



PROCESSING DATA ON MISSING REFUGEES AND MIGRANTS

**INTER-AGENCY ROUNDTABLE
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I. INTRODUCTION

While the International Commission on Missing Persons (ICMP) is the only international organization exclusively tasked with addressing the issue of persons who go missing as a result of conflict, human rights abuses, disasters, irregular migration, organized crime and other involuntary causes, there are many organizations that make important contributions to this global effort, from different perspectives and with different levels of resources and focus. It is therefore crucial that these contributions reinforce one another.

With this in mind, on 27 January 2016, together with the mission of the United Kingdom to the United Nations, ICMP brought together senior diplomats and experts at the UN Security Council, under the Arria Format of informal discussion, to explore core aspects of the global missing persons problem. At the Arria meeting, UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein highlighted the need for effective institutional mechanisms to clarify the fate of missing persons. The meeting reflected an emerging international understanding that – like organized crime, human trafficking and drug smuggling, for example – the issue of missing persons cuts across national jurisdictions and responsibilities of States and must be addressed through dedicated techniques and strategies. The massive number of people who go missing every year as a consequence of conflict, disasters, migration, organized crime and other causes represents a global challenge that demands a coordinated and specialized global response.

At the Arria meeting, ICMP announced its intention to establish an Inter-Agency Committee on Missing Persons in The Hague to coordinate its efforts with those of other international organizations working on this issue. On 9 December 2016, a first inter-agency roundtable meeting was held at ICMP Headquarters, in cooperation with the International Organization for Migration (IOM). The day-long event focused on processing and managing data on missing persons, with an emphasis on missing refugees and migrants. It brought together participants from Eurojust, Europol, International Criminal Police Organization (INTERPOL), the International Criminal Court (ICC), the International Committee of the Red Cross (ICRC), Office of the United Nations High Commissioner for Refugees (UNHCR), United Nations Children's Fund (UNICEF), and the European Commission Representation in the Netherlands, in addition to IOM and ICMP, as well as H.E. Ambassador Johan van der Werff, representing the Ministry of Foreign Affairs of the Netherlands, who delivered opening remarks.

The meeting reviewed current data collection and processing efforts related to missing persons generally and to the missing persons aspect of global migration in particular, and it offered an opportunity to discuss practical proposals designed to improve such efforts. Participating organizations presented their current data collection and processing methodologies directly or potentially relevant to accounting for the missing.

Intergovernmental organizations, while contributing to the discharge of international obligations and public responsibilities on the issue of missing persons, are not the only entities that offer data processing tools on this issue. Public domain tools have been developed by internet companies; these include Google's "People Finder" and Facebook's "Safety Check," in addition to solutions used by domestic agencies, such as the "Athena Project" employed by the Yorkshire Police. Furthermore, numerous applications exist for the Android and iOS platforms that can help to address missing persons issues resulting from natural disasters, military conflict and other circumstances.

It appears that these products tend to adopt a hands-off approach, relying on user-input, and in the

case of Facebook and Google, on vast community networks providing large amounts of personal and other data. The Android and iOS platforms generally provide focused applications for particular areas of interest.

With the exception of the “Athena project,” the aforementioned tools have been developed by companies whose main objective is not finding missing people. As a result, the Google and Facebook tools do not offer any substantial data entry possibilities or analytical capabilities, nor do the Android and iOS-based platforms, such as Help Rescue Victims, Amber Alerts, PEOPLE LOCATOR® and ReUnite®, Missing Child Alert, FindU, Missing Persons App, Missing Kids Android, Missing Children Mobile, and MCI Missing Child Alert.

They focus on reporting missing persons, or reporting sightings of previously reported missing persons, using manual upload and human photo recognition. In most cases, there are no direct links to law enforcement or specialized agencies, and it is generally unclear how individuals or groups can follow up through a community-based response. Most use location-based services on mobile devices and few offer multi-language user interfaces. They often focus on kidnapping and abduction scenarios.

The extent to which international organizations and national authorities dealing with missing persons can gain from closer links with web-community-based tools or telecom operators supporting mobile applications remains unclear. Clearly, it will be necessary to assess the relevance of data provided on web community platforms, especially where missing persons are deceased or do not wish to be located or identified, as well as privacy and data protection issues. Nevertheless, as private industry is currently driving innovation in data processing, a comprehensive assessment of available tools has the potential to improve systems that are now in use or that are planned by international and other organizations and national authorities.

Data systems used by international organizations as they relate to persons going missing as a result of migration, conflict, human rights abuses or other involuntary causes, vary in focus and size. However, there is significant potential for realizing synergies through closer cooperation and data sharing. At the same time, there are instances where clear benefits may be derived from keeping data sets separate. A more detailed mapping of data processing policies, including data protection policies, is required to identify gaps in mutually beneficial data sharing between organizations and with national agencies.

The following is an overview of systems currently in place or planned within ten international organizations. Mapping of data processing policies, including data protection policies, would be a logical next step for inter-agency consultation in this field. Contributions in this report are attributable to the organizations concerned. A discussion of the EU personal data protection regime at the end of this report constitutes a summary by ICMP and an outlook on future discussions, and, as such, should not be attributed to the EU.

II. INTERNATIONAL COMMISSION ON MISSING PERSONS (ICMP)

2.1. Policy approach

ICMP works with governments, civil society organizations, justice institutions, international organizations and others throughout the world to address the issue of people who have gone missing as a result of armed conflict, human rights abuses, disasters, organized crime, migration and other involuntary causes. ICMP has signed cooperation agreements with a number of other

International Organizations, including the ICC (OTP), IOM and INTERPOL, and aims to develop robust and interlinked data processing mechanism with partner organizations and others.

