the belgrade minimum rules of procedure for international human rights fact-finding visits
CURRENT DEVELOPMENT: THE BELGRADE MINIMAL RULES OF PROCEDURE FOR INTERNATIONAL HUMAN RIGHTS FACT-FINDING MISSIONS

NAME: Thomas M. Franck, Board of Editors

SUMMARY:
... After 4 years of study by a special subcommittee, composed of members from Britain, Austria, Singapore, Kenya, Uruguay, Bulgaria, Cyprus, Ghana, the Netherlands, and the U.S., the 59th Conference of the International Law Association, held in Belgrade from August 18 to 23, 1980, approved by consensus a set of minimal procedures to protect the integrity of human rights fact-finding by nongovernmental organizations. ... While terms of reference should not unduly restrict the mission in the investigation of the subject and its context, they should be so specific as to indicate the nature of the subject to be investigated. ... Any person appointed a member of the fact finding mission should not be removed from membership except for reasons of incapacity or gross misbehaviour. ... The state concerned should have an opportunity to comment in writing on data referred to in paragraph 10 and statements referred to in paragraph 11. ... Petitioners ought ordinarily to be heard by the fact finding mission in public session with an opportunity for questioning by the states concerned. ... On the basis of data generated by its staff, written statements, and testimony of witnesses, the fact finding mission should make its own determination as to whether it needs to conduct an on-site inspection. ... A final report shall be prepared by the chairman reflecting the consensus of the fact finding mission. ...

TEXT:

[*163] After 4 years of study by a special subcommittee, composed of members from Britain, Austria, Singapore, Kenya, Uruguay, Bulgaria, Cyprus, Ghana, the Netherlands, and the U.S., the 59th Conference of the International Law Association, held in Belgrade from August 18 to 23, 1980, approved by consensus a set of minimal procedures to protect the integrity of human rights fact-finding by nongovernmental organizations. These norms, designated the Belgrade Rules, are intended to encourage states to cooperate with fact-finding missions and to contribute to the credibility of the facts found. Although the International Law Association is a nongovernmental forum, its formulations of international law carry considerable weight because of the expertise of the members and the organization’s broad geographical coverage. In future, those seeking a human rights investigation as well as those to be investigated will be able to point to the rules as the minimum — but not exhaustive — standard of fairness.

The rules are intended to curb serious abuses and departures from fundamental norms of due process, which were found by the research of the committee; their substance appeared in this Journal’s issue of April 1980. n1

The rules are as follows:

I. Terms of Reference (Mandate)

1. The organ of an organization establishing a fact finding mission should set forth objective terms of reference which do not prejudge the issues to be investigated. These terms should accord with the instrument establishing the organization.

2. The resolution authorizing the mission should not prejudge the mission’s work and findings.

3. While terms of reference should not unduly restrict the mission in the investigation of the subject and its context,
they should be so specific as to indicate the nature of the subject to be investigated.

II. Selection of Fact Finders

4. The fact finding mission should be composed of persons who are respected for their integrity, impartiality, competence and objectivity and who are serving in their personal capacities.

5. Where the mandate of the mission concerns one or several specific states, in order to facilitate the task of the mission, the government or governments concerned, whenever possible, should be consulted in regard to the composition of the mission.

6. Any person appointed a member of the fact finding mission should not be removed from membership except for reasons of incapacity or gross misbehaviour.

[*164] 7. The chairman and the rapporteur of the fact finding mission should not be replaced during the term of the mission except for reasons of incapacity or gross misbehaviour.

8. Once a fact finding mission has been established and its chairman and members appointed, no persons should be added to the mission as members except to fill vacancies in the mission.

III. Collection of Evidence

9. At the commencement of the mission, all material relevant to the purpose of the mission should be made available to it, with the assistance of the organization concerned.

10. Fact finding missions should operate with staff sufficient to permit the independent collection of data and should be assisted by such independent experts as the mission may deem necessary.

11. Fact finding missions may invite the submission of evidence that is in writing and contains specific statements of fact that are in their nature verifiable.

12. The state concerned should have an opportunity to comment in writing on data referred to in paragraph 10 and statements referred to in paragraph 11.

13. Both the petitioners, such as states, non-governmental organizations, or groups of individuals, and the states concerned may present lists of witnesses to the fact finding mission. The fact finding mission should make its own determination as to which witnesses it will hear.

14. Petitioners ought ordinarily to be heard by the fact finding mission in public session with an opportunity for questioning by the states concerned.

15. The fact finding mission shall in advance require the state concerned to provide adequate guarantee of non-retaliation against individual petitioners, witnesses and their relatives.

16. In case a guarantee, as referred to in paragraph 15, is provided to the satisfaction of the fact finding mission, the latter should, on hearing witnesses, either provide an opportunity for the state concerned to be present and to question witnesses, or make available to the state concerned a record of the witnesses' testimony for comment.

17. The fact finding mission may withhold information which, in its judgment, may jeopardize the safety or well-being of those giving testimony, or of third parties, or which in its opinion is likely to reveal sources.

18. On the basis of data generated by its staff, written statements, and testimony of witnesses, the fact finding mission should make its own determination as to whether it needs to conduct an on-site inspection.

IV. The On-Site Investigation

19. The fact finding mission should draw up its programme of work, including the list of witnesses it wishes to interview at the site of the investigation, places it wishes to visit, and the sequence, timing and location of its activities on the site.

20. The fact finding mission may operate as a whole or in smaller groups assigned to conduct specific parts of the investigation.

21. The fact finding mission should insist on interviewing any persons it deems necessary, even if incarcerated.
V. Final Stage

22. After conclusion of the on-site investigation, members of the fact finding mission should draw up a set of preliminary findings and submit these, together with supplementary questions where appropriate, to the state concerned, giving it an opportunity, within a reasonable time, to present comments and/or to rectify the matter investigated.

23. A final report shall be prepared by the chairman reflecting the consensus of the fact finding mission. In the absence of a consensus, the mission's report should contain the findings of the majority as well as any views of dissenting members.

24. In case a decision is made to publish the report, it should be published in its entirety.

25. The Organization establishing the fact finding mission should keep under review the compliance of states with their undertaking regarding non-reprisal against petitioners, witnesses, their relatives and associates.

FOOTNOTES:

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