

# Addressing missing persons arising from armed conflict as a driver of peace: Towards a research agenda

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## Abstract

*International humanitarian law (IHL) provides the normative foundation for efforts to address the issue of missing persons during and after armed conflict. Whilst IHL does not engage with how parties to an armed conflict may go about restoring peace, there has been speculation that resolving the missing issue, by bringing answers to families about the fate and whereabouts of their missing relatives, can*

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*potentially play a role in building peace. This article represents an effort to compile existing evidence in academic and practice literature that supports an understanding of how addressing the missing issue relates to peacebuilding. In so doing, the article seeks to lay out a research agenda to understand how addressing the issue of the missing can serve to advance peacebuilding, and proposes avenues for further research.*

**Keywords:** missing persons, peacebuilding, international humanitarian law, armed conflict.

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## Introduction

One of the most powerful barriers to healing, reconciliation and rebuilding of societies ... is the psychologically unsettling issue of missing persons. Families of the disappeared are suspended in a “no-man’s land” of psychological and spiritual existence.<sup>1</sup>

Decisive steps by the international community are needed, to provide an effective path to clarify the fate and whereabouts of missing people, to pursue the release of those who continue to be detained, and to provide support to families. There will be no enduring peace ... without progress on these issues that are fundamental to families, communities and society as a whole. The pain, the loss, and the injustice are simply too great.<sup>2</sup>

It has long been presumed by those who work on the issue of persons missing<sup>3</sup> in armed conflict that resolving the missing issue by bringing answers to families, including while conflict is ongoing, plays a role in building peace by addressing some of the legacies of conflict that can continue to divide people.<sup>4</sup> There is however no base of evidence to support this understanding, and as such, this

- 1 Mary Ellen Keough, Sara Kahn and Andrej Andrejevic, “Missing Persons in Post-Conflict Settings: Best Practices for Integrating Psychosocial and Scientific Approaches”, *Journal of the Royal Society for the Promotion of Health*, Vol. 6, No. 124, 2004, p. 271.
- 2 Volker Türk, UN High Commissioner for Human Rights, speech given at the 77th Session of the UN General Assembly, 29 March 2023, available at: [www.ohchr.org/en/statements-and-speeches/2023/03/turk-calls-un-general-assembly-establish-new-independent](http://www.ohchr.org/en/statements-and-speeches/2023/03/turk-calls-un-general-assembly-establish-new-independent) (all internet references were accessed in September 2024).
- 3 While there is no legal definition of a missing person under international law, this article adopts definition used by the International Committee of the Red Cross (ICRC): individuals of whom their families have no news and/or who, on the basis of reliable information, have been reported missing as a result of an armed conflict or other situation of violence, or any other situation that may require the intervention of a competent State authority. This notion includes victims of enforced disappearances. Definition based on ICRC, *Missing Persons: A Handbook for Parliamentarians*, Geneva, 2009, p. 9.
- 4 See e.g. Jill Stockwell, “Does Individual and Collective Remembrance of Past Violence Impede or Foster Reconciliation? From Argentina to Sri Lanka”, *International Review of the Red Cross*, Vol. 101, No. 910, 2019; Simon Robins, “The Politics of Ambiguous Loss”, *Journal of Human Rights Practice*, 2024 (forthcoming).

article represents an effort to compile existing evidence in academic and practice literature that suggests a link between addressing the missing issue and peace. The ultimate goal of such a research agenda is to demonstrate and interrogate causal pathways linking an addressing of the missing issue to relevant obligations under international humanitarian law (IHL) that can serve the advancing of peace. In this paper, a broad review of the relevant literature is presented.

There are several routes through which an addressing of the missing issue can potentially advance peace. It provides closure to the families of the missing and thus enables them to grieve, fosters trust and reconciliation in the community, and also potentially serves to rebuild trust between parties involved in the conflict. When families can end the ambiguity over the fate and whereabouts of their loved ones, honour their remains and commemorate their memory, this can help reduce feelings of distrust and resentment towards the opposing party. Dialogue around the missing, involving both parties to conflict and families of the missing (often from both sides of the conflict), can be a foundation for a broader engagement with the “other” that can enhance trust and build peace. This is particularly so where there is a need for information to be exchanged between the parties in order to deliver answers, leading to more effective communication and negotiations and thereby helping to provide a foundation for peace.

This article seeks to understand the extent to which the normative foundation of IHL represents a framework for addressing the issue of missing persons arising from armed conflict that can in turn be a stepping stone from conflict to peace. It seeks to provide the basis of an alternative route to advocacy with States and parties to a conflict around the importance of addressing missing persons, beyond the needs of families directly affected.

The article begins by outlining the obligations of States and parties to conflict concerning the missing under IHL. It then discusses how missing persons are inextricably linked to politics by the fact that ambiguity – that is, uncertainty over whether a missing person is alive or dead – is relationally and discursively defined, and thus subject to power relations. The article posits the missing as a driver of conflict, noting that the missing issue can be an obstacle to the rebuilding of relations between communities that have been in conflict and one that can drive further cycles of violence. Most importantly, the missing can be exploited politically and instrumentalized to advance nationalist and antagonistic attitudes to the other, as a barrier to peacebuilding.

The subsequent discussion surveys how addressing the missing can potentially advance peacebuilding. It examines how families of the missing are motivated to build relations with families from the other side in order to both seek information about their loved ones and to prevent violence that could lead to more individuals going missing.

In conclusion, a research agenda to interrogate the causal links between missing persons and peacebuilding is articulated, providing a road map to collect

data that can serve as a platform for discussion with States, parties to conflict and others about the importance of addressing those missing in armed conflict.

## Missing persons and international humanitarian law

This article engages with the implications of addressing the issue of missing persons during and after armed conflict on prospects for peace, and proceeds from the understanding that the most relevant framework for this is that provided by IHL. Here, a brief overview of the main relevant IHL provisions regarding the protection of missing persons is presented.

IHL is a set of rules that applies to international and non-international armed conflicts. It includes rules that seek to prevent people from going missing as a result of armed conflict, to clarify the fate and whereabouts of those who do, and to investigate and prosecute crimes resulting in persons going missing.<sup>5</sup> In international and non-international armed conflicts, IHL requires that parties to the conflict take all feasible measures to account for persons reported missing and to provide their family members with any information the parties have on their fate.<sup>6</sup> This is motivated by the right of families to know the fate and whereabouts of their missing loved ones.<sup>7</sup> In practice, this means that States and parties to armed conflict are required to take different measures, including searching for the remains of those who have been reported missing or who have died, identifying them, and sharing any information with family members. It is important to note that IHL rules protecting the missing, the dead and their families continue to apply even after the end of the armed conflict.<sup>8</sup>

Although not foreseen by IHL, addressing the needs of the families is key. Families of missing persons can have multifaceted needs, including legal, administrative, economic, psychological and psychosocial needs.<sup>9</sup> States should

5 ICRC, “Missing Persons and Their Families”, fact sheet, Geneva, 2023, available at: [www.icrc.org/en/document/missing-persons-and-their-families-factsheet](http://www.icrc.org/en/document/missing-persons-and-their-families-factsheet).

6 Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), Rule 117, available at: <https://ihl-databases.icrc.org/en/customary-ihl/rules>; Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978), Arts 32–33.

7 The right of families to know the fate and whereabouts of their missing relatives is enshrined in Additional Protocol I to the Geneva Conventions of 1949. Article 32 establishes a general principle by which, in international armed conflicts, States Parties, parties to the conflict and humanitarian organizations “shall be prompted mainly by the right of families to know the fate of their relatives”. Moreover, under customary IHL, each party to an international or non-international armed conflict “must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate”. As noted in the explanation to Rule 117 of the ICRC Customary Law Study, above note 6, “[p]ractice indicates that this rule is motivated by the right of families to know the fate of their missing relatives”.

