



**The Missing:
Action to resolve the problem of people unaccounted for as a result of armed
conflict or internal violence and to assist their families**

Study of existing mechanisms to clarify the fate of missing people

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Report and recommendations

Mission statement

The aim is to heighten awareness among governments, the military, international and national organizations – including the worldwide Red Cross and Red Crescent network – and the general public about the tragedy of people unaccounted for as a result of armed conflict or internal violence and about the anguish of their families

by creating and making available tools for action and communication

in order to ensure accountability on the part of the authorities responsible for resolving the problem of missing people, to better assist the families and to prevent further disappearances.



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SUMMARY AND RECOMMENDATIONS

1. Armed conflicts and situations of internal violence can give rise to **four categories of missing persons**:

- (1) those who are the victims of enforced or involuntary disappearances, which can occur in armed conflicts or in other situations;
- (2) in armed conflicts, those who are killed or secretly detained in violation of international humanitarian law;
- (3) combatants whose families have not been informed of their death on the battlefield;
- (4) persons who have lost contact with their families in the course of an armed conflict.

The first category is the subject of the largest attention on the part of both context-based systems and the present international protosystem. Increasingly, however, the human rights mechanisms that focus on enforced disappearances are also turning their attention to the second category. International humanitarian law and humanitarian mechanisms, for their part, in particular the ICRC, are equally attentive to all four categories.

2. All mechanisms face a number of **dilemmas and difficulties**. International humanitarian law, the provisions of which could prevent most disappearances if they were respected, emphasizes the obligation of the former warring parties to provide information to the families of missing persons. Often, however, the parties do not want to provide that information or are not in a position to do so, and the families wish to receive not only information but also their relatives' remains, the only tangible evidence of death and an essential component of certain funeral rites. In most cases and contexts, though, it is unrealistic to promise the families that they will recover the corpse, if only because of the substantial financial resources required for forensic identification. Mechanisms are therefore sometimes obliged, in the absence of a body, to inform the families that a missing relative is presumed dead on the sole basis of their own conclusions.

3. **Numerous mechanisms** are active in the field of missing persons. They may be:

- (a) universal: the ICRC, the Working Group on Enforced or Involuntary Disappearances, the major NGOs working for the protection of human rights or specialized in forensic sciences, UNICEF;
- (b) regional: in the Balkans, for example, the OSCE and the International Commission on Missing Persons in the former Yugoslavia;
- (c) national: human rights committees, truth commissions and, if international humanitarian law is respected, national information bureaux in time of armed conflict; or
- (d) established to bring together the former warring parties.

Their mandate is either self-conferred or stems from international or internal law.

Many mechanisms take **preventive action**, in particular as concerns the first two categories of missing persons, as victims of human rights violations.

The International Red Cross and Red Crescent Movement **works to restore family links** broken during armed conflicts. The ICRC also visits detainees, thereby helping to prevent their disappearance.

Other mechanisms endeavour to establish the **truth about past disappearances**.

Some mechanisms work to **trace missing persons**, often by submitting cases to the authorities concerned, sometimes by trying, for the most part unsuccessfully, to find the missing persons or their remains themselves.

Specialized NGOs and certain regional organisms rely heavily on **exhumations** and **forensic identification**.

Other mechanisms also provide assistance to the families of missing persons.

Only the ICRC works in all these spheres of activity, although for the time being it performs no forensic identifications (except in very rare cases).

4. The mechanisms dealing with missing persons are not bound by international or national law to **cooperate** with each other in an ongoing fashion. Their **relations** are **intermittent and limited**. Their activities are not carried out within a true national or international system for action. This report therefore suggests that those systems are on the whole underdeveloped.

5. The international protosystem governing missing persons is based on the United Nations General Assembly 1992 *Declaration on the Protection of All Persons from Enforced Disappearances* and a number of international humanitarian law and human rights instruments. Most of the tasks relating to missing persons are carried out by specialized institutions, such as the ICRC and the Working Group. A regional system has been launched in Latin America, but it deals only with enforced or involuntary disappearances, works only with government authorities

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and does not yet receive sufficient support from the OAS Member States. At the national level, few States have established truly integrated systems of intervention with mechanisms able to carry out tasks relating to missing persons.

6. Mechanisms have been most successful (at a rate that is hard to assess quantitatively) in the fields of **prevention** and the re-establishment of family links. All mechanisms with training activities should provide instruction in the rules of international humanitarian law and human rights law aimed specifically at preventing disappearances. They should also provide the States with advisory services on the matter.

If preventive measures fail, **the missing persons are almost always dead**, the exception being certain conflicts following which the mechanisms know that a large number of persons are still detained but do not know their identity. To clarify the fate of missing persons presumed dead, mechanisms are obliged to rely on the **good will of the authorities concerned**, an attitude that often emerges only after a change of regime. In most cases, **the absence of good will prevents existing mechanisms from finding many missing persons**. In the few cases in which missing persons have been found, it has usually been thanks to national mechanisms or to cooperation between the former warring parties, and not thanks to international mechanisms.

7. **All the mechanisms are short of the resources they need**, which are particularly substantial when, to find information, recourse must be had to forensic identification. Providing mechanisms with the means they need is one way of upholding the right of the families to know what happened to their relatives. For those who are responsible for the disappearances, providing resources can also be a way of making partial reparation for their violations. The fact that resources are made available also provides acknowledgement of the families' suffering and shows that it has not been forgotten.

The mechanisms must nevertheless also endeavour to **adapt their methods to the means** available and not start using very costly methods in certain individual cases when they know that they will not have the means to apply those methods in all cases.

8. **Mechanisms that are interested in missing persons purely as a phenomenon** should clearly inform the families that this is the case and send them, directly or via other mechanisms, all the information collected that could serve to clarify an individual's fate. They should also emphasize, in their reports and representations, the need to clarify individual cases, giving the names of missing persons and providing as much information as possible so as to allow the families to understand what happened to their relatives.

9. All mechanisms should **deal with government authorities and non-State actors** responsible for disappearances. They should also try to **obtain information from all existing reliable sources**, or at least transmit any information they are unable to process to other mechanisms that are able to process it. All mechanisms, even those doing their own tracing work, **depend on the good will of the authorities** for access to territories, burial sites and witnesses. They must also **be careful to ensure that their tracing work is not perceived as relieving the authorities of their responsibilities**.

10. International mechanisms should use their good offices to promote **cooperation between former warring parties** (with regard to tracing work, exhumations and forensic identification).

11. Bringing together the former parties to the conflict under the auspices of an international player sends a strong political and diplomatic signal and can sometimes allow the problem of missing persons to be separated - and thereby delimited - from other issues that are humanitarian in nature.

The results obtained (in terms of persons located) by such **trilateral or multilateral mechanisms** are not really satisfying. The mechanisms are unable to make up for the lack of good will shown by the former warring parties or to keep the debate on the matter from being politicized. Before such a mechanism is constituted, therefore, the parties should be asked to demonstrate their good faith by providing information on a number of cases of missing persons.

A joint mechanism should then be used to discuss, not individual cases, but general and abstract matters, and investigative methods and plans, including exhumations.

12. In order to make it easier to obtain the financial resources required, to encourage the authorities and witnesses to cooperate, and also to demonstrate interest, understanding and solidarity in respect of the families, all mechanisms should take steps to **heighten public awareness**, nationally and internationally, of the problem of missing persons and the suffering it entails.

13. When it comes to registering requests for information, **all the mechanisms concerned by the same context should cooperate** in order to ensure that the families are called on to provide information only once. There are two possibilities: either one mechanism is designated as being in charge of registering requests, or each mechanism collects its own information using commonly agreed criteria, and that information is subsequently made available to the other mechanisms.

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All the individual data collected in one context by each mechanism should be stored, whenever possible without detriment to the missing persons, their families or the sources of information, in **one database**.

To that end, as soon as tracing work starts, **agreements** should be reached among all those involved to determine the database's technical specifications, the information to be stored in it, how it is to be monitored, who is in charge of it and who has access to it. Those agreements should also include each mechanism's undertaking to store in the central data base all the information collected by it in the course of its activities that may serve to ascertain the fate of a missing person, unless, of course, doing so would restrict its work or limit its sources.

14. In order to **find information**, most mechanisms ask the authorities to conduct police investigations. Some of them, however, such as national mechanisms, have on occasion conducted their own inquiries. Offering amnesty, within the framework of such inquiries, to those who agree to bear witness may help to clarify the fate of a number of missing persons, but it may be difficult to reconcile such an amnesty with international law. The authorities, however, could offer protection or a reward to witnesses.

Attempts by international mechanisms to encourage witnesses to provide them with information by stating the matter will be handled confidentially or by appealing to the good of their hearts are, as a rule, unsuccessful. Similarly, the **publication of the names, particulars** and pictures of missing persons has not been as successful as anticipated; it does, however, give the families the sense that they have not been forgotten.

Unannounced visits to alleged places of detention should be undertaken only by mechanisms whose task it is to protect the detainees in those places.

When they receive information, the mechanisms must **decide whether or not it is satisfactory**.

15. All mechanisms need the information provided by the **families**.

All mechanisms, even those that do not trace individuals, should be concerned about the missing person's family; not only is it an important source of information, it must be considered as the victim of a human rights and humanitarian law violation. All mechanisms should **inform the families** of how they intend to follow up the information received. No mechanism should record data that it cannot process.

All mechanisms should be concerned about the **families' needs**, should listen to them, inform them of their rights and about the tracing methods and mechanisms involved, about the authorities' reaction and the likelihood that the missing person will be found alive, that the body will be identified and recovered or that at least some information will be obtained on what happened. It is essential, in the interests of the families, not to instil false hope.

Involving the families in the actual tracing work can make that work less effective.

While they wait for answers, the families have **psychological, material and administrative needs**. Those needs should and can in principle be met by the authorities or local organizations. The mechanisms must nevertheless ensure that the families are taken care of and must, if necessary, help the local organizations to do so and inform the families about who they can turn to.

Associations of families play an important role as relays. They also help bring the families out of their isolation. It is nevertheless relatively hard for the mechanisms to assess the level of internal democracy of such associations and the degree to which their leaders are accountable. The mechanisms must try not to allow such associations to prevent them from having direct contact with the families of missing persons.

16. **Exhumations, followed by forensic identification**, allow the families to recover their relatives' remains and to find out what happened to them. Although the exhumation as such does not require the cooperation of the authorities, their permission is needed to obtain access to the burial site.

For the time being, exhumations do not serve to provide rapid answers to a large number of families and they require substantial financial resources that are not available in most contexts.

The mechanisms performing exhumations must coordinate their activities with the mechanisms prosecuting those responsible for the disappearances. Coordination between mechanisms, prosecuting bodies and the authorities is a sine qua non for any action. The mechanisms must ensure that the families' other needs are not overlooked but must not neglect their quest for justice.

17. In cases in which the mechanisms do their own tracing work, have given up all hope of finding the missing persons and have handed over responsibility to another organization, they should **issue to the families documents attesting to the disappearances and the efforts undertaken** to find the missing persons.

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The mechanisms should also promote, following consultation with associations of families, **commemorative ceremonies and monuments**.

18. In our view, one of the major objectives in the coming years for humanitarian organizations, States, intergovernmental organizations and others active in this field should be to **endorse the establishment and the strengthening of international and national systems addressing all aspects of the issue of missing persons**.

I. INTRODUCTION

One major component of the project launched by the International Committee of the Red Cross (ICRC) to improve the plight of persons who are unaccounted for as a result of a conflict is the study of existing mechanisms and their respective working methods. The term “mechanism” refers to the procedures and institutions used to meet the following main objectives: preventing disappearances, tracing missing persons and providing support to the families.

Such mechanisms were discussed at a meeting of practitioners and experts held in Geneva in September 2002 and attended by us. The meeting examined reports submitted by many institutions and adopted numerous recommendations.¹ This independent study of the topic was carried out at the request of the ICRC. It is the outcome of an association of our views on the issue, considered from the standpoints of political science and international law, and of the practical experience one of us had had within one of those mechanisms. The study is based on lessons drawn from the above meeting, on the reports presented to it – *inter alia* by one of us on the ICRC, national human rights committees and truth commissions – and on additional research carried out using public documents.

We decided not to make a scientific and comparative evaluation of the mechanisms involved. First, it would have been difficult to identify the parameters for such an evaluation. For example, many mechanisms say that they endeavour to trace missing persons. While they are not successful, they underscore the psychological utility of their work for the families and the contribution they make to reconciliation between the belligerents. Should they be evaluated in terms of their primary objective (to trace missing persons) or should account be taken of their subsequent explanations, which in turn require the evaluation of hard-to-determine factors? Secondly, and most importantly, such an evaluation would require interviews with a representative sample of beneficiaries (former missing persons and, above all, the families of people who are still unaccounted for) from around the world. It would almost certainly have been impossible to identify those beneficiaries independently of the mechanisms concerned within the timeframe established, and doing so would have involved considerable expense. The relevance of such an evaluation is also open to doubt. In all likelihood, it would have served to examine the families’ perceptions and the efforts undertaken by the mechanisms to communicate with them, and nothing more.

