

## **Bosnia and Herzegovina: tracing missing persons**

Every war brings its share of missing persons, whether military or civilian. And every individual reported missing is then sought by a family anxiously awaiting news of their loved one. These families cannot be left in such a state of anguish. For the truth, however painful it may be, is preferable to the torture of uncertainty and false hope. In Bosnia and Herzegovina civilians were especially affected by a conflict in which belligerents pursued a policy of ethnic cleansing by expelling minority groups from certain regions. Thousands of people who disappeared in combat or were thrown into prison, summarily executed or massacred, are still being sought by their families.

### **What is a missing person?**

International humanitarian law contains several provisions stipulating that families have the right to know what has happened to their missing relatives and that the warring parties must use every means at their disposal to provide those families with information.<sup>1</sup> Taking these two cardinal principles in particular as a basis for action, the International Committee of the Red Cross (ICRC) has set up various mechanisms to assist families suffering the agony of uncertainty, even after the guns have fallen silent.

In any conflict the ICRC starts out by trying to assess the problem of persons reported missing. Families without news of their relatives are asked to fill out tracing requests describing the circumstances in which the individual sought was last seen. Each request is then turned over to the authorities with whom the person in question last had contacts. This working method means that the number of people gone missing does not

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<sup>1</sup> Articles 15, 16 and 17 of the First Geneva Convention of 1949; Articles 122 and 123 of the Third Convention; Articles 26 and 136 to 140 of the Fourth Convention; and Articles 32, 33 and 34 of Additional Protocol I of 1977.

correspond to the actual number of conflict victims — a gruesome count which the ICRC does not intend to perform. In Bosnia and Herzegovina, more than 10,000 families have so far submitted tracing requests to the ICRC or to the National Red Cross or Red Crescent Societies in their countries of asylum.

### **Agreements for Peace in Bosnia and Herzegovina**

In early 1995, following the cease-fire negotiated by former United States President Jimmy Carter, the ICRC brought the belligerents together on numerous occasions at Sarajevo airport and asked them to reply to the tracing requests that its delegates had gathered from families. The only practical result it achieved, however, was to be able to explain in detail what would constitute a credible and satisfactory reply.

Prior to the drafting of the General Framework Agreement for Peace in Bosnia and Herzegovina, which the parties negotiated in Dayton, Ohio, in autumn 1995, the United States consulted the main humanitarian organizations. With the ICRC it discussed the release of detainees and the tracing of missing persons. The first of these issues is dealt with in the Annex on Military Aspects of the Peace Settlement, and the second is covered in the Framework Agreement's provisions pertaining to civilians. Thus Article V, Annex 7, of the Agreement stipulates that: "The Parties shall provide information through the tracing mechanisms of the ICRC on all persons unaccounted for. The Parties shall also cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for". The terms of this Article take up and confirm the core principles of international humanitarian law.

The Framework Agreement also confers on the ICRC the task of organizing, in consultation with the parties involved, and overseeing the release and transfer of all civilian and military prisoners held in connection with the conflict. The ICRC performed this task in cooperation with the Implementation Force (IFOR) entrusted with carrying out the military provisions of the Framework Agreement.

### **ICRC action**

Despite resistance from the parties, over 1,000 prisoners were returned home. Throughout the operation, which lasted about two months, the ICRC firmly refused to link the release process with the problem of missing persons, just as it had refused to become involved in the reciprocity game the parties used to play during the conflict. The success of

the operation was also ensured by the international community, which was convinced that the ICRC was taking the right approach and pressured the parties to cooperate. Since many detainees had been withheld from the ICRC and were therefore being sought by their families, it was important to empty the prisons before addressing the issue of missing persons.

On the basis of the General Framework Agreement for Peace in Bosnia and Herzegovina, the ICRC thus proposed that the former belligerents set up a Working Group on the Process for Tracing Persons Unaccounted for in Connection with the Conflict on the Territory of Bosnia and Herzegovina — a convoluted title reflecting the nature of the political negotiations that led to the establishment of this body. While the parties endorsed the proposal itself, they engaged in endless quibbling over the wording of the Rules of Procedure and of the Terms of Reference drafted by the ICRC. Nevertheless, the Working Group, which is chaired by the ICRC, has already met three times in the Sarajevo offices of the High Representative for Bosnia and Herzegovina<sup>2</sup> in the presence of the ambassadors of the Contact Group on Bosnia and Herzegovina,<sup>3</sup> the representative of the presiding member of the European Union<sup>4</sup> and the representatives of Croatia and the Federal Republic of Yugoslavia. These meetings were also attended by IFOR and the United Nations Expert on Missing Persons in the Former Yugoslavia.<sup>5</sup>

