

Independent Commission for the Location of Victims' Remains

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Introduction

The following is an abridged version of a presentation given to an information session of the Humanitarian/Human Rights Working Group of the Geneva International Discussions on 10 October 2012, during Ireland's Chairmanship in Office of the Organization for Security and Co-operation in Europe (OSCE). The Geneva International Discussions were put in place after the cessation of military hostilities following the Russian incursion into Georgia in 2008, and are managed trilaterally by the OSCE, the UN and the EU. The process engages participants on a non-representative basis from Georgia, Russia, South Ossetia and Abkhazia. The aim is to maintain a forum for discussion on political and related humanitarian issues in order to seek to avoid a repeat of military action in the area. The issue of disappeared persons is important in the bundle of humanitarian issues linked to the outfall of the armed conflict in the area in 2008 and from earlier conflict there in the mid 1990s.

A theme of Ireland's 2012 Chairmanship in Office of the OSCE was to bring its experience of conflict resolution in the Northern Ireland context to the table in supporting the conflict-resolution efforts in which the OSCE is engaged.

The Independent Commission for the Location of Victims' Remains (ICLVR) is considered an important model for seeking to address the issue of disappeared persons with a focus on the humanitarian imperative. The job of the ICLVR is to facilitate, as far as possible, identification of the location and recovery of the remains of a number of missing persons who were killed and buried secretly

during the conflict in Northern Ireland by unlawful paramilitary groups.

This paper provides some detailed information on the origin, purpose and operation of the ICLVR, and on some of the cases of missing persons and the investigations involved in dealing with those cases. Given the confidential nature of much of the ICLVR's work and the fact that many of its investigations are ongoing, there are certain limits on the detail of cases that can be revealed. However, this paper aims to provide a useful insight into how the issue of missing persons has been addressed in the context of the Northern Ireland conflict.

Background

The modern-day relationship between the Irish and British people is a multifaceted one that is strongly influenced by the historical, family and individual connections between them. Naturally, it is also characterised by the geographical closeness of the two states and by very positive cultural and economic links between them.

Over the course of centuries there has been some political division between Ireland and Britain and sometimes this has given rise to armed conflict. The recent conflict in Northern Ireland has its roots in some aspects of this history. In the early part of the twentieth century Ireland gained its political independence from the UK with the exception of an area in the north-east of the island of Ireland, Northern Ireland, which remained a part of the UK. This constitutional arrangement has been in place for Northern Ireland since that time.

From the late 1960s to the mid 1990s, the conflict in Northern Ireland largely manifested in a campaign of violence carried out by unlawful republican paramilitary groups claiming to seek to end the inclusion of Northern Ireland in the UK and unification with the rest of the island of Ireland. The violence of these republican paramilitary groups was mainly targeted against the police and security forces in Northern Ireland, and against the institutions of government and the economic infrastructure there. However, the republican groups also carried out campaigns of armed violence in Ireland and Britain.

During this period unlawful paramilitary groups from the community in Northern Ireland who claimed political loyalty to the UK were also engaged in conflict. These groups mainly carried out

violent attacks in the south of Ireland and against persons in Northern Ireland whom they considered to be republicans. That said, violence was also inflicted by the paramilitary groups on both sides of the conflict against individual members of the other's community and, indeed, on persons in Ireland and Britain who had no connection with the conflict.

Particularly from the early 1980s onwards, the Irish and British Governments deepened their cooperation in an effort to seek to resolve the conflict in Northern Ireland and to achieve a broadly acceptable and durable political solution there. The guiding approach was that the problems of Northern Ireland had to be resolved exclusively by political and democratic means, and that there could be no recourse to violence or support for violence.

The peace process

Efforts by the two governments to secure a way forward on the future of Northern Ireland intensified throughout the 1990s and included a process of multi-party talks between the parties representing the communities in Northern Ireland that was co-sponsored by the two governments. Ultimately, it was this process of multi-party talks that led to and formed the basis of the Belfast (Good Friday) Agreement of 1998.

This Agreement was a key milestone in seeking a comprehensive political settlement and securing an end to the violence that had characterised society and politics in Northern Ireland for decades.

The Northern Ireland peace process also received significant support from many partners in the international community. The EU and the US have played a particularly important role in promoting greater understanding and reconciliation between the communities in Northern Ireland, and this is crucial in building a more peaceful and stable society. The EU, over many years, has made funding directly available to community-based groups and other non-governmental organisations to develop and carry out reconciliation initiatives within and between the communities in Northern Ireland.

