



Evaluating Mechanisms to Investigate Attacks on Healthcare

Boards of Inquiry established by the
UN Secretary-General

UNSG-Bol

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ORIGINS AND SUMMARY

In his or her capacity as chief administrative officer of the United Nations, the secretary-general has the authority to establish a headquarters board of inquiry or other internal administrative investigative mechanism (UNSG-Bol).¹ These UNSG-Bol are set up to establish the facts and causes of specific incidents and provide an internal report to the secretary-general with their findings, including the attribution of the incidents to any individuals or entities and recommendations for corrective action. UNSG-Bol are typically established to inquire into serious incidents that directly affect UN personnel or property or otherwise affect UN operations.

The main purpose of UNSG-Bol is to draw lessons from serious incidents affecting the UN and its personnel and to identify shortcomings in the organization's procedures and further actions that the UN could take to prevent the recurrence of similar incidents or at least to mitigate their effects. They are not established or designed to name and shame or to ensure accountability for alleged violations of international law, and their reports generally do not make legal findings. They are internal administrative mechanisms that produce internal, confidential reports to the secretary-general for his or her consideration and further action.

So far, secretaries-general have established only a small number of such "headquarters boards of inquiry." At least one of those has investigated an incident of alleged violence against a healthcare facility.

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LEGAL BASIS AND FRAMEWORK, RELEVANT GUIDELINES

Legal basis and framework

- o In his or her capacity as chief administrative officer of the UN (Article 97 of the [UN Charter](#)), the secretary-general has developed the practice of establishing Bol or other internal fact-finding mechanisms (FFMs) to investigate serious incidents that affect the UN's personnel, assets, operations, or activities.

¹ While in practice they may have different names, for the purpose of this research project these internal investigative mechanisms are referred to collectively as UNSG-Bol. These internal administrative mechanisms are to be distinguished from other investigative mechanisms the secretary-general can establish in distinct roles, such as commissions of inquiry ([UNSG Col](#), used primarily for dispute resolution and accountability purposes) and the Mechanism for Investigation of Alleged Use of Chemical and Biological Weapons ([UNSG MICBW](#)). UNSG "headquarters Bol" are also to be distinguished from so-called "mission Bol" used by the Departments of Peacekeeping Operations (DPKO) and Field Support (DFS) as management tools for incidents affecting UN country missions' personnel or premises.

Relevant rules, guidelines, and methodology

- The secretary-general develops specific terms of reference (ToR) for each UNSG-Bol he or she establishes. These ToR define the purpose, mandate, and tasks of the mechanism.
- There is no standard methodology that Bol established by the secretary-general follow. They may be guided by the Department of Peacekeeping Operations (DPKO)/Department of Field Support (DFS) standard operating procedure for board of inquiries (last version: N.2016.05 of December 1, 2016) or by the [OHCHR Guidance and Practice](#) (2015).

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SCOPE OF MANDATE AND INVESTIGATIVE ACTIVITIES

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

<p>FULL</p> <p><i>The mechanism can look into all incidents SCR 2286 seeks to address</i></p>		N/A
<p>PARTIAL</p> <p><i>The mechanism can only look into some but not all incidents that Res 2286 seeks to address</i></p>		N/A
<p>CONDITIONAL</p> <p><i>The mechanism can only look into incidents where a certain condition related to the mechanism's mandate is met</i></p>	✓	In order to establish a UNSG-Bol, there needs to be a link to the UN (i.e., an incident directly affecting UN premises, personnel, transportation means, or other assets or otherwise directly affecting UN operations or activities). As a matter of practice, incidents for which a UNSG-Bol is established have a strong negative impact on UN operations or activities.
<p>SINGLE INCIDENTS</p> <p><i>The mechanism can be used to investigate single incidents within the purview of that Res 2286</i></p>	✓	A UNSG-Bol can be established to investigate a single incident.

Geographic scope

<p>GLOBAL</p> <p><i>The mechanism can be activated to look into incidents regardless of where these occurred</i></p>	✓	A UNSG-Bol can investigate incidents affecting the UN regardless of where they occur.
<p>REGION-SPECIFIC</p> <p><i>The mechanism can only be activated to look into incidents that have occurred in a specific region</i></p>		N/A

COUNTRY-SPECIFIC <i>The mechanism can only be activated to look into incidents that have occurred in a specific country</i>		N/A
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Type of investigative activities