Despite numerous plenary and bilateral working sessions, it has not been possible to bring the parties to agree on matters of participation and representation (the question under discussion is whether or not the former belligerents are the same as the parties that signed the Framework Agreement) or formally to adopt the Rules of Procedure. However, these Rules have been tacitly agreed on in the plenary meetings, making it possible to begin practical work: more than 10,000 detailed cases of persons

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<sup>2</sup> Former Swedish Prime Minister Carl Bildt's appointment to this post was confirmed by the United Nations Security Council shortly before the General Framework Agreement for Peace in Bosnia and Herzegovina was signed in Paris on 14 December 1995. Just as IFOR, which is made up of NATO troops and Russian troops, is entrusted with implementing the military provisions of the Framework Agreement, so it is the task of the High Representative to implement the Agreement's provisions pertaining to civilians.

<sup>3</sup> France, Germany, the Russian Federation, the United Kingdom and the United States.

<sup>4</sup> Italy at the time of writing.

<sup>5</sup> Manfred Nowak, who in 1994 was appointed by the UN Commission on Human Rights as the Expert in charge of the Special Process on Missing Persons in the Territory of the Former Yugoslavia.

reported missing by their families have already been submitted to the parties, which must now provide replies.

In a remarkable departure from the procedure normally followed in such cases, the Working Group has adopted a rule whereby the information contained in the tracing requests, as well as the replies that the parties are called on to provide, are not only exchanged bilaterally between the families and the parties concerned through the intermediary of the ICRC, but are also communicated to all the members of the Working Group, that is, to all the former belligerents, and to the High Representative. Such a policy of openness is meant to prevent further politicization of the issue and the ICRC intends to pursue it, in particular by issuing a gazette that lists the names of all missing persons and by publishing these names on the Internet. This should prompt possible witnesses to approach the ICRC with confidential information concerning the fate of individuals who have gone missing, which the organization could then pass on to the families concerned.

Indeed, after every war families seek news of missing relatives and the settlement of this question is always a highly political issue. One reason is that for a party to provide information is to admit that it knows something, which may give it the feeling that it is owning up to some crime. Another reason is that the anguish of families with missing relatives is such that they generally band together and pressure their authorities to obtain information from the opposite party, which may be tempted to use these families to destabilize the other side.

### **The issue of exhumations**

As the tragic result of more than three years of conflict, Bosnia and Herzegovina is strewn with mass graves in which thousands of civilians were buried like animals. The graves in the region of Srebrenica are a horrifying example. Displaced families in Tuzla interviewed by the ICRC allege that more than 3,000 people were arrested by Bosnian Serb forces immediately after the fall of the enclave in mid-July 1995. Since the authorities in Pale have persistently refused to say what happened to these people, the ICRC has concluded that all of them were killed.

Families now wish to recover the bodies of their missing relatives in the wild hope of being able to identify them. Before this can be done, however, an *ante mortem* database<sup>6</sup> must be set up so as to have a pool

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<sup>6</sup> A database containing all pertinent medical information that can be obtained from families with missing relatives.

of information with which forensic evidence can later be compared. Between the two operations, the bodies must be exhumed, knowing that most of the mass graves in Bosnia and Herzegovina are situated on the other side of ethnic boundaries, which prevents families and the relevant authorities from gaining access to them.

Families are also demanding that justice be done. That is the role of the International Criminal Tribunal for the Former Yugoslavia, set up by the United Nations Security Council while the fighting was still raging in Bosnia and Herzegovina. The Tribunal intends to exhume a number of bodies to establish the cause of death and gather evidence and proof of massacres. However, it is not the Tribunal's responsibility to identify the bodies or to arrange for their proper burial.

Between the families' need and right to know what has become of their missing relatives, and that justice must be done, lie thousands of bodies in the mass graves. While it would probably be unrealistic to imagine that all the bodies buried in Bosnia and Herzegovina could ever be exhumed and identified,<sup>7</sup> the moral issue of their proper burial must still be addressed. Without the cooperation of the former belligerents and of IFOR, however, all discussion remains purely theoretical. Only when people have peace in their hearts and when justice has been done will thoughts of revenge be forgotten and belief in peace and justice be restored in every individual and every community.

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<sup>7</sup> According to the forensic experts of the American organization, *Physicians for Human Rights*, who exhumed bodies for the International Criminal Tribunal that was set up following the horrific massacres in Rwanda, the success rate for identifying remains exhumed from a grave containing several hundred bodies is no higher than 10 to 20 per cent, providing a detailed *ante mortem* database is available.