

SPEECH BY HER MAJESTY QUEEN NOOR, ICMP COMMISSIONER
CONFERENCE
THE MISSING: AN AGENDA FOR THE FUTURE

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Your Excellencies, Ladies and Gentlemen,

I have been an ICMP Commissioner since 2001 and have participated in its growth from a small commission to what it has become today— one of the world’s leading missing persons organization. I am proud to be a part of this successful international initiative and delighted to share with you some lessons and perspectives from our work over the past decades.

As ICMP grew, we learned, and transformed ideas into action – at first primarily in the post-conflict countries of the Western Balkans. Our teachers were the survivors of the conflicts that raged through that region in the 1990’s, mainly women, thousands of women who had lost husbands, brothers, fathers and children. Many of them are here today. Together with them, and because of them, we have accomplished something unprecedented. But the lessons we have learned are not limited to the issue of persons missing from war and gross human rights violations. They can also be applied universally to all missing persons cases whether from human trafficking, drug related violence, migration or disasters.

For a long time, accounting for people missing during conflict was treated exclusively in accordance with rules and customs applying specifically to war under the Geneva Conventions requiring warring parties to record the identity of the dead and wounded and to share this information with enemy forces. If warring parties to a conflict really did

behave according to these provisions, there would be no conflict-related missing persons....

And of course there almost always are, for two reasons:

First, wars are not conducted in moderation; they are chaotic, arbitrary and lawless. Consequently, accounting for the missing during conflict consistently and reliably and communicating that information to an enemy, is virtually impossible.

Second, the nature of war itself has changed. The ratio of civilians to soldier's deaths in wars in the 19th century was about 1:7. However, since the mid-20th century this ratio has been more than reversed, to an estimated 9 civilians to every soldier killed today.

The practical problem in applying the rules of war that charge combatants with addressing the fate of the missing is that they can no longer be presumed to know who and where most of them are. As a result, even once the fighting has ended, very little progress is made in locating and identifying the missing. Unfortunately this is the situation in most of the world. Only a handful of governments have shown a commitment to recognizing the rights of victims and to employing a modern, rule-of-law-based approach.

The countries of the former Yugoslavia are among those that have. Over 70% of the estimated 40,000 persons missing as a consequence of the conflicts of the 1990's have been accounted for. In Bosnia and Herzegovina, specifically, where an estimated 30,000 persons went missing, 74% have been accounted for to date. Concerning Srebrenica, the only recognized genocide on European soil since WWII, ICMP has assisted Bosnia and Herzegovina in identifying almost 90% of the 8,000 men and boys who went missing.

These numbers contrast sharply with those reported from other parts of the world.

Several conditions enabled this progress:

First, in the Western Balkans, the international community turned its attention to the issue early and maintained its efforts for almost two decades, in particular through the

International Criminal Tribunal of the former Yugoslavia (ICTY) As a consequence, the issue did not become a domain exclusively dominated by political factors, as it has in other parts of the world;

Second, in their efforts to locate the missing, the countries of the Western Balkans systematically ensured the cooperation of their domestic institutions and post-conflict justice systems.

A third condition was the active, unrelenting engagement of the families of the missing, as well as the broader public. It is important to note that in the former Yugoslavia the families were neither left alone, nor simply passive recipients of international assistance. Instead, they were, and still are, active and articulate participants who work across national, religious and ethnic lines to hold both domestic authorities and international organizations to account. They were the first to build a functioning civil society network, and they directly participated in operational efforts to locate the missing. They provided ICMP with close to 100,000 records of personal information, including genetic samples to permit the identification of their missing loved ones. And they remained in control of their personal information, queried progress of their cases online and took informed decisions on the use of their genetic data for criminal prosecutions.

A fourth condition relates directly to the rule-of-law approach that was taken in the region which included working to a standard of evidence required for legal processes of all kinds. They require that specific, highly reliable methods are used. DNA is one of them and the only one that could be used in the former Yugoslavia. Applying modern technology, the very technology that any modern rule-of-law country would use to account for its missing citizens, was an important condition, both for reliably identifying the missing and for strengthening the rule of law itself.

Finally, the establishment of the ICMP, which focused the international community's commitment on the issue, and was the mechanism through which domestic post-conflict institutions, including the justice apparatus, could receive the material, operational and technical support they required.