ICMP directly assists national authorities in the discharge of their duties to conduct effective investigations of persons going missing, including forensic investigations, fieldwork and human identification, and complements and advises on policy frameworks to sustain such investigations on the basis of the rule-of-law and human rights.

2.2. Data processing practices and tools

In the data field, ICMP maintains an Identification Data Management System (iDMS) that is accessible anywhere in the world via its Online Inquiry Center (OIC), also available on Android and iOS. Through the iDMS and OIC, ICMP provides authorities and relatives of the missing with the means to comprehensively record and process data on missing persons, including information on clandestine gravesites and other locations where the remains of the missing may be located, as well as genetic and other ante-mortem data. ICMP also enables the documentation of official examination processes. To date, about 20,000 deceased missing persons from around the world have been located and conclusively identified with ICMP's assistance, using database DNA matching.

ICMP maintains a specialized missing persons DNA identification laboratory capable of testing environmentally compromised human remains on a large scale, with an advanced iDMS DNA Matching modules to perform pedigree-based kinship of large databases of family reference DNA profiles. This system has been used in a number of large, international disaster events, such as the 2004 SE Asian tsunami and the 2008 Typhoon Frank in the Philippines, resulting in nearly 1500 DNA-assisted identifications from bodies lost at sea. ICMP is developing new technologies such Massively Parallel Sequencing DNA testing, which may have the potential to better resolve cases and focus the search for missing migrants and their associated living families.

The iDMS can be accessed through ICMP's website and the OIC is available to the public, which includes a Report a Missing Person function and a Site Location function. Whereas the former allows external users to report a missing person or search for information in the ICMP database, the latter enables anonymous reporting of possible clandestine gravesites and other locations, including possible places of illegal detention for further investigation by competent authorities.

Additional iDMS applications, which are available to public authorities upon request and through end-user license agreements that are subject to adequate data protection arrangements, include 10 different applications from recovery of mortal remains to aerial imagery to DNA testing and other analytical data relevant to locating missing persons. The iDMS allows institutions to upload and store data and track the processing of evidence within the ICMP system from evidence collection to case closure, including pairwise and pedigree DNA database matching.

ICMP provides a comprehensive, transparent and standards-based approach to data processing, contributing to and improving public accountability in missing persons investigations. Participation in data collection and processing by public authorities, including justice sector institutions, as well as civil society organizations and families of the missing, increases confidence in public investigations and institutions, and makes such investigations more effective and deserving of public trust.

There is a high degree of control over access to sensitive information contained in the iDMS and OIC, such as DNA and family data. ICMP implements technical, organizational, and legal security measures to protect personal data: (1) data systems are secured against cyberattacks, are regularly

reviewed for their safety and are hosted only on ICMP's IT servers; (2) human genetic data is stored and analyzed in an anonymous, coded form at many stages of the process; (3) ICMP staff members are responsible for safeguarding information in accordance with ICMP's policies and applicable international principles; (4) as a treaty-based international organization, ICMP may benefit from privileges and immunities that can guarantee legal protection of data; and (5) ICMP ensures that the collection, use, and storage of personal data, including genetic data, is in conformity with the principles of confidentiality and informed consent, whenever possible. To protect data subjects against risks that genetic information may be used for illegal or inappropriate purposes, they are asked to release ICMP from any obligation to provide them or any other party with the results of genetic analysis performed by ICMP.

III. INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM)

3.1. Policy approach

For more than 65 years the IOM has worked to promote and support orderly, dignified and humane migration. As an inter-governmental organization, IOM works closely with a number of partners, including governmental and non-governmental organizations, in order to support the operational challenges of migration, encourage socio-economic development through migration, and uphold the human dignity and well-being of migrants, among other things.

In recent years, refugees, displaced persons and other migrants have made their way to Europe across the Mediterranean, escaping from conflict and violence in their own countries and seeking better, safer conditions. Under these circumstances, in this region migration has become increasingly dangerous for many migrants. October 2013 marked the beginning of multiple tragedies, when around 380 migrants drowned off the Italian island of Lampedusa.

3.2. Data processing practices and tools

The same year, the IOM established the Missing Migrants Project as a response to the refugee crisis in the region and the lack of data about migrant fatalities in different parts of the world. The project has contributed to the effort to compile data on migrant deaths and, since 2014, it has been possible to produce credible estimates. Among the project's outcomes are two comprehensive reports: Volumes 1 and 2 of *Fatal Journeys: Tracking Lives Lost During Migration*. In these reports, the IOM presents the latest data, estimates and trends on migrant fatalities around the world, and analyzes the challenges that authorities face in identifying deceased migrants and the consequences for their relatives.

According to the latest report, in 2016 a total of 7,932 migrants were recorded as dead or missing. The region with the highest number of victims is the Mediterranean, with a total of 5,143 (65 percent), followed by North Africa with 1,382 (18 percent) and the United States-Mexico border region with 396 (5 percent).

As mentioned above, in 2013 the Missing Migrants Project was established to track migrant fatalities during migration and to produce a public, online database. This project is a joint initiative of the IOM's Global Migration Data Analysis Centre (GMDAC) and Media and Communication Division. The Missing Migrants Project is the only database that covers migrant fatalities worldwide. The data is compiled from several sources including coast guards, medical examiners, media reports, NGOs and survivors of shipwrecks. On its website, the project provides interactive maps about migration flows

by region, the number of arrivals and fatalities, and migrant routes, as well as the latest global figures.

