

**ROUNDTABLE MEETING
THE GLOBAL MISSING PERSONS AGENDA: NEXT STEPS**

Wednesday, 11 June 2014, Oslo

I. INTRODUCTION

1. On 11 June 2014, the Peace Research Institute Oslo (PRIO) and the International Commission on Missing Persons (ICMP), co-hosted a discussion the issue of missing persons from conflict, human rights abuses, disasters, organized crime and other causes. The discussion was held at the Peace Research Institute in Oslo. The meeting formed part of follow-up discussions to ICMP's international conference *The Missing: An Agenda for the Future* (The Hague, 2013), where representatives of international organizations, NGOs, academics, scientists, journalists, law enforcement, survivor groups, government officials, diplomats and others discussed the need for a sustainable and effective global mechanism to respond to the challenges posed by millions of persons missing as a result of armed conflicts, human rights abuses, disasters and organized violence. The conference had examined legal frameworks and victim rights, as well as information collection, management and data processing concerns, in addition to aspects of prevention and repression, including criminal responsibility and protecting people from going missing.
2. Key tenets of the conference included the following:
 - It should be a global goal to improve the availability and quality of data on missing persons, and that more research needs to be conducted to this end;
 - A universal missing persons inquiry function should be established to assist families in their search for the missing;
 - There is a need for an international standing capacity that can provide a structured and sustainable response that is accessible to all countries;
 - Legal responsibilities, standards and data protection measures for addressing missing persons scenarios need to be better defined in order to allow scientific advances to be effectively harnessed to provide assistance in accounting for the missing;
 - The role and responsibilities of governments in addressing missing persons cases need to be clarified.

II. ICMP AND THE AGENDA FOR THE FUTURE

3. Ms. Kathyne Bomberger, in her opening statement, provided an introduction to the issue of the missing and ICMP. ICMP was established at the initiative of US President Bill Clinton in 1996 at the G-7 Summit in Lyon, France, initially to secure the cooperation of governments to locate persons missing from the conflicts in the former Yugoslavia. Since 2004, ICMP has been a globally active organization assisting governments in locating and identifying missing persons regardless of the circumstances of disappearance. The missing persons issue in the former Yugoslavia, and in Bosnia and Herzegovina (BIH) particularly, has resulted in an

unprecedented number of persons accounted for, with over 70% of some ~40,000 missing persons accounted for since the war. This outcome became possible as a result of an emphasis on developing domestic institutions and a rule-of-law approach, in addition to deploying new technologies, in particular large scale DNA testing and advanced database informatics encompassing other forensic disciplines. The rule of law based approach to the issue of the missing meant inculcating civil society through empowering families and their organizations, assisting justice mechanisms internationally and domestically, and helping to establish national laws and institutions.

4. One of the main conclusions of the international conference and the preceding Round Table meetings, which took place in The Hague, on 21 June 2013, at Sussex University on 1 July 2013 and in Sarajevo on 3 September 2013, was that global mechanisms to bring a similar holistic approach are needed to address the issue of the missing comprehensively, whether as a result of armed conflicts, natural or manmade disasters, migration, human trafficking or organized crime. The previous round table meetings also emphasized that missing persons issues are often also a gender issue, with surviving women disproportionately affected and rendered highly vulnerable.

III. THE GLOBAL MISSING PERSONS AGENDA

5. Ambassador Knut Vollebaek, in his introductory remarks, reflected on the importance of missing persons issues globally as brought home by his recent visit to BiH, where he visited ICMP facilities, met with families of the missing and the Srebrenica memorial in Potocari, BiH. He was able to see that proper address of missing persons issues is an important element in societal reconstruction as well as personal healing. He noted the growing problem of many people missing as a result of desperate migration, such as those many killed while attempting to cross the Mediterranean. The effect of uncertainty of families on the fate of the missing is actually a form of torture for them, and the issue could even be framed with reference to Article 3 of the European Convention of Human Rights, which prohibits torture. An obligation on the part of States to investigate missing persons has been established under Article 2 of the Convention, the right to life. However, there are a number of reasons why these guarantees are not consistently granted.
6. While it is increasingly recognized that all cases of persons going missing must be investigated, significant ambiguities remain. For instance, international law distinguishes between missing persons generally and disappearances more specifically. Disappearances imply some involvement by the authorities that triggers a requirement to investigate under the International Convention for the Protection of all Persons against Involuntary Disappearance. Questions arise as to the involvement of non-state actors and concerning the rights, including procedural rights, of victims, i.e. the families of the missing.
7. 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.

