

REPORT ON THE ROUNDTABLE ON MISSING PERSONS
WITHIN THE CONTEXT OF ARMED CONFLICT AND HUMAN RIGHTS
Tuesday, 3rd September 2013, Sarajevo

1. ICMP hosted a regional roundtable on 3rd September 2013 in Sarajevo, gathering individuals from state institutions, human rights NGOs, victim groups, academia, journalists and youth that are involved in the missing persons process to discuss a set of issues that will point to a missing persons agenda for the future, based on the experience of the missing persons process in the Western Balkans.
2. The Sarajevo regional roundtable was the third in a series of roundtables preparatory to the international conference on missing persons that ICMP will host in The Hague at the end of October 2013. The two previous roundtables took place in The Hague and the University of Sussex earlier in the year.
3. ICMP structured the Sarajevo regional roundtable around four sets of questions. First, what is the role of the international community in assisting countries recovering from armed conflict or human rights abuses? Are there standards that should be applied by the international community to respond to afflicted states? Second, what are the responsibilities of afflicted states in addressing this issue? What are the rights and role of victims groups and civil society in addressing the issue? Third, are criminal investigations and prosecutions a deterrent to accounting for the missing, or are they a motivating factor and under what conditions? Fourth, does addressing missing persons cases from armed conflict, human rights abuses and organized violence contribute to ending the cycle of violence and to eventual economic development? The roundtable concluded with a final session in which participants identified what the lessons learned from the Western Balkans are, and how they can they be applied to other missing persons scenarios globally, such as disaster response, trafficking, migration.
4. In her introduction, Kathyne Bomberger, ICMP Director General, emphasized a paradigm shift in how the issue of missing persons has been considered and addressed in recent years. Comparing the ratio of killed civilians with combatants in world war (1 civilian for every 7 combatants) with conflict at the end of the twentieth and the beginning of the twenty-first century (9 civilians for every 1 combatant killed), she explained that the dynamics of conflict had fundamentally changed, adding that in conflict today “the majority of missing persons are not combatants but civilians.” The 1990s witnessed a shift of approach, from a humanitarian orientation to a rule of law one. This development was underpinned by the establishment of the ICTY and later the ICC. As a result of these changes in the nature of conflict and law based approaches to addressing missing persons cases following conflict, in the former Yugoslavia more than 70% of the 40,000 persons missing from the conflicts have been accounted for. The question follows: how can positive experiences from the Western Balkans be applied in other parts of the world in different scenarios?

I. Discussion

Part 1: What is the role of the international community in assisting countries recovering from armed conflict or human rights abuses? Are there standards that should be applied by the international community to respond to afflicted states?

5. There was broad consensus that international institutions had played an important role in the process of accounting for missing persons in the Western Balkans, one that has benefited the domestic authorities that bear the primary responsibility for addressing the issue.
6. Saliha Đuderija, assistant to the Minister for Human Rights and Refugees of Bosnia and Herzegovina, noted that “the international community was a key factor in overcoming political obstacles to resolving the fate of the missing. Prior to 1996 we had ethnically segregated committees that worked on the principle of reciprocity. With the assistance of the international community we were able to create a non-discriminatory process that would account for everyone, regardless of ethnic, religious or national background.”
7. Ivan Grujić, Assistant to the Minister for Homeland Defenders and Intergenerational Solidarity of the Republic of Croatia, noted that “The international community is not ideal, but it has played an extremely important role in terms of the missing persons issue. He stressed the important role of the international community in fostering regional cooperation which has been critical to the success of the missing persons process in the Western Balkans as well as how it has encouraged the authorities to resolve the issue of the victims, helped build capacities, provided resources and helped to implement the regulations adopted by the state. “We must work to ensure that an international organization has a strong mandate relating to the issue of missing persons so that it can apply standards in future conflicts that unfortunately did not exist here [in the Western Balkans],” said Colonel Grujić. “Nowhere,” concluded Colonel Grujić, “has such a large percentage of the missing been accounted for. It would be very good if the lessons learned from this region could be transferred elsewhere.”
8. Milutin Mišić, a member of the Missing Persons Institute Board of Directors, BIH, underlined that “the question of missing persons ought to be a question and problem for the state,” but that to date the state had an incentive to hide behind international community efforts which has led to complacency on the part of the State. He concluded: “When will we convey sufficient responsibility to the institutions of BIH?”
9. Anisa Sućeska, BIRN, BIH, commented on the dependence that had grown on the international community. “I think we are afflicted with the syndrome of victimization. We are only one chapter in a series conflicts in the world that occurred almost simultaneously. We are now angry that the international community changed its focus, rather than accept the fact that it needs to help other victims. However, we must insist that the international community complete the process that began here.”
10. Vesna Teršelič, an NGO activist and human rights defender, Croatia, stated that it was “because of the requests of associations of families of missing persons and human rights organizations, and because of the involvement of the international community we now have the standards that we have, whereas in the 1990s we did not have any standards at all.” Ms. Teršelič discussed the rights that victims have subsequent to massive and systemic violations of human rights, namely rights to truth, to justice, to reparation and non-repetition. She suggested that the international community enshrine these rights and the corresponding obligations of the state in a convention. “There are still a lot of steps [to be taken], but international contributions may take the form of the building of standards based on lessons learned from this region,” said Ms. Teršelič.

