

# INTERNATIONAL CRIMINAL INVESTIGATIONS AND THE MAJOR CASE MANAGEMENT SYSTEM



BY  
R. M. Baskey

A THESIS PRESENTED IN PARTIAL COMPLETION OF THE REQUIREMENTS OF  
The Certificate-of-Training in United Nations Peace Support Operations



Peace Operations Training Institute®

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United Nations Peace Support Operations  
(COTIPSO)

Detective Sergeant R. M. "Rob" Baskey B.E.S. Ontario Provincial Police

4/22/2011

*"In the search for the truth, success lies in the integrity of the pursuit"*

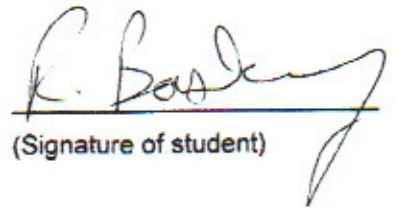
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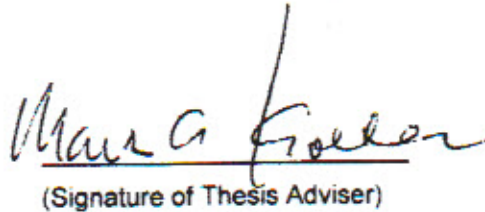
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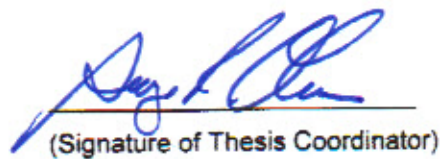
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## 1.0 Introduction

Criminal investigations whether domestic or international face the same inherent problems. Whether this is the investigation into acts of genocide in Srebrenica and Rwanda or the investigation of a multi-jurisdictional serial killer, common problems emerge. History provides us with several examples of the transitional justice, from an act of war to a criminal act when an individual becomes responsible for his actions. It is at this point that nations become responsible for the protection of their citizens and must investigate and prosecute the crimes. This is also where war crimes meet domestic crimes and the two proceed on a common path.

The signs of crimes related to the Responsibility to Protect are always apparent. Swift diplomatic intervention would be the first step for countries that fail to protect their own people. The United Nations is natural choice to lead the process of intervention due to its historical involvement and established administration. Madeleine Albright is the former United States Ambassador to the United Nations in the Clinton Administration at the time of the crisis in Rwanda and she brought it down to one factor; "governments don't set up for these crises and have to start from scratch."<sup>1</sup>

The response mechanism is already in place within the United Nations and member countries and the process is underway to refine it.

Identifying these problems requires the examination and comparison of particular investigations. Three United Nations Security Council sanctioned international investigations were examined to discover the problems encountered by international criminal investigators. A comparison was then made to the Ontario experience of Major Case Management of Criminal Investigations as the learning moment that created the system and is offered here as a model for major case management in an international setting. All of these crimes represent a benchmark for a standardized major case management response. Many fundamental elements of criminal investigations can be identified as being inherently problematic. Examples of the major categorical problems identified in this examination are; The Right People, Political Pressure, Best Evidence, Background Investigation, Investigative Strategy, Communication, Interference, Major Case Management System, Evidence, Prosecution and Information Management. Many are found in several or all of the major investigations examined.

The data is limited to descriptive text from various references and the comparison is rudimentary but ultimately serves the purpose. It is clear that each investigation encountered some of the same problems.

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<sup>1</sup> *Worse Than War: Genocide, Eliminationsism, and the Ongoing Assault on Humanity*. Director Mike Dewit, writer Daniel Jonah Goldhagen, DVD, JTNProductions and 13/WNET, 2010.

The problems are not worded in the same manner but can be categorized in order to show that they are common. Previous studies, reports and investigative files would serve as a more exact source and provide for more precise results.

Three international criminal investigations undertaken or initiated by Un Security Council Resolution have been chosen for examination. They are the UN International Independent Investigation (UNIIC) of the assassination of Rafik Hariri and related assassinations in Lebanon in 2005, the investigation of genocide and crimes against humanity by the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the investigation into the genocide in Rwanda by the International Criminal Tribunal for Rwanda (ICTR). The procedure was to examine the investigations to find the common or inherent problems or patterns that exist in each and then compare them. Ultimately they were compared to the Ontario Experience of the Campbell Inquiry, a review of the investigation of serial killer Paul Bernardo that represents the "crisis" in Ontario criminal investigations and resulted in the Ontario Major Case Management System.

The history of the UN's efforts to establish the Responsibility to Protect is covered beginning in 1999/2000 with Secretary General Kofi Annan's call for an international response to the systemic failure to the genocides in Rwanda and Srebrenica. This was followed by the establishment of the International Commission on Intervention and State Sovereignty in 2000. The origin of the Responsibility to Protect was the World Summit in 2005 when member states gathered to re-affirm their commitment to the Charter of the United Nations. Secretary General Ban, Ki-moon's approach to implementing the Responsibility to Protect is the essence for criminal investigations in Canada. Canada is a member country with a long history of participation with the United Nations. The four crimes related to the Responsibility to Protect are already enshrined in the Criminal Code of Canada. It is therefore important to know the present political environment in Canada and the national interests at stake. Presently Canada's largest foreign contribution is to the combat mission in Afghanistan. The combat mission will end in July 2011 however Canada also has a Provincial Reconstruction Team (PRT) working in Afghanistan. This is an American concept aimed at "nation-building" that Canada has accepted because it satisfies the "Three D Approach" to foreign policy of Defence, Diplomacy and Development. The PRT will ultimately present the vehicle by which Canada contributes to the Responsibility to Protect in failed and failing states.

The advent of international criminal tribunals created a dilemma for the United Nations. Should the UN create a large scale International Humanitarian Law enforcement body or establish domestic judicial systems capable of delivering justice by intervention of member states. Member states would contribute by delivery of transitional justice in war-torn or failed states until domestic systems were in place. The history of international criminal investigation is covered from the "Nuremberg Legacy" to recent efforts in Haiti to establish comprehensive United Nations Policing Missions. This is further evidence that the United Nations is the logical body to continue with "Rule of Law" and "Responsibility to Protect" efforts in

the international setting. The United Nations already has a process in place for intervening in State Sovereignty when crimes related to the Responsibility to Protect are committed. It is based on the Nuremberg Legacy and has been implemented in the recent past with the International Criminal Tribunal for the Former Yugoslavia (ICTY) and The International Criminal Tribunal for Rwanda (ICTR). The UN is firmly entrenched in its efforts to improve the Rule of Law around the world and therefore represents the logical agency to continue. With a history of peacekeeping and a network of member states the UN has taken a more comprehensive approach to all of the disciplines of policing. Haiti is an example of where the United Nations still falls short in its efforts in international policing and international criminal investigations

The Ontario Major Case Management System should be implemented in international criminal investigations as a comprehensive uniform approach.

The United Nations should establish a pool of qualified police officers, training partnerships, common levels of preparedness and standard operating procedures for the purpose of undertaking international criminal investigations.

Standing Police Capacity should include criminal investigators. Measuring effectiveness and evaluating the impact of the rule of law assistance is the key to UN efforts and the backbone of the Ontario Major Case Management System.

## **2.0 Responsibility to Protect**

At the United Nations General Assembly in 1999, and again in 2000, Secretary-General Kofi Annan asked;

*“If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – two gross and systematic violations of human rights that affect every precept of our common humanity?”<sup>2</sup>*

The Government of Canada responded together with a group of major foundations, in announcing at the General Assembly in September 2000 the establishment of the International Commission on Intervention and State Sovereignty (ICISS). The ICISS had a mandate to debate the legal, moral, operational and political questions and report to the Secretary-General.<sup>3</sup>

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<sup>2</sup>Gareth Evans and Mohamed Sahnoun, *Report of the International Commission on Intervention and State Sovereignty* (Ottawa, Canada; Her Majesty The Queen In Right Of Canada, 2001), p. VII.

<sup>3</sup>Ibid.

Former Canadian Foreign Affairs Minister Lloyd Axworthy, initiated the Commission and chaired the Advisory Board, and his successor John Manley carried it through. Allan Rock was the ambassador to the United Nations at the time that the resolution was passed. Canadians were strong supporters of the concept and there is a sense of ownership by Canadians.

The World Summit in 2005 was a landmark conference that brought world leaders together at the United Nations Headquarters on September 14<sup>th</sup> and 15<sup>th</sup>, 2005 in New York. The conference was meant to have member nations reaffirm their commitments to the Charter to the United Nations and to provide multilateral solutions to problems in development, peace and collective security, human rights and the rule of law and strengthening of the United Nations.

The “Responsibility to Protect” phrase came out of a debate on Peace and Collective Security regarding sovereign states responsibility to their populations. It was recognized that sovereign states had a responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. The International community has a responsibility to assist individual states and to assist the UN in early detection. The international community also has a responsibility to use appropriate diplomatic, humanitarian and other peaceful means in accordance with Chapters VI and VIII of the Charter. In cases where the above are inadequate member states will take collective action through the Security Council in accordance with Chapter VII of the Charter to protect those populations. The member states also committed to capacity-building for states to protect their populations. This became the foundation for the United Nations implementing the “Responsibility to Protect”.<sup>4</sup>(See Appendix “A”)

The International Commission on Intervention and State Sovereignty stated that the “external military intervention for humanitarian protection purposes has been controversial both when it has happened — as in Somalia, Bosnia and Herzegovina and Kosovo — and when it has failed to happen, as in Rwanda”.<sup>5</sup> The Commission identified three elements of the Responsibility to Protect;

1. The responsibility to prevent,
2. The responsibility to react, and
3. The responsibility to rebuild.

In 2009 the Secretary General of the United Nations Ban, Ki-moon reported on the implementation of the Responsibility to Protect and stated that it would become one of the key issues of his tenure. “Eliminating

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<sup>4</sup>The United Nations General Assembly. *The Outcome Document of the World Summit 2005* (New York: UN/Res/60/1, October 2005), 31.

<sup>5</sup> Ban, Ki-moon, *Report of the Secretary General – Implementing the Responsibility to Protect* (UN A/63/677, 12 January 2009), 7.

mass atrocity crimes will continue to be one of the cardinal objectives of my tenure as Secretary-General.”<sup>6</sup> Implementing the responsibility to protect would be the edifice supported by a “three pillar approach.”<sup>7</sup>

Pillar one is the protection responsibilities of the State. This enduring responsibility of the state is to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement. The declaration by the Heads of State and Government in paragraph 138 of the Summit Outcome that “we accept that responsibility and will act in accordance with it” is the bedrock of the responsibility to protect.

Pillar two is the International assistance and capacity-building. This is the commitment of the international community in assisting the State in accomplishing its obligation to protect its population. It seeks to draw on the cooperation of Member States, regional and sub-regional arrangements, civil society and the private sector, as well as on the institutional strengths and comparative advantages of the United Nations system. (See Appendix “A” Report of the Secretary General – Implementing the Responsibility to Protect)

Pillar three is a timely and decisive response. This is the responsibility of Member States to respond collectively in a timely and decisive manner when a State is not living up to its responsibility to protect. These responses are not always one of “use force” or do nothing. The United Nations has a number of choices that include the pacific measures under Chapter VI of the Charter as well as more coercive measures under Chapter VII. The key to maintaining the strength of this pillar lies in an early, flexible response tailored to the specific situation.<sup>8</sup>

The Secretary General goes on to comment that part of pillar two, capacity building is that good ideas and successful practices are not dictated by politics or economics. The responsibility to protect is not limited to poor countries. More research and analysis are needed. States that are able to handle their internal diversity are more likely not to fall into situations where their populations become subject to crimes relating to the responsibility to protect. Ban, Ki-moon suggests that States need to become party to international instruments on human rights, international humanitarian law and refugee law as well as the Rome Statutes of the International Criminal Court as steps to prevent crimes relating to the responsibility to protect. These international standards should be enshrined in national laws. The four crimes relating to the responsibility to protect as well as their incitement should be criminalized in domestic laws. Law

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<sup>6</sup> Ban, Ki-moon, *Report of the Secretary General – Implementing the Responsibility to Protect* (UN A/63/677, 12 January 2009), 29.

<sup>7</sup> *Ibid.*, 8.

<sup>8</sup> *Ibid.*, 9.

enforcement and justice officials should be trained in human rights, international humanitarian law and refugee law. A lively civil society, a free press and openness to international scrutiny can help to correct the abuses of the justice system and will also assist in preventing crimes relating to the responsibility to protect.

The Rome Statute of the International Criminal Court reflects the States obligation to its populations in pre-existing, treaty based and customary international law. The crimes related to the responsibility to protect are also reflected in the Rome Statute. It is the obligation of the International Criminal Court to punish the individual perpetrators of the related crimes. The International Criminal Court and ad hoc war crimes tribunals set in motion processes and mechanisms for identifying, investigating and prosecuting those most directly responsible for crimes and violations relating to the responsibility to protect, an essential tool for implementing the responsibility to protect.<sup>9</sup>

National Judicial processes are the first line of defence for the responsibility to protect. The Rome Statute compliments measures undertaken by individual States. There are 108 States that are party to the Rome Statutes and the International Criminal Court accepting their responsibility to protect. National authorities should assist the International Criminal Court and other international tribunals in locating and apprehending individuals, at whatever level, who are accused of committing or inciting crimes and violations relating to the responsibility to protect.<sup>10</sup>

Ban, Ki-moon's Report of the Secretary General - Implementing the Responsibility to Protect (2009) identifies the approach of member countries providing the resources to prevent and reconcile the Responsibility to Protect and also the inherent problems of mobilizing an investigative team to deploy around the world.

On occasion states have sought the assistance of the United Nations, neighbouring countries, and independent organizations, specialized non-governmental groups in establishing national human rights institutions and to encourage the independence of those institutions from governments. Ban, Ki-moon advocates a State-to-State learning approach and sites several examples; "the transfer of best/good practices, such as through the African Peer Review Mechanism under the New Partnership for Africa's Development or through the standards established for gaining membership in the European Union." He then goes on to suggest that a similar peer review mechanisms might be implemented to introduce criteria for the responsibility to protect when trying to gain membership in organizations like the European Union. Countries will regularly leave themselves exposed and subject of complaints of their human rights violations to "third party investigation" if it will benefit them in the public eye and allow them to maintain

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<sup>9</sup> Ibid., 12.

<sup>10</sup> Ibid.

their access to American Aid Funding. Perhaps this should be part of the criteria for membership or funding in the first place.<sup>11</sup>

This is precisely the point made above that countries like Canada have enshrined the four crimes related to the responsibility to protect into their domestic law. Canada is well suited for mentoring other countries because of an established system of investigation of these types of crimes that is already in place. Canadians are also well prepared for the next pillar, a timely and decisive response.

The Secretary General reports that this should be a collaborative effort of education, training and assistance by different organs of the United Nations and members states. Among those in a position to contribute are the United Nations High Commissioner for Human Rights, the United Nations High Commissioner for Refugees, the Emergency Relief Coordinator, the Special Adviser on the Prevention of Genocide, other special advisers, special representatives and envoys of the Secretary-General, and ranking officials of the United Nations, its development agencies and the Bretton Woods institutions. When supported by Member State diplomacy, they will be more persuasive.<sup>12</sup>

In its resolutions 1612 (2005) and 1820 (2008), the Security Council underscored that rape and other forms of sexual violence could constitute war crimes, crimes against humanity or constitutive acts with respect to genocide. In its resolution 1820 (2008), the Council recognized that widespread and systematic sexual violence was a security problem that should be monitored by the Council. Systematic sexual violence, can be every bit as destructive to communities as more conventional weapons.<sup>13</sup> The difficulty in the investigation of what may be the most prevalent of war crimes is the sheer number of occurrences. The individuality of rape would create some investigative challenges because of the nature of identification issues that are characteristic of war crimes investigation. Because prosecutors are only required to identify victims based on their relationship to an ethnic or religious group in order to prosecute the perpetrator of a war crime it would seem far easier to prove mass murder than mass rape because the numbers of rape victims would be greater. The investigation of mass killings is more appalling to people because they can see the damage done. The horror of dead and mutilated bodies attracts far more attention than would the invisible mental scars borne of rape victims. To investigate each individual rape would be a daunting task however gathering information from a live victim has its investigative advantages as well. This issue certainly requires more follow-up.

There are some regional and sub-regional efforts presently taking place that require the expertise and experience of member states for example the special political missions in Guinea-Bissau and the Central

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<sup>11</sup> Ibid., 13.

<sup>12</sup> Ibid., 15.

<sup>13</sup> Ibid., 16.

African Republic. The old saying of an “ounce of prevention” rings true as an investment by member states. Building local institutions in a previously or presently conflicted state takes considerable skill from outside democratic member nations. Preventing crimes related to the responsibility to protect requires, building cultural and political bridges, mediating differences, disseminating global values and helping to build durable local institutions, all in conditions of uncertain security. But the idea is much more economically palatable than the cost of post-conflict peace operations of the United Nations. A number of useful initiatives along these lines are being considered under the African Union-United Nations 10-year capacity-building programme.<sup>14</sup>

Helping conflicted or failed States to help themselves is the essence of this paper. The idea is to develop a civilian response with expertise in international criminal investigations in responding to situations relating to the responsibility to protect in societies undergoing domestic chaos and strife. One of the main difficulties is to identify and mobilize sufficient numbers of police and civilians with the skills and training required to deal with crimes relating to the responsibility to protect. The Secretary General states that “There have been a host of proposals by Governments and civil society alike for creating a standing or standby rapid-response civilian and police capacity for such emergencies. I would encourage further creative thinking about such an option and will ensure its careful review by the relevant United Nations officials.”<sup>15</sup>

The Secretary General goes on to report that the concept of “the Rule of Law” is fundamental to preventing the perpetration of crimes relating to the responsibility to protect. He calls for donor countries to increase their contributions to the rule of law to ensure equal access to justice and to improve judicial, prosecutorial, penal and law enforcement services. That training and education based on the Ontario experience in the management and investigation of major crimes is the key to the successful investigation of crimes related to the responsibility to protect. The best practices by civilian police experts using systems already in place in Ontario and having that at the disposal of the United Nations is a major contribution to the concept of the rule of law. “The United Nations and regional organizations should undertake region-to-region learning and lessons-learned processes concerning assistance relating to the responsibility to protect, given how new this field is.”<sup>16</sup>

As the first two sentences of paragraph 139 of the Summit Outcome make unambiguously clear, pillar three is integral to the strategy for fulfilling the responsibility to protect that was agreed upon by the assembled Heads of State and Governments. According to the opening sentence, “the international community, through the United Nations, also has the responsibility to use appropriatediplomatic,

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<sup>14</sup> Ibid., 17.

<sup>15</sup> Ibid., 18.

<sup>16</sup> Ibid., 21.

humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity". The wording suggests that the intent is for this to be an ongoing, generic responsibility that employs the kind of peaceful, pacific measures specified in Chapter VI and in Article 52, Chapter VIII. The second sentence of paragraph 139 underscores that a wider range of collective actions, either peaceful or non-peaceful, could be invoked by the international community if two conditions are met: (a) "should peaceful means be inadequate", and (b) "national authorities are manifestly failing to protect their populations" from the four specified crimes and violations. In those two cases, paragraph 139 affirms that "we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate".<sup>17</sup>

### **3.0 Canadian Defence, Diplomacy and Developmental Assistance**

The importance of understanding Canadian politics and foreign policy cannot be understated in understanding how Canada makes its contributions to the three pillars of the implementation of the responsibility to protect. Presently Canada's largest international contribution is made to a combat mission in Afghanistan. Paul Martin's Liberal Government of 2005 initially made Darfur one of its priorities. "Peacekeeping in Darfur" rather than the "War in Afghanistan" was something that Canadians would approve of. At that time there were no western countries involved in the crisis in Darfur. Prime Minister Martin made it known to the UN and African Union that Canada was prepared to provide troops to an international coalition to protect innocent civilians from the militias in Darfur. US Secretary of State Colin Powell deliberately labelled the crisis "genocide" as it triggered precise international legal obligations. Darfur did not materialize and ultimately Canada was committed to Afghanistan. The Ontario Provincial Police has made an ongoing commitment to monitoring the crisis in Darfur. The OPP has provided several officers to the mission recently.

The United Nations sanctioned the invasion of Afghanistan as a just war. Al-Qaeda had planned the attack on the United States in the sheltered space provided by the Taliban. The United Nations approved military operations by the United States in September 2001; in early October, NATO, for the first time in its history, invoked the obligation of all members of the alliance to come to the assistance of a member state that had been attacked and the United Nations Security Council authorized the International Security Assistance Force (ISAF) on December 20<sup>th</sup>, 2001.

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<sup>17</sup> Ibid., 29.

ISAF was limited by UN Resolution to “Kabul and its environs,” an area about 3600 square kilometres for two years.<sup>18</sup> Karzai’s government did not extend beyond Kabul. There was no national army or police, nor functioning state to referee the struggle among the ethnic groups and the tribes. Canada as a member of NATO is fighting in Afghanistan because the Taliban government supported those who planned and executed an attack against the World Trade Centre and the Pentagon. The fact that the Taliban’s mistreated women and violated their basic human rights did not play into the decision to go to war in Afghanistan. However the media has used this fact rather effectively in swaying Canadian public opinion. The April 5<sup>th</sup>, 2009 headlines in the Toronto Starstate “Leaders Blast Afghan Law”<sup>19</sup> that is accompanied by a picture of the First Lady Michele Obama. The April 16<sup>th</sup>, 2009 headlines in the Globe and Mail reads “We are not the property of men.”<sup>20</sup> A by-line indicates that our troops are not linked to the human rights issue. In a post-Taliban Afghanistan women’s basic human rights are still in danger as western countries reacted to a new law in Afghanistan that allowed women to be raped allowing men to demand sex from their wives. Stories in western newspapers may not have taken us there but it does help to keep us there. The Taliban stoned women to death for years while most of the world looked the other way. The Taliban that supported Al-Qaeda was removed by force very quickly and Canada sent troops to Kandahar in 2002 to stabilize a peace, to help the Afghan people initially to recover, not to fight a war.