8. Sometimes the issue is simply seen as too overwhelming. An example is Indonesia following the 2004 South East Asian 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.
9. Thus, 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, the ICMP in 1996, or the International Criminal Court (ICC) in 2002 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.
10. In regard of war and human rights abuses, these differences are 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. However, if these institutions address the issue effectively, accountably and fairly, then they contribute to reinstating the rights that were violated and can foster trust and cohesion.
11. Thus, to get to peace, it is necessary to act by the law of peace, and not by the law of war. It is necessary to act by the rule of law, which must be applied in all missing persons scenarios. One 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 by many believed to be military expediency. The lack of transparency or secrecy employed by the authorities exacerbated the anguish of the families of those on board of the plane. Thus, competing interests that need to be balanced exist in many missing persons scenarios. The way they are balanced is important: Balancing competing interests through democratic institutions provides the best guarantee to safeguard rights and to strengthen confidence.

IV. THE ROUND TABLE DISCUSSION

12. Following the initial round of contributions from the participants, Ms. Kathryn Bomberger suggested that the continuing discussion might focus on the role of domestic versus international agencies in missing persons processes. One of the outcomes of the conference *The Missing: An Agenda for the Future* was to establish an ICMP-mediated "Global Forum" on missing persons to bring together stakeholders and policy makers to explore issues and solutions relating amongst other topics to the interrelation of domestic and international actors. Ms. Kathryn Bomberger noted a variety of missing persons responses with regard to

the role of international/domestic authorities. Cyprus is a long standing effort that has been run largely by the International Community; likewise in Kosovo, through the action of UNMIK and EULEX the issue of the missing has been essentially a “reserve power” of international agencies. In contrast, Serbia has a completely national response that is acting effectively today. In BIH, the hugely successful effort was a transformational process with greater levels of international action at the outset, but now having transferred mainly to national processes. There are many areas of the world where important issues of the missing are largely stagnant, such as Lebanon or the Caucuses. Ms. Kathryn Bomberger suggested that optimal results are obtained when international and domestic authorities both play significant, well-coordinated roles.

13. On behalf of PRIO, Mr. Greg Reichberg, reminded the participants of the long term harm suffered by those implicated in disappearances. Disappearances and the failure to protect persons from going missing casts a shadow even after decades where there is no vehicle for individuals to deal with the past, and no mechanism for resolution of such trauma. Mr. Reichberg also reminded the participants that the Cypriot process to find the remains of the missing has been administered by a local mechanism with the facilitation of the UN through a special office, headed by a Swiss representative. The process has also been receiving technical assistance by ICMP.
14. Ms. Maria Fuglevaag Warsinska-Varisi, reporting from her extensive experience working in BIH, Kosovo and Macedonia noted that in early years following the war, there was concern that establishing public documentary records concerning the missing would exacerbate societal discord, while in fact it has proven to have a strong restorative effect, particularly as support mechanisms were established for families and family organizations. However, a question that often causes great concern is how long investigations on the missing need to continue. There is always a risk that investigations remain partial or are artificially limited.
15. Discussing the role of the ten operative centers that the Nansen Center for Peace and Dialog (NCPD) has maintained in the Western Balkans, Mr. Steinar Bryn emphasized the need to introduce a “win-win” dynamic. Through the NCPD documentary activities family members on one side of the former conflict were able to participate in a process that allowed them to witness how benefits they derived from addressing the issue of the missing also helped families from the formerly opposing side and vice versa. This type of “win-win” dynamic depends on international support and involvement. The fear of “dependency” on international actors should not obscure the important benefit of international mechanisms. Consequently there should not be a continuous emphasis on developing exit strategies for internationally supported efforts or a tendency to pursue hand-over to local actors or agencies at all cost, but to embrace long term perspectives. Kathryn Bomberger noted that the establishment of the BIH Missing Persons Institute that was designed to serve the function of a permanent central archive in the country followed a 7-year process. Mr. Finn Lynghjem, considering the importance of justice and accountability, underlined the importance of strengthening domestic mechanisms for justice, and in particular their investigative (including forensic) capacities.
16. Mr. Torkjel Rygestad, on the issue of police operations associated with Disaster Victim Identification (DVI) provided the example of the Thai Tsunami Victim Identification Process (TTVI), where international and domestic actors established a highly effective joint response.

As jurisdictional public authorities, Police play a central role in DVI, and their investigative experience is well suited to collection suitable evidence available under the circumstances. For instance, poor populations are often deficient in suitable antemortem records, such as dental records or fingerprints, in which case DNA is single most useful tool in DVI. Issuing death certificates following investigations is necessarily a function under domestic law. However, a central theme is the cross-border element of missing persons issues, both with regard to crime and DVI. Mechanisms for access to central, international databases should be developed similar to the International Criminal Police Organization's (INTERPOL) Yellow Notice System. At the same time, he emphasized the sensitive nature of personal data, including and especially DNA data, and that the ability to share and make use of these tools by authorities, including the police, needs to also include rigorous data protection. He noted that DNA identification coordinated by INTERPOL and ICMP has permitted the large scale use of DNA while the genetic profiles remained confidential. He additionally highlighted that some missing persons may not wish to be found, for either personal or political reasons, and that central mechanisms must also take this consent issue into account.

