

**ROUNDTABLE MEETING**  
**THE MISSING: AN AGENDA FOR THE FUTURE**  
**Friday, 21<sup>st</sup> June 2013, The Hague**

1. The Roundtable of 21<sup>st</sup> June 2013 served as a forum for initial discussions on agenda items for conference *The Missing: An Agenda for the Future*. The Hague, Peace Palace, 29<sup>th</sup> October - 1<sup>st</sup> November 2013. The Roundtable was the first of three such events. It involved primarily representatives of international and other organizations that are concerned with missing persons in varying contexts, including criminal justice, policing and humanitarian relief. Two subsequent Roundtables have included primarily participants from academia and forensic experts respectively.<sup>1</sup> All Roundtable Meetings explore the following broad themes, taking stock of current issues, impediments and progress regarding:
  - Missing and disappeared persons from armed conflict and human rights abuses, and the role of national authorities and international institutions in accounting for the missing;
  - Missing persons from disasters and other mass calamities, and harmonizing local and international efforts to locate and identify the missing;
  - Missing persons from organized crime, including human trafficking, drug related violence, as well as persons missing from migration and displacement.
2. Over the last two decades the manner in which the missing persons issue has been addressed has changed. Whereas an almost exclusively humanitarian approach characterized post World War II efforts to account for millions of missing persons, the establishment of the International Tribunal for the former Yugoslavia (ICTY) and later the International Criminal Court (ICC), as well as the international tribunals for Ruanda (ICTR) and Lebanon (STL) meant a steadily increasing role of rule of law processes and institution in missing persons scenarios. Also in the context of disasters, where humanitarian efforts had likewise prevailed in the past, the functions of public authorities, in particular of the police, include locating persons missing as a result of disasters, *inter alia*, through INTERPOL.
3. New technologies have also contributed to this change. Highly developed communication and database informatics, as well as great advances in the forensic sciences, along with their widespread use in the criminal justice field, meant that more and better information on missing persons and the circumstances of their disappearance has become available.
4. Lastly, Courts have promulgated legal frameworks under public law for how public authorities shall address missing persons cases. Various legal instruments, including those found in international human rights, such as the European Convention on Human Rights, are now understood to enshrine the state's obligation to conduct effective investigations regarding missing persons. A range of corresponding rights have emerged, including the right to the truth, the right to justice and the duty of the state to investigate human rights violations. For instance, the United Nations Human Rights Commission stated that the international community should "endeavor to recognize the right of victims of gross violations of human rights, and their families, and society as a whole to know the truth to the fullest extent practicable."<sup>2</sup>

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<sup>1</sup> University of Sussex at the beginning of July and in Sarajevo the end of August. Include references of reports.

<sup>2</sup> United Nations Human Rights Commission, Human Rights Resolution 9/11, "Right to the truth," 24<sup>th</sup> September, 2008, A/HRC/RES/9/11.

5. Nevertheless, the issue of missing persons is not yet universally recognized as a stand-alone one. As a complex phenomenon it is necessary to explore the phenomena in its various contexts to examine how over-arching principles can be applied to each, or subject to which provisions.

## **2.1. Discussion**

6. At the outset of the Roundtable participants took note that over the last two decades the manner in which the missing persons issue has been addressed has changed. Nevertheless, the issue of missing persons is not yet universally recognized as a stand-alone one. As a complex phenomenon it is necessary to explore its various contexts to examine how might overarching principles be applied to each and subject to which provisions.