The way in which the process was worked out in the Northern Ireland context is not a fixed recipe for dealing with these complex issues. Progress can be made on conflict-resolution issues as part of an ongoing process, which may or may not involve a formal agreement on all aspects as the outcome. These issues can be brought forward in a stand-alone way. This is particularly the case when dealing with the

humanitarian and human rights issues and when addressing those issues engages all of the local partners. This approach of building from the ground up, directly engaging the representatives of the communities in political opposition to one another and the representatives of those groups actively engaged in conflict, has been essential in making progress towards reaching a settlement in Northern Ireland.

The measures taken in this conflict-settlement process seek to address a range of important aspects, including of course constitutional issues, political issues, and security and policing issues. However, human rights and humanitarian issues lie at the very heart of the peace process in Northern Ireland. They were, and are, equally important in the overall conflict-resolution context. Indeed, in some senses, they are more important in building a foundation for reconciliation between the communities there.

A central aspect of addressing these humanitarian issues is the explicit acknowledgement of, and the actions to address, the individual suffering of the victims of conflict violence and their families. This is an absolutely necessary and important element of reconciliation both between and within communities in Northern Ireland. A wide range of measures have been taken in order to give effect to this commitment to acknowledge the particular hurt of the men, women and children who found themselves in the midst of conflict, and to address the needs of those victims, irrespective of their background or circumstances, or their political affiliations.

One of the important measures was the decision by the two governments to put in place a means to facilitate, insofar as it could be done, identification of the location and recovery of the remains of a number of people who had been killed during the Northern Ireland conflict by paramilitary groups and then buried in secret locations. These missing victims of violence had become known as 'the Disappeared'.

In some cases the persons who were killed and secretly buried were connected with the paramilitary groups who killed them. None of those persons involved was killed by state forces.

In April 1999 agreement was reached between the Irish and British Governments to establish the ICLVR, which was given the objective of facilitating identification of the location of the remains of these missing victims. The two governments gave effect in law to their Agreement with similar legislation that was enacted in both jurisdictions. In Ireland the relevant law is the Criminal Justice

(Location of Victims' Remains) Act, 1999, and in the UK the relevant law is the Northern Ireland (Location of Victims' Remains) Act, 1999.

In early 1999 the Provisional Irish Republican Army (IRA) admitted for the first time that it was responsible for the deaths of a number of named persons, whom it had buried secretly in unknown locations. The Provisional IRA indicated that it was willing to share information about the location of their remains. This willingness to provide information, which had come about over the course of the peace process in Northern Ireland, was an essential factor in enabling the establishment of the ICLVR.

The ICLVR was devised by the governments as a means of allowing information to be passed by the paramilitary groups, and by others who may have had information, to the relevant authorities in confidence and in the knowledge that the information could only be used for the purpose of locating the missing victims.

Role of the ICLVR

The ICLVR's objective is set out clearly in the Agreement between the two governments. It was established 'to facilitate the location of the remains of victims of violence'. It is important to note that this is the only objective of the ICLVR. It has no political, security or criminal law function; its remit is singularly humanitarian.

The ICLVR's principal functions are also set out by agreement between the governments and they are:

- to receive information relating to the location of the remains of the missing victims;
- to disclose this information for the purpose of facilitating the location of remains to which the information relates.

Those missing victims who are covered in the ICLVR's remit are defined in the Agreement as persons who were killed before 10 April 1998 as the result of acts committed on behalf of, or in connection with, a proscribed organisation. The date of 10 April 1998 was considered appropriate as it was the date of the signing of the Agreement.

The ICLVR is conferred with complete independence in respect of its operations in the legislation that has been put in place in both jurisdictions. This independence from the two governments and, indeed, from any other body was fundamental to building confidence

in the work of the ICLVR and to providing a guarantee of its completely non-partisan, non-political commitment to address the humanitarian needs of the victims' families.

Emphasis needs to be placed on this point. A very deliberate decision was taken to put in place a mechanism that had, as its only purpose, to deal with the humanitarian situation of the families of the missing persons. Its primary aim was not political or criminal justice related; it was not an attempt to attribute blame or to seek retribution. Many of the victims' relatives had long-since faced up to the probability that their missing loved one had been killed. However, in such circumstances it is undoubtedly a fundamental human instinct to seek some certain knowledge of the fate of the loved one.

The purpose of setting up the ICLVR was to respond to that need: to seek to help the families of those who had been killed to recover their loved ones so that they might give them a decent, proper burial. This was an important aspect of building trust and confidence at an individual level among the families of the missing victims. It was and continues to be important for them to have trust in the process and to have confidence that their individual suffering is being acknowledged. It is essential for them to know that action is being taken in good faith to seek to address their individual tragedy.