On February 10<sup>th</sup>, 2002 Canada was approached by the International community for assistance in maintaining peace and security in Afghanistan for the UN-mandated mission in Kabul. At that time Canada was willing to serve with a battle group and a brigade head-quartered for a period of one year, starting late in the summer. Canada’s leadership in ISAF was to be short-term of one year.

On April 16<sup>th</sup>, 2003 NATO took responsibility for ISAF. From August NATO assumed the lead role from Germany and the Netherlands for strategic coordination, command and control of ISAF. ISAF continues to operate under the United Nations mandate.<sup>21</sup>

Canada’s Chief of Defence Staff General Rick Hillier was the author of Canada’s Defence Policy Statement that guided Canadian Foreign Policy in places like Afghanistan. Failed and failing states like Afghanistan and Haiti and the emergence of global terrorism were the essence of the document. Then

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<sup>18</sup> Janice Gross Stein and Eugene Lang, *The Unexpected War: Canada in Kandahar* (Toronto: Penguin Books Ltd., 2007), 286.

<sup>19</sup> Author Unknown, *Toronto Star*, April 5<sup>th</sup>, 2009.

<sup>20</sup> Author Unknown, *Globe and Mail*, April 16<sup>th</sup>, 2009.

<sup>21</sup> Janice Gross Stein and Eugene Lang, *The Unexpected War: Canada in Kandahar* (Toronto: Penguin Books Ltd., 2007), 95.

General Hillier introduced and developed the concept of the “three-block war.” General Hillier proposed a unified approach to military operations with transformed command structures, fully integrated units, and better coordination with other government departments, advanced interoperability with other allied forces and better intelligence, surveillance and reconnaissance capabilities. The biggest threat to global peace and security was failed and failing states. This is where the international community expects Canada to deploy in stabilization, humanitarian and combat roles. Bosnia, Somalia, Afghanistan are places where Canada has deployed in the past. The new front in the War on Terror is Yemen. The Three-block war was developed by the United States Marine Corps to describe an urban conflict zone, in the developing world in which one city block will require humanitarian relief, another will require stabilization and a third will require combat troops. This is no longer traditional peacekeeping along a cease fire line. These are international peace and security challenges of the Post-Cold War era that require military and civilian cooperation.

Canada is now one of the five largest bilateral donors to Afghanistan. Even though Canada is a large and significant donor, its development assistance is only one tenth of what it is spending on the military effort in Afghanistan. This is a strange skewing of priorities. Money is distributed through multi-lateral agencies like the World Food Program, and 43% goes to the Afghan government so there is an Afghan face on the development.<sup>22</sup> Canada has initiated The Three D’s Strategy of defence, development, and diplomacy. This is a “whole of government” approach to focus all of Canada’s assets in a coherent strategy.<sup>23</sup> The department of National Defence (DND), the Department of Foreign Affairs and International Trade (DFAIT) and the Canadian International Development Agency (CIDA) communicate and work together in Afghanistan. The international community has spent only eight percent of the total funds it committed to Afghanistan between 2002 and 2006 on development and poverty relief.<sup>24</sup> The conventional wisdom is diametrically opposed: eighty percent of the spending should go to economic, political and social development. The four critical problems that could put at risk all the hard won gains are; weak governance, corruption, the opium economy and security.

According to former Defence Minister Bill Graham our role in the “Three D’s” is “quintessentially Canadian: helping re-build a troubled country and giving hope for the future to a long suffering people.”<sup>25</sup> The weakness of Foreign Affairs is serious, for it no longer provides a strong counter-weight to DND. In 2007 an integrated task force that would assemble the very best Canadian Experts was

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<sup>22</sup> Ibid., 270.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid., 266.

<sup>25</sup> Ibid., 199.

implemented to coordinate the “Three D’s.” The head of Foreign Affairs David Mulroney, assured that all major changes in policy – including military policy – now go through the Afghan Task Force, which Mulroney heads.

Britain’s example is to put its money for all three departments in a single “crisis pool” for each mission and all three departments compete for funding. The result is a much more tightly integrated programming.

The Provincial Reconstruction Team (PRT) was developed by the U.S. Army for Afghanistan as an exit strategy for their combat mission in Afghanistan. PRT’s would include both military and civilian elements working together in the Afghan Provinces. The official role was to “conduct operations to strengthen the interim Afghan Transitional Authority’s through effective interaction with regional, political, military and religious leaders, the UN Mission in Afghanistan, Security Sector coordinating bodies, international organizations and non-governmental organizations within the regions.” The teams were to “encourage peace and stability within provinces/regions and monitor the supervision of developmental activities throughout Afghanistan.” This fit very well into Canada’s Defence Policy of the “Three Block War” and the “Three D’s Strategy” for co-ordinating government ministries on the ground.

Each PRT engages directly in reconstruction and development. Each team is tailored to the specific needs of the region. This focus may include training police, infrastructure development or supporting local government administration. PRT’s are the core of the nation-building strategy that the US developed for Afghanistan. The idea was to spread PRT’s out over the whole of Afghanistan with at least one PRT per coalition country. The purpose was;

- 1) help rebuild and extend security throughout Afghanistan
- 2) Permit the Americans to gradually reduce their footprint in Afghanistan by bringing in Europeans, Canadians and other coalition partners to do the longer-term reconstruction work.

The “nation-building” concept was developed to encourage other nations to take responsibility for provincial teams. The Germans saw reconstruction teams as an alternative to counterinsurgency or combat and an opportunity to stabilize. Their first PRT’s in Feyzabad and Konduz north of Kabul contained 30-50 civilian experts and 80 soldiers along with commitments from other European countries.

Afghanistan is a major priority for Canada and we are presently providing \$600 million in aid. Canada has a history of peacekeeping and aid. Afghanistan is in need of every aspect in life especially education and health care. Coincidentally the Deputy Minister of the Interior for Afghanistan advised that they were in desperate need of police training especially border police. Canada’s former Minister of Defence

MaCallum at the time explored the concept of a Royal Canadian Mounted Police (RCMP) contribution to the Provincial Reconstruction Team concept.

Canada's PRT brought together development officers, military personnel, civilian police officers, correctional services staff, and diplomats in a single unit in Khandahar to develop, monitor and focus Canadian strategy in southern Afghanistan. Their job is reconstruction. The funding goes directly from Canadian soldiers to the Afghans. As is indicated by the Secretary General in his report above, this is an integrated approach to the concept of the "rule of law".

The Canadian PRT recognized early on that they had a big problem with the police in Kandahar. The head of the United Nations Mission in southern Afghanistan Talatbek Masadykov was advised the Afghan police officers moved in behind Canadian Forces and behaved like criminal gangs ransacking homes, burning shops, stealing valuables, cash and transportation. The police proposed that the people had to join the Taliban in order to be protected from the government.

"A joint report by the Pentagon and the State Department found that the police force in Afghanistan was largely incapable of carrying out routine law enforcement."<sup>26</sup> Colonel Bernard Horn advised that they were "young, untrained, and answerable to the governor of their respective province, they resemble and behave more like common thugs than police."<sup>27</sup> The response seemed elementary to the experts on the ground and they proposed a new police training academy in Kandahar that would focus on middle level police officers.<sup>28</sup>

Canada plans to end its combat mission in Afghanistan in 2011. It has been proposed that Canada could withdraw its combat troops from ISAF but offer a second PRT that would deploy elsewhere in Afghanistan, not on the front lines, and keep its team in Kandahar as well. It could leave its Strategic Advisory Team (SAT), a team of military officers – along with one official from CIDA – seconded to ministries in the Afghan government to help build their capacity. The team has established extraordinary relationships with ministers and ministries in the Afghan government and other NATO countries have expressed interest in adding a member to Canada's team. The Strategic Advisory Team is an aid project worked out by Afghan President Hamid Karzai and Canadian Military Commanders. Fifteen Advisors most from the Canadian Forces work with the Afghan government in Kabul on planning the Afghan Development Strategy, the basic economic strategy for objectives and implementation. It is a 10-20 year plan.

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<sup>26</sup> Ibid., 222.

<sup>27</sup> Ibid., 223.

<sup>28</sup> Ibid., 278.

Canada could also commit a significant number of army and police officers to train the Afghan National Army and Afghan National Police, two institutions that are in urgent need of assistance. One effort by ten RCMP officers with the PRT in Kandahar helped to train Afghan National Police officers including some female officers. Using Canadian funds they built two police stations, provided 12 police trucks, supplied a wide range of police equipment and paid a local tailor to make 1000 uniforms for the ANP. Local mechanics were found to maintain the trucks that created a few jobs for Afghans in a country with a very high unemployment rate.

#### **4.0 Canada, National Interests and Values**

Canada participated in UN Peacekeeping for several reasons. Initially we got involved in the Congo in 1960 because of the Soviet effort to de-colonize Africa. In 1964 the Greeks and Turks faced-off over Cyprus. Canada supported peacekeeping in the region because both Greece and Turkey were NATO allies and in the midst of the Cold War, trouble in that region would have left the whole of the southern flank open to the Soviets.

The Canadian government believed that the commitment of troops to peacekeeping missions enhanced our international credibility. Canada sought to increase influence within the UN and Canada won favour in peace loving countries in Scandinavia and the Third World where most regional conflicts had taken place as a result of the Cold War Era. Canada could distinguish itself from the US without casting doubt on its loyalty. Iraq-Kuwait was not a peacekeeping mission however it was sanctioned by the UN therefore Canada was comfortable taking part.

Bosnia and Afghanistan are NATO missions or “coalitions of the willing” that Canada takes part in due to an obligation to its NATO allies. The bottom line is that peacekeeping is cheaper than mounting and maintaining modern defence forces. After years of decay the Canadian Armed Forces were to finally receive new money from the Paul Martin Liberal government of 2005. Their money for defence was not planned until 2009-2010. It was only after the Liberal defeat by the Conservatives led by Stephen Harper in January 2006 that \$17.1 billion was earmarked for helicopters, trucks, joint-support ships and long and medium range transport aircraft.

Canada has national interest that must be observed if it to survive as a nation. Canada must;

- 1) protect its sovereignty,
- 2) maintain its unity,
- 3) enhance its independence,
- 4) expand its economy to improve the welfare of its people, and

- 5) to maintain its global interests it must work with other countries to advance democracy and freedom.

One of Canada's most important national interests is unity. Historically sovereignists have sued for an independent Quebec. The politics of this affect other national interests including maintaining global interests in our attempts to maintain democracy and freedom. It is difficult because if you can't maintain the appearance of democracy and freedom at home you send a mixed message to your international partners. Canada recognizes Quebec as a distinct society and accepts the liberal pacifist attitude. However this makes it difficult to convince this large segment of Canadian society that War in Afghanistan must be fought in the name of national interests. Prime Minister Louis St. Laurent brought Canada into NATO the first post-war alliance following the WWII. The importance of the threat of communism on freedom and democracy was not lost and he committed a brigade sized contingent to the Korean War in 1950 and also to Germany. St. Laurent understood national interests and the importance of fighting communism in Europe, Korea and at home.

Canada's participation in NATO since 1949 has been to defend European democracies. Canada cannot be neutral and must cooperate with other like-minded states to defend a way of life, maintain Canada's place in the Western Civilization and maintain global peace and security. Canada lacks the military might to work unilaterally in the world and has to opt for a more cooperative approach. Coalitions of the willing and NATO or UN sanctioned missions usually enable the Canadian government to justify participation. A Canadian approach is to "show-case" our brand of democracy through the three D's in hopes that a keen marketing plan appeals to our partners in the endeavour.

Canada's Lloyd Axworthy addressed the UN Commission on Human Rights in April 1996 advocating a new focus on "individual security". State borders were porous and there is less emphasis on national security. Individuals were contacting each other and the citizens of countries were forming their countries foreign policy. He wanted to move the emphasis from national interests, priorities and responsibilities and respond to the citizens as well. Axworthy was successful with a ban on anti-personnel landmines that received no support from most major powers in the Security Council. The International Criminal Court was set up to try genocidal dictators although successful received no support from the US. The United States feared that as the "world's policeman", attacks on another country's sovereignty would expose its leaders and soldiers to prosecution for war crimes and crimes against humanity, actions taken in their country's national interests. Like Kosovo in 1999 that was not sanctioned by the United Nations and the Iraq War in 2003.

There is a difference between Interests and values. Values help to shape national interests. Values may change but interests stay the same. On March 13<sup>th</sup>, 2006 Prime Minister Stephen Harper spoke to troops

in Kandahar, Afghanistan “You have put yourself on the line to defend our national interests... your work is important because it is in our national interest to see Afghanistan become a free, democratic and peaceful country.”<sup>29</sup>

Canada is at war, the War on Terror. Canada chose Afghanistan as the front to fight this war among many other fronts. Terrorism threatens Canada’s national security as lax immigration laws allow anyone claiming refugee status into the country. Terrorism threatens sovereignty as disenfranchised Muslim youth prepare to execute acts of terrorism on Canadian soil. A recent example of this is the “Toronto 18.” Terrorism may become a barrier to Canada’s largest trading partner the United States, as it strengthens the longest unprotected border in the world.

Prime Minister Stephen Harper will be put to the same test as a conservative prime minister. His advantage is several controversial liberal scandals that have gutted the liberal party in Quebec. This makes the Conservatives the only federal party still maintaining unity in Quebec. While allowing Quebec to continue its own foreign and domestic policy, Harper has now gained the trust of the province. But Canadian defence and foreign policy is still a federal responsibility and for the sake of national interests Prime Minister Harper’s position is that it is Canada’s war at home and abroad.

The previous Prime Minister, Jean Chretien’s balance foreign policy on the Middle East hardly made Canada neutral. Canada is very pro-Israel. Despite the multi-cultural appearance Canada still has national interests that don’t always support what is going on in the various cultural homelands. Many groups in Canada are upset at Canadian participation in the Gulf War and the Former Yugoslavia. National interests over-ride the minority’s protest.

The three basic core values of Canadian national interests are;

- 1) The separation of church and state,
- 2) Self-determination, and
- 3) The Majority Rules.

Some things that cannot change are freedom of speech, freedom of religion, freedom from religion, equality, democracy and the rule of law.

Canada and Canadians are involved in the War on Terror by virtue of the fact that Islamic terrorists attacked an ally, another like-minded western democracy and Canadians died in the attack. It is in Canada’s national interest to participate in this war. Afghanistan was a failed state that harboured

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<sup>29</sup> Ibid., 73.

terrorists. Canada is fighting a war against Al-Qaeda and the Taliban. This is a threat to global peace and security. The Afghan government of the time allowed them a base to plan and execute attacks around the world. Canadian citizens have been arrested for their terror activities. Omar Kadr remains at Guantanamo Bay Military Base for his part in killing an American medic in a firefight in Afghanistan. On June 2, 2006 a combined police investigation arrested and charged 18 people with offences under the Canadian Anti-Terrorism Act. All were Toronto area Muslims with connections in the US, Pakistan and Britain. They attempted to bring weapons, explosives and material to target the Toronto Stock Exchange, CBC Headquarters and CSIS in Toronto. Canada is a target for terrorism because it is a western secular democracy. Canada is a target of a global theocracy against modernity. Canada was a target before the Canadian Forces went to Afghanistan. Fighting terrorism wherever it exists is to protect and ensure peace and security, and to maintain democracy and freedom.

Investigative techniques learned at home to fight terrorism like having informants in mosques, electronic surveillance, monitoring Internet users in chat rooms and on e-mail and having the legislation in place give the government the ability to act quickly and decisively. This has all been accomplished post-9/11.

Canada lost its world influence since the conservative governments of the 1980's and 1990's. In the capitals of the world, Canada is a bit player in the debates in the UN Security Council, in the meetings of the G-8, the world Trade Organization. This was recently illustrated in Canada's failure to win a seat on the Security Council. This was a political disaster for Canada and was blamed on Canada's lack of commitment to African foreign policy. Obsessed with domestic concerns and huge national debt, successive governments have slashed the budgets of Department of Foreign Affairs, and International Trade, the Canadian International Development Agency, and the Canadian Forces. "If your diplomacy, your foreign aid and your armed forces are weak and are perceived as such by your friends and enemies abroad, your influence slips. Morality doesn't count when calculating power and influence nor does political rhetoric."<sup>30</sup>

Canadians talk about peacekeeping as being what we do. But right now the majority of our armed forces are committed to the War on Terror and peace-enforcement. Only a few are engaged in UN peacekeeping missions. The "3-D" foreign policy approach continues to make some headway. Troops are engaged in the combat mission to establish security, reconstruction efforts continue, and diplomats from Foreign Affairs and development experts from the CIDA have an opportunity to succeed. Canada spent \$106.5 million in 2006 and a similar amount in 2007. The security situation prevents Provincial Reconstruction Teams from assisting the Afghan people.<sup>31</sup>

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<sup>30</sup> Ibid., 205.

<sup>31</sup> Ibid., 214.

Reconstruction contributions included assistance to the Kandahar Fire Department, assisting thousands of refugees to return to their homes, providing medical care, and installing new wells.

Canadians distributed school kits donated by Canadians, provided computers to the Kandahar University, and to the provincial governor so he could communicate with Kabul. RCMP Officers regularly attend *shuras*, the meeting of elders that fill a large role in local government. All of these activities function under the protection of the Canadian Military. There has been no alternative found for the opium trade with alternate crops or controlled markets. It is estimated that 12 percent of the Afghan population are opium-growing farmers. Alternatives to opium are the only way to loosen the grip of the drug lords and the Taliban who live off the profits of the opium trade.<sup>32</sup>

## 5.0 International Criminal Tribunals and Transitional Justice

This chapter will focus on three specific international criminal investigations that have been undertaken by the United Nations under Security Council resolution. The United Nations International Independent Investigation Commission - UNIIIC investigation into the assassination of Rafik Hariri in Lebanon in 2005 conducted by the Special Tribunal for Lebanon, investigations into genocide and crimes against humanity at Ovchara, Srebrenica, and Kosovo in the Former Yugoslavia undertaken by the International Criminal Tribunal for the Former Yugoslavia, and finally the investigation into the genocide in Rwanda conducted by the International Criminal Tribunal for Rwanda will be examined. These international criminal investigations serve as examples for proving the case for utilizing a uniform major case management system. This is not a commentary on the success or failure of the investigation. The idea is to examine the investigation and try to discover common or inherent patterns that can be improved upon by a uniform major case management system. Many of these same inherent problems will also be seen in a comparison to the Ontario experience.

It is very difficult to say whether an investigation is successful or not. As you start into an investigation it is very important to keep a completely open mind. Investigators have a tendency to “jump to conclusions” or develop “tunnel vision” at the beginning of an investigation. The Ontario Major Case Management System is set up to prevent or discourage this and instead forces or teaches the investigator to “follow the evidence.” Although it may appear that these several examples are being used to point out their failures or shortcomings, nothing could be further from the truth. An investigation does not live or die based on its single outcome. The laying of a charge is not the difference between success and failure. Registering a conviction is not the difference between success and failure. ***In the search for the truth, success lies in the integrity of its pursuit.*** An investigation may develop many persons of interest and suspects. Some will be obvious due to their relationship to the victim. Some will be obvious due to their own background

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<sup>32</sup> Ibid., 216.

and behaviour. Others will be a complete surprise and may come to light by accident or fluke. The important thing for the investigator to remember is to gather all of the information about a suspect or person of interest. Investigate that person until there is reason to believe that they committed the offence, they have been somehow cleared based on your comprehensive investigation or there is no further investigative avenue to pursue. At that point, save the information gathered in a format that is easily accessed, can be queried and is understandable to anyone in the future. It is at this point that the investigator can move onto the next suspect or person of interest. The other thing to remember is “never give up.” The investigator is the last remaining link between a victim and their loved ones and it is their honour to be involved in the investigation of the death of another human being. When that has been done success will be based on how well the investigation was managed and how well the investigators adhered to the standards set out in the major case management system.

“The Nuremburg Legacy” is the idea that the Nuremburg War Crimes Tribunal was the first international criminal jurisdiction and represents “the benchmark for assessing the international tribunal and its prospects for success.”<sup>33</sup> Nuremburg was a transformation of German society from National Socialism to de-Nazification. Its legacy is that post-war criminal prosecution is seen as feasible and desirable for social transformation and reconciliation. In the 1990’s Nuremburg was the model used in the establishment of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. Madoka Futamura calls this transitional justice the “Last act of war and the first act of peace” or “peace through justice.” The lesson learned from the Nuremburg Legacy were two fold, the pursuit of individual responsibility and the creation of an historical record. Today international criminal tribunals or transitional justice are the preferred response to post-war reconstruction and reconciliation. The international communities’ emphasis on criminal prosecutions had led to considerable achievements on the legal and institutional development of international criminal justice. Without links between international criminal justice and national reconstruction these trials may become just an exercise in developing International Humanitarian Law.

The perpetrators had to be held accountable. The primary objectives were the punishment of war criminals and restoration of peace and security. Ultimately the goal of reconciliation became associated with these trials. Bosnian judges and prosecutors viewed the eventual punishment of major accused war criminals like Slobodan Milosevic and Radovan Karadzic as contributing to social reform not unlike the

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<sup>33</sup>Futamura, Madoka. *War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremburg legacy* (London and New York: Routledge - Taylor and Francis Group, 2008), 6.