### **2.1.1. Part One: Missing persons as a consequence of armed conflict and human rights abuses**

7. In the context of armed conflict, important lessons may be drawn for missing persons processes from the experience of the ICTY, both in regard of efforts to locate the missing and the use of forensic evidence to establish their identity. Ms. Šoljan (ICTY) explained that the ICTY conducted excavations of mass graves for the purpose of collecting evidence for its ongoing war crimes prosecutions in The Hague until 2001. At exhumation sites, ICTY scenes of crime officers were instructed to document and catalogue everything they found (e.g. artifacts including identification or other documents, casings, bullets, etc.), which might assist in the identification of the dead. Those working in the field also emphasized in their subsequent reports and/or testimony how every effort was made to document adequately all information that could assist identifications. When the ICTY ceased exhumations and the recovery of remains in 2001, the ICMP, working with local authorities who took over the exhumations, spearheaded the identification of thousands of missing persons in the territory of the former Yugoslavia, including the identification almost 7,000 persons who went missing at the fall of Srebrenica in 1995.
8. In the former Yugoslavia there was consequently a coordinated process of accounting for the missing, first as part of criminal investigations that resulted in locating numerous illicit gravesites. Secondly, the efforts of ICMP enabled the governments of the region to identify the remains of the missing and to provide information on their fate to family members and others. The methods used by ICMP, i.e. forensic DNA, archeology and anthropology, furthermore produced evidence that was admissible at trials. This was especially the case with DNA evidence, which could reliably link the remains of missing persons to alleged crimes, proved highly probative in numerous trials before the Court, and has been used in the ongoing trials Prosecutor vs. Mladić and Prosecutor vs. Karadžić.
9. At the international level, the process of accounting for the missing was not only greatly complementary in terms of locating and identifying the missing, it was also inclusive of the rights of families to know the truth and of efforts to end impunity. As the representative of the ICTY also pointed out, from the prosecution side, the use of forensic sciences enabled connections to be made between primary and secondary mass graves sites and consequently provided a significantly enhanced picture of what had actually happened. From an overall justice standpoint, the use of modern forensic methods and the emphasis on the participation of the families of the missing, has played a significant role in uncovering the truth.
10. The experience in the former Yugoslavia is not a universal one, however. The ICC so far has not specifically addressed the issue of missing persons in current cases. As Ms. Yamaguchi noted, the cases concern ongoing armed conflicts where it is difficult to send investigators and to collect forensic evidence. The ICC's work is furthermore underpinned by the recognition that the primary responsibility to investigate and prosecute crimes concerned lies with the states involved. Since clearly not all

countries have the capacity to undertake effective investigations, there is a need to assist states in building such capacities, including through international coordinated mechanisms.

13. Processes in the former Yugoslavia as implemented through the ICTY and ICMP also differ from the approaches of other international actors. As Mr. Mehley of the ICRC noted, the ICRC pursues a strictly humanitarian approach to the problem of the missing, concentrating on the needs of the families of the missing – notably the “right to know” the fate of one’s loved-ones; this includes addressing legal, administrative, socio-economic and psychological/psychosocial issues of the families. Often, families are living in limbo as a result of a family member having gone missing. In some countries, national legislation provides for a legal status for families of missing persons so that — from a legal standpoint — they can move on with their lives. But they may be left with other issues, such as dealing with psychological trauma and with uncertainty, as well as with economic and financial difficulties. The ICRC also works to address preventive mechanisms, i.e. what kind of measures can be taken at the international and national level before persons go missing.
14. As the ICRC noted, such efforts are complementary to a certain degree with those outlined for the ICTY and the ICMP, but not always when applied to a particular context. For instance, according to the ICRC, obtaining information from families of missing may prove to be easier if the purpose is only to clarify the fate of their missing relatives, because using such information simultaneously for criminal justice purposes may cause fears. Also, from a data protection perspective, if families provide information for humanitarian purposes, it cannot be used in criminal judicial processes; indeed, any collected data must only be used with the full consent and understanding of those concerned. As the ICRC pointed out, there has to be a balance between the humanitarian and the rule of law based approach to the problem of the missing.
15. Different communities have different needs. While there is a right to know the truth, it was considered very important that this is realized in line with the particular needs and circumstances of families. In particular, statistically well-based needs assessments are necessary to design effective programs that can also be adapted over time. Nevertheless, it was widely acknowledged that the integrated approach in the Western Balkans had yielded unprecedented results.
16. Generally, while the initial response by state actors, especially at the domestic level, is clearly directed at families of the missing, the content of the response develops over time to include numerous actors who contribute in various ways. In aiming to be inclusive, the response has an inherently political element, but in a positive sense, where such inclusiveness seeks to build political will to account for missing or disappeared persons.
17. Reflecting on these political aspects, the representative of the International Centre for Counter-Terrorism, Mr. Knoope, noted that there is a basic question of choices, priorities and money, also for investigative agencies. As a result, in the context of terrorism, locating and identifying the terrorists is often the priority. More needs to be done to locate missing persons without regard to the circumstances or their roles in causing persons to go missing. The representative of the Institute for Historical Justice and Reconciliation (IHJR), Ms. Cissé van den Muijsenberg, noted that priority setting and process planning must consider cultural contexts that require a balancing of international standards with local expectations.
18. Ms. O’Sullivan, Netherlands Forensic Institute (NFI), recalled that managing expectations requires building a broad understanding of the responsibilities of the role of international actors, as well as of domestic counterparts, a task that can be complicated where capacities and knowledge are lacking. Mr. Maat (NFI) in particular pointed out that not only technical processes are often insufficiently understood, but that also the modalities of information processing and data protection can lead to