MONITORING AND REPORTING <i>Actively monitoring conflict to identify and report on trends/patterns of violations of IHL/IHRL</i>			UNSG-Bol are established in reaction to specific incidents.
FACT-FINDING & INVESTIGATING	Identify possible violations <i>Establish facts and circumstances of specific incidents or series of incidents and assess against relevant legal framework (IHL/IHRL)</i>		UNSG-Bol are established to investigate and ascertain facts and the causes of incidents but generally do not determine whether these constitute violations of international law. For example, the UNSG-Bol for Syria in 2016 examined whether the attack was deliberate but made no assessment of whether it amounted to a violation of international humanitarian law (IHL).
	Identify those responsible <i>Identify entities/persons responsible for or with influence over facts/circumstances</i>	✓	UNSG-Bol can be mandated to determine to which individual or entity an incident can be attributed. Each UNSG-Bol established so far has indeed identified those to whom certain acts could be attributed. However, in general UNSG-Bol do not make findings of responsibility, legal or otherwise (with the exception of the UNSG-Bol for Gaza in 2009).
	Identify perpetrators of crimes <i>Identify entities/persons allegedly responsible for war crimes or crimes against humanity</i>		UNSG-Bol do not assess whether incidents under investigation amount to criminal acts, so they do not identify alleged perpetrators of crimes and do not consider questions of legal liability or criminal responsibility.
COLLECTING EVIDENCE OF ALLEGED CRIMES <i>Collecting (and corroborating) evidence of alleged war crimes or crimes against humanity</i>			UNSG-Bol do not collect evidence for the purpose of criminal prosecutions.
ASSESSING VICTIMS' GRIEVANCES <i>Identify direct/indirect consequences of attacks and assess need for reparations</i>		✓	The UNSG-Bol for Gaza in 2009 is the only one to have addressed the question of whether the UN could or should seek reparations and what assistance could be provided to civilians affected by the incidents. The UNSG-Bol for Gaza in 2015 recommended the provision of counseling to affected staff to address potential posttraumatic stress disorder.

RECOMMENDATIONS TO	<p>Prevent future incidents <i>Identify/propose corrective measures to prevent future incidents</i></p>	✓	UNSG-Bol can make recommendations for corrective or mitigating measures to be adopted or sought by the UN in order to prevent future incidents or mitigate their impact.
	<p>Ensure accountability for violations of IHL/IHRL <i>Identify appropriate avenues and concrete actions to ensure accountability</i></p>	✓	Bol typically do not make legal findings or recommendations on legal issues. The UNSG-Bol for Gaza in 2009 is the only one to have made recommendations with regard to accountability. It recommended that where civilians had been killed and there were allegations of violations of IHL, there should be thorough investigations, full explanations and, where required, accountability.
	<p>Ensure reparations and/or address victims' other grievances</p>	✓	UNSG-Bol can make recommendations to seek reparations and to address the consequences of the incidents for the UN. The UNSG-Bol for Gaza in 2009 is the only one so far to have made recommendations regarding reparations to the UN. The UNSG-Bol for Gaza in 2015 recommended the provision of counseling to affected staff to address potential posttraumatic stress disorder. UNSG-Bol can also make observations regarding steps that may be taken to minimize future risks for civilians and civilian objects, including those related to the delivery of healthcare in armed conflict.

4 INVESTIGATIVE TEAM MEMBERS AND IMPACT ON INDEPENDENCE AND IMPARTIALITY

Members	Election/appointment	Guarantees of independence & impartiality
UNSG-Bol are generally composed of five expert members, typically current or former UN personnel with different areas of expertise relevant to the context of the incident.	The secretary-general appoints board members based on their expertise and knowledge. He or she also appoints a head of the board. For example, the UNSG-Bol for Gaza in 2009 was headed by a former special representative of the secretary-general, the UNSG-Bol for Gaza in 2015 was headed by a former DPKO military adviser.	Board members are required to sign a formal declaration that they will act independently and with integrity in the service of the United Nations. They are either UN officials or qualify as UN experts on mission and, as such, enjoy UN privileges and immunities that allow them to carry out their functions independently.

Activator/Creator	Authorization/Enabler	Average duration to activate/create/function
UNSG-Bol are ad hoc investigative mechanisms, which the secretary-general has discretionary power to establish.	In principle, there is no need for the concerned state's consent. However, depending on the circumstances of the incident and the purpose of the inquiry, the secretary-general may decide to seek the consent of the concerned state.	On average, UNSG-Bol are convened and deployed rapidly (between one and two and a half months). They generally produce their reports within three to five months of the incidents.

