Quality Control in International Fact-Finding Outside Criminal Justice for Core International Crimes

The 2013 LI Haopei Lecture and Seminar

A seminar organized by
the Forum for International Criminal and Humanitarian Law,
the European University Institute, and Peking University International Law Institute,
on 20 May 2013, 09:00-18:00,
at The Refectory, Badia Fiesolana, European University Institute, Florence.

There are academic efforts under way to map, and analyse best practices of, the plethora of international fact-finding commissions and other mandates to look into allegations of serious violations of international criminal, humanitarian or human rights law. There have been significant developments in international practice in this area since the Commission of Experts for the former Yugoslavia established pursuant to United Nations Security Council resolution 780 (1992), an institution which served as a catalyst for later developments. The FICHL supports these academic efforts, and it seeks, together with the European University Institute and Peking University International Law Institute, to supplement them by focusing the 2013 LI Haopei Seminar on the specific topic of ‘Quality Control in International Fact-Finding Outside Criminal Justice for Core International Crimes’.

To serve the interests of professionalization, how can the quality of international fact-finding, -analysis and -reporting be improved? How should the significant developments in fact-work in international criminal jurisdictions since the mid-1990s positively influence similar fact-work outside criminal justice for core international crimes? In which ways should the flexibility, concentration of effort, dynamism, cost-efficiency, and other advantages of non-criminal justice fact-work be further reinforced? Is quality control only a matter of enhanced work processes, or does it also bear on issues such as the formulation of mandates, personnel composition of fact-finding mechanisms, independence and impartiality, and public relations? Should non-criminal justice fact-work be made more similar to the work processes in criminal jurisdic-

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1 The term ‘fact-finding’ is often used to describe several types of work on facts or alleged facts, including work processes to identify, locate, obtain, verify, analyse, corroborate, summarize, synthesize, structure, organize, present and disseminate facts. The term ‘fact-work’ is used in this document and at the 2013 LI Haopei Seminar to capture all such work processes.

2 See, for example, the International Fact-Finding Mission on Israeli Settlements in the Occupied Palestinian Territory (UN Human Rights Council resolution 19/17, 22 March 2012), the Fact-Finding Mission on Syria (UN Human Rights Council resolution 16/1, 29 April 2011), and the Independent International Fact-Finding Mission on the Conflict in Georgia (mandated by the Council of the European Union on 2 December 2008).

3 For the purposes of this document and the 2013 LI Haopei Seminar, the term ‘core international crimes’ is used for the categories war crimes, crimes against humanity, acts of genocide and crimes of aggression. As such, the term includes all serious violations of international human rights law which may amount to core international crimes, not only violations against life, physical integrity and personal liberty, but also non-physical violations that can constitute, for example, persecution as a crime against humanity. ‘Criminal justice for core international crimes’ is used – rather than ‘international criminal justice’ – in order not to exclude internationalised or national criminal justice for core international crimes from the discussion. The term ‘international criminal justice’ is narrower and therefore not used here.
tions? To which extent do resource constraints affect quality control in non-criminal justice fact-work? Can information technology enhance quality control in non-criminal justice fact-work? Is there a need to strengthen legal capacity in such fact-work? Would increased transparency about the human resources involved in relevant fact-work reinforce a sense of accountability and, by that, quality in the work processes?

These are among the questions that will be discussed during the 2013 LI Haopei Seminar. More precisely, the seminar will concentrate on quality control in five particular contexts:

1. the formulation of the mandate of relevant international fact-finding;
2. the work processes in relevant fact-finding and analysis;
3. the composition, staffing, resources and organisation of such fact-work;
4. the writing of fact-finding reports and conclusions; and
5. public communication in connection with the submission of the final report.

The quality of their mandate, independence, work processes and reporting determine the utility, efficacy and legitimacy of international fact-finding commissions and inquiries. Increasing the awareness and understanding of quality control may enhance the value of international fact-finding to relevant stakeholders, ultimately to victims and, indirectly, taxpayers who make it possible for Governments to support such commissions. More refined quality control mechanisms can make the success of international fact-finding less conditioned by the individual composition of any given commission. Quality control can also contribute to the substantive independence of the fact-finders’ assessment of allegations of serious violations of international criminal, humanitarian or human rights law.

