

Evaluating Mechanisms for Investigating Attacks on Healthcare

ELS DEBUF



Cover Photo: An ambulance is on fire after a vacuum bomb attack in the town of Jisr al-Shughur near Idlib, Syria on April 25, 2015. Getty Images/Salih Mahmud Leyla.

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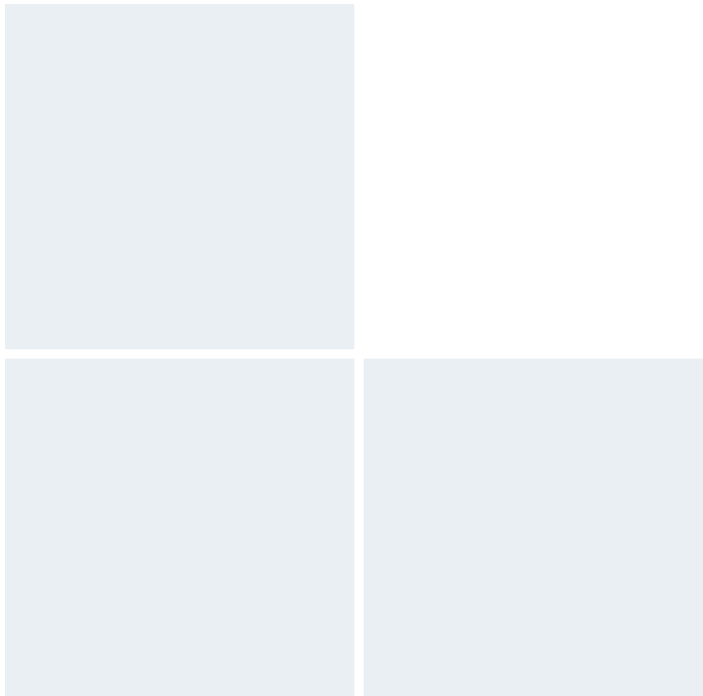
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Abbreviations

HCHR-FFM	Fact-finding mission mandated by the UN high commissioner for human rights
HRC-Col	Commission of inquiry mandated by the UN Human Rights Council
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
IHFFC	International Humanitarian Fact-Finding Commission
IIIM-SY	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
MRM-CAAC	UN Security Council's Monitoring and Reporting Mechanism on Grave Violations Committed against Children in Times of Armed Conflict
MSF	Médecins Sans Frontières
OHCHR	Office of the UN High Commissioner for Human Rights
OPCW	Organisation for the Prohibition of Chemical Weapons
UN-Col	Commission of inquiry mandated by the UN Security Council, General Assembly, or secretary-general
UNGA-Col	Commission of inquiry mandated by the UN General Assembly
UNRWA	UN Relief and Works Agency for Palestine Refugees in the Near East
UNSC-Col	Commission of inquiry mandated by the UN Security Council
UNSC-PoE	Panel of experts supporting UN Security Council sanctions regimes
UNSG-Bol	Board of inquiry mandated by the UN secretary-general
UNSG-Col	Commission of inquiry mandated by the UN secretary-general
UNSG-MICBW	UN secretary-general's Mechanism for Investigation of Alleged Use of Chemical and Biological Weapons
WHO	World Health Organization

Executive Summary

On May 3, 2016, the UN Security Council adopted a landmark resolution on the protection of medical care in situations of armed conflict. By adopting Resolution 2286, the council heeded an urgent call from medical and humanitarian organizations to address a recent spike in brutal violence against healthcare personnel and facilities in countries affected by armed conflict around the globe. Both the human and economic costs of attacks on healthcare are extremely high. In addition to causing immediate loss of life, injury, and destruction, such attacks also can deprive entire populations of essential healthcare services and set hard-earned development gains in the area of public health years, if not decades, back.

Many of these incidents of violence against or interference with the delivery of healthcare are blatant violations of international humanitarian law; indeed, protection of the wounded and sick and those who provide them with medical care in situations of armed conflict is at the very origin and heart of international humanitarian law. However, the many non-judicial mechanisms to investigate these violations are not widely known or researched.

This paper is part of a research project that maps and evaluates international mechanisms that can be used to investigate attacks on healthcare. In doing so, it aims to assist the Security Council, relevant UN organs, member states, and other stakeholders in operationalizing Resolution 2286 and the UN secretary general's recommendations for its implementation by providing tools to identify the most appropriate mechanism, or set of mechanisms, for each specific context. These tools include: a general mapping of mechanisms that can be used to investigate attacks on healthcare; an interactive map of the mechanisms evaluated for the project, with detailed fact sheets on each of these mechanisms; and a comprehensive and interactive list of investigations carried out by existing international investigative mechanisms that have (or have not) been used to investigate attacks on healthcare. The present paper is a supplement to this broader set of tools developed as part of the research project.

The paper presents the project's general findings on whether and how these mechanisms can be used

to investigate attacks on healthcare. It discusses their respective advantages and disadvantages by comparing their composition or membership, the procedures for creating or activating them, the resources required to operationalize them, the extent to which their mandates allow or enable them to investigate attacks on healthcare, the nature of their investigative activities, possible outcomes of and follow-up measures to their investigations, and whether and how these mechanisms have so far been used to investigate attacks on healthcare. It also presents some of the inherent challenges in investigating violations of international law in situations of armed conflict, including lack of full access, lack of consent and cooperation from the parties to the conflict, the tension between confidentiality and publicity, limited time and resources, lack of a standardized methodology, and inadequate coordination and interoperability among different mechanisms.

The paper also submits a number of concrete recommendations to ensure a more systematic and adequate use of existing mechanisms that could have a positive impact on the ground:

- Make more systematic use of existing mechanisms to investigate attacks on healthcare.
- Systematically list parties to armed conflict who engage in attacks on healthcare in the secretary-general's annual report on children and armed conflict.
- Include the denial of humanitarian access as a trigger to list parties to armed conflicts violating relevant violations of international law in the report on children and armed conflict.
- Establish a platform to discuss strategic use of investigative mechanisms in specific situations and foster synergies between different mechanisms.
- Formally expand the mandate of the International Humanitarian Fact-Finding Commission.
- Impose targeted Security Council sanctions for attacks on healthcare when appropriate.
- Identify the specific human resources needed to staff investigative mechanisms.
- Strengthen the operational capacity of UN agencies to investigate attacks on healthcare.

Introduction

“It is when fighting breaks out that health-care services are most needed, but it is also then that they are most vulnerable to attack.”¹

“You, the [Security] Council Members, pledged to protect civilians and the medical services they need to survive.... We appeal to you to immediately endorse and implement the Secretary-General’s...call for independent and effective investigations.”²

On May 3, 2016, the UN Security Council adopted a landmark resolution on the protection of medical care in situations of armed conflict. Security Council Resolution 2286 “strongly condemns acts of violence against the wounded and sick, medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities” (hereinafter referred to as “attacks on healthcare”). It also “demands that all parties to armed conflicts fully comply” with their existing obligations under international law and take action to ensure respect for and protection of the delivery of healthcare in armed conflict.³

ATTACKS ON HEALTHCARE ON THE RISE

By adopting Resolution 2286, the council heeded an urgent call from medical and humanitarian organizations on the ground to address growing concerns over such attacks on healthcare. Indeed, in recent years the world has been shocked by a spike in

brutal violence against healthcare personnel and facilities in countries affected by armed conflict around the globe.⁴ In 2016 alone the World Health Organization (WHO) recorded over 300 attacks in twenty countries or territories that killed 418 and injured 561 healthcare providers and patients. These numbers only reveal the tip of the iceberg, as many incidents are not reported or recorded, and there is no comprehensive, systematic, and consolidated collection of global data on incidents of violence against or interference with the provision of healthcare in armed conflict.⁵

An even more worrying trend is that an increasing number of incidents intentionally target healthcare personnel, patients, facilities, equipment, or transportation. Out of 594 incidents recorded by WHO in nineteen countries between January 2014 and December 2015, 62 percent were reported to have intentionally targeted healthcare personnel or facilities, 20 percent were reportedly unintentional, and for 19 percent intentionality was not reported, unknown, or undetermined.⁶

Not only do attacks on healthcare result in immediate loss of life, injury, and destruction, but they also have a devastating long-term impact. They can deprive entire populations of essential healthcare services, compounding existing vulnerabilities and risks and further deepening humanitarian crises. Moreover, in many countries, the repetitive and cumulative nature of attacks has led to the collapse of entire public health systems and erased hard-earned gains in development and public health work.⁷

1 International Committee of the Red Cross (ICRC), “Healthcare in Danger: The Issue,” available at <http://healthcareindanger.org/the-issue/>.

2 Joanne Liu, statement to the Security Council for Médecins Sans Frontières, September 28, 2016, available at www.msf.org.uk/article/msf-president-to-un-security-council-this-failure-reflects-a-lack-of-political-will.

3 UN Security Council Resolution 2286 (May 3, 2016), UN Doc. S/RES/2286, paras. 1–2.

4 See, for example, ICRC, “Healthcare in Danger: A Sixteen-Country Study,” July 2011, available at www.icrc.org/eng/resources/documents/report/hcid-report-2011-08-10.htm; ICRC, “Healthcare in Danger: Violent Incidents Affecting the Delivery of Healthcare, January 2012 to December 2014,” April 2015, available at www.icrc.org/en/publication/4237-health-care-danger-violent-incidents-affecting-delivery-health-care-january-2012; WHO, “Attacks on Health Care,” available at www.who.int/emergencies/attacks-on-health-care/en/; Safeguarding Health in Conflict and Human Rights Watch, “Under Attack: Violence against Health Workers, Patients and Facilities,” 2013, available at www.msh.org/resources/under-attack-violence-against-health-workers-patients-and-facilities; Safeguarding Health in Conflict and Human Rights Watch, “Attacks on Health: Global Report,” May 2015, available at www.safeguardinghealth.org/sites/shcc/files/attacks-on-health-global-report-2015.pdf; Safeguarding Health in Conflict et al., “No Protection, No Respect: Health Workers and Health Facilities under Attack 2015 and Early 2016,” May 2016, available at www.safeguardinghealth.org/sites/shcc/files/SHCC2016final.pdf; Safeguarding Health in Conflict et al., “Impunity Must End: Attacks on Health in 23 Countries in Conflict in 2016,” 2017, available at www.safeguardinghealth.org/sites/shcc/files/SHCC2017final.pdf.

5 Mandated by the World Health Assembly (Resolution 65.20, 2012), WHO is in the process of setting up a system and methodology for improving collection of global data on attacks on healthcare.

6 WHO, “Report on Attacks on Health Care in Emergencies,” 2016, p. 7, available at www.who.int/hac/techguidance/attacksreport.pdf.

7 See, for example, WHO, “Health System in Yemen Close to Collapse,” 2015, available at www.who.int/bulletin/volumes/93/10/15-021015.pdf. In his 2017 report on the protection of civilians, the UN secretary-general expressed deep concern over the collapse of health systems in South Sudan (43 percent of health facilities are functional), Yemen (45 percent of health facilities are functional), and Syria (over 50 percent of health facilities are closed or only partially functioning, and two-thirds of specialized medical personnel have fled the country). Apart from damage or destruction of health facilities, attacks on healthcare result in the flight of qualified medical personnel and health workers, the destruction of medical equipment and means of transportation, and disruption of essential medical supplies, all of which result in diminished access to healthcare, a lack of effective disease prevention and medical treatment, and—in the end—a general weakening of the population’s health. UN Security Council, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, UN Doc. S/2017/414, May 10, 2017, para. 42.

Attacks on Health Care Dashboard

Reporting period: 1 July to 30 September 2017 (Quarter 3)

Overview

63

attacks

52

deaths

15

injuries

10

countries and territories

Number of attacks

Country/Territory	Number of attacks
Syria Arab Republic	35
Central African Republic	9
Libya	5
South Sudan	4
Nigeria	2
Sudan	2
Ethiopia	2
Mali	2
Pakistan	2
Somalia	1

Primary object

Primary object	Number of attacks
facility	32
transport	17
provider	11
patient	3

Type

Type	Percentage
bombing	52%
shooting	13%
threat	13%
looting	8%
abduction	5%
delay/denial of services	5%
assault	2%
arson	2%
psychological violence	2%

Countries and territories with reported attacks (Q3 2017)

4-year comparative data

Year	attacks	deaths	injuries
2014	338	525	1024
2015	256	434	537
2016	302	418	561
2017 (Q1+Q2+Q3)	218	178	170

The data in this dashboard are consolidated by WHO from information that is publicly available and/or provided by relevant WHO country offices. WHO does not verify individual incidents, and cannot guarantee that the data in the dashboard are accurate and/or exhaustive. The dashboard is being published without warranty of any kind, either expressed or implied. The responsibility for the interpretation and use of the dashboard and the data contained therein lies with the reader. In no event shall the World Health Organization be liable for damages arising from their use.

