January 4, 2009, 6:30 a.m., Zeytoun area, south of Gaza city; the 17th day of Israeli Military offensive in Gaza (operation 'Cast Lead') begins: Palestinians report that Israeli forces fire several projectiles at the Al-Samouni family house, were dozens of unarmed civilians took shelter, killing 21 family members and injuring 19. Israeli military authorities reject this description, arguing they were targeting a group of terrorists holding RPG rockets. Many other facts concerning this 22-day offensive, including the total number of Palestinian casualties, were also extremely contested. The international community decided to intervene: the UN Human Rights Council established a Fact-Finding Mission on the Gaza Conflict, headed by former South African Judge and ICTY prosecutor Richard Goldstone, to investigate the case. After months of intensive work collecting evidence and hearing testimonies, the Mission issued a thorough 452-page report. Among other things, the Report found that the attack on the Al-Samouni house was "a direct intentional attack against civilian population" which constitutes a crime against humanity.¹

The Jewish-Israeli public rejected the report altogether as biased and unfounded, and refused to cooperate with the Mission or to accept its findings. An Israeli public opinion poll found that among the Jewish-Israelis that knew what the report's main conclusion was, an overwhelming majority (93.5%) believed that the report was biased against Israel; and a surprising majority (64%) discounted the testimonies of IDF soldiers who testified that they witnessed or participated in activities harming Palestinian civilians and civilian’s objects. Consequently, the Report has failed to resolve the factual controversies surrounding this military operation or to motivate domestic sanctioning of the offenders inside Israel, and became, in itself, a part of the conflict. Moreover, while the legal conclusions of the Report were clear and unambiguous, the factual findings lacked the same clarity. In fact, the Report was unable to determine some of the basic facts, including the number of casualties. Seven years later, we still don’t know for certain how many Palestinians were killed during operation ‘Cast Lead’, and how many of them were unarmed civilians. Years later, in an Op-Ed published by the

4 Following the release of the Goldstone report, Israeli authorities pressed charges against IDF soldiers in only three cases (out of hundreds of complaints concerning unlawful behavior during operation ‘Cast Lead.’ In one of these cases two soldiers were convicted of forcing a nine-year-old Palestinian child to search bags suspected of being booby trapped. They were demoted and received suspended sentences of three months each (150/10 The Military prosecutor v. A. S. and G. S. [2010] (not published)). In another case, a soldier was sentenced to a prison term of seven and a half months for stealing a credit card during the operation. And finally, in the only case relating to unlawful killing of a civilian, the accused pleaded guilty to an unlawful use of weapon and was sentenced to forty-five days of imprisonment, demotion and suspended six-month sentence. See: Report of the Committee of independent experts in international humanitarian and human rights law established pursuant to Council resolution 13/9, 8 (2011), available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A_HRC.16.24_AUV.pdf; Cast Lead Operation, B’TSELEM, September 18, 2014. Available at: http://www.btselem.org/hebrew/gaza_strip/castlead_operation.
6 The Goldstone mission found that the number of Palestinian casualties varies between 1,387 to 1,417, without distinguishing between civilians and combatants. Report of the United Nations Fact-Finding Mission on the Gaza Conflict, UN HUMAN RIGHTS COUNCIL (2009), at 90-91. Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf.
Washington Post, Goldstone himself recanted some of the factual findings, including concerning the Al-Samouni incident.7

Israeli society is not unique in its response to international fact-finding efforts. The Rwandan reaction to the 2010 DRC Report (“dangerous and irresponsible”) is another example of the heated controversies generated by the release of many of the UN fact-finding reports.8 Analyzing public opinion polls in the former Yugoslavia, Marko Milanovic revealed that factual controversies continue to thrive even when the factual determinations are made by a competent court, whose judgements are binding and final.9 While the ICTY pride itself in ‘creating a historical record, combatting denial and preventing attempts at revisionism,’ Milanovic demonstrated that denialism is thriving, that each ethnic group in the former Yugoslavia is still firmly attached to its own version of reality, and that the tribunal failed to persuade the relevant target populations that the findings in its judgments are true.10

My dissertation project asks why: why have international fact-finding missions failed to settle disputes over ‘what happened’, and more importantly, whether there is a better way to design fact-finding mechanisms to ascertain facts and to promote a shared understanding of controversial events. Fundamentally, I argue that the institutional choice of current international fact-finding mechanisms (the Goldstone Mission included) to focus on legal truth and to produce legalized fact-finding reports triggers social processes of rejection of information and production of counter-facts. The abstract nature of legal norms creates a psychological distance between the facts and their audience; and the adversarial nature of legal norms motivates conflicting societies to reject information that deviates from the national narrative. As a result, the adoption of legal standards may unintentionally intensify distortion (rather than assertion) of facts.

