making modern States on a broadly Western model' (at 2), the continued relevance of IOs going forward may depend on their promotion of a non-Western one. IOs, like international law, can serve an illiberal project just as easily as a liberal one.

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doi:10.1093/ejil/chx084

Christian Henderson (ed.). ***Commissions of Inquiry: Problems and Prospects***. Oxford: Hart Publishing, 2017. Pp. 371. £75. ISBN: 9781782258766.

The post-Cold War era has seen a dramatic proliferation in the use of 'inquiry bodies' – that is, ad hoc institutional arrangements that engage in fact-finding and legal analysis to arrive at non-binding conclusions and recommendations. Calls to establish new commissions of inquiry – to fill a perceived need for the impartial, independent assessment of the latest international crisis – have become commonplace. UN organs, regional bodies and individual states have established such bodies (commissions of inquiry, fact-finding missions, high-level expert panels – the label used usually reveals little about their function) for a wide array of purposes: to promote compliance with international law and accountability for its transgression; to facilitate diplomatic settlement; to inform (or, perhaps, to forestall) collective action by international bodies or to realize a so-called 'right to truth'. This is but a partial list.

Legal scholarship has begun to catch up with practice, and *Commissions of Inquiry: Problems and Prospects*, edited by Christian Henderson of the University of Sussex, is the most recent book-length entrant into the fray.[1] Comprising an introduction and 13 chapters divided into four sub-categories (the diversity of commissions of inquiry; their relationship with international courts and tribunals; substantive engagement with international law; and procedural questions and working methods), the contributors include those with established track records in writing about inquiry and fact-finding (for example, Théo Boutruche, Russell Buchan and Rob Grace) alongside legal scholars who work primarily in other areas of international law. The book thus brings several new voices into ongoing debates about where, as Henderson writes in the introduction, commissions of inquiry 'fit within … the legal landscape' (at 5).

Most of the contributors work from the prevailing assumptions that attach to commissions of inquiry in both scholarship and policy-making circles: namely, that commissions of inquiry have the capacity to clarify and resolve disputed facts, establish a historical record and make authoritative determinations about alleged violations of international law and that they make a positive contribution to the work of international organizations and international courts and tribunals – in short, that commissions of inquiry are *useful*. Several chapters recount (in various levels of detail) the now familiar narrative that inquiry has evolved from being an instrument aimed at interstate dispute settlement, as envisioned by the 1899 and 1907 Hague Peace Conventions[2] (and as famously used in response to the 1905 *Dogger Bank* incident) to 'providing

[1] Recent edited collections on commissions of inquiry and fact-finding include M. Bergsmo (ed.), *Quality Control in Fact-Finding* (2013); P. Alston and S. Knuckey (eds), *The Transformation of Human Rights Fact-Finding* (2016). Like these earlier volumes, *Problems and Prospects* offers a wide-ranging, diverse collection of articles but is arguably less focused around a central organizing question or theme.

[2] Convention for the Pacific Settlement of International Disputes (adopted 29 July 1899, entered into force 4 September 1900); Convention for the Pacific Settlement of International Disputes (adopted 18 October 1907, entered into force 26 January 1910).

a means of public accountability' (Butchard and Henderson, at 11) or 'a new form of adjudication' (Buchan, at 276).[3] Patrick Butchard and Christian Henderson, in an opening chapter that sets forth a typology of the various functions that commissions of inquiry may perform, go so far as to argue that commissions of inquiry might constitute 'a mechanism of *legal* accountability *in their own right*' (at 21, emphasis in original), not merely adjuncts or precursors to other accountability mechanisms.