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It is therefore not surprising that the protection of the wounded and sick and those who provide them with medical care in situations of armed conflict is at the very origin and heart of international humanitarian law, the body of law that regulates war. Indeed, the first international treaty regulating situations of armed conflict, the 1864 Geneva Convention, is exclusively dedicated to the protection of healthcare.⁸ In spite of this longstanding and robust legal protection, many of the incidents of violence against or interference with the delivery of healthcare that take place today are blatant violations of international humanitarian law. These include violations both of the specific rules related to the protection of the wounded and sick or the medical mission⁹ and general rules on the conduct of hostilities, such as the prohibition of indiscriminate or disproportionate attacks or the obligation to allow and facilitate access to humanitarian relief.

INVESTIGATING ATTACKS ON HEALTHCARE

Security Council Resolution 2286 reaffirms those obligations and strongly urges states to conduct, in an independent manner, “full, prompt, impartial and effective investigations”¹⁰ into violations “with a view to reinforcing preventive measures, ensuring accountability and addressing the grievances of victims.”¹¹ Moreover, in his recommendations for the implementation of Resolution 2286 the UN secretary-general calls on member states to ensure that alleged violations of international humanitarian law are systematically investigated by strengthening the capacity of national institutions to conduct such investigations (Recommendation 11.1), and by requesting and consenting to inquiries by the International

Humanitarian Fact-Finding Commission (Recommendation 11.2).¹²

However, according to the UN secretary-general’s first report on the implementation of Resolution 2286, many if not most of the incidents of violence against healthcare that occurred in 2016 were not investigated, and where investigations were conducted, they often failed to meet internationally recognized standards.¹³ The secretary-general’s report stressed that the lack of proper investigations prevents both effective corrective action that could prevent future incidents and accountability for violations of international law. The secretary-general therefore called on the Security Council to take action when member states are unable or unwilling to carry out investigations at the domestic level:

When Member States fail to carry out such investigations, the Security Council should consider establishing international fact-finding missions or commissions of inquiry, or have recourse to the International Humanitarian Fact-Finding Commission..., to investigate allegations of serious violations of international law relating to the protection of medical care in armed conflict. (*Recommendation 11.3*)

Member States and parties to armed conflicts should provide support to, and facilitate the work of, fact-finding missions and commissions of inquiry established by the Secretary-General or United Nations bodies, including the Security Council and the Human Rights Council.¹⁴ (*Recommendation 11.4*)

AIM AND FOCUS OF THE RESEARCH PROJECT

The below mapping provides a general overview of entities or mechanisms that can engage in some kind of investigation into, or reporting on, attacks

8 Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, Geneva, Switzerland, August 22, 1864.

9 For a comprehensive overview of international norms related to the protection of medical care in armed conflict, see ICRC, “Domestic Normative Frameworks for the Protection of Healthcare,” September 2015, pp. 15–26, available at www.icrc.org/en/publication/4215-domestic-normative-frameworks-protection-health-care. pp. 114–148.

11 For a discussion of how to meet these standards for investigations in practice, see OHCHR, *Guidance and Practice*, 2015, pp. 33–35 and the UN principles and standards for fact-finding and investigations under its authority referenced on p. 106; Rob Grace and Claude Bruderlein, “Building Effective Monitoring, Reporting, and Fact-Finding,” April 2012, pp. 17–21, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2038854; and Turkel Commission, “Second Report: Israel’s Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law,” February 2013, pp. 114–148.

12 *Letter Dated 18 August 2016 from the Secretary-General Addressed to the President of the Security Council*, UN Doc. S/2016/722, August 18, 2016, Annex, paras. 28–29.

13 UN Security Council, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, UN Doc. S/2017/414, May 10, 2017, para. 37. Human Rights Watch research on investigations into incidents that occurred between 2013 and 2016 has had similar findings. See Safeguarding Health in Conflict et al., “Impunity Must End,” pp. 51–60.

14 UN Security Council, *Letter Dated 18 August 2016 from the Secretary-General Addressed to the President of the Security Council*, UN Doc. S/2016/722, August 18, 2016, Annex, paras. 30–31. A separate set of the UN secretary-general’s recommendations (paras. 32–36) pertains to criminal investigations and the prosecution of perpetrators of violations of international humanitarian law that amount to international crimes.

on healthcare that fall within the purview of Resolution 2286 and allegedly amount to violations of international law (see Figure 2).¹⁵

IPI's research project on mechanisms to investigate attacks on healthcare focused on international mechanisms that engage in fact-finding on and

investigation into alleged violations of international law in situations of armed conflict but are not judicial bodies mandated to establish state or criminal responsibility for such violations. This focus stems from the observation that while the nature, functioning, and advantages and disadvan-

Figure 2. Mapping of mechanisms to investigate attacks on healthcare¹⁶



15 The assessment of the facts and circumstances in which these facts occurred against relevant legal frameworks to identify possible violations is what distinguishes fact-finding and investigation from data collection. While the latter is not within the scope of this research, it deserves to be noted that Security Council Resolution 2286 and the UN secretary-general's recommendations for its implementation stress the importance of comprehensive data collection on and analysis of attacks on healthcare, and that a number of organizations are collecting, analyzing, and reporting on such data. See above note 4.

16 All mechanisms mapped and evaluated for this report can to some extent be used to investigate attacks on healthcare that allegedly amount to violations of international humanitarian or human rights law. However, not all of them can be used to investigate the full range of incidents that fall within the purview of Resolution 2286, and the purpose, nature, and outcome of their investigations vary.

tages of national and regional investigative mechanisms (be they administrative, disciplinary, or judicial) and of international criminal justice mechanisms are relatively well-known and researched, this is less the case for international non-judicial fact-finding and investigative mechanisms.

As such, the project aims to assist the Security Council, relevant UN organs, member states, and other stakeholders in operationalizing Resolution 2286 and the UN secretary general's recommendations for its implementation, with a focus on recommendations 11.3 and 11.4, quoted above. By mapping and evaluating international mechanisms that can be used to investigate attacks on healthcare, it seeks to provide tools to identify the most appropriate mechanism, or set of mechanisms, for each specific context. This can help ensure that the "full, prompt, impartial and effective investigations" required by Resolution 2286 are carried out when parties to the conflict are unable or unwilling to do so themselves.

Through a combination of desk research, key informant interviews, and an expert meeting bringing together key stakeholders in the implementation of Resolution 2286 and experts on international fact-finding and investigation into violations of international law, the project developed a set of tools, which are available on the [project's webpage](#). These include the general mapping of mechanisms that can be used to investigate attacks on healthcare (see Figure 2 above); an interactive map of the mechanisms evaluated for the project, with detailed fact sheets on each of these mechanisms; and a comprehensive and interactive list of investigations carried out by existing international investigative mechanisms that have (or have not) been used to investigate attacks on healthcare.

This paper is a supplement to this broader set of tools and should be read in conjunction with them. It introduces the topic and the research project, reflects on the purpose of fact-finding and investigation into attacks on healthcare, and proposes a mapping of existing and proposed new mechanisms for carrying out such investigations. It also evaluates a selection of mechanisms in more detail by presenting the project's general findings on whether and how these mechanisms can be used to investigate attacks on healthcare, discussing

their respective advantages and disadvantages and some of the inherent challenges in investigating violations of international law in situations of armed conflict. Finally, it submits a number of conclusions and a set of concrete recommendations to ensure a more systematic and adequate use of existing mechanisms that could have a positive impact on the ground.

While the research tools—and the remainder of this paper—focus on international non-judicial fact-finding and investigative mechanisms, this does not diminish the relevance of other mechanisms included in the general mapping above (Figure 2) to investigate attacks on healthcare for the purpose of preventing future incidents and holding perpetrators to account.

For example, investigations into attacks on healthcare should ideally be carried out at the national level. Apart from the fact that the primary responsibility for such investigations lies with member states and other parties to armed conflicts, national mechanisms (be they administrative, disciplinary, or judicial) are—in principle—most appropriate for investigating attacks on healthcare. They are obliged and should be able to investigate all incidents, while international mechanisms tend to focus on certain incidents that amount to very serious violations of international humanitarian law, illustrate broader patterns of abuse, or otherwise attract high visibility or scrutiny. Moreover, due to their proximity to the actual events, national investigative mechanisms should—again, in principle—be more efficient and effective. Such mechanisms should also be able to count on the full cooperation of the armed forces and other relevant authorities of the parties to the conflict and may have easier access to victims and witnesses of attacks. To some extent, the same holds true for regional mechanisms, which may also be appropriate and easier to establish when countries are unable or unwilling to carry out full, prompt, independent, impartial, and effective investigations themselves. However, as mentioned above, in many contemporary armed conflicts, particularly non-international ones, the reality is that national or regional mechanisms are unwilling or unable, or lack the required independence from the parties to the conflict, to carry out such investigations.

For legal accountability purposes (i.e., establishing state or individual criminal responsibility for violations of international law), judicial bodies—national, regional, and international courts and tribunals—remain the only viable option, as the fact-finding and investigative mechanisms that are the subject of the research for this project do not have prosecutorial powers and are not mandated or equipped to carry out their work in accordance with the high standard of proof required for criminal investigations.

Some operational humanitarian and human rights agencies on the ground, such as the International Committee of the Red Cross (ICRC), Médecins Sans Frontières (MSF), the Office of the High Commissioner for Human Rights (OHCHR), and the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), also conduct inquiries into alleged attacks and other incidents of violence against healthcare. These field investigations feed into direct and usually confidential bilateral dialogue with parties to armed conflicts, essentially aiming to change behaviors and prevent future incidents. Similarly, to the extent their mandate allows them to do so, the human rights components of UN peace operations—which report both to the head of the mission and to the high commissioner for human rights—also engage in these types of field-based inquiries aimed at informing an operational dialogue with parties to armed conflicts.

Finally, the increasing role of civil society (NGOs, human rights advocates, think tanks, academia, etc.), journalists and media outlets, and private initiatives reporting on and documenting alleged violations of international humanitarian and human rights law also deserves to be noted. While these, like the field investigations by operational agencies mentioned above, are also not formal investigative mechanisms the international community can activate to investigate incidents where the parties to the conflict are unable or unwilling to do so, they contribute significantly to the work of many formal mechanisms, especially those aimed at ensuring accountability for international crimes.

Evaluating International Mechanisms to Investigate Attacks on Healthcare

As mentioned above, the project's in-depth evaluation of mechanisms to investigate attacks on healthcare focused on international non-judicial mechanisms that can be used when parties to the conflict are unable or unwilling to do so themselves. Detailed fact sheets on these mechanisms, which are also discussed in this paper, are available on the [project's webpage](#). This includes fact sheets on: commissions of inquiry and fact-finding missions mandated by the UN Security Council ([UNSC-CoIs](#)), UN General Assembly ([UNGA-CoIs](#)), UN secretary-general ([UNSG-CoIs](#)), and UN Human Rights Council ([HRC-CoIs](#)); the special procedures mandated by the Human Rights Council ([HRC-SPs](#)); the International, Independent and Impartial Mechanism on Syria established by the UN General Assembly ([IIIM-SY](#)); Security Council panels of experts supporting sanctions regimes ([UNSC-PoEs](#)); the Security Council's Monitoring and Reporting Mechanism on Grave Violations Committed against Children in Times of Armed Conflict ([MRM-CAAC](#)); boards of inquiry mandated by the UN secretary-general ([UNSG-BoIs](#)); the UN secretary-general's Mechanism for Investigation of Alleged Use of Chemical and Biological Weapons ([UNSG-MICBW](#)); fact-finding missions mandated by the UN high commissioner for human rights ([OHCHR-FFMs](#)); the International Humanitarian Fact-Finding Commission ([IHFFC](#)); and the investigative mechanisms of the Organisation for the Prohibition of Chemical Weapons ([OPCW](#)).

The fact sheets provide information on the legal basis and framework of the mechanisms, their composition or membership, the procedure for creating or activating them, the resources required to operationalize them, the extent to which their mandates allow or enable them to investigate attacks on healthcare, the nature of their investigative activities, and possible outcomes of and follow-up measures to their investigations. The fact sheets

also indicate and illustrate whether and how these mechanisms have so far been used to investigate attacks on healthcare. A [comprehensive list](#) of all iterations of these mechanisms, highlighting which ones have been used to investigate or report on attacks on healthcare, is also available on the [project's webpage](#).

What follows below are a number of general findings on the main distinctive features and respective advantages and disadvantages of resorting to these different mechanisms to investigate attacks on healthcare. Reflecting upon these issues is both necessary and helpful to design strategies on which mechanism or combination of mechanisms to use to investigate attacks on healthcare when the parties to the conflict are unable or unwilling to do so themselves. This section, as well as the following, should be read in conjunction with the detailed fact sheets on specific mechanisms available on the [project's webpage](#).