11. Lejla Hadžimešić, human rights expert, BIH, echoed Ms. Teršelič's opinion about "how important it is to standardize this area and that the lessons learned in this region are transferred to other areas," stressing in particular "the four rights outlined by Ms. Teršelič, as well as the fight against impunity." "When standardizing, it is very important because this field showed that the formation of the ICC and the ICTY did result in a new shift," said Ms. Hadžimešić.

Part 2a: What are the responsibilities of afflicted states in addressing this issue?

12. There are many lessons learned from the Western Balkans. It has created institutions to address missing persons cases specifically, such as the commissions on missing persons in Croatia, Kosovo and Serbia and the Missing Persons Institute in Bosnia, as well as War Crimes Prosecutors' offices which are tasked with investigating among other issues, crimes related to disappearances. These institutions are unusual and do not exist in most countries.
13. Aida Čerkez, an Associated Press journalist, commented on the intergenerational cycles of violence, and how, now, as a result of the international community's efforts to address the issue of missing persons no one will be able to manipulate numbers of missing persons in the future as a catalyst for renewed conflict. She added however that, "it seems to me that we have identified more than 70% of the missing only because of the pressure from the inter-national community. Why do we not take responsibility? Will the process continue without the conditions of the international community?"
14. Sandra Orlović, Executive Director of the Humanitarian Law Center, Serbia, emphasized the obligations of the state to resolve the issue of missing persons. "These obligations are deeply embodied in international law, and stem from a number of conventions that are present in our legal systems, and articulated through mechanisms of transitional justice," she said. Ms. Orlović expressed skepticism however that the missing persons process could move any further forward in the Western Balkans until facing the past becomes a part of the agenda of the political elites in the region. What is critical is that states must assume ownership of the problem and must want to find their citizens. Saliha Đuderija stressed that "each state must have a highly visible national vocational and professional mechanism that must operate in a transparent manner [to address the legacies of a violent past]. Such mechanisms should however not absolve other participants in the process (police, prosecutors, etc.) from fulfilling their duties. In BIH, the mechanisms exist, but they are not effective because there is no political will to make major breakthroughs because we are still distrustful of one another after the last conflict."
15. Adnan Rizvić, ICMP, suggested that the state's role can be seen in two ways: establishing and supporting mechanisms to resolve the issue of missing persons as well as mechanisms which aim at prevention in the future. The latter, he said, were not yet developed. Therefore historians need to deal with this issue and only then will the next generation be able to capitalize on our experience. Governmental bodies need to document and record the truth and make it the basis for a better future. "This issue should be resolved in order to push forward the process of reconciliation and peace in the future," said Mr. Rizvić.
16. Sven Milekić, Youth Initiative for Human Rights Croatia, drew attention to the fact that even if a state may appear to show political will to address a certain issue, the adoption of laws to that end is often not enough. "Some laws exist on paper and the form is done, but they are not applied." "No matter who comes to power, there is no readiness for dealing with the past or the promotion of issues about which ordinary people know little," said Mr. Milekić.
17. Ivan Grujić commented that "three things fall under the obligation of the state: the obligation to resolve,

accountability and political will.” The key “is still genuine political will,” said Colonel Grujić, “which is operationalized through the adoption of national legislation, the efficient operation of institutional mechanisms for the protection of the families of missing persons and the resolution of their cases, the prosecution of perpetrators and marking events and places of suffering as an expression of respect for the victims.”