Nuremburg Trials. There is a large scale if not total lack of knowledge regarding international humanitarian laws enforced by ICTY.<sup>34</sup>

Establishment of the ad hoc tribunals implied a new, critical role for the UN in implementing rectificatory justice. International criminal accountability has quickly become the norm for post-conflict countries. The question for the United Nations was with this responsibility of international criminal tribunals should a robust enforcement institution of international law be created or should it meet the needs of all victims and all citizens by establishing a domestic judicial system capable of delivering justice? The position taken here is that the United Nations is responsible for international peace and security and in the event that a nation has not lived up to its responsibility to protect its citizens or that post-war society is in such disarray as not to have the ability to deliver justice, the United Nations has a responsibility to intervene through Security Council resolution. That intervention would take the form of member nations contributing to rebuilding a nation by contributing to transitional justice utilizing military and civilian experts initially until the conflicted country can sustain its own domestic judicial system. This is a marked departure of the “victor’s justice” that was initially the Nuremburg Legacy and represents an evolving and improving system of international criminal justice. The United Nations required some infrastructure to accomplish this beyond the management of the international criminal investigation. The establishment of special investigations and international criminal tribunals served to develop parallel teaching and rehabilitative structures, establishing a historical record, application of the rule of law to create a social legacy against the resurgence of support for the political forces that causes the aggression in the first place. International Criminal Tribunals established that;

- 1) The relationship between the population and the tribunal is a critical dimension of success
- 2) The domestic legal system must be influenced by the international one for effective war crimes trial to take place

## **6.0 United Nations International Independent Investigation Commission – UNIIC**

UNIIC was a “fact finding” mission that was initially sent to Lebanon (FITZGERALD Commission) after the February 14<sup>th</sup>, 2005, assassination of former Lebanese Prime Minister, Rafik HARIRI and 22 others. The reason for an international independent investigation was that the local authorities did not have the trust of the Lebanese people. The United Nations International Independent Investigation Commission was established in April 2005 by Security Council Resolution 1595. The Commission’s mandate was;

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<sup>34</sup> Eric Stover and Weinstein Harvey M., ed. *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity* (Cambridge: Cambridge University Press, 2004), 39.

1. To investigate the Hariri Case (assisting the Lebanese authorities)
2. To provide technical assistance for other cases (targeted and non-targeted attacks)
3. To determine if these “other” cases could only be prosecuted (by the Special Tribunal for Lebanon “STL”) if shown to be linked to the HARIRI case.<sup>35</sup>

Detlev MEHLIS of Germany was appointed the first Commissioner of the UNIIIC in August of 2005. The following four arrests were made on the basis of an UNIIIC report;

1. General Jamil AL-SAYYED (Lebanese Internal Security Forces)
2. General Raymond AZAR (Lebanese General Security)
3. General Ali AL-HAJJ (Lebanese Military Intelligence)
4. General Mustafa HAMDAN (Presidential Guard)

The second Commissioner of UNIIIC was Serge BRAMMERTZ. The third Commissioner was Daniel BELLEMARE the former Assistant Deputy Attorney General of Canada. Upon conclusion of the mandate on February 28<sup>th</sup>, 2009 the Special Tribunal for Lebanon commenced in Leidschendam, The Netherlands, at The Hague. Daniel BELLEMARE is now the lead prosecutor. The four generals were transferred to The Hague where they were released due to a lack of sufficient information to warrant continued detention.

The UNIIIC initially set up to investigate the assassination of the former Lebanese Prime Minister. Article 1 of the Statute of the Special Tribunal for Lebanon (STL) established a tribunal to prosecute persons responsible for the assassination of Rafik Hariri. In addition Article 1 further provided that: *If the tribunal finds that other attacks that occurred in Lebanon between 1 October 2004 and 12 December 2005, or any later date decided by the Parties and with the consent of the Security Council, are connected in accordance with the principles of criminal justice and are of a nature and gravity similar to the attack of 14 February 2005, it shall also have jurisdiction over persons responsible for such attacks. This connection includes but is not limited to a combination of the following elements: criminal intent (motive), the purpose behind the attacks, the nature of the victims targeted the pattern of the attacks (modus operandi) and the perpetrators.*<sup>36</sup>

There were eleven other occurrences found to be targeted attacks related to the assassination of Rafik Hairi. The details of these occurrences are listed in Appendix “B” Report on United Nations International Independent Investigation Commission – UNIIIC. These eleven occurrences each represent a complex homicide investigation. Undertaking this many linked occurrences is a monumental task that would challenge the best Major Case Manager and major case management system. Each of the

<sup>35</sup>Catherine Yeandle-Slater, *Report on United Nations International Independent Investigation Commission – UNIIIC* (Orillia, Canada; by the Author, 2009), 1.

<sup>36</sup>Ibid. 2.

homicides would have to consider the very diverse backgrounds of the victims with respect to politics, religion and associates. The amount of peri-mortem information would be immense. As well each occurrence would have its own crime scene, post-mortem examination and secondary victims alive and deceased that would also require investigation.

UNIIC Investigations Division was made up of two groups; the Tactical Investigation Group (TIG) and the Strategic Intelligence Group (SIG). The SIG's main purpose was to identify actionable intelligence to feed to the TIG. The Ontario Provincial Police provided three officers with major case management experience to UNIIC as a Senior Advisor, Analyst and Investigator. The officers faced many challenges personal and professional. Keeping in mind that there is the equivalent of 12 homicide investigations S/Sgt. Yeandle-Slater summarized the following challenges;

- Sheer volume of material,
- The lead up time to becoming familiar with each investigation,
- duplication of material,
- Sourcing
- NO MAJOR CASE MANAGEMENT SYSTEM
- Employee turnover
- No consistency
- The Right People in the Right Positions
  - Lawyers (and Police Officers) acting as analysts
  - Police Officers who had never investigated a homicide prior to UNIIC
  - Retired Officers
  - Academics – leading projects
  
- UNIIC relied on the Internal Security Forces to provide materials
- Completed by “Request for Assistance” through the Prosecutor General of Lebanon
- Best evidence was lost
- No crime scene control
- Delays in the UNIIC involvement
- Language barriers between co-workers
- Use of translators for most interviews
- Political pressures
- Secular government – elections
- Hezbollah / Syrian interference
- Witnesses frightened, apprehensive
- Interviews occur at Monteverde compound through the “Request for Assistance”

- Witnesses previously tortured<sup>37</sup>

Some very positive things have been reported by S/Sgt. Yeandle-Slater with respect to the Ontario Provincial Police. In her experience she confirmed that the OPP is one of the most progressive and professional police services internationally. Having learned the lessons in the early 1990's with the Green Ribbon Task Force investigation of Paul Bernardo and subsequent Judicial Inquiry by Justice Archie Campbell it became apparent that OPP officers are well trained and qualified.

## 7.0 The International Criminal Tribunal for Rwanda - ICTR

The International Criminal Tribunal for Rwanda (ICTR) is based in Arusha, Tanzania, in national courts in Belgium and Switzerland, in classical courts in Rwanda and the local judicial system, "Gacaca." Both international and domestic prosecutions have focused exclusively on the genocide, while war crimes and crimes against humanity have been largely ignored. Even "Gacaca", which is being promoted as a community-based initiative that will support reconciliation more effectively than classical justice remains one-sided and closely controlled by the government.

The genocidal leaders of Rwanda were basically treated as the Rwandan government – they were a non-permanent member of the Security Council at the time of the genocide. Hutu who rejected propaganda about Tutsi and chose not to participate in the genocide were subject to reproach on the radio, and public meetings, humiliation, fines, imprisonment and even death. Whether people participated under duress or willingly, they constitute tens of thousands of people, a number that has complicated efforts at rendering justice for the genocide.

The ICTR was created following the same procedures as the ICTY. The UN Secretary General appointed a human rights fact-finding mission in August of 1994 that found grave violations of international law including genocide. Based on this the UN Security Council adopted Resolution 955 on November 8<sup>th</sup>, 1994 to prosecute "persons responsible for genocide and other serious violations of International Humanitarian Law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of other neighbouring states between January 1<sup>st</sup>, 1994 and December 31<sup>st</sup>, 1994."<sup>38</sup> Two points are made in the creation of the International Criminal Tribunal for Rwanda;

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<sup>37</sup>Ibid., 9.

<sup>38</sup> Eric Stover and Weinstein Harvey M., ed. *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity* (Cambridge: Cambridge University Press, 2004) p.52

- 1) UN Security Council found that crimes committed in Rwanda constituted a threat to international peace and security and it was their responsibility to contribute to ensuring that such violations are halted and effectively redressed.<sup>39</sup>
- 2) Rwanda required assistance to bring peace and reconciliation.<sup>40</sup>

The ICTR was established as an organ of the United Nations. Several disadvantages were inherent in that the bureaucracy made the process slow and the United Nations being in its infancy of international criminal investigations were unfamiliar with the demands of judicial operations. There was no regular appropriation of money. It received short-term allocation only and as a result was only able to hire staff on 3 month contract basis.

The ICTR had trouble recruiting in the war-torn country. Lengthy UN procedures did not identify the best candidate. Some positions took a year to fill and some were hired for positions of great responsibility without an interview. Prosecutors came from academia or human rights organizations with no experience in criminal prosecutions. Investigators drawn from police forces around the world had no experience investigating crimes of this magnitude.

No one on staff had any knowledge of history or culture of Rwanda. The problems with the ICTR persisted because they had no powerful advocate on the Security Council or UN Secretariat.<sup>41</sup>

The initial prosecutions of the ICTR were weak. Investigators and prosecutors relied on witnesses identified by the Rwandan Government and organizations of Genocide Survivors. Most of the witnesses were victims or family members; they could describe attacks and identify assailants, but possessed no knowledge of organizers of the genocide. Organizers were most responsible for the genocide and were supposed to be the target of the ICTR.

Other than witness testimony, investigators made no systematic effort to gather documentary and forensic evidence linking alleged suspects to specific crimes. Not only was evidence poorly presented but the prosecutors lacked an overall strategy. Before the prosecution had launched its own investigation the government of Rwanda had already arrested some suspects and delivered them to the ICTR as they did not want to prosecute them.

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<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid., 53.

Little attention was paid to the hierarchy of the genocide and many persons delivered to the ICTR played relatively minor roles. Resources meant for the organizers of the genocide were spent on the less notorious suspects. Ultimately as the prosecutor had no overall knowledge of the genocide, it prosecuted low-level targets without using the record of their criminal activity to implicate more important figures.<sup>42</sup>

The first excavation by an international criminal tribunal took place at the grounds of the Roman Catholic Church in Kibuye Rwanda in December 1995 Six victims were identified by documents on their persons and 11 victims were identified by personal effects by acquaintances. None had x-rays or dental records.

However the ICTR is not without its successes. In 2003 the ICTR in the first case decided, Jean-Paul Akayesu, the former Burgomaster of the Taba commune was found guilty of genocide. This was the first time such a condemnation had ever been pronounced in an international court. The court also convicted him of rape, ruling that rape was used as a tool of the genocide.

Survivors of the genocide have no role in the tribunals other than as witnesses. In the civil legal system plaintiffs are permitted to play a role and are represented by their own lawyers who helped bring evidence against the accused.

## **8.0 The International Criminal Tribunal for the Former Yugoslavia Experience - ICTY**

International war crimes tribunals are charged with investigating large-scale killings however may lack the skill or political will to identify all of the victims. Personal identification of all the victims is not essential when charges of genocide or crimes against humanity are laid against high level perpetrators. Genocide requires proof of acts with intent to destroy, in whole, or in part, a national, ethnic, racial or religious group. The investigation then only has to prove the “categorical identity” of the victims of ethnicity, religion or race and then the cause and manner of death. Remains are then released by the investigation to the local authorities to establish identity. This is next to impossible in a post-conflict region these services may be interrupted or non-existent.

The two international criminal tribunals ICTY and ICTR identified a very small percentage of the victims. The clandestine manner in which the victims met their demise makes recovery of victims very difficult without the assistance of those responsible. It is generally not beneficial for them to assist with the investigation. Sheer numbers in Rwanda made it impossible for the International Criminal Tribunal or the government of Rwanda to identify all of the victims.

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<sup>42</sup> Ibid.

Identifying victims for international criminal tribunals requires a new comprehensive plan to satisfy the humanitarian needs of families and legal needs of the tribunal. In October 1992 the UN Security Council appointed a Commission of Experts to investigate reports of mass killings, genocide and crimes against humanity in the former Yugoslavia (UN Security Council resolution 780(1992) S/1994/674, 1994) As a result the International Criminal Tribunal for the former Yugoslavia was founded in May 1993. The tribunals themselves established forensic units drawn from those who worked on the disappearances in Central and South America. They were known as the Argentine Forensic Anthropology Team established by American forensic anthropologist Clyde Snow. Their forensic findings were admissible in only a very few criminal trials.

The Ovcara investigation is the best example of how forensics satisfies both the humanitarian needs and legal requirements of evidence. Largely based on DNA analysis, by October 2002 184 victims were identified.<sup>43</sup> The Croatian government built a state of the art morgue at the medical school at the University of Zagreb for the investigation and trained geneticists in DNA analysis. Ovcara was a fairly straight forward case that involved a single crime, at one location, perpetrated by 4 people with 200 victims. The mass grave was undisturbed from the time of the crime and there were numerous witnesses to the identity of the accused and their presence at the crime on the day it occurred. The families of the victims cooperated. The Office of the Prosecutor (OTP) kept relatives informed. By doing this relatives felt that they were participating in the outcome and are more likely to provide information.

On July 11<sup>th</sup>, 1995 General Ratko Mladic seized the northeast Bosnian town of Potocari. The town was previously a UN Safe Zone guarded by a Dutch Army Battalion. Bosnian Muslim women and children made their way to the safe zone and the protection of the United Nations Peacekeepers stationed there. Then 10,000 to 15,000 Muslim men and boys fled into the woods to go to a safe zone 40 miles away. Mladic's army attacked, captured and executed 7,500 men and boys in an act of genocide. On November 16<sup>th</sup>, 1995 Mladic and his civilian superior Radovan Karadzic were charged with genocide.

In May of 1996 the forensic teams were excavating 4 mass graves around Srebrenica. They uncovered 517 bodies and various remains. They were autopsied at a makeshift morgue to determine the cause and manner of death and evidence of ligatures and blindfolds were preserved as evidence. None of the bodies were identified and they were turned over to Bosnian authorities and re-buried in an abandoned tunnel cut in the hillside at Tuzla. The Office of the Prosecutor for the ICTY decided that evidence of the ethnicity of the bodies was enough to prove their case for genocide and individual identification was unnecessary.

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<sup>43</sup> Ibid., 89.

In 1998 and 1999 the Office of the Prosecutor of ICTY and local Bosnian investigators continued to recover bodies and to gather ante-mortem information. There was no more room left in the tunnel at Tuzla. Finally in 2000 US President Clinton established the International Commission on Missing Persons (ICMP) and built a new storage facility (morgue) for the bodies and undertook an aggressive DNA program to identify the bodies. By July 2003 over 700 of the 7500 individuals had been identified. This has been a difficult task for the Srebrenica investigators. The remains of the victims of Srebrenica had been buried over a large area, some had been scattered when they were left where they fell by scavengers, stripped of personal belongings, jewellery and documents that purposely prevented identification. Bosnian Serb soldiers using earth moving equipment exhumed mass graves and moved the bodies in order to avoid apprehension. The remains were mutilated, disarticulated and crushed. The Office of the Prosecutor, instead of making an international effort turned the remains over to local authorities for identification, a task that they were not prepared for due to a lack of resources and skill.<sup>44</sup>

The largest forensic war crimes investigation took place in Kosovo in mid-June 1999 days after NATO tanks rolled in. The Office of the Prosecutor brought in 300 forensic scientists from 14 countries including Britain's Scotland Yard, the United States' FBI and Canadian RCMP. All sent teams as did police services from Germany, Denmark, France, Belgium, the Netherlands and Switzerland. As an example of what it takes to put such a team together the FBI team consisted of 64 people and 107,000 pounds of equipment, Security for the forensic team was provided by their Hostage Response Team.<sup>45</sup>

The teams were gathering evidence against Slobodan Milosevic the President of the Federal Republic of Yugoslavia and four military and civilian leaders. The investigation was being conducted by the ICTY under the direction of the Office of the Prosecutor. The allegation was of crimes against humanity that terrorized civilian Kosovo Albanians of the Federal Republic of Yugoslavia. Yugoslav soldiers massacred civilians in 7 Yugoslav towns and villages.

During the armistice and Peace Conference in Paris in 1919 the Albanian claim included Kosovo a relatively prosperous farming area. They claimed it as Albanians had been there since "time immemorial" whereas the Serbs had only been there since the seventh century. Kosovo had been under Serb control since 1913. Albanians promised trouble if Kosovo remained under Serb rule and Serbia promised trouble if it did not. The majority of the population of Kosovo was Albanian. There were historic events that the Serbs cited as their claim over Kosovo as this was the place where in 1839 the Serbs were defeated by the Ottoman Empire that brought them under Muslim rule. Kosovo was not returned to Albania in 1919

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<sup>44</sup> Ibid., 91.

<sup>45</sup> Ibid., 92.

however during World War II Albania did seize power briefly until Kosovo became part of Tito's Yugoslavia. Then with the fall of communism in 1989 Albania renewed its claim over Kosovo.<sup>46</sup>

"Crimes against Humanity" – originates from the Preamble of the 1907 Hague Convention that codified customary law of armed conflict. In 1915 the Ottoman Empire was accused of crimes against humanity for persecution of the Armenians and the term was later incorporated in the Nuremberg Charter of 1945. This includes mass murder, extermination, enslavement, deportation, rape and torture committed against civilians on a large scale. Daniel Goldhagen stated that from a political standpoint this is called "Eliminationism."<sup>47</sup>

The facts in issue to the Office of the Prosecutor to prove beyond a reasonable doubt were that the deaths were planned, widespread and systematic, that the victims were civilians and that the manner of death was similar in each of the 7 villages. Graham Blewitt was the prosecutor for the Kosovo investigation and relied on circumstantial evidence to show that tactics of the Yugoslav military, police and paramilitary were similar on different occasions in different locations. A sample of the killings to prove a pattern was required.

Ante-mortem information had to be gathered from Kosovar Albanians living in the seven villages that were witness to the acts. Documentary evidence such as orders of troop deployments noted from high level meetings, intelligence intercepts of telephone conversations that would indicate a systematic plan from a high level in order to orchestrate the killing and terrorization of innocent civilians in the seven locations was also gathered by investigators. "Command Responsibility" had to be proven to show that Milosevic and his co-accused had either ordered the acts in question or knowing that the crimes were taking place, failed to take all necessary and reasonable measures to prevent subordinates from committing such acts.<sup>48</sup>

The forensic examination of the mass graves was conducted to establish the means and cause of death to prove a pattern. Witnesses would be required to corroborate the evidence gathered as a result of the documentary and forensic evidence and to identify the victims to show ethnicity, race or religion or "categorical identity." If the killings could be shown to be systematic and widespread it demonstrated that it was planned at the command level.

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<sup>46</sup>MacMillan, Margaret, *Paris 1919: Six Months That Changed The World* (New York, New York: Random House Trade Paperbacks, 2002), 361-2

<sup>47</sup>Goldhagen, Daniel Jonah, *Worse Than War: Genocide, Eliminationism, and the Ongoing Assault on Humanity* (New York: Public Affairs, 2009) p.

<sup>48</sup> Stover, Eric and Weinstein Harvey M., ed. *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity* (Cambridge: Cambridge University Press, 2004), 94.

Unfortunately the forensic teams did not set up the ante-mortem investigations right away nor did they sample the bones and teeth for DNA analysis. They were under pressure to investigate as many sites as possible and report back to The Hague. This placed the investigators in a difficult position with the relatives of the victims who were anxiously waiting for news about their loved ones. Investigator-Victim relationships are paramount. A breakdown in communication will further hinder their ability to conduct ante-mortem investigation.

## **9.0 Comparison of the Inherent Problems Experienced in the International Investigations and the Ontario Experience of 1996**

When comparing criminal investigations it is easy to see there are many inherent problems, inherent in that they are the same and inherent in that they continue to occur over the time span of 1992 to 2009. It is interesting that despite the example set in the 1940's with the Nuremburg Trials and the idea that the "Nuremburg Legacy" gave rise to the criminal tribunals of the 1990's there were still so many common inherent problems. *"Those who do not remember the past are condemned to relive it"* – Santayana. Generally these problems include but are not limited to; qualified investigators, a major case management system to deal with the volume of information, political pressures and interference, best evidence lost due to delays, no investigative strategy, no resource management system, no historical or cultural background. (See Appendix "C" – Observed Problems of Criminal Investigations). These problems are identified from the text found in the sources used to research the investigations. The Ontario experience is then added into the comparison. Common problems were then laid out along categorical lines. Eleven categories were identified; The Right People, Political Pressure, Best Evidence, Primary Investigation, Investigative Strategy, Communication, Interference, MCM System, Evidence, Prosecution and Information Management. The last column in the chart uses the Ontario Major Case Management System and the Core Competencies of Criminal Investigators (Appendix "D") to propose possible solution or series of solutions to these categorical problems.

The above examples of investigations show an evolution in the quality of investigation over the course of approximately a decade from outset of transitional justice through the two international criminal tribunals in 1992 where anthropologists are used for crime scene examination to the influx of international civilian experts in 1999 into Kosovo. Commitment and methods steadily increase and improve over time. In the investigation into the genocide at Srebrenica only 841 of the 7500 victims are identified. In Rwanda only a few of the 800,000 victims are identified. In Kosovo over half of the victims were identified. This seems to be a classic case of "one step forward, two steps back" when the UNIIIC is considered. Rafik Hariri is

assassinated in 2005 and the fundamental aspects of the investigation like crime scene preservations and timely investigation are sacrificed. S/Sgt. Yeandle-Slater points out very clearly that there is no uniform major case management system as late as 2009. In the Kosovo investigation half of the 4,500 recovered bodies have now been identified. This is a tribute to the quick action of international forensic teams' deployment into Kosovo. However a lot of the victims were identified not for the prosecution rather for humanitarian purposes. In 2002 the United Nations Interim Administration Mission in Kosovo (UNMIK) and the ICMP undertook a large-scale DNA led project of identification. The original teams that were unable to identify victims re-buried them and they were re-exhumed.

