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N.B. As per the disclaimer ^[1], neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

Report of the Working Group on Enforced or Involuntary Disappearances on its visit to Serbia, including Kosovo (19 – 26 June, 2014)

[Source: Human Rights Council, Thirtieth session, Doc. A/HRC/30/38/Add.1, 17 August 2015, available at: http://www.ohchr.org/Documents/Issues/Disappearances/A-HRC-30-38-Add1_en.pdf ^[2], footnotes omitted]

[...]

I. Introduction

1. The United Nations Working Group on Enforced or Involuntary Disappearances, represented by three of its members, Ariel Dulitzky, Jasminka Dzumhur and Osman El Hajjé, visited Serbia, including Kosovo, from 19 to 26 June 2014.

2. The purpose of the visit was to examine matters related to enforced disappearances and missing persons in Serbia, including Kosovo, focusing in particular on truth, justice, reparation and memory for victims. While the Working Group is mandated to deal with issues related to enforced disappearance, the issues related to enforced disappearance and missing persons are clearly interlinked in this particular context. The Working Group makes reference in the present report to victims of enforced disappearance and missing persons, and remains aware of the legal and factual differences between them.

[...]

II. Regional context

[...]

8. Despite impressive results in the past, progress in the search for missing persons in the region has slowed down significantly in recent years, and many families are extremely frustrated by that. It is becoming urgent to ensure that the process of identifying mass grave

locations and burial places speeds up as soon as possible, primarily because memories are fading and individuals, places and events are more difficult to identify. Furthermore, some of the witnesses have died or are likely to die in the next few years. Additionally, and even more importantly, some relatives of missing persons are reaching the end of their lives and risk dying without ever knowing the truth about the fate or whereabouts of their loved ones.

9. The conflicts in the former Yugoslavia broke one country into several independent entities. That resulted in specific challenges, primarily obstacles to the prosecution of war crimes in the region, since the prosecution of war criminals may create tensions among States and entities.

10. In the absence of a legal framework for regional cooperation, searching for the disappeared and missing persons, conducting investigations and bringing those responsible for war crimes to justice becomes critically challenging, particularly because many victims, witnesses and perpetrators are living in the territories of different States and the scenes of the crimes are located in different countries. Often, the presence of an alleged perpetrator in another country where there is no willingness or legal grounds to prosecute leads to insurmountable obstacles to achieving accountability. Insufficient witness protection and the lack of incentives to encourage people to provide more information have also contributed to the slow progress of investigations.

11. Progress is also hampered by the fact that information and evidence that are available are often not shared across borders in the search and identification of the missing, as well as in the investigation, prosecution and conviction of war criminals. There is no centralized regional database on cases of missing persons, not even a list of all missing persons in the region. Several representatives of organizations of families of the disappeared expressed frustration at the ongoing and slow-paced discussions on the creation of a common list of the disappeared. The Working Group notes in this respect that a meeting among governmental institutions in charge of the issue of missing persons in the Western Balkans was held in May 2015 to discuss the establishment of a joint list of missing persons in the territories of the former Yugoslavia.

[...]

17. The International Commission on Missing Persons and ICRC have carried out important work in helping States to establish the whereabouts and identity of those who went missing during armed conflicts in this region, and in coordinating joint exhumations. They also played an essential role in the process of DNA analysis and collection of blood samples from family members of missing persons, which is a key precursor to the identification of the bodies that were recovered during the exhumation processes. [...]

[...]

III. General situation concerning enforced disappearances and missing persons in Serbia, including Kosovo

19. Many years after the end of the conflicts, some progress in tracking and identifying missing persons has been achieved. In Serbia, a State Commission for Humanitarian Issues was established in November 1994, which included a Department for Searching for Missing Persons. In 2006, the Government established the Commission on Missing Persons, with a mandate to direct and coordinate activities in respect of the exhumation and identification of remains of missing persons found on the territory of Serbia. This crucial and active intergovernmental body includes representatives from 10 government departments.