II. DILEMMAS AND DIFFICULTIES FACING THE MECHANISMS

Before discussing the mechanisms as such, we think it would be best to describe the context in which they work and the problems they face.

The issue of persons who are unaccounted for as a result of a conflict is a particularly sensitive topic in which fundamental matters pertaining to the essence of human existence, such as death, love and family ties, commingle and are ultimately dominated and even replaced by a feeling that modern society finds it increasingly difficult to accept: uncertainty. Living with daily uncertainty, constantly waiting for news, inevitably generates worry, anxiety, and emotional and moral anguish.

1. Impediments to the solution established in international humanitarian law

The number of persons who are missing as a result of armed conflicts could be considerably reduced if the parties to the conflicts systematically complied with the applicable provisions of international humanitarian law.² This law must also, however, reflect the fact that by its very nature it is often violated. In the face of the disappearances that occur as a result of transgressions of the law, and also of those that inevitably occur in conflicts even when the rules are followed, the law emphasizes the obligation of the parties to the conflict to provide information to the families. As is the case for any rule of law, that solution requires a minimum of organization and good faith on the part of the addressee if it is to be effective. Not only, however, does respect for the obligation to provide information about missing persons encounter the general problems of implementation common to all provisions of international humanitarian law, it also gives rise to specific problems.

Often, the (former) warring parties do not want to answer the questions they are asked about the missing; they prefer to keep “the enemy” uncertain and thus inflict additional suffering on the “enemy” population. Uncertainty is therefore used as a symbolic weapon to provoke, humiliate and psychologically destroy the adversary. The former belligerents try to use the issue of missing persons to exert pressure in connection with other, often political, demands. In some cases, they are prompted by the concept of reciprocity, the “cancer” of respect for international humanitarian law, to provide no information to “enemy” families until they have obtained assurances that their own families will also be provided with information. Instead of displaying solidarity and demanding that information be provided by their own authorities to the “enemy” families, the families approve and sometimes

¹ See ICRC/The Missing/12.2002/EN/6

² See ICRC/The Missing/12.2002/EN/6, pp. 90 and 91, for a summary of the relevant rules.

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even demand that things be done this way because they have the feeling that they will thus receive information more rapidly than “the others”.

In addition, the belligerents may want to hide from their people the extent of the losses suffered during a conflict and therefore prefer to consider their own soldiers as missing rather than admitting that they are dead. Leaders whose hold on the community depends on hatred for the other camp also have an interest in making the problem of missing persons last. Indeed, while it may be possible to pardon those responsible for the death of a loved one, it is impossible to obtain reconciliation with those presumed to be holding a relative in continued detention.

Criminal prosecutions before national and international courts against people charged with war crimes and crimes against humanity, including enforced or involuntary disappearances promote respect for international humanitarian and international human rights law and thereby help prevent disappearances. They nevertheless have an undesirable side effect: if the local authorities fear prosecution, they may become increasingly reluctant to provide information on the fate of the victims. It may also be more difficult to obtain the authorizations needed to perform exhumations and identify the victims' remains. In addition, the fact that prosecutors of international tribunals may require that exhumations be performed by their services (in order to ensure that the evidence is not biased) further delays the proceedings.

In very many cases, the belligerents do not have the information they should provide. This is partly due to the fact that during the conflict they did not perform the tasks they are charged to perform by international humanitarian law: they did not systematically identify bodies, even those belonging to enemy combatants, or automatically register all persons arrested or detained. The (former) warring parties may nevertheless be expected to make inquiries among their own agents and among the people in the territories they control. In any event, they should be able to provide, as a minimum, information on the location of any mass graves and on military operations that led to disappearances.

A problem has recently emerged in some parts of the world, namely that the families are no longer satisfied to receive only the information they are entitled to under humanitarian law as it presently stands. They are increasingly distrustful of the death certificates established by their (former) enemy, even if those certificates conform to the requirements of humanitarian law. More and more often they express the desire to recover their relatives' remains, and often even insist on knowing who was responsible for the death and demand that the guilty parties be punished.

2. The hope of the families

In the absence of their relatives, who are in all likelihood usually dead, the families maintain the unrealistic hope that the missing person has somehow managed to survive somewhere. Many families who continue to believe this do everything to ignore or cast doubt on information indicating that the relative is dead. It is to put an end to this slow and prolonged moral torture, and not in the vain hope of finding survivors years later, that it is particularly important to ascertain the fate of missing persons. In order to be able to start the mourning process, the families must concede that their loved one is dead, they must be certain of that death. To do this, they need more and more information, and if possible tangible proof that the person has died. That need, compounded by the fact that many religions and cultures require the presence of the corpse for the performance of certain rites,³ reinforces their desire to recover the remains of their loved ones. It is nevertheless interesting to note that the families do not have the same demands everywhere. Some families are satisfied with an announcement of death by the authorities or by an organization they consider credible and with the production of a certificate. Others want to recover the body and sometimes even demand scientific proof that it is indeed that of their relative. Is this because in the language of the subconscious “no body” means “no death”? Is it because they no longer trust anyone? Is it because they are thus able to keep hoping that their loved one is alive? Or because of the funeral rites? Or is it simply the result of manipulation by the former warring parties, who try thus to keep the flames of hatred burning, or by certain international players trying to sell their expensive technology for identification of the dead?

3. Should mechanisms draw conclusions on the fate of a person?

All the mechanisms must make the following choice: should they or should they not inform the families that *in all likelihood* – or, as stipulated in international humanitarian law, according to the information provided by the former enemy - their next-of-kin are dead? The question is an important one, because in the absence of a body, the families' trust in the source of information is an essential factor in whether they can start the mourning process. In addition, the staff of humanitarian organizations must be able to strike, in this as in other areas, a balance between identifying with the victims, an understandable urge from the human point of view, and keeping the distance required for the sake of their psychological well being and of the operation. The personal problems of humanitarian personnel (discontent on the part of the families, feelings of guilt that extend in some cases to the perception that they personally condemned the missing person to death) notwithstanding, the families' interests must be taken account of first and foremost. The fact that those interests may appear contradictory, however,

³ See “Mourning process and commemoration – Report and recommendations”, ICRC/The Missing/10.2002/EN/7.

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only complicates the situation. Who can decide for the families where their “true interests” lie? Should all hope be quashed, even though it is impossible to assert categorically that the missing person is dead, or is it best to say nothing and thereby to maintain the families’ suffering merely because there can be no absolute certainty? It is our belief that the families should be informed in as forthright a manner as possible of the situation and of the true chances of ever finding their relatives, alive or dead.

4. Universal needs and local contexts

The international mechanisms, the donors and the universal organizations have to decide whether all missing persons everywhere in the world should be considered equal and their cases investigated with the same intensity. Are there not differences, in terms of the families’ expectations and needs, between countries and cultures, in particular between developed and developing countries? Do those differences justify the different ways in which cases have been handled (compare, for example, the international focus on missing persons from Bosnia-Herzegovina and Kuwait, on the one hand, and on the Great Lakes region of Africa and Afghanistan, on the other)? In the developed countries, the members of a family, even if they are geographically far apart, are accustomed to and have the means of staying in contact, in particular thanks to the new communication technologies. In developing countries, the living conditions are hard and precarious (poverty, unemployment, rural exodus, the separation of families) and do not always, not even in time of peace, allow families to maintain a direct link with all their members. Such families are used to live with some degree of uncertainty about what is happening to their relatives, and are therefore *better* able to cope with the anxiety that arises from disappearances related to a conflict; indeed, they develop a kind of fatalistic attitude. What is more, their personal experience makes them less likely to expect the authorities or the “international community” to find a solution to their problems.

If one follows this reasoning, the issue of missing persons could be approached differently, depending on the living conditions in the respective countries and on the pressure exerted by the families and public opinion. Given the principle, however, that international humanitarian law is the same for everyone, it must be implemented everywhere. This thinking runs counter to the approach proposed by the double standard theory, which we therefore find unsatisfactory. Indeed, it is more prudent to uphold the idea that all families share the same needs and have the same expectations.

There are, of course, cultural differences, and they are not insignificant. For example, families whose religion or tradition requires that the remains be cremated will not be as fervent as others in their desire to recover their relatives’ remains. All families nevertheless suffer when they do not know what has happened to a loved one. The fact that they are less demonstrative does not mean that they suffer less. In addition, in the current context of globalization, the trend seems to be for all families, no matter where they are, to have similar needs. Following the attack of 11 September 2001 against the World Trade Center, some American families refused to admit that a relative had died unless that death was attested to by DNA analysis. It may be only on a matter of time until the families in the Great Lakes region in Africa demand the same thing. As expectations and demands grow increasingly similar, a major stumbling block will appear: the question of funds. DNA analyses and the collection of the *ante mortem* and *post mortem* data required to perform them are very expensive.

5. Find the dead or help the living?

Organizations that have other activities in addition to tracing missing persons, the donors and the international community have to set priorities when allocating financial and human resources. Should they spend so much money and engage so many means to find people who are very probably dead? Would it not be better to allocate those resources to missions that “truly” help to save thousands of human lives (such as the fight against hunger)? Although it seems immoral to make comparisons or attribute priority in this field, resources must no doubt be allocated on the basis of an assessment of priority needs. The process by which the most urgent and most important needs are identified must, however, involve the community concerned and take account of the fact that the point at hand is not just the missing persons but also the anxiety, the constant uncertainty and the difficulties encountered by their next-of-kin and their communities.

III. OVERVIEW OF THE MECHANISMS

The scope of the phenomenon worldwide has prompted the emergence of several mechanisms working to ascertain the fate of missing persons. Before proceeding to a comparative analysis of their endeavours and before making any recommendations, an overview must be made of the players working, at the international, regional and national levels, to put a stop to disappearances and to clarify the fate of the missing. The emphasis will be on mechanisms other than the ICRC, human rights committees and truth commissions, which are described in other documents.⁴ Some of the mechanisms base their work on a mandate conferred by international law, others receive their mandate from the internal legislation of the country concerned, while a third category have no State or inter-State mandate but adopt their own. For the purposes of this study, which aims to

⁴ See ICRC/The Missing/12.2002/EN/6, pp. 87-123.

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analyze reality and not standards, the latter category is just as important. In the light of the sources used, however, it may be that greater emphasis is placed on mechanisms that speak publicly about their activities than on those that may be just as effective but work out of the limelight.

The aim here is not to draw up a list of all the mechanisms dealing with the problem of missing people. It might be useful to recall, however, that all national and international human rights organizations are in one way or another involved in preventing disappearances. Indeed, certain NGOs such as Human Rights Watch and *Médecins Sans Frontières* bring cases of individuals who are unaccounted for to the attention of governments and the international community as human rights violations (through press releases, in their annual reports, etc.). Other intergovernmental organizations such as the International Organization for Migration and the United Nations High Commissioner for Refugees report, in the framework of their respective activities, on certain categories of missing persons of concern to them by virtue of their mandate and formally express their concern to the authorities in representations, communiqués and reports, demanding an end to such practices and asking for clarification of the missing persons' fate.

By the same token, judicial mechanisms (the police, prosecutors, national and international courts) help shed light on cases of missing persons as a by-product of their inquiries. In this respect, the Inter-American Commission on Human Rights is particularly noteworthy. The Commission is an independent organ of the Organization of American States (OAS) and its mandate is to promote respect for and the defence of human rights throughout the region. The fight against disappearances is one of its priorities. To that end, it conducts and publishes studies on specific problems and issues recommendations, for example, on the importance of guaranteeing an independent judiciary, on the activities of irregular armed forces or on the specific situation of minors, women and indigenous peoples. It publishes annual reports, special reports and communiqués that speak of disappearances in member countries. It examines individual cases of enforced disappearance and informs the governments accordingly.

