Chapter 26

The ICTY Legacy in Finding Missing Persons

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Introduction

It has been more than 18 years since armed conflict broke out in the former Yugoslavia. The war resulted in over 34,000 persons reported missing to the International Committee of the Red Cross (ICRC). The records of the International Criminal Tribunal for the former Yugoslavia (ICTY) are an invaluable tool for determining what the fates of these persons were and for bringing peace of mind to their loved ones. With the mandate of the Tribunal ending, it is imperative that the information in its archives be preserved with an eye toward ascertaining the fates of those who are still missing.

Defining the Missing

The missing are all those unaccounted for as a result of international or non-international armed conflict or internal violence. In the course of armed conflict, people disappear, and their fate or whereabouts become unknown for a variety of reasons. They may have been arrested, abducted, or killed upon capture or during massacres. They may have been held incommunicado or in a secret location for a long period of time, or isolated inadvertently by fighting or intentionally by the warring parties. They may have been members of armed forces or armed groups whose fate is unknown (also referred to as “missing in action”); refugees or displaced persons without means of communication; children separated from their families while fleeing fighting or through forced recruitment, detention, or even adoption; or people who have died and whose identities were not recorded.

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The Missing in the Former Yugoslavia

According to ICRC records, as of December 2009 there were over 15,400 persons still unaccounted for in the former Yugoslavia. The unresolved issue of missing persons continues to burden hundreds of families and civil society in general. It represents a sad and tragic chapter of the region’s recent history. The families of missing persons continue to live in anxiety, hoping to eventually find out what happened to their loved ones. The issue of missing persons also divides ethnic communities, fuels resentment, and hinders the process of the return of displaced persons and reconciliation.

The issue of missing persons is, above all, humanitarian, but it also has political, judicial, and legal dimensions. The necessary political will is required for states to assume proper legal obligations to the victims of disappearances and their families. The judiciary must be involved in bringing the persons responsible for the disappearances to justice. The right of the families to know the fate of their loved ones is a fundamental concern of international humanitarian law and human rights law. These legal obligations are laid out in the Geneva Conventions and their Additional Protocols, along with the new International Convention for the Protection of All Persons from Enforced Disappearance and other treaties.

The ICRC acts independently, but also works closely with public authorities as well as local and international organizations in order to support the families of the missing in their quest to ascertain the fate and whereabouts of their relatives. Through various mechanisms and initiatives, the ICRC has been fulfilling its mandate, reminding the authorities of formerly warring parties that they have an obligation to provide any information that can be used by families to ascertain the fate of their relatives.

The Relevance of the ICTY Legacy for Victims and Civil Society

A major problem in the region today is the lack of new, useful information that can be used to clarify the fate of missing persons.

A relevant example is Kosovo, where, as of December 2009, 1,879 persons remain missing from the 1998-1999 conflict. A Working Group for Persons Unaccounted For in connection with the Kosovo conflict was set up in 2004 and has held regular sessions ever since. It is comprised of delegations from Belgrade and Pristina. In its capacity as a neutral intermediary, the ICRC chairs the Working Group. The primary objective of the Working Group is to clarify the fate of those persons who remain missing as a result of the conflict and to inform their families accordingly. In general, both delegations have actively participated in the Working Group process and have provided information that led to the identification of human remains or helped clarify issues related to known gravesites. Very little information, however, was provided on newly discovered gravesites and getting results to families has decreased over the years.

Facing this challenge, the Working Group has also taken on the daunting task of clearing up the chaotic situation inherited from the immediate aftermath of the Kosovo conflict in 1999, when many ICTY forensic teams carried out the exhumation and analysis of human remains from all over Kosovo for prosecution purposes.