



Evaluating Mechanisms to Investigate Attacks on Healthcare

International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011

IIIM-SY

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ORIGINS AND SUMMARY

The International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (IIIM-SY) is an ad hoc, international, independent, and impartial mechanism established by the UN General Assembly.

The purpose of this mechanism is to ensure criminal accountability for those who have committed violations of international humanitarian law (IHL) and international human rights law (IHRL) in Syria. While the IIIM-SY is not a prosecutorial body itself, it is mandated to collect, consolidate, preserve, and analyze evidence of violations of IHL and human rights violations and abuses and to prepare files on such violations and abuses for future criminal proceedings. The information and evidence it collects and produces are confidential and only to be shared with judicial authorities that have jurisdiction over crimes within the IIIM-SY's mandate and are competent to prosecute them. The IIIM-SY cooperates closely with the Independent International Commission of Inquiry on Syria (established by the Human Rights Council in 2011).

The IIIM-SY's mandate covers the most serious crimes under international law. Its work therefore focuses on investigating incidents that could qualify as genocide, war crimes, or crimes against humanity. Incidents of violence against healthcare within the purview of Security Council Resolution 2286 that amount to such crimes can therefore be investigated by the IIIM-SY.

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LEGAL BASIS AND FRAMEWORK, RELEVANT GUIDELINES

Legal basis and framework

- The IIIM-SY was established by General Assembly [Resolution 71/248](#) (2016), passed with 105 affirmative votes, 52 abstentions, and 15 negatives votes. The resolution was cosponsored by fifty-nine states. Several states that voted against the resolution contested the legal basis of the mechanism, which they argued violates Article 2.7 of the [UN Charter](#) on noninterference in domestic affairs and Article 12 of the [UN Charter](#) limiting the General Assembly's powers to deal with issues on the Security Council's

agenda. They also argued that the General Assembly does not have the power to create a body with prosecutorial/judicial powers (see [Note Verbale](#)).¹

- o In light of its mandate to investigate the most serious crimes under international law, the IIM-SY will collect and assess factual information and evidentiary materials against international criminal law.

Relevant rules, guidelines, and methodology

- o [Terms of Reference of the IIM-SY](#) (ToR), developed by the secretary-general with the support of the Office of the High Commissioner for Human Rights (OHCHR).
- o Once established and fully functioning, the IIM-SY will adopt procedures based on existing international criminal law standards and international criminal tribunal best practices ([ToR](#), paras. 17–21).

3 SCOPE OF MANDATE AND INVESTIGATIVE ACTIVITIES

Substantive scope: type of incidents within purview of Res 2286 the mechanism can investigate

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| FULL <i>The mechanism can look into all incidents that Res 2286 seeks to address</i> | | N/A |
| PARTIAL <i>The mechanism can only look into some but not all incidents that Res 2286 seeks to address</i> | ✓ | The IIM-SY is mandated to assist in the investigation and prosecution of “the most serious crimes” under international law committed in Syria, in particular crimes of genocide, crimes against humanity, and war crimes (ToR , paras, 10, 31). The IIM-SY can therefore only investigate attacks on healthcare facilities, equipment, personnel, patients, and means of transportation that qualify as such crimes. |
| CONDITIONAL <i>The mechanism can only look into incidents where a certain condition related to the mechanism’s mandate is met</i> | | N/A |
| SINGLE INCIDENTS <i>The mechanism can be activated/used to investigate single incidents that Res 2286 seeks to address</i> | ✓ | N/A |

¹ For counterarguments on all three counts of illegality invoked in the Note Verbale, see Christian Wenaweser and James Cockayne, “Justice for Syria?: The International, Impartial and Independent Mechanism and the Emergence of the UN General Assembly in the Realm of International Criminal Justice,” *Journal of International Criminal Justice* 15, no. 2 (2017), a shorter version of which can be found [here](#).