The mechanisms helping to ascertain the fate of missing persons run the range from informal representations (interpersonal approaches between States or mediation), institutional or national bodies (international organizations, national committees), civil and military agencies (civilian oversight boards for police and armed forces) to private undertakings (by corporations or even individuals, such as the initiative taken by Mr Bernhard Clasen concerning missing persons in Armenia and Azerbaijan).⁵

1. Universal mechanisms

(a) The Working Group on Enforced or Involuntary Disappearances

The Working Group on Enforced or Involuntary Disappearances, which was established in 1980 by resolution 20 (XXXVI) of the UN Commission on Human Rights, is a non-treaty-based mechanism belonging to the United Nations human rights system.⁶ The Working Group only handles cases of enforced disappearance that can be attributed, directly or indirectly, to State agents. It therefore does not examine abductions or other practices similar to enforced disappearances that are the work of non-State actors, illegal groups or insurgents. Nor does it deal with situations of international armed conflict, which in accordance with the Geneva Conventions and their Additional Protocol I are of the competence of the ICRC. The Working Group nevertheless has looked into cases of missing persons in the former Yugoslavia, even though most of the conflicts that took place there were considered by the international community to be international conflicts.⁷

The Working Group's mandate is essentially to help the relatives of missing persons to ascertain their loved ones' fate (find out what happened to them and discover their whereabouts) by submitting specific cases to the government concerned. It therefore acts as an intermediary between the families and the government. The Working Group examines individual cases of missing persons brought to its attention. By virtue of the *Declaration on the Protection of All Persons from Enforced Disappearance*,⁸ it collects and examines communications from the families of missing persons or from human rights organizations acting on their behalf. It acts as a channel between the families and the governments, transmitting individual files to the latter, inviting them to inquire into the enforced disappearances and to keep the Working Group informed of the outcome of those inquiries. It keeps the families abreast of what action the governments take and collects additional information and comments on the inquiries from them. Any reply from the government that contains detailed information on the fate of a missing person and on that person's whereabouts is transmitted to the source (i.e. the person who submitted the case). The Working Group thus endeavours to establish a trilateral dialogue between itself, the government and the

⁵ See ICRC/The Missing/12.2002/EN/6, pp. 40-43.

⁶ See also Federico Andreu-Guzmán, "The United Nations Working Group on Enforced Disappearances", ICRC/TheMissing/12.2002/EN/6, pp. 16-22, and the sites <http://www.unhchr.ch/html/menu6/2/fs6.htm> and <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/f5cefa4dfb6ad460c1256ba0004bb8d3?Opendocument> (accessed on 8 December 2002)

⁷ See Marco Sassòli, "The legal qualification of the conflicts in the former Yugoslavia: double standards or new horizons in international humanitarian law?", in WANG TIEYA and SIENHO YEE (eds), *International Law in the Post-Cold War World: Essays in Memory of Li Haopei*, London, Routledge, 2001, pp. 307-333.

⁸ See United Nations General Assembly resolution 47/133 of 18 December 1992.

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author of the communication, with a view to clarifying the fate of missing persons. The case is open until the missing person's fate and whereabouts have been clearly ascertained (whether the person is dead or alive), an outcome that may be obtained as a result of the government's inquiries, the tracing efforts of the family or the submitting NGO, a field mission undertaken by the Working Group or by United Nations staff specialized in human rights, or thanks to the information provided by any other international organization working in the field. The Working Group's role ends there.

The Working Group also provides the governments concerned with information about instances of intimidation, persecution or reprisals against the missing person's next-of-kin, witnesses to disappearances, members of their families or associations of families. The aim is to prompt the governments to take steps to protect the fundamental rights of those persons.

Occasionally, with the consent of the government concerned, the Working Group conducts a field mission to a country. During its mission it examines the situation in the country and meets with government officials, representatives of NGOs and other individuals.

In its own reports, the Working Group complains that it receives few substantive replies from the governments,⁹ some of which do not even deign to respond. Most of the cases opened over 10 years ago have still not been resolved. The Working Group deplores the fact that one of the reasons the governments are not interested in such cases is that they presume the missing persons to be dead. In its latest report, the Working Group nevertheless expressed satisfaction that the fate of numerous missing persons had been clarified (it reported that 4,419 cases had been solved). That increase in the percentage of cases closed by the Working Group is the result of sustained cooperation and work on the part of a single government, which undertook serious tracing efforts in conjunction with the Working Group, NGOs and the families of the missing persons concerned. According to the Working Group, concerted efforts of this kind constitute an effective mechanism that should serve as a model for future endeavours to improve cooperation between the families, civil society and all others involved in the clarification process, in order to do justice to the victims and solve cases of missing persons throughout the world.

(b) The International Committee of the Red Cross (ICRC)

Founded in 1863, the ICRC is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of the victims of war and internal violence and to provide them with assistance. It directs and coordinates the international relief activities of the International Red Cross and Red Crescent Movement in such situations.

Through its traditional activities to promote respect for international humanitarian law, the ICRC helps prevent and resolve cases of disappearances during armed conflicts. In situations of internal violence, the ICRC works on the basis of its right of initiative, set forth in the Movement's Statutes, to conduct similar activities. A detailed analysis of those activities and recommendations for their systematization and improvement may be found in our report, entitled "The missing: The ICRC as a mechanism to solve issues on people unaccounted for".¹⁰

The ICRC helps prevent disappearances in a number of ways. It spreads knowledge of the rules of international humanitarian law, which, if they were more scrupulously respected, could prevent most disappearances. It provides the States with advisory services aimed at furnishing governments with legal expertise on the implementation of international humanitarian law. Lastly, whenever a conflict breaks out it takes steps to remind the belligerents of their humanitarian obligations. It plans henceforth to pay particularly close and systematic attention to the obligations relating to missing persons in its preventive work.

When ICRC delegates visit detainees for the purpose of affording them protection, they seize the opportunity to register them and to note their families' addresses so as to provide them with information. They also make inquiries of the detainees and those holding them in the hope of discovering information on captives and deceased or missing persons to whom they do not have access.

People can become separated from their families for any number of reasons: because of the existence of a front line, because they have moved to another area or sought refuge in another country, or because they have been detained or hospitalized by the adverse party. To ensure that such people are not considered to be missing by their relatives, every effort must be made to re-establish and/or maintain contact with them. The exchange of news is a simple means (encouraged by the ICRC) of "finding" missing persons. Thus, when the normal, physical channels of communication (mail, telephone) are interrupted by a conflict, the ICRC, with the help of local Red Cross or Red Crescent staff, sets up a substitute communication network that anyone who wishes can use to send news to family. The means used vary from one emergency situation to another, depending on the political and military situation, existing needs and the resources available. They include the distribution of messages to the families (the "Red Cross Messages"), Red Cross cell phones, local and international radio networks,

⁹ See United Nations document E/CN.4/2002/79 of 18 January 2002.

¹⁰ See ICRC/The Missing/12.2002/EN/6, pp. 87-100.

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newspapers, billboards, and the publication of names in books or on the Internet site of the "Family Links Network".¹¹ Such messages allow the members of separated families to renew contact with each other. They also facilitate tracing work and make it possible to organize family reunifications and/or repatriations.

When none of these mechanisms has had the desired result, the ICRC invites the families to submit to it a more detailed tracing request: all the information on the missing person is then checked against the data in the ICRC's data bases. If the information in the ICRC's possession does not allow it to reply to the family, it transmits the request to the authorities concerned, in particular in international armed conflicts and sometimes within the framework of mechanisms established to promote cooperation between the parties. As a neutral intermediary, the ICRC endeavours, as soon as the conflict has ended, to facilitate cooperation between the former warring parties so that tracing work, such as joint exhumations, can be carried out. It also makes sure that the issue of missing persons is taken into account when the arrangements for ending the conflict are negotiated. In that respect, the ICRC does not give in to the belligerents' endeavours to draw a link of reciprocity between the issue of missing persons and that of the release, once the hostilities are over, of any known prisoners.

While it is making its representations, when those representations are in vain or when it has not been possible to submit requests to the belligerents, the ICRC takes the initiative to have its own staff make inquiries in the field, on condition that they have the required access and are not in danger. It has sometimes published lists or books containing the names of the missing, in order to collect information on them. It has launched appeals for witnesses to disappearances to come forward with any information they have, if necessary in a confidential manner, but those appeals have not met with success.

At the end of some conflicts, the ICRC has set up psychological and material support programmes for the families of missing persons. In such cases, it also endeavours to ensure that the families' wish to receive their relatives' remains is respected and that exhumations and forensic identifications are carried out. The identifications are sometimes facilitated by showing the families pictures of personal belongings found with the remains. It is only in exceptional cases, however, that the ICRC itself performs an exhumation.

(c) UNICEF

UNICEF (the United Nations Children's Fund) works on behalf of missing persons by protecting children who, following an armed conflict or other international emergency situation, find themselves on their own, separated from their families.¹² To improve cooperation between the agencies involved and to ensure the response is concerted and effective, UNICEF has adopted an integrated approach based on guiding principles drawn essentially from international law (including the 1989 Convention on the Rights of the Child).

Prevention is a fundamental component of UNICEF's programme for unaccompanied children. According to UNICEF, it is important to conduct an awareness and training campaign, the better to tackle the problem at the roots. The families must be kept informed about the tracing efforts made by the mechanisms and about the measures to take, in emergency situations, to lower the risk of separation. In addition, UNICEF encourages the use of medical examinations, registration and the issuing of birth certificates, in that they enable children separated from their parents to be identified.

UNICEF is of the opinion that family reunifications and the identification of unaccompanied children require the development of a concerted approach (or at least mutually compatible systems) by those involved in the process (verification of data on the families and the children, special protection for the children, confidentiality, precautions to take when sharing information).

(d) Non-governmental human rights organizations

Amnesty International makes representations to the authorities asking them to put a stop to disappearances because they constitute human rights violations. It is a worldwide, neutral and independent movement that fights such violations committed by both opposition groups and States. In terms of missing persons, it seeks to bring a halt to summary executions and to abductions. To that end, it conducts inquiries into individual cases, information on which (names and circumstances of the disappearance) it publishes in annual reports and in specialized journals. Amnesty International thus assesses the current state of affairs in respect of disappearances. It also launches repeated appeals to a large number of States and examines what prevents cases from being solved (lack of political will, partial or truncated inquiries, a climate of impunity among government forces, failure on the part of military or civilian tribunals to act, the passivity of the international community). One of its means of action is to incite its members and the general public to write letters to the perpetrators of the violations, asking them to bring the violations to a halt in respect of a specific person. That person is thus "adopted" by the organization. Letters are also sent to the authorities asking them to shed light on cases in which people have disappeared

¹¹ See the ICRC web site: <http://www.familylinks.icrc.org> (accessed on 8 December 2002).

¹² See Jolanda van Westering, "Children whose parents are missing. Prevention and response", ICRC/The Missing/12.2002/EN/5, pp. 91-94.

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(whether they are political prisoners or not), and demanding in particular that the families be kept informed about what happens to their relatives. The sources for those representations are often the families themselves.

The work of the *International Federation of Human Rights Leagues* (FIDH) is also noteworthy. The Federation discharges its mission – to inform, denounce and protect - by conducting field missions to the countries concerned¹³ and by publishing reports, press releases and *La Lettre*, its periodical, with the support and thanks to the work of its member leagues.

Some NGOs focus on the problem of disappearances in respect of a particular category of persons. This is the case, for example, of the *Save the Children Fund*, a group that is made up of 30 organizations acting in defence of children in over 120 countries and that is specifically interested in the protection of children separated from their families. As the example of Save the Children UK (SCF-UK) tends to prove, such protection implies activities that are tantamount to tracing missing persons.¹⁴ Those activities have a major preventive component: description of the reasons children disappear (natural disasters, separations arranged during humanitarian operations, voluntary repatriations, abductions, forcible recruitment into armed groups), instruction in schools and for the local authorities, the armed forces and humanitarian practitioners. Like UNICEF, the Save the Children Fund underscores the importance of adopting a concerted approach to the exchange of information and prevention (heightening awareness among vulnerable groups, families and children; involving community organizations in prevention campaigns; the need for a rapid action strategy to conduct inquiries and to prevent forcible recruitment).

At the same time, SCUK has set up an identification, documentation, tracing and reunification process known as IDTR. In particular thanks to its field staff, who ask questions of the families, the organization collects a wealth of information on children (names, names of next-of-kin, place of origin, present situation, circumstances of the separation, other family ties, if possible photographs). That information is filed in alphabetical and geographical order (by the place where it is presumed the child can be found), then entered in secure data bases. The case remains open until the child reaches adulthood (18 years of age), at which point a decision on further action is made on a case-by-case basis. Closed cases are stored in the data bases, and any cases that remain open are forwarded to another agency or to a government.

SCUK regrets the lack of coordination in situations in which disappearances occur. It would like a specialized agency to be given a leading role in each emergency situation.

(e) Non-governmental organizations specialized in forensic medicine

Since the only means of furnishing the families with proof that a missing relative has died is to disinter the body and establish its identity, some organizations have specialized in exhumations and forensic identification.

Since 1986, *Physicians For Human Rights* (PHR) has conducted inquiries into human rights violations in over 50 countries.¹⁵ PHR uses its expertise in forensic medicine to examine and expose human rights violations, in particular disappearances. Its International Forensic Programme mobilizes the skills of professionals in a dozen countries to investigate human rights violations perpetrated during war crimes or genocides.