The purpose of the LI Haopei Lecture Series is to honour the international law service and contributions of the late Judge LI Haopei (1906-1997), a distinguished Chinese jurist, diplomat and academic. Judge LI was a leading authority on international law. From 1963 to 1993, he was concurrently Legal Adviser to the Ministry of Foreign Affairs of China and Professor of International Law at Peking University. Judge LI became China’s main representative at international conferences and tribunals. From 1993 to 1997, he was a Member of the Permanent Court of Arbitration. In the same period, he served as Judge at the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia and Rwanda.

Justice Richard J. Goldstone will give the distinguished 2013 LI Haopei Lecture on the seminar topic. The programme below details the other speakers and their specific topics.

Registration:

As the number of available seminar seats is limited, those interested in participating in the seminar should send an e-mail message to bolton@fichl.org before 10 May 2013. Those registered will receive an e-mail confirmation and may also attend the reception at the end of the seminar. Participation is without cost, but non-speakers cover their own travel and accommodation expenses.
Programme

on Monday, 20 May 2013, 09:00–18:00,
at the Refectory, Badia Fiesolana, European University Institute, Florence:

09:00  Introductory statements:
- Professor Marise Cremona\(^4\) (President, European University Institute)
- Professor LING Yan\(^5\) (China University of Political Science and Law; Co-Director, LI Haopei Lecture Series)
- Judge LIU Daqun\(^6\) (Appeals Chamber of the International Criminal Tribunals for the Former Yugoslavia and Rwanda)

09:30  *The Quality and Limitations of Fact-Finding: the Seminar Topic and Its Relevancy*, by Professor Morten Bergsmo\(^7\) (Peking University Law School; Director, CILRAP)

**Session 1**
*Chair: Professor LING Yan*

09:45  The 2013 LI Haopei Lecture:
*Quality Control in International Fact-Finding Outside Criminal Justice for Core International Crimes*, by Richard J. Goldstone\(^8\) (Visiting Professor of Law, University of Virginia Law School and Stanford Law School)

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\(^4\) **Marise Cremona** has led the EUI since 9 June 2012. She joined the EUI in 2006 as Professor of European Law and was later appointed Head of the Department of Law. She holds a BA honours degree from Somerville College, Oxford and an LL.M. in International Law from Darwin College, Cambridge. She has been Professor of European Commercial Law and Associate Director at the Centre for Commercial Law Studies of Queen Mary University of London. Her areas of interest include: EU external relations, trade and development policy, common security and policy security, EU and the WTO, European neighbourhood policy, EU enlargement, as well as the European internal market and the institutional and constitutional law of the EU.

\(^5\) **LING Yan** is Professor at the Faculty of International Law at China University of Political Science and Law (2004-), Director of its Research Center for International Criminal Law and Humanitarian Law (www.rcicl.org/english/index.asp), and Deputy Director of its Institute of Air and Space Law. She has worked as a legal officer for the ICTR (1998-2004).

\(^6\) **LIU Daqun** is Judge at the Appeals Chamber of the ICTY and ICTR (having been a Judge at the ICTY since 2000). He has been Director both of the Private International Law Division, the Law of the Sea Division and the International Law Division of the Treaty and Law Department, Ministry of Foreign Affairs of China, and Deputy Director-General of that Department. He has taught law at Peking University, the Chinese Academy of Social Sciences, China University of Political Science and Law, and Wuhan University. He has participated in numerous delegations of the Chinese Government, including as Deputy Head and Chief Negotiator of the Chinese Delegation to the Rome Conference on the establishment of the ICC. He has been Ambassador to Jamaica.