20. An important mechanism addressing the issue of missing persons is the Working Group on persons unaccounted for in connection with events in Kosovo between 1998 and 1999 (Working Group on Missing Persons), which is chaired by ICRC. The Working Group was established in 2004 as a humanitarian forum facilitating the exchange of information between the Serbian authorities and the authorities in Kosovo on the fate and whereabouts of missing persons, in particular on potential gravesite locations. The Working Group members are appointed by both the Serbian authorities and the authorities in Kosovo. Representatives from relevant embassies and other international and national institutions are regularly invited to attend public sessions of the Working Group as observers. Under the auspices of the United Nations, the Working Group has contributed to the resolution of many cases over the years. On several occasions, various people involved in the process

have stated that the participation of UNMIK in this mechanism is highly appreciated. In addition, the Government Commission on Missing Persons of Kosovo was established in 2006, as a continuation or upgrade of the Office on Missing Persons, which was operational until 2006 within the Office of the Prime Minister. Law No. 04/L-023 on Missing Persons, which entered into force in 2011, provides the legal mandate of the Commission on Missing Persons. The Commission is mandated to lead, supervise and coordinate activities with local and international institutions with regard to the clarification of the fate of missing persons as a result of 1998-1999 events in Kosovo.

[...]

22. While no enforced disappearances reportedly occurred in central Serbia, as of June 2014, there were reportedly 1,443 families of missing persons living in Serbia. Furthermore, a significant number of bodies of persons who went missing in Kosovo were relocated after their deaths and were later found in central Serbia. Indeed, the Working Group visited the site of Rudnica, where the bodies of persons from the village of Rezalla, which is within the administrative boundary lines of Kosovo, were found. It is believed that the individuals were killed in Rezalla, buried there for a brief period and thereafter moved to the Rudnica site. Furthermore, during the conflicts, about 480 bodies washed ashore in Serbia from rivers that flow there from other territories. Only about 200 of them have been identified.

23. According to some associations of relatives of disappeared persons, some missing persons are not included in the list of missing persons because their disappearance was not reported to ICRC or the Red Cross of Serbia, or because the ICRC criteria for registering a case were not fulfilled. According to the figures provided by the Government Commission on Missing Persons of Serbia, this is the case for approximately 740 Serbian citizens who fled to Serbia from Croatia. The Commission is reviewing those cases in coordination with the Croatian authorities.

24. ICRC has registered 6,027 cases of missing persons in connection with the 1998- 2000 Kosovo conflict. Of those cases, 4,316 have been closed: 1,372 persons were located alive, the bodies of 2,729 were found, identified and returned to the families and 215 cases were

closed for administrative reasons. As at 24 June 2014, some 1,711 persons from all ethnic backgrounds were missing as a result of the Kosovo conflict.

25. In Kosovo, most of the disappearances occurred during and immediately after the conflict, when international forces took charge. One of the biggest problems in the search for missing persons continues to be the lack of accurate information that could lead to the disclosure of their fate and whereabouts and the circumstances of their disappearances. A contributing factor is that different forces have had effective control of the territory of Kosovo, and assistance from the forces that were operating in Kosovo, such as the International Security Force in Kosovo (KFOR), is crucial in the search for and identification of persons who went missing as a result of the conflict. The authorities in Kosovo informed the Working Group after its visit that the Commission on Missing Persons has begun strengthening its cooperation with the competent institutions in Croatia and Montenegro to address both the issue of residents of Kosovo who went missing during the conflict in the former Yugoslavia and the issue of residents of other territories who disappeared during the conflict in Kosovo.

IV. Serbia

A. Legal framework

[...]

B. Right to the truth

[...]

