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International Law on Missing Persons: Normative Foundations and Contemporary Significance**

ABSTRACT

The article examines the emergence of a new field of international law: *missing persons law*, comprising a body of binding and non-binding norms, and a sophisticated governance architecture involving diverse actors and institutions. It argues that, while the problem of missing persons remains acutely relevant in today's turbulent world, contemporary developments in international law support identifying missing persons law as a distinct field at the global level. The article further makes the case for consolidating an *international law of missing persons* as a separate branch of international law, and contends that future norm development should be informed by critical approaches, including Third World Approaches to International Law (TWAIL), and feminist legal theory.

Keywords: missing persons, armed conflict, right to know, enforced disappearance, new area of law

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I. Introduction

The 2025 Oscars Awards spotlighted numerous films from Central and South America, a region historically marked by the tragic legacy of enforced disappearances. Among them, two standout films directly engage with the issue of missing persons and the enduring anguish faced by their loved ones. In both, characters draw powerful parallels between disappearance and a form of existential punishment. In *Emilia Pérez*,¹ the main heroine declares, “Losing a loved one is a tragedy; losing their remains is a condemnation.” Similarly, in *I’m Still Here*,² Eunice (a character based on the real-life figure Eunice Paiva) tells journalists, “Enforced disappearance kills one person, but condemns all the others to eternal psychological torture.”

Against this backdrop, the present article analyzes the international legal framework concerning missing persons. It explores the protections currently provided under international law to prevent persons going missing, and, when this occurs, to ensure efforts to trace, recover, identify, and return the remains to their families, while guaranteeing that families are meaningfully included throughout the process.

After establishing that the issue of missing persons remains a pressing concern for the international community, largely due to its global nature, the article first examines the relevant legal and institutional frameworks on missing persons, alongside the jurisprudence of international courts and tribunals. It then argues that the law on missing persons is emerging as a distinct branch of international law, shaped through transnational legal processes in which states, as well as a range of other actors, play a formative role. The article also offers an analysis of how this field has developed, drawing on critical theories of international law.

1. The Issue

Both the international community and national authorities remain committed to addressing the issue of missing persons, which has become an increasingly salient concern in contemporary contexts.³ Families are often left without information about the fate of their relatives and must navigate profound uncertainty. The primary con-

¹ “*Emilia Pérez*” in Internet Movie Database <<https://www.imdb.com/title/tt20221436/>> [30.01.2026].

² “*I’m Still Here*” (Original title: “*Ainda Estou Aqui*”) in Internet Movie Database <<https://www.imdb.com/title/tt14961016/>> [30.01.2026].

³ According to the latest estimate of the International Committee of the Red Cross (ICRC), the number of people registered as missing by the International Red Cross and Red Crescent Movement worldwide has increased by nearly 70 per cent over the past five years to about 284,000, driven by growing numbers of conflicts, mass migration, and fading respect for the rules of war. See <<https://www.icrc.org/en/news-release/missing-people-registered-increased-70-percent-five-years>> [30.01.2026].

cern is whether missing persons are alive or deceased, followed by the legal, social, and psychological consequences associated with prolonged absence or confirmed death, as well as the enduring question of the circumstances and causes of disappearance.

Individuals may be reported missing for a variety of reasons, including enforced or involuntary disappearance (such as abduction), natural disasters, and migratory movements.⁴ In situations of armed conflict or internal violence, heightened insecurity and social disruption frequently lead to separation and disappearance among both civilians and members of the armed forces.⁵

From the outset, it should be emphasized that the issue of missing persons is fundamentally humanitarian in nature. Accordingly, measures aimed at preventing disappearances, clarifying fate and whereabouts, and supporting affected families, should be implemented without discrimination,⁶ as families experience comparable harm regardless of nationality or affiliation with parties to a conflict.

2. Key Definitions

In international law, there is no single, unified definition of a “missing person.”⁷ The International Commission on Missing Persons (ICMP) offers a broad understanding, suggesting that, at a minimum, a missing person is anyone who needs to be located for reasons beyond that person’s control.⁸ People may go missing in a wide range of contexts. The ICMP notes that the causes may include, *inter alia*, armed conflict, human rights violations, natural and man-made disasters, transnational crimes (such as drug trafficking or trafficking in human beings), as well as migration.⁹

By contrast, the International Committee of the Red Cross (ICRC) argues in favor of a more specific definition, and provides the following formulation: a missing person is someone whose whereabouts are unknown to his or her relatives and/or who, on the basis of reliable information, has been reported missing in accordance with national legislation, in connection with an international or non-international armed conflict, a situation of internal violence or disturbances, natural catastro-

⁴ World Population Review, *Possible Reasons an Individual May Go Missing*. See <<https://worldpopulationreview.com/country-rankings/missing-persons-statistics-by-country/>> [30.01.2026].

⁵ Hamadeh et al., 2022, 29-34, 59-63, 95-99.

⁶ In the context of armed conflict, “discrimination” is referred to as “adverse distinction”. For more details on similarities between these two notions, see: Dvaladze, 2022, 411-434.

⁷ La Vaccara, 2019, 21-25.

⁸ ICMP, Who Are the Missing? <<https://icmp.int/the-missing/who-are-the-missing/>> [30.01.2026].

