

BLAVATNIK SCHOOL OF GOVERNMENT, OXFORD

**The Creation of a Modern International Organization:
The Story of the International Commission on Missing Persons (ICMP)**

Sousse, Ankara, the Sinai Peninsula, Beirut, Paris, Bamako and the “migration and refugee crisis” in Europe have brought the shocking misery of what is a daily occurrence in so many parts of the world to the fore of global attention.

While international news networks and social media captured the swirling sentiments of compassion, fear and rage, and as the bombings in Syria by Russian and Western forces intensified and the manhunt for terrorists continued in Belgium and elsewhere, the 15 members of the UN Security Council unanimously adopted a French-drafted resolution condemning the terrorist attacks. During the discussion, the Spanish representative said, “It is time to act with a French, Russian, Malian and Arab heart.”

These sentiments are both a reminder of the fragility of the world order and the desperate need for international cooperation to ensure security and peace. The UN and, in my experience, specialized International organizations, are particularly effective instruments available to our global community to address and prevent future horror and suffering brought about by violent conflict and injustice.

I have had the privilege of serving as a public servant in a range of capacities over almost four decades with a particular focus on conflict regions and developing country challenges often working with the UN and other multilateral institutions and NGOs. Twenty years ago, the world’s attention was gripped by another catastrophic crisis that occurred in Europe, in a region I have come to know very well over the years.

In a few weeks the countries of the former Yugoslavia will mark the 20th anniversary of the signing of the Dayton Peace Accords, which ended the bloody conflicts in the 1990s. Those conflicts resulted in over 160,000 casualties and 40,000 missing persons. The majority of those missing had been forcibly disappeared, meaning that governments, or political institutions acting on their behalf conspired to abduct, detain and execute persons. The perpetrators then hid the victims in clandestine and mass graves in locations throughout the region.

Prominent among the missing were the 8,000 Muslim men and boys executed in July 1995 in Srebrenica. That crime has been recognized by two international courts as the only genocide on European soil since World War Two. Today over 28,000 of the 40,000 missing persons have been accounted for, including almost 90 percent of the victims of Srebrenica. This constitutes the largest number of missing persons ever accounted for from armed conflict in history.

I first visited Bosnia in 1996, a year after the fall of Srebrenica, to bring humanitarian supplies from Jordan and to meet with thousands of grief-stricken survivors, almost entirely women, to express support and solidarity. I have never forgotten the all consuming paralysis of survivors in their dread and grief. When I met with the Mayor of New York City soon after the 9-11 catastrophe to offer assistance, his description of the desperate suffering and uncertainty of the lives of victims’ families

struck me as tragically similar to those of the families I had come to know in Serbia, Croatia, Kosovo and Bosnia.

In the course of the last 100 years, battlefields have spread into villages and towns and cities, and terrorism and the physical abuse of civilian populations have become an instrument of war, for example through ethnic cleansing. This has produced an exponential rise in the number of civilians missing in conflict.

For a long time, accounting for people missing during conflict was treated under the Geneva Conventions, which require warring parties to record the identity of the dead and wounded and to share this information with enemy forces.

Conflict, of course, doesn't follow rules. And, in addition, the nature of war itself has changed. The ratio of civilians' to soldiers' deaths in 19th century wars was about 1:7, but since the mid-20th century it has been more than reversed, to an estimated nine civilians to every soldier killed today.

The practical problem in applying the rules of war that charge combatants with addressing the fate of the missing is that they can no longer be presumed to know who and where most of them are. As a result, even once the fighting has ended, very little progress is made in locating and identifying the missing. Unfortunately, this is the situation in most of the world. Only a handful of governments have shown a commitment to recognizing the rights of victims and to employing a modern, rule-of-law-based approach.

At the forefront of these are the countries of the former Yugoslavia – in particular Bosnia and Herzegovina, where the highest number of casualties and missing persons were recorded.

What made the post-conflict process in Bosnia and Herzegovina different from so many other examples around the world in terms of dealing with the age-old issue of missing persons?

Months after signing the Dayton Peace Agreement, world leaders gathered at a G-7 Summit in Lyon to discuss how to rebuild the war-torn region of the former Yugoslavia. Former US Secretary of State, Cyrus Vance and others who had played a key role in the peace negotiations understood that large numbers of missing persons represented an obstacle to reinstating the rule of law and establishing long-term peace and stability. However, the Dayton Peace Agreement presented a paradox regarding how to address this pressing issue.

On the one hand, the humanitarian role of the International Committee of the Red Cross (the ICRC) was incorporated into the Agreement, which included that under the auspices of the ICRC the former warring parties should provide information on tracing missing persons, as had been the custom for over a hundred years. On the other hand, the Agreement called for the investigation of crimes through mandatory cooperation with the International Tribunal for the former Yugoslavia (ICTY), which had been created in 1993. Such investigations meant uncovering crimes and, literally, uncovering the victims of mass atrocities.

ICRC's neutrality and mandate would not allow it to become embroiled in the politics of unearthing crimes, while ICTY's ability to gather evidence of war crimes depended entirely on uncovering such crimes.