Geographic scope

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| GLOBAL <i>The mechanism can be activated to look into incidents regardless of where these occurred</i> | | N/A |
| REGION-SPECIFIC <i>The mechanism can only be activated to look into incidents that occurred in a specific region</i> | | N/A |
| COUNTRY-SPECIFIC <i>The mechanism can only be activated to look into incidents that occurred in a specific country</i> | ✓ | The IIIM-SY can only investigate incidents that occur in Syria (Resolution 71/248 , para. 4). |

Type of investigative activities

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| MONITORING AND REPORTING <i>Actively monitoring conflict to identify and report on trends/patterns of violations of IHL/IHRL</i> | | | N/A |
| FACT-FINDING & INVESTIGATING | Identify possible violations <i>Establishing facts and circumstances of specific incidents or series of incidents and assess against relevant legal framework (IHL/IHRL)</i> | ✓ | The IIIM-SY is mandated to “collect, consolidate, preserve and analyze evidence of violations of international humanitarian law and human rights violations and abuses” (Resolution 71/248 , para. 4). |
| | Identify those responsible <i>Identifying entities/persons responsible for or with influence over facts/circumstances</i> | ✓ | In the process of collecting and analyzing evidence of violations, the IIIM-SY is mandated to identify those responsible. |
| | Identify perpetrators of crimes <i>Identifying entities/persons allegedly responsible for war crimes or crimes against humanity</i> | ✓ | The IIIM-SY is mandated to prepare criminal files and so will identify entities or persons allegedly responsible for the most serious crimes under international law. |
| COLLECTING EVIDENCE OF ALLEGED CRIMES <i>Collecting (and corroborating) evidence of alleged war crimes or crimes against humanity</i> | | ✓ | The IIIM-SY is mandated explicitly to “prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have |

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| | | jurisdiction over these crimes" (Resolution 71/248 , para. 4). It therefore collects, analyzes, and records information and evidentiary materials for the purpose of criminal investigations and prosecution. |
| | ASSESSING VICTIMS' GRIEVANCES <i>Identifying direct/indirect consequences of attacks and assess need for reparations</i> | The IIIM-SY is not specifically mandated to assess victims' grievances. |
| RECOMMENDATIONS TO | Prevent future incidents <i>Identifying/proposing corrective measures to prevent future incidents</i> | The IIIM-SY is not specifically mandated to make recommendations to prevent future incidents. Nevertheless, the resolution reflects the idea that accountability will contribute to preventing future crimes. |
| | Ensure accountability for violations of IHL/IHRL <i>Identifying appropriate avenues and concrete actions to ensure accountability</i> | (✓) The IIIM-SY could make recommendations as to prosecutorial strategies to courts and tribunals. |
| | Ensure reparations and/or address victims' other grievances | The IIIM-SY is not specifically mandated to make recommendations regarding reparations or addressing victims' grievances. |

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INVESTIGATIVE TEAM MEMBERS AND IMPACT ON INDEPENDENCE AND IMPARTIALITY

| Members | Election/appointment | Guarantee of independence & impartiality |
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| The IIIM-SY is headed by a senior judge with extensive experience in criminal investigations and prosecutions and who serves as a UN official at the assistant secretary-general level. Catherine Marchi- | The head of the IIIM-SY is appointed by the UN secretary-general in consultation with the UN high commissioner for human rights and the secretary-general's Office of Legal Affairs for two years on a renewable basis (ToR , para. 40). Other staff | The head and deputy head of the IIIM-SY must have a "proven record of independence and impartiality and be committed to upholding justice, accountability and human rights and ensuring gender equality," and "their background, prior public statements or political and other affiliations should not be of a nature that would affect their independence and impartiality or create perceptions of bias" (ToR , para. 40). |

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| <p>Uhel will be assisted by deputy Michelle Jarvis and a secretariat (ToR, para. 40) composed of impartial and experienced professional and administrative staff (ToR, para. 41) employed by the UN.</p> | <p>members are recruited by the IIIM-SY.</p> | <p>“The Head, the Deputy Head and the secretariat [of the IIIM-SY] will exercise their mandate and discharge their functions in full independence and not seek or accept instructions regarding the performance of their duties from any Government or external source” (ToR, para. 43).</p> <p>The members and support staff of the IIIM-SY enjoy privileges and immunities as UN officials or experts on mission, which will allow them to carry out their functions independently.</p> |
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5 PROCEDURE TO ESTABLISH AND/OR ACTIVATE THE MECHANISM