⁹ Ibid.

phes, or any other situation that may require the intervention of a competent state authority.¹⁰

On the basis of the ICRC definition, several elements must be satisfied for a person to qualify as a “missing person” in legal terms. First, the person’s whereabouts must be unknown to their relatives; alternatively, there must be reliable information indicating that the person has gone missing and has been reported missing in accordance with national legislation. Second, the disappearance must be linked to armed conflict (international or non-international), internal violence or disturbances, natural disasters, or another situation requiring the intervention of competent state authorities. In this sense, the ICRC definition is both narrow and broad: it is narrow because it sets identifiable criteria that must be met, yet broad because it contains a residual clause and therefore does not exhaustively list all situations in which a person may go missing.

The ICRC also addresses the meaning of “relative” of a missing person. It suggests that the general definition should be sufficiently wide to cover persons affected by the unknown whereabouts of the missing person, while acknowledging that particular provisions conferring specific rights may require a more restricted definition.¹¹ Subject to general rules on family relationships in existing law, and for the purposes of protection and assistance to the “relative(s)” of missing persons, the term should be understood to include: children born in and out of wedlock, adopted children and step-children, a lawfully wedded spouse or an unwedded partner, parents (including step-mother, step-father, and adoptive parents), and full, half, or adopted sisters and brothers.¹²

The definition of “relative” may also be broadened to reflect particular cultural contexts in which the notion of “family” extends beyond formal kinship ties, and which may include, for example, close friends.¹³ The rationale for broadening the scope of “relative(s)” is to avoid limiting participation in tracing processes to the immediate family alone. Where a person’s emotional and social ties to the missing individual indicate a relationship akin to family, that person should be able to engage with tracing and search efforts and to receive information, subject to any necessary legal safeguards.

For the purposes of this article, the author adopts the ICRC approach. Accordingly, references to “missing persons” and “relatives” should be understood in the sense articulated by the ICRC.

¹⁰ ICRC Advisory Service on International Humanitarian Law, Guiding Principles / Model Law, Art. 2, p. 7.

¹¹ *Ibid.*

¹² *Ibid.*, commentary to Art. 2, p.8.

¹³ *Ibid.*

Confusion at times arises between the concepts of missing persons and enforced disappearance. It should be noted that enforced disappearance refers to a specific form of conduct that may result in a person going missing. Its scope, however, is limited to the facts and circumstances defined in the relevant international instruments governing enforced disappearance.¹⁴ By contrast, the category of missing persons is considerably broader, and encompasses situations extending beyond enforced disappearance, including a wide range of other reasons for which a person may go missing. In essence, enforced disappearance may constitute one ground on which a person goes missing, but not every case of a missing person amounts to an enforced disappearance.

3. Legal Scholarship

To the best of the author's knowledge, no publication to date has addressed the issue of missing persons through a genuinely holistic approach, meaning one that covers the full range of legal questions arising across the field.

Nevertheless, international legal scholarship has produced several important works that illuminate particular dimensions of the issue. Among the earliest is Alessandra La Vaccara's *When the Conflict Ends, While Uncertainty Continues: Accounting for Missing Persons between War and Peace in International Law*,¹⁵ which examines the obligations of parties to an armed conflict to search for and trace missing persons, and to provide information to their relatives. Another seminal contribution on the same matter is Grażyna Baranowska's *The Rights of the Families of Missing Persons: Going Beyond International Humanitarian Law*,¹⁶ published in the *Israeli Law Review*. In addition, the *International Review of the Red Cross* has devoted two thematic volumes to related questions - *The Missing*¹⁷ and the more recent *Protection of the Dead*.¹⁸ These volumes examine specific issues concerning missing persons and the dead in the context of armed conflict. None of the above works, however, considers the issue of missing persons through a comprehensive analysis that aims to integrate all relevant legal aspects within a single framework.

¹⁴ See: International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006 (International Convention on Enforced Disappearance), Art. 2; Rome Statute of the International Criminal Court, 17 July 1998, (Rome Statute), Art. 7(1-i).

¹⁵ La Vaccara, 2019.

¹⁶ Baranowska, 25-49.

¹⁷ *International Review of the Red Cross*, 2017.

¹⁸ *International Review of the Red Cross*, 2025.

Given the absence of scholarship that addresses missing persons from all relevant perspectives of international law, the author of this article proposes to initiate a broader book project that would analyze the issue across multiple branches of international law and articulate a new concept: an *international law on missing persons*.¹⁹ This concept would encompass the international legal framework governing prevention, search and tracing, identification and the transfer of remains, as well as the corresponding obligations that arise under different branches of international law. To this end, the author seeks to identify and develop an emerging area – a missing persons law - whose central objective is to consolidate the applicable international legal norms relating to missing persons and, where appropriate, to advance the development of those norms.

This article aims to help fill the gap in legal scholarship on missing persons. It seeks to lay the groundwork for the argument that a distinct field - missing persons law - has begun to emerge and is continuing to develop. The author intends to build on this premise through further publications. This article is the first in a planned series addressing the contours and content of international law on missing persons.

II. The Legal and Institutional Framework

1. Legal Framework

1.1. Treaty and Customary Law

International law provides both hard- and soft-law instruments aimed at preventing persons from going missing, and protecting the rights and interests of missing persons, as well as those of their families. International Humanitarian Law (IHL), particularly the 1949 Geneva Conventions (GC I - IV),²⁰ the 1977 Additional Protocols (AP I and AP II),²¹ and customary IHL and International Human Rights

¹⁹ The author presented this book project at two international academic events: at the lunch seminar of the Ghent Rolin-Jaequemyns International Law Institute on 23 November 2023, held in Ghent, Belgium, and at the conference “Enhancing Good Practices” organized under the EU-supported GRM Project implemented by the DAAD on 21-22 February 2024, held in Tbilisi, Georgia.