C. Right to justice

42. Specialized war crimes chambers to deal with war crime cases have been established. The main instance that holds alleged perpetrators accountable for war crimes is the Office of the War Crimes Prosecutor and the Department for War Crimes of the Higher Court in Belgrade. When evidence of a war crime is discovered, the War Crimes Prosecutor verifies

the information and proceeds with the prosecution of the alleged perpetrator or perpetrators based on that assessment. According to the statistics published by the Office of the War Crimes Prosecutor, as at 29 December 2014, some 440 persons had been prosecuted for crimes committed during the war, of which 170 had been indicted. About 80 per cent of those who have been prosecuted are of Serbian nationality. The cases are at various stages of proceedings before the competent courts. There is, however, an apparent decrease in the number of new war crimes indictments, as since 2009/2010 there have been only three newly indicted alleged perpetrators. The 440 ongoing prosecutions relate to 3,010 victims.

43. The alleged perpetrators of war crimes are prosecuted under the Criminal Code of 1993, which was applicable at the time the crimes were committed, but does not contain any provisions relating to the autonomous crime of enforced disappearance or to enforced disappearance as an element of a crime against humanity. However, alleged perpetrators of enforced disappearances can be prosecuted for other criminal offences, such as unlawful detention, hostage-taking, murder and torture.

44. The 440 individuals who are being prosecuted are mainly low-ranking officials, as the Serbian authorities acted on the assumption that the International Tribunal for the Former Yugoslavia was responsible for the prosecution of high-level officials. That created a worrying gap for middle-ranking officials such as battalion commanders and municipal leaders who were not prosecuted by the Tribunal or the Serbian war crimes chamber. The Working Group welcomes the fact that the Serbian authorities have expressed their intention to address that gap, which results in impunity.

45. Some alleged perpetrators, even while indicted in relation to war crimes, are still exercising their official functions. This is a source of impunity and frustration for victims, and may also entail constant threats and intimidation to victims, witnesses and their families.

46. Serbia applies the principle of non-extradition of its own nationals, who cannot be handed over to a foreign State for prosecution, but criminal proceedings are supposed to be instigated in Serbia at the initiative of the prosecutor. However, the Working Group is concerned at reports that there is some resistance, including from the public and the media,

to efforts to prosecute Serbian suspects in relation to war crime charges. The work of those investigating and prosecuting war crimes is reportedly not popular and they are often perceived and labelled as traitors.

[...]

D. Right to reparation

56. Serbia has established reparation programmes for the victims of the war, but not specifically for the victims of enforced disappearance and their families. The reparation programmes mainly consist of monthly financial benefits that are stipulated in the Law on the Fundamental Rights of War Veterans, Disabled Veterans and Families of Fallen Soldiers, and the Law on the Rights of Civilian Victims of War. These programmes do not apply to family members of civilian missing persons. Only civilian victims who have been injured by enemy troops on the territory of Serbia have the right to claim compensation under the current law. That may result in different treatment among the different categories of victims, and may prevent many of them from receiving adequate compensation. This falls short of the requirements specified by the Working Group in its general comment on article 19 of the Declaration on the Protection of All Persons from Enforced Disappearance, according to which the right to redress of victims of an act of enforced disappearance and their family places States “under an obligation to adopt legislative and other measures in order to enable the victims to claim compensation before the courts or special administrative bodies empowered to grant compensation”. The general comment also indicates that redress for acts of enforced disappearance includes “the means for as complete a rehabilitation as possible”.

[...]

V. Kosovo

A. Legal framework

[...]

B. Right to the truth

62. Family members and representatives of associations of families of missing persons expressed their deep frustration about the difficulties they encounter when trying to access the information they need to clarify the fate and whereabouts of their loved ones. As provided by the Law on Missing Persons, the authorities in Kosovo are reportedly establishing a central register on missing persons, which will include data on the search, recovery and identification process and information on the rights of the victims and their families. Families of missing persons will be granted access to the database.

