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THE DEVELOPMENT OF THE LUND-LONDON GUIDELINES ON HUMAN RIGHTS FACT FINDING: A BRIEF HISTORY

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The International Bar Association's Human Rights Institute (IBAHRI), in conjunction with the Raoul Wallenberg Institute (RWI), launched a set of human rights fact-finding guidelines (the 'Guidelines') during a conference at the British Institute of International and Comparative Law, London, on 1 June 2009. The Guidelines were the result of several years' work and wide consultation. They arose out of concern that, despite there being no agreed international standards for human rights fact-finding reporting, such reports are frequently referred to by courts and tribunals as evidence of the facts alleged in them, as well as by governments, non-governmental organisations (NGOs) and other interested parties. The Guidelines aim to fill this gap by setting an agreed international standard of good practice in the conduct of fact-finding visits and compilation of resultant reports.

While primarily intended for use by NGOs, the Guidelines can provide direction to all those engaged in human rights fact-finding and reporting with a view to improving accuracy, objectivity, transparency and credibility.

As the Preamble to the Guidelines states:

'If a report has been compiled in accordance with these guidelines it indicates that the allegations, observations and conclusions in it can be reasonably relied upon, thus enhancing the efficacy and credibility of the report. This will enhance fact finding as a step in a constructive process to improve the general climate of human rights compliance and to protect the victims of human rights violations.'

The process of formulating the guidelines

The idea

In 2003 Alan Stephens, who was then the Publishing Director at Kluwer Law International/Martinus Nijhoff Publishers, approached the RWI and the International Bar Association (IBA) with a view to composing guidelines for human rights fact-finding visits and reports. The fact-finding mission has become a commonly used instrument in contemporary organised international society. Reports resulting from fact-finding missions are often widely circulated, and those with the imprimatur of certain NGOs tend to be treated as being authoritative, or close to authoritative, especially by news media.

As background research commenced, it was also discovered that courts and tribunals including the United Nations (UN) human rights treaty bodies were attaching probative significance to such reports. The founding documents of the International Criminal Court (ICC) give a special status to NGOs, and thus to their fact-finding capacities and reports.

Despite much discussion, no procedural standards had been universally accepted for the conduct of fact-finding enquiries, and for the assessment of reports. The project's purpose would be to answer the need for a set of guidelines that were internationally accepted and amounted to a system of quality control. Such guidelines would encapsulate accepted standards of fairness, serve as a check-list for all organisations setting up fact-finding missions and serve as criteria for judging the reliability of reports, and their admissibility as evidence.

The original goal of the project was to produce guidelines for fact-finding with respect to alleged breaches of human rights and the laws of war, and to obtain the highest attainable level of adoption of the guidelines by intergovernmental organisations (IGOs) and, in particular, by NGOs. As the work progressed, it became apparent that producing guidelines covering alleged breaches of humanitarian law and war crimes – particularly with respect to gathering forensic evidence – would be too ambitious a task and the decision was made to produce instead guidelines primarily for NGOs dealing with human rights violations. The guidelines would not be binding rules, but would nevertheless act as a benchmark by which the reliability of reports could be reasonably assessed by any interested person.

The process

A Steering Committee representing the partners in the project was formed. It comprised Alan Stephens (Chair); Rolf Ring (RWI); Phillip Tahmindjis (IBAHRI); and Ralph Walden (Consultative Council of Jewish Organisations). Mr Walden withdrew from the Committee in 2004 for health reasons.

It was agreed that the first stage of the project would consist of making an analytical compilation of a large number of human rights reports from a selection of organisations, covering a world-wide geographical spread, different mandates and thematic concerns, and of varying resource capacities. A study was also made of any existing fact-finding guidelines. The research was intended to uncover the principal issues relating to human rights fact-finding missions and the extent to which these were transparent in any subsequent reports.

The RWI agreed to fund a graduate of its Human Rights Master's programme in London, for up to approximately six months to undertake the research. As it turned out, a total of four RWI researchers were used for periods of 12 months each. These researchers were based at, and provided facilities by, the London office of the IBA, and received help, support and supervision from the staff of the IBAHRI. The IBA also assigned its own interns to the project when necessary.