The UN Commission on Human Rights has created a list of 487 forensic scientists at the disposal of human rights fact-finding missions. There is a requirement for scientific and ethical standards and protocols relating to the field of identification through mass exhumation. Establishing standards will better serve the two goals of forensic identification for legal requirements at criminal tribunals and humanitarian requirements for relatives of victims of genocide and crimes against humanity.<sup>49</sup>

The ICRC argues that a process of identification is required for forensic scientist to observe and document all crime-scene and post-mortem information and refrain from destroying anything that may lead to the identification of victims. The forensic scientists need to know their ethical boundaries. There is an obligation not only to the legal institution that has retained their services but also to the families of the victims. An international network of forensic scientists with a mandate of identification not just for the criminal investigation but for humanitarian reasons of informing family and returning remains.

## **10.0 Mitochondrial DNA**

In specific cases of war crimes where there is a mass grave it can be advantageous to utilize mitochondrial DNA (mtDNA). In the case of the genocide in Srebrenica there may have even been an advantage over nuclear DNA in the forensic examination of mass graves. mtDNA is far more sensitive than nuclear DNA and there is a lot more of it. It can be derived from teeth and bone where nuclear DNA cannot and it can be developed from all of the other bodily substances that we use to develop nuclear DNA profiles. Mass graves of victims that are racially alike could be easily proven by mtDNA as it can determine the racial origin of a victim. This may satisfy those questions of "categorical identity" very quickly. A third advantage of mtDNA is its ability to identify maternal lineage. In the case of Srebrenica the "military-aged" Muslim men and boys were separated from the women, children and elderly at Potocari, the UN safe zone guarded by a battalion of Dutch soldiers. The men and boys attempted an escape to Muslim Safe Zone 40 miles away. Approximately 7500 of them were attacked by the Bosnian Serb Army

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<sup>49</sup> Ibid., 98.

and killed in an act of genocide and buried in several mass gravesites. The scenario although horrifying, from an investigator's stand-point is one of the best scenarios. All of the victims went with their families to Potocari because it represented a safe place. The surviving family members represent known samples of mtDNA. Sampling the surviving family members could have provided the majority of familial profiles required to identify the victims. The investigation could have constructed an "mtDNA Data Bank" for comparison with the victims' mtDNA, sampling the mtDNA of women in the group who had a missing male relative. The advantage being that a complete "blooding" would not have to be conducted as subjects from the same maternal line are equally represented by one member of the family. A fourth advantage would be that the victims were found in several mass gravesites in and around Srebrenica. Many of the bodies had been unearthed and reburied using construction machinery. The bodies were mutilated and mixed and probably devoid of flesh. Some bodies that remained unburied would have been scavenged and only the skeletal remains discovered. When only the skeletal remains are discovered the only alternative for identification is teeth and bones that can be analyzed for mtDNA. The Kosovo investigation of the killings in the 7 villages is an equally advantageous for mtDNA examination. As family tend to stay together a comprehensive Data Bank could be constructed from surviving family members.

Many of the victims could have been easily identified. There are certain advantages to mtDNA victim identification and this topic needs to be explored further for its geographic value. Dr. Terry Melton Ph.D. is the President, CEO and Laboratory Director of Mitotyping Technologies, LLC in State College Pennsylvania. Dr. Melton is currently working on one war crimes project and can say that one of the big challenges is not knowing (since mtDNA is not a unique identifier) what the population genetics are of a region. For example, the first match you make with an mtDNA profile might seem great until a few weeks later that same profile appears again in another set of remains or another family. This is where anthropology information, grave artefacts, and geographical information become crucial.<sup>50</sup> Nuclear DNA testing, if it can be done, is as helpful when first degree relatives are available. "Standard of care" would now require doing both as often as possible and adding absolutely everything else you know about the case to the mix.

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<sup>50</sup> Melton, Dr. Terry, Ph.d, State College, Pennsylvania, 2010, e-mail to Robert Baskey Barrie, Ontario, 1.

## 11.0 The Haitian Experience

It should be noted that information provided here is from 2006 and the significant event of the earthquake in Haiti in January of 2010 will have had a drastic effect on progress made to this point.

The Haitian Experience of Police reform is an important one for Canada due to participation in MINUSTAH the UN mission in Haiti for several years. Several steps have been taken towards improving the Haitian National Police. Front-line police officers receive more training, new recruits to the police academy have had background checks conducted and the curriculum has been revised. Police officers in the field are receiving 'in-service' training from UNPOL that was funded bilaterally by the US. This is a 40-hour course, which includes human rights, crime scene investigation, handcuffing, use-of-force, report writing, traffic, and weapons training. Aside from the training that HNP officers are receiving UNPOL officers are on the streets of Haiti mentoring HNP officers in their daily duties. There is a desire for more active one-to-one support and mentoring in the field. UN Security Council Resolution 1542 provides 1,622 civilian police officers for deployment to Haiti. This was expanded to 1,897 by Resolution 1608. In 2006, there were only about 700 civilian police officers in Haiti. There is a critical shortage of monitoring and mentoring officers in Haiti. The majority of civilian police officers are assigned to the public order police units (FPU) not tasked with monitoring and mentoring.<sup>51</sup>

There seem to be two factors hindering the achievement of the goals set out by the mission in Haiti; it is imperative that the number of public order units be reduced and replaced with civilian police officers. The full complement of 1,622 civilian police officers is required to maintain the mission. The difficulty lies in ensuring member states' make their contributions consistently throughout the course of the mission.

Member states have obligations to fulfil the existing mandate. There is a real need in Haiti for increased international civilian police presence and contributing member states should be urged to provide a higher number of UNPOL officers. Without the commitment of the member states the objectives of the mission will take longer to attain or may not be accomplished at all. The second factor affecting achievement in Haiti is the poor quality of UNPOL officers being deployed and the lack of French-speaking officers. Presently only 38% of UNPOL officers in Haiti speak French. Deploying officers that can speak the language of the host country is an inherent problem in peace-building operations. While it is acknowledged

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<sup>51</sup> Corraello, Walter, *A Thesis: Use Of U.N. Civilian Police And Police Reform In Post-Conflict Societies: The U.N. Civilian Police in Haiti and The Reform Plan of The Haitian National Police* (New York: UNHQ-DSS/SSS, 2006), 28.

that quality control and selection of UNPOL officers has increased, more needs to be done to address this problem.<sup>52</sup>

In his research submission for his Certificate of Training in Peace Support Operations (COTIPSO) in 2006 Walter Corrarello UNHQ- DSS/SSS advised that vetting and certification of police officers had yet to begin. The mission was still impeded by the lack of French-speaking civilian police and specialists such as investigators and forensic experts. Additional measures were necessary to assist the Transitional Government to ensure a secure and stable environment in Haiti.<sup>53</sup>

The Haitian Constitution (1987) establishes the Haitian National Police and basic structures and organs including an Academy, a Police School and specialized sections, such as the Prison Administration, the Fire Marshall, the Traffic Police, the Highway Police, Criminal Investigations, the Narcotics Service and the Anti-Smuggling Service.<sup>54</sup> The establishment, organization and duties police officer in Haiti are set out in law much like Ontario's Police Services Act or the legislation of any other democratic country and can be summarized as ensuring peace and security, preventing crime, the investigation of crime, making arrests in compliance with the law, prosecuting before courts of competent jurisdiction and basically ensuring public safety.

The nexus to this hypothesis that international criminal investigations maintain similar inherent problems to those experienced in Ontario is found in the Haitian National Police Reform Plan for Haitian criminal investigation services with the enhancement of the Central Directorate of Judicial Police. It is dependent on other parts of the system such as the judicial system and penal management systems.

“The training lead time needed to build professional and technical capacity is much longer than what is required to build up general policing skills.” The Central Directorate of Judicial Police was to be accommodated in Port-au-Prince by the end of 2008. By 2011 facilities will be required to house regional units of the judicial police. The enhancement of institutional support for the Bureaus of Criminal Affairs and Trafficking and Drug Control within the Directorate of Judicial Police should build upon the technical assistance projects already established by the United Nations and other international partners. Reestablishment of the Forensics Laboratory needs specific support, including both technical equipment and training for the forensic technicians and personnel management. Particular attention will be given to the firearms, toxicology and fingerprint capabilities. The milestone for completion of these functions was the end of 2009, to coincide with the planned date for the data links with the

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<sup>52</sup> Ibid., 29.

<sup>53</sup> Ibid., 41.

<sup>54</sup> Ibid., 51.

Department level that will provide the communications needed for the fingerprint system. The criminal intelligence system must convert from a manual system to a computerized system by the end of 2009, and by the end of 2011 it should be moved to a searchable database linked to all users via HNP data links.

Haiti shows that a continued progressive commitment by the United Nations member countries in the plans for national police reforms in post-conflict nations is becoming more comprehensive. Reforms started with several examples of transitional justice based on the Nuremberg Legacy where under the United Nations Security Council resolution member states intervened in order to secure peace and security. This was prior to the articulation of the "responsibility to protect" but the concept is the same. That transitional justice in the form of international criminal investigation and tribunal focussed on crimes related to the responsibility to protect brings about social transformation and reconciliation. Haiti is far more comprehensive than a special investigation like the one into the assassinations in Lebanon or the two international criminal tribunals. In Haiti policing institutions are re-building from the ground up including those specialized sectors of policing like the Central Directorate of Judicial Police. There is some criticism of UNPOL's efforts however in that too much of the resources allocated to policing are being used for public order units when really the requirement is for monitoring and mentoring of Haitian police officers as they conduct their daily duties. The mission has been approved and had several extensions and enhancements over the years, from 1600 and 1800 UNPOL police officers from numerous member states. But member states are not living up to their commitments and the police officers that are being sent are not qualified for the positions that they are expected to fill. Adding to the shortfall is that only 38% of officers can speak French. These criticisms are not new and they appear in all of the examples above.

The criticisms will be more relevant in re-building the Central Directorate of Judicial Police. Criminal investigators or detectives investigate the most serious crime requires an adequacy standard even higher than that of a uniformed officer conducting general law enforcement. There is a greater learning curve and mindset to being a detective. Detectives are not "made" they start with a passion for the pursuit of criminals. Member countries involved in the re-building of the Haitian National Police are not giving up their highly trained and skilled criminal investigators to the mission. Skilled investigators who presently investigate homicides and sexual assaults in their home country could not be freed up easily from their responsibilities at home. Without a commitment to international peace and security by the home police force it is not likely that the mandates of missions like Haiti could ever meet their optimum level. Most policing in Canada is provincially or municipally mandated. Any large scale contribution to international criminal investigations would be window dressing only. The Ontario Provincial Police contributed to the UNIIC and the Kosovo investigation but not to any other international criminal investigation.

Generally criminal investigators make up between 10-15% of detachment strength in the Ontario Provincial Police. In the case of Orillia OPP Detachment whose approved strength is 65 general law enforcement officers, 10 to 12 of those officers provide a purely investigative function. The loss of an investigator for a 9 to 12 month UNPOL mission would be more difficult to absorb than the loss of a front-line general law enforcement officer. This scenario is therefore less likely to happen.

## 12.0 Lessons in United Nations International Policing Missions

In 1997, the important role played by international police officers was underlined by the President of the Security Council who stated that 'the civilian police perform indispensable functions in monitoring and training national police forces and can play a major role, through assistance to local police forces, in restoring civil order, supporting the rule of law and fostering civil reconciliation,' and that the Security Council 'sees an increasingly important role for civilian police....'<sup>55</sup>

The Secretary-General's bulletin of August 6<sup>th</sup>, 1999 entitled "Observance by United Nations forces of international humanitarian law" made five key recommendations on civilian police personnel:

(a) Member States are encouraged to each establish a national pool of civilian police officers that would be ready for deployment to United Nations peace operations on short notice, within the context of the United Nations standby arrangements system;

(b) Member States are encouraged to enter into regional training partnerships for civilian police in the respective national pools in order to promote a common level of preparedness in accordance with guidelines, standard operating procedures and performance standards to be promulgated by the United Nations;

(c) Member States are encouraged to designate a single point of contact within their governmental structures for the provision of civilian police to United Nations peace operations;

(d) The Panel recommends that a revolving on-call list of about 100 police officers and related experts be created in UNSAS to be available on seven days' notice with teams trained to create the civilian police component of a new peacekeeping operation, train incoming personnel and give the component greater coherence at an early date;

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<sup>55</sup> Statement by the President of the Security Council, *S/PRST/1997/38*, (New York: United Nations General Assembly Security Council, 1997).

(e) The Panel recommends that parallel arrangements to recommendations (a), (b) and (c) above be established for judicial, penal, human rights and other relevant specialists, who with specialist civilian police will make up collegial “rule of law” teams.<sup>56</sup>

The Brahimi report of 2000 was the foundation for comprehensive international policing efforts. It called for judicial, penal, human rights and civilian policing experts in sufficient numbers to strengthen the rule of law in post conflict countries. This should be initiated under authorization by the Security Council where justice, reconciliation and the fight against impunity require it. Brahimi also called for sufficient criminal investigators and forensic specialists, to further the work of apprehension and prosecution of persons indicted for war crimes in support of United Nations international criminal tribunals.<sup>57</sup>

The ‘doctrinal shift’ that Brahimi called for was in how the United Nations conceives and utilizes the use of civilian policing experts in peace operations. As well Brahimi’s report identified a need “for an adequately resourced team approach to upholding the rule of law and respect for human rights, through judicial, penal, human rights and policing experts working together.” The Security Council has authorized the deployment of several thousand police in a peacekeeping operation but has resisted the notion of providing the same operations with even 20 or 30 criminal justice experts.<sup>58</sup>

MINUSTAH the UN mission in Haiti is an example of an effort to heed of the Brahimi Report’s call for a more comprehensive approach to international policing. However as indicated above the conversion is not complete and there is still a focus on public order police officers where there is a call for civilian experts to re-build policing institutions from the ground up. This is what the Brahimi Report meant by a “doctrinal shift.” The Brahimi Report reflected the increasing value of international civilian policing in peace operations and contained an analysis of the role of UNPOL and outlined recommendations for change. The report emphasised that “the modern role of civilian police needs to be better understood and developed calling for a “doctrinal shift” in how the UNPOL conceives of and utilizes civilian police in peace operations.”<sup>59</sup>

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<sup>56</sup>The Secretary-General’s Bulletin *Observance by United Nations forces of international humanitarian law*, (New York: United Nations General Assembly Security Council, 1999).

<sup>57</sup>Lakhdar Brahimi, *Report of the Panel on United Nations Peace Operations. Comprehensive review of the whole question of peacekeeping operations in all their aspects*, General Assembly, United Nations (New York: United Nations General Assembly Security Council, 2001), 7.

<sup>58</sup>Ibid.

<sup>59</sup>Mobekk, Eirin. *Identifying Lessons in United Nations International Policing Missions*, (Geneva: Policy Paper №9 Monthly Military and Civilian Police Contributions to UN PKO, UN Department of

## 13.0 Transitional Justice

Eirin Mobekk's report, *Identifying Lessons in the United Nations International Policing Missions* set out several categories where improvement was required. Some of these categories are directly related to the point being made here that a common system of major case management and qualified criminal investigators for international criminal investigations is imperative to building rule of law institutions in post-conflict countries. Mobekk shows a steady progression from the comments of the president of the Security Council in 1997 on the role of civilian policing experts to the today's implementation efforts by Secretary Ban, Ki-moon on the "responsibility to protect and related crimes" and the "Rule of Law."

Eirin Mobrekkwrote about the "interconnectedness" of the system of the "rule of law" and policing peace operations and cited judicial reform as being an integral part of the system. Judicial reform takes much longer than police reform and, therefore, in any post-conflict society there will be a judicial vacuum until reform has taken hold. Establishing a functioning judicial system requires more resources than a policing operation. A non-functioning penal system can lead to vigilantism on the part of both the local police and the local population, which can lead to further destabilisation and insecurity. A police force, whether international or local, cannot operate effectively without a functioning penal system. UN Civilian Policedivision has added a judicial officer to its staff for this purpose.<sup>60</sup> Canada is presently in the midst of a historic ruling by the Parliamentary Speaker who has ordered the release of all information relating to the transfer of prisoners Taliban fighters, by the Canadian Forces to the Afghani gaolers. The investigation surrounds the issue of transferring a prisoner to host country's prison system and whether Canadians knew that the prisoners would be summarily abused or tortured. This is probably one of the best examples of where a comprehensive mission would fit to ensure institution-building and the democratization of the mission country's system of "rule of law." Mobekk indicates that there have been changes in the right direction in the policy, but not in practice. Penal reform has tended to be overlooked or ad hoc procedures have been applied. This has complicated international policing operations in the field and has limited their potential for success. Training and reforming local police is fruitless unless there is a penal system in place to support such a reformed force.<sup>61</sup>

The idea of transitional codes has been suggested for international policing missions. Canada defence policy is being built around the idea that we will be deploying to "failed or failing states" that have no "rule of law." International policing would benefit from this approach as member nations are being asked to

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Peacekeeping Operations Vol. Policy Paper #9. Geneva: Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2005), 2.

<sup>60</sup>Ibid., 8.

<sup>61</sup>Ibid., 9.

prepare for international policing deployments with civilian experts; their expertise is in the law of their own land. Criminal investigations rely heavily on criminal codes and legal precedent or “case law.” Importing a criminal code such as the one in Canada may be difficult; importing case law based on decisions made in Canadian courts would be even more difficult. This idea is not out of the question as Canada built a legal system based on the laws of Great Britain and American precedents are being cited in Canadian Case law. From a policing standpoint applying Canadian case law in a foreign country certainly would not violate the inalienable rights of accused person. For example, whenever investigators travel from Canada to Germany they must first get the permission of the German Government before any interviews of German nationals can be conducted. Although the interviews are conducted in a German courtroom Canadian “case law” is applied to ensure that the threshold in Canadian courts is protected or upheld. In contrast to the Canadian legal system, Germany’s is much more efficient and their approach less liberal. Canadian liberal laws and judges have always stood by the philosophy that they would “rather let 10 guilty men go free than to convict an innocent one.” Transitional codes would increase the efficiency of international policing at the deployment stage. They could be used by international public security forces and local forces in post-conflict societies until more permanent laws and codes are established. These transitional codes will provide a legal tool kit for use during international policing operations, and therefore will focus on criminal law and law enforcement, including criminal and penal codes.<sup>62</sup>

There have been several approaches developed, such as ‘steering group’, ‘lead nation’ or ‘friends of the process’ mechanisms. Until now, these approaches have been insufficiently used; although in Afghanistan, for example, the lead nation approach was employed. In the Afghan context, this means that different countries are responsible for different tasks. Five lead donor-nations have primary responsibility for five pillars - Demobilisation, Disarmament and Reintegration (DDR) (Japan), police (Germany), military (US), counter narcotics (UK), judicial reform (Italy). In Afghanistan, this approach has had mixed results. There have been positive results when the lead nation provides funding to the Afghan people for programs like DDR but have been less effective when it comes to the military.<sup>63</sup> There needs to be considerable improvement regarding communication, coordination and cooperation on all levels. Currently the efficiency of international policing operations is affected by the lack of communication.<sup>64</sup>

Foreign requests for Canadian police assistance come from organizations such as the United Nations or from specific countries. The decision to deploy Canadian police is made within the framework of the Canadian Police Arrangement (CPA), a partnership between the Department of Foreign Affairs and International Trade, the Canadian International Development Agency, Public Safety Canada and the

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<sup>62</sup>Ibid., 13.

<sup>63</sup>Ibid., 15.

<sup>64</sup>Ibid., 17.

RCMP. Revised in 2006, the CPA is designed to help Canada respond to increased demands for Canadian police participation in international missions without affecting policing at home. The RCMP manages the deployment of Canadian police, including planning and evaluating missions, selecting and training personnel from across the country and providing support throughout deployment. Canadian police who serve abroad come from municipal, provincial and regional police forces as well as the RCMP, and represent a variety of backgrounds. They play widely varying roles within each mission, from patrolling streets and training police recruits to providing humanitarian assistance, ensuring security for elections and investigating human rights violations. Serving on a mission can help police officers improve their leadership and problem-solving skills as well as their ability to interact effectively with people from various cultures. In the end, this also benefits their police agency and the communities they serve.

## 14.0 The Common Standard

There is a reliance on the contributing nations to provide officers that meet a certain standard, although this standard is not generally met.<sup>65</sup> A number of countries, such as Australia, and Norway, give their own officers specific pre-deployment training courses, some lasting up to two weeks and in Canada the pre-deployment training lasts up to two months. In addition, several organisations offer courses to police officers and there are unilateral efforts being made. However, such training is not available to all contributing officers; what is needed is unified pre-deployment training for all officers. To increase efficiency and effectiveness of international police contingents, a pre-deployment curriculum should be created in which the only changeable module should be that relating to the mission country, its history, culture and laws.<sup>66</sup> Also along the line of pre-deployment training is the concept of career development. Each officer that participates in an UNPOL mission from a member country should be developing toward the mission as a part of pre-deployment training. OPP officers are required to take responsibility for their own career development and are required to articulate their learning and development plans in their annual performance assessment. Identifying learning objectives, learning activities and results achieved should be a pre-requisite to participating in a mission. This releases the organization from the responsibility to make sure the officer is trained and allows it to develop a pool of candidates when required. The Peace Operations Training Institute provides an excellent opportunity for on-line pre-deployment learning. The topics covered easily rival any two week classroom course of instruction. The Certificate of Training in United Nations Peace Support Operations (COTIPSO) provides for an even more in-depth pre-deployment study of a more focussed self generated topic of study. Pre-deployment study and career planning could add to UNPOL list of civilian police officers that are ready to deploy at any time. Participation in the two Peace Operations Training Institute's programs described above indicates

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<sup>65</sup>Ibid.