Guarantees of confidentiality

In accordance with the terms of the Agreement between the governments, three further important guarantees are provided in the process.

- i. The information passed to the ICLVR attracts a guarantee of absolute confidentiality; the information may not be disclosed to any person except for the purpose of locating the remains of the individual to whom the information relates.
- ii. Any information received by the ICLVR can only be used for the purpose of locating the remains of the missing persons.
- iii. The ICLVR may not disclose the identity of an informant nor any information that would be likely to lead to the identification of an informant.

These legislative guarantees were considered to be an essential encouragement to those in the paramilitary organisations and to others to provide the necessary information to the ICLVR in the

knowledge that they would not be subject to further court proceedings on the basis of having done so. The ICLVR has scrupulously maintained and given effect to these guarantees over the course of its work.

One exception to this regime of the non-release of information is that the ICLVR may inform a victim's family that information has been received and inform them of the place where, according to the information, the victim's remains may be located. This is an important recognition in the Agreement and in the supporting legislation of the central position of the victims' families in the process, and is another demonstration of the humanitarian nature of the ICLVR's remit.

Criminal liability

The interaction between the general criminal law and the legal arrangements that have been put in place for the work of the ICLVR will now be discussed. It is important to note that the legal arrangements in place to allow for information to be provided on the cases of the missing persons do not, and are not intended to, confer any immunity from criminal prosecution on those who have been involved in the abduction and killing of the missing persons.

Of course, in each case serious, criminal offences were committed – the persons involved were abducted against their will and they were subjected ultimately to a violent killing. The individual cases may still be the focus of a criminal investigation by the relevant law enforcement authorities in Ireland, Great Britain or Northern Ireland. This is required, of course, by the criminal law in these jurisdictions. Not only that, it is a fundamental right for the families to have an expectation that justice can still be sought through the criminal process.

However, the information that is received by the ICLVR and the investigations and other work in which it engages to recover the remains of the missing victims do not and cannot by law form part of any such criminal investigation. The police and other criminal law enforcement authorities cannot have access to the information or other material in the possession of the ICLVR for forensic purposes or criminal investigations into the killings. This is an absolutely fundamental feature of the ICLVR – it must operate completely separately from the criminal investigation process in this respect.

This was a very important decision taken at the outset to ensure that the ICLVR could be successful. It is a key element in building

confidence in the ICLVR for those who have information on the missing victims and who are prepared to give it to the ICLVR. It is also, admittedly, a complicated balance to strike in the context of, on the one hand, the strong public interest in pursuing criminal prosecutions for such serious offences and, on the other hand, the humanitarian imperative of the families' need to recover their loved ones' remains.

The victims' families

As already emphasised, the overriding priority for the ICLVR from the outset has been to locate the remains of the victims so that they could be returned to their families and that they could receive a decent burial. In that regard, the ICLVR has always hoped that the families might, in some measure at least, achieve resolution or closure in respect of the deaths of their loved ones. Those involved in the process of seeking the recovery of the Disappeared have always been conscious that the families of the missing persons have had to endure a particular double cruelty. They have had to face the tragedy and injustice of having lost their family member who was killed, and in addition for decades they have not known where that loved one was buried.

The religious tradition on the island of Ireland is predominantly Christian, mainly Roman Catholic and Protestant, and therefore the rituals of the proper burial of the dead are very important in social, cultural and religious contexts. In this respect, these families have the additional pain of wanting to ensure that their beloved family member can receive a decent, Christian burial, leaving them with a place to grieve for and to remember their loved one. In this way they might perhaps reach some closure or resolution to the personal, human tragedy that they have experienced. They would also have the comfort of satisfying that strong cultural need to observe the rituals associated with death and bereavement.

Therefore, the ICLVR has always kept the humanitarian interests of the families at the centre of its efforts in the process of recovery, and has always tried to keep that aspect of its work at the forefront of its considerations and communications. An important part of the work of the ICLVR is to maintain a constant interaction with the families, keeping them informed and engaged in the process of the investigations. Crucially, the ICLVR plays a key role in listening to the families, understanding their needs and taking their concerns into the process.

In many ways the families of the missing persons have been partners in the process over the course of the ICLVR's work. They have acted as public advocates not just for the case of each individual missing person but also for their collective case as a group of victims with a shared experience. In doing so, they have helped to keep the work of the ICLVR to the forefront in a very public sense.

The commissioners and the investigation team

The governments jointly appointed two commissioners to lead the ICLVR. The British Government nominated Sir Kenneth Bloomfield, who had formerly been the most senior government official in Northern Ireland and who had served subsequently as Northern Ireland's Victims' Commissioner. The Irish Government nominated John Wilson, a former Deputy Prime Minister, who had also served as Ireland's Victims' Commissioner, and then Frank Murray, a former Secretary General to the Government, to succeed him upon his retirement. The nomination by the governments of such respected and experienced persons was an important element in establishing the credibility and underpinning the integrity and independence of the ICLVR.