Shane Darcy's contribution, which includes an account of the Commission on the Responsibility of the Authors of the War and on the Enforcement of Penalties (1919) and the United Nations War Crimes Commission (UNWCC) (1943–1948), introduces a wrinkle into this historical narrative. Darcy highlights the forward-looking approach taken by the 1919 commission, a body composed of 15 state representatives that made recommendations concerning state responsibility and individual liability for offences committed during World War I. Remarkably, this commission drew up a list of punishable offences (including rape and forced prostitution), even though treaties on the law of armed conflict at that time did not expressly provide for criminal liability. Although the proposals were not incorporated into the Treaty of Versailles or the Leipzig trials, two decades later the UNWCC, which preceded the Nuremberg trials, invoked the 1919 report and its 'Versailles list' of offences 'to diminish the risk that the UN would be seen as inventing new crimes after the fact' (at 240).[4] Darcy also describes how the UNWCC argued for a flexible approach to the definition of international crimes and the need to set aside 'narrow legalisms … to meet the requirements of justice' (at 243).[5] These details complicate the idea that the transformation of commissions of inquiry from instruments of dispute settlement into tools of accountability is only a recent development. They similarly challenge the false impression that commissions of inquiry have shifted only recently from an exclusive focus on fact-finding – this was almost never the case – to engaging with international law, sometimes in novel ways.

Many of the contributions to *Problems and Prospects* take as a given that the effectiveness of a commission of inquiry depends largely on whether it can produce a credible and objective report, which in turn requires due attention to the soundness of a commission's structure, methodology and procedures.[6] For example, Rob Grace prefaces his engaging look at innovative approaches taken by inquiry bodies in Georgia and South Sudan by explaining that a commission of inquiry's 'potential for political impact hinges on the perception that its report is an objective and methodologically sound undertaking' (at 66). Alison Bisset's contribution argues that effective fact-finding requires more robust procedural safeguards, especially 'to afford procedural rights to those implicated' by an inquiry body's report (at 330). And Alexander Orakhelashvili emphasizes the importance of sound procedures and working methods because commissions of inquiry function as quasi-judicial bodies but do not usually offer the protections associated with international dispute settlement, including

[3] For an earlier account of how commissions of inquiry have evolved, see van den Herik, 'An Inquiry into the Role of Commissions of Inquiry in International Law: Navigating the Tensions between Fact-Finding and Application of International Law', 13 *Chinese Journal of International Law* (2014) 507. This seminal article on the contemporary role of inquiry is cited (for various propositions) in nearly every chapter of the book under review.

[4] Treaty of Versailles 1919, 225 Parry 188.

[5] One can hardly fail to notice the echo of this approach a half-century later in the landmark *Tadić* decision on jurisdiction by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia. Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, *Prosecutor v. Tadić* (IT-94-1-AR72), Appeals Chamber, 2 October 1995.

[6] This premise is deeply entrenched in the wider literature, but little scholarship is directed at verifying it empirically. Moreover, what constitutes 'effectiveness', a normative question, may be highly contested and viewed differently from one constituency to the next.

the requirement of state consent and other procedural and evidentiary safeguards. In his telling, these circumstances make it imperative that commissions of inquiry remain at all times 'politically impartial, even at the cost of not delivering on … the prevailing political expectation' of their mandating bodies (at 125). He further emphasizes that a commission of inquiry must adopt a standard of proof appropriate to the function it is performing and cast blame on a state only 'for what it can prove' if the legitimacy of the exercise is to be preserved (at 139).

Of course, this may be easier said than done. Théo Boutruche explains that fact-finding implicates a constant tension between 'the imperative of objectivity with so many potential risks of appearing subjective' (at 288) and remarks on the difficulty of making consistent assessments about compliance with international humanitarian law (IHL). Boutruche's contribution raises the question whether commissions of inquiry, which so frequently engage with IHL (a topic explored in the chapter by Marco Odello), are being asked to achieve the impossible. Along these lines, Rob Grace observes that commissions of inquiry are frequently not 'sufficiently transparent' about the 'inherent complexities' of unsettled or evolving areas of law (at 74) and that making controversial or equivocal legal pronouncements may undermine an inquiry body's credibility and, in turn, its ability to fulfil its objectives. By way of example, he notes that the final report of the Independent International Fact-Finding Mission on the Conflict in Georgia had the unhelpful effect of presenting conflicting views on a key disputed question of *jus ad bellum*. In that case, engaging with international law may have undermined the mission's goal of easing political tensions. As for the African Union Commission of Inquiry on South Sudan, Grace praises the transparent methodology adopted by that inquiry body but asserts that a lack of consensus among its five commissioners in the final report 'deprived the mission of the powerful seal of authoritativeness that would have derived from their full consensus' – a result that Grace suggests may point to the risk of appointing several commissioners with eclectic professional backgrounds and expertise (at 81). As do many of the chapters in the book, his contribution highlights the difficulties of reconciling expertise and politics in the practice of inquiry.

