REPORT:
MISSING PERSONS AND THE WORK OF THE ICMP
University of Sussex, 1st July 2013

1. The Sussex Centre for Conflict and Security Research is an interdisciplinary research centre, established in 2011, dedicated to supporting research, and informing public and policy debate, on issues of conflict and security. The core missions of the Centre are to support the development and dissemination of research on conflict and security, building upon Sussex’s longstanding reputation for rigorous, theoretically informed and challenging scholarship on these and other global issues; and to promote engagement with policymakers and practitioners working on conflict and security issues.

I. Introduction

2. The Sussex Centre for Conflict and Security Research (SCSR) together with the International Commission on Missing Persons (ICMP) organised a one-day workshop focused on the issue of missing persons and the work of the ICMP. The ICMP was established in 1996 to help address missing persons issues, in support of post-conflict peace-building and reconciliation under the Dayton Accords. The organisation has since provided technical expertise and assistance to the Governments of Bosnia and Herzegovina, the Republic of Croatia, the Republic of Serbia, Montenegro, and the former Yugoslav Republic of Macedonia, as well as to the authorities of Kosovo, and has located, recovered and identified 27,000 persons who went missing during the conflicts in the Balkans. It has also carried out programme work in Africa, the Middle East, South America and South East Asia, as well as in the EU. In addition, since the 2004 South East Asian tsunami, it has addressed disasters, and recently begun cooperation with the International Organization for Migration (IOM) regarding migration-related disappearances.

3. Recently, the government of the Netherlands has launched an initiative to explore the potential to provide ICMP with a permanent international status. As part of this process the ICMP is preparing for a major conference to be held at The Hague Peace Palace from 29 October – 1 November 2013, the purpose of which is to explore future concepts and ideas regarding how to advance a global response to addressing the missing.

4. The ICMP has a strong rule of law component. In the former Yugoslavia it soon established close working relations with the International Criminal Tribunal for the Former Yugoslavia (ICTY). The ICTY has a law-based approach to post-conflict justice and peace-building, seeking to hold perpetrators criminally responsible for acts committed during the conflicts in the Balkans. The ICMP’s work in the Balkans has been in support of this aim. In an effort to find evidence of war crimes, the ICTY was mandated to send teams of archaeologists to various areas of the Former Yugoslavia to exhume mass graves in order to compile evidence that was used to build cases for criminal trials. The ICTY, however, could not identify individual human remains. In this context, the ICMP started working in coordination with Physicians for Human Rights and others to establish mechanisms capable of dealing with the issue of missing persons and used DNA technology to carry out the identification of remains.
II. Discussion

5. This report presents the main conclusions that emerged from the workshop, which will go forward to the Hague conference. The selected themes debated at the roundtable discussion were divided into the following sessions:

- The ICMP’s historical mandate and transformations underway;
- Theorizing the missing;
- Missing persons in post-conflict contexts; and
- Formalizing the ICMP’s mandate.

6. Participants to the Round Table took note that the ICMP was established in 1996 to help address missing persons issues, in support of post-conflict peace-building and reconciliation under the Dayton Accords. The organization has since provided technical expertise and assistance to the Governments of Bosnia and Herzegovina, the Republic of Croatia, the Republic of Serbia, Montenegro, and the former Yugoslav Republic of Macedonia, as well as to the authorities of Kosovo, and has located and assisted in the recovery and identification of 27,000 persons who went missing during the conflicts in the Balkans including the identification of over 16,000 persons using DNA testing. It has also carried out program work in Africa, the Middle East, South America and South East Asia, as well as in the EU. In addition, since the 2004 South East Asian tsunami, it has addressed disasters, and recently begun cooperation with the International Organization for Migration (IOM) regarding migration-related disappearances.

