

**REMARKS BY MS. KATHRYNE BOMBERGER, DIRECTOR-GENERAL,
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**COOPERATION IN INVESTIGATING MISSING PERSONS CASES LINKED TO WAR CRIMES,
CRIMES AGAINST HUMANITY AND GENOCIDE**

Until 20 years ago, when large numbers of persons went missing as a consequence of armed conflict or disasters the prospect of finding them was very small. Since 1996, the International Commission on Missing Persons (ICMP) has demonstrated that:

- Missing persons can be found,
- The right of survivors to truth, justice and reparations can be met, and
- Processes to locate the missing, based on human rights and the rule of law, can advance confidence in domestic institutions, which in turn contributes to peace and reconciliation.

ICMP was created at a G-7 Summit in 1996 to address the issue of missing persons from the armed conflicts in the former Yugoslavia. In

2003, when supporting governments encouraged ICMP to respond to the global challenge of missing persons and begin working beyond the Western Balkans, ICMP initiated a process to address the temporal and geographic limitations inherent in its *ad hoc* status by obtaining a permanent status under international law, and it began working towards the long-term goal of moving its Headquarters from Sarajevo to an international organization hub.

These goals were met in 2014 and 2015 through the entry into force of the *Agreement on the Status and Functions of the International Commission on Missing Persons* (known as the ICMP Agreement) and the signing of a host state agreement with the Government of the Kingdom of the Netherlands to move ICMP's Headquarters to The Hague.

The ICMP Agreement constitutes an important step towards addressing the issue of missing persons in the context of foreign policy platforms and international strategies. The agreement recognizes ICMP's mandate in ensuring the cooperation of governments and others in addressing the issue of persons missing from armed conflict, human rights abuses, manmade and natural disasters, organized crime, irregular migration and other circumstances where persons go missing for involuntary reasons.

Importantly, the Agreement embraces a human-rights based, rule-of-law approach to the issue in order to close gaps in humanitarian law. Given the wide range of circumstances in which persons go missing, it is important that ICMP maintains cooperation agreements with other international organizations and mechanisms. ICMP concluded cooperation agreements with the International Criminal Tribunal for the former Yugoslavia (ICTY) in 2006, with INTERPOL in 2007, with IOM in 2013, and most recently, in July this year, with the Office of the Prosecutor of the International Criminal Court (ICC).

ICMP's work builds upon the striking evolution that has taken place over the last two decades regarding the manner in which the issue of the missing is addressed, particularly following conflict and human rights abuses.

These recent advances have been propelled by international efforts to consolidate peace through transitional justice and rule-of-law strategies that attempt to redress the legacy of violent conflict and massive human rights abuses.

Such strategies have had a direct impact on missing persons cases, where rule-of-law-based approaches are becoming the norm. Justice institutions now take the lead in reinstating basic guarantees that had been flouted during conflict, including guarantees of due

process. Furthermore, the use of modern forensic methods and the creation of dedicated databases have made it possible to locate and identify missing persons with a level of efficiency and certainty that was not previously possible.

These advances are quantifiable. More persons have been accounted for who went missing during recent conflicts and disasters than was the case decades ago. The conflicts that took place in the former Yugoslavia during the 1990s are a case in point. It is estimated that 40,000 persons went missing in the Western Balkans as a consequence of armed conflict, abuses of human rights and other atrocities. Today, 70 percent of those missing have been accounted for, including almost 90 percent of those missing from the Srebrenica genocide. The mass loss of life following the attacks in New York City on September 11, 2001 is another case in point, where, following extensive efforts, the majority of those killed have been identified. The unprecedented effort by the world's police forces to account for persons missing from the 2004 Southeast Asian Tsunami is a further example of the ability to pull together resources on an international level, making it possible to account for a significant number of the missing.

These advances have had an impact on the development of countries emerging from periods of conflict and systematic human rights

abuses, and on societies that are coming to terms with large-scale disasters. This has been the case, for example in the countries of the former Yugoslavia, Argentina, Chile and South Africa. In each of these instances, states have assumed ownership of the process, efforts have been made to investigate cases properly and to hold perpetrators to account, civil society has been actively engaged and modern forensic methods, including DNA matching, have been used. These factors have also had a significant bearing on criminal trials, strengthening the rule of law and according relatives of the missing not only the right to know the fate and circumstances of the missing, but the means to seek justice and reparations.

Such efforts are furthermore anchored in the International Covenant on Civil and Political Rights, and the European Convention on Human Rights, as well as on other relevant international instruments that oblige public authorities to conduct effective investigations even when there is no direct state responsibility for a death, or for a person going missing.

The problem of missing persons does not respect borders, whether persons are missing as a result of conflict, human rights violations, disasters, organized violence, or refugee flows or migration. For this reason, the issue of the missing is increasingly being understood as a global challenge that demands a structured and sustainable

international response as opposed to uncoordinated, *ad hoc*, situation-specific approaches.

The role of the international community has also evolved as a consequence of this. The developing global perspective was framed in the 1990s when the ICC was established, following the establishment of hybrid courts such as the ICTY and the International Criminal Tribunal for Rwanda. The experience of the 2004 Tsunami, including the efforts of INTERPOL and others to establish a permanent platform to respond to disasters, further highlighted the necessity and effectiveness of a coordinated, law-based, international response.