\(^7\) **Morten Bergsmo** is Visiting Professor, Peking University Law School; Visiting Fellow, Stanford University; Director, CILRAP; and ICC Consultant and Co-ordinator of the ICC Legal Tools Project. He was formerly Visiting Professor, Georgetown University (2010-12); Senior Researcher, University of Oslo, Faculty of Law (2010-12); Fernand Braudel Senior Fellow, European University Institute (2011 Spring); Visiting Scholar, UC Berkeley (2010 Spring); Senior Researcher, PRIO (2006-09); Special Adviser to the Office of the Director of Public Prosecution of Norway (2007-08); Senior Legal Adviser and Chief of the Legal Advisory Section, ICC Office of the Prosecutor (2002-05); Co-ordinator of the establishment of the ICC Office of the Prosecutor (2002-03); Legal Adviser, ICTY (1994-2002); and Legal Adviser, UN Commission of Experts for the Former Yugoslavia established pursuant to Security Council resolution 780(1992) (1993-94). He represented the ICTY during the UN negotiation process to establish the ICC (1996-2002). He founded and directs the Centre for International Law Research and Policy (CILRAP, www.cilrap.org).

\(^8\) **Richard J. Goldstone** is a Visiting Professor of Law, University of Virginia Law School and Stanford Law School.
10:30  Improving Fact-Finding in Treaty-Based Human Rights Mechanisms and Before the UN Human Rights Council, by Professor Martin Scheinin⁸ (European University Institute)

11:15 How to Attain Justified Beliefs About Mass Atrocity and Large-Scale Violations of Human Rights – Towards an Epistemology of International Fact-Finding, by Simon De Smet¹⁰ (Legal Officer, International Criminal Court)

12:00 Lunch at Badia Fiesolana

13:00 Session 2: Mandate, Members, Function, Operation and Oversight

Chair: Professor YANG Lijun¹¹

- Quality Control and the Mandate of International Fact-Finding, by FAN Yuwen¹² (Peking University Law School)
- Coherence in the Design and Implementation of the Mandates of International Fact-Finding Commissions: Internal and External Dimensions, by Isabelle Lassée¹³ (Université Paris II Panthéon - Assas, Paris)

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⁸ Richard J. Goldstone is Visiting Professor of Law in 2013 at the University of Virginia Law School in the spring semester and will be at Stanford Law School in the fall. He is a former justice of the Constitutional Court of South Africa and was the first Chief Prosecutor of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda. Justice Goldstone was appointed by the Secretary-General of the United Nations to the Independent International Commission, which investigated the Iraq Oil for Food program. In 2009 he led the UN Fact Finding Mission on Gaza. Among his other professional endeavours, Goldstone served as chairperson of the Commission of Inquiry regarding Public Violence and Intimidation that came to be known as the Goldstone Commission; and of the International Independent Inquiry on Kosovo. He also was co-chairperson of the International Task Force on Terrorism, which was established by the International Bar Association; director of the American Arbitration Association; from 1999 to 2003, a member of the international advisory committee of the International Committee of the Red Cross; and national president of the National Institute of Crime Prevention and the Rehabilitation of Offenders (NICRO). He is also a foreign member of the American Academy of Arts and Sciences and an honorary member of the Association of the Bar of the City of New York. He is an honorary bencher of the Inner Temple, London and an honorary fellow of St. Johns College, Cambridge.

⁹ Martin Scheinin joined the EUI in 2008 after having served for 15 years as professor in Finland. In 1993-1998, he was Professor of Constitutional Law at the University of Helsinki where he also got his doctorate in 1991. In 1998-2008, he was Professor of Constitutional and International Law and Director of the Institute for Human Rights at Åbo Akademi University in Turku, Finland. In 1997-2004, he was a member of the United Nations Human Rights Committee, the treaty body acting under the Covenant on Civil and Political Rights. In 2005, he was appointed as the first United Nations Special Rapporteur on human rights and counter-terrorism, a position of trust he held until July 2011. Currently he is the President of the International Association of Constitutional Law.

¹⁰ Simon De Smet is a Legal Officer in ICC Chambers (since 2003). He has served as a Law Clerk at the International Court of Justice (to Judges Thomas Buergenthal and Pieter Kooijmans, 2002-2003), and was a First Lieutenant (Reserve) in the Belgian Air Force (1993-2005). He holds a Ph.D. from Cambridge University, an LL.M. from Columbia University School of Law, and a Licentiaat in rechten in de Rechten from the University of Ghent.

