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FONDATION RENÉ CASSIN

WHEN THE CONFLICT ENDS,
WHILE UNCERTAINTY CONTINUES :
ACCOUNTING FOR MISSING PERSONS
BETWEEN
WAR AND PEACE
IN INTERNATIONAL LAW

Alessandra LA VACCARA

Foreword

Vincent CHETAIL

René Cassin Prize

2018

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FOREWORD

This book represents an important contribution on a particularly complex and timely issue located at the cross-road of several fields of international law. Its key objective and added value are to assess the existing international legal framework on missing persons during and after an armed conflict. The book focuses on two distinctive albeit intertwined concerns: the need of families to know the fate of their missing relatives, as well as the correlative need for accountability for violations committed during the conflict. *Following this twofold approach, Alessandra La Vaccara unveils in a clear and coherent way the broad diversity of international rules on missing persons in situations of armed conflicts and the byzantine complexity of their implementation during the challenging and precarious transition from war to peace.*

While combining both theoretical and practical insights, the author explores the multifaceted and controversial linkages between humanitarian and accountability-driven efforts *vis-à-vis* post-conflict claims for information on missing persons. Her comprehensive and thorough approach takes into account the diverse roles and implications multiplicity of connotations and roles that information on missing persons may have in post-conflict settings. To highlight some of them, information on missing persons can be a bargaining tool in peace negotiation and dispute settlement; a societal and individual goal to be achieved in order to move forward after a conflict; a *medium* which gives access to certain legal rights at the domestic level; a tool to fight impunity and/or to promote reconciliation. The variety of implications and responses to address the issue of missing persons reflects the composite and contentious nature of any post-conflict environment, where the situation on the ground is neither one of war nor of peace. In such a volatile context, the duty to account for missing persons represents an integral component of any attempts to promote and establish sustainable peace in post-conflict situations.

Among many other interesting aspects of her work, the author convincingly substantiates the normative complementarity between international humanitarian law and international human rights law during the transition from conflict to peace. Both branches are indeed mutually reinforcing when their respective rules simultaneously apply to a given situation. Following this stance, Dr. La Vaccara thoroughly assesses the interplay between the two branches of international law by providing a critical account of the doctrines developed in this area. She identifies a set of three criteria to be used by lawyers, legal advisors and judges in resorting to the complementarity approach. These parameters include the nature of the rights at stake (absolute/relative; derogable/underogable), the principle of systemic integration, and the rule of the most favourable treatment. According to this cumulative and systemic articulation between international humanitarian law and international human rights law, the lacunae of one

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particular branch may be overcome by the most protective standard of the other one. The result is not only an increased level of protection for individuals. It also ensures a more coherent approach to the international legal framework governing post-conflict situations.

For these reasons and others, Dr. La Vaccara provides a groundbreaking contribution to the legal scholarship in order to better appraise the broad number of international rules that apply to missing persons in post-conflict situations and the ways to articulate and implement them in a comprehensive and coherent manner. This book offers scholars and practitioners of international law a solid and detailed understanding on a highly complicated and long neglected issue of our time.

Dr. Vincent CHETAIL

Professor of International Law

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Director of the Global Migration Centre

Graduate Institute of International and Development Studies

November 2018

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This book is based on a PhD thesis completed at the Graduate Institute of International and Development Studies in January 2018. While completing this book has often been a lonely journey, it has been made possible with the support of many who have crossed my path.

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I want to express my gratitude to the IHEID and to the Feris Foundation of America for awarding me their scholarships: their support allowed me to pursue this journey in Switzerland and abroad. During this journey, I had an opportunity to receive feedback from many individuals with whom I had the chance to work while at the IHEID and at Harvard Law School: their inputs, criticism and support have proven invaluable. Similarly, turning my doctoral work into a book would not have been possible without the International Human Rights Institute “René Cassin”, which awarded me the 2018 René Cassin Thesis prize. It goes without saying that the views expressed in this book are mine and not those of the institutions mentioned thereof.

Moreover, it is only with the support of family and friends that I found the energy and strength to complete this endeavor. I am particularly thankful to Carolina and Tommaso: that this journey has reached a successful conclusion is due to the fact that they have always been there for me, no matter what. For their support, never-ending discussions, and mind-opening inputs, I am grateful to Antonio and Francesco. I am also grateful to Ariana, Morgane S., Morgane C., and Deborah, for being amazing inspirational supporters, and to the Harvard Italian gang for bringing the warmth of Italy to Cambridge. I am especially grateful to Marco for being the most intellectually stimulating companion and the firmest pillar of my life. Finally, *grazie* to my family: *a mia madre* for her unconditional support; to my brother for his humor,

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Alessandra LA VACCARA

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FONDATION RENÉ CASSIN

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During an armed conflict and in its aftermath, measures must be undertaken in order to ascertain the fate of the missing and to address the emotional distress of families from the lack of news on their relatives. In the same contextual settings, cases of missing persons may involve criminal accountability, thereby triggering actions directed to answer questions like 'who is responsible?' and 'what are the circumstances of the crime?'. These courses of action respond to two different needs, i.e., the need of families to know the fate and whereabouts of their missing relatives, and the societal and individual need for accountability. The book examines how the international legal framework meets these two distinct, but intertwined, needs. It captures the diversity of international rules concerning the issue of persons reported missing in armed conflict, as well as the complexity of their implementation in the transition from an armed conflict to peace. The book shows that the duty to account for missing persons has a temporal cross-cutting nature, since its implementation requires measures before, during, and after an armed conflict. Dealing with the issue of the missing across phases – i.e., *durante bello* and *post bellum* – entails a complex interplay of international norms. Affirming the relevance of the dialectic between International Humanitarian Law (IHL) and International Human Rights Law (IHRL) in the transition from conflict to peace, the book analyzes the simultaneous application of IHL and IHRL rules on missing persons in post-conflict and proposes a set of criteria that should govern their interplay. Measures that respond to the right of families to know the fate of their relatives cannot substitute those that are required to establish responsibility for IHL/IHRL violations and international crimes, and vice-versa. Examining specific examples, the book unveils the role that international law plays in the attempts of the international community to articulate humanitarian and accountability-driven efforts vis-à-vis post-conflict claims for information on the missing. In light of this analysis, the book explores the legal and policy aspects of how to build linkages between such efforts.

Alessandra LA VACCARA holds a PhD in International Law from the Graduate Institute of International and Development Studies. She is currently Program Manager (Missing Migrants Program) at the International Commission on Missing Persons (ICMP), and worked previously with the ICRC, the EU, and the Italian Senate. The views expressed in this book are those of the author alone and do not engage ICMP, or previous employers, in any form.

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