SUBSTANTIVE AND GEOGRAPHIC SCOPE OF MECHANISMS' MANDATES

The first element to consider when reflecting on which international mechanism or mechanisms to employ to investigate attacks on healthcare is whether the type of incidents that will be investigated fall within the substantive and geographic scope of the mechanism's mandate.

Attacks on healthcare can take various forms, including bombing, shelling, looting, forcing entry into, or shooting at healthcare facilities; encircling or otherwise forcefully interfering with the running of healthcare facilities and means of transportation (such as depriving them of electricity and water); killing, injuring, harassing, or intimidating patients or wounded and sick people trying to access healthcare; obstructing or interfering with the timely access of the wounded and sick to care; deliberately failing to provide or denying medical assistance; discriminating against certain groups in terms of access to or quality of care; interrupting medical care; killing, injuring, kidnapping, threatening, intimidating, harassing, or robbing healthcare personnel; or arresting healthcare personnel for performing medical duties.¹⁷

Resolution 2286 covers a wide range of acts of violence and threats against the wounded, the sick, and the medical mission and specifically calls for investigations into all violations of international rules relating to the respect and protection of the delivery of healthcare in armed conflict (see also above). All mechanisms mapped and evaluated for the purpose of this report can to some extent be used to investigate alleged violations of international humanitarian or human rights law. Not all of them, however, can be used to investigate the full range of incidents that fall within the purview of Resolution 2286.

Some mechanisms (e.g., the [IHFFC](#)) are only mandated to investigate violations of international humanitarian law, while others are exclusively mandated to investigate violations of international human rights law, as is the case for some commissions of inquiry mandated by UN organs (e.g., [UN-CoIs](#)) or entities (e.g., [HRC-CoIs](#)). This being said, as many human rights investigations take place in the context of armed conflict and violate both bodies of law, some institutionally human rights-oriented mechanisms—in particular commissions of inquiry mandated by the Human Rights Council ([HRC-CoIs](#)) and other UN-mandated commissions of inquiry ([UN-CoIs](#))—have interpreted seemingly human rights-exclusive mandates in a manner that has allowed them, in practice, to also investigate and report on serious violations of international humanitarian law.

While some mechanisms can be used to investigate violations of international humanitarian or human rights law at large (such as the [IHFFC](#), [OHCHR-FFMs](#), and most [HRC-CoIs](#) and [UN-CoIs](#)), others can only be used to investigate specific categories of attacks on healthcare. For example, the Organisation for the Prohibition of Chemical Weapons' ([OPCW](#)) investigative mechanisms and the UN secretary-general's Mechanism for Investigation of Alleged Use of Chemical and Biological Weapons ([UNSG-MICBW](#)) can only be used to investigate incidents involving the use of chemical or biological weapons. Similarly, boards of inquiry and special investigation mechanisms mandated by the UN

¹⁷ ICRC, "Healthcare in Danger: The Issue." Healthcare facilities include hospitals, laboratories, clinics, first-aid posts, blood transfusion centers, and the medical and pharmaceutical stores of these facilities. The wounded and the sick include all persons, whether military or civilian, who are in need of medical assistance and who refrain from any act of hostility. This includes maternity cases, newborn babies, and the infirm. Healthcare personnel include doctors, nurses, paramedical staff including first-aiders, support staff assigned to medical functions, administrative staff of healthcare facilities, and ambulance personnel.

secretary-general ([UNSG-BoIs](#)) can only be used when incidents directly affect UN premises, personnel, transportation means, or other assets or have a negative impact on the UN's operations or activities. As its title suggests, the Security Council's Monitoring and Reporting Mechanism on Grave Violations Committed against Children in Times of Armed Conflict ([MRM-CAAC](#)) can only investigate certain violations that affect children in armed conflict. Two categories of violations that fall within the MRM-CAAC's mandate are relevant for investigating attacks on healthcare: "attacks on schools and hospitals" and "denial of humanitarian access for children." Both sets of violations are interpreted widely to include many of the attacks on healthcare that fall within the purview of Resolution 2286. Some panels of experts set up to support Security Council sanctions regimes ([UNSC-PoEs](#)) will only investigate specific violations that—under the specific sanctions regime—can trigger targeted sanctions.

Many of the mechanisms evaluated are mandated to or generally focus only on "serious violations" of international humanitarian or human rights law, which could amount to war crimes or other international crimes. This being said, in practice, several of these mechanisms (e.g., the [IHFFC](#), [HRC-CoIs](#), [HRC-SPs](#), [UN-CoIs](#), and the [MRM-CAAC](#)) are also able to investigate attacks on healthcare that violate international law without qualifying as "serious violations."

With the exception of the [HIIM-SY](#), which can only investigate international crimes committed in Syria, all mechanisms evaluated have a universal geographic scope and can, in principle, be used to investigate attacks on healthcare regardless of where they occurred. This being said, additional criteria need to be fulfilled to establish or activate certain mechanisms in a specific country. For example, the General Assembly can only create a commission of inquiry ([UNGA-CoI](#)) to investigate attacks on healthcare (or any other violations of international law) that occurred in a country that is on its formal agenda. Similarly, for the Security Council to establish a commission of inquiry ([UNSC-CoI](#)), the situation in the country concerned must fall within the council's mandate and thus must reach the threshold of threatening international peace and security. For the Security Council's Monitoring and Reporting Mechanism

on Grave Violations Committed against Children in Times of Armed Conflict ([MRM-CAAC](#)) to be triggered, at least one of the parties to the conflict must be listed in the annexes to the UN secretary-general's annual report on children and armed conflict. For other mechanisms, the consent of the concerned state parties to the conflict is a formal requirement (e.g., the [IHFFC](#)), and still others can only be used to investigate incidents that occurred in a country that is a state party to the treaty establishing the mechanism (e.g., the [OPCW's](#) investigative mechanisms).

Three final caveats are in order. First, as mentioned above, the mechanisms mapped and evaluated for this report mostly are used to investigate incidents that amount to serious violations of international humanitarian or human rights law. It is important to note, though, that not all—and most likely not even the majority of—incidents of violence, threats, or undue interference with the provision of healthcare in situations of armed conflict amount to violations of the law. Second, even when violations have occurred, only a limited number of them will amount to "grave breaches" or "serious violations" and therefore qualify as war crimes or other international crimes. Finally, while major incidents such as the bombing of hospitals generally attract more visibility and scrutiny, the cumulative impact of less visible but far more numerous incidents on the provision of healthcare is much greater.

Therefore, in order to effectively enhance the protection of the medical mission and the adequate delivery of healthcare, *all* incidents of violence or threats against, damage to, or undue interference with the provision of healthcare in armed conflict should be investigated—regardless of whether they amount to violations of the law. This is crucial in order to understand what happened and what went wrong, identify concrete measures to prevent future shortcomings or errors, and repair the damage done.

PURPOSE OF INVESTIGATIONS

Another important element to consider in selecting mechanisms to investigate attacks on healthcare is the purpose of the investigation. Resolution 2286 calls for investigations into and, where appropriate, action against those responsible for violations of international humanitarian law related to respect

for or protection of the provision of healthcare in armed conflict “with a view to reinforcing preventive measures, ensuring accountability, and addressing the grievances of victims.”¹⁸ These three main purposes broadly correspond to those for which fact-finding on and investigations into violations of international law are generally carried out. While of less immediate relevance for operationalization of Resolution 2286, it deserves to be noted that, traditionally, international fact-finding on and investigations into violations of international law have also been used for dispute resolution. An additional, more overarching purpose of investigating attacks on healthcare and other violations of international law is to inform or mobilize political action by the mandating authority of the fact-finding or investigative mechanism. While certain mechanisms serve a number of these purposes, it is rare that a single mechanism can or does serve all of them at the same time.

Informing Political Action

Mechanisms that are mandated by a political authority to investigate violations of international law (e.g., [UN-CoIs](#), [HRC-CoIs](#), [HRC-SPs](#), [UNSC-PoEs](#), [UNSG-BoIs](#), the [MRM-CAAC](#), [OHCHR-FFMs](#), the [OPCW](#)’s investigative mechanisms) essentially serve the purpose of informing action to be taken by that mandating authority. Such action usually serves one or more purposes that, apart from dispute resolution, mainly include those foreseen by Resolution 2286: preventing future violations (policy or behavior change and restoration of respect for the law), ensuring different forms of accountability (moral, political, and legal accountability as well as sanctions), or addressing victims’ grievances and needs. The [fact sheets](#) on specific investigative mechanisms provide examples of actions that can or have been taken, in particular by UN organs or entities, but also by the OPCW, following a fact-finding or investigation mechanism’s report.

Figure 3. Purpose of investigating attacks on healthcare



¹⁸ “Accountability” is a broad and multilayered concept that, for present purposes, can be broken down into three elements: moral accountability (acknowledgment of facts and responsibility for such facts), political accountability (so-called “naming and shaming” and public condemnation of perpetrators of violations of international law), and legal accountability (establishment of state or individual criminal responsibility or liability).

Preventing Future Incidents

Some of the mechanisms mapped and evaluated for the purpose of this project primarily serve a preventive purpose (e.g., some of the [OPCW's](#) investigative mechanisms, the [IHFFC](#), [UNSG-BoIs](#), or the [MRM-CAAC](#)).¹⁹ Investigations for preventive purposes primarily seek to establish what happened, what went wrong, and how errors, mistakes, and possible violations of the law can be prevented in the future.

The immediate goal of such investigations is to avoid further suffering, injuries, death, destruction, and disruption of essential services resulting from violations of international humanitarian or human rights law. Such investigations seek to identify concrete measures that can be taken by parties to armed conflict or by medical institutions and humanitarian organizations involved in the delivery of healthcare to change behaviors, restore respect for international law, and in doing so, avoid future incidents.²⁰ Investigations of this nature can also contribute to ensuring that medical institutions and humanitarian organizations have the operational security and capacity to deliver healthcare services and assistance to those most in need, maintaining essential healthcare services for populations affected by the conflict, and minimizing the degradation of healthcare systems and infrastructure. For such investigations to be effective, they generally require the direct engagement, involvement, and cooperation of the parties to the conflict responsible for incidents of attacks on healthcare or obstruction of the delivery of medical or humanitarian assistance.²¹

Addressing Victims' Grievances and Needs

With the exception of the [UNSG-MICBW](#) and, to some extent, the [MRM-CAAC](#) and the [OPCW's](#) investigative mechanisms,²² none of the mechanisms examined for this project seem to be exclusively or even primarily geared toward addressing the needs and grievances of victims of violations of international humanitarian or human rights law. Overall, international mechanisms that have been or could be used to investigate attacks on healthcare are oriented toward prevention or accountability. In pursuing these other purposes, these mechanisms can however indirectly address many victims' needs and grievances. Effectively preventing future attacks on healthcare directly contributes to addressing the needs of victims of previous attacks as well as the healthcare needs of the broader population. And holding perpetrators accountable necessarily involves achieving truth, justice, and reparations for victims.²³

However, some needs of victims go beyond prevention and accountability, and the mechanisms evaluated generally address these needs less, if at all. They include the need for reparations for damage done, restitution, reconstruction, access to different types of relief, assistance, and accompaniment, and reconciliation. In the case of attacks on healthcare, addressing victims' needs also means addressing the needs of "indirect victims," including the populations deprived of access to quality healthcare because of attacks. Reparations for or restitution of damaged, destroyed, or looted medical infrastruc-

19 The in-country operation of the Security Council's Monitoring and Reporting Mechanism on Grave Violations Committed against Children in Times of Armed Conflict ([MRM-CAAC](#)) is more geared toward preventing future incidents and restoring respect for relevant international law. Listing by the UN secretary-general, which triggers the activation of the [MRM-CAAC](#), however, is geared toward both political accountability and exerting pressure on parties to armed conflict to restore respect for the law. See also the fact-sheet on the [MRM-CAAC](#) on the project's webpage.

20 Such measures can include policy changes, legislative reform, revision of standard operating procedures, training for weapon bearers, clarification of military orders and instructions, and establishment or revision of deconfliction arrangements.

21 For many operational agencies and institutions, such as the WHO, UNRWA, ICRC, and MSF, these are the main purposes for which they call for systematic investigations of attacks on healthcare. While such operational actors fully recognize the need for and support efforts to ensure accountability for violations of the law, their immediate objective is to ensure they can fulfill their operational mandates to minimize human suffering, interruption of essential healthcare services, and degradation of healthcare systems that are indispensable to the survival, health, integrity, and well-being of affected populations.

22 Investigative teams activated under the [UNSG-MICBW](#) not only assess whether chemical and biological weapons were used in violation of relevant international law but also provide an estimate to the secretary-general on the possible victims of the use of such weapons and the types of injuries endured so as to inform the provision of aid. Similarly, the main purpose of [OPCW](#) investigations, other than verifying whether alleged violations of the Chemical Weapons Convention (CWC) have occurred, is to provide assistance and protection against the effects of chemical weapons as provided for in Article 10 of the CWC). Finally, the action plans negotiated by the [MRM-CAAC](#) with the parties to the conflict should also inform programmatic responses, including to address the needs and grievances of victims of violations.