8 See Marko Milanović, “The End of Application of International Humanitarian Law”, *International Review of the Red Cross*, Vol. 96, No. 893, 2014, p. 174.

9 ICRC, *Accompanying the Families of Missing Persons: A Practical Handbook*, Geneva, 2020.

ensure that the necessary domestic legal and policy frameworks are in place to address these needs.

## Peacebuilding and missing persons

The broader positive societal impact of addressing the missing in post-conflict societies has been described in various ways, using the terms “reconciliation”,<sup>10</sup> “conflict resolution”, “trust-building”<sup>11</sup> and “political will”.<sup>12</sup> While reconciliation is an important and desirable outcome, it is conceptually complex, being both a process and an outcome,<sup>13</sup> and both an individual and a collective attribute.<sup>14</sup> It also appears to make particular demands of attitudinal change on the part of the families of those missing or dead, and/or their communities, that make it a less attractive concept. Peacebuilding is used here as the dependent variable of choice for two reasons. First, it most closely correlates with what we hope to show, in terms of addressing the missing issue as supporting the ending of conflict and the building of peace. Second, it is a term widely used in a range of sectors, including the humanitarian sector, and by key global actors such as the United Nations (UN).

The exact definition of peacebuilding varies depending on the actor using the term. Within the UN, **peacebuilding** refers to

efforts to assist countries and regions in their transitions from war to peace and to reduce a country’s risk of lapsing or relapsing into conflict by strengthening national capacities for conflict management, and laying the foundations for sustainable peace and development.<sup>15</sup>

This is the definition that will be used here. In this understanding, peacebuilding includes a wide range of efforts by diverse actors, including government and civil society, at the community, national and international levels, to address the root causes of violence in societies emerging from armed conflict. It implicitly addresses contexts emerging from both international and non-international armed conflict, as well as those where violence threatens to spill over into armed conflict.<sup>16</sup>

10 Janine Natalya Clark, “Missing Persons, Reconciliation and the View from Below: A Case Study of Bosnia-Herzegovina”, *Southeast European and Black Sea Studies*, Vol. 10, No. 4, 2010.

11 Ann Rigney, “Reconciliation and Remembering: (How) Does It Work?”, *Memory Studies*, Vol. 5, No. 3, 2012.

12 ICRC, *National Mechanisms for Missing Persons: A Toolbox*, Geneva, 2022.

13 Daniel Bar-Tal and Gemma H. Bennink, “The Nature of Reconciliation as an Outcome and as a Process”, in Yaacov Bar-Siman-Tov (ed.), *From Conflict Resolution to Reconciliation*, Oxford University Press, Oxford, 2004.

14 For example, in the South African Truth and Reconciliation Commission process, individual reconciliation between victims and perpetrators was conflated with the larger project of “national reconciliation” that the Commission was leading, while the links between the two were never evident. See e.g. Michael Humphrey, “Reconciliation and the Therapeutic State”, *Journal of Intercultural Studies*, Vol. 26, No. 3, 2005.

15 UN, “Global Issues: Peace and Security”, available at: [www.un.org/en/global-issues/peace-and-security](https://www.un.org/en/global-issues/peace-and-security).

16 It should be noted that in contexts where violence has not reached the threshold of armed conflict, IHL is not applicable and international human rights law is the relevant legal framework.

Global institutions, notably the UN, have recognized the links between missing persons and peacebuilding. UN General Assembly Resolution 63/183 “[s]tresses the need for addressing the issue of missing persons as a part of peacebuilding processes”.<sup>17</sup> The UN Secretary-General’s 2009 report on missing persons emphasized that

the establishment of the circumstances that led to death and clarification of the facts are all necessary steps for families to complete their mourning process, for victims to obtain reparation and, in the long term, for peoples and communities to come to terms with their past and move forward in peace.<sup>18</sup>

UN Security Council Resolution 2474 further states that “identifying missing persons and returning human remains to their families [and] the manner in which these cases are addressed affects relations between parties to armed conflict and efforts to resolve conflicts”.<sup>19</sup>

In addition to the establishment of security, the delivery of justice and the rule of law, as well as the political and institutional framework of long-term peace, understandings of peacebuilding include psychosocial recovery and the healing of the wounds of war, which is highly relevant for families of the missing.<sup>20</sup> The assumption here is that one potential root cause of future violence is the anger and frustration of the families of the missing and the communities of which they are a part, directed at those who have caused their loved ones to go missing. One of the key goals of research around missing persons and peacebuilding is to trace how having a missing relative, with clear impacts at the individual and family levels, impacts attitudes and action in the wider community and ultimately among a political leadership with the capacity to both address the missing issue and advance peace. As such, the research agenda being pursued here must seek to demonstrate how the missing issue and its resolution can advance intergroup processes that enhance peace as well as influence the behaviour of State authorities, non-State armed groups and political actors who have the capacity to either prolong or end armed conflict.

Linking the *addressing* of the missing issue to peacebuilding implies that persons are no longer considered as missing – i.e., that the fate and/or whereabouts of the missing have been clarified. However, in addition to clarifying the fate of those who have gone missing, the needs of families will likely extend beyond confirming the fate and receiving human remains, potentially encompassing issues of criminal accountability and recognition as well as social and economic demands linked to the loss of loved ones, often breadwinners, along with legal and administrative needs.<sup>21</sup>

17 UNGA Res. 63/183, 18 December 2008.

18 *Missing Persons: Report of the Secretary-General*, UN Doc. A/HRC/10/28, 3 February 2009, para. 38.

19 UNSC Res. 2474, 11 June 2019.

20 See e.g. Necla Tschirgi, *Post-Conflict Peacebuilding Revisited: Achievements, Limitations, and Challenges*, International Peace Academy, New York, 2004, p. 9.

21 Simon Robins, *Families of the Missing: A Test for Contemporary Approaches to Transitional Justice*, Routledge, New York, 2013.

## The politics of missing persons

It is clear from the data presented in this article that the missing are a site of politics during and after conflict. This is most often the case where there are no efforts to investigate and prosecute serious violations of IHL and gross violation of human rights law. Often, actors linked to acts that have led to people going missing will attempt to minimize engagement with accountability for such acts as well as any focus on the issue of missing persons, such as demands for truth-telling or exhumations. This is traditionally the greatest barrier to families learning the fate and whereabouts of the missing and is typically challenged by human rights, a traditional pillar of international action in post-conflict contexts, defined by a contestation of impunity and reference to international law.

Implicit in IHL is a “humanitarian politics”<sup>22</sup> in which the suffering of victims is foregrounded and an emphasis is placed on addressing their needs. Where missing persons are concerned, the family’s need for an answer is often paramount. It is important to note that whilst accountability for serious violations of IHL and gross violations of international human rights law is required, in practice it has been found to be effective to sequence approaches to addressing the missing by separating efforts to learn their fate and whereabouts from processes aimed at determining criminal responsibility for the violations that led to them going missing.<sup>23</sup> A humanitarian approach to the missing should, then, be one that balances the needs of victims – while considering other relevant processes for upholding other obligations under international law – with the concrete political realities of the post-conflict space.

## The politics of ambiguous loss

Ambiguous loss has become the principal lens through which the impacts on individuals and families of having a missing relative are both understood and addressed. Where a family member’s absence is unexplained, the lack of knowledge about the loved one gives rise to the challenge of transforming the experience into one with which the family can live.<sup>24</sup> Ambiguous loss occurs where a family member is psychologically present but physically absent, and is one of the most stressful types of loss precisely because it is unresolved. Families missing loved ones are torn between the urgent need to end ambiguity and finding meaning in the situation despite the absence of information.