²⁰ Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, (GC I), Art. 16-17; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949 (GC II) Art. 19-20; Geneva Convention (III) Relative to the Treatment of Prisoners of War of 12 August 1949 (GC III), Art. 122-124; Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (GC IV) Art. 136-141.

²¹ Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and Relating to the Protection

Law (IHRL) seek to ensure that individuals do not go missing. These bodies of law give rise to two overarching obligations for states and parties to an armed conflict: (i) to clarify the fate and whereabouts of missing persons, and (ii) to prevent persons from going missing.²² The first obligation also entails respect for a family's right to know the fate and whereabouts of their relatives.²³ In addition, IHL sets out extensive duties regarding the dead, requiring that all possible measures be taken to search for, recover, and identify deceased persons.²⁴ States must also adopt domestic legislation and other measures to respond to the needs of families of missing persons.

Rule 117 of the ICRC Customary International Humanitarian Law Study reflects state practice, establishing a norm applicable in both international and non-international armed conflicts: each party to the conflict must take all feasible measures to account for persons reported missing, and must provide family members with any information it has on their fate.²⁵ Rules 112 and 116 further emphasize each party's obligation to take all possible measures to search for, collect, and evacuate the dead without adverse distinction;²⁶ to record all available information prior to disposal; and to mark the location of graves.²⁷

The 2006 *International Convention for the Protection of All Persons from Enforced Disappearance* is the first universally binding treaty to address the phenomenon of enforced disappearance. It defines enforced disappearance as the arrest, detention, abduction, or other deprivation of liberty by state agents (or by persons acting with state authorization, support, or acquiescence), followed by a refusal to acknowledge the deprivation of liberty or to disclose the fate or whereabouts of the disappeared person.²⁸ Enforced disappearance constitutes a violation of human rights and is prohibited.²⁹ Where committed as part of a widespread or systematic attack directed

of Victims of International Armed Conflicts, 8 June 1977 (AP I), Arts 32 and 33; Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977 (AP II), art 8.

²² Petrig, 2015, 260-272.

²³ For the "right to know" see Baranowska, 2022.

²⁴ Art. 15-17 of the GC I; Art. 18-20 of the GC II; Art. 120-121 of the GC III; Art. 16 of the GC IV; Art. 33-34 of the AP I; Art. 8 of the AP II.

²⁵ Henckaerts, 2005, Rule 117, available at: <<https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>> [30.01.2026].

²⁶ *Ibid.*, Rules 112.

²⁷ *Ibid.*, Rules 116.

²⁸ International Convention on Enforced Disappearance, Art. 2.

²⁹ Diakonia International Humanitarian Law Centre, 2024, 25-27.

against a civilian population, it may amount to a crime against humanity under the Rome Statute of the International Criminal Court.³⁰

1.2. Soft Law Instruments

Aside from binding international legal instruments, the issue of missing persons is also addressed extensively in a range of soft-law documents adopted by international organizations. Among these, the most significant is the United Nations Security Council (SC) resolution concerning persons missing as a consequence of armed conflict.³¹ In this resolution, the SC calls upon parties to armed conflict to take appropriate measures to prevent persons from going missing as a result of armed conflict, through the facilitation of the reunion of families dispersed as a result of armed conflict, and to allow for the exchange of family news, consistent with their international obligations.³² At the same time, it emphasizes the dramatic increase in persons reported missing as a result of armed conflict, which entails consequences for the missing persons themselves and for their families - especially women, children, and communities in the immediate and long-term - and reaffirms in this regard the importance of allowing families to know the fate and whereabouts of their missing relatives, consistent with applicable international humanitarian law, which is of crucial humanitarian importance.³³

The Parliamentary Assembly of the Council of Europe (PACE), in its relevant resolution, underscores the importance of resolving the issue of missing persons in Europe - particularly in Cyprus, the Balkans, and the South Caucasus - and reiterates states' obligation to conduct effective investigations to clarify the fate and whereabouts of missing persons.³⁴ To that end, PACE identifies five priority areas: (i) placing affected families at the center of all action on missing persons; (ii) developing and promoting national legislation to address missing-person cases; (iii) supporting national and regional mechanisms established to prevent and resolve disappearances; (iv) ensuring access to information on missing persons; and (v) taking all feasible measures to identify human remains, establish identity, and record relevant data.³⁵

³⁰ Rome Statute, Art. 7(1-i).

³¹ United Nations Security Council, Resolution 2474, 11 June 2019.

³² *Ibid.*, para. 3.

³³ *Ibid.*, preamble.

³⁴ Council of Europe Parliamentary Assembly, Missing Persons from Europe's Conflicts: The Long Road to Finding Humanitarian Answers, Res. 1956, 3 October 2013.

³⁵ *Ibid.*, para. 7.

1.3. Case Law of the International Courts

The issue of missing persons, and corresponding state obligations, has also been addressed and further developed in the jurisprudence of regional bodies, namely the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR).