IV. INTERNATIONAL CRIMINAL POLICE ORGANIZATION (INTERPOL)

4.1. Policy approach

INTERPOL works primarily with national law enforcement agencies but can also work in cooperation with other organizations involved in Disaster Victim Identification (DVI) situations and missing persons cases. This supports one of INTERPOL's mandates – to identify dead bodies – and shows INTERPOL's capability to act as a bridge between law enforcement and non-law enforcement agencies. The legal framework set down in INTERPOL's Rules on the Processing of Data (RPD) allows for the establishment of relations with international entities in order to collaborate with them on data processing on a regular basis. The conditions and mutual requirements of such data exchange and collaboration have to be specified through an individual agreement between INTERPOL and an international entity, which can be defined as an international, intergovernmental or non-governmental organization performing a public-interest role at the international level.

In 2015, INTERPOL's DNA Monitoring Expert Group presented key considerations and recommendations for INTERPOL member countries wishing to use DNA for the identification of missing persons and unidentified human remains in police investigations. The expert group recommended that: (1) identification efforts should apply equally to all, and should not take into account a person's wealth, ethnicity or circumstances of disappearance; (2) all the generally accepted primary identifiers – dental, fingerprint and DNA – should be integrated and considered along with other information, such as medical data, physical characteristics, tattoos and property; and (3) data collection, wherever possible, should include direct samples from the person reported missing and reference samples from closely related biological family members (family samples).

In terms of collection of data, the DNA Monitoring Expert Group recommended that reference samples should be collected only after obtaining informed and written consent acknowledging the intended use of the samples and profiles, and the associated risks. The consent form should also specify the possibility of international data sharing, where appropriate. Laboratories carrying out the analyses should be accredited according to ISO 17025 or an equivalent national standard. Electronic data processing should be compatible with international DNA data exchange formats, ideally those described in ISO/IEC.

4.2. Data processing practices and tools

In addition to the internal RPD, INTERPOL uses several guidelines to ensure quality management of information. These are the INTERPOL DVI Guide, the guidelines of the International Society for Forensic Genetics, and the Scientific Working Group on DNA Analysis Methods (SWGDM) for missing persons casework.

INTERPOL uses a system of Notices to issue international requests for cooperation or alerts, allowing police in member countries to share critical police-related information. The Notices are also used to communicate information about missing persons and unidentified human remains. Specifically, INTERPOL uses Yellow and Black Notices – yellow for alerts issued in connection with missing persons, and black for alerts issued in connection with unidentified human remains. Biometric data, i.e. fingerprints and DNA profiles as well as dental data, can be attached to Yellow and Black Notices

to be used for identification purposes by authorized entities in INTERPOL's member countries. If family DNA data for a missing person is available, it will not be attached to a Yellow Notice. Instead, a statement on the Notice will indicate that family data is available and can be obtained from the source country upon request.

On the INTERPOL public website, it is possible to search Yellow Notices by name, nationality, current age, photograph, sex, color of eyes, color of hair, context of disappearance etc. Biometric data of the missing person is not publicly disclosed when Yellow Notices are accessed through the INTERPOL public website.

INTERPOL manages the INTERPOL DNA Database, containing profiles from offenders, crime scenes, missing persons and unidentified bodies. INTERPOL does not store any nominal data linking a DNA profile to any individual in the DNA database and DNA profiles from missing persons are only searched against DNA profiles from unidentified human remains. More than 60 countries are currently providing DNA profiles of missing persons and unidentified human remains to the INTERPOL DNA database and the direct matching of this data has contributed to confirmed identifications.

Recently, INTERPOL has approved the further development of an international family DNA matching service allowing for the identification of unidentified human remains through comparison with DNA data from biological relatives. Family DNA data sent to INTERPOL will not be stored in the aforementioned INTERPOL DNA Database where it could be in proximity to data from criminal cases, but will be kept in a new separate database (INTERPOL Missing Persons DNA Database) and will only be compared with unidentified human remains. INTERPOL plans to offer this new service to its member countries in the very near future.

V. EUROPEAN UNION AGENCY FOR LAW ENFORCEMENT COOPERATION (EUROPOL)

5.1. Policy approach

In terms of missing persons, Europol views crimes against vulnerable children as one of its main priorities in combating serious and organized crime. This is a priority for Europol because identifying victims of trafficking is especially difficult where the victims are children. When they are forced to commit crimes, these children are often treated as offenders, resist cooperation with law enforcement and are at risk of disappearing or of being re-trafficked if they are handed back to their exploiters. The issue of unaccompanied children is further complicated as a result of fragmented and limited information. In addition, Europol has currently no legal basis to look into the matter of missing persons.

In a report on migrant smuggling in the EU, published in 2016, Europol states that in many EU member states, unaccompanied minors disappear from asylum or reception centers.

5.2. Data processing practices and tools

Europol facilitates the exchange of intelligence and the analysis of information shared by the EU member states in order to combat trafficking in human beings, including children. The mandate of Europol's work extends only to suspects under investigation. In cases of human trafficking, Europol is only authorized to store data on victims.

At the end of February 2016, Europol established the European Migrant Smuggling Center (EMSC). The goal of the EMSC is to support EU member states proactively in their efforts to dismantle criminal networks involved in organized migrant smuggling. The EMSC focuses on geographical criminal hotspots, and is endeavoring to enhance capability across the EU to fight people smuggling networks. The EMSC focuses on smugglers rather than migrants and is legally mandated to collect data on suspects only.

The EMSC incorporates the Joint Operational Team (JOT) Mare, which is made up of specialists seconded from seven member states. These member states exchange vital information in real time to disrupt smuggling networks operating across the Mediterranean from Turkey, as well as from Libya and other North African countries. The EMSC has facilities for cross-checking the data in various Europol databases, provides forensic and technical support, and acts as an information hub.