Whilst there is nothing inherent in ambiguous loss that informs how it shapes broader political responses to missing persons, the fact that ambiguity

22 Larry Minear and Thomas G. Weiss, *Humanitarian Politics*, Headline Series No. 304, Foreign Policy Association, Ithaca, NY, 1995.

23 Monique Crettol, Lina Milner, Anne-Marie La Rosa and Jill Stockwell, “Establishing Mechanisms to Clarify the Fate and Whereabouts of Missing Persons: A Proposed Humanitarian Approach”, *International Review of the Red Cross*, Vol. 99, No. 2, 2017.

24 Pauline Boss, *Ambiguous Loss: Learning to Live with Unresolved Grief*, Harvard University Press, Boston, MA, 2009.

itself is understood as socially constructed suggests that politics can impact both understandings of ambiguity and the form the resulting loss takes, and vice versa.<sup>25</sup> This will be particularly true for those missing in armed conflict, where politics saturates both the circumstances in which people go missing and how their absence is interpreted and framed, including by the State. Given that having a missing relative is a unique trauma with no end as long as truth about the missing person is inaccessible, it would seem likely that such trauma – particularly when experienced by large numbers of people – will have collective impacts and potentially political implications, keeping in place a collective fixation on the past.<sup>26</sup>

Given that ambiguity itself is discursively constructed, whether or not someone is perceived as missing is itself a function of power, with a number of actors – including the State – having the capacity to advance particular meanings over others, intertwining particular political goals with the personal experience of absence. Additionally, the chronic trauma of ambiguous loss reshapes individuals', families' and potentially communities' perspectives on events in which people have gone missing. The often obsessive nature of the response to an ambiguous loss and freezing of grief around the absence of a loved one focuses attention on the nature – and potentially the perpetrator – of that loss. This makes the trauma of ambiguous loss one that is much easier to instrumentalize politically, particularly in terms of negative views of the “other” of conflict, than other forms of victimization, including a death that is confirmed and can be mourned.<sup>27</sup>

There is a significant literature around collective trauma (i.e., psychological reactions to a traumatic event that affects an entire society), which, like ambiguity and ambiguous loss, is both discursively driven and represents a crisis of meaning.<sup>28</sup> Because collective traumas, such as those arising from episodes of extreme violence, become a part of how a group identifies, particularly in relation to others, they are highly politically charged. This can for example lead to competitive victimhood dynamics, with a range of groups demanding to be recognized as the true victim<sup>29</sup> as a nation-State propels one version of traumatic history into the public sphere over another, fuelling feelings of marginalization, ostracism and anger within a politics of recognition.<sup>30</sup> Aydin has identified one of the greatest threats of collective trauma as destruction of the capacity of forgetting,<sup>31</sup> as seen in cultures that have experienced atrocities such as genocide.

25 S. Robins, above note 4.

26 Jill Stockwell, *Reframing the Transitional Justice Paradigm: Women's Affective Memories in Post-Dictatorial Argentina*, Springer Academic, New York, 2014, p. 154.

27 *Ibid.*

28 Gilad Hirschberger, “Collective Trauma and the Social Construction of Meaning”, *Frontiers in Psychology*, Vol. 9, 2018, p. 1441.

29 Masi Noor, Johanna Ray Vollhardt, Silvia Mari and Arie Nadler, “The Social Psychology of Collective Victimhood”, *European Journal of Social Psychology*, Vol. 47, No. 2, 2017.

30 J. Stockwell, above note 26.

31 Ciano Aydin, “How to Forget the Unforgettable? On Collective Trauma, Cultural Identity, and Mnemotechnologies”, *Identity*, Vol. 17, No. 3, 2017.



Because of this damaged capacity to forget, the trauma experienced cannot be given a proper place in the identity of that culture. This echoes how ambiguous loss both defies meaning but is inescapable, and how it freezes mourning and forces those impacted to keep the memory of the missing alive, maintaining the political salience of past violence.

Volkan discusses what he calls “chosen traumas”, in the sense that affected communities choose to define their group identity on the basis of a collective trauma. He uses the language of an “inability to mourn” in a way that very precisely echoes the impacts of ambiguous loss. The resonance between the nature of such “chosen traumas” and that of ambiguous loss suggests that ambiguous loss is peculiarly well suited as a collective trauma, not least because it is necessarily an ongoing and potentially never-ending trauma. This conceptual framework can serve as a basis for understanding both how missing persons in armed conflict are used to maintain antagonism towards the “other” of conflict and why the missing are such an effective vehicle for such politics.

A more general challenge posed by missing persons in armed conflict is the presence of bodies and human remains that are subject to uncertainty. The presence of the bodies of those violently killed, but where the circumstances and nature of those deaths is unclear, creates a space for political opportunists who can frame such deaths (even where they occurred many years earlier) in terms that advance particular agendas: when it is not clear who these individuals were, how they died or who killed them, they can become effective instruments for conflict entrepreneurs.<sup>32</sup>

## The missing issue as a driver of conflict

There is significant literature where the assumption is made that not addressing the issue of the missing can prolong conflict and/or represent an obstacle to peace and reconciliation,<sup>33</sup> but few sources where evidence is presented. Here, an effort is made to summarize the latter.

### The need to address the missing to advance peacebuilding

According to the estimate of one scholar, of the 103 countries that experienced some form of non-international armed conflict between 1945 and 2009, 57% experienced at least one further conflict at a later point.<sup>34</sup> Per the same source, recurring non-international armed conflicts have become the dominant form of armed conflict

32 See e.g. Katherine Verdery, *The Political Lives of Dead Bodies: Reburial and Postsocialist Change*, Columbia University Press, New York, 1999; Joost Fontein, *The Politics of the Dead in Zimbabwe 2000–2020*, Boydell and Brewer, Rochester, NY, 2022.

33 See e.g. *Bosnia and Herzegovina 2010 Progress Report*, Commission Staff Working Document, SEC (2010) 1331 Final, 9 November 2010, available at: <http://aei.pitt.edu/44838/>.

34 Barbara F. Walter, *Conflict Relapse and the Sustainability of Post-Conflict Peace*, World Development Report 2011 Background Paper, 13 September 2010, available at: <https://openknowledge.worldbank.org/server/api/core/bitstreams/3633592d-58d0-5ed5-9394-aea81448f25c/content>.

in the world today, and every such conflict since 2003 has been a continuation of a previous civil war.<sup>35</sup> This demonstrates that the principal challenge of contemporary peacebuilding is stopping new armed conflicts by addressing the legacies of old conflicts. Research indicates that renewed violence and conflict are associated with contexts where instability, disappearances and arbitrary detention take place.<sup>36</sup> Given that having a missing relative is widely understood as being one of the most traumatic impacts of conflict, and one that continues indefinitely in the absence of closure, it is a legacy of conflict that appears likely to be a central issue in the recurrence of conflict.

### *Within communities*

There is a significant set of studies showing the impacts of having a missing relative that stigmatize families and serve to divide them from the communities of which they have been a part. This derives both from simple security concerns and deeper social issues that reflect the relational impacts of ambiguous loss.<sup>37</sup> These relational impacts are driven by the fact that the ambiguous loss of having a missing relative challenges meanings constructed according to particular social understandings.<sup>38</sup> Königstein has noted that in Lebanon, families of the missing and their reluctance to assume the death of the missing are poorly understood, and that “[m]ourning the death of a loved one generates more community support than living in uncertainty about the destiny of a family member”.<sup>39</sup> This resonates with what Robins has found in Nepal, where the pressure on families to confirm the death of their missing relative was further reinforced by compensation payments from the State that were contingent upon them being declared dead.<sup>40</sup>

The absence of bodies prevents the appropriate rituals from being carried out even where the missing are presumed dead. In most cultures, such rituals have an important social role and a relevance for relations in the community beyond the concerned family.<sup>41</sup> In Timor-Leste, for example, when the missing from conflict cannot be buried subject to the appropriate ritual, it is believed that their restless spirits can cause crops to fail, animals to die and children to become sick.<sup>42</sup> These collective impacts not only negatively impact communities, but make families who have failed – or been unable – to perform the necessary rituals objects of scorn and suspicion. In northern Uganda, Baines tells the story of a young woman whose family was stigmatized not only as a result of the fact that

35 *Ibid.*, p. 1.