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2.1. The ICMP’s historical mandate and transformations underway

9. The phenomenon of missing persons is as old as humankind and for centuries people have gone missing due to war, and natural or man-made disasters. Before the end of the Cold War, however, the international community did very little to locate and identify individual missing persons in order to reunite them with members of their family. The ICMP was created in 1996 at a G-7 summit to address the problem of persons who went missing during the conflicts in the Former Yugoslavia. The international community felt that the number of missing persons (later estimated at 40,000 individuals – 70% now accounted for) represented a threat to future peace and stability in the Balkans and a potential cause of insecurity and political instability for Europe.
10. The mandate of the organization was to secure the cooperation of governments in addressing the issue of persons missing due to the interrelated conflicts in the Former Yugoslavia. The creation of the ICMP implied a move away from an ad hoc humanitarian approach to missing persons to an approach that is law-based and that requires states to take responsibility for missing persons cases. Given the ethno-sectarian nature of the conflicts in the Former Yugoslavia, the ICMP faced the challenge of ensuring that governments in the region would collaborate in the search for missing persons in a non-discriminatory way regardless of their ethno-religious background, political affiliation, or role during the conflicts.

11. ICMP operates within the legal framework of international human rights law including the European Convention on Human Rights. The ICMP tries to build local legislation and institutions in post-conflict countries that allow the families of the missing to claim their right to information, right to reparation, and right to protection of the information that they share with institutions in charge of searching for their missing relatives.

12. Compared to other conflict-affected societies, Bosnia and Herzegovina and other countries in the Former Yugoslavia benefited from extensive international attention and support in addressing the issue of missing persons, exemplified by the establishment of the ICMP and the ICTY but also by the reference to this problem in the 1995 Dayton peace agreement. The fact that 70% of the 40,000 missing persons in the former Yugoslavia have today been accounted for warrants attention and can be plausibly explained by a number of factors:

- The strong international presence and support for the inclusion of the issue of missing persons in international peace agreements and treaties;
- The law-based approach moving away from an ad hoc humanitarian approach and the protection of missing persons during conflict to an understanding that in a post-conflict setting states should address the issue of missing persons through the establishment of apposite legislation and institutions as part of transitional justice and reconciliation processes; and the involvement of international and local courts in investigating – not only tracing – cases of missing persons, so that the families of the missing can not only have the bodies of their relatives returned to them but can also seek justice through legal mechanisms.

13. The progress in the search and identification of missing persons varies in different post-conflict contexts and is strongly linked to the political willingness of the international community and local state and non-state actors, their financial resources, and institutional capacity in addressing the issue of missing persons as part of broader political reconciliation and reconstruction processes. This is an important fact that should be taken into consideration when evaluating the work of the ICMP in different geopolitical contexts.

2.2. Theorizing the missing

14. A key theme that emerged from presentations and following debate was a critique of bureaucracy in dealing with the issue of the missing. The search for and tracing of missing persons by organizations like the International Red Cross and Red Crescent Society necessarily involves the formulation of legal and bureaucratic categorizations of the missing, which creates hierarchies. Categories establish an order to approach a complex problem, however such categories may also objectify those gone missing and may run the risk of instrumentalizing those who are searching.

15. This tendency to objectify and categorize the missing persists in contemporary politics. The unraveling of the past that occurs when someone goes missing can cause trauma. Most mechanisms to cope with such trauma, in order to restore a sense of justice and rehabilitation, require some form of collective system. However, as participants noted, bureaucratic or quasi-bureaucratic systems function on the
basis of categorization which may offer false promises of certainty. Not unraveling the past and thus refraining from the demand for certainty and accepting living with ambiguity was suggested by some as another legitimate option.

16. Some participants stressed how ‘the missing’ are seen as objects to be administered instead of irreplaceable human beings. Any bureaucratic entity, however sophisticated, transparent and accountable, is unable to deal with certain notions of personhood. The development of bureaucracy in modern societies has positive and negative effects. There is a need to further explore and understand the interaction between local informal narratives of injustice, human remains and spirits, with more sanitized bureaucratic mechanisms and formal narratives about post-conflict reconstruction and reconciliation in war-affected societies.

17. The objectification and categorization of the missing is at the core of the tension between an institutional approach towards missing persons and the concerns and priorities of those searching for their family members and friends. The participants in the workshop agreed that there is a need for more people and family-centered mechanisms to address the issue of missing persons. Such mechanisms should be designed for listening to the families of the missing and be more responsive to their needs, showing greater flexibility and adaptability to local culture, traditions and politics. Families of missing persons benefit from being involved in decision-making processes directly; from actively participating in producing the genetic evidence needed in the search and identification process; and also from defining the outcomes of the process and evaluating when the process has reached sufficiently satisfactory outcomes.

