



**The Missing:**  
Action to resolve the problem of people unaccounted for as a result of armed conflict or internal violence and to assist their families

**16<sup>th</sup> Meeting of the  
Standing Committee on Disaster Victim Identification**

**Lyon, France, 5-7 May 2004**

## **The Handling of Human Remains and Information on the Dead in Situations relating to Armed Conflicts or Internal Violence and involving Missing Persons**

**Contribution from the International Committee of the Red Cross (ICRC)**

### **Mission statement**

**The aim is** to heighten awareness among governments, the military, international and national organizations – including the worldwide Red Cross and Red Crescent network – and the general public about the tragedy of people unaccounted for as a result of armed conflict or internal violence and about the anguish of their families

**by** creating and making available tools for action and communication

**in** order to ensure accountability on the part of the authorities responsible for resolving the problem of missing people, to better assist the families and to prevent further disappearances.



**ICRC**

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## ICRC Contribution

Mr Chairman,

Ladies and Gentlemen,

The International Committee of the Red Cross (ICRC) is grateful to INTERPOL's Standing Committee on Disaster Victim Identification (DVI), in particular its Chairman, for giving it this opportunity to present its concerns regarding the need to identify the remains of those who die in direct or indirect relation to an armed conflict or internal violence. Indeed, identification represents the fulfilment of the right of human beings not to lose their identities after death<sup>1</sup> and, overall, the right of families to know what has happened to their relatives<sup>2</sup> in all circumstances. We will also take this opportunity to reaffirm the ICRC's interest in continuing the fruitful dialogue and in exploring the potential for cooperation with INTERPOL in this field.

### 1. Introduction

Let us first recall what the ICRC is: the International Committee of the Red Cross is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance. Established in 1863, the ICRC is at the origin of the International Red Cross and Red Crescent Movement. It directs and coordinates the international relief activities conducted by the Movement in situations of conflict. It also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles.

In 2002 the ICRC was given the opportunity to highlight, before this body, the specific issue of missing persons, and particularly the right of families to know what has happened to relatives of whom they have had no news because of an armed conflict or internal violence.<sup>3</sup> Thousands of families around the globe experience anguish for this very reason. As these people tell us, the death of a family member – however painful – can be accepted, but not knowing the fate of a loved one is far worse than almost any other possible experience.

Acting on the basis of the mandate conferred upon it by the Geneva Conventions and their Additional Protocols, and of its right of initiative, the ICRC aims to prevent all disappearances, to restore family ties when they have been broken, and to ascertain the whereabouts of people about whom their families have no news.

Two years ago, the ICRC launched a consultative process with the objective of doing more to prevent people from going missing in situations of armed conflict or internal violence, to clarify the fate of those who do go missing, and to assist their families.

The initial phase of the process, which comprised eight workshops and three studies, was carried out with the involvement of academic institutions, numerous experts and

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<sup>1</sup> 1996 ICPO-INTERPOL General Assembly, 65<sup>th</sup> session, Resolution AGN/65/RES/13.

<sup>2</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts of 8 June 1977, Art. 32.

<sup>3</sup> See *Contribution from the International Committee of the Red Cross (ICRC)*, INTERPOL Standing Committee on Disaster Victim Identification, Chambéry & Lyon, 29-31 May 2002.

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representatives of governmental and non-governmental organizations.<sup>4</sup> It resulted in a series of practical recommendations on legal and operational matters designed to help prevent disappearances, ascertain the fate of missing persons and assist their families.<sup>5</sup> In a second stage, the ICRC organized an international conference of governmental and non-governmental experts which was held in Geneva from 19 to 21 February 2003 and which provided an opportunity to share the outcome of this work with a wide array of participants. The *Observations and Recommendations*<sup>6</sup> made at the conference were then included in the *Agenda for Humanitarian Action*<sup>7</sup> adopted by the 28th International Conference of the Red Cross and Red Crescent in December 2003.<sup>8</sup>

Existing recommendations and best practices relate to topics such as international and domestic law, means of identification for civilians and non-civilians, the treatment of persons deprived of their liberty, the exchange of family news and the proper handling of human remains and information on the dead.