It fell to the White House to take action. During the G-7 Summit, President Bill Clinton announced the establishment of the International Commission on Missing Persons for the former Yugoslavia, to be chaired by Secretary of State Cyrus Vance, who was later succeeded as Chairperson by a

prominent US Senator. ICMP was established as a mechanism to secure the cooperation of governments and other authorities on the issue of the missing in the former Yugoslavia.

The establishment of ICMP marked a historic shift in how states should address the issue of missing persons.

I have been an ICMP Commissioner since 2001 and have participated in its growth from a small, commission with headquarters in Sarajevo, to what it has become today – the world’s leading missing persons organization, now located in The Hague. This evolution has been a fascinating, perplexing and often frustrating, but ultimately rewarding journey – a journey which I hope will be of interest to you.

In the context of the conflicts of the 1990s in the former Yugoslavia, several conditions contributed to ICMP’s development in that region:

- First, the international community turned its attention to the issue early on and continues to maintain support in the Western Balkans. As a consequence, the issue did not become a domain exclusively dominated by political factors, as it has in other parts of the world;
- Second, in their efforts to locate the missing, the countries of the Western Balkans systematically ensured the cooperation of their domestic institutions and justice systems;
- A third condition was the engagement of the families of the missing. They were the first to build a functioning civil society network, and then they worked directly with domestic institutions and with ICMP to locate the missing.

I returned to Bosnia in 2001 as an ICMP commissioner to meet and commiserate with Bosniak, Serb and Croat women and men as they struggled to come to terms with the disappearance of their husbands, sons and fathers – killed, in some cases, by the husbands or sons of those sitting across the table in meetings facilitated by ICMP.

Remarkably, in the context of a very divided post-conflict Balkan region, many of the survivors were able to find common ground in their suffering and to unite across sectarian fault lines to work together to fight for answers and for justice;

- A fourth condition relates to the rule-of-law approach taken in the region, which, for ICMP and others, included working to standards of evidence and investigations required for legal processes, in particular criminal prosecutions. Notably, ICMP has provided evidence regarding the identity of the victims of war crimes and human rights abuses in over 30 international and domestic tribunals;
- And finally, from the outset, ICMP had a public law status. It therefore could work within the framework of domestic public administrations and fill gaps in their capacity.

All of this meant that the issue of the missing was no longer being tackled solely as a humanitarian issue and by humanitarian actors, but as a public law issue to be addressed by public institutions including domestic courts, prosecutors and law enforcement. It also meant that the processes and capacities developed through ICMP over the years could be applied in other missing persons scenarios and other regions.

However, there was one obstacle. ICMP's approach, and the capacities it had developed, rested on its ability to work with governments under public law instruments. Those capacities, however, were limited to the countries of the former Yugoslavia and more specifically to Bosnia and Herzegovina, where the State Department had negotiated a headquarters agreement providing the organization with a status equivalent to that of an inter-governmental organization.

The Clinton Administration had created ICMP as an *ad hoc* instrument to work in a specific former conflict zone, not as an international organization that would work globally. It had no such status and could not easily enter into agreements with states, including new states emerging in that region.

This issue became increasingly acute as ICMP's assistance was sought following the Kosovo conflict and the crisis in Macedonia. The ICMP Commissioners regarded it as their responsibility, therefore, to put the question of determining whether and how ICMP should continue its work to the states that supported the organization.

Initially, the United States took the lead again. In 2002, Colin Powell suggested to the Commissioners that ICMP create a working group with representatives from supporting states to resolve the legal status issue. The process was chaired by the ICMP chairperson, and included representatives from the United States, the United Kingdom, the Netherlands, Denmark and Pakistan. The group met twice before the effort was abandoned in 2004. Colin Powell had stepped down and Condoleezza Rice became the new Secretary of State. Eventually, in 2005, I received a letter from the Assistant Secretary for International Organization Affairs explaining that the United States did not support the "proliferation of international organizations."

While the pathologies of international organizations are many, the question of financing is one area in which there appears to be a disincentive for wealthier countries to participate. For example, the open ended nature of the treaty obligations that underlie the UN and other international organizations and the mismatch between the obligation to pay and the ability to influence budget negotiations by the richest member states clearly provides a powerful disincentive to the creation of new such organizations.

Another disincentive is of course political. Powerful countries claim that international organizations interfere with national sovereignty. The Rome Statute, for example, establishing the International Criminal Court among other things, is a case in point. Only two of the five permanent members of the Security Council are a party to the Statute, which is of course debilitating to its work.

Other reasons for not creating new international mechanisms include a duplication of mandates, or the unfortunate emerging perception that international organizations are ineffective, costly bureaucratic structures.

With US political support withdrawn from the process, interest in an agreement among the other states declined. Pakistan had already pulled out following George Bush's reelection. ICMP was seen as a US initiative without US backing and in an era, just a decade ago, when this still seemed to matter, the initiative went into the political wilderness.

Despite this set-back the working group of supporting governments did make some progress. First, the reference to the former Yugoslavia was removed from ICMP's title and second, the range of ICMP's activities was expanded to include not only persons missing from conflict and human rights abuses, but also persons missing from disasters.