18. Participants also discussed how the memorializing of those who disappeared or died often involves establishing public memory and reconstructing historical narratives, which can be subject to political usages. For example, in Spain, after the end of Franco’s regime, silence was instituted and the Spanish judiciary stood against the disinterment of dead bodies with the aim of protecting certain political prerogatives and avoiding reopening deep fractures in Spanish society. State-sponsored memorializing has different purposes from memorializing enacted by individual families. It is important to explore how different forms of memorializing construct and consolidate specific narratives such as the narrative of victimhood that can exacerbate tensions between different parties in a conflict. There are also narratives of non-identity, like the emblematic ‘unknown soldier’, which emphasize that the unknown body may have much more significance than the identified body.

19. A workshop participant explained that practices of collection, DNA identification and classification of human remains entail not only the physical and chemical treatment of bones but also the social construction of individual and collective identities, narratives about shared experiences and past events that form the bases of ‘bio-citizenship’ and communitarian culture indispensable for reconciliation and rebuilding conflict-affected societies.

20. The DNA identification method adopted by the ICMP has had interesting effects because it allowed the identification of persons who were not searched for. In some cases, the outcomes of the process have been completely unexpected and have had unintended political consequences. The work of the ICMP allowed the identification and memorializing of missing persons regardless of their role in the conflicts and regardless of whether they were searched for or remembered by the state or non-state actors. Through its work the ICMP uncovered cases of so-called ‘missed missing’ or ‘unmissed missing’ persons, meaning those people who were presumably missing but were not reported or missed because they fell between the categories of particular societal structures, were not members of any specific national, religious or sectarian community, or were members of marginalized groups such as homosexuals and transgender, whose disappearance was not reported because, for reasons such as particular socio-
cultural norms, their families and communities were less likely to come forward and agree to participate in DNA testing with the aim of finding them.

2.3. Missing persons in post-conflict contexts

21. Some workshop participants expressed doubts about whether and how the ICMP’s technical success in using DNA testing to identify the bodies of missing persons has contributed towards the organization’s political aim to promote peace and reconciliation in post-conflict settings such as the former Yugoslavia.

22. The international community supports the idea that there can be no peace without justice for the missing and that finding out what happened to missing persons is a moral and ethical responsibility. Some workshop participants, however, argued that the promotion of this idea in war-torn societies dependent on international funding for their subsistence and reconstruction can be seen as a neo-colonial cultural imposition and external political interference from donors and other dominant international actors. Even if international and national actors promote such ideas with the best intentions, discourses of the missing, victimhood and justice may be politically manipulated by various groups to justify their refusal to engage in peaceful dialogue and reconciliation efforts with former enemies.

23. A participant argued that the ICMP’s promotion of the state’s ownership of the process to deal with the issue of missing persons can be particularly problematic in contexts where local civil society does not regard the state as a legitimate and impartial actor. It was noted that this was a common dilemma within internally-led peace-building initiatives, and was not specific to ICMP. It was suggested that a better approach may be to promote the shared ownership and collaboration of different stakeholders including the state, local civil society actors and the inter-national community.

24. Some participants expressed concerns that despite the ICMP’s attempt to contribute to peace and reconciliation, it is unclear whether the organization is actually making any concrete contribution to that goal. The ICMP works towards peace and security in post-conflict settings but its presence and projects potentially have limited life, capacity and impact. Resolving cases of missing persons and supporting the production of knowledge, narratives and policies based on scientific evidence may help, but there is not sufficient evidence to support this claim conclusively. This point was taken up in a lively discussion in which it became clear that there are tensions between ICMP’s methodological individualism, which uses forensic sciences to identify individual remains and respond to individual and family requests, and its broader mandate to facilitate both institutional and societal capacity building and ownership. The case of Bosnia and Herzegovina has been a success in so far as a number of missing people were reunited with their families and there is some evidence of durable ownership build-up for a process of reconciliation.