| Activator/Creator | Authorization/Enabler | Duration to activate/create/function |
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| <p>The IIIM-SY was established on an ad hoc basis by the General Assembly.</p> | <p>The establishment of the IIIM-SY did not require the consent of the concerned state (which gave rise to some controversy; see above).</p> <p>The General Assembly delegated the setting up of the IIIM-SY to the secretary-general, with the support of OHCHR.</p> | <p>The IIIM-SY is being established in phases until it is fully functional (ToR, para. 44).</p> <p>Resolution 71/248 was adopted on December 21, 2016, and although there was a short timeframe for the secretary-general to establish the ToR, operationalization and recruitment of the secretariat is ongoing and expected to be completed in the second half of 2017 (ToR, para. 48). The IIIM-SY began its substantive work upon appointment of its head and deputy head (ToR, para. 47).</p> |

| | Pre-existing | To be established when activated/created |
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| Human resources | N/A | The head and deputy head of the IIIM-SY are appointed by the secretary-general in consultation with OHCHR and the UN legal counsel (ToR , para. 40). They are supported by a secretariat of staff with relevant expertise (ToR , para. 40) recruited by OHCHR. The IIIM-SY is expected to have a staff of around fifty when it reaches its full size. |
| Financial resources | N/A | The estimate of the immediate starting budget is between \$4 and \$6 million (ToR , para. 46), and the annual operating needs are expected to amount to \$13 million. The IIIM-SY is not funded from the regular UN budget for now. The IIIM-SY is initially to be funded exclusively from voluntary contributions (Resolution 71/248 , para. 5). The funding of the mechanism, however, is to be revisited "as soon as possible" (Resolution 71/248 , para. 8). As of September 30, 2017, thirty-one countries and the European Union had promised to contribute on a voluntary basis, for a total amount of over \$11 million. |

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| Confidential reporting to and dialogue with the parties to the conflict | | Prosecution purposes aside, all materials produced or obtained by the IIIM-SY will be classified as strictly confidential (ToR , para. 28). The IIIM-SY is not mandated to engage in a bilateral dialogue with parties to the conflict. |
| Public reporting to UN and/or other international organizations | (✓) | The head of the IIIM-SY will submit a report to the General Assembly twice a year on the implementation of its mandate and set out funding requirements while preserving the confidential nature of its substantive work (ToR , para. 50). |

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| <p>Transmissibility to judicial mechanisms</p> | <p>✓</p> | <p>The IIM-SY is meant to serve as a center for international criminal and judicial cooperation (Cockayne and Wenaweser, "Justice for Syria?," pp. 4–5) and is described as having a "quasi-prosecutorial function" (ToR, para. 32).</p> <p>The IIM-SY will share the information and evidentiary material it collects and produces with competent courts and tribunals to facilitate and expedite fair and independent criminal proceedings (Resolution 71/248, para. 4). The IIM-SY will thus transmit its findings and records to relevant courts and tribunals for prosecution purposes, either at the request of national, regional, or international courts or tribunals or on its own initiative, except in the case of a trial in absentia on the basis of universal jurisdiction or if the jurisdiction does not respect international human rights law and standards, or if the death penalty would apply (ToR, paras. 20–21).</p> <p>The IIM-SY will adopt procedures and methods of work further regulating the sharing of information (ToR, para. 22).</p> |
| <p>Potential follow-up mechanisms</p> | <p>✓</p> | <p>There is no pre-established follow-up mechanism, but the information collected and analyzed by the IIM-SY is meant to be used by any competent court or tribunal prosecuting genocide, war crimes, or crimes against humanity.</p> |
| <p>Available enforcement measures</p> | <p>✓</p> | <p>N/A</p> |

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PRECEDENT OF USE FOR ATTACKS ON HEALTHCARE

The IIM-SY is still in the process of being set up. This being said, in light of the work done by the Commission on Inquiry on Syria established by the Human Rights Council, with which the IIM-SY is to cooperate, it is likely that the IIM-SY will collect evidence on incidents of violence against healthcare within the purview of Security Council Resolution 2286 that amount to international crimes.