63. One major obstacle to establishing the fate and whereabouts of missing persons in Kosovo is the lack of precise information on the locations of undiscovered gravesites. The Serbian authorities are believed to possess more information than that contained in the documents already submitted. There is a common perception in Kosovo that the Serbian military has complete records of the locations of gravesites, yet has not fully opened its archive. Meanwhile, it is believed that the authorities in Kosovo have not shared information that they possess either. Another difficulty is the reluctance of witnesses to provide information owing to threats, intimidation, a sense of loyalty or the fear that they might implicate themselves in the crime.

64. With regard to identification work, misidentification in the early days has resulted in significant challenges in identifying human remains from recent exhumations. The remains of approximately 300 bodies in the morgue in Pristina have not been identified. The preservation of the bodies is becoming a challenge. According to the International Commission on Missing Persons, 412 unidentified individual DNA profiles from Kosovo do not match any of the blood samples in their database. This confirms the fear that a number of errors occurred during the identification work conducted in the early years based on traditional methods, before the introduction of DNA testing. Civil society organizations and the International Commission on Missing Persons have been promoting a review process to address the misidentifications conducted in the past. Provided that the right to privacy of the families of victims of enforced disappearances are fully respected and that the DNA data is protected with the utmost care, a review process is essential for the

ongoing identification work.

[...]

67. Initiatives taken by civil society to seek and tell the truth include collecting evidence, accounts and stories that could contribute to the clarification of the fate of missing persons. Some organizations have also established memorials providing a venue for families of victims to tell their stories publicly and memorize their loved ones.

C. Right to justice

68. The complex situation in Kosovo after the conflicts is a contributing factor to the huge challenges related to the prosecution of the war crimes thereof. UNMIK was established in 1999 pursuant to Security Council resolution 1244 in order to bring a political solution to the Kosovo crisis. As an international civil presence, UNMIK was vested with authority over the territory and population of Kosovo, including all legislative and executive powers and administration of the judiciary.

69. The Working Group is concerned about consistent information received indicating that cases of enforced disappearances and missing persons were not properly investigated by UNMIK during its full-range administration in Kosovo. The Human Rights Committee has raised concern about the failure of UNMIK to effectively investigate many of the crimes perpetrated prior to the UNMIK mandate and bring perpetrators to justice. Similarly, the Working Group notes with concern that the Human Rights Advisory Panel of UNMIK has ruled in several cases that the investigation of enforced disappearances and missing persons carried out by UNMIK failed to meet the minimum standard of an effective investigation as required by international human rights norms. In this regard, the Working Group considers that the failures by UNMIK should be properly addressed and the victims of those failures should be effectively compensated by the United Nations.

[...]

D. Right to reparation

78. Many victims in Kosovo have not received adequate reparation for their suffering. Reparation in cases of enforced disappearance entails not only monetary compensation, but also access to health care, legal aid, social benefits and rehabilitation programmes (restitution, satisfaction and guarantees of non-repetition).

79. Most families of victims of enforced disappearance live in poverty, as the direct victims of enforced disappearance were often the breadwinners in the household. While the situation is worse when the same family has more than one direct victim, the Kosovo authorities informed the Working Group that the amount of the pension increases if the family has more than one victim of enforced disappearance. In accordance with the law regulating the status and rights of martyrs, invalids, veterans, members of Kosovo Liberation Army, civilian victims of war and their families, after conducting an administrative procedure, family members of disappeared persons are entitled to receive 168 euros per month, where there is one direct victim of disappearance in the family, until the whereabouts of their loved ones are established. The Kosovo authorities reported that family members whose relatives have been identified still enjoy by law the right to a pension. That, however, was unclear to relatives with whom the Working Group met during the visit.

[...]

VI. Conclusions and recommendations

82. Considering the amount of time that has passed since the disappearances occurred in the Western Balkans and the very advanced age of many relatives and witnesses, there is an urgent need for everyone involved in the process of searching for missing persons to set as an immediate priority the establishment of the truth, particularly the determination of the fate and whereabouts of all the disappeared. The issue of disappearances should be considered as a humanitarian as well as a human rights issue on the agenda of political processes. In particular, it should be on the agenda of the Belgrade-Pristina dialogue facilitated by the High Representative of the European Union for Foreign Affairs and Security Policy.