36 *Ibid.*, p. 30.

37 S. Robins, above note 21.

38 Simon Robins, “Discursive Approaches to Ambiguous Loss: Theorizing Community-Based Therapy after Enforced Disappearance”, *Journal of Family Theory & Review*, Vol. 8, No. 3, 2016.

39 Heiko Fabian Königstein, *The Influence of Mental Health on Reconciliation in Post-War Lebanon*, Institute for International Law of Peace and Armed Conflict Working Paper, Vol. 3, No. 2, 2013.

40 S. Robins, above note 21.

41 K. Verdery, above note 32, p. 107.

42 S. Robins, above note 21.

rituals were not performed for her dead sister, with the corresponding spiritual impacts, but also because she was a part of an armed group.<sup>43</sup> This emphasizes how social exclusion of families of the missing is also linked to the fact that in some contexts, the missing person used to be a member of a non-State armed group.

The marginalization of the families of the missing can serve to enhance the polarization within communities that is driven by conflict. Families of the missing will often be politically connected to those active in the conflict, and their exclusion can become a part of post-conflict atomization that threatens intra-community reconciliation.

### *Between communities*

A large number of sources quote victims themselves describing how reconciliation with the “other” is impossible as long as violations, and in particular the issue of the missing, are not addressed:

We can't expect people still mourning the dead or anguishing over the missing to move forward without addressing what happened to them first. ... Their collective anguish needs to be resolved for reconciliation efforts to move forward.<sup>44</sup> (Sri Lanka)

When discussing reconciliation, the issue of missing persons is often among the first and most pressing concerns raised by both Serb and Albanian communities. ... [U]nresolved issues of alleged war crimes and missing persons continue to directly affect trust between the communities today.<sup>45</sup> (Kosovo)

In Cyprus, Sahoglu reports that “[u]nless the relatives of missing persons have a proper burial, providing closure to a long period of anguish and uncertainty, they may remain unhappy and be hateful”<sup>46</sup> towards the other side in the conflict. One way to humanize the erstwhile enemy is to acknowledge that they also suffer from the same problem, and this emphasizes the peacebuilding potential of activism that links affected families across the divide of conflict (see below).

Robins worked in Nepal with families of the missing, many of whom had been close to Maoist rebels and were disappeared in their struggle against the government. When asked about their attitude to the Nepalese State, half of the families believed they would never be able to trust the State, while 40% believed that this trust could be built.<sup>47</sup> If the issue of disappearances was not addressed, a

43 Erin K. Baines, “The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda”, *International Journal of Transitional Justice*, Vol. 1, No. 1, 2007.

44 Fokus Women, *Reconciling Sri Lanka: What the Women Say – Thirty Case Studies*, Colombo, 2016, p. 30.

45 Lars Burema, “Reconciliation in Kosovo: A Few Steps Taken, a Long Road Ahead”, *Journal on Ethnopolitics and Minority Issues in Europe*, Vol. 11, No. 4, 2012, p. 7.

46 Hasibe Sahoglu, “One Step towards Reconciliation in Cyprus: Perceptions of the ‘Other’ for the Families of Missing Persons”, *All Azimuth: A Journal of Foreign Policy and Peace*, Vol. 10, No. 1, 2020.

47 Simon Robins and Ram Kumar Bhandari, *From Victims to Actors: Mobilising Victims to Drive [the] Transitional Justice Process*, National Network of Families of the Missing and Disappeared, Kathmandu, 2012.

majority of the victims said they would react: half would take part in a political movement, while a significant minority (15%) said they would be prepared to engage in rebellion with the use of arms. Given that many of these families were cadres of the Maoist party, the implications for the future of ignoring the needs of such victims appear clear.

In Syria, more than 100,000 persons are estimated to be missing for conflict-related reasons.<sup>48</sup> The reported impacts of this – on families, communities etc. – are enormous.<sup>49</sup> The importance of addressing the missing issue to sustainable peace in Syria has been echoed in both the Astana process, whose framework includes a Working Group on the Release of Detainees/Abductees, Handover of Bodies and Identification of Missing Persons,<sup>50</sup> and in a recent statement by concerned parties.<sup>51</sup>

### *Trauma, psychosocial impacts and limits to reconciliation*

Recognizing the social and political influence of emotions, particularly those that arise from traumatizing events, is an important element of overcoming the social legacies of conflict and violence. The relevance of this to peacebuilding is twofold: first, that individuals and communities suffering from trauma are less able to reconcile, and second, that after trauma, emotions can be stimulated and mobilized in ways that may limit the possibility of political reconciliation.

Trauma impacts mental health, behaviour and ability to trust others, which can make peacebuilding more challenging, including through potential re-traumatization in peacebuilding efforts that inadvertently trigger painful memories or feelings; distrust of outsiders; aggression and violence triggered by trauma, including towards perpetrators; and mental health challenges, including depression and anxiety. After violations, victims feel vulnerable and insecure; they will mistrust people and see the world as dangerous, feeling any threat more acutely.<sup>52</sup> These challenges can make it difficult for people to engage in reconciliation efforts. Königstein worked with victims in Lebanon and concluded that

mental health problems disrupt the process of repairing fractured relationships in Lebanon. Poor mental health negatively affects cognitive skills which are necessary to engage in the reconciliation process, such as problem-solving

48 International Committee on Missing Persons, *Missing Persons in North East Syria: A Stocktaking*, The Hague, 25 March 2020, available at: [www.icmp.int/wp-content/uploads/2020/05/icmp-gr-mena-065-6-w-doc-stocktaking-missing-persons-in-north-east-syria.pdf](http://www.icmp.int/wp-content/uploads/2020/05/icmp-gr-mena-065-6-w-doc-stocktaking-missing-persons-in-north-east-syria.pdf).

49 *Missing People in the Syrian Arab Republic: Report of the Secretary-General*, UN Doc. A/76/890, 2 August 2022.

50 See e.g. Office of the Special Envoy of the Secretary-General for Syria, “Detainees, Abductees and Missing Persons”, available at: <https://specialeuvoyisria.unmissions.org/detainees-abductees-and-missing-persons>.

51 “Amman Meeting Explores Path to End Crisis in Syria”, *Jordan Times*, 2 May 2023, available at: <https://jordantimes.com/news/local/amman-meeting-explores-path-end-crisis-syria>.

52 Ervin Staub, “Preventing Violence and Generating Humane Values: Healing and Reconciliation in Rwanda”, *International Review of the Red Cross*, Vol. 85, No. 852, 2003.

and perspective-taking. People lack trust, there is no feeling of shared responsibility and irrational fears fuel sectarianism.<sup>53</sup>

There is empirical confirmation of such impacts on the families of the missing. Clark interviewed families of the missing in Bosnia, noting that they were traumatized and not able to easily open up to others, despite such openness being one of the prerequisites for reconciliation.<sup>54</sup> This suggested an end to trauma – and implicitly the need for an answer about the missing – as a prerequisite to acknowledging victims of the “other side”. The issue of missing persons also exacerbates the problem of inter-ethnic mistrust, as relatives of the missing insist that neighbours and community members from other ethnic groups are wilfully withholding information.