PHR's experts work to discover the remains of missing persons, to determine the causes and the circumstances of death and to identify the bodies, thus enabling the families to start legal and administrative proceedings and, of course, to begin mourning.

The *Argentine Forensic Anthropology Team* (EAAF)¹⁶ is another non-governmental organization working in the field of forensic medicine. It was founded in 1984, with the support of the American Association for the Advance of Science (AAAS) and following the work of Argentina's National Commission on Disappeared Persons.

The EAAF applies its forensic expertise (in particular in the field of forensic anthropology) in investigations of human rights violations, in particular disappearances. It also aims to help the victims' families recover their relatives' remains and to re-establish the truth – often twisted by the belligerents and governments involved – about the circumstances of their deaths. The EAAF works in close cooperation with other mechanisms concerned about the fate of missing persons: the International Criminal Tribunal for the former Yugoslavia in the Balkans, the Foundation for Forensic Anthropology in Guatemala, and other organizations in Colombia, Suriname and Haiti.

¹³ See, for example, the international mission report on the inquiry carried out in Morocco on enforced disappearances: <http://www.fidh.org/magmoyen/rapport/2000pdf/fr/dispmar/pdf> (in French only; accessed on 8 December 2002).

¹⁴ See Sarah Uppard, "Prevention of disappearances during a situation of armed conflict or internal violence: measures to be taken to ensure the protection of the physical integrity of people not/ no longer participating in the hostilities", ICRC/The Missing/12.2002/EN/5, pp. 85-90.

¹⁵ See the Physicians for Human Rights web site : <http://www.phrusa.org/index.html> (accessed on 8 December 2002).

¹⁶ See the Argentine Forensic Anthropology Team's web site: <http://www.eaaf.org.ar> (accessed on 8 December 2002).

2. Regional mechanisms

(a) The Organization for Security and Co-operation in Europe (OSCE)

Several regional human rights organizations work to prevent disappearances within their respective regions. For example, the OSCE discusses individual cases of missing persons (names, circumstances and place of the disappearance) in several of its official publications (annual reports, special reports and press releases). It has also helped publish a book containing pictures of clothes and other personal belongings found on unidentified bodies in Bosnia and Kosovo. It regularly exchanges information and data with the ICRC to facilitate tracing work. While the ICRC centralizes data on missing persons, the OSCE focuses on more technical areas, such as identifying human remains, taking care to work all the while in close coordination with the ICRC.¹⁷

(b) The International Commission on Missing Persons in the former Yugoslavia

The International Commission on Missing Persons in the former Yugoslavia was established in 1996 following the G7 summit in Lyon (France) and one year after the signing of the Dayton Peace Agreements.¹⁸ Its only aim is to help the families, irrespective of their ethnic or religious origin, ascertain the fate of relatives who went missing during the armed conflicts that took place in the former Yugoslavia between 1991 and 1999. The Commission estimates at more than 40,000 the number of people who are still missing; between 12,000 and 13,000 bodies have been exhumed to date - although not necessarily identified.

The Commission would like to pick up the pace of tracing and identification of bodies by using forensic identification methods (DNA) on human remains found in the region. To that end, it has started collecting blood samples from the families of missing persons who have volunteered to give such samples. At the same time, when it has obtained the necessary authorizations, it carries out exhumations at sites likely to contain the remains of missing persons. Those sites are pinpointed with the help of witnesses, perpetrators, victims and neighbours who signal the location of possible mass graves to local committees, international organizations such as SFOR (the international stabilization force in Bosnia) or the Commission itself. The exhumations are closely scrutinized by several agencies (including the Commission, which claims to coordinate the proceedings), in order to make sure they are conducted meticulously and in all lawfulness. Laboratories then analyse the genetic code, to check whether the DNA in a body corresponds to that of a missing person. If the sequences correspond and medical experts confirm this, a death certificate is issued.

3. National mechanisms

Several national human rights organisms also work to prevent disappearances. We present here only those that conduct investigations in order to clarify the fate of missing persons. We were nevertheless unable to examine them all, as some of them are less well known, such as civilian oversight committees for the police, and it was therefore particularly difficult to find public documentation on them. It must nevertheless be borne in mind that such mechanisms exist and that they, too, within the framework of their respective mandates, trace missing persons.

(a) The National Information Bureaux provided for in the Geneva Conventions

In an international armed conflict, the parties to the conflict are bound, by virtue of the Third and Fourth Geneva Conventions of 1949, to set up a National Information Bureau (NIB) whose task is to centralize all data on protected persons and forward them to the ICRC's Central Information Agency (since renamed the Central Tracing Agency), which in turn forwards the data to the families concerned. Article 33 of Protocol I additional to the Geneva Conventions extends the NIB's obligations to persons who are not protected by the Geneva Conventions. If they prepare to perform their tasks in peacetime, NIBs can also act in the event of a non-international armed conflict.¹⁹

Under the Conventions, the NIB has several tasks. The State's administrative services must transmit to it information and documents including duly certified certificates or lists of deaths, indications on the exact location of graves and burial sites, information on the identity and state of health of protected civilians and prisoners of war, and any objects of value left by those persons. The NIB must then forward all that information and all those documents to the Central Tracing Agency, which will rapidly send it on to the families.

¹⁷ See Organization for Security and Co-operation in Europe, Eighth Meeting of the Ministerial Council, Vienna, 27 and 28 November 2000, written contribution by the International Committee of the Red Cross, at <http://icrc.org/Web/eng> (accessed on 8 December 2002).

¹⁸ See: <http://www.ic-mp.org/icmp/home.php> and <http://www.nato.int/sfor/indexinf/137/content.htm> (accessed on 8 December 2002).

¹⁹ On the NIB's tasks, see Marco Sassòli, "The National Information Bureau in aid of victims of armed conflicts", *International Review of the Red Cross*, January-February 1987.

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The information in the NIB's possession should be stored in a database, as the Conventions oblige it to respond to any request made concerning protected persons. If it does not have the information requested, it must take steps to obtain it.

In modern State practice, the parties to international armed conflicts generally do not meet their obligation to set up a National Information Bureau, although the authorities do sometimes collect and transmit the information required. Often, however, it is the ICRC's delegates who have to perform the NIB's tasks, in particular by collecting information during their visits to protected persons. The few States who have taken steps to establish an NIB in peacetime are not involved in armed conflicts. In our opinion, the systematic establishment of NIBs in time of peace would go a long way towards preventing most of the disappearances relating to armed conflicts.

(b) Truth commissions

Truth commissions are usually established by governments for a limited term, their aim being to shed light on past events, which are presumed to constitute serious human rights violations. They work to facilitate reconciliation within the country. There are many forms of truth commissions. Each has its own structure and its own mandate. Very few actually bear the name "truth commission".²⁰ In spite of the range of situations and organizations, however, they all share certain characteristics.²¹

The commissions seek to establish the truth about the violations committed, usually by the State, at times also by opposition movements. They are not courts of law: they do not determine individual criminal responsibility and do not inflict penal sanctions.

In terms of disappearances, and in particular of enforced disappearances, the truth commissions try to establish the truth about any violations committed and to attribute responsibility for them to the State (or an opposition movement). A phenomenon is often illustrated by the violations committed against a few individuals. In this respect, finding a missing person is merely one result of the search for the truth. The commissions rarely investigate all individual violations. Sometimes responsibility for violations is attributed to an individual. It is mainly in such cases that the fate of missing persons has been clarified. It is hard to know whether the families are informed individually about the outcome of the commission's inquiries or whether that outcome simply appears in the commission's report.

One of the main spurs for investigations into disappearances is the information provided by the missing persons' next-of-kin, NGOs and other victims of human rights violations (persons who were temporarily detained in the company of someone reported as missing). The commissions are sometimes also entitled to question witnesses under oath and given access to government records. When no information is found, some commissions have concluded that the missing persons are dead.

(c) National human rights commissions

A national human rights commission is usually established by a country's executive or legislative branch to promote and protect human rights at national level. Its mandate is to restore respect for human rights and to prevent violations thereof, often on the basis of individual complaints. When it comes to missing persons, the mandate thus only covers disappearances resulting from human rights violations, in particular cases of enforced disappearance. Some national human rights commissions also have a mandate covering cases of people who are unaccounted for as a result of a violation of international humanitarian law.²²

National human rights commissions try to prevent further disappearances and exert pressure on the authorities to conduct investigations and to obtain additional information for the families; as such they are essentially indirect protagonists in the system. They have nevertheless also been known, in some cases, to ascertain the fate of missing individuals. In Mexico, for example, the commission has a specific programme to trace missing persons and itself investigates each case brought to its attention. The direct or indirect impact of any national human rights commission nevertheless always depends on how willing the government authorities are to respect human rights.

The commissions are interested in missing persons for because they are victims of human rights violations. Once they reach the conclusion that there has been a violation, for example because they can attribute the disappearance to the government authorities, it is up to the criminal courts to take over and prosecute those

²⁰ They are known as the "Clarification Commission" in Guatemala, the "Commission on Disappeared Persons" in Argentina, and as "Commissions of Inquiry" in many other countries.

²¹ For a more in-depth analysis of such commissions and their activities to investigate cases of missing persons and for recommendations, see our report, entitled "The missing: Truth Commissions as mechanisms to solve issues on people unaccounted for", ICRC/The Missing/12.2002/EN/6, pp. 101-114.

²² For a more in-depth analysis of such committees and their activities to investigate cases of missing persons and for recommendations, see our report, entitled "The missing: National Human Rights Commissions as mechanisms to solve issues on people unaccounted for", ICRC/The Missing/12.2002/EN/6, pp. 115-123.

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responsible. The commissions usually demand that the authorities provide information on the fate of missing persons, either directly to the families concerned or to the commissions, which then inform the families.

When the commissions conduct their own investigations into the fate of missing persons, and in exceptional cases into the present circumstances of those persons (beyond simply observing that a human right was violated), they act as truth commissions seeking information on specific past events.

4. Mechanisms bringing together the (former) warring parties

After a number of conflicts that ended without a clear victory for either side, mechanisms were established that brought together the former belligerents. Usually constituted within the framework of general agreements on the humanitarian issues arising from the conflict, those mechanisms were set up at the initiative and under the auspices of an international mechanism (such as the ICRC in Bosnia-Herzegovina, between Croatia and Yugoslavia, between Iraq and Kuwait and its allies) or another international player (such as the UN in Cyprus). Those international players take part in the mechanism's work and often chair it. The mechanisms launched by the ICRC are often suspended or at an impasse because one of the parties is no longer participating. The ICRC has also tried, unsuccessfully, to establish such a mechanism between Iran and Iraq. A less formal, but more effective, similar mechanism has brought together the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Federal Republic of Yugoslavia.

In practice, these mechanisms are often a forum – sometimes the only one – for dialogue between the parties. They have also occasionally managed to bring together international players (other than those under whose auspices the mechanism was constituted) and the representatives of families. In concrete terms, they have served above all to request a party presumed to be responsible for a disappearance to provide information. Little information has been forthcoming, however, and quarrels over procedure and gratuitous mutual accusations have been commonplace.

IV. COMPARATIVE ASSESSMENT AND RECOMMENDATIONS

1. Results in terms of missing persons found, alive or dead

Our assessment of the different mechanisms is not based on analysis and quantitative evaluation of the results they achieve (number of missing persons found, whether alive or dead), but on the conclusions we have drawn from a study of their legal, operational and administrative characteristics and the practices they adopt.

When preventive action and efforts to restore family links, undertaken in particular by the ICRC, fail, the good will of the former parties to the conflict is essential for the success of national and international mechanisms. Often this condition is fulfilled only after a change of regime, and even then there is little chance of finding missing persons alive. There are, however, some exceptions. Ten years after the end of the war between Iran and Iraq, thousands of prisoners of war were repatriated.²³ Until then they were technically considered as missing persons inasmuch as, even though it was known that there were survivors, neither the ICRC nor their families knew the survivors' names. On a smaller scale, the same is true for prisoners of war from the conflict in the Western Sahara. Finally, several missing persons in Mexico were found alive. According to figures published by the Mexican Human Rights Commission, among resolved cases relating to a certain category of missing persons, more than half the individuals concerned were found alive some 20 years after the events. Despite repeated requests, the Commission officials were unable to specify to what category these missing persons belonged nor how they had been found.²⁴

In most cases, however, people still missing after the end of the conflict must be considered to be dead. Nevertheless, international mechanisms or those established by the parties are rarely able to find information confirming death. When such information is obtained, it is usually forwarded by national mechanisms, often under pressure from international bodies. National mechanisms have more success in terms of obtaining information about the dead. This is particularly true in two cases: when the regime has changed and police investigations are carried out (Mexico, South Africa); and when, thanks to cooperation between the tracing mechanisms of former enemies, it has been possible to conduct exhumations and to identify the remains exhumed (Bosnia-Herzegovina, Kosovo). Even so, despite all the efforts made by different mechanisms, the vast majority of persons who remain missing at the end of a conflict are never found.