83. The Working Group recognizes that the United Nations and other international bodies did not adequately address a number of issues in relation to missing persons, and that the international community is also responsible for the lack of truth, justice and reparation that relatives continue to face.

[...]

A. Regional recommendations to Governments and authorities

86. Act with due urgency and speed in the matter of enforced disappearances, as required by the Declaration on the Protection of All Persons from Enforced Disappearance and other international obligations.

87. Disclose all information on mass graves and make that information accessible to all countries and authorities in the region.

88. Ensure high-level commitment to clarifying the fate and whereabouts of all missing persons, bringing all perpetrators to justice and ensuring full reparation for all victims.

89. Reinvigorate efforts to establish a common regional list of the disappeared.

[...]

96. Immediately open archives that are relevant to cases of enforced disappearances in order to facilitate the localization of undiscovered gravesites and speed up the search for missing persons.

97. The Government of Serbia and the authorities in Kosovo should actively contribute to the Working Group on Missing Persons, including with information on new gravesite locations.

B. Recommendations to Serbia

98. Establish enforced disappearance as a separate offence in accordance with the definition contained in the Declaration on the Protection of All Persons from Enforced Disappearance. The offence of enforced disappearance should be punishable by appropriate penalties that take into account its extreme seriousness.

99. Recognize the status of families of missing persons by law and guarantee their rights in a non-discriminatory manner.

100. Establish an effective public system of free legal aid to allow relatives of missing persons to obtain legal assistance if they cannot afford it.

[...]

104. Ensure reparation is available to all victims of enforced disappearance. Compensation should not be limited to the victims of enemy forces only. [...]

105. Ensure that all victims of enforced disappearance obtain full reparation, including restitution, rehabilitation, satisfaction and guarantees of non-repetition, without discrimination and without having to declare the disappeared person dead.

106. Ensure the equitable allocation of existing resources for the civilian victims of war in order to eradicate the discrimination between, inter alia, the budget for civilian and military victims of war.

107. Raise public awareness of war crimes prosecution, including investigation into cases of enforced disappearances, in order to reduce negative feelings about war crimes proceedings.

108. Set up regular consultations with families of victims of enforced disappearance and representatives of associations of families of disappeared persons.

109. Provide greater institutional and financial support to families and associations of families of victims of enforced disappearance.

110. Promulgate a law on access to information and a proper legislative framework on archives, so as to guarantee full access to all information that could potentially lead to clarification in cases of missing persons.

111. Examine without undue delay all locations of potential mass graves.

112. Address the possible misidentifications made in the past, provided that the right to privacy of the families of victims of enforced disappearances are fully respected and that the DNA data is protected with the utmost care. A review process should be initiated to remove obstacles of the ongoing identification work.

113. Expedite the process of war crimes prosecutions.

114. Initiate a vetting process to identify all government officials who were allegedly involved in the commission of war crimes. Improve and systematize vetting measures in the recruitment and appointment of State officials.

[...]

117. Pay equal attention to all victims, regardless of their nationality, in respect of memorials. This principle should be integrated into future activities related to this element of reparation.

C. Recommendations to the authorities in Kosovo

119. Intensify efforts in the search for missing persons and the identification of human remains that have been exhumed.

120. Seek technical assistance from international bodies operating on the ground to conduct institutional reforms aimed at establishing an independent and efficient judicial system.

121. Conduct effective negotiations and reach an agreement on war crime cases with the Serbian authorities in order to establish an operational protocol on cooperation in the investigation and prosecution of war crimes.

[...]