In 2003 the interns identified 17 significant monographs and journal articles specifically dealing with human rights fact-finding reporting, and eight websites. Some of these included rudimentary guidelines – such as Hans Thoolen and Berth Verstappens' *Human Rights Missions: A Study of the Fact-Finding Practice of NGOs*. UN guidelines, such as the Model Rules of Procedure for UN Bodies dealing with Violations of Human Rights (E/CN 4/1134), ECOSOC Resolution 1870 (LVI) and UN General Assembly Resolution 35/176, were also consulted, together with the 1980 International Law Association guidelines in the *Belgrade Minimal Rules of Procedure for International Fact-Finding Missions*. The internal guidelines of NGOs undertaking fact finding were in general confidential documents to which the interns and drafting team were declined access.

The interns undertook a search of organisations producing and publishing human rights fact-finding reports in English (it not being possible to research reports in other languages). Seventy-six such organisations were identified. The reports of these organisations were then considered. As it would be impossible to analyse in an effective way all available reports, a selection was made, both between the available organisations for consideration and within the sometimes dozens of reports each organisation had published, providing an overview of reports to allow diversity of subject matter, geographical region, large and small NGOs, etc, and then subject them to a detailed analysis. In order that no organisation might feel that it was being unfairly singled out for scrutiny, the names of the organisations selected and the specific reports that were subjected to the analysis remained confidential.

A template for comparative analysis was constructed and redrafted several times as continuing analysis of the reports indicated more and more issues of significance. The template as finally agreed referred to the basic issues of: the mandate of the organisation; the triggering of the mission; the selection and composition of the delegation of fact finders; the mandate or terms of reference of the mission; the working methods of the delegation; the process of writing the report; the process by which conclusions were arrived at in the report; the publication of the report; the reaction to the report; and whether any follow-up missions were undertaken. Within each of these general categories, a list of findings was compiled, and from these, a list of issues arising for consideration was developed. Considerations across these categories also affected the construction of the Guidelines: the mandate of the organisation will have an impact on the triggering of a mission and its terms of reference; these will affect the composition of the fact finders and how and on what bases they are selected; the working methods of the fact finders will affect the writing of the report and its conclusions; these will all affect the publication of the report, decisions as to whom it is released and whether a report is made public.

The template's general overview issues were to examine: transparency; objectivity; clarity; impartiality; and presentation.

As the research phase drew to an end, the drafting phase commenced. It was decided that a small seminar of experts at the RWI in Lund, Sweden, would be held to consider the research findings and to provide guidance and direction for the drafting of the Guidelines. This occurred from 30 November – 2 December, 2004, and was funded by the Clemens Nathan Research Centre. There were 16 participants, representing a mixture of academic and technical or practical expertise in fact finding. These included Professor Michael Bothe (International Committee of the Red Cross, International Fact Finding Commission); Dr Illaria Bottigliero (RWI); Professor Christina Cerna (Organization of American States); Professor Andrew Corin (International Criminal Tribunal for the former Yugoslavia); Dr Lief Holstrom (RWI); Judge Jakob Müller (Constitutional Court of Bosnia and Herzegovina); Clemens Nathan (Clemens Nathan Institute); Professor Manoj Sinha (Indian Society of International Law); Professor Lyal Sunga (University of Hong Kong); together with the Steering Committee; the RWI intern Annie Chew; and five LL.M students from the RWI who acted as rapporteurs.

This group looked in detail at the documentation and template outlines prepared so far and concluded that the project was worth pursuing. A programme of further work was outlined. Two of the participants agreed to produce an initial draft of the Guidelines. This included continuing with the assistance of RWI-funded interns (of whom there were four in total: Annie Chew, Rashad Ibadov, Tamrat Kidanemariam and Lydia Mugambe) who, in addition to providing research assistance, tested the developing template against (then) recent fact-finding reports.

Unfortunately, the drafters were unable to complete their task. After a considerable break, the project was then taken on by Phillip Tahmindjis with the assistance of IBAHRI Programme Lawyer Jo Salisbury, who together produced a working draft of the Guidelines.

At this stage, another workshop was organised in London, with the aim of examining the text of the draft line by line in order to finalise the wording of the Guidelines. This took place in 2008 at the British Institute of International and Comparative Law (BIICL), which offered its premises free of charge. There were 12 expert participants at this workshop, including representatives of the International Commission of Jurists, Amnesty International and leading academics including Professor Christine Chinkin, Professor Robert McCorquodale and Professor Michael O’Flaherty. They met over two days and many amendments to the draft were suggested. A redrafting committee comprising Phillip Tahmindjis (IBAHRI) and Sarah Williams (BIICL) then produced the penultimate version of the Guidelines, which were approved by the Steering Committee, and the final version was completed and printed by mid-2009.

