

**ADDRESS BY KATHRYNE BOMBERGER, DIRECTOR-GENERAL,  
INTERNATIONAL COMMISSION ON MISSING PERSONS TO THE COMMITTEE ON LEGAL  
AFFAIRS AND HUMAN RIGHTS OF THE PARLIAMENTARY ASSEMBLY OF  
THE COUNCIL OF EUROPE**

**6<sup>th</sup> October, 2011**

Mr. President, Mr. Secretary General, Mr. Chairman, Honorable Members of the Assembly,

Before I deliver my speech, I would like to express my sincere gratitude to the Committee of Legal Affairs and Human Rights of the Parliamentary Assembly for the invitation to address the Committee on the topic of “Enforced Disappearances” and to contribute to a discussion on the need to for a European legal instrument that would supplement the Convention on Enforced and Involuntary Disappearances and to discuss progress on missing persons in the Western Balkans.

Mr. President / Mr. Chairman,

The International Commission on Missing Persons (ICMP) was established to seek the cooperation of Governments and to assist them in addressing the issue of persons missing as a consequence of armed conflict and human rights abuses.

Today, we must recognize that many persons missing as a consequence of such events will not be found alive, but that their mortal remains are hidden, often in remote locations. We must also recognize that survivors have suffered, and often continue to suffer, severe hardship and injustice.

Large numbers of missing persons thereby perpetuate the specter of a painful past, exacerbate the fragility of peace and reconciliation processes and are an obstacle to the

development of democratic society through accountable and just institutions. The Council of Europe, in particular the European Court of Human Rights, recognized early on that the failure to provide answers on the fate and whereabouts of missing persons constitutes a continuing human rights violation in need of redress.

For fifteen years, ICMP has worked - in the Balkans and elsewhere – together with governments to address this particular concern. It has done so consistently through an approach based on human rights and rule of law principles. Some of you will be aware, that in 2004, the ICMP Chairman appraised this Assembly of ICMP's conviction that efforts to solve the problem of disappearances must be anchored in the rule of law and human rights.

Such efforts must go hand in hand with ending impunity, including that of non-state actors and must be closely aligned with the requirements of regular domestic and international justice institutions, including the technical capacities needed to deliver answers in a manner that conforms to standards of justice, and, last but not least, must not discriminate on the basis of nationality, ethnic or religious affiliation of the disappeared or the circumstances of disappearances, including circumstances of locations or specific time periods.

ICMP has welcomed the entry into force in 2010 of the 2006 UN Convention and continues to advocate for broader acceptance of this important instrument. ICMP has also noted some of the Convention's shortcomings with regard to the requirements I just mentioned. ICMP therefore concurs with the Rapporteur in this respect.

Mr. President / Mr. Chairman,

The Council of Europe, especially this Assembly, has pioneered many initiatives in many different fields that have created better, more advanced and equitable policies. These many improvements have benefitted primarily the member states of the Council of Europe. However, they have also been inspiring to others and have contributed to progress, as well as providing a forum for new ways of thinking on important matters. The issue of disappearances is one such important matter.

ICMP therefore very much welcomes the initiative of this Assembly to examine the development of a European instrument on the issue of disappearances. Such an instrument would presumably seek to fully embrace the Council of Europe's core values of human rights and the rule of law. In so doing, it would not only further improve the protection that Council of Europe instruments accord to the people in Europe, but would also help to promote and further strengthen universal understanding and progress in policy making.

Mr. President / Mr. Chairman

I was asked to comment specifically on the Balkan Region. I want to recall that the largest effort to systematically locate and reliably identify persons missing as a consequence of armed conflicts and human rights violations that occurred over a decade ago in the countries of the Western Balkans, have been undertaken in that region.

As consequence of the armed conflicts of the in the Western Balkans it is estimated that 40,000 persons went missing. This number includes the conflicts relevant to Croatia, Bosnia and Herzegovina and Kosovo. Today, two- thirds of those missing, or approximately 26,000 persons have been accounted for and an estimated 14,000 persons are still missing in the region. This number includes approximately 2,000 persons missing from the Croatia conflict (out of 6,000 reported missing), approximately 2,000 persons from the Kosovo conflict (out of approximately 4,500) and approximately 10,000 persons missing from the Bosnia conflict out of an estimated 30,000 persons missing. This progress made by the governments of the Western Balkans represents an unprecedented achievement when compared to other countries in the world affected by large numbers of missing persons from armed conflict, crimes against humanity and violations of human rights.