123. Hold consultations with associations of families of missing persons, civil society organizations and other relevant stakeholders on the establishment of a central register on missing persons to ensure that the register contains all the information necessary to facilitate the clarification of the fate and whereabouts of missing persons in a transparent, inclusive and consultative manner.

124. Engage minority groups and ensure they are adequately represented in the Commission on Missing Persons. The Commission should ensure the implementation in practice of the principle of non-discrimination.

[...]

126. Organize joint commemorations for victims of missing persons from all ethnic backgrounds.

[...]

128. Immediately open archives relevant to cases of enforced disappearances that took place during and immediately after the 1998-1999 events in Kosovo, in order to facilitate the localization of undiscovered gravesites and to speed up the search.

129. Provide the families of missing persons with adequate and effective reparation. Consultations with victims from all ethnic groups should be held to hear their views on the specific nature of the reparation that they need. Language support should be provided upon request in the whole process.

130. Ensure that all victims of enforced disappearance obtain full reparation, including restitution, rehabilitation, satisfaction and guarantees of non-repetition, without discrimination and without having to declare the disappeared person dead.

131. Establish and effectively implement a comprehensive witness protection programme, with the support of international organizations.

[...]

133. Address the possible misidentifications made in the past, provided that the right to privacy of the families of victims of enforced disappearances are fully respected and that the DNA data is protected with the utmost care. A review process should be initiated to remove the obstacles to the ongoing identification work.

134. Ensure media freedom and use the mass media to raise awareness of the issue of missing persons in the region.

[...]

136. Put in place a strong vetting process in order to ensure that alleged perpetrators are not appointed to positions of authority.

D. Recommendations to international bodies

137. UNMIK and EULEX should engage with international human rights mechanisms with the aim of addressing issues related to enforced disappearance. International bodies acting as transitional administrators in Kosovo should be held accountable for human rights violations.

138. All international bodies that hold relevant information regarding cases of enforced disappearances that took place during and immediately after the 1998-1999 events in Kosovo should open their archives and facilitate the search and investigation.

139. ICRC should continue chairing the Working Group on Missing Persons and facilitate communication and cooperation in the region. ICRC should further strengthen and expand its initiatives.

140. The Working Group on Missing Persons should meet more frequently. In the meantime, the Working Group encourages UNMIK, as an observer of the body, to continue playing an active role.

141. UNMIK should seek suitable means to grant compensation to victims of human rights abuses as identified by its Human Rights Advisory Panel, especially in relation to the alleged ineffective investigations into cases of missing persons.

142. UNMIK should make additional efforts to encourage the effective continuation of investigations that were initiated prior to the transfer of power from UNMIK to EULEX.

[...]

146. The Working Group invites the Government of Serbia, the authorities in Kosovo and the heads of mission of UNMIK and EULEX, within 90 days from the date of presentation of the present report to the Human Rights Council, to submit a timetable showing the steps they will take to implement the recommendations of the Working Group, the dates by which each measure will be taken and the dates by which they plan to finalize the implementation of the recommendations.

Discussion

I. Classification of the situation and applicable law

1. At the time of the Commission's visit (19 - 26 June 2014), was there an armed conflict in the territories visited?
2. (*Paras. 9, 19*) Had the territories in question previously been engulfed in armed conflicts? Can you tell, by the information in this report, whether those were international or non-international in character?
3. What law is applicable to the situations of enforced disappearances and missing persons referred to in the report? Does IHL cover these situations? Only some of these situations? If so, which ones? Is IHRL applicable to these situations? All of them? Only some of them? If so, which ones?
4. What rules of IHL applicable *during* armed conflicts function to reduce the risk of enforced disappearances? To increase the likelihood that missing persons will be traced and found? Do the Geneva Conventions foresee particular mechanisms/institutions to enable families to reunite with their loved ones?
5. (*Paras. 17, 20*) When does IHL cease to apply in IAC and NIAC? May IHL prescribe obligations for belligerent parties to be performed after the end of the conflict, e.g. in relation to persons missing during the conflict? (GC IV, Art. 6(2) ^[3]; P I, Arts 3(b) ^[4], 33 ^[5] and 34 ^[6]; P II, Art. 2(2) ^[7])
6. What rules of IHL relevant to the situations of persons who are forcibly disappeared and missing persons apply *after* the end of armed conflict? Does the application of these rules depend on whether the conflict was an IAC or a NIAC?