At the end of 2004, countries in Southeast Asia were hit by the largest tsunami ever recorded. For the first time, the world's police forces came together to respond to this disaster. ICMP's assistance was sought by the European Union. Of particular importance was ICMP's standing capacity to use DNA to make identifications in complex political environments.

Through this assistance, which resulted in resolving a significant number of missing persons cases, ICMP began a partnership with INTERPOL, which culminated in an agreement between the two organizations in much the same way as ICMP's work in the region of the former Yugoslavia culminated in an agreement with the ICTY in 2006.

These two agreements provided the organization with growing rule of law credentials and underscored the fact that the issue of missing persons is a global public law concern.

However, because of the specific and limited nature of its legal status, tied to Bosnia and Herzegovina and the Western Balkans, it was difficult for ICMP to develop global operations.

In 2013, the Dutch Government and the United Kingdom stepped in. Frans Timmermans, then Foreign Minister of the Netherlands, and William Hague, then Foreign Secretary of the United Kingdom, announced their intention to seek the cooperation of like-minded States to elaborate an adequate legal basis for ICMP to exercise its mandate globally. This initiative picked-up on the process that had been abandoned a decade earlier and was underpinned by two beliefs.

First that there were gaps in international law, including humanitarian law, and an international initiative was required in order to redress these gaps.

Second that this could be done by means of a light but efficient modern international organization. The first belief harkened back to ICMP's creation and an understanding that the problem of the missing should be addressed as a rule of law issue, and the second belief reflected the evolving nature of international organizations.

As a result, on 15 December 2014, Belgium, Luxembourg, the Netherlands, Sweden and the United Kingdom, as the first States, signed the *Agreement on the Status and Functions of the International Commission on Missing Persons*. The Agreement establishes ICMP as an international organization headquartered in The Hague. El Salvador recently signed the agreement and others have since indicated their desire to do so.

The Agreement does not create new obligations for State Parties, financial or otherwise. As in the past, ICMP will remain a voluntarily funded organization. This poses challenges: while the principle of voluntary funding is a good one, as ICMP Commissioners we must also ensure that ICMP as a public international organization performs its core functions reliably with the participation of all.

The Agreement also does not entail new international commitments in respect of missing persons. Rather, it aims to provide an international mechanism to better meet existing commitments under human rights and other relevant international instruments. So, ICMP's mandate under the agreement is broad. It effectively encompasses all persons missing for involuntary reasons. There are advantages to that breadth. It means that *a priori* attributions of missing persons as belonging to one or another group are not required for ICMP to offer its assistance. The challenge will be to secure cooperation with a broad spectrum of actors that address specific categories.

Finally, ICMP's mandate has served it well and has changed little since it was created, with the notable exception of the expansion of the scope of activities which are tied to the circumstances

under which persons go missing. The mandate is:

To endeavor to secure the co-operation of governments and other authorities in locating and identifying persons missing as a result of conflicts, human rights abuses, disasters, organized violence and crime such as human and trafficking and other causes and to assist them in doing so. ICMP also supports the work of other organizations in their efforts, encourages public involvement in its activities and contributes to the development of appropriate expressions of commemoration and tribute to the missing.

Today, ICMP is helping countries around the world to address the issue of the missing and disappeared in Iraq, Lebanon, Syria, Libya, South Africa, El Salvador, and Chile. It has worked on cases from Norway and Canada and it is on standby to assist Denmark in case of a manmade or natural disaster. In the past it has helped countries such as the Philippines, Thailand and the United States to address missing persons from natural disasters. This list is not exhaustive and does not include the number of countries that have recently asked for assistance, such as Sri Lanka, Colombia and Italy.

Ladies and Gentlemen,

I have been in mass graves.

I am still haunted by the memory.

I still cannot comprehend the barbarism that mankind is capable of inflicting on his fellow man, and the calculated, systematic attempts to strip these people of their humanity and to hide their bodies repeatedly so that they would never be identified, in order to deny that these atrocities took place

The need for knowledge, for closure, for justice in these situations is universal. Fulfilling that need is critical to overcoming anger and despair and restoring stability – to families, communities and nations.

The fundamental human rights work of ICMP is not only palliative, it is preventative; the healing and recovery it affords victims, as well as the process of accountability it helps to foster with governments, are absolutely integral to the process of reconciliation, justice and ultimately conflict prevention.

The development of ICMP presents a new approach towards creating a modern, light international organization; however, a new approach cannot take root without corresponding changes in the traditional consultation and funding mechanisms of governments, and other common aspects of bureaucracy. Reforms are needed at both ends: in the case of ICMP, I am proud to say, change and growth have been underway for a long time and have already delivered positive results.

Thank you and if you have any questions I brought someone to join the discussion who has a unique perspective on the development of ICMP and without whose dedication, intelligent perseverance and human rights knowledge, we might never have succeeded in achieving our international legal status, Kathryne Bomberger who has been our Director-General since 2004, having led the development of the organization since 1998.