The section on the proper handling of the remains of those who die in direct or indirect relation to an armed conflict or internal violence is essential. It is the result of the fruitful deliberations of three workshops to which more than 50 experts, including specialists from INTERPOL DVI, were invited.<sup>9</sup>

These recommendations and best practices note the particularities of situations of armed conflict or internal violence, their impact on forensic work and how to adapt accordingly.

We would like to summarize these recommendations and best practices and to explore both the DVI Standing Committee's potential role in implementing these recommendations and best practices and areas of cooperation between INTERPOL DVI and the ICRC.

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<sup>4</sup> See the list of events and their respective reports on the ICRC WEB site at [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/section\\_missing\\_persons\\_events?OpenDocument](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/section_missing_persons_events?OpenDocument)

<sup>5</sup> See *ICRC Report: The Missing and Their Families – Summary of the Conclusions arising from Events Held prior to the International Conference of Governmental and Non-Governmental Experts (19-21 February 2003)* (ICRC/TheMissing/01.2003/EN/10; [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5JAHR8/\\$File/ICRC\\_TheMissing\\_012003\\_EN\\_10.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5JAHR8/$File/ICRC_TheMissing_012003_EN_10.pdf))

<sup>6</sup> See *International Conference of Governmental and Non-Governmental Experts (Geneva, 19-21.02.2003), Outcome* in *The Missing: Action to resolve the problem of people unaccounted for as a result of armed conflict or internal violence and to assist their families – Documents of Reference*, or at [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/881CB6F1912554CDC1256CD40041F954/\\$File/TheMissing\\_Conf\\_022003\\_EN\\_1AND82.pdf?OpenElement](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/881CB6F1912554CDC1256CD40041F954/$File/TheMissing_Conf_022003_EN_1AND82.pdf?OpenElement)

<sup>7</sup> See *The Missing: Action to resolve the problem of people unaccounted for as a result of armed conflict or internal violence and to assist their families – Documents of Reference* or at [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5Y4DK7/\\$File/conference\\_ang-final.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5Y4DK7/$File/conference_ang-final.pdf)

<sup>8</sup> The International Conferences of the Red Cross and Red Crescent brings together not only the National Red Cross and Red Crescent Societies but also the governments of the 191 States party to the Geneva Conventions.

<sup>9</sup> See *Human remains & forensic sciences – Electronic workshop 02-03.2002; Human remains: Law, politics & ethics 23-24.05.2002; and Human remains: management of remains and of information on the dead 10-12.07.2002* (ICRC/TheMissing/10.2002/EN/3; [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5CALR3/\\$File/ICRC\\_TheMissing\\_102002\\_EN\\_3.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5CALR3/$File/ICRC_TheMissing_102002_EN_3.pdf))

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2. **The management of human remains and information on the dead in situations of armed conflict or internal violence: summary of the recommendations and best practices defined by experts in the framework of the process launched by the ICRC between 2002 and 2003**
  - 2.1 A **first set of recommendations and best practices** relates to the specificities of situations of armed conflict or internal violence and their impact on forensic activities.
    - A. Providing information on those who die in situations of armed conflict or internal violence directly reduces the number of missing persons and helps ascertain the fate of persons who are unaccounted for, putting an end to the uncertainty of their families. Thus, the proper handling of human remains and information on the dead is essential in such situations. State authorities and armed groups bear primary responsibility for this; where they are unable / unwilling to fulfill their obligations, humanitarian organizations must address the problem from the beginning of an armed conflict or as soon as internal violence breaks out, with the support of the community of States.
    - B. In most of the situations concerned, all information on the dead, whether on individuals or on the location of mass graves, is politically sensitive and a source of distress for the families. Thus, in particular:
      - security constraints must be taken into account when planning action;
      - the authorities, communities and families involved must be fully informed of all planned activities, which should take into account the cultural context and respect local customs.
    - C. As a general rule, forensic specialists should do all the work involving human remains. Since forensic specialists are not always available, the involvement of non-forensic specialists is often necessary. Their work should maximize the chances that the event can be systematically evaluated and the dead identified at a later stage. To that end, checklists have been drawn up to streamline the processes by which information on the dead is collected and human remains are handled. These checklists should be adapted to the specific context and then promoted in particular among armed and security forces, armed groups, military forces serving in peace-keeping and peace-enforcement units, health facilities and humanitarian organizations.
    - D. The role forensic specialists play in the domestic context cannot be automatically extrapolated to the role they have in contexts of armed conflict or internal violence. In the domestic context, forensic specialists work as an extension of the domestic legal process. The identification of remains is an integral part of criminal investigation and goes hand-in-hand with ascertaining the cause of death. However, in a context of armed conflict or internal violence, especially when the investigation involves the exhumation of mass graves, the cause of death may already be known or be obvious, and identification may be the most difficult and resource-intensive task. This can lead to the unfortunate situation whereby remains are exhumed and the cause of death established but, because the process of identification is much more time-consuming, the bodies re-interred. This situation is unacceptable, as it does not allow the families