Part 2b: What are the rights and role of victims groups and civil society in addressing the issue?

18. Olgica Božanić, a member of the Association of Families of kidnapped and missing persons from Kosovo and Metohija, Serbia, commented that the role of families of the missing is to form associations, to lobby for our rights and to apply sustained pressure on the government [to fulfill its obligations]. “We collect and disseminate information from institutions and international and non-governmental organizations to our members. We demand justice and the criminal prosecution of all perpetrators. We also realize the importance of networking and established two years ago, a regional coordination body, which deals with the issue of the missing on non-discriminatory principles. Today we lobby for the states in the region of the Western Balkans to sign a Declaration of best practice principles in terms of locating recovering and identifying missing persons, as well as for 2014 to be marked as the Year of the Missing.”
19. Ljiljana Alvir, President of the Union of Killed and Missing Homeland Defenders, Croatia, emphasized that, “associations of families of missing persons have played a key role in the process of searching for missing persons because [...] families are the most committed to resolving this problem and they are the driving force and initiator of governmental institutions and bonds with their families. Their role is twofold; on the one hand they put pressure on government institutions [to fulfill their obligations to locate recover and identify the missing], on the other hand they can constructively contribute to government policy related to the issue through participation in committees and raising the problem to a higher level.”
20. Anisa Sućeska commented on the need to address the intergenerational transfer of trauma from one generation to another. Although the media is not usually considered a part of civil society, Ms. Sućeska suggested that, like civil society, the media has a significant role to play in combatting hate speech and moreover in educating youth about dealing with the past so as to avoid the intergenerational transfer of trauma.

Part 3: Are criminal investigations and prosecutions a deterrent to accounting for the missing or are they a motivating factor and under what conditions?

21. Lejla Hadžimešić opened the third session with an unequivocal dismissal of the need to discuss whether or not persons should answer for the crimes they have committed; there is no alternative to achieving justice and guarding against impunity. She emphasized “in terms of non-repetition, by convicting perpetrators, a clear message is sent to the world – international law does not welcome crimes and if someone dares to create a destructive ideology again, he/she will know there is no escape from conviction. In addition, convictions make it more difficult for a potentially monstrous criminal ideology, according to international law, to build a critical mass of supporters, because young people have already learned through their education that such deeds are punishable, against the international law and definitely prompt condemnation.”
22. Mioljub Vitorović, war crimes prosecutor, Serbia, noted that “of course you need to prosecute every crime and every war crime must be prosecuted. [...] War crimes trials can be an obstacle if there is no coordination, and if the witness discloses information [about clandestine gravesites of missing

persons] and nothing is then done for years.” However, he added “if there is good coordination, it is a very efficient mechanism. [...] From experience I know for sure that every time you succeed to bring witnesses who testify about what happened, especially those who admit their guilt, it motivates others who killed to admit their crimes and ease the soul because a normal man cannot live with the fact that he killed others burdening his soul.”

23. Anisa Sućeska: “The answer to this question is that [criminal prosecution] is an obligation and no discussion. But trials do have an effect on public transparency of the process and access to information. Testimony can be a positive element in raising public awareness. Yet there is a dangerous move across the region for anonymization of data from war crime trials.”
24. Ljiljana Alvir discussed the example of the Ovčara trial relating to the massacre of Croatian civilians at the Ovčara farm in eastern Slavonia in 1991 by the JNA and Serb paramilitaries. “We have already noted a positive approach to the presiding judge in the Ovčara case who permitted wider questioning of the indicted and witnesses to elicit information related to missing persons. We even recommended to the International Criminal Court that it permit wider questioning in its hearings to obtain information related to the missing.”
25. Ivan Grujić: “There is clearly a responsibility of states to prosecute and punish offenders. [...] It is necessary to give the perpetrators the opportunity to disclose information and receive more lenient treatment through plea-bargaining. We have positive experience where criminal prosecution led to specific information.”
26. Olgica Božanić: “The Hague Tribunal worked for three years on an indictment for the kidnapers of my brothers. They passed the indictment on to UNMIK, later to EULEX. In the end they were charged with expulsion, not murder, and were acquitted. How can I trust international justice mechanisms, let alone domestic mechanisms? It is therefore necessary to interview suspects and witnesses and members of their families as early as possible so as to save lives.”

Part 4: Does addressing missing persons cases from armed conflict, human rights abuses and organized violence contribute to ending the cycle of violence to eventual economic development?