In its landmark judgment in the case of *Cyprus v Turkey*,³⁶ the ECtHR held that the failure of the Turkish authorities to conduct an effective investigation into the whereabouts and fate of missing persons who disappeared in life-threatening circumstances constituted a violation of the right to life.³⁷ The Court further found that the failure to investigate cases in which there was an arguable claim that individuals had been in custody at the time of their disappearance amounted to a violation of the right to liberty and security.³⁸ Finally, it held that the authorities' silence in the face of the relatives' legitimate concerns attained a level of severity which could only be categorized as inhuman treatment, in breach of the prohibition of such treatment.³⁹

Likewise, the IACtHR, in its pilot judgment *Velasquez Rodriguez v. Honduras*, found that a systematic pattern of disappearances had been carried out in Honduras between 1981 and 1984 by military personnel, police, or persons acting under their orders.⁴⁰ Such disappearances violated basic rights guaranteed in the American Convention, including the rights to personal liberty, to be free from arbitrary arrest or imprisonment, and not to be arbitrarily deprived of life.⁴¹ According to the Court, state parties are generally required to respect and guarantee the rights of the Convention. This includes the duty to prevent, investigate and punish any violation of the rights recognized by the Convention, and, as appropriate, the duty to restore rights that were violated and provide appropriate compensation for damages resulting from any such violation.⁴²

The Court held that Honduras must therefore compensate the family of the victim, and that any agreement on the form and amount of compensation must be approved by the Court.⁴³ This judgment paved the way to multiple similar

³⁶ *Cyprus v. Turkey* [ECtHR], app. No. 25781/94, 10 May 2001.

³⁷ European Court of Human Rights, Factsheet – Armed Conflicts, January 2023, 2.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Case of Velásquez-Rodríguez v. Honduras* [IACtHR], Judgment of July 29, 1988 (Merits), para. 81.

⁴¹ *Ibid.*, paras. 117, 119, 155, 157, 194.

⁴² *Ibid.*, paras. 174-177.

⁴³ *Ibid.*, para. 194.

claims⁴⁴ by the families and relatives of victims of enforced disappearances in various parts of the Americas, and, consequently, many cases of enforced disappearances reached the IACtHR seeking effective remedy in the form of compensation for the massive human rights violations caused by the large-scale practice of enforced disappearances.

1.4. Non-Binding Guidelines

Reflecting these general obligations across hard- and soft-law instruments, the ICRC Advisory Service has developed a practical tool - *Guiding Principles/Model Law on the Missing* - to assist states and competent national authorities in adopting legislation aimed at addressing, preventing, and resolving cases of missing persons.⁴⁵

The non-binding *Manual on the Effective Prevention and Investigation of Potentially Unlawful Death* (the “Minnesota Protocol”), adopted under the auspices of the United Nations, constitutes another important tool for effectively addressing the issue of missing persons.⁴⁶

The Minnesota Protocol aims to protect the right to life and advance justice, accountability, and the right to a remedy, by promoting the effective investigation of potentially unlawful death or suspected enforced disappearance.⁴⁷ The Protocol sets a common standard of performance in investigating potentially unlawful death or suspected enforced disappearance, and offers a shared set of principles and guidelines for states, as well as for institutions and individuals who play a role in the investigation.⁴⁸

⁴⁴ See: *inter alia*, Case of Durand and Ugarte v. Peru [IACtHR], Judgment of August 16, 2000 (Merits); Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala [IACtHR], Judgment of May 26, 2001 (Reparations and Costs); Case of Rodríguez Vera Et Al. (The Disappeared from The Palace of Justice) V. Colombia [IACtHR], Judgment of November 14, 2014 (Preliminary objections, merits, reparations and costs); Case of De La Cruz-Flores v. Peru [IACtHR], Judgment of November 18, 2004 (Merits, Reparations and Costs); Case of Yvon Neptune v. Haiti [IACtHR], Judgment of May 6, 2008 (Merits, Reparations and Costs); Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador [IACtHR], Judgment of November 21, 2007 (Preliminary Objections, Merits, Reparations, and Costs); Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago [IACtHR], Judgment of June 21, 2002 (Merits, Reparations and Costs).

⁴⁵ ICRC Model Law.

⁴⁶ United Nations Office of the High Commissioner on Human Rights, *The Minnesota Protocol on The Investigation of Potentially Unlawful Death* (2016) *The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* (The Minnesota Protocol), New York, Geneva, 2017.

⁴⁷ *Ibid.*, para. 1.

⁴⁸ *Ibid.*, paras. 1-2.

1.5. Domestic Law

Several states have adopted special legislation on missing persons.⁴⁹ Such laws typically address, *inter alia*: the legal status of missing persons; the mandate and responsibilities of national authorities for tracing; procedures for the search, recovery, transfer, identification, and burial of human remains; the rights and benefits of families; rules on personal data processing; and criminal or administrative liability for violations related to the handling of missing person cases.

Given that the issue of missing persons intersects⁵⁰ with multiple areas of international law, violations of rules governing the search for and tracing of missing persons, and of relatives' right to know the fate and whereabouts of their loved ones, may also trigger the application of numerous other international legal instruments,⁵¹ even where those instruments do not specifically address missing persons.

2. Institutional Framework

2.1. International Committee of the Red Cross

From its inception, the issue of missing persons has been one of the International Committee of the Red Cross's central concerns. Its operation of the Central Tracing

⁴⁹ Ukraine, Sri-Lanka, Bosnia and Herzegovina, Croatia.