<sup>66</sup>Ibid.

that the officers are already engaged in the idea of deployment to a UN Peacekeeping Mission. The fact that an officer has indicated UNPOL as a career goal or objective shows that they are committed. There is no question that UN missions are lucrative, but money should never be the motivation for entering into such a commitment, "Mission before self."

Rapid deployment of small teams in the immediate aftermath of conflict is crucial in this context. Much work has been put into this and the UN has currently a list of police officers that can be deployed on short notice. Yet this capability is not fully operational at present. However, it is an issue that is constantly being worked on and improved upon.<sup>67</sup> Ontario police officers routinely deploy rapidly to occurrences however not on the scale of genocide in Rwanda or post-conflict lawlessness like Haiti. However the Ontario Major Case Management System is designed for quick, efficient response with and the ability to handle multi-jurisdictional and multi-faceted investigations. "Practice like you play, play like you practice" and the system is ready for any eventuality. The idea of an Immediate Rapid Investigation Support (IRIS) is not new to the OPP and the Ontario major case management system. Major cases are heavily "front-end loaded" in the crucial "first 48" hours to capture that perishable evidence. This is also where the bulk of the canvassing and interviewing of witnesses takes place and the hardcopy file is established. These tasks can seem somewhat tedious at times however they are an invaluable source of information for the major case manager to develop the speed, direction and flow of the investigation. It is imperative that they are done. The first 48 hours is also the deadline identifying a suspect and subsequently submitting the case to "Powercase", the live database in Ontario that can potentially link it to others. The UNIIIC is an excellent example of what Canadian police officers can offer an international criminal investigation. If the right officers are sent based on their qualifications ultimately they will do what they have been trained to do, and participate in the management of the equivalent of 12 homicide investigations at once.

One proposition is to employ retired officers. The United States uses retired officers in its contribution to international police missions. There are benefits in employing retired officers – the main benefit being that these are experienced officers who can provide a valuable contribution to training and assisting other officers. This is not without its merits as long as retired police officers are qualified to do the job. One issue identified in all of the cases compared is that the police officers that are being deployed have never conducted a homicide or lesser criminal investigation let alone one that occurred in another country. Lawyers (and police officers) deployed as analysts, police officers who had never investigated a homicide, retired officers and academics – leading projects. This point is made by Erin Mobekk, that officers are improperly assigned and not in accordance to skill. So, for example, computer fraud experts

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<sup>67</sup>Ibid., 18.

have been placed in rural areas trying to teach recruits how to use a baton, when their particular expertise could have been put to better use elsewhere.<sup>68</sup>

Officer skill levels have been described as “frighteningly low.” This is common to the case in Haiti cited earlier and the limited skills of many police officers have been a problem in most missions, in which officers have often arrived extremely unqualified. More importantly, and potentially with more difficulty, would be to ensure that serving in an international policing operation will be viewed as a positive contribution to the home police force and that it would positively affect the police officers’ careers. This could only be positive for international policing operations as a whole, since more highly qualified police officers will then seek to serve with UNPOL as part of their career path.<sup>69</sup>

There is a need for establishing a common standard for international policing. There has been some work conducted in this area by the European Union, however there has not been a common standard established for UN police activities in post-conflict societies. This could substantially increase their effectiveness and chances of successfully executing their mandate. A common standard taught to all international civilian police officers, and implemented in all policing missions, would lessen friction among the national contingents and also provide the local police forces with coherent training, mentoring, monitoring throughout the mission area. However, for optimum international policing, a standard that addresses all aspects of policing should be established.<sup>70</sup> In 1996 Justice Archie Campbell, an Ontario criminal court judge conducted a review into the investigation of serial sex offender and murderer Paul Bernardo that turned out to be Ontario’s crisis in criminal investigation and the catalyst for implementing a common standard for criminal investigations.

## **15.0 Strengthening and Coordinating United Nations Rule of Law Activities**

The progression of UNPOL missions and international criminal investigations continues to the present day. In his *Annual report on strengthening and coordinating United Nations rule of law activities - Report of the Secretary-General August 17<sup>th</sup>, 2009* Secretary-General Ban, Ki-moon detailed the progress made from the beginning with the ad hoc Criminal Tribunals in the former Yugoslavia and Rwanda. A great deal of the report draws a nexus to the task at hand of developing a common major case management system for international criminal investigations. The Secretary General called for a system to carry on the legacy of the ad hoc tribunals.

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<sup>68</sup>Ibid., 19.

<sup>69</sup>Ibid., 24.

<sup>70</sup>Ibid., 18.

The Secretary General's report cites the pursuit of individual responsibility for crimes under international law has advanced steadily since the Security Council established the International Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda in the 1990s. Though temporary in nature, the value these judicial mechanisms bring to the field of international criminal law is enduring.<sup>71</sup>

The UNIIIC established pursuant to Security Council resolution 1595 (2005) is cited due to its successful completion at the investigative stage and the transition to the International Criminal Court in The Hague for prosecution. The United Nations is not limited to international criminal investigations nor is the application of Ontario's Major Case Management System. The OMCM System has been used on occasion for the Public Inquiry, more specifically into the tainted water supply in Walkerton Ontario, a case where several deaths occurred due to funding cuts by the Ontario government. The UN provides assistance to the independent international fact-finding mission established by the Human Rights Council in early 2009 to investigate possible violations of international law in Gaza between December 2008 and January 2009 (see Human Rights Council resolution S-9/1). Pursuant to Security Council resolution 1612 (2005), regular monitoring, reporting and response takes place on grave violations of international law against children in armed conflict. Accountability of perpetrators of such violations has been further advanced recently by Security Council resolution 1882 (2009). A major case management system could be utilized in all of the above.<sup>72</sup>

The Secretary General cites implementation as the key to strengthen institutions, both formal and informal, to be well structured and financed, trained and equipped to make, promulgate, enforce, uphold and adjudicate the law in a manner that ensures protection, security and safety, and access to justice for all.<sup>73</sup>

The United Nations is supporting a substantial three-year justice programme in the Occupied Palestinian Territory to develop the institutional capacity of the Ministry of Justice, enhance access to justice at the grass-roots level, and build confidence between justice sector actors and the public. Similar support was provided in 2009 in Colombia, Kosovo, Liberia, Sierra Leone, Sri Lanka and Timor-Leste.<sup>74</sup>

The European Union Rule of Law Mission in Kosovo (EULEX) assumed full operational responsibility in the area of rule of law (police, customs and justice) in Kosovo on December 9<sup>th</sup>, 2008 within the framework

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<sup>71</sup>Ban, Ki-moon, *Annual report on strengthening and coordinating United Nations rule of law activities. Annual Report of the Secretary General* (General Assembly, United Nations, New York: United Nations General Assembly, 2009), para. 15

<sup>72</sup>Ibid., para. 32.

<sup>73</sup>Ibid.

<sup>74</sup>Ibid., para. 33.

of Council resolution 1244 (1999) and under the overall authority of the United Nations. In Timor-Leste, United Nations police transferred responsibilities to national police in March 2009, marking a key step towards greater peace and security. The police component of the United Nations Mission in the Central African Republic and Chad played a central role in the establishment of the *Detachment intégré de sécurité* in early 2009. In four African countries, police and military help desks and hotlines for violence against women are being established, with United Nations assistance, on the basis of the pioneering work done in Rwanda.

The United Nations recently published *Rule-of-Law Tools for Post-Conflict States: Amnesties* by the Office of the High Commissioner for Human Rights. This represents a vehicle for identifying a common approach that could be utilized in the implementation of a common major case management system for international criminal investigations.<sup>75</sup>

The United Nations is developing its in-house expertise through training, as well as partnering with others to provide standby teams and maintain rosters of experts able to respond to immediate needs in rule of law, there are Standing Police Capacity deployment to missions in the Democratic Republic of the Congo, Guinea-Bissau and Liberia. That comprehensive approach to criminal justice should include standardized major case management system training and the standing police capacity should include detectives at the start-up phase of peace operations.<sup>76</sup>

Weaknesses in laws, procedures and institutions and in political will make holding perpetrators accountable and providing adequate protection, services and reparations for victims nearly impossible. When the police and military are the perpetrators of crimes related to the responsibility to protect as was seen in Afghanistan the rule of law becomes even more challenging. Along-term systematic, coherent and consistent rule of law support system is required.<sup>77</sup>

Signs of an evolving United Nations-wide approach on the ground are encouraging. They do not reflect, however, a shared and consistent methodology nor a comprehensive approach to the rule of law. To improve coherent United Nations support for national efforts, the Organization is reviewing national development plans to assess how rule of law is reflected in national priority-setting, and approaches to developing and implementing overall rule of law, or specific justice or security, strategies.<sup>78</sup>

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<sup>75</sup>Ibid., para. 41.

<sup>76</sup>Ibid., para. 48.

<sup>77</sup>Ibid., para. 53.

<sup>78</sup>Ibid., para. 62.

The common theme repeated throughout the Secretary General's report is to implement an approach to rule of law assistance at the national level, including developing shared methodologies on assessment and programming. This should be a key focus of overall coordination and coherence efforts.

## **16.0 Measuring effectiveness and evaluating impact**

Evaluating the impact of rule of law assistance and measuring its effectiveness remains a major challenge. More realistic assessments of what can be achieved and in what time frames are related to this. The lack of systematic, ongoing analysis of the functioning of rule of law institutions and processes, particularly of national justice systems, remains an obstacle to effective programming.<sup>79</sup>

The United Nations Rule of Law Indicators Project is using multiple data sources, including public surveys, to make up for deficiencies in administrative data in conflict-affected environments. This means empirical assessment of the performance of criminal justice institutions. Haiti and Liberia are presently subject to this. It should be noted that the Ontario Major Case management System comes with its own quality assurance system that does require some centralized organizational control.<sup>80</sup>

Increasingly, United Nations rule of law programmes are targeted to assist regional agendas, particularly in Africa. In support of the Economic Community of West African States, three entities of the Secretariat and the International Criminal Police Organization are working together to combat drug trafficking and organized crime through the West Africa Coast Initiative. To combat the increase of piracy off the coast of Somalia, the Organization assists Kenya and other countries in the region in prosecuting suspected pirates. The African Union receives capacity-building support to develop a regional approach to strengthening security institutions.<sup>81</sup>

## **17.0 The Ontario Experience – The Bernardo Investigation Review – Report of Mr. Justice Archie Campbell – June 1996**

Between May of 1987 and December of 1992, Paul Bernardo raped or sexually assaulted at least eighteen women in Scarborough, Peel, and St. Catharines and killed three women in St. Catharines and Burlington. Paul Bernardo is a unique type of criminal, a determined, organized, mobile, sadistic serial rapist and killer who demonstrate the ability of such predators to strike in any Ontario community. The

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<sup>79</sup>Ibid., para. 79.

<sup>80</sup>Ibid., para. 80.

<sup>81</sup>Ibid., para. 89.

tragic history of this case, and similar cases from other countries, shows that these predators pose a unique challenge to the systemic investigative capacity of local law enforcement agencies throughout North America and Europe. The Bernardo case proves that Ontario is no exception. Justice Campbell conducted a review of the work done by local and provincial law enforcement and forensic agencies during the Bernardo investigations. The Bernardo case, like every similar investigation, had its share of human error. "But this is not a story of human error or lack of dedication or investigative skill. It is a story of systemic failure." Justice Archie Campbell.<sup>82</sup>

Every inter-jurisdictional serial killer case including Sutcliffe (the Yorkshire Ripper) and Black (the cross-border child killer) in England, Ted Bundy and the Green River Killer in the United States and Clifford Olsen in Canada, demonstrate the same problems and raise the same questions. In quoting Justice Campbell the need for a common system of international criminal investigations is summarized. "But this is not a story of human error or lack of dedication or investigative skill. It is a story of systemic failure. Virtually every inter-jurisdictional serial killer case including, (several cases from Canada, the United States and Britain are cited) ... demonstrate the same problems and raise the same questions. And always the answer turns out to be the same - systemic failure. Always the problems turn out to be the same, the mistakes the same, and the systemic failures the same." Justice Campbell went on to say, "What is needed is a system of case management for major and inter-jurisdictional serial predator investigations, a system that corrects the defects demonstrated by this and so many similar cases. A case management system is needed that is based on cooperation, rather than rivalry, among law enforcement agencies. A case management system is needed that depends on specialized training, early recognition of linked offences, co-ordination of inter-disciplinary and forensic resources, and some simple mechanisms to ensure unified management, accountability and co-ordination..."<sup>83</sup>

It was recognized that the requirement for investigating complex criminal occurrences is a system that corrects the defects demonstrated by this and so many similar cases, a case management system based on cooperation. Major case management depends on specialized training, early recognition of linked offences, co-ordination of interdisciplinary and forensic resources, and some simple mechanisms to ensure unified management, accountability and co-ordination when serial predators cross police borders. The systemic failures that Justice Campbell identified in his review include but are not limited to the following;

- Little continuity of investigators,

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<sup>82</sup> Archie Campbell, Honourable Mr. Justice Archie G., *Bernardo Investigation Review*. Investigative Review, (Toronto: The Queen's Printer, 1996.), 4.

<sup>83</sup> Archie G. Campbell, Honourable Mr. Justice Archie G. *Bernardo Investigation Review*. Investigative Review, (Toronto: The Queen's Printer, 1996), 4.

- No system whereby senior officers monitored and followed up the investigation and set time lines and ensured follow up,
- No monitoring or supervisory system in place to ensure follows up with the Centre of Forensic Science and high level co-ordination when necessary,
- No information system to ensure that all the tips called in about one suspect were put together and followed up when appropriate,
- No consistent organized system for suspect classification and elimination. Communication between police forces was inadequate,
- No Violent Crimes Linkage Analysis System (ViCLAS) automated crime linkage system in place,
- No case management information system to ensure the effective communication of suspect information between the two police forces,
- No way to put together the information different agencies had about the same suspect,
- All this information was readily available but there was no system to put it together and it got lost in the overall mass of investigative information.

The problems that arose from lack of a case management system show that motivation, investigative skill, and dedication are not enough. The work of the most dedicated, skilful, and highly motivated investigators and supervisors can be defeated by the lack of an effective case management system.

What was clearly needed was a systematic case management approach that taps into every available technique and resource and source of information and organizes the information in a way that it can be recognized and used effectively by investigators.

The Ontario Major Case Management System was based on the strengths of the Criminal Intelligence Service of Ontario (CISO) model. CISO had a proven operational track record with its ability to secure cooperation between police forces by reason of its neutrality and credibility in the police community, its strict accountability and lack of bureaucratic baggage, and its demonstrated ability to achieve buy-in from the chiefs, senior management, and officers of the co-operating police forces.

CISO provided a proven, ready-made model that could be readily adapted for the coordination and management of serial predator investigations without the creation of a whole new bureaucracy. The CISO model required some special adaptation to the unique problems of investigating mobile serial predators, particularly by way of case management support structures and a focus on inter-disciplinary teamwork and training. This required emphasis on special case management systems, training, and the forensic, medical and scientific teamwork required for serial sexual predator investigations.

A major case management system is required to ensure that all relevant resources and techniques and information sources are applied to the investigation. Justice Campbell's review of the Bernardo

investigation made twelve recommendations for a major case management system that are summarized below;

1. A standard computerized case management information system for major sexual assault and homicide investigations that have the potential to involve inter-jurisdictional investigation,
2. A major case management system to ensure standardized interview and statement techniques and consistent criteria for suspect classification and elimination. Police Forces needed to communicate better about common suspects. There needed to be an assurance that police investigators were aware of what was required by the forensic pathologist during a postmortem investigation. Each investigation would require a specially trained media relations officer
3. A major case management system to ensure accountability by a single specially trained officer is in clearly in charge of, and accountable for, the planning, strategy, and execution of the arrest and interview as well as all other aspects of the investigation. A detailed running synopsis of the investigation needed to be maintained in a form that can be quickly adapted as a core document as a basis for the preparation of search warrant and other legal documentation. Investigators involved in the arrest and questioning of a suspect were aware of the legal requirements for a valid arrest and questioning and the legal consequences of failing to comply with those requirements and that the officer in charge be responsible for the co-ordination of all advice and direction given to the arresting and interviewing officers.
4. A co-ordinated early recognition system to recognize links between crimes early enough to pool information and focus the separate investigations onto the same target. This would include better utilization of the Canadian Police Information Centre (C.P.I.C.). Mandatory ViCLAS (Violent Crimes Linkage Analysis System) reporting should be included and enforced in the Police Services Act of Ontario. The Chief Coroner's records for unidentified human remains should be utilized as a way of potentially linking cases. Uniformed officers should be better informed as also assist in the potentially linking cases and suspects.
5. A centrally supported organizational structure based on co-operation among individual police forces that combines unified leadership across police jurisdictions with organized case management procedures and inter-disciplinary support from forensic scientists and other agencies. The recommended structure was a two level co-ordination including a Board of Directors and an Executive Committee. The Board of Directors, based on the CISO police co-operative model is composed of twelve police chiefs chosen by the Ontario Association of Chiefs of Police (OACP) and/or the CISO governing body, the Chief Coroner, the Director of the CFS, the

Assistant Deputy Solicitors General for Policing Services and Public Safety. This would be utilized to resolve any conflicts that could not be resolved by the officer in charge. The structure was to be directly accountable to the Solicitor General of the Government of Ontario. A major case manager was to be personally and directly in charge of the investigation at all times. The establishment of an inter-disciplinary Advisory Committee to ensure a consistently high level of continuing technical, legal and forensic advice; selected jointly by the Senior Case Manager and the Executive Committee, to advise the senior officer in charge but not to manage the investigation. Finally a support Team composed of a full-time media officer, crime analysts, profilers, computer technicians, an officer manager, clerical staff including data entry staff and a budget officer lead investigators for the individual cases who will have received essentially the same training package as the senior case manager.

6. Standard case management procedures are required of the kind described in the Major Case Management Manual developed by the Canadian Police College, customized to the Ontario police, legal and forensic environments
7. Early approval of one single uniform computerized case management system for mandatory use in all serial predator investigations and all major sexual assault and homicide cases that could potentially fit the ViCLAS definition or the triggering definition and turn into a serial predator investigation. "POWERCASE" was agreed upon quickly by the Ontario police community as the one single preferred uniform package.
8. Eventual standardization is desirable of other police information and records systems, information standards, and mainframes, such work not to interfere with the immediate approval of a single common computerized case management information system, POWERCASE.
9. Specialized training is required as one of the foundations in the areas of major case management, special problems of serial predator investigations, special problems of inter-jurisdictional investigations, media liaison, victim support, stress management, information management and specialized training for criminal investigators in homicide and sexual assault investigations and crime scene identification.
10. An organized system was required under the direction of the Board of Directors to ensure that law enforcement agencies learn from the mistakes of the past not only in the Bernardo and other serial predator investigations but also the problems and solutions identified by Ontario coroners' juries.

11. Funding and support for serial predator investigations had to be secured under s. 9 of the Treasury Act, administered through the Board of Directors and Executive committee through machinery based on the CISO funding model.
12. Funding was required for the training packages, the establishment and maintenance of a reasonable turnaround time for DNA testing, and the start-up and maintenance of the proposed system. The necessary funds were modest compared with the human and financial costs of failing to increase, to a more reasonable level, the systems of public protection against serial predators.

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## 18.0 Ontario Major Case Management

Major Case Management (MCM) focuses on:

- Accountability
- Proper investigative techniques
- Information sharing and management
- Interdisciplinary coordination
- Proper use of science and technology
- The correct amount of training and experience

Major Case Management was designed for;

- Multi-jurisdictional serial investigations
- Homicides and civil disasters
- Police investigations with multiple victims
- Multiple accused
- Multiple crime scenes
- Multiple offences or
- Multiple investigative agencies

The three investigations undertaken by the United Nations being examined here include mass murder with numerous victims and accused and many other intricacies. The Major Case Management System is well suited for any eventualities and can be adapted to fit a single occurrence of a civil disaster. Every

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<sup>84</sup> Archie G. Campbell, Honourable Mr. Justice Archie G. *Bernardo Investigation Review*. Investigative Review, (Toronto: The Queen's Printer, 1996), 28-34.

aspect of a major case investigation falls under the investigative oversight authority of the Command Triangle. The three main functions are:

1. Case Management (Major Case Manager) – The overall strategic command of the investigation in accordance with established policies and procedures, liaison with other involved law enforcement agencies, victims and the media. Accountable to the executive of an organization for all aspects of the investigation.
2. Primary Investigation (Lead Investigator) – Identification and procurement of the necessary resources to conduct an investigation. Prioritization, assignment and supervision of investigative tasks, including witness interviews, suspect classification, ground searches, canvasses, search warrant preparation, crime scene investigation, collection of evidence, analysis of evidence and arrests.
3. File Coordination (File Coordinator) – Collection, management, retrieval, analysis, dissemination and security of all information collected during the investigation. Prioritization of investigative leads for follow-up action. Responsible for completion of necessary court briefs and documents.<sup>85</sup>

The following represent what is considered a major case in Ontario;

1. Homicide,
2. Sexual Assaults and all attempts,
3. Non-familial abductions and all attempts,
4. Missing Persons where foul play is suspected
5. Found Human Remains
6. Criminal Harassment (Stalking) where the offender is not known to the victim

A unified command and accountability structure are the main results of linking similar investigations. One person has over all command and the authority to do what is required for the benefit of all cases. This prevents rivalry, competition and private agendas. This prevents duplication of effort between agencies. Cases may be linked as a result of forensic evidence like DNA, finger prints or tire impressions. They may also be potentially linked as a result of ViCLAS (Violent Crimes Linkage Analysis System), Behavioural Profiling or other more conventional investigative means.<sup>86</sup>

When various professions Crown Attorneys, Forensic Scientists, Coroners, Pathologists and police officers come together as an Investigative Consultant Team, cross-disciplinary expertise is shared in

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<sup>85</sup>Bill Van Allen, *Criminal Investigations: In Search of the Truth* Edited by Michael J. Young (Toronto, Ontario: Pearson Pentice Hall, 2007), 329.