Stockwell writes that families who have experienced enforced disappearance are defined by the powerful and ever-present fear of their loved ones being forgotten, and it is this fear that can at times deny any other viewpoint apart from their own.<sup>55</sup> For many, what remains of their sense of loss is an overpowering sense of uncertainty, vulnerability, survivor guilt and shame. As a result, through recreating the lives of their disappeared for over forty years in the public sphere, families maintain their suffering and loss as a fundamental part of who they are, feeling that there is no other place they can belong. Finding genuine empathy for the “other” is thus made extremely difficult because of the families’ strong identification with the disappeared, bringing with it an ongoing internal repression and a dismissal of any dissonant discourse.<sup>56</sup>

In the Bosnian context, O’Sullivan shows how family members cannot “move past the feelings of fear and mistrust towards the perceived perpetrators’ ethnic group” because of the lack of results of mechanisms for both finding all the missing and prosecuting perpetrators.<sup>57</sup> Families are “stuck” in the past, both in a personal sense, in being unable to grieve the loss of a loved one, and politically, continuing to define a particular ethnic group as the enemy. This demonstrates the impact on families of the missing of the temporal confusions of having an absent relative, linked to the stasis that ambiguous loss induces.<sup>58</sup> O’Sullivan shows family members resisting efforts by the International Commission on Missing Persons to bring families of the missing together across ethnic groups.<sup>59</sup>

The individual and familial impacts of missing persons are often replicated at the wider societal level, particularly in communities where the number of missing is high or where the issue is leveraged and highlighted for political reasons. Salih and Samarasinghe, for example, report that in Sri Lanka,

53 H. F. Königstein, above note 39, p. i.

54 J. N. Clark, above note 10.

55 J. Stockwell, above note 26.

56 *Ibid.*, p. 145.

57 Maeve O’Sullivan, “Missing Persons, Missing Peace: The Role of the War-Related Missing Persons in Post-Conflict Bosnia-Herzegovina”, master’s thesis, American University of Paris, 2014, p. 57.

58 P. Boss, above note 24.

59 M. O’Sullivan, above note 57.

psychosocial impacts are evident not only at the individual level but also at the family and community levels. For example, abductions and enforced disappearances have reconfigured entire families and changed relations between extended families and across generations, and have impacted on larger collectives such as neighbourhoods and villages.<sup>60</sup>

Powerful collective memories about past violence, including disappearances, continue to heighten political and social tensions in a variety of contexts even decades later. Much of the power of these collective memories has been derived from the strong emotions they provoke,<sup>61</sup> as memory belongs in the “intermediary realm” between individuals; it develops and grows out of the interplay of interpersonal relations, and as such, emotions play an important role in this process.<sup>62</sup> While an investment in the retelling of stories about disappearances can reinforce their fixation on a past that keeps in place, and possibly deepens, their already traumatized State, these stories encompass a wider impact on those listening. Empirical evidence suggests that emotions tend to be socially shared. As families repeatedly talk about the stories of their relatives going missing, this private emotional experience feeds into collective memory through a social psychological process called the “social sharing of emotions”.<sup>63</sup> This process can contribute significantly to the ongoing polarization between parties to a conflict and can engender strong feelings in those listening, contributing towards a wider continuance of animosity and resentment over time. This results in a collective trauma that can rupture the basic tissue of social life and sense of community.<sup>64</sup>

## Unidentified bodies as a driver of conflict

For every person missing in conflict, there is likely an unclaimed body somewhere. The uncertainty experienced by families of the missing is mirrored by an uncertainty about human remains that can be instrumentalized politically, and as such, the bodies of missing persons can have significant implications for peace. Just as uncertainty over the fate and whereabouts of relatives drives ambiguous loss, so uncertainty around the bodies of the dead who correspond to the missing drive anxieties that may have political ramifications, including over their identity, who killed them and how they died.

60 Maleeka Salih and Gameela Samarasinghe, “Families of the Missing in Sri Lanka: Psychosocial Considerations in Transitional Justice Mechanisms”, *International Review of the Red Cross*, Vol. 99, No. 905, 2017, pp. 515–516.

61 Jill Stockwell, “‘The Country that Doesn’t Want to Heal Itself’: The Burden of History, Affect and Women’s Memories in Post-Dictatorial Argentina”, *International Journal of Violence and Conflict*, Vol. 8, No. 1, 2014.

62 Jan Assman, *Religion and Cultural Memory: Ten Studies*, trans. Rodney Livingstone, Stanford University Press, Stanford, CA, 2006, p. 3.

63 Bernard Rimé and Véronique Christophe, “How Individual Emotional Episodes Feed Collective Memory”, in James Pennebaker, Dario Paez and Bernard Rimé (eds), *Collective Memory of Political Events: Social Psychological Perspectives*, Routledge, New York, 1997, p. 133.

64 J. Stockwell, above note 61.

The implication of unidentified and formally unmourned bodies became most visible in the lead-up to the wars in the former Yugoslavia in the 1990s, where, in Bosnia, Serbia and Croatia, the nameless dead of the Second World War contributed to the triggering of new conflicts. During the Second World War, victims from all sides were thrown into caves or buried in shallow mass graves.<sup>65</sup> Verdery has reported that as the Yugoslav regime began to weaken in the late 1980s, those who knew where their dead lay began opening graves and giving the victims proper burials.<sup>66</sup> Nationalist politicians then used these events to advance a nationalist agenda, possible only due to the uncertainty over who these individuals were and how they died. Verdery reports this as the State “having ‘collectivized’ and nationalized the dead”,<sup>67</sup> representing the explicit instrumentalization of those who had not been appropriately laid to rest in order to drive ethnic conflict. Retrieving and reburying these nameless bones – and consecrating the respective space as “ours” – marked the territory of Yugoslavia’s ethnically defined successor States and made the nameless dead an intrinsic part of both State-building and peacebuilding.

This highlights the important links between what is considered “proper burial” and the transition from living to dead. Every missing person who is dead represents a violation of social and cultural norms over the treatment of the dead,<sup>68</sup> with all the social ramifications that this implies. Even where the missing are known to be dead, where the body has not been subject to proper rituals this can drive social dislocation and threaten peace. In Timor-Leste, tens of thousands died “bad deaths” in relation to the 1975–99 conflict and as a result have not been laid to rest with appropriate ritual.<sup>69</sup> As noted above, this drives concerns about the spiritual implications of disappearances, including impacts on animals, agriculture and the health of family members, where ritual demands are not satisfied.<sup>70</sup> A failure to treat remains and address the spirits of the dead appropriately has been blamed for post-independence violence along ethnic lines in Timor.<sup>71</sup> The memory and trauma of the missing are relevant in all contexts, even where such a spiritual interpretation is not made, as Zembylas reports in Cyprus:

These are the ghosts of disappeared victims of war and dictatorship, and they return through remembrance practices and rituals that serve as constant reminders of the disappeared victims’ unresolved ontological status. ... It is not surprising, then, that societies struggling to come to terms with the unresolved issue of the disappeared are often deeply divided when it comes to what the disappeared represent in collective memory, what constitutes

65 K. Verdery, above note 32.

66 *Ibid.*

67 *Ibid.*

68 *Ibid.*

69 Judith Bovensiepen, “Paying for the Dead: On the Politics of Death in Independent Timor-Leste”, *Asia Pacific Journal of Anthropology*, Vol. 15, No. 2, 2014.