misunderstandings. The representative of the STL, Dr. Acquaviva, emphasized in that regard that while some organizations have privileges and are not obliged to disclose sensitive information, such as ICMP or the ICRC and international tribunals, there is insufficient clarity regarding the ownership of documents and forensic materials and personal data in their archives. The ICTY, for instance, has ownership of forensic documents in its archive; ICMP applies a policy of data subject control over personal data and holds other forensic evidence in a fiduciary capacity.

19. As a rule, the rights of individuals to their information and evidence must be balanced with the public interest. That interest, as Ms. Cissé van den Muijsenberg (IHJR) pointed out, includes the requirements of reconciliation processes. Linking the major issue of missing persons to the broader issue of sustainable reconciliation necessitates the provision of all possible historical data in an accessible manner. For instance, as was noted for the ICTY, the justice sector passing judgments with detailed accounts — the judgment in Prosecutor v. Tolimir relating to crimes that took place in Srebrenica being one example — significantly contributes to establishing unbiased historical narratives. At the same time, the Chamber went to great lengths to protect sensitive personal information and to ensure data subject control over personal data.
20. Concerning historical narratives emerging from forensic data and witness accounts, however, Ms. Cissé van den Muijsenberg (IHJR) noted that while there is a great amount of detail, it is obtained from a limited number of witnesses and sources. The judicial truth is always a product of constraints, and establishing narratives is therefore also about rules, those of evidence and procedure, and the rules used by historians. The rules should complement each other to provide a broader picture and more broadly shared narratives.
21. Dr. Acquaviva (STL) noted that concerning legal frame-works, there is a continuing fragmentation of rules, mechanisms and standards relative to the issue of the missing. Mr. Kleiser (ICMP), concurring, added that the International Convention for the Protection of all Persons against Enforced Disappearance concerns persons going missing with the involvement of state actors. However, the Council of Europe's Parliamentary Assembly recently examined the desirability of launching a separate European instrument in view of possible shortcomings of the convention in relation to human rights and the rule of law. The Geneva Conventions again apply to armed conflict and do not confer rights onto relatives of the missing, but postulate obligations on warring parties. Human rights on the other hand always apply and are enforceable. It was also stressed that a very real challenge relates to the actual implementation — or not — by state and non-state actors of existing legal frameworks.
22. Finally, no system is in place to harmonize or combine all these efforts even for practical purposes. While a universal coordination system exists within the UN, i.e. cluster coordination, as Mr. Seen (UNDAC) pointed out, there exists no missing persons cluster. Hence the issue falls on the various players to find a way to coordinate efforts. The INTERPOL representative, Mr. O'Connell, felt that gaps at the international level have been identified and measures to redress these problems are being taken in partnership with ICMP, the EU and others for disaster contexts. The approach taken in disaster situations can be helpful in other contexts as well.

#### **2.1.2. Part Two: Disasters and mass calamities**

23. In cases where persons go missing as a result of disasters, law enforcement agencies, including their forensic institutes and services, are increasingly taking the lead in locating and identifying victims. Considering that disasters today have an increasingly international dimension, in particular with regard to disaster victim identification (DVI), practically all states have adopted measures to ensure co-operation in DVI events and to safeguard whenever possible the basic human rights of victims and their families with regard to accurate identifications. In particular, the INTERPOL Standing Committee on DVI

has continuously worked to improve standard DVI procedures, to disseminate best practice and to promote their implementation.