The commissioners are supported by an investigation team that seeks out and pursues information with regard to the Disappeared, and that organises and carries out searches and excavations where a possible burial site is identified. In doing so it deploys a range of technological and other forensic investigation techniques, including the use of forensic archaeologists, in order to ensure a focused and comprehensive treatment of any excavation.

The ICLVR's investigation team naturally relies heavily on information in order to carry out its work. It maintains a range of contacts with persons who are connected to the paramilitary groups who carried out the killings. It also seeks and receives information from many other sources, including the general public. In order to facilitate this information-giving process, the ICLVR maintains a freephone, confidential telephone service and a confidential postal-receipt service. The commissioners and the investigation team issue regular public appeals to anyone who may have information of assistance to the ICLVR to bring it forward, no matter how inconsequential the information may seem, so that it can be pursued.

The victims

There are sixteen missing persons on the ICLVR's list of the Disappeared, nine of whom have been recovered to date: Eugene Simons (recovered in 1984 before the establishment of the ICLVR); John McClory, Brian McKinney, Eamon Molloy (all recovered in 1999); Jean McConville (recovered in 2003); Danny McIlhone (recovered in 2008); Charlie Armstrong (recovered in 2010); Gerard Evans (recovered in 2010); and Peter Wilson (recovered in 2010). There are, however, seven persons whose remains have yet to be recovered: Joe Lynskey, Kevin McKee, Columba McVeigh, Brendan Megraw, Captain Robert Nairac, Seamus Ruddy and Seamus Wright.

In some cases the missing persons were involved with the paramilitary groups who abducted and killed them. In other cases the missing persons were not in any way connected with paramilitary groups or activities; rather, they were people simply caught up in events beyond their control. One of the missing persons on the ICLVR's list was a serving British Army soldier who was on a tour of duty in Northern Ireland.

The Provisional IRA has admitted responsibility for thirteen of the sixteen victims – mostly in a statement issued in 1999 but also with subsequent admissions over the course of the ICLVR's work. The Irish National Liberation Army has admitted responsibility for one victim. Responsibility for two of the missing victims has not been acknowledged by any group or otherwise attributed.

Two of the cases on the ICLVR's list will now be outlined briefly. Columba McVeigh from Donaghmore, Co Tyrone, was nineteen years old when he was abducted and killed in October 1975. He had been working in Dublin and had only returned to Northern Ireland a few days earlier. In its 1999 statement the Provisional IRA admitted that it had abducted, killed and secretly buried Columba. On the basis of information received between 1999 and 2012, the ICLVR has carried out a number of searches and excavations at a location near Tydavnet, Co Monaghan. His remains have yet to be recovered but the ICLVR's investigation team is continuing its searches and excavation at the identified site.

Charlie Armstrong was a married father of five children from Crossmaglen, Co Armagh, and was fifty-four years old when he disappeared in August 1981. He had left home to collect an elderly neighbour to go to morning mass but he never arrived. Following unsuccessful excavations in 2000 and 2008, on the basis of further

information the ICLVR recovered his remains in July 2010 buried in a bog at Colgagh in County Monaghan. Charlie Armstrong was not included on the list of missing people issued by the IRA in 1999 and, to date, no group has admitted responsibility for his murder.

International and cross-community support

In carrying out its work since its establishment, the ICLVR has been able to rely on support from both the Irish and British Governments primarily. It has also been supported in its development and its work by other governments and international organisations, both in general terms and in respect of individual cases. Most importantly, it has enjoyed support from across the political spectrum at local level in Northern Ireland and in Ireland and Great Britain. It has had support from the Churches and other religious organisations and from a wide range of other non-government and community groups.

Crucially, the ICLVR has also gained support and trust from the paramilitary organisations. That is not to say that this support and trust was present from the beginning or that it was easy to develop. It has taken careful and sustained effort over a good number of years to build up that relationship of trust and to generate support and establish confidence among groups and individuals, North and South. However, the broad-based nature of the support that the ICLVR has attracted over this time has greatly enhanced its integrity and credibility as a non-partisan, non-political humanitarian body, and this has been fundamental to its effectiveness in carrying out its task.

*Information can be passed in confidence to the ICLVR by
freephone 00 800 55585500 or to PO Box 10827, Dublin 2, Ireland.
Further information about the ICLVR and its work can be found at
www.iclvr.ie.*