In view of the great diversity of existing mechanisms, of the limited results they achieve in terms of missing persons found, and of the impossibility of conducting a quantitative assessment of their effectiveness in this area

²³ See, for example, ICRC press release No. 02/05 of 23 January 2002, *Iran/Iraq: Iraqi prisoners released*: <http://www.icrc.org/Web/eng/siteeng0.nsf/iwpList74/2D49B2E6E4012234C1256B660060EEE8> (access date: 22 October 2002)

²⁴ See the Website of the Comisión Nacional de los Derechos Humanos (Mexico): http://www.cndh.org.mx/Principal/document/la_cndh/estruct/segun_vis/fr_prede.htm (access date 8 December 2002)

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as in others, we have opted to continue this study with a comparison of their mandates and activities, primarily so as to be in a position to offer recommendations aimed at strengthening their complementarity and improving their efficiency.

2. Categories of missing persons and the mechanisms that deal with them

Four categories of missing persons may be distinguished:

Victims of enforced or involuntary disappearances who are targeted by government authorities, paramilitary groups or insurgents. In these cases, disappearance is an end in itself, a means whereby the perpetrators hope to spread terror or get rid of some of their enemies, political or otherwise. This type of disappearance can occur either during an armed conflict or in other circumstances.

Persons protected by international humanitarian law in the event of armed conflict (prisoners, civilians) who disappear because, in violation of that body of law, they are killed or detained by one of the parties to the conflict which refuses to admit to its acts. In this instance disappearance is only a secondary effect of a violation of international humanitarian law.

Combatants who have been killed in the fighting but whose families have not been informed. The number of such persons missing in action could be considerably reduced if combatants wore identity tags and if the requirements of international humanitarian law relating to identification of the dead were met.

Persons who, during an armed conflict, have lost all contact with their families because they have been displaced, detained or separated from their relatives by a front line.

From the standpoint of families and of their right to know what has happened to their loved ones, these four categories merit an equal measure of attention, which is indeed accorded them by humanitarian organizations. In terms of mechanisms, however, there are some differences. Human rights mechanisms traditionally focus on the first category, inasmuch as the disappearance is the result of a serious violation of human rights. However, they are paying increasing attention to the second category, inasmuch as international humanitarian law is considered as a set of rules intended to protect human rights in situations of armed conflict. Truth commissions, which seek to shed light on violations committed, are also interested mainly in these first two categories.

3. To whom do these mechanisms address their representations?

Traditionally, most of the rules of international human rights law are aimed at States, represented by their government authorities. While there is a current trend that seeks to make these rules applicable also to non-State actors, the legal tools that would allow such direct application still need to be clarified.²⁵ It has to be acknowledged that present-day human rights mechanisms almost always concentrate the representations they make on government authorities. This is particularly the case when the mechanisms in question are established by intergovernmental organizations, since the members of those organizations would certainly object to any contacts with non-State actors within their jurisdiction, fearing that such relations would imply according those actors a degree of recognition.

However, since international humanitarian law is also aimed at non-State parties to armed conflict, mechanisms arising from this body of law or engaging in exclusively humanitarian activities have no such scruples. In our view, all mechanisms should be able to contact all those responsible for disappearances, for only they are in a position to provide answers about the persons sought. That in no way prevents, in certain cases, a State from being held legally responsible for disappearances caused by non-State actors within its jurisdiction.

4. Dealing with the phenomenon and/or individual cases

Disappearances, forced, involuntary and/or resulting from violations of international humanitarian law, may be considered either as a phenomenon or as individual cases. Lack of resources or expertise may lead certain mechanisms, especially those focusing on defending human rights or on establishing the truth, to decide justifiably not to investigate every case of an individual reported missing. Indeed, it is understandable that, when a large number of people have disappeared, investigation of each particular case might well paralyse the mechanism's other activities.

Mechanisms, which deal with disappearances exclusively as a phenomenon should, however:

- inform families and any witnesses of disappearances of the choice made;
- pass on to families any information obtained during their activities that might elucidate the fate of an individual;

²⁵ On this point, see in particular Andrew Clapham, *Human Rights in the Private Sphere*, Clarendon Press, Oxford, 1993

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- stress in their reports and point out in their representations to the relevant authorities that it is also essential to resolve individual cases;
- include in their reports any information that might enable families to understand what happened to their loved ones (especially information that explains why victims belonging to such and such a category or sub-category must be presumed dead);
- when possible, mention in their reports the names of persons reported missing (as this constitutes a form of recognition for the families concerned).

Once these conditions have been fulfilled, a mechanism can choose to focus on a few individual cases judged to be representative. It is nevertheless important for it to explain clearly the criteria determining its choice to the families of other missing persons. These criteria should be based on the representative value of the case for the phenomenon and not on the importance of the missing individual, the influence of his or her family or pressure of any kind.

For their part, mechanisms dealing with individual cases should try to identify, for preventive reasons, the phenomena underlying the disappearances they are investigating.

5. The need for resources

All mechanisms have insufficient funds, staff and means of exerting pressure to perform their task in a more effective way. Elucidating individual cases can be extremely costly, especially when it means recourse to exhumations and forensic identification procedures. Mechanisms dealing with disappearances as a phenomenon should systematically draw attention, in their reports and representations, to the fact that if organizations are to throw light on individual cases they must be given the necessary resources.

Giving help of this kind is a way for the States concerned and for donors to allow families to exercise their right to know what happened to their relatives; and for those responsible for disappearances it can be a way of making partial reparation for the wrong they have done. When the necessary resources are forthcoming, families tend to consider that their distress is being taken seriously. Moreover, when in spite of the resources invested the case cannot be resolved, families resign themselves to beginning the grieving process, having the impression that everything possible has been done.

However, mechanisms should also try to tailor their methods to their means and avoid instituting very costly measures (such as DNA testing) for certain individual cases when they know they lack the resources to use them in all cases.

6. Submitting requests to the authorities and/or investigation by the mechanisms themselves

According to international humanitarian law and international human rights law, it is the responsibility of the authorities of the parties to the conflict to provide families with information about the fate or whereabouts of their loved ones. It is therefore logical that mechanisms, which are set up to trace the missing, and whose mandates are based on these bodies of international law should apply first of all to the relevant authorities. Furthermore, all mechanisms should stand ready to help the authorities meet their obligations.

When the authorities prove unequal to the task, it is increasingly the case that humanitarian organizations, including the ICRC, try to substitute for them. Most often, however, these organizations are not capable of conducting police-type investigations and, above all, lack sufficient legal means of exerting pressure on individuals reluctant to give them information. Even when they do try to trace the missing or find answers on their own, they depend on the willingness of the authorities, who alone can allow them access to territory, burial sites and witnesses. For all such organizations, the authorities also represent a valuable source of information. Tracing activities should be conducted in a fully transparent manner vis-à-vis the authorities, if only to avoid placing the missing, their families and any witnesses at risk. In all their activities, tracing mechanisms should make sure that, in the eyes of the families, settling the problem of the missing remains the responsibility of the authorities and not that of the mechanisms.

Although this may not always seem realistic when it comes to intergovernmental bodies, we feel that all mechanisms should try to obtain information from all available sources,²⁶ provided, of course, that they are reliable. Families may, on the other hand, for example for legal reasons, wish to receive information from official sources. Mechanisms refusing to use certain sources of information should at least make sure that details emanating from those sources are passed on to other mechanisms in a position to use them.

²⁶ See recommendation 2.3.5. adopted by the working meeting of 19 and 20 September 2002, ICRC/TheMissing/12.2002/EN/6, p. 12

7. Preventing disappearances

Domestic law, international human rights law and especially international humanitarian law have laid down rules intended to prevent disappearances. But these rules cannot be complied with unless they are known. Instruction in and raising awareness of these rules must begin before the conflict and focus more particularly on those bearing weapons. Although this responsibility lies first and foremost with the authorities, mechanisms that engage in training activities should systematically include these specific rules in their programmes and offer to States, which so wish advisory services in the area of prevention of disappearances. Other mechanisms, for their part, should consider developing such training activities. Those taking action after the events that have given rise to disappearances should include in their representations and reports recommendations on preventive activities so as to avoid any resurgence of the phenomenon.

During a conflict some organizations (such as the ICRC), conducting protection and assistance programmes, prevent disappearances by their very presence, their activities and their representations to the authorities. They could also systematically register individuals at risk, which would perhaps prompt the belligerents to show these individuals more respect, as long, of course, as the belligerents are made aware of the fact that such registration has taken place. It should however be borne in mind that this procedure could have the opposite effect by attracting the unwelcome attention of the belligerents to the individuals concerned. Moreover, once a person has disappeared, the fact that he or she was previously registered is not very helpful in shedding light on the situation. It is therefore recommended that this type of registration be limited, as provided for by international humanitarian law in certain situations,²⁷ to individuals such as children who may subsequently be unaware of their identity.

8. Forwarding family news

Apparently, only the International Red Cross and Red Crescent Movement systematically offers families affected by conflict a network for the exchange of news which enables them to restore contact with relatives from whom they have become separated. In view of the fact that the unique and centralized nature of the system increases the chances of messages reaching their addressees and that information on the senders of such messages may subsequently facilitate the search for missing persons, it is not advisable for other mechanisms to engage in this activity. Instead, they should encourage those seeking missing persons to begin by trying to contact their relatives by means of the Red Cross/Red Crescent network. The information obtained by this means should be used, once the conflict is over, by the ICRC itself or by other mechanisms dealing with the problem to facilitate the effort to trace the missing.

9. Role of neutral intermediary between (former) parties to the conflict

Whether to share the information in their possession, to allow exhumations in territory under their control or to gather the necessary *ante mortem* details from relatives, the good will of (former) belligerents and cooperation between their respective authorities is essential. By bringing together those concerned to discuss the problem, offering their good offices to overcome political differences and/or proposing technical solutions and standards, international organizations can facilitate such cooperation. At the first stage they can also partially bridge the gap of mutual distrust between the former belligerents, centralize information provided by the parties and reduce the risk of political exploitation of such information. When the parties show real political will to tackle the problem of the missing, international mechanisms can, in addition, promote the setting-up of mechanisms involving the parties. Past experience has shown that tracing efforts in the field, including exhumations, are more efficient when conducted by mixed teams, that is, teams comprising specialists and representatives of each of the former belligerents. The presence, as a facilitator, of a representative of an international mechanism in the team in the early stages may make it possible to avoid the team's work being paralysed by arguments and distrust.

10. Bringing the (former) parties to the conflict together in a mechanism

One of the solutions advocated in the previous section, that is, the bringing together, under the auspices of an international agency, the former warring parties in a tri- or multipartite mechanism entirely devoted to the issue of the missing, merits special assessment.

Inter-party mechanisms set up in the past on the initiative of the ICRC have sometimes allowed the rapid release and repatriation of registered prisoners, separating the fate of the latter from that of prisoners alleged to be hidden, a matter that has to be dealt with by these mechanisms. Another major advantage of this type of body, whether set up by the ICRC, the United Nations or the parties themselves, is that they make it possible to deal with humanitarian issues separately from political issues. They also allow the parties to express their views, initiate a dialogue and embark on the first stage of cooperation by addressing a humanitarian problem of common concern, which demands that they work together; this also contributes to some extent to the restoration of peace. In Cyprus, for example, this mechanism is the only one within which the island's two communities conduct a

²⁷ See Protocol I, Art. 78(3)

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dialogue on equal terms. In some contexts such a mechanism can also serve as a focal point for international attention and pressure. Another advantage is that it can help make tracing efforts more transparent vis-à-vis families, prevent the parties from reaching compromises that run counter to the families' interests, and, ideally, allow the international community to determine who is actually cooperating in the search for a solution to the problem.

Experience gained in Bosnia-Herzegovina, in Cyprus and in the aftermath of the 1990/91 Gulf war, however, shows that these mechanisms shed light on disappearances in only a few rare cases. As long as the interested parties continue to consider each other as enemies and those who were in power during the conflict remain in place, the transparency that is essential to the work of these mechanisms tends rather to favour propaganda and political exploitation of the problem. Interminable procedural disputes mask the lack of will to give answers or to receive them. Once the mechanism is set up, and even if not a single case is resolved for decades, neither the parties to the conflict nor the international actors dare to close it down, for fear of being seen by the families in particular as responsible for the failure to elucidate the fate of the missing. When an operational organization like the ICRC is involved, it faces additional difficulties inasmuch as on the one hand it has to keep its operational activities separate from its role in the context of the mechanism, and on the other hand it must avoid the situation whereby the parties use the mechanism to gain control over its work.