<sup>86</sup>Ibid., 76.

“case conferencing.” The possibility of “tunnel vision” is greatly reduced when different perspectives are provided by all disciplines. MCM’s can more readily develop and execute investigative strategies. Regularly scheduled meetings of the Investigative Consultant Team is advisable and detailed minutes of the meetings is paramount to good record keeping practises.<sup>87</sup>

An effective information management system is required from the very outset of the investigation so that no piece of information or evidence is lost and proper investigative action is taken. Manual systems are known as “hardcopy file management” systems. This requires the cataloguing of every piece of information into the 52 File (category) systems of tips, statements, assignments etc.

Ontario MCM uses the “Powercase” automated or computerized information management system. The Ontario Major Case Management System is the first of its kind to connect all police services in a jurisdiction using a wide area network and centralized database to capture and compare compatible investigative data from similar crimes. Officers are trained province wide in the use of Powercase. Even solved cases remain on the system and are continually compared to other solved and unsolved cases.<sup>88</sup>

Maintaining a running chronology of the case will pay off in the event of the need to prepare a bail brief or search warrant. This can be maintained in a number of ways in a number of formats and time frames, daily activity reports or weekly reports to the MCM.

- Summary of offences dates, times, locations
- Victimology, including injuries
- Summary of witnesses and police officers information
- Summary of police investigative techniques and results
- Summary of physical evidence

This is a time saving benefit for search warrants and prosecutor briefs. Any investigator can use the chronology to get up to speed on an investigation and adopt the chronology as reasonable grounds for applications for authorizations or arrest.<sup>89</sup>

Operational planning is commonly used to increase the probability of success for any large scale investigative techniques. An Ops Plan should be in place for a one-time short duration surveillance operation or a long-term undercover operation. Planning promotes the effective use of resources by

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<sup>87</sup>Ibid., 331-332.

<sup>88</sup>Ibid., 332-335.

<sup>89</sup>Ibid., 335.

identifying objectives. Planning provides each investigator with his or her responsibility to the common goal. It promotes team work so that everyone knows what they are supposed to do. It prevents overlap in responsibility and duplication of services. It also makes sure that the gaps are filled and nothing is overlooked. It ensures effective execution. An operations plan is the template for the operational briefing. Everyone gets a copy and everyone signs the original so they know their responsibility. The operations plan is read out at the meeting so that everyone knows what their role is and what was expected. This becomes very crucial in court when questions about “what happened?” come up. There is a document of the briefing that clearly states the direction of the operation.

The operations plan serves to encourage contingencies. No one can predict how another human being will behave in certain situations. The operations plan allows for future planning if the situational assessment changes. Operations plans can be fluid to allow situational changes, “plan, act, assess.” The operations plan identifies resources for whatever techniques is being used and represents a permanent record of the planning that went into an operation in the event of something unforeseen.

There are five stages to the operations plan;

1. Planning
2. Briefing
3. Execution
4. Debriefing and
5. Follow-up

This is all laid out on a SMEAC (Situation, Mission, Execution, Administration and Command) Operation Planning Form covering the Who? What? When? Where? Why? and How? of the operation.<sup>90</sup>

Canvassing is a specialized interview that attempts to identify potential witnesses. A conventional canvas would be conducted in the area of the occurrence going door-to-door and asking if people were aware of anything that may assist the investigation. Depending on the nature of the crime however, there are several other ways to target potential witnesses:

- door-to-door in a the neighbourhood, apartment or area of a crime,
- surveys of pedestrian or motorists at a checkpoint
- soliciting from a group of people that frequent an establishment, public place where the crime occurred
- interviewing all employees of a company students at a school etc. where a crime has occurred

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<sup>90</sup>Ibid., 336-340.

Maximum effectiveness is achieved through the canvas by a detailed Canvas Plan:

1. assigning adequate resources
2. canvassers must be well briefed of the questions to be asked
3. conducting follow-up on anyone not available at the time of the canvas
4. identify all persons living at a residence
5. names of boarders and visitors
6. ensure that potential witnesses identified in the canvas are interviewed.<sup>91</sup>

A primary victim is considered to be someone whom a crime has been committed against. Secondary victims are those close to the victim such as relatives and friends. It is important to make sure that victims are not re-victimized by the system as it attempts to solve the crime. The victim police relationship is crucial and should be professional at all times. Every attempt should be made to ensure that the victim deals with the same investigator. The personal safety of the victim needs to be guaranteed. There are several safeguards in the system that ensures this. This includes notifying the victim of any outcomes in court, safety planning and victim witness support through the ongoing court process. Witness Protection can include any number of techniques from providing individual police protection to new identities and relocation. Keeping the victim apprised of what is taking place in the investigation and any material change is also paramount. Regular contact will keep victims informed even if there is nothing to report. Victims should be aware of pre-trial custody, release conditions, escapes, future court appearances and court dispositions.

Ontario has several agencies that ensure ongoing communication with the victim. VCARS is the Victim's Crisis Assistance and Referral Services. This is group of volunteers that assist victims of crime. VWAP is the Victim Witness Assistance Plan that is a province wide court-based program providing orientation and support to victims throughout the court process.

The Victim's Injury Compensation Board will provide victims of crime with financial compensation for injuries sustained as a result of a criminal occurrence.<sup>92</sup>

Good relationships with the media are crucial to high profile investigations.

- Never provide information that you know to be false

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<sup>91</sup>Ibid., 340-344.

<sup>92</sup>Ibid., 344-347.

- Never ignore the media's requests for information and put them in a position of conducting their own investigation
- Never show favouritism to one member of the media.

Policing is a profession that attracts media attention. Media reporting can have an enormous impact on an investigation. An objective journalist may be critical of the police.

The benefits of good media relations are:

- Public awareness that the police are actively investigating
- Public education encourages citizens to take proactive measures to protect themselves
- Public confidence in local police is enhanced when efforts are reported in the media

Each investigation should have a designated trained media liaison officer cognizant of the established policies and procedures in the release of information

The Police Services Act of Ontario allows that a Chief of Police or Commissioner of the OPP may release the personal details of a suspect or accused person in the event that there is a public safety concerns as a result of that person being at large.<sup>93</sup>

Public Appeals can be very effective in identifying previously unknown witnesses and new suspects or persons of interest. Re-enactments, case studies and billboards are examples of public appeals for information. This can on occasion generate a large volume of tips and must be a plan for this contingency. Police "hot-lines" should be set up to handle the tips and extra resources put in place to handle the volume of calls.

## **19.0 Quality Assurance**

Quality assurance in major case management relies on peer review. The Ontario Major Case Management System is set up with the checks and balances that integrate quality assurance into the responsibilities of major case manager, primary investigator and file coordinator. All information is viewed at these three levels and investigative decisions made as a result. This is intended to ensure a consistent quality investigation. The process is flexible to provide applicability to a wide range of investigations. The quality processes compliment human experience and investigative intuitiveness and are not intended as a substitute for sound judgement and discretion. Case Review is defined in the Ontario Major Case

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<sup>93</sup>Ibid., 347-352.

Management Manual as an examination of the administrative management and/or operational aspects of the investigation including a peer evaluation. This can take place anytime during the investigation.<sup>94</sup>

Quality assurance provides systematic monitoring and evaluation of investigations to ensure that standards of quality are consistently met based on practicality, functionality, established practices, flexibility and legislative standards. The ultimate goal of the quality assurance processes is to provide organizational assurance of consistent quality practices on conducting homicide investigations. Ultimately quality assurance contributes to organizational goals of continuous improvement, organizational learning and consistent quality investigations.

The benchmarks for quality assurance are based in qualitative and quantitative performance standards required by legislation. The Ontario Major Case Management Manual is imbedded in legislation as Ontario Regulation 354/04 of the Police Services Act. Several judicial inquiries were utilized to form the comprehensive system including the Campbell Inquiry and the implementation of its recommendations (See above) and the Kaufmann Inquiry and its recommendations, not the least of which included new rules for homicide investigators and crown prosecutors with respect to for example in-custody informers. Finally police services and investigators are measured against a set of adequacy standards in the Ontario Policing Standards Manual (2000) that details the core competencies of criminal investigators.

A major case manager provides the primary context for quality assurance processes, responsible for leadership, direction and oversight and monitoring of the investigative team. A major part of the role of MCM is ongoing quality checks on all aspects of the homicide investigation.

The essence of quality assurance is to ensure consistent quality processes. Hence the timing of quality assurance checks is a critical success factors in monitoring on-going quality homicide investigations. A full range of quality processes are applied to both solved and unsolved cases. Quality checks should occur early in the homicide investigation, to monitor the continued quality, and make adjustments where required. Other systemic quality checks are more retrospective; they are completed at the conclusion of the investigation and judicial processes and contribute to organizational learning. The following investigative activities from the Ontario Major Case Management Manual can be monitored during the investigation of a homicide;

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<sup>94</sup>Ontario Ministry of the Attorney General. *The Ontario Major Case Management Manual*. Ontario Regulation 354/04 of the Police Services Act, Ministry of the Attorney General, Government of the Province of Ontario, (Toronto: The Queen's Printer, 2004), 9.

1. Major Case Management – The structure of the investigative team varies with the scope of the investigation. It is a triangular conceptual framework and provides the essential function of each role Major Case Manager, Primary (Lead) Investigator and File Control Officer or Coordinator.

The Major Case Manager is responsible for the speed, flow and direction of the investigation and ultimately for quality assurance The MCM is responsible for making sure that the resources are available to appropriately staff the investigation and complete the required tasks.

2. Investigative Focus – Conducting an investigation requires planning, implementing and evaluating. Planning determines the direction, speed and flow and investigative assignments are a result of the plan. The investigative team completes its assignments under the direction of the Major Case Manager. Information that results is analyzed and contributes to the focus and direction of the investigation. Ongoing evaluation of the information based on an objective approach prevents tunnel vision, misinterpretation of the evidence and pre-conceived conclusions. Regular meetings maintain communication flow amongst all areas of the investigation. The overlap of responsibilities and constant communication contribute to the quality of the investigation.
3. Crime Scene Investigation and Examination – Preserve the crime scene. Examine, capture and preserve a true depiction of the crime scene with minimal disruption or change with detailed, accurate documentation. Using the latest technology to identify the perpetrator of the crime. Analyze all aspects of the crime scene to determine the next investigative steps.
4. Manage Forensic Evidence – Forensic evidence is items that are the subject of scientific examination to inform the criminal investigation. Investigators with the knowledge skill and ability, training and expertise are collecting the evidence and analyzing it as the relevance to the investigation. The Major Case Manager is responsible for the systematic collection of this reconstruction process involved in solving the crime.
5. Liaison with the Coroner – The Coroner is a part of the greater hierarchy of investigation and facilitates contact with medical services, assisting in identification of experts and providing advice to the investigative team. The Major Case Manager maintains a cooperative working relationship to comply with the legal duties of the coroner and although the coroner is authorized by the Coroner's Act in Ontario for conducting an investigation their involvement in a criminal investigation is limited.

6. Post Mortem Examination– The purpose of this is to ensure that appropriate evidence is collected and preserved, to maintain the integrity of the investigation. Appropriate investigative, forensic and medical personnel are required to attend. The pathologist's findings on cause of death are crucial to the subsequent focus of the investigation.
7. Victims Liaison – The MCM ensures that the appropriate assistance is provided to victims and their relatives utilizing community based systems and programs as well as those of the organization.
8. Media Liaison – Media Liaison Officer plays a major role in the maintenance of a relationship with the media. This represents a single organizational contact with the media. Media releases are drafted by the MCM in compliance with organizational policy with consideration for the integrity of the ongoing criminal investigation. The public has a right to know and be informed and occasionally to be warned about specific investigations.
9. Canvas Coordination – Canvassing is a systematic approach to a group of persons usually limited to a defined area utilized to identify persons that may have information relating to the investigation. It takes place in the early stages of the investigation. Officers are directed to ask specific questions in a specific manner and make enquiries pertaining to specific issues. The MCM directs and oversees the canvas by identifying the resources required and ensuring that it is completed in a timely manner. Witnesses are identified through the canvas for future more detailed interviews.
10. Interviewing – Witness, victim, person of interest, suspect and accused interviews are the primary method for gathering information about the subject under investigation. Interviews can be conducted and recorded in a variety of formats, sworn or un-sworn. There are some trained interviewing specialists including polygraph examiners and child interview specialists. The best evidence is audio/video recorded and sworn. In this manner it can be considered evidence for the truth of its content at trial. The MCM provides the who, when, how and the content of the interviews. A review of the statements is an on-going process for obtaining the information to advance the investigation.
11. Identification and Apprehension of Offender – The primary purpose of the investigation is to solve the crime by identifying the offender(s) and bringing them before a court of competent jurisdiction. The role of the Case Manager is to determine when a charge is laid and lay the appropriate charge based on the evidence.

12. Judicial Authorizations – Several types of judicial applications may be made during an investigation e.g. Criminal Code Search Warrants, DNA Warrants, Bodily Impression Warrants, Authorization for “One-Party Consent” and “Wire-tap” Electronic Intercepts Authorizations. The MCM oversees their preparation.
13. Reporting – The MCM oversees and reviews all reports written by the investigative team. The Primary Report is the Prosecutor Brief for the prosecutor, a complete summary of the case and all the information gathered. The synopsis of the brief can be used to screen the brief or in the event of a guilty plea, can be read into the record. The Prosecutor Brief is also the disclosure that the defence receives that includes all of the information that the state has against the accused. A Case Control Report should also be submitted to the organization reporting on the progress of the case and the eventual outcome.
14. Relationships with Prosecutor – The police-prosecutor relationship evolves throughout the investigation. Police may seek legal advice from the prosecutor with respect to judicial authorizations. It is customary that the police and prosecutor reach a consensus on the laying of charges although not required. Once the charge is laid the role of police is to assist the prosecutor in preparing the prosecution.
15. Case Conferencing – The role of the MCM is to facilitate and chair the Investigative Consultant Team meetings. A multi-disciplinary approach is used to further the investigation. The MCM facilitates the on-going investigation, and develops investigative strategies.
16. Investigative Resources – The MCM manages financial and human resources, assessing resource requirements, obtaining human resources, expenditures for contract resources. From there the Lead Investigator utilizes the resources to execute the strategy. Depending on the complexity of the investigation the duration may vary and the MCM may have to plan for long-term resources. It is imperative that the beginning of the investigation be staffed with sufficient human resources. This is called “Front-end Loading.” More long-term investigation will require fewer investigators for a longer duration.
17. Data and Information Management – The MCM is responsible for identifying the intelligence needs for the investigation. Intelligence is one of the many types of information that contributes to the direction of the investigation or focus.
18. Undercover Investigations and Agents – The use of Undercover Operators is one of many investigative techniques to be considered. The MCM determines the need for an undercover

operator and the lead is then responsible to coordinate the required logistics and provide strategic management and advice.

19. Agents and Informants – The MCM oversees the initial assessment of the agent/informant's information and makes the decision as to whether to continue pursuing the agent/informant process. A key responsibility is to ensure the safety of the agent/informant during and after the investigation. Once the decision is made to utilize the agent/informant the responsibility remains with the MCM. The MCM then directs the use of the agent/informant.

Agent – a person, who acts on behalf of the police, is directed by police to further the investigation. This person will be required to testify in the event of a prosecution. There are significant organizational liabilities in designating an agent.

Informant – a person who provides information only. There is an expectation of secrecy, e.g. No testimony in court.

An In-Custody Informer is a person, who receives one or more statements from an accused while both are in custody. Information is in relation to the investigation that occurred outside of the institution. The informant privilege applies and the informant does not have to take the stand and testify.<sup>95</sup>

Witness – a person, in or out of custody, who provides information to the police, with no expectation of secrecy, with the potential to testify in court.

20. External Agencies – The MCM identifies external agencies to contact to assist in the investigation. These external agencies provide expertise that is not otherwise available, e.g. Canada Customs, Ontario Fire Marshall's Office, Special Investigative Unit, Federal Bureau of Investigations, Criminal Intelligence Service of Ontario, DNA Labs and other police agencies.<sup>96</sup>

Quality assurance process measures and provides ongoing feedback on major case investigation and management. Feedback will originate from several sources and the paramilitary structure of police services generally infers rank in the management of the investigation. The nature of the investigator's character will often provide that first level of scrutiny in being motivated toward success in the investigation. The supervisor responsibility is as subject matter expert in providing feedback and recognition for the proper execution of the above investigative activities. Finally the Systemic

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<sup>95</sup> Ibid., 9.

<sup>96</sup> Ibid., 15.

Checks completed at various organizational levels are done early and often throughout a homicide investigation for both solved and open cases, to provide on-going monitoring of consistent quality throughout all stages of the homicide investigation.

This major case management process provides the framework for review of applicable activities of a homicide investigation, and is ideally completed when the investigation is complete, where a charge is laid or the investigation has reached an inactive status. This is a review of essential standard activities that are always required for homicide investigation, as well as selected items, specific to the actual homicide investigation. The checks are focussed on the above activities.

A complete and detailed review of all aspects of a homicide investigation should be done at the conclusion of the case solved or open by an objective and knowledgeable team to ensure compliance with the established standards. It allows the measure of activities and outputs as opposed to the traditional police and societal measures – clearance and convictions rates that are one dimensional and do not measure quality processes in conducting the investigation and assisting with the prosecution. A quality homicide investigation may not result in a charge or conviction.

There are many aspects of a homicide investigation that are not quantifiable. The human experience and intricacies of each case require investigative knowledge, intuitiveness and judgement based on experience. The purpose of conducting a homicide investigation is to solve the homicide – find the truth. Major Case Managers (MCM) are expected to consistently demonstrate prudent management practices, including resource and fiscal management.

## **20.0 Core Competencies for Criminal Investigators**

The core competencies for a criminal investigator are a set of measurables of an individual's qualifications. This is duly noted but detectives are born, they are not made. This set of competencies will protect the organization from the liability of using unqualified investigators but one must keep in mind that there has to be an inherent part of an individual that drives them to investigate the death of another human being. An investigator's motivations, compulsion and attitude are hard to measure and all the courses in the world will not make an investigator competent. Police officers don't all sign up for the same reason. Simply put it should have been to put the bad guys in jail.

There are 14 competencies that investigators in Ontario are measured by. They range from the investigators ability to identify actual offences to taking responsibility for their own professional development. (See Appendix "D"- Core Competencies for Criminal Investigators). The selection of

criminal investigators does not always put the right person in the right job. Some investigators start too early in their career and fail to lay down the proper foundation of uniform policing before the “glory” of being a detective takes them down the wrong path. Television and movies make being a detective “sexy” and adventurous when that is not the reality. Some investigators start when they are supervisors or managers. Without the proper basis for criminal investigations police officers can gain a cursory knowledge of criminal investigations and case law that allows them to “talk the talk” but not “walk the walk.” The basis for being a detective comes from uniformed patrol work where the crimes you investigate fall below the “major case” benchmark. This is where burgeoning detectives “cut their teeth.” This goes back to Community Policing from the 1990’s and the Intelligence-Led Policing today.

The police officer has to get to know the criminal element in the area of operations. That can only come from the day-to-day contact with people that utilize a police service most. Generally people don’t call police unless they absolutely have to. People are able to go about their lives without ever facing a problem that they cannot handle on their own. However there is an element of society that comes in contact with the police on a regular basis because of their lifestyle. Chosen lifestyle, learned lifestyle or unfortunate circumstance lifestyle the police are a regular part of their lives. Not all of them are criminals and not all of those are criminals by choice. Some just don’t see any other way to look after themselves and their families. Some of these folks are victims and that is the reason for their constant contact with police. The point being there is a fraction of the population that police officers deal with regularly and these are the people that a police officer has to get to know. Eventually as the police officer gets to know the clientele the names and lifestyles of the criminal element become familiar. Information (intelligence) starts to come into the police officers possession through many sources; concerned citizens, witnesses, confidential human sources, Crime Stopper’s Tips and other police officers. This is the information that young investigators begin to rely on to direct their enforcement efforts. There are many dynamics to these crimes that start to emerge like the Break and Enters to steal property to convert to drugs or cash to buy more drugs. The Dynamic of Domestic or Spousal Abuse is another one that is played out daily. Many of these crimes are the secondary or tertiary crimes that surface as a result of drug addictions, or the lack of illicit drug enforcement in an area of operations. When an officer gets involved in the gathering, collating, analyzing and disseminating information they learn the “intelligence cycle”. The next step is the investigation of these lower end crimes and formulating the requisite grounds that an offence has been committed. Continuing the investigation and gathering enough evidence to support the charge is the next step in the process. The process from information gathering to investigation, to laying a charge, and then giving testimony at the trial lays the groundwork for becoming a detective. After repeating this process over the course of several years a patrol officer could then start to focus on a career in criminal investigations. But missing out on the opportunity to repeat the process over and over will ultimately deprive a police officer of the required foundation that a criminal investigation rests that is the solid foundation of uniform police work. Joining criminal investigations at the supervisory or management level

with only a cursory knowledge would be akin to going from playing minor hockey to the NHL without ever playing Junior A or College hockey. After that no amount of education will make you a competent detective. Experience is the key to knowing how criminals behave. Being proactive and engaged with the criminal element in your community is part of the inherent will required to be a detective. Qualifying a police officer according to the following set of Core Competencies will ensure that the organization can maintain a measure of quality assurance of its investigations and articulate that investigators are competent but nothing can take the place of experience.

