 1999; Donnelly 2003; Forsythe 2006; Ishay 2008). The development of human rights norms is a combination of three complex processes: standard setting, investigation, and accountability. Scholars of international norms so far have focused on standard setting and, more recently, accountability (Sikkink 2011; Kim and Sharman 2014), but the process of investigation, of examining and matching conduct against norms, has been mostly overlooked. The investigation process plays an intermediate role between standard setting and accountability. Determining whether behavior has met expectations demands information gathering, evaluation, judgment, or more generally, investigation. The process of comparing actions with standards to determine the appropriate response to norm violators

feeds back into norm development by elaborating and entrenching the norm in question. Investigation forms a bridge between standard setting and accountability and is the necessary intermediate stage between these two.

Investigation is a process by which universal human rights are expanded, but also elaborated, extended and entrenched. The process of evaluating real behavior against an ideal standard, and the concomitant process of revising human rights norms in the face of new problems, contributes to both vertical intensification and horizontal expansion of human rights. Investigation is the process by which formerly unexplained phenomena are conceptualized, categorized, and understood differently to suggest a new framework, which may eventually result in new codified rules. Investigation detects, but also creates, problems, which then need to be addressed by further investigation. These changes accumulate as they are transferred across time, actors and space, being further modified in the process into more generic models and practices. Thus, globalization is an incremental, uneven, agglomeration of unintended and uncoordinated improvisations.

Holding those accountable who transgress against human rights norms for their violations logically depends on the prior step of investigation or evaluation, which may be a formal-legal process, or a much more informal matter. Holding a guilty party to account can only be done once that party has been identified as transgressing against human rights norms; simply sanctioning random individuals does not qualify as accountability. Investigation is the process of collecting evidence of relevant behavior, matching that evidence against the provisions of the existing and developing human rights standards, and coming to a judgment as to whether that behavior is compliant or not. Yet, investigating conduct in light of a particular norm may incrementally shift the norm itself: the need for judgments in novel circumstances can give rise to extensions, amendments or elaborations of existing shared standards of appropriateness in the area of human rights.

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