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concerned to learn what happened to missing relatives or to receive the remains.

- E. The involvement of forensic specialists requires an adequate working framework and agreed protocols. Identification for the purposes of informing the family and returning remains is just as important as providing evidence for criminal investigations and constitutes due recognition of the rights of the families. The work of forensic specialists is necessary to ensure both objectives are met.
- F. Forensic specialists working in contexts of armed conflict or internal violence must demonstrate a level of professionalism that goes beyond simply assuring standards of practice.
- They must be qualified and competent to work in the situations under consideration.
  - They have an ethical obligation actively to advocate an identification process.
  - When examining remains, they have an ethical duty to observe and record all information potentially relevant to identification and the cause of death.
  - They must not follow procedures that will result in the destruction of material that may be used at a later date.
  - They must consider the families' rights and needs before, during and after exhumation.
  - They must give consideration to the disposal of unidentified remains in a way appropriate to the context.
  - They must be familiar with the pertinent provisions of international humanitarian and human rights law, and should promote the incorporation of those provisions into the basic training of forensic specialists.
  - They have a duty to abide by the ethics of their profession and to be aware of the threats they may face in contexts involving missing persons.
- G. The State authorities bear ultimate responsibility for the management, exhumation and identification of human remains. However, in some contexts others may play this role (e.g. international tribunals, UNHCHR or non-governmental organizations) and bring forensic specialists to the area. All those involved must recognize the role of forensic specialists and the need for a framework, standard guidelines and protocols relating to exhumation, autopsies and identification. This includes the understanding that exhumation and identification comprise the dual objectives of identification and establishing the cause of death; it also includes a commitment to give simultaneous consideration to the family in all matters pertaining to human remains and to ensure that everything possible is done so that the families are informed and supported. These aspects should be reflected in contracts between the forensic specialists and those employing them.
- H. Best practice guidelines that take account of existing guidelines (such as those set forth in the 1989 Minnesota Protocol on the legal investigation of extra-legal, arbitrary and summary executions) and minimum acceptable standards will make it easier to act within these ethical boundaries and ensure they are observed in all circumstances. Such guidelines on forensic work in contexts of

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armed conflict or internal violence involving missing persons must be disseminated and promoted within the forensic community.

- I. An international body whose mission statement relates to forensic specialists who work in contexts of armed conflict or internal violence involving missing persons should be responsible for:
  - drawing together the disciplines that make up the forensic sciences;
  - disseminating guidelines and standards of practice;
  - ethical issues;
  - professional credentials;
  - providing advice to forensic specialists and employers, whether authorities or organizations;
  - accrediting laboratories undertaking DNA analysis in contexts involving missing persons;
  - auditing and evaluating field activities;
  - language issues (translation and professional lexicon);
  - lobbying governments to make forensic expertise and material resources available for international work;
  - lobbying for national or regional "clearing houses" for dealing with missing persons.
- 2.2 A **second set of recommendations and best practices** relates to the adaptation of forensic professional guidelines and standards to situations of armed conflict or internal violence.
  - A. All those involved must work in accordance with best practices while respecting the legal and ethical rules pertaining to the management of personal information, included medical and genetic information, and human remains.
  - B. One standardized *post mortem* form should be adopted in the light of the advantages and disadvantages of existing references (i.e. the Minnesota Protocol; the Interpol DVI autopsy form). After comparing the four existing forms for *ante mortem* data collection, including that of the Interpol DVI, the need for a standard *ante mortem* data collection form adapted to armed conflict and internal violence was also established. A working group deliberating within well-defined criteria is currently drawing up these two standardized forms, which should be compatible and will be accompanied by a handbook on their use. The working group will also define what parts of the forms are to be reproduced electronically and the policy for producing, distributing and maintaining such electronic tools.
  - C. In contexts of armed conflict or internal violence, forensic pathologists may find themselves unable to perform a full autopsy. It may be necessary under difficult conditions, with little time and without access to mortuary facilities, to examine a number of bodies with a view both to identifying them and to establishing the cause of death. For such situations, a checklist has been established for forensic work conducted when only an external examination can be preformed.