	Pre-existing	To be established when activated/created
Human resources	<p>UNSG-Bol are established and serviced by the Office of the UN Secretary-General. Preparatory work on the mandate, ToR, and selection of board members is generally undertaken by the Department of Political Affairs (DPA) in consultation with the Office of Legal Affairs (OLA).</p> <p>UNSG-Bol are supported throughout their work by relevant UN Secretariat staff (at headquarters or in the field), as set out in their ToR.</p>	Board members are appointed by the secretary-general when a Bol is established. They usually are current or former UN personnel (who serve as officials or experts on mission) who have specific knowledge about particular aspects of the issue at hand.
Financial resources	UNSG-Bol are funded through the regular UN budget for the Office of the UN Secretary-General (unforeseen and extraordinary expenses account).	N/A

Confidential reporting to and dialogue with the parties to the conflict	✓	N/A
Public reporting to UN and other	(✓)	<p>UNSG-Bol reports are internal and confidential UN documents, submitted directly to the secretary-general. A summary of the report prepared by the Secretariat can (at the secretary-general's discretion) be released publicly, or presented by the secretary-general to the Security Council or General Assembly. This was the case for the report of the UNSG-Bol for Syria in 2016, the summary of which was discussed by the Security Council in a closed session, and for the UNSG-Bol for Gaza in 2009 and UNSG-Bol for Gaza in 2015, some discussion of which took place in informal Security Council consultations.</p> <p>The secretary-general could in theory also decide to share the full report or a version or summary thereof with the concerned parties to the conflict or to publicly release the full report if he or she deems it appropriate and while adhering to UN confidentiality criteria. However, this would be contrary to well-established policy and has not happened in practice.</p>
Transmissibility to judicial mechanisms	(✓)	<p>The UN has an established procedure for cooperation with both international judicial mechanisms and national judicial bodies, including for the release of specific material. The secretary-general, based on those procedures and on the UN's established policy and practice on the release of confidential documents, may decide on requests from judicial mechanisms investigating one or more of the incidents investigated by a UNSG-Bol for specific material collected by the board, as well as the report of the board, in particular its findings. Thus far, this has not been the case.</p>
Possible follow-up mechanisms	✓	<p>The secretary-general can decide on follow-up to the Bol recommendations, which could include:</p> <ul style="list-style-type: none"> • Submitting them to the president of the Security Council (e.g., UNSG-Bol for Syria in 2016); • Creating an ad hoc group of senior UN managers to review recommendations and

		<p>advise the secretary-general on courses of action (e.g., UNSG-Bol for Gaza in 2015); or</p> <ul style="list-style-type: none"> Initiating action with other UN entities to provide counseling to staff (UNSG-Bol for Gaza in 2015).
Available enforcement measures	✓	If brought to its attention, the Security Council could take enforcement measures. This has not happened so far.

8 PRECEDENT OF USE FOR ATTACKS ON HEALTHCARE

Board of Inquiry	Investigated alleged violations of IHL	Investigated alleged attacks on healthcare
Syria (2016)	✓ Investigation of the death and injury of humanitarian personnel and damage to objects used for a relief operation carried out jointly by the UN and the Syrian Arab Red Crescent.	✓ The relief convoy that was the subject of the attack was not part of an exclusively medical relief operation. Initial reports surrounding the incident indicated a medical facility was also attacked, but the investigation found no evidence of this.
South Sudan/Juba (2016)	✓ Investigation of violence against civilians, including sexual violence, within or in the vicinity of the headquarters of the UN Mission in the Republic of South Sudan (UNMISS) and the attack on Terrain camp, a private compound where UN personnel, aid workers, and local staff were robbed, beaten, raped, and killed by armed soldiers.	✓ The executive summary of the report did not mention any incidents of attacks on healthcare. The full report has not been published (as of October 2017).
South Sudan/Malakal (2016)	✓ Investigation of the circumstances of the clashes that occurred at the UNMISS protection of civilians site in Malakal, South Sudan, in February 2016, resulting in internally displaced persons being killed and injured.	The special investigation report was not released. Only a short summary of its findings was published in a note to correspondents . The executive summary of the Bol report did not mention any incidents of attacks on healthcare.

Gaza (2015)	✓	Investigation of damage to facilities and assets of the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and injuries and death of UNRWA personnel resulting from attacks on a number of UNWRA schools in Gaza.	N/A
Central African Republic (2016)	✓	Investigation into alleged sexual abuse carried out by Burundian and Gabonese peacekeepers deployed in Dekoa, Kemo prefecture, in the Central African Republic.	N/A
Gaza (2009)	✓	Investigation of damage to UNRWA facilities and assets and injuries and death of UNRWA personnel during Operation Cast Lead.	✓ One of the incidents investigated concerned damage to UNRWA facilities and assets and injuries and death of UNRWA personnel resulting from an attack on a UNRWA health center. The Bol found the Government of Israel responsible and made recommendations to the UN to pursue claims to secure reparations for the death or injury of UN personnel and the destruction of UN property and to promote the provision of assistance to other civilians killed or injured or their family members.