The Core Competencies for a criminal investigator correlate with the inherent problems that have been identified in the three UN International Criminal investigations. One can also see how applying these core competencies would fit into Chapter 14. The Common Standard and Chapter 15 Strengthening and Coordinating United Nations Rule of Law Activities in order to alleviate those inherent problems. The core competencies were developed as a result of the Campbell Inquiry for that reason, to set a common standard and how Ontario investigators have to meet the standard at a very minimum. This standard for investigators also lays out the competencies that an investigator will be measured by. Clearly the effectiveness of an investigator will dictate the quality of the investigation. The whole of the investigation is based on the human resource. As the United Nations tries to make up for deficiencies in administrative data to measure the effectiveness of rule of law activities the core competencies for criminal investigators provides the system with these measurable characteristics based on previous inherent problems in criminal investigations. (See Chapter 16. Measuring Effectiveness and Evaluating Impact) The Ontario Major Case Management System comes with its own system for measuring and evaluating criminal investigations.

The interconnectedness of the OMCM and the Core Competencies for Criminal Investigators creates a matrix to ensure that the investigation is done properly by the right people to ensure the integrity and give the investigation the best chance of success. With reference to Appendix "C" Observed Problems of Criminal Investigations, the problems have been categorized in order to show that each of the UN investigations encountered similar problems to the Ontario Experience. Using one, several or the entire matrix described above, all of these problems can have a solution, remedy or at the very least a way in which to mitigate the problem.

The problems have been categorized in Appendix "C" into the following; The Right People, Political Pressure, Best Evidence, Background Investigation, Investigative Strategy, Communication, Interference, Major Case Management System, Evidence, Prosecution and Information Management. The chart now contains a fifth column entitled Major Case Management and Core Competency. This column provides what the possible solution or solutions from the Major Case Management System could be used to alleviate the problem.

The Right People category contains items such as turnover rate, recruiting, qualifications and continuity. The core competencies for criminal investigators can alleviate a number of these items. The UN has proposed that there be a standby pool of investigators that are ready to go to war-torn or failed states in order to establish rule of law activities. Instead of having anthropologists acting as forensic investigators or academia and lawyers acting as investigators, the core competencies can be used to identify the right people for the job. One of the best examples of this was in 1999 when 300 Forensic Scientists and all their equipment were assembled in Kosovo. The right people also includes the right major case manager. By identifying competent criminal investigators for the pool you will also get those people with the personality traits mentioned above that are inherent. This is likely to stem the turnover rate as these investigators are more likely to be committed to the end of the investigation.

Political Pressure is the absolute jurisdiction of the major case manager and the investigators should be shielded from this pressure in order to maintain the integrity of their investigation. The Ontario Major Case Management System is not without its political pressures. Police Service Boards and Police Service Management all put pressure on the major case manager to get the crime "solved." They need to be able to go back to their constituents and say the crime has been solved and there is no longer a risk to public safety. This requires a centrally supported organizational structure based on co-operation among individual police forces that combines unified leadership across police jurisdictions with organized case management procedures and inter-disciplinary support. This includes an Executive and Board of Directors accountable to the government or in our case the United Nations and then a senior major case manager to take responsibility for the investigation and report back when there is political pressure or interference.

Best evidence is lost or contaminated due to delayed involvement, crime scene continuity and security and negligence. Best evidence provides the investigator with a bit of a spectrum. Best evidence can be a matter of timing and preparedness. The thing that may determine the best evidence is how it is articulated to show that at that moment in time, the evidence before the judge is the best that it could be. For instance the best evidence is always the truth and in order to capture it in the optimal way is to have the evidence emanate from a witness or accused under oath, knowing the consequences of not telling the truth and then recording the whole process. It will then pass the test of reliability. Writing word for word what the person said and imploring them to tell the truth, in circumstances where there is no electricity may be the "best evidence" for that place and time. However utilizing the same practice when there is audio/video recording equipment and a commissioner of oaths would not represent the best evidence. An investigator with the proper training and experience will meet the core competency of interview victim/witness and would make the right decision in capturing the evidence. Crime Scene Management will maintain the proper security and documentation to prove continuity of the crime scene; this can be

accomplished physically with armed guards or crime scene tape around the perimeter. It can also be attained with the proper documents that account for the integrity of the crime scene and prove continuity of evidence. Knowing what constitutes evidence in the first place can alleviate this problem. Sometimes this requires the expertise of a forensic investigator and sometimes it requires common sense and foresight. When you interview a person of interest and abide by the law by providing them with creature comforts, foresight will have you seizing the discarded cup they drank from in order to develop their DNA profile for future reference.

The Primary Investigation was so categorized because it refers to the gathering of information in order to reconstruct the events leading up to the death of the victim and the ante-mortem information. For lack of a better term it is all of the investigative information that makes up the investigative file minus the forensic examination. In International Criminal Tribunals of the United Nations investigations there were mass graves containing thousands of victims that are unidentified to this day. On occasion a body will turn up in Ontario that is unidentified and conversely to that is a missing person where foul play is suspected. The Ontario Provincial Police now has a Missing Persons and Unidentified Bodies Unit as a central database for these investigations in Ontario. In these cases the reconstructive information is very important. Although forensic investigation will eventually confirm the identity of the victim, it is the background investigation that will lead to this. The investigator's experience in this area is paramount. As the investigator gathers information about a victim it is always with the intended crime in mind. So the information is gathered according to the facts in issue in order to lay the appropriate charge and the investigator must know what is required in order to prosecute and obtain a conviction. This requires acute victim/witness interviewing skills to mine this information from the investigative source. The investigator must keep in mind not only the identity of the victim but also how the perpetrator will be identified. Often the investigative information will remain in the file for years before it is accessed. When it is referenced in the future the information needs to be complete. This is the importance of the integrity of the pursuit.

The major case manager maintains the responsibility of the speed, flow and direction of the investigation. Therefore the major case manager develops the investigative strategy based on the information gathered by the initial investigators and consultation within the command triangle. The importance of continuity of major case managers is the key to maintaining investigative strategy. Although accurate and uniform information should lead an investigation in the same direction despite different managers, often other factors influence different individuals to go in different directions. Political pressure and career development are two factors that have a tendency to change the direction. Some major case managers are more influenced by the forensic investigation while others will rely on the background investigation to determine direction. Forensic investigations can reveal instant results however in the absence of a good crime scene DNA profile the investigators may be lead on a long journey in many directions before getting there by the forensic science shortcut. The command triangle is made up of the major case manager, the

lead investigator and the file coordinator. Consultation within this core group must be continuous so that everyone remains headed in the same direction. The investigation should follow the investigative avenue until a charge is laid, the investigative avenue comes to an end or the suspect is eliminated, then and only then should a different direction be taken. At no time should an investigation take a shotgun approach. However, "tunnel vision" is also dangerous as investigative resources are committed in the wrong direction; this is why the multi-disciplinary consultative approach is so important. Constant actions, assessment and reaction should identify the optimal direction. Plan, act, assess. Attempting to follow two unrelated directions will spread the investigative resources too thin in many areas rather than front-end loading in one direction and getting all of the work done there.

Communication is a very broad category and can refer to many things. In this case it refers to communication with the primary or secondary victims in order to conduct the primary investigation. All three of the international investigations encounter communication problems with the victims. Information received from interviewing victims and witnesses will make up the majority of the information in the investigative file so it is important that investigators are able to interview victims and witnesses. In many cases this will require native interviewers or the use of translators or interpreters. Language barriers can occur anywhere including a bi-lingual country like Canada. Not all investigators speak both official languages. Language is a very specific barrier to communication; culture would be the broader category to overcome. This is cited in the investigation in Rwanda as investigator knew nothing of the culture and history. Canada is known as a multi-cultural society due to an "open door" immigration policy but sometime investigators are faced with cultural barriers with Canada's First Nations people. The OPP has a bureau dedicated to First Nations policing and specialist investigators that assist as liaison officers. At the very least investigators should be sympathetic and open to other cultures and to understand those barriers. Victim assistance is paramount to the investigation and the investigators have to be prepared to assist the victims. Assistance can come from outside agencies or from within the investigation itself. The major case management system includes a full-time position for a victim liaison officer and making sure that the barriers to communication are a part of the overall investigative strategy whether it is to deal with a single instance of a language barrier or the need to learn the culture and history of a country. The accuracy of the investigation depends on it.

The interference that has occurred in the international investigations is another barrier to conducting the primary investigation. Sometimes this interference can be subtle and investigators will have to be good interviewers in order to pick up on it. On other occasions it may be blatant in order to send a message to others that cooperation with an investigation would be dangerous. Victim Assistance covers a wide range of activities including witness protection. Witnesses can be protected through relocation and new identities or simply by providing information or intelligence under the protection of an informant privilege. There is a requirement for police to be able to gather and utilize information anonymously that will not

require that witness to testify. Then there is the Proven and Reliability aspect of the informant and the information. There are numerous motivations for people to provide anonymous information to police and their own personal safety is a legitimate one. Investigators need to be savvy to these motivations while they conduct interviews and then they need to be aware of the options available to ensure the witness' safety. Witnesses will only provide information to someone that they trust. When those assurances are in place the witness will provide the information. Obtaining the information is not the last act. That trust must be maintained throughout the investigation and into the prosecution. Failed trust may cause the witness to recant. Commissioned statements will ensure the reliability of victim and witness interviews. Commissioned evidence is just that, evidence that can be tested for reliability at trial. Investigators need to be able to gather the best-evidence as is indicated above.

The lack of a Major Case Management System will affect all aspects of the investigation. The problems faced by the international criminal investigations included poor resource management. This is a hierarchical system that makes one person responsible and accountable. The major case manager is responsible for obtaining the resources to conduct the investigation with includes the finances. The major case manager is then responsible for their management. Poor utilization of resources will make the investigation inefficient. Poor financial management will lead to overrun and lack of resources. Major case management is a system of accountability for the investigation to ensure that proper investigative techniques are utilized, that information is shared and managed, that there interdisciplinary coordination, the proper use of science and technology and that the investigators have the proper experience and training. Major case management is a training issue and investigators need to be trained and qualified in case management principles and practices. In the case of the international investigations the absence of a case management system led to problems identifying victims and suspects and evidence being lost. There needs to be that continuity of major case managers and the command triangle to ensure that suspects are arrested and processed and then prosecuted. A lot of this depends on the investigator taking responsibility for the administrative work that goes along with the major case management system that includes resources, inventory control of evidence, financial accountability, and statistics.

The evidence category of the matrix generally speaks to the proper seizure and storage of evidence. One doesn't have to look too far to find a case where proper evidence storage will lead to the identification of the accused years later. The BTK killer was identified in 2004 from a forensic sample taken from a crime scene and stored since the 1970's. Technology continues to grow and refine itself. DNA testing required large amounts of bodily fluid in the past is now down to pica grams. When nuclear DNA could only be recovered from bodily fluids like blood and semen in the 1980' mitochondrial DNA can now be recovered from hair, bones and teeth. Investigators must have a demonstrated knowledge of authorities to search for evidence with or without a warrant. Investigators must have the ability to synthesize the information

gathered in the primary investigation through victim/witness interviews and the management of the crime scene and then authorjudicial authorizations and search warrants. Then they need to be able to execute search warrants, document and preserve evidence and present evidence for court purposes.

The final step in the process of the investigation is the prosecution. At this point the investigator has identified the suspects and arrested them and now based on the evidence that has been gathered a prosecution will take place. The investigator works on the basis of a set of facts and circumstances that would lead an ordinarily prudent and cautious person to come to a conclusion. This can be subjective at times and based on the investigators experience and ability to articulate may vary slightly from one investigator to another. Known as reasonable grounds, this is the requirement that an investigator must satisfy and believe before an arrest can be made or a charge to be laid. The analogy made here is that if 50% is arrest and 100% is a conviction the reasonable grounds for a prima facie case are 75%. Somewhere on that spectrum an investigator makes the decision to arrest and then to charge and what charge is to be laid. There is a different set of rules and a higher test for the prosecutor and is referred to as expectation of conviction. This is based on the case provided by the investigators to the prosecutors. Rules and processes in the enforcement end of the investigation are different than the prosecution. A piece of evidence seized at the scene can be considered for formulating the requisite grounds for arrest or charge but whether the piece of evidence is admissible at prosecution can be a different story. Therefore investigators must be aware of the precedents that have been set by the courts prior to seizing evidence in order to ensure its admissibility at trial. A breach of the accused person's right to be free of unlawful search and seizure can render evidence inadmissible and be lethal to the prosecution of the investigation. Breaching a person's expectation of privacy without prior judicial authorization will prevent the judge and jury from hearing and considering a piece of evidence against the accused. Providing the accused with the opportunity to retain and instruct counsel prior to interviewing/interrogating will make a difference with respect to admissibility.

Information Management is vital in every step of the investigation. It is important to gather and store the information but the information management system should make it accessible, organized and searchable to the investigators. An effective information management system is required from the very outset of the investigation so that no piece of information or evidence is lost and proper investigative action is taken. Manual systems are known as "hardcopy file management" systems. This requires the cataloguing of every piece of information into the 52 File (category) systems of tips, statements, assignments etc. The Ontario Major Case Management System is the first of its kind to connect all police services in a jurisdiction using a wide area network and centralized database to capture and compare compatible investigative data from similar crimes. The UNIIIC is the equivalent of twelve homicide investigations. In Rwanda there were as many witnesses as there were victims. The ICTY investigated genocide and crimes against humanity that took place in different areas of the Former Yugoslavia over a

ten year period. The interconnectedness of these examples is akin to the investigation of a serial predator and then some. Information management will be vital and investigators will need strong case management principles and practices with a major case manager to take responsibility of all aspects of the case.

## **21.0 Conclusions**

Three international criminal investigations undertaken or initiated by Un Security Council Resolution were chosen for examination. They are the UN International Independent Investigation (UNIIC) of the assassination of Rafik Hariri and related assassinations in Lebanon in 2005, the investigation of genocide and crimes against humanity by the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the investigation into the genocide in Rwanda by the International Criminal Tribunal for Rwanda (ICTR). When compared to the Ontario Experience of the Campbell Inquiry fundamental elements of criminal investigations can be identified as being problematic.

The examination of the three international criminal investigations was fairly rudimentary but served the purpose of this paper. In comparing the investigations it became fairly clear that each investigation encountered some of the same inherent problems. The problems are merely descriptive at this point and were taken from the text of the literature. They are not always worded in the same manner but can be categorized in order to show that they are common problems in most investigations. The categories used in this analysis were The Right People, Political Pressure, Best Evidence, Background Investigation, Investigative Strategy, Communication, Interference, Major Case Management System, Evidence, Prosecution and Information Management. They can be found as headings in Appendix "C". The most common problems are the lack of qualified investigators, a major case management system to deal with the volume of information, political pressures and interference, best evidence lost due to delays, no investigative strategy, no resource management system, no historical or cultural background. This was not an empirical study. Once again the comparisons were descriptive. This is somewhat thought provoking however and lays the groundwork for more advanced research. Access to actual investigative files and investigators would provide for better information to analyze. Access to United Nations databases on international criminal investigations would lead to the quality control type research needed to draw real conclusions about the inherent problems of criminal investigations. Access to such information would allow for a more comprehensive study of the problems and a larger sample to draw from. A more detailed statistical analysis could be done and more succinct conclusions drawn. It is apparent that criminal investigations whether domestic or international face the same problems. The Ontario Experience of Major Case Management of criminal investigations provides an example of what happens when these inherent problems reach a crisis. The crisis ultimately leads to the establishment of a standardized system of homicide investigation but not without some severe consequences.

The United Nations is not without a crisis. The genocide in Rwanda is probably the crisis most widely cited for systemic failure. The lessons of the Nuremberg Legacy are brought forward with the establishment of two international criminal tribunals. The need for that “De-Notification-like” transformation and the need to document the history of the genocide spawn the international effort to investigate. The success of the tribunals leads to new and different international investigations in their legacy. But the ICTY and ICTR spark a decade long effort to ensure that it doesn’t happen again. Before the term “Responsibility to Protect” had been coined Secretary General Kofi Annan’s made a call for an international response to the systemic failure to the genocides in Rwanda and Srebrenica. This was followed by the establishment of the International Commission on Intervention and State Sovereignty in 2000 that led to the World Summit in 2005. The United Nations started to recognize that international criminal tribunals and the establishment of the International Criminal Court was not enough. UN Member States lost their direction when it came to international peace and security and it was time for the members of the UN to re-affirm their faith in the original purpose of the United Nations and their commitment to international peace and security.

Crimes related to the Responsibility to Protect are defined during this period as genocide, war crimes, ethnic cleansing and crimes against humanity. All of these crimes represent a benchmark for an international intervention. That intervention may take many forms that include the various forms of transitional justice mentioned above that lead to reconciliation. Whatever the response is whether it is military, civilian/military, diplomatic or developmental; there is a need for a common or standardized approach to manage the response. Whatever the response is; fact-finding or investigative there will be a need for a standardized major case management response.

There has been steady progress in the establishment of the Responsibility to Protect highlighted by the Rome statute in 1997 that created the International Criminal Court. Two consecutive Secretaries General called for and implemented state sovereignty and international intervention implementation plans. Two international criminal tribunals in the legacy of the trials at Nuremberg were created by the Security Council. The idea is that individuals responsible for crimes related to the Responsibility to Protect would be tried at the International Criminal Court. The ICC and ad hoc war crimes tribunals set in motion the processes for identifying, investigating and prosecuting those most responsible. Pillar I of Ban, Ki-moon’s Three Pillar Approach is the most relevant to this paper as it calls for assistance for war-torn or failed states and capacity building by member states. The aim of this paper is to show that there were inherent problems in all criminal investigations and that three investigations undertaken by the United Nations share those same patterns and problems. The Ontario Experience was similar and was compared to the UN experience to show how Ontario built its capacity. Having had that experience and put a system of major case management in place, Ontario criminal investigators are well suited to assisting war-torn or

failed states in building their democratic systems. Canada's membership and participation in previous UN endeavours increase the UN's ability to respond. The four crimes related to the Responsibility to Protect are already enshrined in our domestic law, the Criminal Code of Canada. Canada's commitment to a democratic society and all the rights and freedoms that go along with it make the investigation and prosecution of crime a necessity. There is a requirement for this to be done in the most detailed and expeditious way. Then there needs to be the quality assurance process to make sure that each investigations follows the guidelines. Citizens of democracies are equal and deserve equal access to justice. In the search for the truth, success lies in the integrity of the pursuit.

Political interference is one of the common problems of criminal investigations. The political climate in Canada is very good right now for Canada's participation in rule of law or Responsibility to Protect activities. As there are calls from other organizations to ensure the responsibility to protect, it was important to establish that there was already a process in place that was progressing and refining. This is not just a Canadian political issue but also a United Nations issue. There is no need to re-invent the wheel when it comes to the process of implementing international criminal investigations. It is therefore important to know the present political environment in Canada and the national interests at stake. Security Council resolution and United Nations support mean a great deal to Canadians when it comes to justifying or rationalizing international intervention or state sovereignty. Canada has historically participated in United Nations endeavours and has avoided those that were not sanctioned by the UN. Membership in NATO also justifies action and obligates Canada. Canadian values form national interests. Protecting Canada, maintaining unity and enhancing independence, expanding the Canadian economy and maintaining global interests by working with other countries to advance democracy and freedom are Canadian national interests. Canada became involved in Afghanistan due to a complicated chain of events that included a change of government. The practice of waiting for UN approval before Canada participates in any intervention on another nation's sovereignty is a moral one. Canada participates in the United Nations and NATO undertakings because they are organizations that are dedicated to peace and security and the defence of democracy respectively. This serves Canadian values and Canadian national interests. Canada's involvement in Afghanistan as a combat mission will end in 2011 and make way for a training mission until 2014. This will put more emphasis on Canada's Provincial Reconstruction Team and the civilian experts attached to it. As democracy grows in Afghanistan there will be a transition to justice from war. The defence of democracy in Afghanistan, fighting the War on Terror, and "nation-building" efforts with other countries on the world stage satisfy Canada's national interests. This is Canada's "Three D Approach" to foreign policy of Defence, Diplomacy and Development. The PRT will ultimately present the vehicle by which Canada contributes to the Responsibility to Protect in failed and failing states.

Canada's Defence Policy is already more receptive to participation in international criminal investigations. The transition from traditional peacekeeping to the "Three-Block War" strategy provides the perfect combination of quick response required by rule of law and Responsibility to Protect missions. The Provincial Reconstruction Team in Afghanistan is like the testing or proving ground for this concept. There are civilian police officers from the RCMP on the PRT helping to train, mentor and equip the Afghan National Police in a hostile environment. The stage is already set for a concerted effort into international criminal investigations. The responsibility to protect is the point when individual criminality begins and acts of war end. Comprehensive policing efforts like those made in the Haitian UNPOL mission should set the example.