Global initiatives are being examined to locate persons missing as a result of organized violence and within populations of refugees and migrants, such as the approximately 10,000 children missing from the migration crisis. Such initiatives will require improved cooperation among states, including better information sharing and better use of advanced communication and data processing mechanisms.

The substantial progress that has already been achieved must be analyzed and reviewed and new concepts and strategies must be

explored in order to develop an effective global response to a fundamental and pressing global problem.

Judicial and law enforcement institutions are required to conduct effective investigations regarding missing and disappeared persons as part of procedural and justice guarantees. Effective investigations must be official, transparent, and capable of establishing the facts. Often such investigations take place in the context of criminal investigations, including investigating crimes against humanity, war crimes and genocide.

ICMP's contribution to the work of international and domestic judicial institutions includes:

- Reporting and updating on ICMP's forensic work;
- Providing analytical assessments relative to specific events or alleged crimes at the request of Courts;
- Providing investigative reports relative to individual missing persons; and
- Giving expert witness statements and testimony.

In order to provide such assistance to courts, ICMP must work in accordance with its mandate to ensure the cooperation of states.

I would like to provide two examples of this. The first relates to ICMP's work in the former Yugoslavia and the second, in honor of the presence of the Prosecutor General of Libya in this panel, to the assistance ICMP provided to Libya following the 2011 conflict.

In the context of the countries of the former Yugoslavia, ICMP assisted in creating or enhancing the work of institutions tasked with investigating missing persons cases, such as the Missing Persons Institute, which it co-founded with the Council of Ministers of Bosnia and Herzegovina, as well as the work of the War Crimes Chamber and the War Crimes Prosecutor, which ICMP has supported. ICMP also helped to create legislation that secured the rights of victims to truth, justice and reparations. It provided technical assistance to domestic institutions such as the Missing Persons Institute and the Prosecutor's Office in the excavation of 3,000 mass and clandestine graves across the region and it applied a DNA-led identification process to account – with scientific certainty – for the largest number of missing persons ever identified in a post-conflict setting.

The use of DNA has meant working with domestic authorities throughout the region, including the provision of court orders to receive post-mortem samples. ICMP returned DNA match reports to the authorities so that they could finalize their investigations into cause and manner of death. ICMP's DNA-based assistance, working

in conjunction with proper chain-of-custody procedures, has allowed local investigators to link the identity of the victim to the scene of the crime in thousands of cases.

ICMP's assistance has helped the regional governments to create central records on missing persons which in turn help victims to access economic rights. In addition, ICMP has provided evidence from its DNA work in over 30 criminal trials both at the domestic and the international level.

This work has been intensive and meticulous and has required close cooperation with domestic authorities and almost 100,000 surviving family members. It should be noted that providing evidence at criminal trials has been labor-intensive. For instance, ICMP compiled over 9,000 pages of evidence for the trial of Radovan Karadzic under a compromise with the accused, who had originally demanded a much larger volume of records. These trials were procedurally demanding, in particular with regard to disclosure, confidentiality and witness-protection requirements. Throughout these trials, ICMP's data protection and confidentiality policies were upheld by trial chambers.

Regarding Libya, in 2012 ICMP was invited by the Libyan authorities to support efforts to account for the approximately 10,000 persons

missing from the Qaddafi regime, including conflicts with neighboring states during his 40-year rule, as well as the conflict in 2011. In less than two years, ICMP was able to help Libya create purpose-specific institutions tasked with investigating disappearances: it created a Libyan Identification Center, which included training over 50 Libyans in the process of locating and recovering missing persons and in collecting biological reference samples from families of the missing. Libyan authorities collected samples from almost 10,000 surviving family members and ICMP was able to assist in making more than 150 DNA-based identifications, including from longstanding atrocities, such as identifying the mortal remains of victims that had been kept in a refrigerator in the Tripoli hospital since 1984. ICMP was also able to help the authorities resolve the case of Dr. Mansour Rashid Kikhia. A former Libyan Foreign Minister, Dr. Kikhia left the country after going into opposition and was abducted in Egypt in 1993. His body was found in Libya in 2012. ICMP matched DNA reference and bone samples, enabling a positive identification of Dr. Kikhia's remains. In addition, ICMP provided the authorities, families and other stakeholders in Libya with an online capacity to account for the missing through access to its Online Inquiry Center.

ICMP continues to maintain contact with surviving families of the missing, so that it can collect data for future identifications, which

might also include missing migrants.

ICMP maintains a database that contains over 150,000 genetic samples and related information regarding missing persons from around the world. Before the end of this year, ICMP will host a meeting with other international organizations, including the ICC, to enhance efforts to collect and share data with the specific purpose of accounting for migrants who went missing while attempting to cross the Mediterranean. Identifying missing migrants will, among other things, support the effort to bring people traffickers to justice.

Over the last 20 years, ICMP has built an unparalleled knowledge base and expertise that will be critical to its cooperation with the ICC.

The agreement between the ICC and ICMP is underpinned by our common mandate of assisting victims of the most serious crimes and contributing to reinforcing the rule of law at national and international levels.

ICMP and the Court operate on the premise that States have the primary responsibility for accounting for missing persons and for prosecuting the most serious crimes under international law.

With this agreement, ICMP seeks to reinforce investigations and the

activities of the Office of the Prosecutor.

At the same time, ICMP looks forward to strengthening the capacities of domestic judicial systems in accordance with the principle of complementarity.

We look forward to joint collaboration that will benefit victims, affected communities and domestic jurisdictions in situations over which the ICC has jurisdiction.