Problems and Prospects is at its most interesting, however, when its contributions move beyond the question of how commissions of inquiry can be more effective and, instead, seek to challenge the conventional wisdom about their function and utility. Christine Schwöbel-Patel starts from the premise that commissions of inquiry 'direct too much attention to a narrow set of international crimes' – an argument that she acknowledges others have also made (at 145). However, Schwöbel-Patel takes this critique in a new and important direction. She conceptualizes commissions of inquiry as not only 'complicit in a narrowing understanding of accountability' but also 'complicit in a global power struggle in favour of the great political and economic powers' (at 146). In her view, the international criminal justice focus of most inquiry bodies is part of an 'intervention formula' used by the most powerful states 'to legitimate the possibility of military intervention' (at 146). She is critical of the existing literature's technical focus on how commissions of inquiry go about their work, since '[t]his brings with it an assumption that commissions of inquiry would be improved if they did better law' (at 150). More concern, she argues, should be devoted to the types of facts that commissions of inquiry often ignore, such as the economic inequalities and structural biases within a society, religious or cultural tensions, or colonial legacies. These types of facts may not only 'elucidate root causes of the conflict but also potential paths to peace' (at 155). Ultimately, Schwöbel-Patel sees the fact that commissions of inquiry are not judicial bodies as an opportunity. If commissions of inquiry were to shift their focus 'towards context and diplomacy' – for example, by feeding into 'peace negotiations rather than accountability mechanisms' – they might instead function as a check on power and the presumption that 'criminalisation and militarisation are the only options for peace' (at 168–169).

In another thought-provoking chapter, Stephen Samuel and James A. Green take up the under-examined topic of domestic commissions of inquiry and how they make use (or not) of international law. The authors point out that engagement with international law is neither apolitical nor objective and will have consequences, depending on the domestic context, for a commission of inquiry's normative authority and, thus, its potential to have 'meaningful value' (at 93). The authors call it a mistake to view 'engagement with international law as being inherently desirable' (at 115). To illustrate this idea, they compare examples from Kyrgyzstan and the Netherlands to show that whether a domestic commission's engagement with international law is likely to have a positive impact (for example, by spurring domestic reforms) may depend on whether there is political space for public deliberation of the commission's findings (a situation that pertained in the Netherlands but not in Kyrgyzstan).

Corinne Heaven's chapter considers the extent to which trends in fact-finding are driven by 'a community of practice' (at 339). She expresses concern that increasing standardization and professionalism 'give fact-finding a technical character' that masks the significance of the agency and discretion exercised by fact-finding experts (at 358). This 'runs the danger of presenting knowledge as separable from politics (and power)' and disingenuously treats commissions of inquiry as mere 'technical devices that report about a phenomenon' rather than as 'means through which governance is exercised' (at 359). Heaven argues that the task ahead lies in using the community of practice not just to improve working methods but also to further develop and negotiate 'the various political goals (and the possible tensions between them)' that commissions of inquiry are asked to achieve (at 359).

Also addressing the politics of inquiry head on, Michelle Farrell and Ben Murphy examine the establishment of commissions of inquiry by the UN Human Rights Council, the most prolific mandate provider over the past decade. Farrell and Murphy argue that because the Human Rights Council is itself a highly politicized body, the inquiry bodies that it creates are effectively denied sociological legitimacy, regardless of whether they adopt sound working methods (even in the face of unbalanced mandates) or reach defensible conclusions. The authors are certainly correct to emphasize that decisions about whether to establish a commission of inquiry are political and that the UN Human Rights Council has faced criticism for its selectivity in establishing inquiries for some situations but not for others (a point also addressed in the contribution by Théo Boutruche). However, Farrell and Murphy are on weaker footing when they claim that commissions of inquiry established by the UN Security Council 'do not tend to receive comparable levels of criticism' to those established by the Human Rights Council – a difference they attribute to 'the hegemonic order that exists within the UN' (at 38). As an empirical matter, it is not clear that their premise – that is, that inquiry bodies established by the New York-based organs of the United Nations are afforded a legitimacy that those from Geneva are not – would hold up to scrutiny.