25. The ICMP’s representative clarified that a large part of the ICMP’s work is to respond to requests from families who explicitly seek justice. In many cases, families of missing persons seek to know the circumstances of their relatives’ death and demand that the people who killed them are held responsible for their crimes. In other cases, members of affected communities may instead prefer to forget past tragedies and focus on their present lives and future projects. War to peace transitions should be based on the freedom of the people involved in the conflict to decide the best way to achieve peace and not be dominated by internationally-promoted ideas that local communities have the right to know what happened to those who disappeared or that there can be no peace in their societies without justice for the missing. A number of participants highlighted that it is an open question whether dealing with the past is a precondition for transition from war to peace and to the creation of more democratic societies. Further research in post-conflict contexts is needed to test such hypotheses.
26. In the history of the protracted conflict in Afghanistan, for instance, disappearances and displacement are two phenomena that have occurred and have had a significant impact on Afghan society. A recent report by the Afghanistan Independent Human Rights Commission (that has not been released) presents evidence of 180 mass graves in Afghanistan resulting from the last 35 years of conflict. The problem of missing persons in Afghanistan, however, is not high on the agenda, either for the Afghan government or for the international community. The Bonn Agreement that led to the establishment of the Transitional Authority in Afghanistan did not even address war crimes or the issue of the missing. The international community has not investigated the past of those who are now in power because their presence and cooperation in the present government is seen as a guarantee of stability and reconciliation for the country. The US and NATO forces, at least initially, concentrated more on fighting terrorism than on peace- and state-building in Afghanistan. This raises questions regarding what distinguishes Afghanistan from other post-conflict contexts where the issue of the missing is addressed, as one of many issues, within formal peace agreements and reconstruction and reconciliation efforts, as for instance in Bosnia and Herzegovina. A possible answer is the geo-political location, including the physical proximity of the Former Yugoslav states to Europe, and therefore the direct and greater interest of EU member states and NATO in the Balkans in ensuring peace and stability at a regional level. The inconsistent international policy attitudes and practices in different post-conflict contexts demand further analysis. Important conclusions can be drawn from some comparative research of multiple post-conflict cases where international intervention is required to address the issue of missing persons. What lessons could be drawn, for instance, from the process and outcomes of ICMP’s work in the Balkans for the organization’s operational approach in other contexts such as Iraq and Libya?

2.4. Broadening the ICMP’s mandate

27. The ICMP was created as an international temporary ad-hoc, mechanism to address missing persons cases, initially in the context of the war-torn Former Yugoslavia. Technically the organization has no membership and relies on voluntary contributions and funding from donor governments. During the workshop discussion concerns were raised that reliance on contributions from international donors may influence its mandate with a possible effect of undermining ICMP’s non-discriminatory approach, thereby not funding work in countries that seem of lower priority or interest to donors. The workshop participants suggested that in future arrangements the ICMP might seek to consolidate its autonomous position and better codify the voluntary and unconditional nature of financial contributions from donor countries. The UNHCR may be seen as a positive precedent to mandate extension and suggest ways of funding this important work.

28. It was reported that originally the ICMP received requests for support for cases of missing persons and disappearances in post-conflict settings and the DNA identification techniques were particularly useful in those cases. The organization has received requests by governments to address a wider range of missing persons cases including conflict and human rights abuses, disaster-induced disappearances, displaced people and refugees, trafficked and smuggled migrants, victims of drug related violence, and all sets of missing persons, whether missing for voluntary or involuntary reasons.

29. Different categories of migrants that are dealt with within distinct migration regimes are refugees, internally displaced people, and environmental or disaster-induced migrants. Introducing migration into the area of activities of the ICMP, recently through a cooperation agreement with IOM, indicates a re-conceptualization of international migration realities both at an academic and policy level. The presentations highlighted that talking about the missing does not necessarily mean talking about dead bodies and human remains but also about people who more or less voluntarily have disappeared but who are still alive. There is plenty of research demonstrating that most migrants are in regular contact with their families and many send remittances back home. Where migrants were not in contact with their families as a way of precaution and protection from possible dangers, attempting to identify them
and promoting their contact with families and communities in the countries of origin could put their lives in danger. For example, in the case of trafficked children it may not be safe to identify them because in some cases their families as much as law enforcement agents are involved in the act of trafficking. In the case of trafficked women for sex work, the conditions may be similar in the sense that these women may be in danger both in the country of origin and in the destination country. Being identified by their families or the smugglers or traffickers may render them vulnerable to further exploitation and violence. In these cases, effective protection might be to give them new identities, rather than searching for these missing individuals.