24. DVI procedures differ from those following armed conflict and human rights abuses in several ways. They apply more uniform standards of work; as a rule, standards of forensic evidence meet the requirements of courts of law; and they usually produce results more quickly than missing persons processes in post-conflict settings, most likely due to the non-interference of political elements often present in post-conflict settings.
25. Like other agencies, law enforcement agencies have been faced with the challenge of globalization for many years, and there is an ever-increasing need to provide a framework to support police globally and across state borders. Because disasters usually affect more than one country in terms of people lost, locations struck, or through calls for international assistance and relief, INTERPOL, ICMP and others have supported the development of global standards and instruments. As Mr. O'Connell (INTERPOL) explained, these include rapid deployment arrangements, efficient data processing methods, such as FASTID, or ICMP's Forensic Science Database Management System (fDMS), as well as maintaining commensurate forensic capacities. An important improvement in that regard is the development by INTERPOL and ICMP of a permanent Platform for DVI (PDVI), which will enhance the resilience of standby capability for the global community. Prof. Kappen (NFI) drew attention to his institute's Bonaparte application, stressing the importance of making this kind of technology available to authorities everywhere.
26. Mr. O'Connell informed the participants that other players are increasingly becoming involved in DVI provision as well, including private service providers. This instills a new dynamic in which complementarity on the basis of clear terms of reference must be ensured. However, this dynamic should be welcomed because preparedness is not yet where it should be. Prof. Schneider (University of Cologne) added that external proficiency testing programs for forensic DNA testing in DVI scenarios are missing due to a lack of funding, and that there are still significant discrepancies in domestic capacity even between the countries of the EU. Accordingly, there are calls on ICMP and others to devise training and other programs to improve that situation.
27. However, building and maintaining domestic capacities is not easy. For instance, according to Mr. O'Connell, following a recent DVI event in the Philippines, international responders left behind good infrastructure, including laboratories, identification capabilities and related resources. However, when a subsequent flood in the Philippines took the lives of thousands of people these provisions were no longer available. Also international financial support is not always tailored to maintaining DVI capacities. In the case of the flood, for instance, the Philippines received some 20 million Euro in humanitarian aid, but could not use any of these funds for purposes of DVI. Sustaining capacity can therefore also depend on the flexibility of foreign aid. Hence there may be a case for giving international and multilateral preparedness priority over building domestic capacity, especially where such capacity will be rarely needed.

### **2.1.3. Part three: Organized Crime and Migration**

28. There is extensive and varied experience in addressing the issue of missing persons as a consequence of armed conflicts as well as disasters. However, issues related to persons going missing as a result of organized crime — including trafficking in human beings (THB) or as a consequence of migration or displacement — are less explored.
29. One conceptual approach to these contexts of persons going missing, according to Mr. Wyss (IOM), could be made by drawing a distinction between (i) locating the missing by forensic means, i.e. through

locating and identifying their remains, and (ii) tracing activities. As a distinction of means, the latter could be regarded as more related to preventing or redressing disappearances. Mr. Kleiser (ICMP) pointed out, that the same could be said also of the forensic approaches. They too have a preventative effect, if one considers that a disappearance is experienced and suffered by those left behind and that resolving the fate of a disappeared person redresses that uncertainty, or prevents its continuation. In the context of crimes, including war crimes, effective forensic means may also have a deterrent effect. Generally, however, a distinction of means seemed a useful first step to take stock of a cluster of problems that needs to be further explored.

30. Tracing, as employed by IOM for instance, includes the use of a displacement tracking matrix to register internally displaced persons or persons separated from their families and friends following natural or manmade disasters. The International Red Cross and Red Crescent Movement's global tracing network aims to re-establish contact between separated family members. The ICRC's work to restore family links goes back to 1870, when it obtained lists of French prisoners held by German forces, and could then reassure the families.
31. ICMP's forensic activities have become highly relevant also due to increasing numbers of migrant fatalities. In the Mediterranean context alone, where limited statistical information has been compiled, inter alia, by the Dutch NGO United, it is estimated that about 1,000 people perish annually as a result of trafficking or illegal migration. In this regard more work needs to be initiated with countries of origin of migrants and their population, in particular families. This domain has not been sufficiently explored. As an initial step, Mr. Wyss (IOM) suggested the situation in Western Africa, Sierra Leone, and Ghana could be explored and potentially extended to other countries with a view to compiling better data that could be made more broadly available.
32. In relation to the phenomenon of Trafficking in Human Beings (THB), Mr. Stary (Eurojust) pointed out that while the numbers of THB victims are constantly increasing, the number of prosecutions and successful convictions is de-creasing. One reason for this trend is that judicial authorities face significant problems obtaining victim testimony. Another problem is that the victims of THB cannot, in many cases, be safely repatriated. This is particularly the case when the perpetrators are located both in the country of destination and in that of origin. While there are no comprehensive statistics on the causes of THB, economic reasons, war, or natural disasters all contribute.
33. Mr. Stary referred to an EC/Eurostat report published earlier in 2013, based on responses from the 27 EU countries plus Iceland, Montenegro, Norway, Serbia, Switzerland, and Turkey. The report covers the period of 2008-2010 and cites a total number of 9,528 identified and presumed victims and an increase of 18% for that period. The number of identified victims in 2010 in the 24 Member States that were able to provide this information is 5,535.
34. Mr. O'Connell (INTERPOL) pointed out that in the medium term, better harmonization of data collection standards and legal provisions ensuring compatibility with rule of law requirements in the field of data processing is needed and that this area of work holds significant potential.
35. Missing persons as a consequence of organized crime, Trafficking in Human Beings and migration are still an unknown quantity. The problem needs to be explored further, in particular with the countries of origin, including Western Africa countries, Sierra Leone, and Ghana, but also in the EU. Furthermore, standardizing data processing, collection and analysis holds significant potential for making progress in this field.