Some of the sub-topics explored in *Problems and Prospects* have been extensively covered in the existing literature – for example, the contribution by commissions of inquiry to the work of international criminal tribunals (which Shane Darcy and Triestino Mariniello also take up here). Russell Buchan's chapter on whether commissions of inquiry 'pose a threat to the overall coherence of international law' when they adopt novel or erroneous legal conclusions (at 260), which he explores by analysing the multiple inquiry bodies created in response to the 2010 *Mavi Marmara* incident, sounds another familiar theme and revisits some of his prior work. There are also potential research questions that the book does not squarely address, such as why the recent practice of commissions of inquiry mainly implicates situations involving allegations of mass atrocities or violations of IHL rather than other types of disputes (for example, over territory or natural resources). But there are enough fresh insights in this collection, as well as controversial claims, to ensure that *Problems and Prospects* will be widely consulted by scholars and practitioners working in this area. Because many of the contributions draw significantly on the 'burgeoning literature on contemporary commissions of inquiry' (see Henderson, at 5), the footnotes are themselves a valuable resource.

Finally, any review of *Problems and Prospects* would be incomplete without acknowledging the excellent foreword by Michael Kirby, the eminent Australian jurist who chaired the UN Security Council's Commission of Inquiry on Human Rights in North Korea in 2013–2014. After tracing the evolution of inquiry as a tool of international relations (which, in his telling, finds its roots in the Congress of Vienna of 1814–1815, not in the sinking of the *USS Maine* or the 1899 Hague Peace Conference), Judge Kirby sets forth a list of 35 questions, drawn from his own experience and the book's contributions, for scholars and inquiry practitioners to contemplate. These include whether 'accountability for human rights violations can be secured without destroying the chances for change in the state of human rights and in safeguarding peace and security', how the members of an inquiry body should 'control a natural sympathy for victims but also win respect by true adherence to the rule of law, including where that law is unclear or doubtful' and where to locate the balance 'between thoroughness, fairness and speedy responses to shocking revelations that call out for early responses' (at viii–xi). He rightfully notes that the responses to these questions will inevitably be influenced by 'individual backgrounds, experience and culture' (at xi), but his overarching message is of the need for professionalism, integrity, and 'calm analysis' in the work of commissions of inquiry. It is these qualities, not 'bleeding hearts and emotional demands', that the work of inquiry bodies requires (at xii). For those interested in grappling with the problems and prospects that arise from the turn to inquiry examined by this book, the foreword, appropriately enough, is a very good place to start.

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doi:10.1093/ejil/chx078

Individual Contributions

Hon *Michael Kirby*, Foreword;
Christian Henderson, Introduction;
Patrick Butchard and Christian Henderson, A Functional Typology of Commissions of Inquiry;
Michelle Farrell and Ben Murphy, Hegemony and Counter-Hegemony: The Politics of Establishing United Nations Commissions of Inquiry;
Rob Grace, Lessons from Two Regional Missions: Fact-finding in Georgia and South Sudan;
Stephen Samuel and James A. Green, Domestic Commissions of Inquiry and International Law: The Importance of Normative Authority;
Alexander Orakhelashvili, Commissions of Inquiry and Traditional Mechanisms of Dispute Settlement;
Christine Schwöbel-Patel, Commissions of Inquiry: Courting International Criminal Courts and Tribunals;
Triestino Mariniello, The Impact of International Commissions of Inquiry on the Proceedings before the International Criminal Court;
Marco Odello, The Interplay between International Human Rights Law and International Humanitarian Law in the Practice of Commissions of Inquiry;
Shane Darcy, Laying the Foundations: Commissions of Inquiry and the Development of International Law;
Russell Buchan, Quo Vadis? Commissions of Inquiry and their Implications for the Coherence of International Law;
Théo Boutruche, Selectivity and Choices in Human Rights Fact-Finding: Reconciling Subjectivity with Objectivity?;
Alison Bisset, Commissions of Inquiry and Procedural Fairness;
Corinne Heaven, A Visible College: The Community of Fact-finding Practice.