30. The numbers of international migrants who die drowning in sea journeys and go unidentified are substantive and keep increasing. In these cases the ICMP’s work could be essential to identify those migrants who have died and disappeared. In these instances, however, how will the identity of the migrants be determined where no identity documents or other indicators of origin and identity are found with the human remains? How will the families of the unidentified migrants be found? This is particularly pertinent where it is unlikely that a country of origin, and therefore citizenship, can be established easily. How will the ICMP negotiate and secure states’ assurances in taking responsibility without reinforcing the securitization and criminalization of migrants who resort to methods such as trafficking or smuggling? Another example is the case of a small NGO in El Salvador which was established to find children who were taken from their families and disappeared during the conflict of the 1980s and were adopted by families in Argentina and in other countries. In this case, it could be argued that a reunification with the biological family – at least by way of contact – might be a positive outcome.

31. It is worth considering some of the consequences of re-conceptualizing migrants, both those who died during their journey and those who are still alive, as missing persons. In particular, when considering another scenario which is identification for the purpose of return, participants noted that it is usually states who have political interests in returning migrants, in particular in the case of so-called ‘failed asylum seekers’ whose identification could have devastating repercussions. In the past decades claiming asylum has become increasingly difficult in Europe. Even where the claim has been filed with the relevant agencies, the asylum claimants, in most cases, had to enter Europe illegally, being automatically included in the category of a violator of immigration rules and a potential security threat to be removed. Given the political environment in Europe, where governments have for a long time been interested in generating biometric information of people who are seen to have illegitimate claims, attempts at finding such persons based on information from a family member would make such ‘missing’ migrants very vulnerable and hamper their efforts to be given the opportunity to rectify their status and to be granted some form of legal residence status in the host country. Asylum seekers, irregular migrants and trafficked persons are aware of their vulnerable condition and fear being imprisoned and deported back to their home country by the host authorities. In the context of increasingly illiberal practices in countries of the global north, this is problematic. ICMP will face a challenge in this regard when established as a formal intergovernmental organization, as – though having international privileges and immunities – it is not free from existing within relationships of power that might override the protection of sensitive information, as has already been witnessed in circumstances where a government claims to be in need of protected data based on claimed terrorist threats.

32. In most post-conflict contexts, the forensic process and the use of new DNA technologies is a highly controversial issue and a process hard to implement because it entails plugging a scientific method into a highly volatile political and social setting where the ICMP faces challenges in promoting the voluntary participation of families of the missing who are often traumatized, afraid, and need to be informed and educated about the function of DNA identification methods and their use by governments and international institutions. This being noticed, most ICMP-SCSR workshop participants agreed that a carefully thought-through expansion of ICMP’s mandate might produce positive outcomes.
33. Data protection and information-sharing mechanisms, similar to those in place in post-conflict contexts, should be developed to guarantee that migrant genetic information is not automatically accessible or used for purposes of surveillance against the will and security of the migrants and their families. Technologies of identification are used in the UK and other countries for recovery after disasters but also to control and manage populations. These technologies are both social and material; they are forms of socio-technical intervention acting on the simultaneous creation of a range of human and non-human agents. Technologies are made up of such components as flesh cards, chips on passports, check lists and templates, and other types of fashioned objects that shape human relations and interactions between actors. This is problematic in so far as these are technologies of power to be used or abused and ICMP needs to find its place on the scale by careful consideration given its mandate to focus on justice and supporting governments in taking responsibility. It is worth noting in this context that genetic information processed by ICMP is dealt with separately and under seal, and is not shared with INTERPOL or local law enforcement agencies.

2.5. Conclusions and recommendations

34. The ICMP is working to shed light on the issue of missing persons in an international environment that is mostly unfamiliar with this important theme. The one-day workshop on 'Missing Persons and the Work of the ICMP' was welcomed as a stimulating day by all participants. Participants had the chance to learn and increase their understanding with regard to the problem of missing persons. It was appreciated that the ICMP’s work is situated within the context of a very politically sensitive environment. The ICMP has been the subject of a number of books and has published articles as well as informative materials also available online on the website of the organization (www.icmp.org) in order to raise this awareness.