¹¹ YANG Lijun is an associate professor in the International Law Research Center of China Academy of Social Sciences, and a senior research fellow of the China Law Centre in the Erasmus University Rotterdam. She has focused on issues of international criminal law for a number of years, in particular on international criminal tribunals, with several publications. She worked as a visiting professional in Chambers of the International Criminal Court in 2005 and as a legal expert in the Office of the Prosecutor of the International Criminal Court in 2006. She is one of the authors of the book ‘Commentaries on the Rome Statute of the International Criminal Court’ published in China. She holds an LL.M. degree from Peking University, China.

¹² FAN Yuwen holds a LL.B. degree from China University of Political Science and Law, and a M.A. degree in International Law from Graduate School, Chinese Academy of Social Sciences. She is currently a doctoral candidate in International Law at Peking University, China. During her studies, she participated in the Human Rights Master Programme of Peking University Law School and Lund University Raoul Wallenberg Institute of Human Rights and Humanitarian Law. She is also an editor of Peking University International and Comparative Law Review and of the Torkel Opsahl Academic EPublisher.

¹³ Isabelle Lassée is currently pursuing doctoral studies at Université Paris II Panthéon - Assas, Paris. Her dissertation focuses on UN-mandated commissions of inquiry for grave human rights and humanitarian law violations. From 2011 to 2013, she worked as a legal consultant in international human rights law for a non-governmental organization in the Maldives. In 2010, she worked in the International Co-Prosecutor’s Office at the Extraordi-
14:45 Tea and coffee break

15:00 Session 3: Finding and Subsuming Facts under Human Rights, Law of Armed Conflict, or International Criminal Law

Chair: Mirna D. Goransky

- The Difference Between Human Rights and Law of Armed Conflict Fact-Finding, by Professor Francoise J. Hampson (University of Essex)

14 WU Xiaodan is a post-doctoral fellow in the Institute of Law of China Academy of Social Sciences (since 2011). Her research fields are international human rights law and outer space law. She holds a Ph.D. from University of Milan, Italy.

15 Dan Saxon is a Visiting Professor at Leiden University College in The Hague where he teaches Global Justice. He served as the legal adviser to the United Nations Independent International Commission of Inquiry for Syria from October 2011 through February 2012. He was the Leverhulme Visiting Professor and Yorke Distinguished Visiting Fellow at the Faculty of Law at the University of Cambridge, where he taught seminars in international criminal law and international humanitarian law to undergraduates and graduate students. From 1998-2010, Saxon served as a prosecutor at the United Nations International Criminal Tribunal for the Former Yugoslavia, the last four years as a Senior Prosecuting Trial Attorney responsible for complex international investigations and prosecutions. He is the author of articles and book chapters concerning topics in international law and is the editor of ‘International Humanitarian Law and the Changing Technology of War’ (Martinus Nijhoff/Brill 2013).

16 Christopher Mahony is Deputy Director of the New Zealand Centre for Human Rights Law, Policy and Practice, Faculty of Law, University of Auckland. He is a candidate for a DPhil in Politics at the University of Oxford. He holds Bachelor of Commerce (BCom) and Bachelor of Laws (LLB) degrees from the University of Otago and a master’s degree in African Studies (MSc) from the University of Oxford. He was admitted to the bar of the High Court of New Zealand in 2006 where he appeared for the crown in criminal and refugee matters. He drafted the recommendations on governance for the Sierra Leone Truth and Reconciliation Commission, and co-authored the ‘Historical antecedents to the conflict’ chapter. In 2008, he directed the Witness Evaluation Legacy Project at the Special Court for Sierra Leone. He has advised the British and US governments and the Institute for Security Studies on justice sector reform and transitional justice issues.

17 Mirna D. Goransky is Deputy General Prosecutor of the Office of the National Attorney General in Argentina. Since she joined the Office in 1996, she has, inter alia, served as Prosecutor of the Special Unit to Investigate Human Rights Crimes during the 1976-83 Dictatorship, in charge of the trials against those accused of crimes against humanity in the Navy School of Mechanics and Operation Condor (2006-2012); Prosecutor of the Criminal Policy Unit, leading programmes such as Community Relations and reorganisation of the Ministerio Público (1996-1999); and Prosecutor of the first-ever decentralised prosecutor’s office in the City of Buenos Aires (1999). She holds a Law Degree from the Law School of the University of Buenos Aires (1976-1982), where she was an Associate Professor teaching courses on criminal law and procedure and constitutional rights (1987-1997). She has authored the book Hacia un Ministerio Público eficaz, eficiente y democrático (Towards an Effective, Efficient and Democratic Prosecution, Editores del Puerto, Buenos Aires, 2010), and has published more than 30 articles on criminal law and procedure, human rights and judiciary reform. She has given numerous lectures in various countries in Latin America on these issues, and served as member of the editorial board of Nueva Doctrina Penal (New Criminal Jurisprudence, a law journal on criminal law and procedure) (1995-2003) and as Editor-in-Chief of Pena y Estado (Punishment and State, also a journal on criminal law and society) (1997-2002).