Furthermore, this type of mechanism offers no special encouragement to a party to supply answers inasmuch as those answers may be used for political ends by its former enemy. Analysis of specific events giving rise to disappearances, with the different parties and the international actors contributing any information they may have so as to form a coherent picture, seems to be a more promising course of action, but it has not yielded any more results. To establish the minimum degree of trust necessary, perhaps the parties should also commit themselves to explaining how they proceed in their search for information. Nevertheless, mechanisms that bring the parties together provide the protagonists with a place where they can discuss and plan joint exhumations (the procedure which has proved the most effective in practice).

Although desirable from the viewpoint of coordination, the involvement in an inter-party tracing mechanism of all other entities concerned (other mechanisms, national and international players) nevertheless creates the danger of making the mechanism unmanageable and allows the parties to exploit any differences and competition between the international partners in particular. Similarly, it is not a good idea to include representatives of the families. Even though to do so would give the latter a feeling of empowerment, the highly emotional atmosphere that would result would facilitate neither the search for the missing nor the reaching of a compromise between the parties. We therefore feel it is preferable to associate the families only sporadically with the work of the mechanism by inviting them to speak on specific matters (as is the case for experts) and keeping them regularly informed about the progress made.

Finally, such mechanisms generally constitute a political and diplomatic symbol. They make it possible to delimit the problem of the missing and to set it apart from other humanitarian issues. On the other hand, they appear to achieve little success in terms of the "quantity" of missing persons found. Furthermore, they cannot serve as a substitute for lack of the political will on the part of the former belligerents to cooperate with their former enemies in order to resolve the problem. Although experience seems to show that when they work together within the same body the representatives of the different parties tend to draw closer together, this does not necessarily hold true for the decision-makers they represent. Before setting up a joint mechanism, therefore, it is advisable to require the parties concerned to demonstrate their good will by supplying answers for a number of missing persons cases. Subsequently the mechanism should be used for discussion of general and abstract issues, tracing methods and plans rather than individual cases.

11. Mobilizing public opinion

All mechanisms should raise public awareness, on the national and international levels, of the problem of the missing and the anguish endured by their families, and that for many reasons: to obtain the funds necessary for tracing work, to encourage the authorities and any witnesses to pass on the information in their possession, to facilitate cooperation between former belligerents, to give the families support and to make sure that they enjoy at least a minimum of understanding and solidarity in a post-conflict society. The effort to raise awareness should also target those unaffected by the problem, to make them realize that it does not belong to the past but remains a burning issue in that the anguish it causes still persists.

12. Collection of requests

Mechanisms set up to conduct investigations into one or more specific contexts in which people have gone missing function without any tracing requests being referred to them. In order to investigate a particular phenomenon, however, these mechanisms need to gather information on individual cases, and they do this by contacting the missing persons' relatives, witnesses or NGOs. In general, mechanisms dealing with individual cases take action only when the family of a missing person files a request, but some of them may also accept requests from NGOs. In the latter case there is the risk that the individuals sought have in fact reappeared; moreover the details available are very often insufficient to allow a really effective search. In the last analysis, all

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such mechanisms, even those that do not try to trace particular individuals, need information supplied by families. It would also be useful if mechanisms addressing the issue of the missing only as a phenomenon could direct families seeking missing relatives to the organizations competent to deal with their cases.

Tracing mechanisms that deal with individual cases should, for their part, take certain decisions about the information they need when a request is filed, for instance, the number of details to be accepted or determination of the most opportune moment for such details to be gathered. The ICRC, for example, sometimes refuses to register tracing requests during a conflict inasmuch as it may reasonably be supposed that the problem is more a matter of restoring family links. However, because family members may forget valuable details about the person unaccounted for, they should be offered the opportunity to fill in a tracing request which will be kept in case further action should need to be taken at a later stage. Recording comprehensive details about a missing person makes it easier to trace him or her and shows the family that its request is being taken seriously. If the mechanism has sufficient resources and easy access to the families, it may be preferable to gather details in several phases. It may be psychologically unsound, for example, to collect information intended for identification of the dead at a time when there is still a realistic hope of finding the missing person alive.

No mechanism should record information that it cannot process. All mechanisms should advise families as to the way the information received will be followed up. Consequently, before receiving requests every mechanism should have defined its working methods and possibilities.

All mechanisms concerned by the same context should cooperate and coordinate their activities in order to make sure that families have to go through the painful process of filing a request only once. This aim may be achieved in two ways: either one specific mechanism is given responsibility for recording requests; or each of the various mechanisms collect information in accordance with identical criteria and then pass it on to the others.

When the "receiving" mechanism also intends to bring legal proceedings against those responsible for disappearances, this standardization of the details to be gathered and the sharing of requests and information may prove to be a sensitive issue. In such circumstances some humanitarian organizations, such as the ICRC, would certainly hesitate to become involved, for fear of being associated with mechanisms seeking to prosecute the authorities and thereby being denied access to families and to areas in the field (where such access is granted by the authorities). Moreover, the collection of such information might place both the families and humanitarian workers at risk.

13. Data management

Problems similar to those encountered with regard to the gathering of data arise when it comes to data management. On the one hand, to increase the probability of matching pieces of information it is very important that a single database be used to store all individual details collected by all mechanisms working in the same context. On the other hand, having a single database implies in practice that all those who contribute data also have access to it. The sharing of certain details, however, can create a risk for some missing persons who may be still alive, for families or for sources of information: the more organizations that have access to the database, the greater the risk of misuse of its content. Furthermore, the rules governing the protection of personal data may prohibit such sharing of information without the prior consent of the persons concerned. We feel, however, that where there is no danger involved any family seeking a relative may be presumed to have given its consent to the sharing with other mechanisms of the details supplied in its request, inasmuch as this increases the probability of resolving the case.

Although in their public statements all mechanisms recognize the need to share data,²⁸ we believe they are actually much more hesitant to do so than they admit. Apart from the risks mentioned above, they fear losing their sources of information, having problems of compatibility between information systems, competition with other mechanisms, and others claiming the credit for the results of their efforts; they also distrust the working methods and impartiality of the other mechanisms. One possible solution would be to conclude an agreement between all those involved right at the start of tracing activities in a given context, an agreement which would have to be respected by all mechanisms arriving subsequently. Such agreements should specify the data that may be shared without risk to the missing persons, to their families and to sources; the technical specifications of the database; the information that must be entered in it by each mechanism; and matters relating to the checking of data, responsibility for and access to the database. Every mechanism should have access to the data in order to use them for purposes approved by the other mechanisms, while having the possibility to add, in a separate selection of data that it manages itself, any additional details it needs for its own activities.

²⁸ See, for example, recommendations 2.4.6 and 7 adopted by the working meeting of 19 and 20 September 2002, ICRC/TheMissing/12.2002/EN/6, p. 14

14. Seeking answers

The main task of all tracing mechanisms concerned with missing persons is to be in a position to supply answers to the requests it receives from families.

In most cases national mechanisms ask the authorities to conduct investigations or oblige them to do so. Police investigation methods are used by some national mechanisms that have the necessary legal authority. These bodies may then have access to the archives and can subpoena witnesses. Some truth commissions undertake to amnesty witnesses for any offences they may have committed if they supply information on certain matters. In international law, however, such undertakings are often considered to be inadmissible. Be that as it may, they should be subject to certain conditions: the witness should have to provide details not only about the crime committed but also about the fate of the victim and the whereabouts of his or her remains. The offer of protection made to certain witnesses in exchange for information presents less of a problem, provided, of course, that those who promise such protection are in a position to guarantee it. The possibility of offering money or other inducements to some witnesses cannot be ruled out. Such offers must not, however, amount to a reward for those responsible for disappearances, and the funds must not come from the families (this would favour corruption and be unjust vis-à-vis less affluent families).

In general, international mechanisms have neither the competence nor the expertise to conduct tracing activities through police investigations. During a conflict or in its immediate aftermath, such methods are also likely to arouse feelings of distrust among the victims. Although international mechanisms cannot compel witnesses to come forward, they encourage them to do so by appealing to their compassion vis-à-vis the families (without much success, it must be said). There are many reasons to explain why certain witnesses refuse to speak up (fear of criminal proceedings or of reprisals by the authorities, or unwillingness on the part of many who have witnessed deaths to speak directly to families who are known to them); when discretion is guaranteed some of them do agree to talk. If a mechanism has to keep the name of a witness confidential, however, the information supplied will be less credible in the eyes of the family. If it is considered that the account given by a witness may put him or her at risk, steps must be taken to protect the person concerned. For all these reasons, and because of the procedural disputes to which they may give rise, the hearing of witnesses by a mechanism bringing together the (former) parties to the conflict appears largely ineffective.

In order to gather more information and testimony, some mechanisms have published, in the form of books and/or on the Internet, the names and photos of missing persons and details concerning the circumstances of their disappearance. Even though they have not yielded the anticipated results, for the families such measures constitute evidence that their plight is receiving attention and that the requests they have filed are still being followed up.

Mechanisms that do not restrict their activities to submitting cases to the authorities have every interest in obtaining the right of access to all places of detention where persons reported missing might be found. This right of access can be effective in combating rumours circulating among the families and establishing a measure of trust between the parties. In practice, it is always possible for a party in control of a territory to hide someone. It is also a sensitive matter to visit a place of detention only to look for hidden detainees, without showing any concern for the humanitarian problems of those who are held there officially. Another disadvantage of such visits is that they may bolster the illusions of some families who persist in believing that their missing relatives are alive; even when the persons concerned are not found most families continue to cherish this hope. Lastly, the relevant authorities may give a mechanism permission to conduct unannounced visits in order to evade their obligation to seek the missing and supply information themselves. We consider, therefore, that such visits should be conducted only by mechanisms also having the mandate to protect detainees.

The agreements between different mechanisms mentioned earlier should require in addition that each of them enters in the central database all the information that it has gathered during its activities and that could help elucidate the fate of a missing person. Difficulties can arise when certain details not only indicate what happened to a missing person but also point to the responsibility of certain authorities or individuals. Every mechanism should be in a position to choose whether to share such information if it feels that doing so would adversely affect its ability to work or would put its sources at risk. It should, however, inform the missing person's family on a bilateral basis, bearing in mind that families also need to see culprits brought to justice and the truth established.

15. Relations with the families

All mechanisms maintain relations with the families, who are the best sources of information about disappearances and the main beneficiaries of tracing efforts, and who also have other needs pending the results of those efforts.

In the case of mechanisms dealing with individual cases, as long as the missing person can be supposed to be alive, his or her needs are paramount. The missing person's family, the only people with whom the mechanism is in contact, are considered to be secondary beneficiaries; once the person sought is presumed dead, the family's

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needs are the only ones that remain to be met. Mechanisms (also) working on disappearances as a phenomenon may have aims going beyond the families' needs, but they should always take account of the fact that families are made up of individuals who are affected by their work and who must therefore be given the opportunity to be heard. All mechanisms must concern themselves with the families' needs, and this implies that the families must be listened to and that a true dialogue must be initiated. To this end, the mechanisms must inform the families about their rights, the tracing methods used and the various other mechanisms involved, about the authorities' reaction and about the chances of finding the missing person alive or of being able to identify and recover his or her body, or at least of obtaining information as to his or her fate. This dialogue also serves to counter any manipulation of the families by the authorities, who sometimes seek to use them as a means of continuing the struggle with their former enemies, especially by leaving them with the illusion that their loved ones are still alive and in detention. Within the dialogue, it is essential not to give rise to false hopes which could slow down the grieving process.

Some mechanisms involve the families in their tracing work, which empowers the families but can also hamper tracing efforts or representations to the authorities because of the emotions that dominate the work.

All mechanisms that work with and for families are faced with the question as to whether and to what extent they wish to take action through family associations. When families whose relatives have gone missing in wartime become organized and exchange information with other affected families, they take a significant step towards emerging from their isolation and begin to (re)gain control over their lives. Such associations may serve as relays for the provision of material, psychological or legal assistance. In some cases, they may themselves engage in efforts to trace the missing or collect *ante mortem* data with a view to forensic identification. Contacts with them are a means of finding out the needs and choices of the families. FEDEFAM (the Latin-American Federation of Associations for Relatives of the Detained-Disappeared) is a special case in that it covers an entire region.²⁹ FEDEFAM operates on a permanent basis, denouncing the practice of forced disappearances, collecting information on disappearances, and providing family associations with support in their tracing efforts and their organization. It exchanges publications and information on forced disappearances that occur in the region, encourages all families of "disappeared detainees" to organize in local associations, and urges the adoption of a plan of action and an international convention to put an end to the practice of forced disappearances.