II. Missing persons

(Para. 2)

7. What do you understand by the term “enforced disappearance?” Do IHL treaties refer to “enforced disappearance” as such? What about customary IHL? Do you think the concept of “enforced disappearance” is the same in IHL and IHRL? Why do you think international law prohibits subjecting persons to enforced disappearance? What human rights violations does a person who has been forcibly disappeared risk? What about their next-of-kin? (CIHL, Rule 98 ^[8])

8. What are the legal and factual differences between victims of enforced disappearances and missing persons?

9. Under IHL, who does the term “missing person” refer to? Does it include persons who have been forcibly disappeared? Does it include dead persons who remain unaccounted for?

10. When is a person considered missing? May a missing person be still alive? If so, which are the possible reasons of his/her disappearance? Does IHL provide for instruments to prevent disappearances?

11. *(Para. 25)* Shall the belligerent parties search for persons reported as missing by the adverse party? If so, is this an obligation of results or of means? (P I, Art. 33 ^[5]; CIHL, Rule 117 ^[9])

12. *(Para. 19)* Does IHL require belligerent Parties to identify every dead body they come across? Alternatively, must they gather and forward information serving to identify the dead? In every case? Only where feasible? Does IHL provide for instruments to facilitate the identification of dead bodies? (GC I, Art. 16 ^[10]; P I, Art. 33(2) ^[5]; CIHL, Rules 112 ^[11] and 116 ^[12])

13. *(Para. 22)* If the identification is successful, shall the belligerent parties bury the remains of the person identified? If so, how should the burial be conducted? Does the family of the identified person have a right to be informed about the burial? (GC I, Art. 16 ^[13]; GC I, Art. 17 ^[13]; GC III, Art. 120 ^[14]; GC IV, Art. 130 ^[15]; P I, Art. 34(1) ^[6]; CIHL, Rule 115 ^[16])

(Paras. 8, 10, 11, 22-25, 62-64 and 69)

14. Could you list some of the challenges that the Working Group cited in accounting for the missing and the forcibly disappeared?

(Paras. 8, 20, 63, 87, 96-97, 111, 128)

15. Under IHL, the dead must be accorded proper burials. In what ways does this report suggest this requirement was not met? Does IHL prohibit disposing of the dead in mass graves? Does a belligerent party have any obligations to inform the adverse party about the burial of one of its combatants/civilians? To inform the family? To allow them to pay respects and visit the burial site?

III. International forces/organizations

(*Paras. 25, 68-69, 83, 137-146*)

16. Are international organizations bound by IHL? What about peacekeeping forces such as KFOR? Are only troop-contributing countries bound?

17. Could UNMIK have violated IHL by failing to fully investigate cases of missing persons and enforced disappearances? IHRL?

18. (*Paras. 17, 20, 23*) May the ICRC propose to the belligerent parties the creation of a system to collect and to share information concerning persons reported missing? If so, which role may the ICRC perform? And may the belligerent parties refuse such an offer? May an activity of tracing take place only in IAC or also in NIAC? (P I, Art. 33(3) ^[5]; GC I-IV, Art. 3 ^[17])

IV. Reparations

19. (*Para. 56*) Is Serbia obliged by IHL to provide reparations to the families of the missing and forcibly disappeared? In all cases? Is it reasonable to limit reparations only to families of military personnel? Only to those who are victims of actions by enemy troops? How has the Working Group treated this issue in its recommendations to all concerned stakeholders? (CIHL, Rule 150 ^[18])

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