18 Francoise J. Hampson is Professor of Law at the University of Essex. She was an independent expert member of the UN Sub-Commission on the Promotion and Protection of Human Rights from 1998-2007. She previously...
International Criminal Law Outside the Courtroom: The Impact of Focusing on International Crimes for the Quality of Fact-Finding Missions, by Dov Jacobs\textsuperscript{19} and Catherine Harwood\textsuperscript{20} (Assistant Professor in Public International Law and Ph.D. candidate, Leiden University, respectively)

How Could UN Human Rights Special Procedures and International Criminal Investigative Methodologies Strengthen Each Other? by Professor Lyal S. Sunga\textsuperscript{21} (Raoul Wallenberg Institute)

16:15 Tea and coffee break

taught at the University of Dundee. She has acted as a consultant on humanitarian law to the International Committee of the Red Cross and taught at Staff Colleges or equivalents in the UK, USA, Canada and Ghana. She represented Oxfam and SCF (UK) at the Preparatory Committee and first session of the Review Conference for the Certain Conventional Weapons Convention. Professor Hampson has successfully litigated many cases before the European Court of Human Rights in Strasbourg and, in recognition of her contribution to the development of law in this area, was awarded Human Rights Lawyer of the Year jointly with her colleague from the Centre, Professor Kevin Boyle. She has taught, researched and published widely in the fields of armed conflict, international humanitarian law and on the European Convention on Human Rights. She is currently working on international law issues relating to private military/security companies and on the use of an individual petition system to address what are widespread or systematic human rights violations.

\textsuperscript{19} Dov Jacobs is an Assistant Professor in International Law at the Grotius Centre of Leiden University. He is currently a member of the editorial board of the Leiden Journal of International Law, on the advisory board of the European Journal of Legal Studies and an Expert Associate in the SHARES project at the University of Amsterdam. He regularly comments on international law issues on his blog, Spreading the Jam. He has published extensively in the field of international law and international criminal law. His current research interests cover international criminal law, public international law (particularly State Responsibility) and legal theory.

\textsuperscript{20} Catherine Harwood is a Ph.D. candidate at the Grotius Centre for International Legal Studies at Leiden University, under the co-supervision of Professor Stahn and Professor Van den Herik. Her research explores how international fact-finding investigations in (post)conflict situations may be co-ordinated and harmonised to strengthen international justice and accountability. Ms. Harwood graduated cum laude from Leiden University in 2012 with a Masters of Laws in Advanced Studies Public International Law, with the assistance of a Rotary Vocational Scholarship. In 2009, she graduated from Victoria University of Wellington, New Zealand, with an LL.B. (Hons) and a Bachelor of Arts in Sociology, and was admitted as a Barrister and Solicitor of the High Court of New Zealand. Ms. Harwood worked for two years as a Judges Clerk at the New Zealand Court of Appeal and was a teaching fellow and researcher at Victoria University. She has also interned at the International Criminal Court and the International Bar Association’s Programme on the ICC.