Many mechanisms support these associations in various ways. It is, however, difficult to assess whether within their ranks a measure of democracy and accountability prevails. They are easy prey for political manipulation on the part of the authorities. Furthermore, certain "professional" representatives of the families of missing persons have made the issue their stock-in-trade. On the day when light is finally shed, their services will no longer be needed, and this explains why some of them – consciously or unconsciously – have every interest in dragging out the process, for example by insisting on ever-stricter requirements before accepting that a case is closed, a reply is credible or a body identified. On occasion they also prevent humanitarian agencies from knowing the real needs of the families, who often have to get on with their lives despite the disappearances, while disappearances are the representatives' means of livelihood.

While they are waiting for answers, the families need psychological and material assistance and support in carrying out any administrative formalities. These needs should and in principle can be met by the authorities or local organizations, which are not necessarily devoted to tracing the missing; this has the advantage of not setting the families of the missing apart from the rest of population. The provision of aid by local organizations also allows society and the authorities to conduct the necessary process of arbitration for allocation of the resources available. The mechanisms must nevertheless make sure that someone is catering for the needs of the families; if necessary they should also assist the local organizations and be in a position to advise the families as to whom they should apply for help.

16. Involvement in exhumations

In some cases the only way for a family to obtain an answer about a missing relative is to have recourse to exhumation. In other cases, as we have seen, the family is not content with mere answers; it wants to recover the body of its relative. Lastly, exhumations relieve the (former) belligerents of the need to supply answers, which might place them in a difficult position vis-à-vis national or international justice. However, the vast majority of families of those who go missing in wartime worldwide will never benefit from the certainty offered by exhumations and forensic identification. For fear that exhumations may uncover evidence that could be used to bring legal proceedings, belligerents tend to refuse access to mortal remains and burial sites. Sometimes the bodies are destroyed or rendered unidentifiable.

In cases where exhumation is possible, bodies may be visually identified by the families, provided that there is a mechanism, usually a national one, capable of pinpointing the families who might be concerned by a certain event or a certain burial site. In other cases, the painful process of constituting an *ante mortem* database has to be carried out together with the families. This requires coordination between all the mechanisms involved and the provision of psychological support to the families while the data is being collected. Sometimes the latter allows

²⁹ See <http://www.desaparecidos.org/fedefam/eng.html> (access date 8 December 2002)

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identification by traditional means (non-perishable objects, distinguishing marks, dental records, etc.). Very often, including because of the families' insistence on making identification certain, and also where the remains are in mass graves, deoxyribonucleic acid (DNA) samples have to be taken from relatives and then from the remains exhumed, with a view to finding a match. Despite its scientific promise, this procedure, which is favoured by some mechanisms, does not seem to swiftly supply many answers for the families. Moreover, in numerous contexts, as for example in the case of the hundreds of thousands of deaths resulting from recent conflicts in the African Great Lakes region, the funds necessary for systematic search for and identification of mortal remains could never be raised.

Finally, the result of the identification procedure and the remains of the former missing person must be handed over to the family, if possible at the same time. Few mechanisms do this themselves, seeming to prefer to go through the local State or religious authorities, which in normal circumstances are responsible for dealing with persons who are killed in accidents.

Mechanisms which themselves become involved in tracing the missing are also faced with two dilemmas when it comes to exhumations. First there is the question of the choice to be made between favouring exhumation as a solution, in accordance with the families' wishes, or moderating the often-unrealistic hopes pinned by the families on this procedure. The ICRC for its part appears to opt for the second course; this is explained by its detractors by the fact that the organization does not normally carry out exhumations and forensic identification itself, but rather seeks answers to the tracing requests it receives. There is also the issue of the choice to be made between involving the mechanism in the exhumation and identification process or submitting data and requests to the authorities or to specialized NGOs. One reason for which humanitarian agencies cannot become involved themselves is that these agencies, in order to maintain their relations with the parties, do not concern themselves with the cause of death. If their own forensic experts examined bodies for purposes of identification, they would also discover the cause of death. It is hardly likely that, once identified, the same body could be subsequently or separately examined by those interested in bringing criminal proceedings. So humanitarian agencies cannot become directly involved with the exhumation and identification of persons who might have been victims of crimes. On the other hand, national and international criminal jurisdictions and mechanisms that investigate disappearances only as a phenomenon must make sure that, when they examine a body in order to discover the cause of death, any details permitting identification of the body will also be recorded and the body will subsequently be handed over to the family. In this respect also, coordination between the various mechanisms, prosecuting agencies and authorities is essential before any action is taken. Without allowing this to hamper the quest for justice, the mechanisms concerned must make sure that the families' other needs are not overlooked.

17. When can a case be considered to be resolved?

For some mechanisms, a case cannot be said to be resolved until the family is satisfied. Others, in particular those wishing to establish the responsibility of the authorities (human rights agencies and truth commissions), mechanisms basing their action on cooperation between the parties, and also the ICRC, decide for themselves when a result can be regarded as conclusive. In practice, it is inevitably up to the mechanisms that search for individual missing persons to decide when they will cease investing effort and resources in a particular case. Mechanisms that submit cases to the parties in order to receive answers also have to decide for themselves, after consulting the family, whether the answer received relieves the authorities of their obligation to provide information. On the other hand, even after such an answer has been received, the family may have further needs (recovering the body of a dead relative, securing the release of a missing person who is still alive, or making sure the culprit is punished). Mechanisms, which deal with such matters (the ICRC, for example, which follows up cases of missing persons found alive in detention) must keep the file open until these other needs are, in its view, met. Just as a prosecutor cannot continue legal proceedings against an accused once a court has decided that the latter has no criminal responsibility, a mechanism that has carried out an exhumation and forensic identification cannot be expected to keep on looking for a body just because a family refuses to accept the results.

18. Giving recognition for a disappearance

When they are seeking missing persons or when they have abandoned hope of finding them, the mechanisms concerned should issue to the families documents attesting to the fact of the disappearance and to the efforts made to trace the persons unaccounted for. In our view, this should also be done when a mechanism, an international agency for example, hands over responsibility for the tracing process and for follow-up of the families to another mechanism, especially a national one. In addition, mechanisms should organize, in consultation with family associations, ceremonies to commemorate disappearances, or should ensure that such ceremonies are held and that monuments in keeping with the local culture are erected as places of remembrance. They should also raise public awareness, on both national and international levels, of the problem of the missing, of the efforts made to find them and of the distress of their families, especially by publishing the names of missing persons. To avoid rising false hopes when publishing such information, an account should be

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given of successes and failures. For the same reason, any manipulation of the figures is irresponsible. A mechanism that has had primary responsibility in a given context should, at the end of its activities, publish a report to meet the requirements of historians and make sure that the personal data recorded are dealt with in compliance with the applicable rules.³⁰

V. FROM MECHANISMS TO SYSTEMS

Mechanisms that deal with matters relating to missing persons are not required by international or national law to cooperate with each other on a continuous basis. A review of the literature and interviews held by the researchers working on this project confirm that relations between the various mechanisms are intermittent and limited. They do not work as part of veritable systems, international or national. In this section we would like to demonstrate that the establishment of such systems is a stage necessary for developing the ability to take preventive measures and to act in behalf of missing persons and their families.

By systems we mean networks of regular and properly scheduled relations among several mechanisms working in a complementary manner to prevent disappearances, trace the missing and provide support for victims. This report suggests that systems set up to deal with the issue are usually underdeveloped, on both national and international levels. During the coming years, the task of humanitarian agencies, States, intergovernmental organizations and other actors in this area will be to support the establishment and strengthening of such systems.

1. Characteristics of systems for action

A system is a set of mechanisms that take coordinated action to carry out multiple and complex tasks. A system has to have the following characteristics: clear objectives, a multiplicity of actors, a division of labour among those actors, and a structure providing governance.

Systems may be national or international. The first may be called "national systems for missing persons". The second comprise the "international regime for missing persons" (a worldwide system that does not yet exist) and "regional regimes for missing persons" (systems involving the States of a given geographical region. The only example of the latter has been set up in the Americas, under the auspices of the OAS; it deals only with forced or involuntary disappearances). Now we shall go on to explain the characteristics of these systems.

(a) Objectives

A system must be based on implicit or explicit rules. In keeping with major ethical and legal principles, the basic rule for every system working in the area under study is that disappearances must be avoided and that families are entitled to know what has happened to their loved ones. This rule brings with it some other paramount principles. In particular, we should mention the principle whereby enforced disappearances are a grave violation of human rights, which it is especially important to prevent. Similarly, in humanitarian law, disappearances are considered to be an affront to the dignity of the individual. Lastly, in the eyes of international criminal law, the practice of instigating forced disappearances on a large scale now amounts to a crime against humanity.

The specific rules stemming from these major principles aim to prohibit and repress forced disappearances, elucidate all such cases, secure the release of individuals detained in secret and provide support for all victims of disappearances and their families. These rules are contained in a range of treaties and political declarations of a general nature, for example the Geneva Conventions and the International Covenant on Civil and Political Rights. They are also contained in specialized treaties and political declarations, such as the 1992 UN Declaration on the Protection of All Persons from Enforced Disappearances. Yet there is no universal treaty encompassing all these rules, and the inter-American treaty concerns only forced or involuntary disappearances.

It is generally desirable that a system be underpinned by a central legal document specifying its aims and the respective roles of its components. This is the case for most national systems (for example political systems, which are based on constitutions) and international regimes (for example, the regime for trade liberalization based on the Agreements of the World Trade Organization). Such documents facilitate the supervision and management of a system.

Yet these founding charters do not always offer responses to all situations that may arise. In reality, systems must have other rules of operation stemming from general or specialized agreements of a political or legal nature, together with traditions and practices, formalized or otherwise, recognized by the participants. In fact, a look at the practice of international regimes shows that most of them base their operations on a central document supplemented by other legal or quasi-legal rules. In the case of the missing, it is possible to envisage the establishment of national or international systems based on incomplete treaties and a mixture of specialized and

³⁰ See *The legal protection of personal data and human remains*, Electronic workshop, 2 April-6 May 2002, Final report and results, ICRC/TheMissing/09.2002/EN/1

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non-specialized institutions. By means of political statements and practical agreements the various participants could draw up common objectives and transform their intermittent relations into truly integrated systems. However, such a situation would have its weaknesses and, ideally, it would be preferable to adopt a central international document to provide guidelines for the establishment of national, regional and international systems.

(b) Multiplicity and complementarity of the components

It goes without saying that a system will have several components. That is precisely what differentiates it from a mechanism. It is also what allows the system to have a larger number of fields of activity, a variety of programmes and approaches and the diversified participation of States, citizens and groups of citizens. To be really effective, a system must have components that complement each other. This allows the development of an effective division of labour and the achievement of results superior to those that would be possible with a single organization or with mechanisms having similar tasks.

It should be noted that, despite the heterogeneity of its components, a system is usually based on a very influential central player such as the State (in the case of national systems) or on a few major powers (in the case of international regimes). Indeed, systems based on States enjoy extensive material resources and the political authority conferred by the government.

(c) Governance of the system

Finally, a system has to have a governance mechanism, that is, operating rules, a decision-making and an executive structure. These do not have to be extremely complex. Governance of such a specialized system as one dealing with the missing could be based on a short treaty and memoranda between the components. Decisions would be made and follow-up ensured by regular meetings and a small executive.

In the next section we shall take a brief look at the characteristics of existing and emerging systems addressing the issue of the missing. The tables in Annexes A and B show the main features of these systems.

2. International regimes for missing persons

(a) The existing proto-system

The system that now exists on the international level is a proto-regime, because it lacks certain important elements. Some of its objectives are set out in the 1992 Declaration on Enforced Disappearances of the UN General Assembly and in various texts of international humanitarian law and human rights law. Some specialized bodies, such as the ICRC and the Working Group, perform tasks relating to the missing. Other organizations work on missing persons cases on an occasional basis during the course of their other activities.

There is no international treaty, however, that covers all these objectives and imposes on States well-defined standards of behaviour to be observed in every circumstance. What is more important is that the action taken by all the organizations dealing with this issue is not properly coordinated. Agreements on consultation procedures and stable and effective coordination committees or groups are notable by their absence. The participants do not seem to share the perception that they are all part of the same regime, which cannot develop further without very close cooperation. Furthermore, not all States have adopted the legislation and set up the internal institutions required by international treaties, in particular the national information bureaux provided for in the Geneva Conventions. Finally, the question of criminal responsibility receives little attention in the existing rules. The proto-regime is not very well developed when it comes to legislation for prosecuting the perpetrators of disappearances and the compensation due to victims.

(b) The emerging regional regime in the Americas

The existence should be mentioned of a regional regime against forced disappearances, which is emerging in the Americas on the initiative of the OAS. The 1994 Inter-American Convention on the Forced Disappearance of Persons constitutes the basis for action in this regard; it clearly demonstrates the resolve of the signatory States to combat forced disappearances and make a firm commitment to prosecuting and punishing those responsible for such crimes. Article IV requires States Parties to include the crime of forced disappearance in their national legislation. The Convention also provides for the establishment of a regional tracing mechanism (Article XIV).