#### 2.1.4. Roundtable conclusion

36. The issue of missing persons is not yet universally recognized as a stand-alone issue. As a complex phenomenon it warrants specialized attention and funding. As different international actors deal with missing persons issues in various contexts with different mandates and objectives, there is a risk of lowering the visibility of the problem as a unique issue, and hence also the prospects for progress in addressing the problem. In addition to developing a global strategy, there is a need for improving international technical capacities, inter alia, of more compatible and mutually accessible data collection and processing systems. It is also essential that a key focus of international efforts be on the needs of families of the missing and their right to know the truth. Finally, international cooperative frameworks should be strengthened, taking into account lessons learned through international police cooperation in DVI events.

#### 2.2. List of Participants

- Ms. Kathryn Bomberger, Director-General, ICMP, Chair of the Roundtable Meeting
- Dr. Guido Acquaviva, Chief of Cabinet, Special Tribunal for Lebanon
- Mr. Adam Boys, Chief Operating Officer, ICMP
- Ms. Catherine Cissé van den Muijsenberg, Executive Director, Institute for Historical Justice and Reconciliation
- Mr. Ian Hanson, Deputy Director of Forensic Science for Archaeology and Anthropology, ICMP
- Ms. Brenda Hollis, Prosecutor, Special Court for Sierra Leone
- Ms. Nerma Jelacic, Head of Outreach, International Criminal Tribunal for the former Yugoslavia
- Professor Bert Kappen, Professor, Radboud University
- Mr. Andreas Kleiser, Director of Policy and Cooperation, ICMP
- Mr. Peter Knoope, Director, International Centre for Counter-Terrorism
- Ms. Jasmina Kurbasic, Legal Officer, ICMP
- Mr. Anthony London, Reporting Officer, ICMP
- Professor George Maat, Professor Anthropologica, Department of Anatomy, Leiden University
- Mr. Christopher Mehley, Deputy Head Central Tracing Agency and Protection Division, ICRC
- Mr. Mick O'Connell, Director, Operational Police Support, Interpol
- Dr. Christina Oelgemoller, Lecturer in International Relations, Loughborough University
- Ms. Irene O'Sullivan, Senior Forensic Advisor/Scientific Support Co-ordinator, Netherlands Forensic Institute
- Ms. Tanja Pacifico, Special Assistant to the Chief of Mission, International Organization on Migration
- Dr. Thomas Parsons, Director of Forensic Sciences, ICMP
- Mr. Adi Rizvic, Deputy Director of Forensic Sciences, ICMP
- Professor Peter Schneider, Project Coordinator, Institute of Legal Medicine, University of Cologne
- Mr. Sjaak Seen, General Project Manager Merger Emergency Dispatch Centers Rotterdam-Rijnmond & South Holland South, The Netherlands Staff Group Commander [USAR.NL](http://www.usar.nl) and UNDAC member
- Ms. Lada Soljan, Legal Officer, Office of the Prosecutor, International Criminal Tribunal for the former Yugoslavia
- Mr. Lukas Stary, College Contact Point on THB and National Member for Czech Republic

at Eurojust (Genocide Network)

- Dr. Carla van Dongen, DNA Department, Netherlands Forensic Institute
- Mr. Martin Wyss, Chief of Mission, International Organization on Migration
- Ms. Yayoi Yamaguchi, Associate Legal Adviser at the Office of the Prosecutor, ICC