23 OHCHR, *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice*, 2015, available at www.ohchr.org/Documents/Publications/CoI_Guidance_and_Practice.pdf.

ture, facilities, equipment, and means of transportation and measures to restore functioning health services are as important as addressing the needs of the direct victims of attacks on healthcare.

The reports and recommendations of UN-mandated commissions of inquiry and fact-finding missions tend not to emphasize victims' needs, focusing more on preventive and accountability measures. Nonetheless, some have also paid attention to, and put forth specific recommendations to address, the needs of victims that go beyond accountability.

For example, the High-Level Fact-Finding Mission to Beit Hanoun in Gaza was explicitly mandated to: (1) assess the situation of victims; (2) address the needs of survivors; and (3) make recommendations on ways and means to protect civilians against any further assaults.²⁴ Similarly, the report of the International Commission of Inquiry on Darfur (2005) not only focused on justice and reparations but also mentioned the need for "measures to bring relief and redress to the victims...to complete the process of accountability."²⁵

The Organisation for the Prohibition of Chemical Weapons' (OPCW) investigations into the alleged use of chemical weapons do not generally make recommendations to address individual victims' grievances, but they do identify urgent needs for assistance to states, such as decontamination equipment or provision of medical treatment, which contribute to addressing victims' needs.

While it could be strengthened in practice, the Monitoring and Reporting Mechanism on Grave Violations Committed against Children in Times of Armed Conflict (MRM-CAAC) does have a victim-oriented component to its work. It engages in dialogue with parties to the conflict on the signing of concrete, time-bound action plans (the implementation of which is required for a party to be de-listed from the annexes to the UN secretary-

general's annual report on children and armed conflict). These plans are also intended to inform programmatic responses, including care for victims of violations. As such, action plans may include measures for reparation, compensation, or provision of other kinds of support (e.g., psychosocial support) to victims.

Holding Perpetrators Accountable

"Accountability" is a broad and multi-layered concept that, for present purposes, can be broken down into legal, moral, and political accountability (see also above). Some mechanisms mapped for this project, such as the International Criminal Court (ICC) and other international courts and tribunals, carry out investigations for the exclusive purpose of ensuring that states and individual perpetrators of serious violations of international humanitarian and human rights law are brought to justice (legal accountability).²⁶ Other mechanisms, such as truth and reconciliation commissions or transitional justice mechanisms, primarily seek to ensure moral accountability (acknowledgment of facts and responsibility) and to address victims' grievances and needs.²⁷

In the absence of, or in the lead-up to, judicial investigations aimed at holding those responsible for serious violations to account, some mechanisms pursue political accountability by naming and shaming states and individual perpetrators of international crimes. A good example is the listing of parties to armed conflicts responsible for grave violations against children in armed conflict in the annexes to the UN secretary-general's annual report to the Security Council on children and armed conflict.²⁸ The listing also triggers the in-country activation of the Monitoring and Reporting Mechanism on Grave Violations Committed against Children in Times of Armed Conflict (MRM-CAAC), which in itself primarily serves a more preventive purpose, as it is geared toward changing behaviors and restoring respect for relevant international legal obligations.

24 Human Rights Council Resolution S-3/1 (November 15, 2006), UN Doc. A/HRC/RES/S-3/1.

25 UN Security Council, *Report of the International Commission of Inquiry on Darfur to the Secretary-General*, UN Doc. S/2005/60, February 1, 2005, paras. 528, 565.

26 Classifying international courts and tribunals as primarily geared toward accountability does not in any way diminish the deterring and thus preventive effect that judicial proceedings, and criminal prosecution of international crimes in particular, can have. The preventive effect of criminal justice is explicitly recognized in Security Council Resolution 2286, which states that "the prevailing impunity for violations [against medical personnel, facilities, means of transportation and equipment] may contribute to the recurrence of these acts," para. 8.

27 As mentioned in the introduction, these mechanisms do not fall within the scope of the present research project.

28 For example, UN General Assembly and Security Council, *Children and Armed Conflict: Report of the Secretary-General*, UN Doc. A/72/361—S/2017/821). Moreover, a listing in the annexes to the report automatically triggers the activation of the Monitoring and Reporting Mechanism (MRM-CAAC).

More generally, accountability, or sometimes even the mere specter of accountability, can contribute to preventive measures or serve as a preventive measure itself. As it raises the political and reputational cost of noncompliance with international norms, accountability can pressure parties to armed conflict to change their behaviors, procedures, and policies in a way that improves protection and prevents future incidents.

UN-Mandated Ad Hoc Investigative Mechanisms: Increasingly Geared toward Legal Accountability

Created on an ad hoc basis for specific contexts or even specific incidents, international commissions of inquiry and fact-finding missions established by UN organs (UN-CoIs) or by subsidiary bodies such as the Human Rights Council (HRC-CoIs) can and generally do serve one or more of the purposes mentioned in Resolution 2286, as well as informing political action by their mandating authority or contributing to dispute resolution. The fact sheets on these mechanisms try to capture the variety of purposes for which specific commissions of inquiry and fact-finding missions were established, but a number of general observations can also be made.

On the one hand, as these mechanisms are established in an ad hoc manner (contrary to permanent fixtures such as the IHFFC, MRM-CAAC, or OPCW), and specific mandates are (negotiated and) established for each commission, the mandating authority has significant influence over the purpose they can serve. Moreover, the mandates of commissions of inquiry are often relatively broad and vague, allowing for individual commissioners or experts that serve on them to interpret and implement the mandate based on the context, and, in some cases, on their particular

backgrounds or interests. Therefore, and apart from informing political action by the mandating authority, commissions of inquiry and fact-finding missions can technically be mandated or used to investigate attacks on healthcare for any of the purposes mentioned in Resolution 2286, or a combination of all three.

This being said, recent practice shows an emerging trend for UN-mandated commissions of inquiry and fact-finding missions to be more and more oriented toward accountability, in particular toward seeking to ensure political accountability (naming and shaming) and legal accountability (bringing perpetrators to justice).²⁹ Traditionally, international commissions of inquiry and fact-finding missions primarily aimed to exert sufficient normative pressure to bring about policy and behavior change and thereby enhance protection and compliance with international law. They also contributed to a broader form of accountability by aiming to bring about structural change.

However, many contemporary commissions of inquiry have become more and more geared toward ensuring individual accountability and preparing the ground for criminal prosecution of individual perpetrators. Especially in recent years, numerous commissions of inquiry and fact-finding missions seem to have been established—as an alternative or as a preliminary step in the right direction—where criminal justice, usually for political reasons, remains elusive in light of the unwillingness or inability of parties to the conflict and/or the international community to bring perpetrators of alleged violations before national or international criminal courts or tribunals.³⁰

This “turn towards accountability,”³¹ and especially the increasingly strong emphasis on

29 For examples, see the fact sheets on UN-CoIs and HRC-CoIs. See also OHCHR, *Guidance and Practice*, pp. 12–14, 114–141; Dapo Akande and Hannah Tonkin, “International Commissions of Inquiry: A New Form of Adjudication,” blog of the *European Journal of International Law*, April 6, 2012, available at www.ejiltalk.org/international-commissions-of-inquiry-a-new-form-of-adjudication/; Larissa J. 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,” *Chinese Journal of International Law* 13, no. 3 (2014), p. 531, available at <https://academic.oup.com/chinesejil/article/13/3/507/2755673/An-Inquiry-into-the-Role-of-Commissions-of-Inquiry>; Carsten Stahn and Catherine Harwood, “What’s the Point of ‘Naming Names’ in International Inquiry? Counseling Caution in the Turn Towards Individual Responsibility,” blog of the *European Journal of International Law*, November 11, 2016, available at www.ejiltalk.org/whats-the-point-of-naming-names-in-international-inquiry-counseling-caution-in-the-turn-towards-individual-responsibility/#more-14724; and Federica D’Alessandra, “The Accountability Turn in Third Wave Human Rights Fact-Finding,” *Utrecht Journal of International and European Law* 33, no. 84 (2017).

30 Perhaps a culmination of this emerging trend is the establishment by the UN General Assembly of 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 (IIIM-SY), which is tasked with cooperating with the Human Rights Council’s commission of inquiry on Syria “to collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses and 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 jurisdiction over these crimes.” UN General Assembly Resolution 71/248 (January 11, 2017), UN Doc. A/RES/71/248.

31 D’Alessandra, “The Accountability Turn in Third Wave Human Rights Fact-Finding.” D’Alessandra’s findings generally echo those of the research carried out for this project.

criminal justice, has not only reoriented the primary purpose of commissions of inquiry from broad prevention to narrower accountability, but has also had a direct impact on the way they work. Earlier commissions of inquiry—like most of the other investigative mechanisms evaluated—tended to assess the facts and the circumstances in which incidents occur against international human rights and/or humanitarian law in order to establish violations of the law but not necessarily whether those violations also amounted to crimes. But the increased focus on legal accountability has led many contemporary commissions of inquiry to make legal assessments on the basis of international criminal law.³²

Moreover, commissions of inquiry traditionally tended to conduct investigations to establish broad trends and patterns of abuse with the intent to bring about a policy change that could restore respect for the law and thus prevent future violations. Contemporary commissions of inquiry, however, increasingly carry out detailed investigations into as many incidents as they can,³³ progressively gathering and preserving criminal evidence on specific incidents for future prosecutions.³⁴ This approach may make a significant contribution to the fight against impunity by ensuring that future prosecutions can or will be carried out. But at the same time, according to some, this “criminalization” or “individualization” of human rights fact-finding also tends to distract commissions of inquiry from their original purpose of bringing about structural policy changes to prevent future violations. In other words, there seems to be a shift from structural to individual accountability.³⁵

The Importance of Clarity on the Purpose of Investigations

As discussed further below, the purpose for which an investigation is carried out (see Figure 3, and in particular the three purposes of investigation referenced in Resolution 2286) has an immediate

impact not only on the type of investigation required (the type of information to gather, the type of legal assessments to make, methodology, and standards of proof) and the type of reporting (nature of recommendations, confidential versus public reporting) but also on the level of cooperation the investigative mechanism tends to obtain and the type of resources, expertise, and time it will require to complete its work and achieve its objectives. As the fact sheets on the project’s webpage demonstrate, different mechanisms have different features. Certain investigative mechanisms are more appropriate to serve preventive purposes, while others are more tailored to serve accountability purposes. In order for investigations to be both efficient and effective, it is therefore important to be clear on the purpose they serve and to select the mechanism that is most appropriate to achieve that purpose.

Taking into account the different agendas and interests of different stakeholders—the parties to the conflict, medical and humanitarian actors on the ground, victims of attacks, concerned states, third-party states, UN entities, and civil society—clarity and, even more so, agreement on the purpose of investigations may in some cases be difficult or even impossible to achieve. Achieving agreement on the actual purpose of investigations is even more challenging for investigative mechanisms established on an ad hoc basis by political authorities, in particular those composed of UN member states such as the Security Council, General Assembly, or Human Rights Council. The mandates of these investigative mechanisms (e.g. [UN-CoIs](#), [HRC-CoIs](#), [UNSC-PoEs](#)) are decided upon and thus negotiated by the member states that make up these bodies. Inevitably, politics comes into play, and the composition, voting procedures, and political dynamics within these bodies influences the purpose and nature of the investigations these mechanisms will carry out. They will also influence whether or not the

32 Ibid., p. 65.

33 Ibid., pp. 66–67.

34 Ibid., pp. 65–66. See also OHCHR, *Guidance and Practice*, pp. 12, 114–141. The [HRC-CoI](#) on Syria deserves particular mention in this context, as does the UN General Assembly’s establishment of 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](#)), which is specifically mandated to collect, consolidate, preserve, and analyze evidence of violations of international humanitarian and human rights law, and to prepare files on such violations for future criminal proceedings.

35 Stahn and Harwood, “What’s the Point of ‘Naming Names’ in International Inquiry?” In light of the fundamental differences between fact-finding and criminal investigations, the turn toward individual and criminal accountability also triggers a number of important challenges in terms of methodology, resources, and expertise, which are discussed further below.

mechanisms are able to carry out effective investigations, as the mandating authority will also decide on the terms of reference and composition of the mechanism and on the time limits and resources at its disposal.

