

**SPEECH BY ICMP COMMISSIONER KNUT VOLLEBAEK
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Ladies and Gentlemen,

The issue of missing persons is about the living. It is about the disappearance of someone you love. It is about the lingering, torturous uncertainty concerning the fate of that person: What happened to them? Where are they? Who is concealing this information and why? Are they dead or might they still be alive? Why have they left us?

The agony of this uncertainty is recognized to be a form of mental torture for the families of the missing. It has been found to meet the requirements of a violation of Article 3 of the European Convention on Human Rights: The Prohibition of Torture.

We realize this as we follow the events concerning the missing children in Nairobi, when we look at Syria and when reflect on the Mediterranean crisis where poor migrants, seeking a better life, go missing every day and are subsequently forgotten... We also realize this when we fail to find persons missing from disasters, such as the Malaysian airlines flight, or Typhoon Hiyan in The Philippines.

International law distinguishes between missing persons generally and disappearances more specifically. Disappearances imply some involvement of the authorities. Hence the authorities are directly required to investigate. Only more recently has it become recognized that all missing persons cases must be investigated, but much remains to be done.

Then, distinctions are frequently made in the context of crimes and disasters. These legal distinctions to some extent define competencies in missing persons scenarios. Missing persons as a consequence of disasters, for instance, are seen primarily as a responsibility of

the police, whereas following armed conflict the issue has for a long time been regarded as the competency of parties to such conflicts – as a humanitarian problem. As a result, there are dichotomies between conflict-related humanitarian approaches and rule of law based responses by police, prosecutors and courts.

Sometimes the issue is simply seen as too overwhelming. An example is Indonesia following the 2004 tsunami, where the missing were largely not identified. However, at the same time in Thailand great efforts were made with good results. While it is true that the numbers were much higher in Indonesia than Thailand, it is also a fact that the missing in Thailand included many Westerners, prompting a competent international response.

Legal preconceptions, issues of competency and technical limitations all contribute to a highly unbalanced approach to missing persons. However, over the last 20 years, there have also been promising improvements:

With the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993, as well as the International Criminal Court (ICC) in 1998, and my Commission, the International Commission on Missing Persons, or (ICMP), in 1996, regular, rule of law based processes have begun to take precedence over ad hoc ,or more or less, discretionary interventions.

These processes have provided for a more unified and inclusive response linking support for families with efforts to locate and identify the missing and contributing to justice in the form of reparations and prosecutions.

Staying with the example of war and human rights abuses, the difference becomes very clear:

- Large numbers of persons missing as a result of war and human rights abuses are a poignant reminder of the failure to safeguard individual rights and to uphold the rule of law.
- Large numbers of missing persons then perpetuate a painful past, often

exacerbate the fragility of peace and reconciliation, and represent an obstacle to the development of democratic society through institutions that are effective, accountable and fair.

- But if we get these institutions to address the issue effectively, accountably and fairly, then we reinstitute the rights that were violated and foster trust and cohesion.
- Thus, to achieve peace, we must act by the law of peace, and not by the law of war. This is what we call the rule of law, and which must be applied in all missing persons scenarios.

Finally, we should not think that in disaster contexts the rule of law is not an issue or a given. For instance, we do not know the reason for the disappearance of Malaysia Airlines flight 370. However, the reason for the lack of transparency on the part of the Malaysian authorities is believed by many to be military expediency, or maybe incompetence. Whatever the reason is, it has exacerbated the anguish of the families of those on board of the plane.

Thus, competing interests exist in all missing persons scenarios. They must be balanced. The way we balance them is important. If we balance competing interests through our democratic institutions, we have the best guarantee to safeguard rights and to strengthen confidence.