17. Mr. Henrik Urdal, referring to his work for the ICTY Office of the Prosecutor in using public and other records to estimate the number of persons missing as a result of the wars in the former Yugoslavia, underlined that investigation of diverse public records are needed to document the missing, especially in the many cases where bodies have not yet been found. Ms. Brita Liholm Johannessen, relating to the work of the Norwegian Red Cross in tracing missing persons from catastrophes and conflict, where work relates to the Balkans conflict, noted that protection issues are very significant and introduce a fundamental tension with regard to working with law enforcement and other national authorities. Access to immigration registers is problematic, although there is some interface with police and INTERPOL, there are no formal mechanisms. An increasing problem relates to unaccompanied minors, who account for 30% of the casework in the last year.
18. Ms. Bente Knaenhjelm discussed the issue of refugees from BIH in Norway, where between 1993 and 1995 13,000 refugees entered the country and were allowed to stay. She noted the important and extensive work of the International Committee of the Red Cross and the Federation of the Red Cross, and recommended that a closer cooperation between these institutions and ICMP. Ms. Kathryn Bomberger, referring to one of the outcomes of *The Missing* conference, pointed to a recommendation to establish a "Global Forum" for addressing issues of the missing. Such a forum would bring together stakeholders and policy makers to explore issues and solutions, both in regard to global approaches as well as in specific scenarios.
19. Mr. Greg Reichberg expanded on the situation in Cyprus where the missing persons process has been designated solely an identification process, to the exclusion of investigating criminal responsibility or even the cause and manner of death of victims. It would have been desirable to go further in terms of documenting what really happened. International guidelines and standards for missing persons scenarios that defined what the components of a proper response should be would therefore be helpful.
20. Mr. Andreas Kleiser observed that the Cyprus mechanism dated from 1981 and that since that time some general standards of what constitutes an effective investigation have emerged, in particular through cases before the European Court for Human Rights, most

prominently the case of Cyprus vs. Turkey (principle ruling in 2001, ruling on damages 12 May 2014). The Court notably rejected Turkey's argument that an effective investigation was taking place through the aforementioned mechanism. According to the Court and exclusively "humanitarian" objectives does not meet the requirements under Art 2 of the Convention, i.e. the right to life, which includes the right to an effective investigation as a procedural guarantee. An effective investigation, according to the Court, must be an official one that is transparent, independent and impartial, as well as capable of establishing the circumstances in a given case.

21. Mr. Torkjel Rygestad reflected on challenges to effective information collection and sharing in the context of DVI responses. Illegal immigrants, for example, are often fearful of coming forward to provide law enforcement authorities with information. He suggested that an organization like ICMP would be very well positioned to serve as an information bridge between police, family members and others with an emphasis on effective data protection and sharing.

V. SUMMING UP AND NEXT STEPS

22. By way of summing up the discussions, Ms. Kathryne Bomberger noted the need for continued dialog on developing a standing international capacity based on rule-of-law processes that inculcate and strengthen domestic institutions. She noted important shortcomings in international capacity to fill operational and policy gaps at the domestic level, in particular with regard to involvement of official authorities and the sharing and protection of sensitive data. While there is broad agreement that the involvement of families is a key element of any response to missing persons, there is also a need for universal standards and guidelines regarding the responsibilities of governments and for defining the characteristics of a transparent, effective investigation.
23. Concluding, Ambassador Knut Vollebaek noted that the governments of the Western Balkans will soon become signatories to an ICMP-mediated Declaration on the Responsibilities of States that may serve as a starting point for developing such guidelines, to which the proposed "Global Forum" could greatly contribute.
24. Mr. Greg Reichberg concluded that the need for such a standing platform should be recognized and that its attributes should form the topic of future discussions.

Annex 1:

LIST OF PARTICIPANTS

PRIO:

Mr. Greg Reichberg, Research Professor

Mr. Henrik Urdal, Research Professor

ICMP:

Ambassador Knut Vollebaek, Commissioner

Ms. Kathryne Bomberger, Director General

Mr. Adam Boys, Director of International Programs

Ms. Mona Kahn, Director of Administration and Finance

Mr. Andreas Kleiser, Director of Policy and Cooperation

Dr. Thomas Parsons, Director of Forensic Sciences

OTHER:

Mr. Steinar Bryn, Senior Advisor, Nansen Center for Peace and Dialog

Ms. Brita Liholm Johannessen, Senior Advisor Restoring Family Links, Norwegian Red Cross

Ms. Bente Knagenhjelm, Senior Project Advisor, Nansen Center for Peace and Dialog

Judge Finn Lynghjem, Agder High Court of Appeals

Mr. Torkjel Rygestad, DVI Expert, Tsunami Evaluation Working Group (INTERPOL)

Ms. Maria Fuglevaag Warsinska-Varsi, Balkans Expert (War Crimes)

Ms. Sidsel Wold, Journalist, Norwegian Broadcasting Corporation