Research and interviews carried out for this project also indicate that, in general, investigative mechanisms are able to carry out more effective investigations, and are more likely to achieve an impact on the ground, when they have a single purpose, and in particular when they do not mix preventive and accountability purposes.³⁶ For example, investigative mechanisms set up and managed by non-political entities for preventive rather than accountability purposes (such as UNSG-BoIs, the IHFFC, the MRM-CAAC, or OHCHR-FFMs) tend to be able to count on much better cooperation with the investigation from both parties to the conflict or other key stakeholders in the conflict or the incident under investigation and from UN and other operational agencies on the ground. Such cooperation is often further enhanced by the fact that most of these mechanisms do not tend to report on their specific findings and recommendations in public but rather use these to feed into dialogue with the parties to the conflict or other entities able to influence the occurrence of such incidents in the future. On the other hand, experience also shows that such investigations may well change behaviors on the ground and at times even address certain needs of victims, but rarely lead to accountability processes. As such, they do less to ensure that perpetrators of serious violations of international law are brought to justice.

This is one of the areas where the diversity of mechanisms is interesting. A combination—or sequencing—of different mechanisms can contribute to achieving different purposes in parallel or at different moments in time, depending on what is possible in light of the political climate surrounding specific incidents.

Moreover, investigations focused on one specific purpose can also, as a side effect, contribute to achieving other purposes. For example, while the essential purpose of prevention-oriented investiga-

tions into attacks on healthcare is to bring about structural changes in behavior, restore respect for the law, and guarantee an environment in which healthcare can safely be provided, the investigations may well reveal indications of potentially serious violations of international humanitarian law and, in light of the duty to investigate and prosecute war crimes, make recommendations to the parties to the conflict to conduct criminal investigations into certain events or the behavior of certain individuals. Similarly, investigations, or the mere specter of investigations, aimed at ensuring accountability for serious violations of international law may well raise the political and reputational cost of attacks on healthcare in a way that pressures parties to the conflict to change their behavior and increase compliance with international law.

For example, local NGOs in Yemen observed that when discussions about the establishment of a commission of inquiry to investigate serious violations of international humanitarian law (including attacks on healthcare, which have been a serious area of concern in the Yemeni context) were ongoing in the Human Rights Council, the behavior of the parties to the conflict improved significantly. When these discussions appeared to falter, a resurgence of attacks and noncompliance with the law was observed on the ground.

The Dark Side of Fact-Finding and Investigations

Reflecting on the purpose of fact-finding on and investigations into attacks on healthcare, and taking into account the political environment in which many of these attacks take place, it is also important to recognize the potential dark side of fact-finding and investigations. Political actors can use these mechanisms to justify or mask their failure to take any meaningful action or even to prevent such action from being taken in the first place. Henry Kissinger poignantly illustrated this risk in a comment on the League of Nations' Lytton Commission: "Finally, a mechanism was devised for doing nothing at all. It took the form of a fact-finding mission—the standard device for diplomats signaling that inaction is the desired

³⁶ While the different purposes for investigating attacks on healthcare are related and complementary—in theory they all contribute to the ultimate goal of enhancing the protection of healthcare in armed conflict—the distinct features of the type of investigative mechanism most likely to achieve these purposes differ and to some extent may be in tension with each other.

outcome. Such commissions take time to assemble, to undertake studies, and to reach a consensus—by which point, with luck, the problem might even have gone away.”³⁷

TYPES OF INVESTIGATIVE ACTIVITIES

The type of investigative powers or activities of the mechanisms evaluated for this project vary from one to another. For example, some mechanisms are more geared toward monitoring and reporting on trends and patterns of alleged violations of international law (such as the [MRM-CAAC](#) and some [UN-CoIs](#), [HRC-CoIs](#), and [HRC-SPs](#)), while others are used to investigate specific incidents without necessarily looking into broader trends or patterns (such as the [IHFFC](#), [UNSC-PoEs](#), the [OPCW’s](#) investigative mechanisms, [UNSG-BoIs](#), and the [UNSG-MICBW](#)).

The [fact sheets on specific mechanisms](#) indicate to what extent each mechanism can or does engage in different types of investigative activities, including:

- Actively monitoring conflicts to identify patterns of violations of international humanitarian and human rights law;
- Fact-finding on and investigation of specific incidents to establish and assess the facts and the circumstances in which these incidents occurred;
- Fact-finding on and investigation of specific incidents to identify entities or people responsible for or with influences over these facts or circumstances;
- Fact-finding on and investigation of specific incidents to identify entities or people who allegedly committed war crimes or crimes against humanity;
- Collecting and corroborating evidence on alleged war crimes or crimes against humanity;
- Assessing and identifying ways to address the grievances and needs of specific attacks;
- Identifying corrective measures to prevent future incidents; and
- Identifying appropriate avenues and concrete actions to ensure accountability.

To a large extent, the type of investigative activity a particular mechanism can or does engage in depends on the purpose for which it was established or is generally being used. For example, mechanisms that investigate primarily to prevent future incidents and restore respect for the law often limit their investigations to what is necessary to take corrective action: establishing the facts and circumstances surrounding incidents to determine what went wrong and identifying who is responsible for or can influence the processes, procedures, and behaviors that led to the incident or contributed to the nature or level of its impact. Such mechanisms generally do not engage in investigative activities that are more geared toward ensuring accountability, such as identifying alleged perpetrators of crimes, collecting and corroborating criminal evidence, or identifying appropriate avenues to ensure legal accountability. Also, in order to bring about structural changes in policies and behavior, and even to “name and shame” parties to the conflict who engage in violations of international law, it may be sufficient to monitor and report on general trends or patterns of such violations. Investigations oriented toward criminal accountability require more in-depth study of specific incidents and the collection of information and materials that can support claims of alleged criminal responsibility.

MANDATING AUTHORITY AND PROCEDURE TO ESTABLISH OR ACTIVATE THE MECHANISM

A number of the mechanisms evaluated for this project can investigate alleged violations of international law on their own initiative (e.g., [UNSG-CoIs](#) and [OHCHR-FFMs](#)) or can be seized by state parties to the conflict or member states directly (e.g., the [IHFFC](#), and some of the [OPCW’s](#) investigative mechanisms). Most, however, are mandated to investigate alleged violations of international law by a political authority such as the Security Council, General Assembly, secretary-general, or Human Rights Council.

The mapping (see Figure 2) and the fact sheets (available on the [project’s webpage](#)) provide more detail on both the mandating authority and the

³⁷ Henry Kissinger, *Diplomacy* (1994), pp. 286–287, quoted, along with other examples and references to the experience of various practitioners, in Rob Grace, “Recommendations and Follow-up Measures in Monitoring, Reporting, and Fact-Finding Missions,” Harvard Humanitarian Initiative, August 2014, pp. 13–14, available at <http://hhi.harvard.edu/publications/recommendations-and-follow-measures-monitoring-reporting-and-fact-finding-missions>.

procedure to establish or activate different investigative mechanisms. It is worth noting here, however, that the type of mandating authority and the procedure to establish or activate a specific mechanism in general influences the ease with which a mechanism can be established or activated, the nature of its mandate and purpose, and, perhaps most importantly, the type of follow-up on the mechanism's findings and recommendations (and thus its ultimate impact on the ground).

For one, it is generally much more difficult (or at times even impossible) to establish or activate an international investigative mechanism that requires the consent of concerned state parties to the conflict or that can be blocked by other states. However, when such consent is obtained, investigations tend to be more effective as there are fewer constraints, which can lead to more or better results.

Similarly, investigative mechanisms mandated by political heavyweights such as the Security Council and General Assembly are generally more difficult to establish or activate because of the nature of these mandating authorities' membership, voting procedures, and political dynamics. At the same time, such mechanisms tend to result in more forceful follow-up to their findings and recommendations, particularly in terms of ensuring accountability. For example, the work of some commissions of inquiry mandated by the Security Council or General Assembly (UN-CoIs) has at times resulted in the establishment of international, domestic, or hybrid criminal tribunals or in referrals to the International Criminal Court.³⁸ Such forceful follow-up has so far not followed similar recommendations made by commissions of inquiry mandated by the Human Rights Council, which are generally easier to establish but, according to some, tend to have less political weight in terms of actual enforcement or direct impact.

Whether a mechanism is mandated by a political

authority composed of member states and is thus inherently political (such as the UNSC-CoIs, UNSC-PoEs, UNGA-CoIs, or HRC-CoIs); or on the contrary is mandated by the UN Secretariat (such as UNSG-BoIs, UNSG-CoIs, the UNSG-MICBW, or OHCHR-FFMs) or functions as an independent or semi-independent institution (such as the IHFFC), may also have an impact on perceptions of the independence and impartiality of the mechanism or its investigations. Such perceptions may in turn influence the level of cooperation from parties to the conflict, victims, witnesses, and even UN and other operational agencies on the ground. In general, the more the mechanism is perceived as independent from political dynamics, power plays, and (real or perceived) bias, the more it can count on effective cooperation, which contributes to the quality of investigations and the likelihood that parties to the conflict will follow up on the mechanism's recommendations. On the contrary, the more a mechanism is perceived as a political instrument, serving a declared or undeclared political purpose, the higher the risk of lower levels of cooperation, often resulting in less effective and impactful investigations.

This being said, it is important to note that while the establishment and mandate of commissions of inquiry by political organs such as the Security Council, General Assembly, or Human Rights Council is inherently political and influenced by political dynamics, the way contemporary commissions of inquiry are composed, staffed, and operate ensure—in general—they can and do function independently from the mandating authority.³⁹ Politics clearly play a role in whether or not a commission of inquiry is established and, if so, to what extent it influences the (negotiated) mandate. But at the same time, in most cases, the actual investigations and their outcome (the commission's findings and recommendations) are sufficiently insulated from the political process and dynamics to minimize the risk of political interfer-

38 For example, following a recommendation made by the Security Council's commission of inquiry on Darfur (2004), the council referred the situation in Darfur to the International Criminal Court (S/RES/1593). The findings and recommendations of the Security Council's commissions of inquiry on Yugoslavia (S/1994/674) and Rwanda (S/1994/1125) led the council to establish the International Criminal Tribunals for the former Yugoslavia (S/RES/827) and for Rwanda (S/RES/955). Upon a recommendation from the General Assembly Group of Experts on Cambodia (1998), the assembly paved the way for the creation of the Extraordinary Chambers in the Courts of Cambodia (A/RES/52/135). In light of the findings of the UNSC-CoI on the Central African Republic (2013), the special representative of the secretary-general signed a memorandum of intent with the Central African minister of justice establishing a Special Criminal Court to prosecute international crimes.

39 This being said, in spite of these significant safeguards, negative perceptions of a commission's independence and neutrality are sometimes hard to avoid or erase. See for example, Kevin Jon Heller, "The International Commission of Inquiry on Libya: A Critical Analysis," 2012, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2123782. Heller argues that the conclusions of the commission "[were] not without...flaws" and that "despite its best efforts...the Commission appears to have been unable to completely cleanse itself of the stain of its politicized birth."

ence with the commissions' actual operations.

The immediate impact of accountability mechanisms mandated by state-composed political entities on behavior change may sometimes be less immediate than that obtained by preventive mechanisms that are independent or mandated by the UN secretary-general. At the same time, however, accountability mechanisms often do contribute to creating the political space and pressure to ensure that measures are taken to prevent further incidents (and scrutiny), and to ensure accountability at the domestic or international level.

Moreover, the reporting function of politically mandated mechanisms has the advantage of bringing the results of investigations back to political organs that can take action. Such action may include mandating a special rapporteur on a specific context or issue; instructing UN peace operations or the OHCHR to monitor progress on the implementation of recommendations; including an issue or context on the formal agenda of the Security Council, General Assembly, or Human Rights Council; including responsible parties in the annexes of the UN secretary-general's annual report on children and armed conflict; including alleged perpetrators of violations in Security Council sanctions regimes; or referring a case to the ICC.

As such, investigations mandated by political bodies also serve the purpose of informing member states about serious violations of international humanitarian or human right law so that they can act in accordance with their obligations to ensure respect for the law and hold those responsible for violations to account. In this sense, these mechanisms can also hold the international community as a whole to account for succeeding or failing to uphold its obligation to prevent and protect the delivery of healthcare in situations of armed conflict.

CONFIDENTIAL VERSUS PUBLIC REPORTING

The fact sheets on specific mechanisms indicate whether the information and evidence they collect, as well as their findings and recommendations, are kept confidential or made publicly available. The

extent to which mechanisms operate on the basis of the principle of confidentiality or on that of public reporting is also influenced by the purpose for which they engage in fact-finding and investigations into violations of international law. While there is no hard and fast rule and there are many variations, in general prevention-oriented mechanisms tend to be more geared toward confidentiality, whereas accountability-oriented mechanisms tend to be more geared toward publicity.