⁵⁰ Aside from international humanitarian law and international human rights law, which address missing persons directly, this issue may also arise under other branches of international law. These include: (1) international environmental law, insofar as effective environmental governance can help prevent circumstances leading to disappearances; (2) the international law on internal displacement, insofar as preventing internal displacement may also reduce the risk of persons going missing; (3) international refugee law, insofar as rules governing asylum procedures and the protections attached to refugee status may affect efforts to search for and trace missing persons; (4) international law relating to disaster relief operations, insofar as persons may go missing as a result of natural or human-made disasters; (5) the international law of the sea, insofar as persons may go missing at sea; (6) international air and space law, insofar as persons may go missing in aircraft or spacecraft, or otherwise in air and outer space; (7) international diplomatic and consular law, insofar as persons may go missing on the premises of diplomatic or consular missions; and (8) data protection law, which can be crucial to identification as well as to search-and-trace processes. Relevant non-legal fields may also be implicated, including forensic science, which is essential for exhumation, autopsy, and the identification of mortal remains.

⁵¹ Aside from the cited international instruments, number of international treaties and other instruments of a universal or regional character contain provisions relevant to missing and deceased persons, including (but not limited to): United Nations International Covenant on Civil and Political Rights (1966); United Nations Convention on the Rights of the Child (1989); European Convention for the Protection of Human Rights and Fundamental Freedoms (1950); United Nations Declaration on the Protection of All Persons from Enforced Disappearance (1992); United Nations Guiding Principles for the Search for Disappeared Persons (2019); United Nations Guidelines for the Regulation of Computerized Personal Data Files (1990); Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981), as amended by Protocol CETS No. 223 (2018); OECD Updated Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data (2013).

Agency⁵² for more than 150 years reflects a sustained commitment to accounting for missing persons, promoting family reunification, and alleviating the suffering of relatives by providing information on the fate and whereabouts of their loved ones. Where death is confirmed, this commitment also extends to searching for, recovering, identifying, and returning human remains. More than a century and a half later, the ICRC remains a leading international institution in this field, with the prevention of family separation, locating missing persons, restoring contact between family members, and supporting families throughout the search process remaining at the core of its humanitarian mandate to relieve suffering caused by armed conflict.⁵³

2.2. International Commission on Missing Persons

The International Commission on Missing Persons is an intergovernmental organization tasked exclusively to work on the issue of missing persons.⁵⁴

ICMP works with governments, civil society organizations, justice institutions, international organizations and families throughout the world to address the issue of missing persons.⁵⁵ It is actively engaged in fostering social and political advocacy, and developing and providing technical expertise to locate and identify missing persons.⁵⁶

ICMP endeavors to secure the co-operation of governments and other authorities in locating persons missing as a result of armed conflicts, human rights abuses, natural and man-made disasters, and other involuntary reasons, and to assist them in doing so.⁵⁷

ICMP also supports the work of other organizations in their efforts, encourages public involvement in its activities, and contributes to the development of appropriate expressions of commemoration and tribute to the missing.⁵⁸

2.3. National Institutions

In addition to long-standing international bodies such as the ICRC and the ICMP - specialized actors in the field - other international organizations also extend

⁵² ICRC Missing Persons Platform, Central Tracing Agency, <<https://missingpersons.icrc.org/directory/icrc-central-tracing-agency>> [30.01.2026].

⁵³ ICRC, Reconnecting Families: Preventing Separation, Searching for the Missing, Reuniting Loved Ones, <<https://www.icrc.org/en/what-we-do/reconnecting-families>> [30.01.2026].

⁵⁴ ICMP, About ICMP, <<https://icmp.int/about-icmp/>> [30.01.2026].

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

their mandates to issues relating to missing persons and enforced disappearances.⁵⁹ Beyond the international level, national authorities play a crucial role in implementing the relevant international legal obligations domestically.

The National Information Bureau, which states are required to establish in peacetime,⁶⁰ constitutes key institutions for preventing persons from going missing and for accounting for those who are missing. In addition, national commissions on missing persons⁶¹ and national bodies responsible for the implementation of international humanitarian law⁶² often play a significant role in efforts to search for and trace missing persons, and to provide information to their relatives.

Taken together, these international and domestic mechanisms form a comprehensive network of agencies, indicating that an institutional framework for addressing missing persons exists at both the national and international levels.

III. The Emergence of a New Branch of International Law “Law on Missing Persons”

1. Formation of Law through a Transnational Legal Process

International law formation is an inclusive process. It requires engagement by a range of actors to determine whether the international community is committed, or at least not opposed, to incorporating a particular legal framework into the global legal system. This part of the paper examines whether the emergence of an *international law on missing persons* through a transnational legal process satisfies the degree of consensus that international law presupposes, such that it may plausibly claim a distinct place within the international legal order.

⁵⁹ For example, United Nations, Organization on Security and Cooperation in Europe, Council of Europe, European Union etc.

⁶⁰ A “National Information Bureau” is an institution operating on the national level to collect information regarding the fate of protected persons, which registers this information, undertakes searches, and transmits all this information through the protecting power, the ICRC, or the national Red Cross or Red Crescent societies of the state concerned. See GC III, Arts. 122-124; GC IV, Arts. 136-141.