VI. INTERNATIONAL CRIMINAL COURT (ICC)

6.1. Policy approach

The primary mission of the International Criminal Court (ICC) is to help put an end to impunity for the perpetrators of the most serious crimes of concern to the international community as a whole, and thus to contribute to the prevention of such crimes. The mandate of the ICC is to try individuals (rather than States), and to hold such persons accountable for the most serious crimes of concern to the international community as a whole, namely the crime of genocide, war crimes, crimes against humanity, and the crime of aggression, when the conditions for the exercise of the Court's jurisdiction over the latter are fulfilled. Because the enforced disappearance of persons is a crime against humanity, it falls within the jurisdiction of the ICC.

On 7 July 2016, the Office of the Prosecutor (OTP) of the ICC signed a Memorandum of Understanding (MoU) with ICMP. In this MoU, both parties agreed, wherever possible, to cooperate and assist each other in the discharge of their respective mandates through the exchange of information, documents and records of mutual interest, including providing access to electronic and paper archives, as well as other databases maintained by either Party.

The OTP investigates and prosecutes serious crime often in conflict or post-conflict situations. There is a natural intersection between its work and that of organizations such as ICMP. ICMP's missing are often the OTP's victims and vice versa. For the OTP, every missing person is a potential victim of crime ranging from murder to illegal detention to enforced disappearance to recruitment of child soldiers. The OTP's activities include collecting bulk data and criminal complaints including allegations that relate to missing persons, taking witness statements from people who indicate that individuals are missing, and exhuming unidentified bodies. All of these have both a criminal and a missing persons element. Close cooperation with ICMP is therefore of specific interest to the OTP.

The OTP is presently assessing its jurisdiction in relation to mass crimes committed against migrants and refugees in Libya. It is anticipated that this enquiry, which overlaps with other criminality such as trafficking and smuggling, may have a particular relevance to ICMP.

Furthermore, in the ICC's second investigation in the Central African Republic (CAR II), the OTP's enquiries into mass killings of as yet unidentified individuals may be relevant to cooperation with ICMP.

6.2. Data processing practices and tools

The OTP is planning to work with a provider that allows the OTP to create SMS flows to collect information from larger groups of people via predefined text messages. The OTP hopes to pilot the activity in the Central African Republic. It has also set up an Internet-based tool that allows individuals to contact the OTP directly and indicate that they are witnesses or victims of serious crime.

The OTP is also in consultation with “big data” experts regarding the use of anonymized phone data to map population movements in relation to the crime of “forcible displacement”. Migrants and refugees carry mobile phones with them on journeys to Europe. An analysis of migrant behavior could identify phone data “patterns” that could also be used to identify missing persons through phone data enquiries. The OTP hopes to inquire further with phone providers into whether a mobile telephone is “recognized” and registered upon arrival by a cell tower in an arrival country as a new one on its system and thus whether phones that depart the launch point in the departure country but do not activate in the arrival country are those of people who may have gone missing. Collecting such data would allow for an estimate of missing phones and, consequently, missing people. The more data that is collected, the easier it is to identify the last known point at which a phone was active and thus the possible location where the person went missing.

In the Libya case, the OTP is aware that some first responders are collecting and downloading individual phone handsets. Phone handsets of migrants contain data that would assist missing persons enquiries. This data could be compared against a database that contains the phone numbers of individuals reporting people missing and the phone numbers of missing persons. This would assist in determining whether the person using or owning the handset had been reported missing and by whom.

The OTP believes that the technologies and processes it is piloting may have applications to the work of other organizations such as ICMP and the IOM. In particular, phone data would be useful to the ICMP in finding missing persons. ICMP recently launched its Site Locator application, which allows persons to provide information to assist governments and stakeholders in their efforts to locate sites, such as mass or clandestine graves, where the mortal remains of missing persons could be hidden. The collection and processing of phone data could prove to be an even more streamlined approach to finding large numbers of missing persons and would be particularly applicable to finding those who have gone missing as a result of migration.

VII. INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)

7.1. Policy approach

The ICRC attributes great importance to privacy and data protection in missing persons scenarios arising from migration, armed conflicts and other humanitarian emergencies. In its activities, the ICRC seeks to advance the international legal framework in this area. This framework includes the right to privacy as a right recognized in Article 25 of the Universal Declaration of Human Rights (1948) and the right to the protection of personal data enshrined in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, of the Council of Europe (1981), the Charter of Fundamental Rights of the European Union (2000) and national laws. UN General Assembly resolution 45/95 of 14 December 1990 adopted Guidelines for the Regulation of Computerized Personal Data Files, which set out a core of principles that the state members should take into account in their legislation.

Due to progress on data protection rights legislation and the rapid advancement of technology, and the impact and benefits of these developments in relation to humanitarian action, the ICRC adopted the ICRC Rules on Personal Data Protection in 2015. These rules are intended to uphold the organization's mandate while following international standards on protecting personal data. Other ICRC initiatives include a joint project with the Vrije Universiteit Brussels (VUB), which provides guidelines to the humanitarian sector on data protection, focusing on new technologies, and the Restoring Family Links (RFL) program, which is designed to locate persons who have been separated from their families as a result of conflicts, disasters or migration, and to put them back into contact with their relatives.

The RFL Network, which, in addition to ICRC, includes the Red Cross and Red Crescent (RC/RC Movement, namely about 190 Red Cross/Red Crescent agencies worldwide), has developed a Data Protection Code of Conduct for Restoring Family Links. It sets out the minimum principles, commitments and procedures with which ICRC, RC/RC, the International Federation of RC/RS and RFL staff must comply when processing data within the framework of RFL activities. The objective is to: (1) comply with data protection standards and regulations; (2) allow a seamless flow of data needed for RFL activities; and (3) protect rights and freedoms of enquires, sought persons and other individuals related to RFL activities and according to International Humanitarian Law, International Human Rights Law, and international standards, in particular the right to privacy and protection of personal data.