Until recently the issue of the missing from war was addressed almost exclusively from a “wartime” perspective, involving former “warring parties” and the rules and customs of war. With the establishment of the ICTY and then of the ICMP this perspective changed.

This change is also evident in the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance, under which States are required to investigate disappearances by standards applicable to criminal investigations. However, much remains to be done in terms of defining the responsibility of States.

To that end, ICMP has created a Declaration on the *Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses*, which we anticipate the governments of the former Yugoslavia will be the first to sign. The issue - or ‘crime’ of missing persons must be addressed from a peacetime perspective, involving courts, prosecutors, forensic experts, all underpinned by rule-of-law and human rights guarantees.

This change in perspective has led to a new understanding of the “crime of missing persons,” focused on what happens after conflict. When we speak of a missing person, we mean someone being missed by others. It is those that remain who experience the anguish of uncertainty. Whether following disasters, suspected crimes, even involuntary disappearances, those left behind turn to State authorities for answers and resolution. They expect the State to give answers irrespective of whether that State bears a direct responsibility for a person having gone missing.

Under the old approach, responsibility for the “crime of the missing” fell to the warring parties. Families had no recourse to the law if efforts made to communicate the identity of the missing were inadequate. Today, those left behind have real options - including human rights courts, participation in war crimes trials and normal rule-of-law proceedings. Since 2001, numerous rulings by the European Court on Human Rights and the Inter-American Court of Human Rights have condemned States for not making sufficient efforts to end the continuing state of uncertainty, and expecting them to conduct genuinely effective investigations into the whereabouts of persons missing as a result of war.

Conducting these investigations is very challenging for a number of reasons, however. For one, those responsible for disappearances have few incentives to reveal their victims' whereabouts. Indeed, in the former Yugoslavia, they often obstructed the State's efforts by relocating mass graves to new, unknown locations.

Second, illicit mass graves containing the remains of missing persons, are often located on the territory of the former enemy;

Thirdly, adequate technical capacities are often lacking. This is a significant concern, because ad hoc and improvised investigations are always assailable for political gain. They can therefore aggravate the continuing anguish of those left behind, and undermine the credibility of the effort;

Fourth, following war or widespread human rights abuses, the necessary legal frameworks for addressing missing persons issues are often lacking. Here I am referring in particular to data-sharing and protection regimes, as well as gaps in the institutional landscape. Such legal and institutional gaps cannot be filled overnight.

For all these reasons it is difficult for States to mount effective investigations as is rightly expected of them.

However, the former Yugoslavia had the benefit of two institutions, the ICTY and the ICMP which were instrumental in confronting these obstacles.

The ICTY's extensive investigations located a significant number of mass graves throughout the region which effectively assisted those countries to overcome territorial and testimonial obstacles to locating the missing.

ICMP for its part has made available sizable technical capacities to excavate mass graves and to scientifically identify the remains of tens of thousands of victims.

It has also provided legal and policy frameworks for effective data sharing and protection and consistently worked with governments to build their own administrative and

institutional capacities to take increasing ownership of these processes. ICMP is currently implementing a similar approach in Iraq, Libya and elsewhere.

ICMP weaves in and out of these State processes, because the importance of the investigation lies not just with the investigation's conduct and outcome but also with the reinstatement of rights and guarantees that were denied during war. Only the State can reinstate rights and guarantees.

If this conference strengthens the resolve of States to address the issue of persons missing as a consequence of war - through rule-of-law institutions, processes and methods commensurate with modern standards of human rights and democratic society – it will make a contribution towards a more just future.

If this conference also strengthens mechanisms that facilitate States' efforts, it will have taken a large step to eradicate what I called the crime of missing persons: A State's failure to end the anguish of uncertainty.

As I earlier indicated a State's failure to properly investigate might not always be attributed to a lack of political will. It may result from obstacles that are beyond the control of the State at a given time. Overcoming these obstacles requires our assistance in partnership with the families of the missing, the international community, forensic experts, judicial experts and many others.

This is our shared learning experience. The families of the missing want justice. They want the truth. They want to live in a society where the state no longer abuses them, but helps them by accounting for the missing and by engaging in an honest reckoning of the past.

I look forward now to hearing from our honored guest, President Josipovic, the President of Croatia. I am very pleased that Croatia, along with other countries of the former Yugoslavia, will soon be among the first nations to sign an ICMP sponsored declaration on the responsibility of States in accounting for missing persons. The declaration espouses the principles which encapsulate a modern approach to missing persons.