\textsuperscript{21} Lyal S. Sunga is Visiting Professor at the Raoul Wallenberg Institute for Human Rights and Humanitarian Law (RWI) in Lund, Sweden, and Special Advisor on Human Rights and Justice at the International Development Law Organization in Rome, Italy. Formerly, he was RWI Director of Research and Senior Lecturer (2005-09). He holds a Bachelor of Arts (Carleton), Bachelor of Laws (Osgoode Hall Law School), Master of Laws in International Human Rights Law (Essex), and Ph.D. in International Law (The Graduate Institute of International Studies). Before joining the RWI, he taught at the University of Hong Kong Faculty of Law and served as Director of the Master of Laws Programme in Human Rights (2001-05). He has given conference presentations, university courses, lectures and training in more than 45 countries. From 1994-2001, Dr. Sunga worked for the UN Office of the High Commissioner for Human Rights in Geneva, first to assist in the investigation of facts and responsibilities relating to the 1994 genocide in Rwanda for the UN Security Council’s Commission of Experts on Rwanda, to draft the Commission’s report recommending the establishment of the International Criminal Tribunal for Rwanda, and then on the establishment of the UN Human Rights Field Operation in Rwanda and on human rights issues relating to the establishment of the International Criminal Court, terrorism, redress for violations of international human rights and humanitarian law, impunity, the death penalty, human rights defenders and the administration of justice. In 2007, he served as Coordinator for the UN Human Rights Council’s Group of Experts on Darfur. Over the last 20 years, he has worked or consulted with the UN Security Council, UNOCHR, UNDP, UNDEF, UNU, UNHCR, UNITAR, UNODC, the ILO, EU and IDLO as well as with the Ethiopian and Uganda Human Rights Commissions. Many of his publications are available for download in PDF format at http://lyalsunga.moonfruit.com/#/journal-and-internet-articles/4534973523.
Session 4
Chair: Professor Olympia Bekou²²

16:30  To Face or Not to Face Judges: How to Enhance Quality in NGO Fact-Work that May Not Lead to Litigation, by Wolfgang Kaleck²³ (European Center for Constitutional and Human Rights)

16:50  Information Technology and Quality Control in Non-Criminal Justice Fact-Work, by Ilia Utmelidze²⁴ (University of Oslo; CMN)

17:20  General discussion and concluding remarks by:
   • Professor Martin Scheinin
   • Judge LIU Daqun

18:00  Reception at the Upper Loggia, Badia Fiesolana²⁵

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²² Dr. Olympia Bekou is Associate Professor and Head of the International Criminal Justice Unit of the Nottingham Human Rights Law Centre. A qualified lawyer, she specialises in international criminal law with particular expertise in national implementing legislation for the ICC. Olympia has provided research and capacity building support for 63 States, through intensive training to more than 75 international government officials and drafting assistance to Samoa (with legislation enacted in November 2007), Fiji and Jamaica. She is responsible for the National Implementing Legislation Database (NILD) of the ICC Legal Tools Project and has researched and taught extensively worldwide. She has undertaken CMN missions to several countries, including the DRC.

²³ Wolfgang Kaleck is the Secretary General and co-founder of the European Center for Constitutional and Human Rights (ECCHR), a lawyer specializing in criminal law, who has established an international reputation as an advocate for human rights. After completing his law degree in Bonn in 1990, Kaleck served as a legal intern at the Comisión de Derechos Humanos de Guatemala. He founded the law firm Kaleck.Hummel.Rechtsanwälte in 1991, following which he worked as a specialist solicitor in criminal law. Since 1998, he has been the attorney of the Koalition der Straflosigkeit, which fights to hold Argentinean military officials accountable for the murder and disappearance of Germans during the Argentine dictatorship.

²⁴ Ilia Utmelidze is the Director of the CMN and a Senior Legal Adviser at the National Human Rights Institutions, the Norwegian Centre for Human Rights, University of Oslo. He is also advising the Norwegian Helsinki Committee on methodologies and tools for documentation of mass atrocities. Formerly, he served as Legal Adviser in the Human Rights Department of the Organization of Security and Cooperation in Europe’s Mission to Bosnia and Herzegovina, advising on transitional justice and institution-building in areas such as domestic war crimes prosecution mechanisms (including the development of a national strategy for war crimes prosecution), specialized investigative commissions for Srebrenica and Sarajevo, and the reform of ombudsman institution. He has also worked for the Norwegian Refugee Council in Azerbaijan with capacity building of local non-governmental organizations in the field of human rights protection and advocacy; as a consultant on development of human rights education and peace programmes within the educational system of Azerbaijan (2001-04); and for the Norwegian Centre for Human Rights on a minority policy and law research project (2000-01).

²⁵ All registered seminar participants are invited to the reception.