⁶¹ For example, Georgia has a special Inter-Agency Commission on the Search and Transfer of Missing Persons in Armed Conflicts, established by the Government of Georgia. See: Ordinance No. 505 of the Government of Georgia “On Approving the Composition and the Statute of the Interagency Commission for the Search for Missing Persons and the Repatriation of the Remains of Persons Missing as a Result of Armed Conflicts”, 24 October 2019.

⁶² See: Table of National Committees and other national bodies on international humanitarian law, <https://www.icrc.org/sites/default/files/2026-01/Final-version-NCIHLs-table_en-2026.pdf> [30.01.2026].

D.P. Verma observes that international law is a dynamic, continuously evolving process: it discards or refines old rules, and recognizes new ones, in order to clarify, supplement, or replace existing precedent.⁶³ The very idea of “approval” presupposes some measure of agreement among relevant actors in the international community regarding the content and status of new norms, as to whether those norms are added to the existing body of rules or substitute for them. Such agreement provides international law with legitimacy and, even if not in a strictly formal sense, contributes to its perceived binding force. R.F. Hansen similarly treats legitimacy as central to international law’s capacity to advance the public policy of the international community.⁶⁴

Some commentators contend that states alone legitimize international law, either because they are the exclusive creators of legal obligations,⁶⁵ or because the international legal order remains primarily a state-to-state system.⁶⁶ Others emphasize the diminishing law-making role of the nation-state, pointing to norm generation by non-state actors and through mechanisms other than intra- or inter-state legislative procedures.⁶⁷ From this perspective, the state, understood as a primarily territorial law-making entity, may increasingly be supplemented, or even displaced, by other norm-generating entities that are not necessarily territorially defined.⁶⁸ Even authors who place states “at the heart of the international legal system”⁶⁹ acknowledge that a focus on state action alone can produce a misleading account of how international law is made.⁷⁰

This diversification of law-making actors accompanies the globalization of international law. As G. Silva argues, globalization entails a legal system that is not merely Eurocentric, but one that also incorporates valuable contributions from other legal traditions.⁷¹ The transnational (or global) legal process has features distinct from classical international law-making: it entails non-traditional forms of norm formation that engage actors who are not exclusively, and sometimes not primarily, states, including a wide range of non-state participants. The process is also dynamic. As

⁶³ Verma, 1989, 44.

⁶⁴ Hansen, 2013, 262-263.

⁶⁵ D’Amato, 1982, 99.

⁶⁶ Hansen, 2013, 262-263.

⁶⁷ Osterdahl, 2014, 123.

⁶⁸ *Ibid.*

⁶⁹ Higgins, 1993, 39.

⁷⁰ *Ibid.*, 41.

⁷¹ Nascimento e Silva, 1996, 238.

H.H. Koh notes, transnational law “transforms, mutates, and percolates” across levels and domains - public and private, domestic and international - moving in multiple directions rather than along a single hierarchical pathway.⁷² In this context, the homogeneous international society from which classical international law emerged is no longer the relevant baseline: contemporary international law operates in a more complex environment, one in which norm formation is increasingly pluralized and, as a consequence, often more cumbersome.⁷³

The formation of an international law on missing persons clearly illustrates the transnational legal process described above for several reasons. First, it draws on a diverse set of sources. As discussed in the previous chapter, the relevant international instruments range from binding treaty obligations to non-binding “soft law” standards adopted by international organizations and, in some instances, developed by non-governmental organizations. Additional obligations and interpretive guidance also emerge from the jurisprudence of international courts and human rights bodies.

The field is characterized by a plurality of actors engaged in norm development, implementation, and enforcement. Most importantly, the international law on missing persons is structured around individuals rather than states: persons who have gone missing and their relatives occupy the normative center of this corpus. Moreover, the law is not created or operationalized exclusively by states. International organizations, human rights groups, and independent experts, particularly in forensic disciplines, play a substantial role in shaping standards and practices.

Finally, the addressees of relevant obligations are not limited to states. Where persons go missing in connection with armed conflict, duties may also bind non-state armed groups. This feature is well established in international humanitarian law, which vests obligations in all parties to a conflict;⁷⁴ in non-international armed conflicts, those parties include organized non-state actors, notwithstanding their non-state character.⁷⁵

2. International Consensus

The article now turns to whether a general agreement exists within the international community to develop an international law on missing persons as a distinct

⁷² Koh, H.H., 2017, 240.

⁷³ Verma, 1989, 39.

⁷⁴ GCs, common Art. 3, para. 1; AP II, Art 1(1).

⁷⁵ GCs, common Art. 3, para. 7.

branch of international law. To that end, it adopts the line of reasoning advanced by Judge Antônio Augusto Cançado Trindade in *International Law for Humankind: Towards a New Jus Gentium*.⁷⁶ Addressing the formation of contemporary international law, Trindade departs from a strict “formal sources” account and argues that the evolution of new norms should be assessed through the lens of international consensus.⁷⁷ In earlier conceptions, state consent was treated as the exclusive indicator of the binding character of international obligations.⁷⁸ By contrast, Trindade maintains that, in contemporary international law, “individual consent could never constitute the ultimate “source” of legal obligation,” and that a discernible tendency toward consensus in the formation of international legal norms has emerged.⁷⁹ Other authors advance a similar position, likewise rejecting the view that norm formation requires unanimous consent.⁸⁰

Trindade does not set out a detailed methodology for tracing “international consensus”. Instead, he anchors the inquiry in *opinio juris*, which he argues has acquired a significantly broader meaning than its traditional role as the “subjective” element of customary international law.⁸¹ For Trindade, *opinio juris* is central not only to the emergence and identification of norms of general international law, but also to the formation of international law more broadly.⁸² On this understanding, *opinio juris* may be treated as a principal manifestation of “international consensus” concerning the development of new norms.