Crimes related to the Responsibility to Protect are not a surprise and the signs are always apparent. Creating a new organization as the world's "Watchdog" or having the United Nations implement a new organ dedicated to world-wide policing would add another layer of bureaucracy to the existing system. The Nuremberg Legacy set the example for international criminal investigations 70 years ago. Transitional justice in the 1990's continued that tradition. A new organization dedicated to overseeing policing on a world scale would amount to little more than the likes of Amnesty International or Green Peace. They are non-governmental agencies whose dedication is honourable but whose effectiveness is questionable and they rely on donation dollars. Member States in the United Nations are there because of the faith in the organization itself. It is like any form of government, you pay your taxes and in return you are provided with services. "One person, one vote," and the majority rules. The United Nations is democracy on the world stage dedicated to peace and security. This is the obvious choice for the responsibility to protect and rule of law activities provided by those best equipped to deliver it. UN member states with the capacity for it should provide it and contribute what is required to war-torn or failed states. These are the states that will harbour terrorists and allow them a base for training. This is essence of the War on Terror. The United Nations had their crises and there has been steady progress since. The United Nations works toward diplomatic responses to crimes related to the responsibility to protect. That bureaucracy is steadily being streamlined. Creating another organization to investigate and prosecute crimes related to the responsibility to protect would take decades. Any new organization would get its authority from International Humanitarian Law the same way the United Nations does. Any prosecution would take place in the International Criminal Court the same way it does now. There are 193 member states in the United Nations 15 of which belong on the Security Council at various times for various lengths of time. There a history of peacekeeping missions going back to 1956 with steady progression since. That means the there are 193 states that have already committed to and recognize the United Nations as the body responsible for peace and security in the world. Any new organization would have to prove itself more worthy than that. War-torn nations often would not recognize the authority of a new organization. Ban Ki-moon reported recently that steps are being taken for a pool of quick reaction forces of trained police officers in the event of crimes related to the responsibility to protect. Governments

no longer have to start from scratch. The response mechanism is already in place within the United Nations and member countries and the process is underway to refine it.

The Haitian UNPOL Experience is included as an example of the progress being made in UN Policing missions. From what once was a focus on Public Order Units for Peacekeeping, has now moved to a more comprehensive approach to all of the disciplines of policing. Haiti is also included for its Canadian content. The “doctrinal shift” initially coined by Lakhdar Brahimi in his report in 2000, has seen a greater commitment to training and mentoring of host country front-line officers in their daily enforcement duties by civilian experts provided by UN member states. However some of the same barriers to successful UNPOL missions prevail that are seen in the three examples of international criminal investigations cited above. Part of the comprehensive approach to policing in Haiti is the enhancement of the Central Directorate of Judicial Police. This is a clear indication that there is a greater commitment required at the institutional level as well as the individual level to be involved in criminal investigations. The Haitian National Police has created a centralized organ dedicated to criminal investigations. This is not unlike the Ontario Provincial Police whose main investigative body is the Criminal Investigations Branch that is dedicated to the most serious and complex investigations or “major cases.” This usually infers a homicide or series of related homicides that require a major case manager to control the speed, direction and flow of the investigation. There is an expertise required for senior, experienced officers to manage such cases. Once again the main issues facing the Haitian Experience are member states that are not living up to commitments in numbers or quality of officers.

Since 1999 the UN had recognized the need for member states to establish national pools of civilian police officers, training partnerships for the pool to promote common levels of preparedness, standard operating procedures and performance standards and a single point of contact within the government structure of the member state. There is a recommendation for an on-call list of 100 police officers to be available on seven days notice to deploy and establish the civilian police component of a peacebuilding operation. The Brahimi Report of 2000 called for a “doctrinal shift” to an adequately resourced team approach to uphold the rule of law. This included sufficient numbers of criminal investigators. Eirin Mobekk identified several aspects of the Justice System that required parallel development with the UNPOL that include judicial reform, transitional codes, donor coordination, pre-deployment training, rapid deployment and a common standard to increase effectiveness of UNPOL missions. Secretary General Ban, Ki-moon continues to make this call for strengthening and coordinating UN rule of law activities. He specifically cites the legacy of the international criminal tribunals of the 1990’s. Weakness in laws and procedures should not prevent institutions from holding criminals responsible. Standing Police Capacity should include criminal investigators. Measuring effectiveness and evaluating the impact of the rule of law assistance is the key to UN efforts and the backbone of the Ontario Major Case Management System.

Finally, Ontario maintains an excellent major case management system for criminal investigations. Ontario is not without a crisis that led to a common approach to major case management. Justice Archie Campbell's review of the investigation into serial killer Paul Bernardo set the standard for the management of major cases. It is presented here as the Ontario Experience. The major case management system was established to rectify those inherent systemic problems that are also identified in the UNIIIC, ICTY and ICTR. The system depends on specialized training, early recognition, and coordination of resources, unified management and accountability. Justice Campbell called for a system that was based on an existing model being used in Ontario by all police services called CISO (Criminal Intelligence Service of Ontario) because of its proven ability to secure cooperation among police services, its suitability, credibility and accountability. The Ontario Major Case Management System is presented as a possible remedy to the inherent problems identified in the three sample international criminal investigations associated to the United Nations. It is also meant as a testament to the officers in Ontario that work within the system everyday as evidence that it does work. All criminal investigators in Ontario receive the same training with the common system. It is protected by a built-in quality assurance process and adequacy standards: core competencies for criminal investigators have been established.

Major Case Management is the purpose of this paper. The "responsibility to protect" is the transition point from acts of war to criminal acts against International Humanitarian Law. It is at this point that people become personally and individually responsible for their behaviour. The United Nations is the right organization to manage international criminal investigations. There is a system in place that has been progressing for almost two decades. That progression continues and Canada has played an integral role. Politically, Canada is committed to international peace and security and our participation in Afghanistan has established the "Three D Approach" to foreign policy needed for our continued commitment to international criminal investigations. The Provincial Reconstruction Team will ultimately be the blueprint for responding to international criminal investigations when rule of law activities can take place where security is questionable and a military force is required to protect civilian experts. Canada maintains the crimes related to the responsibility to protect in domestic law making Canadians well suited for the investigation and prosecution of such crimes. There was a crisis that brought about a change much like the crisis the United Nations suffered with the genocide in Rwanda. Canadians are prepared to showcase a major case management system internationally.

## **Appendix “A” - Report of the Secretary General – Implementing the Responsibility to Protect**

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case by case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

140. We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide.<sup>97</sup>

## **Appendix “B”- Report on United Nations International Independent Investigation Commission – UNIIC**

1. Marwan HAMADEH,
  - MP, Former Minister of Economy and Trade
  - Supporter of the Progressive Socialist Party
  - Close personal friend and political ally of Rafik HARIRI
  - Druze Muslim
  - Date of Attack: 01 October 2004

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<sup>97</sup>The United Nations General Assembly, *The Outcome Document of the World Summit 2005*, (UN A/RES/60/1, October 2005), p. 31 and 32

- Place of Attack: Henry Ford Street, Beirut
- Type of Attack: Vehicle borne IED, remote control detonation,
- Bomb vehicle (stolen Mercedes 300E)
- Type and amount of explosives: C4 and RDX - 6 kg
- Casualties: Marwan HAMADEH and his driver injured, bodyguard killed

2. Rafik HARIRI,

- Former Prime Minister, MP
- Head of "Future" (Al Mustaqbal) Political Movement
- Sunni Muslim
- Date of Attack: 14 February 2005
- Place of Attack: St. George Hotel, downtown Beirut
- Type of Attack: Vehicle borne IED, Suicide-bomber, Bomb vehicle (Mitsubishi Canter Van)
- Type and amount of explosives: TNT, RDX, C-4 - 1000kg
- Casualties: Rafik HARIRI and 22 others killed, approximately 220 persons injured

3. Samir KASSIR,

- Freelance journalist at the An-Nahar Newspaper
- Established Democratic Left Movement (DLM)
- Supporter of the March 14 Group
- Greek Orthodox
- Date of Attack: 02 June 2005
- Place of Attack: Ashrafieh area, Beirut
- Type of attack: Bomb attached to underside of victim's car, remote control detonation
- Type and amount of explosives: TNT and RDX - 300g - 2kg
- Casualties: Samir KASSIR killed

4. George HAWI,

- Former Secretary-General of Lebanese Communist Party
- Active political commentator
- Supporter of the March 14 Group
- Greek Orthodox
- Date of Attack: 21 June 2005
- Place of Attack: Wata Msaytbeh area, Beirut
- Type of Attack: Bomb attached beneath passenger seat of victim's car, remote control detonation

- Type and amount of explosives: TNT and RDX - 500g
- Casualties: George HAWI killed and his driver injured

5. Elias EL-MURR,

- Minister of Defense and Minister of Interior 2000 – 2004
- Deputy Prime Minister in the Najib MIKATI's interim government and later in the Fouad SINIORA government
- Independent of any political block
- Greek Orthodox
- Date of Attack: 12 July 2005
- Place of Attack: Naccache area, Beirut
- Type of Attack: Vehicle borne IED, Remote control detonation,
- Bomb vehicle (Mitsubishi Montero)
- Type and amount of explosives: TNT and RDX - 40kg - 50kg
- Casualties: Elias EL-MURR and his two associates (Amin EL-MURR and Elias BAISSARI) injured, one passer-by killed

6. May CHIDIAC,

- Journalist and anchorwoman with the Lebanese Broadcasting Corporation (LBC)
- Supporter of the Lebanese Forces and the March 14 Group
- Maronite Christian
- Date of Attack: 25 September 2005
- Place of Attack: Ghadir area, suburb of Beirut
- Type of Attack: Bomb attached to underside of victim's car. Remote control detonation
- Type and amount of explosives: TNT- 250g – 300g
- Casualties: May CHIDIAC seriously injured

7. Gebran TUENI,

- MP, Editor-in-chief of the An-Nahar Newspaper
- Founding member of Qornet Chehwan, Leading member of the Bristol Group and the March 14 Group
- Greek Orthodox
- Date of Attack: 12 December 2005
- Place of Attack: Mkalles, north of Beirut
- Type of Attack: Vehicle borne IED, Remote control detonation,
- Bomb vehicle (Renault Rapid 1993)

- Type and amount of explosives: TNT- 30kg - 40kg
- Casualties: Gebran TUENI and his driver and bodyguard killed

8. Pierre GEMAYEL,

- MP for Al-Maten District, Minister of Industry
- Leading figure of the Katae'b Party and the March 14 Group
- Maronite Christian
- Date of Attack: 21 November 2006
- Place of Attack: Jdeideh, north of Beirut
- Type of Attack: Two gunmen
- Type of weapons: 9 mm Parabellum, 9 mm Makarov, 7.65 mm Browning, 9 mm Ingram
- Casualties: Pierre GEMAYEL and one bodyguard killed, one person injured

9. Walid EIDO,

- Date of Attack: 13 June 2007
- Place of Attack: Manara area, Beirut
- Type of Attack: Vehicle borne IED, Remote control detonation, Bomb vehicle (Toyota Rav4)
- Type and amount of explosives: TNT and RDX - 10kg - 13kg
- Casualties: Walid EIDO, his son Khaled EIDO, two bodyguards and four other persons killed

10. Antoine GHANEM

- MP for Baabda District
- Leading figure of the Katae'b Party and the March 14 Group
- Maronite Christian
- Antoine GHANEM
- Date of Attack: 19 September 2007
- Place of Attack: Horsh tabet area , Beirut
- Type of Attack: Vehicle borne IED, Remote control
- Bomb vehicle (Mercedes 1981)
- Type and amount of explosives: TNT - 20kg - 25kg
- Casualties: Antoine GHANEM, two bodyguards and three civilians killed, his driver and approximately 72 persons injured

11. Francois AL-HAJJ

- Major General of the Lebanese Army
- Political affiliation – None
- Maronite Christian
- Date of Attack: 12 December 2007
- Place of Attack: Baabda area, Beirut
- Type of Attack: Vehicle borne IED, Remote control detonation, Bomb vehicle (BMW 320 1980)
- Type and amount of explosives: TNT - 35kg - 45kg
- Casualties: Francois AL-HAJJ and his driver Kheirallah Ali Hedwan killed and approximately 9 persons injured

#### 12. Wissam EID

- Major of the Internal Security Forces
- Political affiliation – None
- Sunni Muslim
- Date of Attack: 25 January 2008
- Place of Attack: HAZMIEH area, Beirut
- Type of Attack: Vehicle borne IED, Remote control detonation,
- Bomb vehicle (BMW 320 1985)
- Type and amount of explosives: TNT - 60kg - 70kg
- Casualties: Wissam EID, his bodyguards and four civilians killed, 42 persons injured

### Appendix “C” – Observed Problems of Criminal Investigations

UNIIIC - 2005	ICTY - 1993	ICTR - 1994	Ontario - 1996	Major Case Management and Core Competency
<b>The Right People</b>				
Employee Turnover	Local Auth. - Lack resources and skill - Srebrenica	UN Recruiting in war-torn Rwanda	very little continuity of investigators	Core Competencies
Familiarization with the case	300 Forensic Scientists – Kosovo 1999	Delays in hiring staff		OMCM Core Competencies
Right People in the right places	Anthropologists	Unqualified people for positions of responsibility		Core Competencies
		Anthropologists		Core Competencies

		Prosecutors from Academia		
		Investigators – no crime experience		Core Competencies
		UNPOL – No crime experience		Core Competencies
<b>Political Pressure</b>				
Political Pressure, Elections, Interference	Lack of Political Will	No high placed Advocate at the UN	Communication between police forces was inadequate	OMCM Core Competencies
Reliance on Internal Security	Political pressure to complete - Kosovo 1999	Genocidal Leaders were the Gov't of Rwanda	no case management information system to ensure the effective communication of suspect information between the two police forces	OMCM Arrest And Process Suspect Identification Of Persons And Suspects
Investigate Through “Request for Assistance” by Host		Witnesses i.d. by Government of Rwanda		OMCM Administrative Work
<b>Best Evidence</b>				
Best Evidence Lost	No bodies I.D. – Srebrenica	No document or Forensic evidence		Core Competencies Crime Scene Management Evidence
Delayed involvement	No bones or teeth sampled for DNA - Kosovo 1999			Crime Scene Management Evidence
No Crime Scene Control	Investigation starts in 1996, Still investigating in 2003 - Srebrenica	First ever Exhumation only - 11 i.d.'s made		Crime Scene Management Evidence

	Bodies stripped of personal effects and Bodies exhumed and moved by perpetrators - Srebrenica			Crime Scene Management  Evidence
<b>Primary Investigation</b>				
	Ante-Mortem investigation not commenced immediately - Kosovo 1999	Did not use Intelligence gathering to go after Leaders		Criminal Complaints Assessment  Interview Victim / Witnesses  Identification Of Persons And Suspects
<b>UNIIC - 2005</b>	<b>ICTY - 1993</b>	<b>ICTR - 1994</b>	<b>Ontario - 1996</b>	<b>Major Case Management and Core Competency</b>
<b>Investigative Strategy</b>				
No consistency in investigation	Local Authority Investigation	No overall Investigative Strategy	senior officers monitored and followed up the investigation and set time lines and ensured follow up	OMCM  Case Management Principles And Practices
	OTP turned bodies over to local authorities - Srebrenica			OMCM  Case Management Principles And Practices
<b>Communication</b>				
Language Barriers	Communication difficulty with Victim-Investigator Relationship - Kosovo 1999	No history or culture background of Rwanda		OMCM  Interview Victim / Witnesses  Victim Assistance
<b>Interference</b>				

Witnesses Previously Tortured		Witnesses under duress		Interview Victim / Witnesses Victim Assistance
		Victims/Witnesses could not i.d. leaders of genocide		Interview Victim / Witnesses Victim Assistance
		Survivors had no representation		Interview Victim / Witnesses Victim Assistance
MCM System				
NO Major Case Management System		Short-term Funding – 3 months	All this information was readily available but there was no system to put it together and it got lost in the overall mass of investigative information	OMCM Case Management Principles And Practices
Sourcing Information	Lack of Knowledge IHL	Poor Resource Management	No information system to ensure that all the tips called in about one suspect were put together and followed up when appropriate	OMCM Case Management Principles And Practices
			No consistent organized system for suspect classification and elimination.	Case Management Principles And Practices Identification Of Persons And Suspects Arrest And Process Suspect Interview / Interrogate Suspect

			no case management information system to ensure the effective communication of suspect information between the two police forces	OMCM Case Management Principles And Practices Identification Of Persons And Suspects Arrest And Process Suspect Interview / Interrogate Suspect
			There was at that time no ViCLAS automated crime linkage system in place	OMCM Administrative Work Identification Of Persons And Suspects
			No supervisory system in place to ensure follow up with the CFS (Centre of Forensic Science) and high level co-ordination when necessary	Crime Scene Management Evidence Identification Of Persons And Suspects
<b>Evidence</b>				
	Identification of Victims "Categorical Identity"	First ever Exhumation only - 11 i.d.'s made		Crime Scene Management Interview Victim / Witnesses Victim Assistance Evidence

	No room for bodies – Tuzla			
Prosecution				
Equivalent of 13 Homicide Investigations		Prosecutions weak		Identification Of Persons And Suspects  Arrest And Process Suspect  Interview / Interrogate Suspect  Decision To Charge / Release / Hold  Court Procedures  Administrative Work
		Perpetrators arrested by Gov't of Rwanda – no prosecution		Identification Of Persons And Suspects  Arrest And Process Suspect  Interview / Interrogate Suspect  Decision To Charge / Release / Hold  Court Procedures  Administrative Work
		Demands of Judicial Operations		Identification Of Persons And Suspects  Arrest And Process Suspect

				Interview / Interrogate Suspect  Decision To Charge / Release / Hold  Court Procedures  Administrative Work
Information Management				
Sheer volume of material		Tens of Thousands of victims and witnesses		OMCM  Case Management Principles And Practices OMCM  Case Management Principles And Practices
Equivalent of 13 Homicide Investigations				OMCM  Case Management Principles And Practices OMCM  Case Management Principles And Practices

**Appendix “D” - Ontario Ministry of the Solicitor General, Adequacy Standards: Core Competencies for Criminal Investigators**

1. Criminal Complaints Assessment

This is about the criminal investigator ability to identify actual offences and types of crimes. They must be able to determine facts in issue and then lay the appropriate charge. The investigator must know what is required in order to obtain a conviction so a certain amount of investigative planning will be required.

Then the investigator must initiate accurate and appropriate documentation / files

## 2. Case Management Principles And Practices

The investigator must consistently apply case management procedures, organize and obtain internal and external resources including technical experts and equipment. The investigator works cooperatively with other law enforcement / other agencies, media, conduct operational planning, coordinate / participate in team briefings / debriefings.

## 3. Crime Scene Management

The investigator is required to attend scene to interview the first officer on the scene, determine command and control, delegate tasks and implement crime scene procedures. Then the investigator should be able to evaluate and validate the crime scene based on witness and victim interviews. The investigator knows the value of evidence ensures continuity of evidence, is able to search for and seize evidence, conduct crime scene examination, problem solve, make decisions and be accountable to them.

## 4. Interview Victim / Witnesses

In order to properly interview witnesses and victims the investigator must demonstrate an understanding of relevant legal issues i.e. Law in relation to statements, the right to counsel and cautions to suspects. The investigator must be able to take commissioned evidence (R vs. KGB Statements), understand the dynamics of communication, conduct investigative interviews, and conduct cognitive interviews. Then document interviews using appropriate media either through note taking or audio/video recording.

## 5. Victim Assistance

The investigator must understand the importance of victim assistance and the need recommend the necessary resources. The investigator must always remain truthful and professional, emotionally detached, supportive, compassionate and empathetic.

## 6. Evidence

Investigators must have a demonstrated knowledge of authorities for search without warrant, the law regarding seizure. As the ability to authorjudicial authorizations and search warrants.Is able to execute search warrants and to document and preserve evidence and then present evidence for court purposes.

## 7. Identification Of Persons And Suspects

The investigator must have demonstrated understanding of legal issues regarding the identification of criminals, surveillance, determine identity of persons using available resources, including: Fingerprints, DNA and criminal profiles. The investigator must have a proven ability to develop and maintain informants and know the difference between an informant, a witness and an agent of the state.

## 8. Arrest And Process Suspect

The investigator will in all likelihood be the officer that arrests the accused therefore must take into account officer safety. And then demonstrates an understanding of legal issues regarding arrest, including, Charter of Rights and the law, Cautions and admissibility of evidence.

The common-law authority to search must be articulated to ensure officer safety and any evidence to the offence. The accused should then be subjected to fingerprints, photographs and sampling of bodily substances if applicable.

## 9. Interview / Interrogate Suspect

The criminal investigator knows the law in relation to statements and admissibility, including the law in relation to confessions and is able to apply Reid's nine steps in the interrogation of suspects.

## 10. Decision To Charge / Release / Hold

In Canada the investigator understands the legal issues regarding arrest and release or show-cause of an accused, taking into account the type of offence / reverse onus, previous record of offence, outstanding charges, and place of residence of accused. We refer to this as R.I.C.E. and the 4 P's. Regarding repetition of offence, identity of accused in question, reasonable grounds to assume will appear in court, containment of evidence

## 11. Court Procedures

The investigator must be able to prepare the requisite document for the accused to appear in court and for the Crown Prosecutor to be fully briefed on the details of the allegation against him.

The investigator must be able to prepare witnesses for Court, educates witnesses re: legal process, confirms reliability of statements and information received and provide for witness safety:

## 12. Administrative Work

The investigator will also be as competent with their paperwork as they are with the physical aspects of the investigation that include resources, administration, inventory control, accountability, and statistics.

### 13. Supervision

The investigator will be required to supervise, evaluate, and direct subordinates as required.

### 14. Ongoing Professional Development

The investigator will also be responsible for their own development with respect to staying current in field through training and other professional development activities.<sup>98</sup>

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<sup>98</sup>Ontario Ministry of the Solicitor General, *Adequacy Standards: Core Competencies for Criminal Investigators* (Toronto, Ontario: The Queen's Printer, July 25th, 2000)

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