One major shortcoming of this treaty is that it concerns only forced or involuntary disappearances, and does not cover other disappearances that occur in situations of armed conflict. Another weak point is that the Convention seeks to prevent disappearances caused by States only. It does not target the rebel and/or criminal groups, which are often also responsible for forced disappearances, in Colombia for example. Moreover, it should be noted that only eight States have ratified the Convention, open for ratification since 1996.

(c) The emerging international regime

Two recent developments on the international scene could facilitate the emergence of an international regime to deal with the issue in question. First of all, there is the establishment of the International Criminal Court (ICC), which could be used to prosecute and punish those responsible for serious cases of forced disappearance. Legal proceedings of this nature should be the point of departure for elucidating the fate of the victims of these crimes, if the ICC takes this aspect into account from the start of its activities. It should be borne in mind, however, that the ICC's competence is subsidiary to that of States and that it will never deal with most crimes committed, let alone with most disappearances resulting from an armed conflict.

Secondly, a draft international convention against forced disappearances is now circulating within the Commission on Human Rights. The adoption of such a treaty could strengthen international guarantees against forced disappearances and oblige States to develop their legislation and their mechanisms for taking action in this regard. Signatory States should submit to investigation procedures conducted by the Human Rights Committee. They should clarify in their legislation their legal detention procedures, specifically by supplying a list of those with responsibility for detention in the country (judges, etc.) and a list of places of detention. The parties to the Convention would also undertake to guarantee the right of victims of forced disappearances and their families to receive reparation. The result would be an international system similar to the one that is developing among the signatories of the Inter-American Convention, which, however, also concerns disappearances of only one type.

In fact, even if it represented an advance over the existing proto-regime, the regime that would emerge from this international convention would be rather weak. First, the draft convention suffers from the same congenital defect as the Inter-American treaty, in that it targets only States and ignores disappearances for which States are not directly responsible. Secondly, it is regrettable that the treaty deals only with forced disappearances and fails to strengthen the humanitarian obligations of States in terms of preventing, investigating and providing for reparation for disappearances of all types, including those that occur in times of armed conflict. An international convention on missing persons might have been conceived with a view to putting together and consolidating all the commitments made by States in this regard.

Furthermore, the draft convention as it stands does not specify what will be the mechanisms for cooperation and for supervision of the treaty. The independent expert appointed by the Commission to assess the draft convention, Mr Manfred Nowak, feels that it is not advisable to establish another supervisory body.³¹ He acknowledges that it would be possible to assign this responsibility to the Working Group of the Commission on Human Rights, with a substantial increase in its funding. Mr Nowak is of the opinion, however, that the task of supervising the implementation of the treaty might interfere with the Working Group's basic humanitarian objectives. He suggests rather that the Human Rights Committee, a sufficiently well-developed and competent body, should be put in charge of supervision.

The question of institutional responsibility for supervision of the convention must be settled as rapidly as possible. It may not be too late, moreover, to mention in the draft convention the Parties' undertaking to facilitate consultation and coordination between the body given this responsibility, States and non-State organizations through cooperation agreements, working groups and various meetings.

Finally, it remains to be seen how much support States will give to this convention. If the example of the Inter-American Convention is anything to go by, it is to be feared that the future treaty will enjoy only a lukewarm reception. To induce more States to sign and ratify it, it could be proposed that it also target non-State actors. This would make the international legislation appear less biased and more realistic to some government officials and to large segments of public opinion. At the same time, however, it would confer a certain status on non-State actors, and this is something that would probably be opposed by several States.

3. National systems

(a) Existing systems

Existing national systems in the area of missing persons vary widely in terms of the number and type of such mechanisms and of the coordination among them. One obligation of States in this regard is to set up a national information bureau. This obligation is set out in the Geneva Conventions. However, as armed conflicts have repeatedly revealed, many States Parties, especially poor Third-World States, have never established such bureaux. In addition, few States have specific legislation prohibiting forced disappearances and officially recognizing the right of families to know what has happened to their relatives who are victims of other types of

³¹ See UN Economic and Social Council, Commission on Human Rights, 58th session, Report presented by Mr Manfred Nowak, independent expert appointed to examine the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearance, pursuant to paragraph 11 of resolution 2001/46 of the Commission, E/CN.4/2002/71, 8 January 2002

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disappearance. In several countries, human rights commissions and other similar bodies do not have the resources to deal with missing persons' cases on a methodical basis. Frequently more faith is placed in the ICRC, the UN Working Group, NGOs and private agencies than in the State to find information about missing persons. As for the legal system, it usually suffers from various shortcomings: it may be overburdened or under-developed, it may lack independence, and the authorities may not implement the measures it adopts. Furthermore, the families concerned do not always have the funds needed to use the legal system in their attempt to obtain satisfaction.

In fact, the States that have the most efficient mechanisms for tracing the missing are the richest, those that enjoy the greatest stability and freedom, in other words, those that have the least need for such bodies.

(b) Ideal national systems

If an international regime – even a weak one – should come into being, it might be expected that States would develop integrated national systems to combat disappearances which would incorporate some appropriate measures.

First of all, States should adopt legislation designed to prevent and punish forced disappearances and to compensate the victims of such acts. If they so wished, this legislation could go beyond the provisions of the future convention and also target non-State actors.

States should also establish the information bureaux provided for in international humanitarian law. They should draft legislation to meet their obligations under the Geneva Conventions in this regard and issue specific administrative directives drawing attention to these obligations.

Subsequently, States should institute means of verifying whether this legislation is being implemented, through executive or legislative bodies and/or through the judiciary. Mechanisms should be set up for inclusion and consultation of NGOs. Agreements should be concluded between the government bodies in charge of dealing with missing persons' cases, the ICRC and some NGOs. States having experienced painful episodes of disappearances, in time of war or in peacetime, could establish truth commissions and set aside funds for compensating victims.

This ideal is far from being attained in the vast majority of countries, but there are grounds for believing that some developed countries and certain developing countries, especially in Latin America, could take the initiative and encourage other States to follow this course.

VI. CONCLUSION

In its public presentation of its initiative on conflict-related disappearances, the ICRC stated: "The current approaches used to deal with conflict-related disappearances, which focus on preventing their occurrence or – failing that – ascertaining the fate of the missing and providing their families and communities with support, are inadequate. For this reason, the ICRC has launched a major initiative to find a more effective way to address the problem".³² In our opinion, the initiative was necessary to focus the attention of governments, public opinion and the relevant mechanisms on the problem. It led to a better understanding of those mechanisms and strengthened their resolve to cooperate with each other. On the other hand, the aim of finding a more effective method is illusory. One can certainly imagine an international regime specifically designed to tackle the problem of disappearances and strong national systems. There is, however, no miracle method that will enable all the many and very different mechanisms, each of them addressing different aspects of the problem, to achieve their aims.

We feel that it is essential to focus on preventive action. Primary responsibility for preventing disappearances and dealing with the cases that will nevertheless inevitably arise in the course of armed conflicts still lies with the parties to the conflict and every individual who in one way or another is associated with those parties. They can meet this responsibility by complying in particular with the rules of international humanitarian law.

As for the mechanisms, general and specific, international and national, they can offer assistance to the authorities – and they often have to act as substitutes for defaulting authorities, an endeavour which can never fully succeed. We have tried to show the weakness of the existing international proto-regime and the possibility that a weak international regime combating disappearances will emerge. Existing national systems vary widely in terms of effectiveness, but the emerging international regime, and also the Inter-American Convention, could give a boost to some national systems. However, as this possibility remains a hypothesis and a long-term prospect, present-day mechanisms such as the ICRC and the NGOs, together with the States that are the most active in this regard, should be encouraged to pursue their efforts to draw the attention of governments and public opinion to the need to prevent disappearances and elucidate the fate of the missing, to prosecute those responsible, and

³² See *ICRC News* 02/25 of 20 June 2002

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to bring support to the victims. These organizations will have to learn to cooperate among themselves and with States in order to promote, in the long term, the establishment of effective systems for dealing with the issue.

The working meeting on mechanisms and the reports submitted by the mechanisms, by us and by other experts show ways in which each of the mechanisms can, by attention to numerous details, improve its effectiveness. What seems more important to us, however, is that each of them takes every aspect of the problem into account, even if it – quite legitimately – works only on the aspects in regard to which it can offer families added value. Every mechanism must see itself as part of a system covering a given armed conflict, and international mechanisms must constitute a regime and be aware of this. Coordination among all mechanisms is crucial, and so is the involvement of the beneficiaries in the choices made. Competition among the mechanisms should not target their respective agendas; each of them should strive to contribute as much as possible to the success of the system as a whole, and that means contributing to the success of other mechanisms as well. Donors can help promote this attitude. As for working methods, they should remain diverse and complementary, all aimed at finding a sustainable solution for the victims. Once all preventive measures have failed and it has proved impossible to restore family links within a reasonable period of time, in our view the only long-term solution, in almost all cases, is for the families to accept the fact of their relatives' death. All further measures, such as seeking information about a missing person or looking for his or her remains, increasing the reliability of identification procedures and providing the family with material and psychological assistance, should be directed towards this end and never be allowed to delay the mourning process.

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ANNEX A: CONSTITUENT ELEMENTS OF THE INTERNATIONAL PROTO-REGIME AND THE EMERGING REGIME FOR MISSING PERSONS

	Objectives	General sources	Specialized documents	Central institutions	Mode of governance
Current proto-regime	<p>Eradicate the practice of forced disappearances</p> <p>Avoid disappearances in wartime</p> <p>Trace the missing</p> <p>Help the victims of disappearances and their families</p>	<p>International humanitarian law (Geneva Conventions and Additional Protocols)</p> <p>Human rights law (e.g. UN Covenants)</p> <p>National legislation</p> <p>National and international precedents</p>	<p>1992 UN Declaration</p> <p>Declarations of the Commission on Human Rights</p>	<p>Working Group</p> <p>ICRC</p> <p>NGOs (e.g. Amnesty International, PHR, etc.)</p>	<p>No overall governance</p>
Emerging regime	<p>Eradicate the practice of forced disappearances</p> <p>Avoid disappearances in wartime</p> <p>Trace the missing</p> <p>Help the victims of disappearances and their families</p> <p>Punish those responsible for forced disappearances</p>	<p>International humanitarian law (Geneva Conventions and Additional Protocols)</p> <p>Human rights law (e.g. UN Covenants)</p> <p>International criminal law (e.g. Statute of the ICC)</p> <p>OAS Convention and other regional instruments</p> <p>National legislation</p> <p>National and international precedents</p>	<p>1992 UN Declaration</p> <p>UN Convention against forced disappearances</p> <p>Declarations of the Commission on Human Rights</p>	<p>Working Group</p> <p>Specialized follow-up body or Commission on Human Rights</p> <p>ICRC</p> <p>NGOs</p>	<p>Coordination by the Working Group, a specialized body or the Human Rights Committee</p> <p>Working committees</p> <p>Memoranda between different actors</p>

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ANNEX B: IDEAL NATIONAL SYSTEM FOR THE MISSING

Rules	General sources	Specialized documents	Specialized institutions	Other participating institutions	Governance
<p>Eradicate the practice of forced disappearances</p> <p>Avoid disappearances in wartime</p> <p>Trace the missing</p> <p>Help the victims of disappearances and their families</p> <p>Punish those responsible for forced disappearances</p>	<p>International humanitarian law (Geneva Conventions)</p> <p>Human rights law (e.g. UN Covenants)</p> <p>International criminal law (e.g. Statute of the ICC)</p> <p>OAS Convention and other regional instruments</p> <p>National and international precedents</p> <p>National constitution and legislation (including legislation for the incorporation and implementation of international instruments)</p>	<p>Legislation against forced disappearances</p> <p>Legislation setting up a central information bureau</p> <p>Legislation to prevent and elucidate disappearances and to assist victims (optional)</p> <p>Legislation establishing other specialized bodies, whether permanent or temporary, on the issue of the missing (optional)</p>	<p>Central information bureau</p> <p>Other specialized bodies, whether permanent or temporary (optional)</p> <p>International mechanisms involved on the operational level</p> <p>Specialized NGOs (e.g. family associations)</p>	<p>National human rights commissions</p> <p>Ombudsman</p> <p>Judicial system</p> <p>Parliament and committees</p> <p>Executive bodies</p> <p>Truth and reconciliation commissions</p> <p>Civilian bodies overseeing the police or the army</p> <p>NGOs</p> <p>The parties</p> <p>The media</p>	<p>Deliberations of Parliament</p> <p>Decisions of the executive</p> <p>Consultations with civil society</p> <p>Working groups</p> <p>Memoranda between different actors</p> <p>Specialized coordinating body (optional)</p>