7.2. Data processing practices and tools

In addition to addressing privacy and data protection issues, ICRC's humanitarian action focuses on helping separated family members, displaced persons, refugees and migrants in Europe and elsewhere to restore contact with their family members. In other countries of origin, ICRC has developed programs to support families of missing migrants (based on needs as a consequence of the disappearance, be it mental health and psychosocial needs, legal and administrative needs, or financial and economic needs). The organization (in cooperation with Red Cross/Red Crescent National Societies) provides assistance along migration routes in the form of services such as free phone calls, help on arrival and free WiFi. Also, through "Trace the Face", an online database, ICRC has uploaded around 2,200 photographs of missing migrants to its website to help people search for their relatives.

ICRC's efforts include activities on behalf of deceased migrants in relation to dignified and proper management of the dead and the identification process. ICRC supports concerned authorities and forensic practitioners in the Mediterranean countries starting with the recovery of the body and finishing with the handover of remains and the provision of appropriate information to families. Several assessments were conducted, followed by two regional conferences on deceased migrants that took place in Milan in 2013 and in Barcelona in 2015. The main objectives were to identify the principal challenges, mostly referring to the need for a coordinated and centralized system at both the local and regional level. Further efforts include: (1) improvement in collection of post-mortem data and in cooperation with the organization's network in countries of origin, transit and destination; and (2) the collection of ante-mortem data, taking into account the fact that results depend on the quantity, quality and availability of this information. ICRC promotes the establishment of agreements with countries of origin to respect applicable laws on data protection, as well as cooperation with other organizations.

VIII. OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR)

8.1. Policy approach

UNHCR has an annual dialogue on missing refugees and finds it especially important to focus on the protection of particular groups within the refugee population, such as children on the move. UNHCR works together with other organizations while providing assistance to refugees in the form of food and shelter. UNHCR is interested in working with other organizations on data collection related to missing migrants/refugees, and on ensuring the verification of all data collected through websites. In order to enhance the efficiency of efforts to locate and identify missing migrants/refugees, UNHCR recommends establishing links between the different mandates of organizations and identifying key contact points in relevant agencies.

8.2. Data processing practices and tools

UNHCR and the IOM are working together on the *Missing Migrants Project*, to track deaths of migrants and those who have gone missing along migratory routes worldwide. Both organizations regularly coordinate on reviewing and using data (collected from national authorities, such as coast guards and medical examiners, media reports, NGOs, and interviews with survivors) to ensure consistency.

The Refugees Operational Portal is a Partners coordination tool for use in refugee situations, made available by UNHCR. The portal is licensed under a Creative Commons Attribution 3.0 International License and therefore free to use by others, as long as they acknowledge that the information comes from UNHCR. Information available on the portal includes data and statistics, weekly reports, population profiling, and interactive maps. The data includes information about people who are missing or dead.

IX. UNITED NATIONS CHILDREN'S FUND (UNICEF)

9.1. Policy approach

In the current migrant crisis, UNICEF focuses on the situation and protection of unaccompanied and separated children who enter the EU seeking asylum. In the case of missing migrant children, UNICEF notes that these children may not be missing from their families, but simply missing from official registration systems. In most cases, children just leave migrant centers without being noticed or monitored. This situation is mainly due to the fact that children often do not trust officials and some of the personnel working at shelters.

As part of its work in this regard, in 2015 UNICEF published a report entitled *Children's rights in return policy and practice in Europe*. In this report, UNICEF addresses the challenges of unaccompanied and separated children during their migration to Europe, and highlights some recommendations that governments should consider in order to respect the rights of these children. These recommendations include assessing the security situation carefully, carrying out a Best Interests Determination (BID), and developing and using child rights-based procedures for tracing and contacting families, among others.

The issue of missing child migrants and refugees in the context of the European migrant and refugee (Protection) crisis is two-fold:

1) Migrants and refugees gone missing while travelling to Europe (eastern, central and western Mediterranean crossings)

UNICEF is part of the regional Information Management Working Group (with the IOM, UNHCR and other partners). UNICEF advocates for data collection on missing children (up to 18 years of age) along a more systematic age-breakdown on flows and a more child-focused data collection. UNICEF has been discussing with the IOM (Missing Migrants Project) a statistical age breakdown. This is “easier” for the eastern Mediterranean route, where children are generally younger and are easily identified as children. It has been very difficult for the central Mediterranean route, where children are older (between the ages of 14 and 17) and therefore more difficult to identify as children. UNICEF can only give estimations based on the proportion of children in the total number of arrivals in Italy.

In addition, according to recent research, many refugees and migrants, including children, go missing before reaching the Mediterranean, as it is believed that more fatalities occur *en route* to Libya and Egypt than at sea (due to health issues, violence, etc.). Although there is an increasing evidence-base regarding the risks to which refugees and migrants are exposed before reaching European shores, there is still little information about the scope of the issue. This is why UNICEF has also been working with the Mixed Migration Hub (covering mixed migration trends to, through and from northern Africa).

2) Missing children in Europe

Reports of as many as 10,000 unaccompanied asylum-seeking children (UASC) missing in Europe have not been verified. In addition, the term “missing children” is itself incorrect.

We have seen children absconding from reception centers in countries of arrival and transit such as Greece, Italy and Bulgaria, but also countries of destination such as Germany. These children are missing from protection and registration systems. This means they are unaccounted for but are not lost/missed by their families. In most of the cases, children are actually well-connected and in touch with their families (either in countries of origin or of destination). Often children have families in other parts of Europe and because of slow bureaucratic family reunification processes and delays in relocation processes, as well as poor conditions in reception centers (including detention in some instances), inadequate or limited access to services and a mistrust in the effectiveness of “the system”, children choose to take matters into their own hands, leave care arrangements, and try to find their families or their final destination by themselves (often with the help of smugglers). This is what we often refer to as “the four Ds”: delays, Dublin, detention and distrust.