70 S. Robins, above note 21.

71 *Ibid.*

justice in this case, and how a society can achieve (re)conciliation after such a traumatic experience.<sup>72</sup>

A particular challenge in addressing the missing are intentional efforts to make bodies difficult to identify, such as through means of identification being removed from corpses, commingling of human remains and deliberate hiding or transfer of remains. Some scholars have concluded that such behaviour was seen in Bosnia, where secondary gravesites were common for victims of the Srebrenica massacre.<sup>73</sup> This intentionality intensifies a survivor's distress and deepens emotional and psychological trauma;<sup>74</sup> in conjunction with the lack of closure intrinsic in the situation of the missing, this makes it extremely difficult for those from opposite sides of conflict to trust one another in post-conflict societies.<sup>75</sup>

### Politicization of the missing issue as an obstacle to peacebuilding

[I]ndividual experiences of trauma can translate into collective experiences, and thus into political formations. This process plays a crucial role in shaping processes of reconciliation and, in a more general sense, influences whether conflict or peace will prevail in the long run.<sup>76</sup>

One positive collective way for families of the missing to engage with trauma is through the solidarity of peers, as in a family association (FA). However, traumatic events can also be used by political projects that marginalize empathy and reconstitute the exclusions and prejudices that drive conflict. This has been seen in multiple contexts where the issue of the missing – and the trauma that it drives – is leveraged by political actors to maintain or prolong antagonism to the “other” of conflict and mobilize concerned constituencies. Zembylas defines this as “the nationalization of mourning by the nation-state [which] constructs forgiveness as an almost impossible or even dangerous idea”.<sup>77</sup> This demonstrates the choices that States and politicians can make when confronting the missing, either seeking to encourage extended grief for political benefit or facilitating the process of mourning by providing families with answers wherever possible, or social recognition of their loss where it is not.<sup>78</sup> This echoes how the deaths of soldiers are portrayed in many contexts, where the deceased is framed as belonging not only to their family, but to broader society: “[t]he parents and the

72 Michalinos Zembylas, “Pedagogies of Hauntology in History Education: Learning to Live with the Ghosts of Disappeared Victims of War and Dictatorship”, *Educational Theory*, Vol. 63, No. 1, 2013, pp. 71–72.

73 Laurie Vollen, “All that Remains: Identifying the Victims of the Srebrenica Massacre”, *Cambridge Quarterly of Healthcare Ethics*, Vol. 10, No. 3, 2001.

74 Behnam Behnia, “Trust Building from the Perspective of Survivors of War and Torture”, *Social Service Review*, Vol. 78, No. 1, 2004.

75 *Ibid.*

76 *Ibid.*, p. 390.

77 Michalinos Zembylas, “Mourning and Forgiveness as Sites of Reconciliation Pedagogies”, *Journal of Bioethical Inquiry*, Vol. 8, No. 3, 2011, p. 260.

78 M. S. Craig Evan Pollack, “Intentions of Burial: Mourning, Politics, and Memorials following the Massacre at Srebrenica”, *Death Studies*, Vol. 27, No. 2, 2003.



deceased soldier-child become a symbol of sacrifice, and their personal and social grief intertwines".<sup>79</sup> The private trauma of loss and its socio-cultural environment intersect, with one influencing the other and both being discursively framed by the narratives spun around that loss.

Political projects that seek to exploit the missing issue do so by enabling the construction of community on the basis of the victimhood that is evidenced by the trauma of absence. Such an identity is constructed on the compelling basis of the emotional salience of disappearance, individually and collectively. The other form of identity that can be built is on a foundation of empathy and compassion, across the divide of the conflict and on the basis of the shared experience of families, which sees traumatic experience as the basis for solidarity rather than hatred. The strength of feeling around the missing, in terms of both individual and community perspectives, has been politically exploited in multiple contexts, and some examples of this are discussed below.

### *Cyprus: Politicizing victimhood*

In Cyprus, the missing issue has been demonstrated in a number of studies to be highly politicized by both parties, and on occasion framed as the purest representation of righteousness and victimhood against a perceived aggressor,<sup>80</sup> to the extent that its continuation is politically critical to some actors. Scholars have suggested that the image of a mother or wife dressed in black and holding a photo of her missing loved one is a powerful symbol of suffering. While some of the Cypriot missing were declared to be dead shortly after the end of active conflict, for many this was not done, ensuring that ambiguity over their fate persists. The ongoing nature of the issue has been used to chastise the other party in international forums, with the suggestion that authorities are withholding information and the implication that some of the missing may still be detained. Sant Cassia describes this as a purely political calculation, despite the costs in preventing healing for families.<sup>81</sup> One scholar has described how efforts to engage with the issue have become defined by propaganda, at the expense of victims, with "memorialization of the missing focused not on bereavement but on social and political gains to set the national agenda".<sup>82</sup>

79 Ruth Malkinson and Liora Bar-Tur, "The Aging of Grief: Parents' Grieving of Israeli Soldiers", *Journal of Personal & Interpersonal Loss*, Vol. 5, No. 2-3, 2000, p. 257.

80 See e.g. Christalla Yakinthou, "The Quiet Deflation of Den Xehno? Changes in the Greek Cypriot Communal Narrative on the Missing Persons in Cyprus", *Cyprus Review*, Vol. 20, No. 1, 2008.

81 Paul Sant Cassia, *Bodies of Evidence: Burial, Memory and the Recovery of Missing Persons in Cyprus*, *New Directions in Anthropology*, Vol. 20, Berghahn Books, Oxford, 2005; Apostolos Papapostolou, "Court Ruling Awards Compensation to Family of Missing Person", *Greek Reporter*, 8 November 2010, available at: <https://greekreporter.com/2010/11/08/court-ruling-awards-compensation-to-family-of-missing-person/>.

82 Michalinos Zembylas, "Personal Narratives of Loss and the Exhumation of Missing Persons in the Aftermath of War: In Search of Public and School Pedagogies of Mourning", *International Journal of Qualitative Studies in Education*, Vol. 24, No. 7, 2011.

### *Kosovo: Dialogue dependent on addressing the missing*

Throughout the Balkans, reconciliation between communities impacted by the conflict continues to be limited. Some progress has been made in accounting for missing persons, but this has not translated into deep reconciliation or the building of inter-ethnic and institutional trust.

In northern Kosovo, where Serb and Albanian communities are adjacent, there are several major issues dividing communities – not least the status of Kosovo as a (majority Albanian) State<sup>83</sup> – but the missing issue remains key, alongside antagonistic understandings of the past. The lack of a comprehensive process to address the issue of the missing, including limited criminal accountability, leads to neither community being willing to recognize the other's status as a victim, and this becomes a mechanism for justifying violence. When discussing reconciliation, the issue of missing persons is often among the first and most pressing concerns raised by both Serb and Albanian communities, and political authorities have used the lack of progress on this issue to put a brake on dialogue, with negotiators highlighting the issue of missing persons as one of the main issues still to be resolved between Serbia and Kosovo.<sup>84</sup>

### *Bosnia: The missing as an obstacle to a post-ethnic society*

O'Sullivan has described Bosnian society's "inability to progress past the divisive missing persons issue to a liberal, pluralistic, unified society",<sup>85</sup> characterizing the issue of the missing as the principal obstacle to peace and democracy. Her research suggests that the deep personal antagonism of families of the missing to the ethnic "other" was stronger where a loved one remained missing:

[D]istrust and hostility against the other communities were felt stronger by family members where the missing person had not been found. ... If you look at the reintegration of returnees in [Bosnia and Herzegovina], those that enter back into an area where the missing persons issue has been dealt with or if their own missing relative has been recovered, there is a much higher level of successful reintegration.<sup>86</sup>

The chairman of the Bosnian Missing Persons Institute has echoed this, stating:

Without an effectiveness and quality in solving the missing persons' cases, it is hard to expect a return of the trust between the people in Bosnia-Herzegovina. Return of [this] trust is a key factor in bringing ... stability and full cooperation [to] the country and the region.<sup>87</sup>

83 L. Burema, above note 45, p. 7.

84 *Ibid.*, p. 23.