The Western Balkans region also benefited from the ICMP's DNA-led process of identifications, which ICMP pioneered in the year 2000 to address the issue of persons missing from war, violations of human rights and natural disasters. Of the number of missing persons outlined above, the ICMP has assisted Serbia, Bosnia and Kosovo and Croatia in using DNA to make accurate identifications of missing persons. In the region of the Western

Balkans, ICMP has made over 16,000 accurate DNA-led identifications; of which over 13,300 are relevant to the Bosnia conflict and over 2,360 relevant to the Kosovo conflict and over 350 regarding the Croatia conflict. Information regarding cases that were identified prior to the implementation of ICMP's DNA-led process in 2001 is provided to ICMP by government or government authorities and is less reliable, since these cases were closed through non-DNA means. These numbers include, 8,000 cases closed in BiH prior to the use of DNA, an unknown number of cases closed in Croatia, and an unknown number in Kosovo (See ICMP's report, *The Situation in Kosovo: A Stock Taking*).

The use of DNA has greatly impacted the process of accounting for missing persons in politically charged environments where numbers of missing persons are frequently contested. In addition, DNA testing has allowed for identifications in cases that would not have been possible through any other means.

ICMP's use of DNA has yielded remarkable success in the context of the 1995 Fall of Srebrenica, where ICMP has been able to use DNA to identify 6,600 persons and to ascertain that the total number of missing is about 8,100; and in Serbia, where ICMP was able to assist Serbia in accounting for 820 persons missing from the Kosovo conflict who were executed and buried in Serbia in 1999.

The approximately 14,000 persons that remain missing will be more difficult to account for. ICMP believes that the process has reached a virtual impasse in Kosovo for both technical and political reasons. In Bosnia and Herzegovina, the process is now slowing down as the majority of missing persons have been accounted for.

With regard to Srebrenica itself, it is estimated that 1,400 persons remain missing from Srebrenica; however, owing to the existence of hundreds of secondary mass grave sites, the recovery of disarticulated body parts of already identified and buried persons may continue for years. The creation of Central Records by the Missing Persons Institute of Bosnia and Herzegovina will be of enormous help in understanding how to strategically address the remaining missing persons' cases in Bosnia and Herzegovina. In addition, the decision of the State Prosecutor's Office in Bosnia to assume control from local prosecutors to conduct

excavations should have a positive impact in expediting the recovery of missing persons from mass and clandestine graves.

Finally, using exact science to identify the missing contributes to ending impunity. DNA analysis is the only rigorously scientific forensic method capable of linking evidence to specific individuals consistently and with a high degree of certainty. It is therefore of considerable value in criminal trials, including those taking place at the ICTY.

ICMP has supported ICTY with testimony, statements and depositions and has assisted the prosecution in domestic war crimes trials. Currently, ICMP is preparing testimony in the trials of Radovan Karadzic and Ratko Mladic.

Mr. President/Mr. Chairman,

The States of the Western Balkans have achieved exceptional results in accounting for missing persons from armed conflict and violations of human rights. The principles that have underpinned this success are congruent with the Council of Europe's vision of creating a new instrument for Europe that strengthens the rule of law measures supported by the Convention.

In practical terms, the States of the Western Balkans have created sustainable rule of law institutions at an executive level to address the issue, including the commissions on missing persons in Serbia, Croatia, Montenegro, Kosovo and the Missing Persons Institute in Bosnia and Herzegovina, which searches for missing persons regardless of ethnic, religious or national origin. They have created domestic legislation, the most important of which is the Law on Missing Persons in Bosnia and Herzegovina, which defines the right of victims to obtain information concerning the fate and whereabouts of the missing. They have created standards under the authority of the prosecutor's office to allow for proper excavations of clandestine or mass graves that enhance investigations and will allow the families of the missing to access justice in addition to knowing the fate of a loved. Critically they have included the families of the missing in the process at every stage, including in the creation of

institutions and legislation. In the Missing Persons Institute, the families of the missing have a direct role in the form of membership of an Advisory Board within the Institute itself.

The process is not perfect in the Western Balkans and the governments in that region must remain vigilant in accounting for the remaining 14,000 missing persons. However, we believe that the efforts of these States and of civil society in that region, in particular the families of the missing who have been active and vocal in this issue, serves as a valuable rule of law based model for Europe and for other parts of the world.