Once they go underground, UASC are on their own and at heightened risk of falling into situations of violence, exploitation, abuse and human trafficking. However, to date there is no nationwide or Europe-wide evidence-base or monitoring system in place to know exactly what happens to these children (whether they find their family, apply for asylum in another country or fall into the hands of criminal groups). Many countries do not report “missing” refugee and migrant children to the police and do not undertake any follow-up action. All evidence and stories we have about children reuniting with their families after leaving care or, on the contrary, becoming victims of trafficking, is merely

anecdotal.

At the peak of the refugee and migrant crisis, agencies such as UNICEF and UNHCR identified that in this particular context, where children were on the move (end of 2015 to beginning of 2016) and UASC did not declare their real age out of fear of being delayed or detained, it was often in their best interest not to be stopped on their journey as they were travelling with protective groups of other children and trusted adults. When identified as children, they would often be placed in protective custody (detention) or a facility for UASC, from where they would leave or escape shortly afterwards. UNICEF and UNHCR were trying to put in place a system to follow and support UASC while *en route* through Europe, through the “Blue Dots/Child and Family Support Hubs”, but with the closure of borders and the entry into force of the EU-Turkey agreement, this became impossible, as children who continued to cross borders from Greece and Bulgaria to the Western Balkans were “invisible”. They did not want to be identified, and therefore would rarely seek assistance from humanitarian agencies, and instead relied exclusively on smugglers for information and facilitation of their journey.

In addition to these general factors, there are some country-specific dynamics that can further explain why UASC go missing. In some European countries, there are additional barriers to family reunification, even within the country, which leads to children leaving centers where they were assigned.

Ultimately, this issue is just a symptom of existing gaps in asylum and child protection systems in Europe, which are failing to address the specific needs of refugee and migrant children to have a safe place to stay, to be reunited quickly with their family, to be able to go to school and learn, and to have access to medical care, including mental health and psychosocial support services. The issue of children going unaccounted for highlights the shortcomings of national monitoring systems, ineffective cross-border cooperation and insufficient political will to address this issue.

9.2. Data processing practices and tools

UNICEF is not involved in direct management of data collection systems on refugee and migrant children. This is the responsibility of European states, and UNICEF is advocating and engaging with state authorities, and EU and other agencies to improve these systems and systematically make publicly available disaggregated information on children. Nevertheless, within its regional child rights monitoring framework, UNICEF has been closely monitoring the situation of refugee and migrant children across Europe, and strengthening partnerships with national ombudspersons and civil society to build their capacity to collect qualitative and quantitative information on refugee and migrant children, along with technical assistance to national authorities to improve their registration and monitoring systems (e.g. in Germany and Greece).

UNICEF is also trying to increase the evidence base on refugee and migrant children through targeted qualitative research and limited direct data collection from children (particularly in Greece and Italy).

UNICEF has a number of recommendations on data processing. First, member States need to collect data on children disaggregated by age, gender, accompanied and separated/unaccompanied, migration status, nationality, etc. Likewise, data on family reunification, asylum, relocation, returns and other migration-related topics should be systematically disaggregated by age, gender and

nationality. Data on UASC (asylum claims, children in centers, reunited with families by country) should be collected and made publicly available in a timely manner. Priority should be placed on establishing monitoring systems in reception and accommodation centers, which capture information on the implementation of protection standards, but also access to services and feedback mechanisms, and information on children who are unaccounted for.

Furthermore, existing cross-country collaboration, established through meetings on the protection of UASC at a technical level across Europe, should be built upon in order to improve exchange of good practices and challenges in national monitoring systems, and facilitate the establishment of a system at the EU level to allow for the collection and analysis of data on refugee and migrant children unaccounted for in different Member States. This could be done through the EU Knowledge Centre on Migration and Demography or other relevant EU agencies.

Lastly, at the 10th EU Forum on the Rights of the Child recommendations were made to identify and protect in a better manner all third country national children in migration. This included proposals to: introduce a new sub-category of alert on unaccompanied children who are unaccounted for, and promote the use of missing child alerts in the Schengen Information System; collect uniform data (name, date of birth, accompanied/unaccompanied/separated, nationality/stateless, facial image or fingerprints) on children in migration, at the external borders, to allow for traceability and help fight child trafficking and address the phenomenon of “missing children”; and ensure that all cases of children going missing are systematically reported to the police and other relevant national authorities, as well as to the national missing children hotline (116 000).

X. EUROJUST

10.1. Policy approach

Eurojust encourages and improves the coordination of investigations and prosecutions among the competent authorities in the member states, and seeks to enhance cooperation among these authorities, in particular by facilitating the execution of international mutual legal assistance and the implementation of extradition requests. Eurojust's competence covers the same types of crime and offences for which Europol has competence, including trafficking in human beings.

In December 2008, Ministers of member states at the Justice and Home Affairs Council adopted a revised Council Decision on the strengthening of Eurojust. The aim of the Decision is to develop Eurojust's potential to help fight transnational organized crime. Measures include increasing the interchange of information about serious cross-border cases, and making Eurojust available to national authorities on a 24/7 basis.

Eurojust may try to improve cooperation and coordination between the competent authorities, and forward requests for judicial assistance when these: (1) are made by the competent authority of a Member State; (2) concern an investigation or prosecution conducted by that authority in a specific case; and (3) necessitate its intervention with a view to coordinated action.