In recent years, a scholarly literature describing and analyzing international fact-finding have been steadily developing. Nonetheless, as Alston and Knuckey rightly identified, the vast majority of these studies is either essentially descriptive

10 Id.
or largely uncritical. The ‘legalization of truth’ in international fact-finding efforts has not yet been analyzed or questioned, and alternatives were not seriously considered. Instead, UN organs, as well as many other international organizations, have routinely designed fact-finding missions to expose the legal truth, based on legal norms and standards. Lacking compulsory jurisdiction, the fundamental goal of these fact-finding missions has been to produce credible facts and to persuade relevant audiences to accept their findings and adopt their recommendations. The basic assumptions underlying this strategy are that fact-finding reports inform the relevant publics and motivate domestic sanctioning of in-group offenders.

This research project challenges both assumptions. It complements existing qualitative and observational studies by leveraging the use of experiments embedded in four comparative national surveys fielded in the U.S., Canada and Israel. Using survey-experiments, this research project provides systematic evidence of the consequences of international fact-finding reports on peoples’ attitudes and beliefs. It directly measures individuals’ reactions to both positive and negative information, and demonstrates how motivated cognition and other socio-psychological processes influence people’s reactions to new information about war crimes committed by their fellow nationals. Querying mass publics also allows me to examine more directly the impact of various framings, processes and institutional designs on willingness to believe counter-attitudinal facts. Additionally, using an experimental design minimizes problems posed by selection effects that characterize much of the existing research on international law and institutions.12

In this brief presentation I will discuss the results of the U.S. experiments, fielded in 2014 and 2013 with representative samples of 2,000 and 1,000 U.S. nationals. Respondents were told that they would be asked questions about a military operation in Afghanistan which happened a few months ago. They were also told that since the facts of the case were unclear (especially how many people died, and whether they were Al-Qaeda members or innocent civilians), an international fact-finding mission was established to investigate the case. Respondents were then presented with the investigation’s executive summary, which included two parts: ‘summary of facts’ and ‘summary of the legal judgment.’ The summary of facts described an event that happened recently in Afghanistan, in which a Taliban fighter killed a U.S. Marine. Three Marines, who witnessed the attack, chased the attacker into a nearby market place, shooting their guns repeatedly. Eventually, they were able to kill the attacker, but four unarmed afghan

12 Adam S. Chilton and Dustin H. Tingley, Why the study of international law needs experiments, 52(1) COLUMBIA JOURNAL OF TRANSNATIONAL LAW 173 (2013).
bystanders were also killed from their gun fire. After reading the factual summary of the events, respondents were presented with the legal judgment. First, the report stated a legal standard, according to which soldiers are obliged to exercise reasonable care to protect civilians during armed conflicts. Second, the report implemented this standard to the facts of the case, concluding that the U.S. Marines violated international law, committed war crimes, or did not violate international law. In experiment 2 participants were told that this standard is a moral standard, and that the Marines either violated or did not violate this moral standard.

After reading the report’s summary, respondents were then asked questions on the credibility of the report (its accuracy, objectivity and fairness) and on their willingness to sanction the soldiers and compensate the victims. Additionally, the survey included demographic, political, social and economic measurements, including gender, education, ideology, political identification, religiousness, interest in news and financial status.

The results demonstrated the ineffectiveness of fact-finding reports in both settling factual disputes concerning contested events and in motivating domestic sanctioning of in-group offenders. First, the study found that the legal conclusion of fact-finding reports trigger partisan and ideological polarization: conservatives were more likely to believe the facts when the report absolved the U.S. Marines from responsibility; and liberals were more likely to believe the facts when the report incriminated the U.S. Marines (treated absolving reports as white-washing). Second, the study found that war crimes terminology is counter-productive and decreases perceived credibility regardless of political ideology. Blaming U.S. Marines for committing war crimes threatened U.S. national identity and triggered defensive reaction. Therefore, even liberals – who preferred the incriminating judgment – were less willing to believe the report if war crimes terminology was used. Third, the study found that moral judgments are more effective than legal judgments in mobilizing domestic condemnation of war crimes. Participants were more willing to prosecute the U.S. soldiers and to compensate Afghan victims when they were told the soldiers violated moral, rather than legal, standards.

Based on these findings, I conclude that under some conditions more information may also mean more bias, and that the adoption of politically charged legal terminology can be counter-productive. These findings are especially important in the context of international fact-finding, as in contrast to criminal tribunals such as the ICTY, international fact-finding main goal is finding and disseminating facts. Lacking enforcement capabilities, international fact-finding is designed to influence the relevant audiences not through binding judgments but rather through soft power, dialogue and persuasion. Under these circumstances, international institutions, such as the UN, should rethink their current design of international fact-finding missions, and consider replacing the focus on legal truth
with broader (more future-oriented) interpretations of the truth, such as narrative, healing and restorative truths. A broader, non-legalistic, understanding of truth, may be better suited to create a ‘shared history’ and to disseminate otherwise threatening facts. Finally, these findings should motivate the international community to treat ‘truth’ as a goal on its own value, rather than as a tool to achieve other goals, such as accountability.