Certain mechanisms function entirely, or at least to a large extent, on a confidential basis, using the information they collect for internal purposes (such as [UNSG-BoIs](#)) or to engage in confidential bilateral dialogue with the concerned party or parties to the conflict (such as the [IHFFC](#)). Most of these mechanisms investigate more for prevention-oriented purposes. Other mechanisms are designed and required to report publicly on their findings and recommendations, to inform political action by states or to foster accountability for international crimes. This is the case, for example, for most commissions of inquiry and fact-finding commissions mandated by the Security Council ([UNSC-CoIs](#)), General Assembly ([UNGA-CoIs](#)), and Human Rights Council ([HRC-CoIs](#)). While the primary purpose of the [MRM-CAAC](#) is to prevent future violations by identifying and implementing corrective measures, the public listing of parties engaging in grave violations against children in armed conflict in the annexes to the UN secretary-general's annual report on children affected by armed conflict clearly is geared toward political accountability (so-called "naming and shaming"). The [OPCW's](#) investigative mechanisms are not made public as such but are shared with states parties to the CWC.

This being said, while mechanisms with public reporting features (such as [UNSC-CoIs](#), [UNGA-CoIs](#), [UNSG-CoIs](#), [HRC-CoIs](#), [HRC-SPs](#), [UNSC-PoEs](#), or the [MRM-CAAC](#)) do publish their findings and recommendations, most of them do not publish full details on specific incidents, names of individual perpetrators, or evidentiary material gathered during the investigation. Much of that material remains confidential and protected from forced disclosure through the privileges and immunities of the United Nations.⁴⁰

40 See also note 48 below.

Members of UN-mandated commissions of inquiry and fact-finding missions may decide to make full details on specific incidents or the names of individual perpetrators public, but they rarely do so.⁴¹ Publication of names may be inappropriate in light of due process rights and witness protection requirements.⁴² It is also generally unnecessary or may even be counterproductive to achieving the commission's objectives. As one expert put it, publishing names of individual perpetrators is the one silver bullet some commissions of inquiry have to exert meaningful pressure on states to acknowledge and ensure accountability for alleged violations of international law; you do not use it unless you are certain it will produce the end-result you seek (for example when a serious investigation into a specific incident or series of incidents has been opened by a judicial authority).⁴³

The fact sheets on the [project's webpage](#) also indicate whether and when the information and evidence collected by specific mechanisms can be transmitted to judicial mechanisms. While it is difficult to ascertain whether, and if so when and to what extent, some mechanisms might transmit their information and evidence to judicial mechanisms investigating specific incidents, there are a number of general principles that apply. Fact-finding and investigative mechanisms do not generally themselves engage in criminal investigations.⁴⁴ While some UN-mandated commissions of inquiry and fact-finding missions clearly serve the purpose of fostering accountability and identifying appropriate avenues to ensure that perpetrators of

international crimes are brought to justice, they are not judicial bodies and do not have prosecutorial powers. As such, their investigative methodology and standards of proof are not those required for criminal investigations and prosecution.⁴⁵ These methodological differences pose a number of challenges for the interoperability between different accountability mechanisms, which will be discussed further below.

But it is worth noting here that the investigations and findings of many of the mechanisms evaluated for this report can and have been transmitted to judicial authorities. For example, the full extent of information and materials gathered by the commissions of experts on Yugoslavia and Rwanda were transferred to the International Criminal Tribunals for the former Yugoslavia and for Rwanda.⁴⁶ Some mandates for the Human Rights Council's commissions of inquiry (HRC-CoIs), such as for the commission of inquiry on Syria, have stated explicitly that the information gathered by the mission should be preserved and eventually transferred for use in subsequent criminal investigations.⁴⁷ On that basis, the commission of inquiry on Syria has made it a policy to share confidential information in its database directly with prosecutors and judicial authorities undertaking such investigations.

As mentioned above, information and materials gathered on behalf of the United Nations but not published as part of mandatory reporting procedures are legally protected from forced disclosure through the privileges and immunities of the United Nations and its officials.⁴⁸ As such,

41 See OHCHR, *Guidance and Practice*, pp. 14, 90: "In practice, none of the commissions/missions, except those for Guinea (2009) and Timor-Leste (2006), named individual perpetrators in their public reports but instead included these in a confidential list that was then handed to the Secretary-General or the High Commissioner for Human Rights."

42 Ibid., p. 14. See also Stahn and Harwood, "What's the Point of 'Naming Names' in International Inquiry?"

43 The publication of names of individuals allegedly responsible for international crimes in a commission of inquiry report or public documentation is different than the transmission of such names, or evidence that may shed light on a specific individual's responsibility for a crime, to a judicial body with the power to prosecute the crime. On the procedure for such transmission of information and evidence, see below note 49.

44 Perhaps apart from 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 (IIIM-SY)—a unique and innovative accountability mechanism established by the UN General Assembly in December 2016 against the backdrop of the military offensive and siege in Eastern Aleppo.

45 See also Stephen Wilkinson, "Finding the Facts: Standards of Proof and Information Handling in Monitoring, Reporting and Fact-Finding Missions," February 2014, pp. 9–11, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2400927; Rob Grace and Jill Coster van Voorhout, "From Isolation to Interoperability: The Interaction of Monitoring, Reporting, and Fact-finding Missions and International Criminal Courts and Tribunals," The Hague Global Institute, December 2014 pp. 15–17, available at www.thehagueinstituteofglobaljustice.org/wp-content/uploads/2015/10/working-paper-4-fact-finding.pdf; Théo Boutruche, "Credible Fact-Finding and Allegations of International Humanitarian Law Violations: Challenges in Theory and Practice," *Journal of Conflict and Security Law* 16, no. 1 (2011), p. 9; Larissa Van den Herik and Catherine Harwood, "Commissions of Inquiry and the Charm of International Criminal Law: Between Transactional and Authoritative Approaches," in Philip Alston and Sarah Knuckley, *The Transformation of Human Rights Fact-Finding* (New York: Oxford University Press, 2016), p. 244; and Philip Alston and Sarah Knuckley, "The Transformation of Human Rights Fact-Finding: Challenges and Opportunities," in Alston and Knuckley, *The Transformation of Human Rights Fact-Finding*.

46 D'Alessandra, "The Accountability Turn in Third Wave Human Rights Fact-Finding," p. 63; Grace and van Voorhout, "From Isolation to Interoperability," p. 14.

47 Human Rights Council Resolution S-19/1 (June 4, 2012), UN Doc. A/HRC/RES/S-19/1.

48 Convention on the Privileges and Immunities of the United Nations (February 13, 1946); Convention on the Privileges and Immunities of the Specialized Agencies (November 21, 1947).

confidential documents and materials produced or gathered by UN-mandated commissions of inquiry and fact-finding mechanisms cannot be summoned by national, regional, or international courts or tribunals. They can, however, be released if the UN decides to issue a waiver to allow their disclosure to judicial authorities. The decision to release is taken by the UN secretary-general (or a designated UN official) upon recommendation from the Office of Legal Affairs, which is responsible for assessing the request against the UN's policy and practice on the release of confidential information.⁴⁹

PERMANENT VERSUS AD HOC MECHANISMS

A final element to take into account when seeking to bring about an international investigation into attacks on healthcare is the permanent or ad hoc nature of investigative mechanisms. A number of mechanisms evaluated for this research project (such as the [IHFFC](#), the [MRM-CAAC](#), the [UNSG-MICBW](#), and the [OPCW's](#) investigative mechanisms) are permanent in nature. They have a clearly delineated and known mandate, purpose, and reporting procedure and have the advantage of disposing of preexisting financial and human resources that are generally adequate to perform their mandate. As such, once the decision to activate them is taken, they can be fully operational in a short period of time, which can significantly enhance the quality of the investigation.

Ad hoc mechanisms such as [UN-CoIs](#), [HRC-CoIs](#), [UNSC-PoEs](#), and the [IIIM-SY](#) can have the advantage of being tailored to a specific situation, but as their mandate and purpose are subject to negotiations by member states, they also risk being less clear in purpose and more politicized. At the same time, their ad hoc nature means that they cannot always rely on preexisting means of implementation—terms of reference, methodology, and human and financial resources—some of which may also be subject to negotiation by their mandating authority. Some ad hoc mechanisms can at least rely on preexisting financial resources, as is the case for [UNSG-BoIs](#), [UNSC-PoEs](#) and the [UNSG-MICBW](#), which are financed through the regular UN budget. Many commissions of inquiry,

however, have suffered not only from a lack of clarity of purpose but also from time limits and resources that were not commensurate with the nature and purpose of the investigations they were mandated to carry out.

Common Challenges in Investigating Violations of International Law in Armed Conflict

This final section discusses a number of challenges to investigating violations of international law, such as attacks on healthcare, in situations of armed conflict. Some of these challenges are inherent to investigating alleged violations of international humanitarian and human rights law. Others are less inherent to such investigations but typical for some of the mechanisms evaluated. Whether and to what extent these challenges can be overcome will have significant consequences for the quality of investigations and their potential impact on the ground.

ACCESS

Perhaps the most significant challenge when investigating alleged violations of international law in situations of armed conflict is to obtain full and unhindered access to the places or areas where alleged violations have occurred, including to victims, witnesses, the parties to the conflict themselves, and other actors who may have been involved in or bear partial responsibility for the incident in question. The obstacles to such access are variable, ranging from active hostilities, other security concerns related to the conflict, fear of reprisals, distrust of and reluctance to engage with outsiders, and general restrictions on movement or communications to denial of access and cooperation from parties to the conflict and deliberate efforts to hamper any independent investigation into their behavior on the battlefield.

While access is an obstacle common to all investigative mechanisms that work in situations of armed conflict, in general mechanisms that are more prevention-oriented and engage in confidential dialogue with parties to the conflict tend to

⁴⁹ See UN Secretariat, *Information Sensitivity, Classification and Handling*, UN Doc. ST/SGB/2007/6, February 12, 2007, available at www.un.org/en/ethics/information.shtml.

have better access than mechanisms that are more accountability-oriented and report publicly on their findings. This being said, where the parties to the conflict involved in the incidents under investigation fully cooperate with the investigation, many of the obstacles to access can be easily overcome, regardless of whether the investigation is geared toward prevention or accountability.

Other ways to overcome limited access are to use technology such as satellite imagery; messaging applications and online platforms to transmit or preserve audio or video footage and written or live testimonies; recourse to information collected by local actors; or interviews with displaced persons who can be accessed out of areas controlled by a party to the conflict, or even outside the country.

Finally, it should be noted that for the two mechanisms evaluated for the research project that were established by treaty (the [IHFFC](#) and the [OPCW's](#) investigative mechanisms) the treaty itself contains an obligation for the parties to the conflict concerned by the investigation to grant access, once a formal investigation is launched, to the investigative teams.⁵⁰ Similarly, if a commission of inquiry is established by the Security Council under Chapter VII of the Charter, this triggers an obligation for UN member states to cooperate, including, where appropriate, by authorizing or facilitating access to relevant areas and persons.⁵¹ In practice, however, such cooperation can and often is refused regardless of the obligation to cooperate.

CONSENT AND COOPERATION

Like access, the cooperation of the parties to the conflict involved in alleged violations of international law is key to a successful investigation, be it geared toward prevention or accountability purposes. In general, investigations that can count on the cooperation of the concerned parties to the conflict and that of the individuals involved in a specific incident or series of incidents have far better access to precise information and can rely on direct and well-informed witnesses (including

victims and those responsible for incidents or the circumstances surrounding them). For example, where the investigators have access to the targeting procedures of a party to the conflict, it is much easier to establish any shortcomings in them that could be addressed to prevent future incidents. Likewise, where investigators can count on the cooperation of parties to the conflict, they are much more likely to have access to the places where alleged violations have occurred and to victims, witnesses, and those responsible for or involved in the incidents. Moreover, direct engagement with the parties to the conflict on their behavior and compliance with international law not only contributes to the quality of an investigation but also increases the likelihood of follow-up and implementation of recommendations, and thus the potential of actual impact on the ground.

Consent and cooperation are closely interrelated. Where a party to a conflict has consented to the investigation, it is far more likely to cooperate with that investigation. On the contrary, where an investigation is carried out without the consent of the concerned party or parties to the conflict, it will be far more difficult to obtain their cooperation.⁵² Moreover, where parties to the conflict have consented to the investigation, there tends to be much less risk of actual or perceived politicization and bias.

Apart from the fact that the relevant parties to the conflict tend to cooperate more when they have consented to an investigation, the issue of consent is intrinsically linked to the principle of state sovereignty, which remains the cornerstone of international relations and international law. The crucial role of consent and cooperation from the concerned state parties to the conflict is therefore one of the main reasons that investigations at the national level—when they actually occur and are carried out properly and in good faith—tend to be much more efficient and effective.⁵³ To a large extent, this also holds true for international investigations that are carried out with the consent of the

⁵⁰ For the [IHFFC](#), see Protocol I to the Geneva Conventions (June 8, 1977), Article 90.4(a); for the [OPCW](#), see Chemical Weapons Convention (August 31, 1994), Verification Annex part XI, para. 15.

⁵¹ UN Charter, Art. 25.

⁵² In such cases, cooperation is more likely when the investigation is mandated or sanctioned by the Security Council, which can take legally binding decisions and has at least some power to enforce its decisions.