Eurojust is focused on cross-border criminal cases, such as people trafficking and smuggling. The biggest challenges faced by Eurojust in its everyday work are language differences and the variable trustworthiness of translators when it comes to collecting evidence, identifying smugglers among migrants, dealing with gaps in information, and addressing the lack of trust among migrants for local authorities in the countries where they arrive. Child migrants represent a special challenge for Eurojust, due to the difficulty that may be encountered when assessing the age of young adults, the

focus on children as targets of criminals, and the incidence of child perpetrators.

10.2. Data processing practices and tools

Eurojust is connected to the Schengen Information System (SIS), allowing National Members to access the SIS directly from their offices. The SIS is Europe's largest shared database for maintaining public security, managing external border controls and issuing visas and residence permits in the absence of internal border controls. The SIS enables competent authorities, such as police and border guards, to publish and access alerts on certain categories of wanted or missing persons or objects. An SIS alert not only contains information about a particular person or object but also clear instructions on what to do when the person or object has been found. Eurojust also cooperates and consults with the European Judicial Network (EJN), and makes use of and contributes to the improvement of its documentary database.

XI. THE EUROPEAN COMMISSION

11.1. Policy approach

Data protection legislation within the EU has been in place since 1995 when Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data was adopted. However, the transposition of the Directive was uneven in member states, causing legal uncertainty, among other things. In addition, the rapid development of digital technology and online services caused enormous growth in the processing of personal data, creating new challenges for data protection. This necessitated the updating and modernizing of principles that had been set forth in the Directive.

Hence in 2012, the EU Commission launched a comprehensive data protection reform that resulted in the adoption of the General Data Protection Regulation (GDPR) and the Data Protection Directive for the police and criminal justice sector in May 2016. The GDPR will be applied from 25 May 2018, and member states will have two years to transpose the Data Protection Directive into their national law. While the GDPR provides for general rules on data protection, the Directive specifically aims to: (1) ensure that the personal data of victims, witnesses, suspects and other individuals involved in criminal proceedings is protected when processed by the competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties; (2) improve the effectiveness and efficiency of exchanging data between law enforcement authorities within the EU; and (3) provide clear rules for transferring data for the said purposes to third countries or international organizations.

The GDPR is directly applicable in the EU member states apart from certain matters that may be further regulated by member states, such as processing of special categories of personal data. This will ensure better harmonization of data protection laws across the EU. The objective is to strengthen the protection of individuals by, *inter alia*, providing for the same level of enforceable rights and also to secure the free movement of personal data. Although the main data protection concepts remain the same, the GDPR further clarifies and strengthens the data protection principles, the rights of individuals and the obligations of entities that process personal data, and it introduces modern governance.

The principles relating to the processing of personal data are clarified and updated. Accordingly, personal data will be processed applying the principle of lawfulness, fairness and transparency, data

minimization, purpose limitation, data accuracy, storage limitation, integrity and confidentiality of data. The GDPR provides for greater accountability as, among other things, the controller is responsible for, and must be able to demonstrate, compliance with the data protection principles.

Personal data may be processed in line with the mentioned principles based only on the prescribed legal basis, which includes the consent of the data subject. The conditions for consent of the data subject for processing his or her personal data as the basis for lawful processing are clearly defined by the GDPR, providing also for specific conditions applicable to the consent of a minor. Accordingly, the controller has to be able to demonstrate that the data subject has consented to the processing of his or her personal data. The consent has to be freely given, specific, informed and unambiguous and the data subject has the right to withdraw his or her consent at any time.

There is an obligation on the part of the controller to provide clear and transparent information to the data subject concerning the processing of his or her personal data, including the data subject's rights in relation to such data. The obligation of the controller to notify the data subject is not dependent on whether the processing is based on the data subject's consent. The obligation to notify includes, among other things, the purpose and legal basis for processing, the recipients or categories of recipients of the personal data, when applicable, and any intention on the part of the controller to transfer personal data to a third country or international organization. Further information to be conveyed to the data subject to ensure fair and transparent processing includes the retention period, the data subject's right of access to and rectification or erasure of personal data, processing restrictions, the right to object to processing, and the right to data portability. If processing is based on consent, the data subject will be informed of his or her right to withdraw such consent at any time.

As mentioned, the data subject has the right to erasure, *inter alia*, if the data is no longer necessary in relation to the purpose for which it was collected, if the data subject withdraws the consent on which processing is based or if there are no other legal grounds for the processing.

Special attention is given to the security of processing with an obligation on the part of the controller to notify the supervisory authority in the case of a personal data breach unless such breach is unlikely to cause a risk to the rights and freedoms of natural persons. The data subject also has the right to be informed of the breach in case it poses a risk to the data subject's rights and freedoms. Special governance measures are also foreseen by the GDPR including privacy impact assessments and privacy by design, which will contribute to minimizing the risk of breaches.

The rules on transfers to third countries and international organizations have now been streamlined. The transfer of personal data may take place if it complies with data protection requirements under the GDPR (the above-mentioned principles of processing and lawfulness of processing) and if additional specific conditions for international transfers under Chapter V of the GDPR are complied with by the controller and the processor. The level of protection of individuals ensured under the GDPR should not be undermined by such international transfers. According to these special conditions, transfer is possible if the country or international organization to which data is to be transferred is considered to ensure an adequate level of protection of personal data (adequacy decision) or if the entity transferring data has appropriate safeguards in place or if certain prescribed derogations apply.

If the Commission decides that the third country or international organization concerned has ensured an adequate level of protection, a transfer of data to that country or international organization does not require specific authorization (Article 45). In this case, the transfer of data, provided it complies with other provisions of the GDPR, is the safest basis for transfer, as it does not

entail any additional requirement for any specific future transfer. So far, the Commission has issued such decisions for several third countries under Directive 95/46/EC. These will remain in force as stipulated by the GDPR until the Commission decides otherwise. It remains to be seen how the Commission will proceed with respect to international organizations that are specifically mentioned under the GDPR and how the rules of assessing adequacy will be interpreted in the context of international organizations.