85 M. O'Sullivan, above note 57, p. 51.

86 *Ibid.*, p. 60.

87 Amor Masović, testimony given to US Commission on Security and Cooperation in Europe, p. 4, available at: [www.scribd.com/document/679903047/Amor-Masovic-Testimony-to-US-Congress](https://www.scribd.com/document/679903047/Amor-Masovic-Testimony-to-US-Congress).

Researchers have found that the issue of missing persons is used by politicians, who make unrealistic promises in their efforts to have FAs support their campaigns.<sup>88</sup> This, combined with the lack of a universally accepted number of missing persons in Bosnia, has provided a space for the issue of missing persons to be leveraged by some political actors in order to advance narrow agendas, empowered by divergent understandings of the conflictual past.<sup>89</sup>

In her interviews with family members of the missing, O'Sullivan noted that manipulation by politicians on the missing persons issue was seen as the second-greatest hindrance to reconciliation, after the failure to recover the missing.<sup>90</sup> The trauma of having a missing relative that enables this situation is being seen to be passed on to the youth in Bosnia, with some family members stating that their FA "will exist until the last victim has been found. If we die, then the younger [generation] will continue." This echoes how collective trauma is defined and perpetuated.<sup>91</sup>

## Addressing missing persons: Evidence of peacebuilding impact

The salience of the issue of the missing – both in emotional terms for the families and communities impacted, and politically – makes the issue not only one that can challenge peace processes and reconciliation, but also one that can serve to advance them. Sant Cassia has written that the case of the missing in Cyprus "raises issues of the allocation of responsibility and culpability, and the tension between civic-political transparency and ethnic responsibility, but is also a means to talk about the past, present and future".<sup>92</sup> The missing can thus serve as a platform for engagement between parties emerging from conflict, and this engagement can occur at multiple levels. These can include families themselves, who can build identities, solidarities and meanings that transcend nationalist politics. But it can also include authorities, who can use the missing to engage, potentially beginning from those cases where accountability and blame are less relevant, such as those of prisoners of war and soldiers missing in action – issues where all parties can benefit from engagement.

In the following sections, the potential for the missing issue to be a platform for advancing peacebuilding is discussed.

### Families of the missing and peacebuilding

Families of the missing, particularly when organized in FAs, represent one of the few routes to linking the individual and personal experience of families with the meso and macro levels of their communities and States, as well as international actors.

88 M. O'Sullivan, above note 57, p. 62.

89 *Ibid.*

90 *Ibid.*, p. 63.

91 *Ibid.*, p. 64.

92 P. Sant Cassia, above note 81, p. 22.

Whilst IHL does not assign a role for families in addressing the issue of missing persons, focusing rather on the obligations of the parties to the conflict, it articulates a logic that puts families at the centre of such action. FAs can both provide individual and mutual support to families and raise awareness and advocate for State responses to the needs of families.<sup>93</sup> More than this, FAs can advocate to the general public, with peacebuilding implications, such as through memorial activities and the telling of public truths. FAs have played a crucial role in the creation and fostering of solidarity among victims and within society. One important way in which FAs can support peacebuilding is by bringing together families from across the conflict divide in order to build mutual trust and solidarity that can break down traditional enmities and suspicions.

There is a legacy of significant achievement by FAs, including catalysing the creation of truth commissions or other types of truth-telling bodies (notably in Latin America)<sup>94</sup> – and even driving the creation of international law prohibiting enforced disappearance.<sup>95</sup> For example, the Argentine human rights activists that emerged from the movement of families against disappearance were especially involved in the Inter-American Commission on Human Rights, and Argentine activists and their allies helped to create the UN Working Group on Enforced and Involuntary Disappearances.<sup>96</sup> The Argentine FAs played a crucial role in drafting first the declarations against forced disappearances and later the regional and international conventions on the issue.<sup>97</sup>

## Contact between families across the divide of conflict as intergroup dialogue

In societies where communities are divided by legacies of conflict, the families of the missing have reasons to build relations across that divide. Since they seek information about the missing that can only come from the other party, families are directly incentivized to engage with the “other” by the need to find answers. In many cases, they also seek to ensure that their suffering is not repeated and can challenge the nationalization of mourning for the missing to serve narrow political agendas with direct contact between affected family members across the divide of the conflict. Families of the missing can sympathize with similarly affected families in the other community and facilitate dialogue, which can result in a broader interaction. Zembylas, writing on Cyprus, notes that

93 Lisa Ott and Natacha Hertig, *Family Associations of Disappeared and Missing Persons: Lessons from Latin America and Beyond*, Swisspeace, Bonn, 2020.

94 Valeria Vegh Weis, “Exploring the World’s First Successful Truth Commission: Argentina’s CONADEP and the Role of Victims in Truth-Seeking”, *Journal of Human Rights Practice*, Vol. 15, No. 1, 2023.

95 Ariel E. Dulitzky, “The Latin-American Flavor of Enforced Disappearances”, *Chicago Journal of International Law*, Vol. 19, No. 2, 2018, p. 423.

96 Emilio F. Mignone, *Derechos humanos y sociedad: El caso argentino*, Centro de Estudios Legales y Sociales, Buenos Aires, 1991.

97 Kathryn Sikkink, “From Pariah State to Global Protagonist: Argentina and the Struggle for International Human Rights”, *Latin American Politics and Society*, Vol. 50, No. 1, 2008.

the recognition that mothers and wives from the other side have also suffered provide[s] a “small opening” ... [which] constitutes a profound *pedagogical moment*; a moment that can teach us something deeply meaningful and valuable about how to construct paths that may gradually build reconciliation.<sup>98</sup>

Butler suggests that shared vulnerability and experience can be the point of departure for a renewed politics of relationality.<sup>99</sup> Contact between families of the missing represents precisely this relationality and as such can be a site for resistance to the instrumentalization of mourning for the missing through a deeply personalized and empathic approach to grief that can serve as a bridge between communities in conflict.

FAs can address conflict in non-violent ways that are rooted in solidarity, and the building of civil society can foster non-sectarian, liberal ideologies that counter the nationalist narratives that drive conflict. In Bosnia, some FAs have grasped the need for both mutual recognition of other FAs and for a degree of intergroup dialogue and cooperation: they understand the need to collaborate.<sup>100</sup> As such, they represent – and have done since the time of conflict – an effort to use their shared and terrible experience of loss as a reason to build relations across the divide of conflict rather than to maintain antagonism.<sup>101</sup>

In Nepal, victims’ groups are identity-based social movements that serve as a source of solidarity among victims with the capacity to create as well as mobilize a victim community, redefining understandings of who is a victim and how victimhood is perceived. Original victims’ groups were firmly rooted in political attachment to one or the other side of the internal conflict, but the victims’ movement that now represents them has defined a new identity beyond political parties that sees the families of the missing identify as such, regardless of the perpetrator. In contrast to the situation in Bosnia, victims represent not a bridge between the two sides of the conflict but a rejection of the politics that led to conflict, and in this context, the victims’ movement – led by families of the missing – has served to give birth to a new generation of activists seeking peace and justice.<sup>102</sup>

The relationships that families of the missing build across the divide of conflict are a powerful example for their societies, and messages of reconciliation delivered by families are seen to have a transformative potential precisely because families have suffered and because in many contexts, they have been instrumentalized politically as examples of why the “other” must be vilified.

98 M. Zembylas, above note 77, p. 258 (emphasis in original).

99 Judith Butler, *Precarious Life: The Powers of Mourning and Violence*, Verso, New York, 2004.

100 Valentina Gentile, “Civil Society in Bosnia after Dayton: The Role of the Associations of Victims and Relatives of Missing Persons”, in Raffaele Marchetti and Nathalie Tocci (eds), *Conflict Society and Peacebuilding*, Routledge India, New Delhi, 2020.