On 1–2 June 2009, the RWI and the IBAHRI held a joint seminar on Human Rights Fact-Finding Missions, sponsored by the Soderberg Foundations at the British Institute of International and Comparative Law to formally launch the Guidelines, which by this stage had been called the ‘Lund-London’ Guidelines to indicate the two cities where their development had taken place. Attended by 73 academics, NGO and IGO personnel and legal practitioners, the keynote address, on human rights fact finding, was delivered by Geoffrey Robertson QC. There followed sessions on: what fact finding is (with commentary by Justice Robert Sharpe, Court of Appeal, Ontario; Wilder Taylor, Secretary-General, International Commission of Jurists; Christian Ahlund, Executive Director, International Legal Assistance Consortium; and Professor Charles

Garraway, International Humanitarian Fact Finding Commission); interviewing vulnerable groups (with commentary by Mona Rishmawi, OHCHR; Graham Dossett, Human Rights Centre, University of Essex; and Carla Ferstman, Director, Redress); practical issues (with commentary by Andrew Mawson, Human Rights Watch, Anne Fitzgerald, Amnesty International, and Purna Sen, Commonwealth Secretariat); and the effectiveness of missions (with commentary by Dan Saxon, ICTY; Professor Philip Leach, London Metropolitan University; and Alison Smith, Legal Counsel at No Peace Without Justice).

Acknowledging that this will be a work in progress, it was decided to hold a follow-up seminar after a few years to assess the state of human rights fact finding and the usefulness of the Guidelines. After their inception, the IBAHRI developed an addendum to them, relating to security issues during a mission. However, by 2014 IBAHRI and RWI considered that it was time for a complete reassessment.

The IBAHRI and RWI decided to run an NGO Colloquium and Workshop entitled *Rule of Law Fact-Finding by NGOs: Monitoring Standards and Maximising Impact – A Re-Examination of the Lund-London Guidelines*. This was held in London at the Law Society of England and Wales on 29 January, 2015, followed the next day by a workshop at the offices of the IBA to consider in detail the Guidelines in the light of the previous day's discussion.

The Colloquium was opened by a keynote address from Juan Mendez, UN Special Rapporteur on Torture, followed by a session on standards for rule of law fact finding, moderated by Professor Robert McCorquodale, Director, BIICL, and with panellists Sir Nigel Rodley (member of the UN Human Rights Committee), Christian Ahlund (Executive Director ILAC), Rolf Ring (RWI); Philippe Kirsch OC QC (Former President, International Criminal Court), Itamar Barak (B'Tselem) and Phillip Tahmindjis (Director, IBAHRI).

The second session discussed the impact of fact-finding by NGOs. It was moderated by Baroness Helena Kennedy QC and the panellists were Alex Wilks (IBAHRI), Sternford Moyo (SADC Lawyers), Guadalupe Marengo (Amnesty International), Robin Phillips (Advocates for Human Rights), Hans Corell (Former UN Under-Secretary-General for Legal Affairs), and Clive Baldwin (Human Rights Watch).

The Colloquium, attended by approximately 80 people, generated much discussion and raised many points which fed into the discussion at the Workshop at the IBA which looked in detail at the Lund-London Guidelines. The Workshop was chaired by Hans Corell and was attended by most of the panellists from the previous day as well as by Professor Christine Chinkin (London School of Economics) and Anne Fitzgerald (Amnesty International). Many amendments were suggested to both the substance and the structure of the Guidelines, in particular to the issues of security of missions and the standard of proof in fact-finding. Hans Corell and Phillip Tahmindjis noted all of the suggestions and produced a final draft, which the IBAHRI had translated into French, Arabic, Russian, and Spanish.

The IBAHRI and RWI and other sympathetic organisations and individuals continue to elicit support for and implementation of the Guidelines. A balance between idealism and pragmatism, the Guidelines are a further indicator that NGOs are legitimate players in the globalised and devolved world of human rights implementation.

Download the Lund-London Guidelines (in English, Spanish, Russian, French and Arabic) at: www.factfindingguidelines.org.



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