The factors that the Commission will take into account include, *inter alia*, rule-of-law, respect for human rights and freedoms, general and specific legislation, data protection rules, professional rules and security measures, effective and enforceable data subject rights, existence of a supervisory authority in the third country or to which an international organization is subject, and international commitments that the third country or international organization concerned has entered into relating to the protection of personal data. The adequacy decision will be adopted following assessment in the form of an implementing act that will provide a mechanism for a periodic review, at least every four years, among other things.

In the absence of an adequacy decision, a controller or processor may transfer personal data to a third country or international organization only if it has provided appropriate safeguards and on condition that enforceable data subject rights and effective legal remedies for data subjects are available (Article 46). The appropriate safeguards that may be provided without requiring any specific authorization from a supervisory authority include, *inter alia*, a legally binding agreement between public authorities or bodies of the EU and the international organization with standard data protection clauses adopted by the Commission. Furthermore, adequate safeguards requiring authorization by the competent supervisory authority may include *ad hoc* contractual clauses with the international organization concerned.

The GDPR also provides for derogations from the above-mentioned requirements for international transfers (Article 49). Accordingly, such transfers may take place, among other things, on the basis of the explicit consent of the data subject after having been informed of the possible risks due to the absence of an adequacy decision and appropriate safeguards. However, this is limited to specific situations in which the transfer is not repetitive, it concerns only a limited number of data subjects, it is in pursuit of a legitimate interest, and the controller, based on the assessment of all circumstances, has provided suitable safeguards for the protection of personal data. The competent supervisory authority should be notified of such transfer.

In view of the above-mentioned requirements for transferring personal data to international organizations and in view of the necessary adequacy assessments, consultation with the EC, in particular DG Justice, is advised.

In order to ensure uniform and consistent protection of individuals with respect to processing of personal data across the Union, other EU legislation concerning personal data will be reviewed and amended as necessary. To that end, the Proposal of the Regulation on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, has been put forward for adoption to bring it into line with the GDPR.

11.2. Data processing practices and tools

In the area of information exchange, in 2012, the European Commission adopted a Communication on the European Information Exchange Model (EIXM Communication). The EIXM supports the two

main legal instruments set up to facilitate and secure cross-border law enforcement information exchanges. These are the so-called Prüm Council Decision (2008/615/JHA) and the so-called Swedish Initiative (2006/960/JHA).

The Council Decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, the Prüm decision, transformed the Prüm Treaty, signed by seven EU member states, into EU law and extended it to all EU member states. The Decision establishes procedures for the efficient exchange of information in specific areas such as the automated exchange of DNA profiles, fingerprint data and vehicle registration data by which EU member states grant each other access to their automated systems. DNA and fingerprint exchanges are based on a "hit/no-hit" approach, i.e. the member states should allow each other access to the reference data in their DNA analysis files and files from fingerprint identification systems, allowing for automated searches by comparing DNA profiles as well as dactyloscopic data. The Decision also provides for the data protection regime that applies to the data subject of this Decision.

The Council framework decision on simplifying the exchange of information and intelligence between law enforcement authorities of the member states of the European Union, the Swedish Initiative, provides for a legal framework for the effective and efficient exchange of existing criminal information and intelligence between law enforcement authorities in the EU member states for the purpose of conducting criminal investigations or criminal intelligence operations. It applies the principle of "equivalent access", which means that the information must be provided to requesting member states under conditions no stricter than those applied at the national level.

The EIXM Communication and the Communication concerning an overview of information management in the area of freedom, security and justice provide further information on other existing information exchanges as well as channels and communication tools used for such cross-border information exchanges. Other mechanisms include the Schengen Information System SIS II (Council Decision No 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)) and Europol (Council Decision 2009/371/JHA establishing the European Police Office (Europol)), which is tasked, among other things, with collecting, storing, processing, analyzing and exchanging information and intelligence. For the purpose of fulfilling its functions, Europol is mandated to establish and maintain the Europol Information System and any other system that would process personal data in line with this Decision.

LIST OF ACRONYMS

AM	Ante-mortem
BID	Best Interests Determination
CAR	The Central African Republic
DG Justice	Directorate-General for Justice and Home Affairs
DNA	Deoxyribonucleic Acid
DVI	Disaster Victim Identification
EC	European Commission
EIXM	European Information Exchange Model
EJN	European Judicial Network
EMSC	European Migrant Smuggling Center
EU	European Union
Eurojust	The European Union's Judicial Cooperation Unit
Europol	The European Union Agency for Law Enforcement Cooperation
GDPR	General Data Protection Regulation
ICC	International Criminal Court
ICMP	International Commission on Missing Persons
ICRC	International Committee of the Red Cross
iDMS	ICMP's Identification Data Management System
INTERPOL	International Criminal Police Organization
IOM	International Organization for Migration
IT	Information technology
JOT	Joint Operational Team
MoU	Memorandum of Understanding
NGOs	Non-governmental Organizations
OIC	ICMP's Online Inquiry Center

OTP	Office of the Prosecutor of the ICC
PM	Post-mortem
RC/RC	Red Cross and Red Crescent Movement
RFL	Restoring Family Links program
RPD	INTERPOL's Rules on the Processing of Data
SIS	Schengen Information System
SMS	Short Message Service
SWGDM	Scientific Working Group on DNA Analysis Methods
UASC	Unaccompanied asylum-seeking children
UN	United Nations
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
VUB	Vrije Universiteit Brussels