27. The fourth session of the roundtable provided a forum for discussing the broader purpose of efforts to locate, recover and identify missing persons. Do such efforts contribute to economic development? Do they contribute to a sustainable peace, reconciliation and the rule of law?
28. Svetlana Cenić, an economist, BIH, noted: “People often ask me when will things get better and my answer is, when you look in the mirror and face yourselves. So far I have not succeeded as an economist to calculate the missed financial opportunities and how much all of this [addressing the issue of missing persons] is costing us. Anyone who is engaged in development economics in post-conflict societies will know that between 1945 and 1993 there were 174 wars and 34 % of the wars were between states, while 66% were civil wars, mostly in developing countries. And in those countries that experienced civil war and where the wounds were not healed, the country fell ill again and again war broke out. Truly the unresolved issue of missing persons and war crimes, and the fact that there is no one who wants to look in the mirror, leads to instability and lack of progress. Politically it is profitable to prolong this process; the cheapest populist campaign still deals with the question of the missing. Economically it is disastrous because no one invests in the afflicted country. Internal conflicts are the most pernicious for society and we know this only too well and it is the most difficult to imagine their consequences and the most difficult to admit guilt. These conflicts lead to all manner of divisiveness,

which from an economic perspective is a disaster. What is the value of one man? How to calculate the value of lost people? How much does it cost to find one person? How much does resolving this issue cost? What is that cost and the general loss to society?"

29. Milovan Kubat, Head of the DNA laboratory at the Zagreb Institute of Forensic Medicine, stated "it is a sad success of the process that we have achieved our business in making identifications of the missing. In the areas where we were able to finish the job ethnic intolerance fell sharply and this is definitely one of the prerequisites for economic development."
30. Svetlana Cenić concluded that not dealing with the past is costing BIH millions, and this situation has arisen because "nobody is prepared to focus on all victims equally and politicians and decision-makers postpone the solution to the problem, they relativize and politicize it, without resolving it."
31. Aleksandar Trifunović, Editor of BUKA [NOISE], BIH suggested that if the issue of dealing with the past, including the issue of missing persons, is kept on the margins of public debate it constitutes "a new tool for conflict."
32. Saliha Đuderija commented on how the economic cost of not dealing with the past is often neglected. "Time has shown that this issue should be given priority instead of many other issues, because it is a prerequisite for stability and subsequently for economic development," she said.
33. Sven Milekić stressed the importance of dealing with the past for economic development. "We cannot expect prosperity of society when war criminals are walking among us, and we pretend that everything is normal. We need further research on this topic because people do not know enough about the connection between this issue and economic development."
34. Svetlana Cenić drew attention also to the importance placed on property over people: "The largest campaign since the war was for the return of property, not finding the missing. It seems property is more important to us than people." She commented on prioritization of issues vis-à-vis budget allocations and state funding. "In every budget [in BIH] there is money for veterans associations, and before elections additional funds are made available to the union of public administration and religious communities and political parties. When this is all combined, you can make three more [missing persons] institutes and pay all the forensics in BIH," she said.

Part 5: What are the lessons learned from the WB and how can they be applied to other missing persons?

35. Adnan Rizvić suggested that based on what has been learned from the Western Balkans, a missing persons process activity checklist should be developed for other afflicted countries. Prior to that there is a need to define what was successful in the Western Balkans and what should be done differently in other regions of the world. "It is obvious that the joint intervention of international and domestic institutions coupled with political will and the participation of civil society proved successful," said Mr. Rizvić.
36. Anisa Sućeska summed up the facts that were presented during the course of the roundtable. "More than 70% of missing persons have been accounted for thanks to the cooperation of the international community, domestic authorities, the prosecutor's offices and civil society in a scenario that is unique, and the process took place within a legal framework to support families of the missing. In the last decade in the UK and USA millions of children disappear annually, and in Brazil some 40,000 children disappear annually due to drug use and trafficking. In India, 35,000 children have been found dead. They too were

victims of human trafficking. We do not have the right not to help them because the problem is essentially the same. The role of government is the same, [...] and there is the same need of the families to find their relatives, and the same need for international standards.”