Crucially, Trindade further contends that agreement on norms of general international law should not be sought solely among states: it should also be identified across a broader range of actors, including international organizations, peoples, “organized civil society”, and groups of individuals operating at the international level.⁸³ This approach aligns with a global-law perspective in which norm formation is no longer the exclusive prerogative of sovereign states, but rather a task shared among the actors participating in global governance.⁸⁴

⁷⁶ Trindade, 2010.

⁷⁷ *Ibid.*, 132.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ See: Geoffrey, 2017.

⁸¹ Trindade, 2010, 137.

⁸² *Ibid.*, 137-138.

⁸³ *Ibid.*, 135.

⁸⁴ Notably, Trindade’s approach in this respect is not reflected, for example, in the recent work of the International Law Commission (ILC). In its latest Draft Conclusions on the Identification of Custo-

Opinio juris, so conceived, gives expression to a “juridical conscience” not only of nations and peoples, but of the international community as a whole.⁸⁵ Notably, Trindade has himself invoked this broader understanding of *opinio juris communis*, including in his separate opinion in the *Whaling in the Antarctic* case.⁸⁶

Pursuant to the reasoning set out above, the paper now examines whether an international consensus has already emerged regarding the formation of an international law on missing persons. This field is among the clearest illustrations of broad-based engagement in norm development. The relevant processes involve not only states, but also international organizations, civil society movements, non-governmental organizations, and, in certain contexts, armed groups.

Despite the absence of a dedicated universal instrument regulating missing persons at the global level, indicators of international consensus can be identified across a range of normative materials and institutional practices. Treaties, customary rules, policy documents, statements, decisions, and operational conduct by international actors collectively point to the existence of an *opinio juris* in favor of recognizing missing persons law as part of international law. The ICRC Study on Customary International Humanitarian Law, which articulates several customary rules relevant to missing persons,⁸⁷ is particularly outstanding in this regard, as it reflects and systematizes the practice and legal conviction underpinning the international character of these rules.

Taken together, the developments discussed above confirm that missing persons have become a significant concern of the international community. This, in turn, supports the view that a measure of consensus exists that the issue warrants distinct regulation at the global level. At the same time, the degree of attention devoted to missing persons remains insufficient to generate comprehensive, sustained discussions on how to consolidate this body of law into a fully articulated global framework.

mary International Law, the ILC maintains that *opinio juris* is confined to those acts of states that demonstrate their acceptance of a rule as law. At the same time, the ILC acknowledges that, in certain cases, the practice of international organizations may contribute to the formation or expression of rules of customary international law, and that the conduct of other actors may also be relevant in assessing state practice. See: Draft conclusions on identification of customary international law (2018). Adopted by the International Law Commission at its seventieth session, in 2018, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session (A/73/10, para. 65). Yearbook of the International Law Commission 2018, 2022, Arts. 4(2-3), 9-10.

⁸⁵ Trindade, 2010, 135.

⁸⁶ *Whaling in the Antarctic (Australia v. Japan, New Zealand intervening)*, Judgment, 2014 I.C.J. Reports 226.

⁸⁷ CIHL, rules 98, 112-117.

Responses have also been uneven across contexts and institutions, leaving room for interpretive divergence and, potentially, future fragmentation.⁸⁸

By analogy, this trajectory resembles the formation of other specialized protective regimes in international law, such as international refugee law,⁸⁹ the international law relating to internally displaced persons,⁹⁰ and the international law on trafficking in human beings,⁹¹ which likewise focus on particular groups and seek to elevate their protection through more specific and, in some respects, more stringent normative standards.

IV. Critical Appraisal of the International Law on Missing Persons

1. TWAIL and SWAIL Critique

Third World Approaches to International Law (TWAIL) is a broad, interdisciplinary movement of scholars and practitioners who critique how modern international law was shaped by the European powers and continues to reproduce global hierarchies that disadvantage the “Third World” (a political term for historically colonized and economically marginalized states and peoples).⁹² TWAIL is not only a critique: it seeks to recover suppressed histories and voices, expose the racial and colonial foundations of key legal institutions, and reimagine international law as a tool for material justice and self-determination, including more equitable global economic governance and genuine accountability for powerful states and corporations.⁹³

⁸⁸ For example, the forcible disappearance of persons by non-state armed groups may be treated as “missing persons” under international humanitarian law (IHL), and as enforced disappearance under international criminal law. However, it would not constitute a violation of the *International Convention for the Protection of All Persons from Enforced Disappearance*, because that treaty applies only to enforced disappearances attributable to the state. This produces a fragmented understanding of “enforced disappearance”, insofar as the same conduct may be categorized differently across distinct bodies of international law.

⁸⁹ Convention Relating to the Status of Refugees, 28 July 1951.

⁹⁰ The Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), United Nations Economic and Social Council, Commission on Human Rights, 11 February 1998.

⁹¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted on 15 November 2000 (Palermo Protocol).

⁹² For details about the TWAIL movement see: Gonzalez Hauck et al., 2024, 79-83.