101 Maria O’Reilly, *Gendered Agency in War and Peace: Gender Justice and Women’s Activism in Post-Conflict Bosnia-Herzegovina*, Springer, Berlin, 2018.

102 See e.g. UN Women, “Gita Rasaili: A Woman of Courage Rebuilds Her Life in Nepal”, 22 March 2011, available at: <https://asiapacific.unwomen.org/en/news-and-events/stories/2011/3/gita-rasaili-a-woman-of-courage-rebuilds-her-life-in-nepal>.

## Conflict parties' engagement with the missing as a route to peacebuilding

The search for missing persons and the efforts to uncover the truth about their fate can also be a powerful driver of reconciliation. By acknowledging the suffering of families and communities affected by conflict, and by working to provide them with answers and closure, governments and societies can demonstrate a commitment to addressing past wrongs and building a more just and equitable future. Efforts to locate and identify missing persons can also provide an opportunity for dialogue and collaboration between different groups, helping to build trust and promote understanding across divides. As such, the search for missing persons can serve as a catalyst for broader efforts at reconciliation, bringing together different stakeholders and fostering a shared sense of responsibility for the past and the future.

During and immediately after conflict, parties to conflict – including both States and non-State actors – remain reluctant to engage with the other party to the conflict. However, there are indications that they are more likely to engage around issues of the missing – of concern to both sides – than other potentially more contentious areas. In particular, some elements of a missing file – such as prisoner exchanges<sup>103</sup> or dead soldiers whose remains have not been identified – carry little cost for parties. In catalyzing engagement between parties, this is a potential route to advancing peacebuilding, by building confidence and trust that can lead to other, potentially deeper engagements. Relevant processes include both informal engagements and the more formalized process of working groups and other more institutionalized mechanisms. There are several conceptual lenses on how such engagement between parties over the issue can advance peacebuilding, and these are discussed below.

*The missing as a “joint gain” for both parties:* Negotiation is not about maximizing individual gain but about looking for a “joint gain” for all parties. The missing is an issue where there is potential for States and others to benefit both themselves and the other party, in terms of giving families and communities – potential key constituencies for political leaders – answers about the missing, without compromising their own interests. There are clear limits to this – in terms of political and military leaders seeking to avoid accountability where crimes have been committed – but it still permits an addressing of at least some of the missing, or the delivery of truth pending justice processes.

*Discussion of the missing as a confidence-building measure:* A minimal degree of confidence in each other and in the negotiation process is required for actors in conflict to negotiate mutually acceptable outcomes.<sup>104</sup> Confidence-building measures (CBMs) are actions negotiated, agreed and implemented by

103 It should be noted that prisoners of war are only understood as missing where processes of detainee registration and/or information exchange with the other party are inadequate.

104 Simon J. A. Mason and Matthias Siegfried, “Confidence Building Measures (CBMs) in Peace Processes”, in African Union, *Managing Peace Processes: Process Related Questions. A Handbook for AU Practitioners*, Addis Ababa, 2013.

parties that do not focus on the root cause of conflict but that serve to prevent escalation, deepen negotiations and consolidate the process. The release of information on the missing – in analogy with prisoner exchanges – has been seen as precisely such a “social CBM”.<sup>105</sup> This is particularly valuable when those engaged with the conflict, including States, non-State parties and individuals involved in the fighting, use their knowledge and other resources to address missing cases. In such a situation this can go beyond confidence-building and serve to enhance coexistence and reconciliation across conflict divides.

*The missing as a sustainer of long-term engagement:* In many chronic and “frozen” conflicts, parties remain reluctant to engage on more substantive issues but are prepared to engage around the missing. Such engagement can be informal or formalized, can potentially include a neutral third-party intermediary, and in many contexts constitutes one of very few spaces where parties sit together.

IHL is implemented in terms of finding the truth about the missing through dedicated mechanisms that typically bring together parties to conflict who can exchange information about missing persons, either confidentially or in a public forum.<sup>106</sup> IHL makes clear that the search for missing persons is “prompted mainly by the right of families to know the fate of their relatives”,<sup>107</sup> and as such, mechanisms will often ensure that issues such as accountability are pursued independently of the search, as a purely humanitarian endeavour. Bringing parties to conflict together in such a space can be a valuable way of building confidence and relationships that can be leveraged to discuss broader issues, including that of peace. There remains a need to collect data that can confirm this hypothesis.

## **Conclusion: The impact of addressing the missing issue on peacebuilding – a research agenda**

This initial discussion of the links between addressing the issues of missing persons after armed conflict, as demanded by the obligations of IHL, and the building of sustainable peace has outlined both conceptual understandings and the limited data that exist, both of which suggest a causal pathway between them. A research agenda has been outlined, in terms of a number of areas where additional research would enhance understanding of such links.

Conceptually, the links between missing persons and peace are clear. It has been shown that the ambiguous loss that results from having a missing relative is a trauma with individual, familial and community impacts that can be effectively exploited to maintain antagonism towards the “other” of conflict.<sup>108</sup> Missing persons can in particular be constructed as a collective, ongoing and potentially never-ending trauma, and instrumentalized politically on this basis. What has

<sup>105</sup> *Ibid.*

<sup>106</sup> ICRC, above note 12.

<sup>107</sup> ICRC Customary Law Study, above note 6, Rule 117, citing AP I, Art. 32.

<sup>108</sup> J. Stockwell, above note 4; S. Robins, above note 4.

been called a “nationalization of mourning” remains highly relevant for the missing even where their fate and whereabouts remain unknown, enabling the construction of community on the basis of the victimhood that is evidenced by the trauma of absence. There are numerous examples of the missing being memorialized on the basis of political agendas that maintain antagonism towards the “other” while actively challenging the effective coping of affected families. This becomes particularly important in a global environment where almost all conflicts are either chronic and ongoing or are the recurrence of previous conflicts, where the unerasable memory of the missing of the past is used to continue conflict in the present. Such trauma also impacts individual capacity to effectively reconcile, through impacts on cognitive skills and trust and through the stasis of ambiguous loss that keeps the time of conflict ever present for families of the missing. Empirical evidence of the importance to communities of an addressing of the missing issue for how they frame their attitudes to the “other” has been seen in multiple contexts. This has significant implications for reconciliation, for trust and, as a consequence, for political and social reconstruction, and sustainable peace. The normative framework of IHL – namely, that States and parties to the conflict must make every effort to ensure that families of the missing receive information about their fate and whereabouts – coincides with what is required to address the issue of missing persons in ways that minimize its potential to act as a driver of conflict.

There is also a clear conceptual path towards understanding the missing as an issue that can bring conflicting parties together in ways that no other issue can. In negotiations, the issue of addressing missing persons can offer a joint gain to both parties, be a confidence-building measure and sustain long-term engagement between the parties where other issues are too contentious. There remains, however, a need to build an empirical base of evidence to support this latter hypothesis.

The above represents a lens on an understanding of the links between the missing issue after conflict and peace that demands further investigation. The research agenda that emerges from this study suggests the following priority areas for further empirical research:

- how the issue of missing persons is used politically after conflict to advance antagonistic understandings of the “other”;
- what role families of the missing play in building relations across the divide of conflict and how they can contribute to changing negative attitudes to the “other” in their communities; and
- the role of mechanisms to address the missing in building confidence and good relations, and sustaining long-term engagement, between parties or former parties to conflict, particularly where other venues for engagement are limited.

It is hoped that effective knowledge production around these topics can demonstrate how approaches to the missing can create new avenues for advocacy with States and others about the importance of addressing the issue of missing persons after conflict, not only for their families but for broader society as well.