35. A number of crucial questions were raised and discussed during the workshop and there is still need for further research-based evidence to address unanswered questions and to inform policies and practices that have an impact on state and non-state actors alike. The academic participants offered a number of interesting contributions and recommendations that would inform the ICMP’s Hague conference in October-November 2013. The following are the key recommendations that the participants of the workshop wished to contribute, showing their interest in being involved in future dialogue and initiatives concerning the issue of missing persons:

a) The ICMP should clarify that the organization has a political mandate to promote peace and reconciliation in post-conflict contexts, pursued through the provision of technical expertise and services to support the process of search and identification of missing persons in different contexts. The outcomes of these processes are not predetermined and in some cases could be completely unexpected, bringing about unintended political consequences. The ICMP is mandated to walk a fine ethical and political line in the quest for missing persons. By extending its activities to groups of persons who have gone missing through events other than war and war-like situations the ICMP and its governing body are called upon to critically question whose interests are served by identifying those gone missing on grounds other than war;

b) To contain the negative effects of bureaucratic objectification and categorization of missing persons, the participants called for more people and family-centered mechanisms designed for listening to the families of the missing and showing greater flexibility and adaptability to local culture, traditions and politics;

c) War to peace transitions should be based on the freedom of the people involved in conflict to decide the best way to achieve peace and justice, rather than by internationally-promoted ideas such as that persons need to know what happened to those who disappeared or that there can be no peace in their societies without justice for missing persons. It is still an open question whether and how dealing with the past is a precondition for transition from war to peace and to the creation of more democratic societies, though from ICMP’s perspective the
right to know the truth is central to the achievement of a peaceful society following war and to the reinstatement of rights and guarantees violated during it. Further comparative research in post-conflict contexts is needed on these issues;

d) In the event that they want to work through this historical trauma, families of missing persons should be offered greater opportunity to participate in decision-making processes and in DNA testing exercises. This would empower them in defining the outcomes of the process and in establishing when the process has reached a satisfactory outcome. Giving them the choice to participate in DNA testing exercises is critical because they are empowered and directly involved in the creation of institutions responsible and capable of solving the problem of their missing relatives;

e) Data protection and information-sharing mechanisms, similar to those in place in post-conflict contexts should be developed to guarantee that migrant genetic information is not accessible or used for purposes of surveillance against the will and security of the migrants and their families.

III. List of Participants

- Dr. Jan Selby, Director, SCSR; Senior Lecturer in International Relations, University of Sussex, Chair of the Roundtable Meeting
- Dr. Louise Askew, Independent Researcher
- Mr. James Barnes, Associate Tutor, Anthropology, University of Sussex
- Professor Richard Black, Head of School for Global Studies, University of Sussex
- Ms. Kathryne Bomberger, Director-General, ICMP
- Professor David Chandler, Professor of International Relations, University of Westminster
- Ms. Yi-Lan Chou, MA Student, Conflict, Security and Development, University of Sussex
- Mr. William Da Rosa, Associate Tutor, International Relations, University of Sussex
- Dr. Lucy Easthope, Teaching Fellow in Mass Fatalities and Pandemics, University of Bath
- Professor Jenny Edkins, Professor of International Politics, Aberystwyth University
- Dr. Andrei Gomez-Suarez, Associate Researcher, University of Sussex
- Dr. Vanessa Iaria, Researcher, University of Sussex
- Mr. Zdenek Kavan, Lecturer in International Relations, University of Sussex
- Mr. Andreas Kleiser, Director for Policy and Cooperation, ICMP
- Ms. Natasha Leite de Moura, MA Student, International Relations, University of Sussex
- Ms. Dejana Mekanić, MA Student, International Development, University of Sussex
- Dr. Christina Oelgemoller, Lecturer in International Relations, Loughborough University
- Dr. Ceri Oeppen, Lecturer in Human Geography, University of Sussex
- Dr. Maja Petrovic-Steger, Research Fellow; Director of Studies in Archaeology and Anthropology, University of Cambridge
- Mr. Christian Stray, MA Student, Conflict, Security and Development, University of Sussex
- Dr. Elspeth van Veeren, Post-Doctoral Research Fellow/Lecturer in Political Science, University of Sussex/Bristol University
- Ms. Joanna Wood, Centre Administrator, SCSR, University of Sussex