⁵³ Other reasons include the proximity to events; understanding of national and local context, culture, language, and customs; and cost-efficiency of relying on national and local infrastructure and procedures.

state parties concerned. On the contrary, cooperation with an investigation into alleged violations of international law is often very difficult to obtain when resorting to international mechanisms that can be established or activated without the consent of the concerned state parties to the conflict (such as [UN-CoIs](#), [HRC-CoIs](#), and the [MRM-CAAC](#)).⁵⁴ Therefore, in his recommendations to the Security Council for implementation of Resolution 2286, the secretary-general first and foremost urges states to carry out investigations into attacks on health-care at the national level, or by requesting *and consenting* to inquiries by the [IHFFC](#) (Recommendations 11.1 and 11.2). This being said, where member states fail to carry out investigations into serious violations of international humanitarian and human rights law themselves, the international community must step in and ensure that investigations do take place, and where necessary it must and is able to do so with or without the consent of the parties to the conflict (Recommendations 11.3 and 11.4).

Some of the mechanisms evaluated for this project cannot be activated without the formal consent of all state parties to the conflict (or at least of those concerned by the incidents under investigation). Perhaps the most poignant example is the International Humanitarian Fact-Finding Commission ([IHFFC](#)), which, perhaps precisely for this reason, has until recently never been used. While several attempts were made to activate the IHFFC (including to investigate attacks on health-care such as the bombing of an MSH hospital in Kunduz, Afghanistan), none of these came to fruition. Each time, the commission failed to obtain consent from the state parties to the conflict involved in the incident to open a formal investigation. The IHFFC is generally seen as one of the most appropriate mechanisms to investigate alleged violations of international humanitarian law for the purpose of restoring respect for the law and preventing future incidents. Now that it has finally been activated to investigate a specific

incident that occurred in Eastern Ukraine,⁵⁵ it will be interesting to see the commission at work.

As far as challenge inspections by the Organisation for the Prohibition of Chemical Weapons ([OPCW](#)) are concerned, any state party to the Chemical Weapons Convention can request them when another state party is alleged to have used chemical weapons. However, the OPCW's Executive Council votes on such requests, and by a majority of three-quarters can block the decision to accept the request. Depending on the membership of the Executive Council, the state accused of having used chemical weapons may well be in a position to block an investigation by the OPCW.⁵⁶ Finally, for some mechanisms (such as the [UNSG-MICBW](#), [UNSG-BoIs](#), and [UNSG-CoIs](#)) consent of the state concerned by the investigation may not be legally required but has in practice always been sought or given.

Other mechanisms, in particular commissions of inquiry and fact-finding missions established by the Security Council ([UNSC-CoIs](#)), General Assembly ([UNGA-CoIs](#)), and Human Rights Council ([HRC-CoIs](#)), can be, and usually are, established without the consent of the concerned parties to the conflict. This has resulted, for many of these commissions, in a serious lack of cooperation and no or very little access to the areas where the incidents occurred, or to victims, witnesses, and entities or individuals involved. While many commissions have been able to work around this obstacle by resorting to technology and interviews with persons who left or fled the country, the lack of access and cooperation remains a significant handicap in carrying out their work.

In order for an investigation to be effective, the consent of non-state parties to the conflict involved in the incidents under investigation should in principle also be sought. However, while some investigative mechanisms cannot be activated without the formal consent of concerned states, it seems that consent by non-state parties to the

54 Contrary to the Security Council, General Assembly, and Human Rights Council, however, the UN secretary-general only tends to establish commissions of inquiry or fact-finding missions after seeking and obtaining the consent of the parties concerned. Moreover, because listing the parties to the conflict in the annexes to the secretary-general's annual report on children and armed conflict automatically activates the Monitoring and Reporting Mechanism (MRM-CAAC) and as such does not require the consent of the parties concerned, the obligation to conclude and implement action plans with the UN to be de-listed generally translates into better cooperation with the mechanism.

55 International Humanitarian Fact-Finding Commission, "News from the IHFFC," May 19, 2017, and "News from the IHFFC," September 7, 2017, both available at www.ihffc.org/index.asp?Language=EN&page=news.

56 For an up-to-date list of council members, see www.opcw.org/about-opcw/executive-council/current-officers-and-members/.

conflict—which, under the traditional tenets of international law, are not formal subjects of the international legal order—would not be a formal requirement.

PUBLIC COMMUNICATION

As previously discussed, some investigative mechanisms work on a strictly confidential basis and use their findings in bilateral dialogue with the parties concerned, while others are mandated and required to report publicly on their findings. There are advantages and disadvantages to both, often dependent on the purpose for which an investigation is carried out.

But most investigative mechanisms have to deal with a certain tension between confidentiality and publicity in communicating about the fact that an investigation has been requested or is taking place, the level of cooperation from concerned parties or other stakeholders, and the nature of their findings and recommendations. Communicating too little may attract criticism from victims and other stakeholders. Communicating too much may attract the ire of concerned parties to the conflict or their allies and diminish cooperation and potential impact on the ground.

Again, while there is no hard-and-fast rule, in general confidential investigations tend to attract better cooperation not only from the parties to the conflict but also from victims and witnesses (who may fear reprisals or other negative consequences when seen or known to cooperate with an investigation) and from UN agencies working on the ground (who may be hampered in their operational work with parties to the conflict when seen or known to cooperate with an investigation into alleged violations). Depending on the context, confidentiality can contribute to either reducing or reinforcing actual or perceived politicization and bias. On the other hand, public communication around an investigation may also raise the reputational and political cost of non-cooperation with an investigation. It also often exerts more political pressure on parties to the conflict to take action themselves or on the international community to step in to change behaviors, ensure accountability,

or redress for violations of international law.

Moreover, while publicity around their cooperation may in some cases be an obstacle to cooperating, for many victims of serious violations of international humanitarian and human rights law, the opportunity to be heard and to be given a voice is extremely important—in particular through the work of UN-mandated commissions of inquiry and fact-finding commissions. This can to some extent make up for the lack of more formal accountability mechanisms such as truth and reconciliation commissions, criminal trials of individual perpetrators, or decisions on state responsibility by international courts.

Finally, in many cases of violations of international humanitarian or human rights law, including attacks on healthcare and in particular those that are highly visible, the role of the media cannot be underestimated. The quality and effectiveness of an investigation can to some extent be dependent on how it is portrayed in the media. Media attention and reports on investigations can influence perceptions on the neutrality and impartiality of the investigative mechanism and cooperation from parties to the conflict, victims, and witnesses. But it can also feed directly back into the conflict itself and its underlying political and community-level tensions.

At the same time, absence of communication on investigations can also create the impression that a specific investigative mechanism is not considered useful or relevant⁵⁷ or can reinforce suspicion of bias or political controversy surrounding the investigation. In the end, it is about finding the right balance between publicity and confidentiality, a balance that is not always easy to strike.

TIME LIMITS AND RESOURCES

As mentioned above, permanent investigative mechanisms (such as the [IHHFC](#), the [MRM-CAAC](#), [OHCHR-FFMs](#), and the [OPCW](#)) have at their disposal preexisting financial and human resources that are generally commensurate to the type of investigations they are mandated to carry out. The budget, funding, and staffing of most ad hoc mechanisms, on the other hand, need to be

⁵⁷ For example, the strictly confidential nature of the investigations and findings of the [IHHFC](#) have at times generated skepticism regarding its effectiveness. The IHHFC is currently engaged in internal discussions about whether it should make the requests it receives from state and non-state actors public, even if the investigation in the end does not go through. Such communications, some argue, may indirectly demonstrate the commission's relevance and effectiveness and help build precedent for future use.

established—and often negotiated—each time an investigation into a particular incident or series of incidents is opened.⁵⁸ Moreover, obtaining adequate staff and funding has not become easier with the proliferation of monitoring, reporting, investigative and fact-finding mechanisms that have been established over the past two decades. Commissions of inquiry and fact-finding missions established by UN organs or entities in particular tend to struggle to obtain the resources and time required to carry out effective investigations and fulfill their mandates.⁵⁹

Ad hoc investigative mechanisms have also in the past struggled to identify, recruit, and deploy staff with the expertise and experience required for the type of investigation to be carried out. To a large extent, that challenge has been overcome by the development of a pool of qualified and diverse experts maintained by OHCHR, which in most cases acts as the secretariat for UN-mandated commissions of inquiry and also recruits and employs most of their support staff. These mechanisms have also drawn on stand-by rosters of experts such as the one managed by Justice Rapid Response.⁶⁰

Another specific challenge that many UN-mandated commissions of inquiry face is the very short deadline for reporting imposed by the mandating authority. This is particularly challenging considering that these mechanisms are usually established to investigate all violations of international human rights and humanitarian law in a given situation of armed conflict rather than just one or a series of specific incidents. For example, the commission of inquiry established by the Human Rights Council to investigate the military operations conducted in the occupied Palestinian territories, and in particular the Gaza strip, in 2014 had less than a year to conduct its investigations and report back to the Human Rights Council. This was a very short time frame in which to cover “all violations of international humanitarian law and international human rights

law” that occurred in a very intense and complex conflict. Inevitably this short time frame affected the nature and quality of the investigations, a challenge the commission sought to overcome by focusing on specific incidents that amounted to grave violations of international law and demonstrated patterns of alleged violations.⁶¹

METHODOLOGY

Some mechanisms (such as the [MRM-CAAC](#)) have recourse to a very detailed, pre-established, and uniform methodology to investigate alleged violations of international law such as attacks on healthcare. The methodology of other mechanisms, however, in particular those that are ad hoc, is much less uniform and, at times, not fully considered prior to engaging in an investigation.

Until recently, investigative mechanisms established and mandated by different treaties and resolutions adopted by a variety of international authorities to investigate alleged violations of international humanitarian or human rights law did not follow a standardized methodology. This lack of standardization resulted from the fast-paced proliferation of international mechanisms investigating alleged violations of international law over the past two decades, the lack of a centralized mandating authority, and the ad hoc nature of the myriad of UN-mandated commissions of inquiry and fact-finding missions, whose methodology is largely left to the discretion of their independent commissioners or experts. This has led to important and often valid criticisms regarding the quality of investigations and the soundness of the resulting conclusions. It has also made such mechanisms particularly vulnerable to allegations of incompetence or political bias.

While the establishment of a clear and sound methodology at times remains a challenge, it has largely been overcome since the publication of OHCHR’s “Guidance and Practice for Commissions of Inquiry and Fact-Finding Missions on International Human Rights and

58 Notable exceptions are [UNSG-BoIs](#), [UNSG-CoIs](#), the [UNSG-MICBW](#) and [UNSC-PoEs](#), which are financed out of the regular UN budget and rely on UN Secretariat staff for administrative and technical support.

59 A notable exception is the Human Rights Council’s commission of inquiry on Syria, which has both an open-ended mandate and considerable resources at its disposal to carry out its work.

60 See OHCHR, *Guidance and Practice*, p. 18; Justice Rapid Response, “JRR Expert Roster,” available at www.justicerapidresponse.org/what-we-do/jrr-roster/; and “Rapid Investigative Expertise, Where It’s Needed Most,” available at <http://www.justicerapidresponse.org/wp-content/uploads/2017/08/JRR-Factsheet-2017.pdf>.

61 Human Rights Council, Report of the Independent Commission of Inquiry Established Pursuant to Human Rights Council Resolution S-21/1 (June 24, 2015), UN Doc. A/HRC.29/52, para. 11.

Humanitarian Law.” This guidance, along with important research efforts by practitioners and academics in recent years, has led to the adoption of increasingly professional, coherent, and homogeneous methodologies by both national and international fact-finding and investigative bodies. It has proven particularly helpful for the members and support staff of investigative mechanisms and has significantly improved the quality of analysis and reporting on alleged violations of international law. Moreover, methodologies are increasingly discussed and decided upon in advance and explained in reports. Robust methodologies and the resulting quality of findings and reporting have contributed significantly to insulating investigative mechanisms from political interference and preventing or rebuffing accusations of alleged incompetence or political bias.

It is useful to recall, however, that the type of investigation and methodology used is also dependent on the purpose for which the investigation is carried out (as explored above). In this light, it should be noted that the recent “turn towards accountability” by many UN-mandated commissions of inquiry (in particular those established by the Human Rights Council) raises a new set of methodological challenges.

The quasi-judicial nature of mandates to identify violations of the law that amount to international crimes as well as their individual perpetrators leads commissions of inquiry to articulate legal findings not only in terms of international humanitarian or human rights law but also in terms of international criminal law. At the same time, commissions of inquiry, which by definition are not judicial bodies, traditionally employ a standard of proof that is well below the “beyond a reasonable doubt” or “intimate conviction” standards required for criminal investigations. They usually also do not have the resources to carry out actual criminal investigations. A standard of proof that is more akin to “reasonable grounds to suspect a violation of international law” is justified where investigations are carried out for preventive and corrective purposes or even to establish patterns to identify and recommend avenues to ensure accountability for such violations. However, it falls short of what is required to conduct a criminal trial and sentence

a person for a crime. As such, the methodology and standard of proof—and often related expertise and experience—employed by many contemporary international commissions of inquiry do not correspond with the quasi-judicial aim and nature of their mandate and investigations.