⁹³ On this matter see: Anghie, 2023, 7-112,

While the project of decolonizing international law has, from the perspective of former Western colonies, gained increasing scholarly attention,⁹⁴ far less consideration has been given to the experiences of states that were historically subjected to domination by the Russian Empire and its successor, the Soviet Union.

Recent scholarship has begun to address this gap. In particular, emerging efforts to articulate “Second World Approaches to International Law” (SWAIL)⁹⁵ seek to foreground the legal experiences of societies shaped by socialist rule and post-socialist transition. Unlike TWAIL, which benefits from a longer and more consolidated intellectual tradition, SWAIL remains at an early stage of conceptual development. Some scholars have proposed the notion of the “Global East”,⁹⁶ in contrast to the “Global South”, to capture the shared historical and geopolitical experiences of countries formerly embedded in the socialist bloc.

Because the issue of missing persons disproportionately affects countries in the Global South and parts of the Global East - most visibly in contexts of armed conflict and pervasive violence shaped by histories of colonialism, imperialism, and their contemporary afterlives in neo-colonial and neo-imperial practices - it is crucial to examine the development of an international law on missing persons through the SWAIL and TWAIL perspectives. As this emerging field of international law will largely govern, and be applied within, these contexts, it is essential that affected states and communities are meaningfully involved in shaping its norms, institutions, and implementation pathways. Accordingly, ongoing legal developments should be scrutinized through SWAIL and TWAIL to ensure that the resulting framework is workable and responsive to the needs of those most impacted, rather than being designed by external actors and subsequently imposed on communities that had little or no role in its creation.

⁹⁴ See for example: Cardoso Squeff and Damasceno, 2024, 63-96.

⁹⁵ International workshop In Search of Second World Approaches to International Law was held at the Central European University in Vienna, Austria on 21-22 February 2025. Program and details are available here: <<https://events.ceu.edu/2025-02-21/search-second-world-approaches-international-law>> [30.01.2026].

⁹⁶ Labuda, 2024, 273-275.

2. The Gender Perspective

Statistically, the majority of missing persons are male, meaning that women and children comprise the bulk of those left behind.⁹⁷ This means that the impact of disappearances is gendered.⁹⁸ Men are most frequently the victims of human rights violations that result in persons going missing, such as arbitrary detentions, torture, executions, and enforced disappearances, while women disproportionately suffer the human rights violations of not knowing the fate and whereabouts of their loved ones, whilst also being required to bear the legal and economic responsibilities for their families and cope with the emotional, social, psychological, and cultural impact of living without their male partner or relative.⁹⁹

In some contexts, the wives of missing persons face significant barriers in accessing bank accounts, inheritance, proprietary rights, and identity documents for children, owing to discriminatory laws.¹⁰⁰

Women relatives of missing persons can also face considerable emotional and social challenges. Beyond the emotional distress already associated with a family member going missing, women may face exacerbated levels of stress, concern, and anxiety in their newly imposed role of breadwinner and provider.¹⁰¹ Their shift in role can be the subject of criticism by the community as a neglect of their responsibilities and traditional requirements.¹⁰²

The negative impact of missing persons on women and children is particularly acute in the context of patriarchal culture, where, in practice, social norms and customary practices dominate over the positive law, and can limit women's ability to exercise their rights.¹⁰³

As demonstrated above, the issue of missing persons is profoundly gendered and, in many contexts, disproportionately affects women. Accordingly, and consis-

⁹⁷ According to the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID) “[M]en comprise between 70 to 94 percent of those who have been disappeared globally.” United Nations Working Group on Enforced or Involuntary Disappearances, General Comment on Women Affected by Enforced Disappearance, UN Doc A/HRC/WGEID/98/2, 14 February 2013.

⁹⁸ For understanding the gender dimension of the issue of missing persons, see: Diakonia International Humanitarian Law Centre, 2023, Chapter 2.

⁹⁹ *Ibid.*, 18.

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*, 18-19.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

tent with SWAIL and TWAIL critiques, emerging developments in the international law on missing persons should also be examined through a gender lens. Any claim to “gender sensitivity” in this field must be grounded in inclusive, meaningful participation by people of all genders, especially those from affected communities, to ensure equal representation and that diverse experiences inform decision-making. Such participatory approaches are essential where the resulting norms and policies will primarily regulate and shape the lives of those who bear the greatest burdens of disappearance and its aftermath.

V. Conclusion

In conclusion, the issue of missing persons intersects with multiple areas of international law. Although initially developed primarily in the context of armed conflict, it has growing relevance across other fields, most notably international human rights law. This article has argued that the rules concerning missing persons found in international humanitarian law and related legal regimes already constitute a coherent corpus that may be conceptualized as a distinct branch of international law: The International Law on Missing Persons. This claim is supported by the diversity of sources and the multiplicity of actors contributing to its elaboration, which together reflect the emergence of a new field through transnational legal processes, in which not only states, but also international organizations, courts, expert bodies, and civil society participate in the creation and application of norms.

At the same time, many contemporary legal provisions relating to missing persons, particularly those rooted in international humanitarian law, remain shaped by colonial legacies and by histories of norm-production in predominantly male-dominated settings. For this reason, future developments in this field should be guided by decolonial and feminist approaches so as to ensure that the law is shaped through the meaningful participation of affected communities and other actors who have historically been marginalized in international lawmaking.

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