37. Drawing on the experience of BIH, Ms. Sućeska stressed the need for the international community to have at its disposal “an international body that, in cases of conflict, would enter the afflicted country and begin to collect data in a non-selective manner and begin a certain process in time.” Such a body is required “because the state must have a resource that will help it to build its own capacity.”
38. Following Ms. Sućeska’s intervention, Ivan Grujić suggested, “the international community and its mechanisms has an important role here. The war has caused the impossible and the development of civil society and we need a certain amount of time to make these processes start. Croatia has still not completed the process of accounting for the remaining missing persons. This is the hardest part of the job.”
39. Vesna Teršelič reminded the participants of the need to collect data about the killed and the missing, i.e. all human losses relevant to dealing with the past and missing persons processes. “It is important to look at the experience in the collection and classification of data, exhumation, identification, in phases and also transfer data to local actors. One of the problems with international actors in former-Yugoslav countries was that they either carried their data away with them, or destroyed it, never having submitted data photocopies for custody to independent institutions in the region,” said Ms. Teršelič. She emphasized the importance of documenting human losses including missing persons so as to leave an accurate historical record and to contribute to reconciliation.
40. Concerning documentation, Kathryn Bomberger under-scored the importance of making data available to states so as to end speculation about numbers of victims. “This is something that we hope we will continue to develop. The difficulty is how to create a global database that will contain information about missing persons for various reasons, but protect personal data at the same time,” said Ms. Bomberger.

II. List of Participants

- Ms. Kathryn Bomberger, Director-General, ICMP, Chair of the Roundtable Meeting
- Ms. Ljiljana Alvir, President of the Union of Associations of Families of Captured and Missing Croatian Defenders - Republic of Croatia
- Ms. Olgica Božanić, Secretary, Association of Families of Kidnapped and Missing Persons from Kosovo and Metohija
- Mr. Goran Bubalo, Project Director, Catholic Relief Services
- Mr. Ibro Bulić, Prosecutor, Prosecutor’s Office of Bosnia and Herzegovina
- Ms. Svetlana Cenić, Political Analyst and Economist, Consultant Economist
- Ms. Aida Čerkez, Journalist, Associated Press
- Ms. Saliha Đuderija, Assistant to the Minister of Human Rights and Refugees, Bosnia and Herzegovina
- Ms. Jelena Dukarić, Activist, Youth Initiatives for Human Rights Serbia
- Col. Ivan Grujić, President of the Commission on Missing and Detained Persons and Assistant to the Minister of Homeland De-fenders of the Republic of Croatia
- Ms. Lejla Hadžimešić, Human Rights Advisor to the UN Resident Coordinator, UN/OHCHR
- Mr. Matthew Holliday, Justice and Civil Society Coordinator, ICMP
- Mr. Adis Hukanović, Activist, Youth Initiatives for Human Rights, Bosnia and Herzegovina
- Ms. Advija Ibrahimović, Member, Association “Women of Srebrenica”
- Ms. Seida Karabašić, Project Manager, Member of the Steering Board, Association of

Women "Izvor" Prijedor

- Dr. Rifat Kešetović, Court Medicine Specialist, Clinical Centre Tuzla
- Ms. Samira Krehić, Head of Political Unit, Western Balkans Program, ICMP
- Dr. Milovan Kubat, Forensic Pathologist, Department of Forensic Medicine and Criminology
- Ms. Klaudia Kuljuh, Chief of Cabinet, Western Balkans Program, ICMP
- Ms. Lejla Mamut, Human Rights Coordinator, Swiss Association Against Impunity (TRIAL)
- Mr. Sven Milekić, Program Coordinator, Youth Initiatives for Human Rights Croatia
- Ms. Lina Milner Enercrantz, Regional Coordinator for Missing Persons Issue, ICRC
- Mr. Milutin Mišić, Member of the Board of Directors, Missing Persons Institute of Bosnia and Herzegovina
- Ms. Sandra Orlović, Executive Director, Humanitarian Law Center
- Mr. Adnan Rizvić, Deputy Director of Forensic Sciences, ICMP
- Ms. Anisa Sućeska, Country Director Programme Manager, Balkan Transitional Justice, Balkan Investigative Reporting Network (BIRN)
- Ms. Vesna Teršelič, Director, Documenta - Dealing with the Past Center
- Mr. Aleksandar Trifunović, Chief Editor, BUKA magazine
- Mr. Miodrag Vitorović, Deputy War Crimes Prosecutor, Republic of Serbia Office of War Crimes Prosecutor
- Mr. Miodrag Živanović, Professor, Faculty of Philosophy Banja Luka