As previously mentioned, in order for any investigation to be effective, it is important not only to be clear and transparent about its purpose but also to ensure that the mechanism mandated to carry out the investigation has the specific resources and expertise required and employs an adequate methodology adequate for achieving that purpose. Therefore, if a political decision is taken to resort to international commissions of inquiry as a temporary alternative to, or a useful bridge toward, actual criminal investigations and trials by competent judicial bodies (such as national or regional courts, the ICC, or ad hoc tribunals), their mandate, methodology and resources should be commensurate to achieving that purpose. Moreover, it has been suggested that the methodological challenges of commissions of inquiry mandated to establish the existence of crimes and the responsibility of individual perpetrators of such crimes could also be overcome by updating the existing OHCHR Guidance and Practice to reflect the quasi-judicial nature of such investigations.⁶²

COORDINATION AND INTEROPERABILITY

A final set of challenges comes with the variety of different mechanisms the international community has at its disposal to investigate violations of international humanitarian or human rights law such as attacks on healthcare (see Figure 2). Where more than one investigative mechanism can be or is being used to investigate a series of incidents or a broader situation in a given country, there are risks of duplicating efforts and confusing or burdening victims and witnesses. Moreover, while different mechanisms can investigate attacks on healthcare in parallel and for different purposes, there is also a risk of political cherry-picking and of competition for adequate resources and political support. This may reduce cooperation from parties to the conflict, impede follow-up on recommendations, and ultimately, lessen the potential impact of

62 D'Alessandra, “The Accountability Turn in Third Wave Human Rights Fact-Finding,” pp. 70–71.

investigations on the ground.

Such challenges can, to a large extent, be overcome through strategic thinking about which mechanism, or combination or sequencing of mechanisms, to use for which purposes and at which time in a specific context. Clarity on the purpose of specific investigative mechanisms and their comparative advantages and disadvantages in light of the specific context and surrounding political climate can and should inform such strategic thinking.

Moreover, where more than one mechanism is activated or envisaged to investigate attacks on healthcare in a specific context, synergies among these mechanisms should be fostered. To the extent feasible and compatible with specific mechanisms' procedures and working methods, efforts should also be made to ensure maximum coordination and cooperation. As such, sequencing or combining different mechanisms can result in tangible progress toward different purposes—from purely preventive and corrective action to addressing victims' grievances and ensuring accountability for violations of the law. Collectively, different mechanisms can achieve the ultimate goal of ensuring respect for and protecting the delivery of healthcare in situations of armed conflict.

Conclusion and Recommendations

In order to prevent attacks on healthcare and enable the delivery of adequate healthcare in situations of armed conflict, parties to armed conflict, individual member states, and the international community as a whole must take action to match the strong political commitments in Resolution 2286. Operationalizing the resolution and the UN secretary-general's recommendations for its implementation through practical measures on the ground must be the first and foremost priority. Ensuring systematic, full, prompt, effective, and independent investigations into alleged violations of the rules related to the protection of healthcare in armed conflict can contribute directly to preventing future attacks, minimizing the impact of conflict on the delivery of healthcare, addressing victims' grievances and needs, and ensuring those responsible for violations of international law are held to account. In order to

succeed, and regardless of their immediate purpose, such investigations should always ultimately aim to enhance respect for and protection of the delivery of healthcare on the ground.

The mapping and evaluation carried out for the purpose of this research demonstrate that the international community has a wide variety of international mechanisms at its disposal to investigate attacks on healthcare where the parties to the conflict are unable or unwilling to do so themselves. The research also showed that there is no need for new mechanisms to investigate attacks on healthcare, but rather that existing mechanisms should be used more systematically and strategically. Indeed, in order to leverage the advantages of different mechanisms, depending on the context and political climate in which specific incidents occur, it is important to think strategically about when and how to resort to one or more of these mechanisms, and to keep doing so over time.

Perhaps the most important element of such a strategic exercise is to be clear about the specific purpose for investigations into a specific attack or series of attacks on healthcare (see Figure 2) and to select the most appropriate investigative mechanism to achieve that purpose.

The research for this project has shown that different investigative mechanisms serve different purposes and that their distinct features can serve as comparative advantages in making actual progress on the purpose of investigations. For example, some mechanisms (the [IHFFC](#), [UNSG-BoIs](#), [OHCHR-FFMs](#), OHCHR field investigations, some of the [OPCW's](#) investigative mechanisms, and the [MRM-CAAC](#)) seem to be more appropriate for investigating specific attacks on healthcare for the purpose of identifying concrete corrective measures to prevent future incidents. Commissions of inquiry ([UN-CoIs](#), [HRC-CoIs](#)) are often more appropriate to report on broader patterns of violations that require structural reforms and to ensure that victims of repeated or systematic attacks on healthcare are given a voice and can participate in efforts to publicly report on serious violations of international humanitarian and human rights law. The listing of parties to armed conflict in the UN secretary-general's annual report on children and armed conflict not only triggers the Monitoring and Reporting Mechanism on Grave Violations Committed

against Children in Times of Armed Conflict (MRM-CAAC) in-country, and thus the obligation to negotiate action plans with the UN to prevent and address grave violations affecting children in armed conflict (including attacks on, and interference with the delivery of, healthcare) but also contributes to ensuring political accountability for belligerents flouting their obligations to protect under international law. Security Council panels of experts supporting sanctions committees (UNSC-PoEs) can contribute to holding those responsible for violations to account and punish them for their actions by imposing targeted sanctions. While the prosecution and punishment of perpetrators of attacks on healthcare that amount to war crimes or crimes against humanity will require the intervention of national, regional, or international criminal courts and tribunals, UN-mandated commissions of inquiry (UN-CoIs, HRC-CoIs) can also contribute to ensuring accountability in the broader sense and, given the appropriate mandate and resources, to opening successful criminal trials in the future.

In general, the quality and impact of an investigation by a specific mechanism tend to be higher when that mechanism serves a single purpose rather than seeking both preventive and accountability measures through a single investigative process. Depending on the context in which a specific incident or series of incidents occurred, it may be more important or urgent to make progress on one or another purpose. But simultaneous efforts can also be made to achieve different purposes by resorting to different mechanisms to investigate the same incidents. As such, the different mechanisms mapped and evaluated for this research can be seen as tools in a toolbox that can be used and sequenced to collectively contribute to preventing and addressing attacks on healthcare. The project's mapping and evaluation of international investigative mechanisms aim to assist states and other stakeholders in using the different tools in an informed and strategic way to ensure such investigations have maximum impact in protecting the delivery of healthcare.

Moreover, without seeking to be exhaustive or repeat existing recommendations for the implementation of Resolution 2286, the research revealed a number of concrete measures that could strengthen and support existing international

investigative mechanisms and contribute to strategic thinking about using them collectively to enhance respect for and protection of the delivery of healthcare in situations of armed conflict:

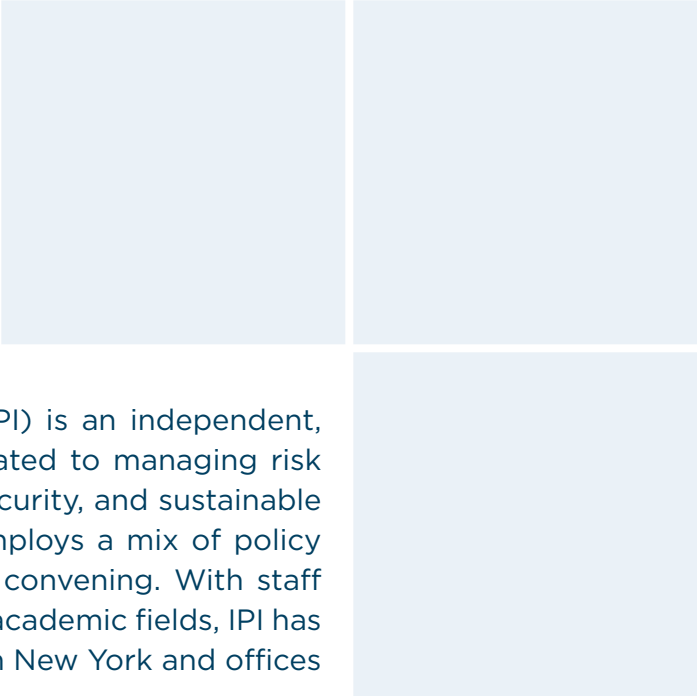
- **Make more systematic use of existing mechanisms to investigate attacks on healthcare:** Member states (both individually and collectively in the Security Council, General Assembly, Human Rights Council, and governing bodies of other international organizations) and other stakeholders in the implementation of Resolution 2286 should ensure the relevant existing fact-finding and investigative mechanisms systematically focus on attacks on healthcare and have the resources to do so. Such a focus on attacks on healthcare should be included in the work of UN peace operations, UN-mandated commissions of inquiry and fact-finding missions (UN-CoIs, HRC-CoIs, HRC-SPs), panels of experts supporting Security Council sanctions regimes (UNSC-PoEs), and the Monitoring and Reporting Mechanism on Grave Violations Committed against Children in Times of Armed Conflict (MRM-CAAC) through disaggregated monitoring and public reporting.
- **Systematically list parties to armed conflict who engage in attacks on healthcare in the annual report on children and armed conflict:** The UN secretary-general should systematically list parties to armed conflicts who engage in attacks on healthcare in the annexes to his annual report on children and armed conflict so as to trigger the related Monitoring and Reporting Mechanism (MRM-CAAC). The latter should step up its monitoring and disaggregated reporting on attacks on healthcare, and systematically include measures specifically designed to prevent and address attacks on healthcare in the negotiation of action plans with parties to armed conflict.
- **Include the denial of humanitarian access as a trigger to include actors in the report on children and armed conflict:** The UN secretary-general and other stakeholders in the UN's work on children and armed conflict should take the required steps toward including the denial of humanitarian access as a violation that triggers being listed in the secretary-general's annual report on children and armed conflict and

activates the Monitoring and Reporting Mechanism (MRM-CAAC). They should also integrate action to prevent and address the denial of humanitarian access, including medical assistance and relief operations, in action plans negotiated to allow delisting from the secretary-general's annual report.

- **Establish a platform to discuss strategic use of investigative mechanisms and foster synergies:** Member states with a particular commitment to operationalizing Resolution 2286 should establish an informal platform for discussing how to use existing national, regional, and international mechanisms to ensure that attacks on healthcare are investigated and that their findings and recommendations are followed up on. For example, they could establish a Group of Friends on Resolution 2286 in New York, possibly chaired by one or more of the co-penholders on the resolution, and liaise closely with the existing Group of Friends in Geneva. The discussions in such a platform should include both member states and other stakeholders, such as humanitarian and medical organizations and other civil society actors. It could also foster synergies between different mechanisms investigating specific attacks or patterns of attacks on healthcare or provide avenues to coordinate efforts, helping to ensure maximum efficiency and impact.
- **Expand the mandate of the International Humanitarian Fact-Finding Commission:** Member states should take the necessary measures to formally expand the treaty mandate of the International Humanitarian Fact-Finding Commission (IHFFC) to include situations of non-international armed conflict. Such action could include amending the relevant provisions of the additional protocols to the 1949 Geneva Convention or adopting a separate additional protocol to this effect. This would formalize the

Commission's readiness to investigate in situations of non-international armed conflict and as such broaden the range of attacks on healthcare (and other serious violations of international humanitarian law) the commission can formally investigate and work on with parties to armed conflict.

- **Impose targeted sanctions for attacks on healthcare when appropriate:** In contexts subject to Security Council sanctions regimes, Security Council sanctions committees, with the support of their respective panels of experts, should systematically evaluate whether attacks on healthcare occur and, where appropriate, include attacks on healthcare within the purview of Resolution 2286 as designation criteria and impose targeted sanctions against individuals or entities responsible for such attacks.
- **Identify the specific human resources needed to staff investigative mechanisms:** Stakeholders in the operationalization of Resolution 2286 should develop a clear and comprehensive set of skills, expertise, and resources required to investigate attacks on healthcare. This would enable the establishment of a pool of experts, inform the selection of investigative mechanisms' members and staff, and support them in their work.
- **Strengthen the operational capacity of UN agencies to investigate attacks on healthcare:** The UN secretary-general, the high commissioner for human rights, and member states should work together to strengthen the expertise and resources of OHCHR and other operational agencies to engage in field investigations into attacks on healthcare and bilateral dialogue with parties to armed conflicts aimed at preventing future incidents, addressing victims' needs, and holding those responsible for violations of international humanitarian or human rights law to account.



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