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- D. The approach to the identification of human remains must be adapted to each context and agreed by all those involved before an identification process is started. It must be based on scientifically valid and reliable methods and technologies and/or customary, clinical or circumstantial evidence that is deemed appropriate and which has been previously adopted by the scientific community. It must include decisions and protocols regarding the collection of *ante mortem* data and/or samples for DNA analysis, and autopsy and identification protocols. It must be implemented under the responsibility of the head of the forensic team.
- E. DNA analysis must not preclude the use of other objective means of positive identification (i.e. fingerprints, X-rays, dental charts). Human remains should be identified by means of DNA typing when other investigative techniques of identification are inadequate. The decision to use DNA analysis should be based on sound scientific and practical considerations within the identification process strategy defined for a given context. Governments, international and regional governmental and non-governmental organizations and the ICRC must endeavour to ensure the highest scientific and ethical standards are applied to DNA analysis in all circumstances and take care not to introduce double standards.
- F. When DNA analysis is deemed necessary for identification:
- the methods and techniques used must be feasible and practicable in the given context;
  - the methods and techniques used must be reliable and scientifically valid;
  - the information technology used to analyse and match DNA samples must be reliable and valid;
  - the chain of custody for the collection, storage and transport of samples must be agreed by all those involved;
  - the analysis must be performed in certified laboratories that can ensure quality to accredited standards and the handling of human remains, samples and data in agreement with the rules governing the protection of personal data and human remains. Such laboratories must agree to be externally audited.
- G. The communities and the families must be involved in any process to exhume and/or identify human remains. Their involvement should be adapted to the context, and the process must therefore include a communication strategy agreed and implemented by all those involved.
- H. The same holds true for the collection from relatives of *ante mortem* data and/or samples for DNA analysis.
- I. The collection of human remains and the processes of exhumation and identification should only start once all those involved have agreed a framework for doing so. This framework must include the relevant protocols, psychological support for the families and the organization of the process in general and of *ante mortem* data collection in particular. Whenever possible, the entire process should be organized for groups of people who went missing under the same circumstances or during the same event and/or whose remains may be

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expected to be found in the same location, so as to facilitate planning and speed up the process of identification.

- J. Last but not least, a working group of recognized forensic professionals convened by the ICRC at regular intervals is pursuing the examination of, and when necessary adapting, the highest possible standards of forensic practice applicable in contexts of armed conflict and internal violence involving missing persons. A guide for forensic specialists working in such contexts is being prepared by the ICRC under the leadership of one of these experts.

### 3. Potential role of INTERPOL DVI

The ICRC considers that INTERPOL has a major role to play in relation to the above-mentioned conclusions and recommendations. INTERPOL is an inter-governmental organization recognized worldwide. It developed the DVI system on the basis of its extensive experience in investigating mass disasters, providing very useful standards and tools. It has encouraged the formation of specialized DVI teams that include civilians as well as police officers; the teams have invaluable know-how and are ready to intervene internationally. INTERPOL DVI has a worldwide capacity to mobilize resources.

Would it be useful and possible to consider extending INTERPOL DVI's mandate to situations related to armed conflict and internal violence?

INTERPOL DVI could play a major role in the establishment of an international body whose mission statement relates to the application of forensic sciences in contexts of armed conflict or internal violence involving missing persons.

INTERPOL DVI could be active in the adaptation and promotion of forensic professional standards applicable to situations of armed conflict or internal violence. For this purpose it could capitalize on other INTERPOL domains of knowledge, such as the work of its DNA Monitoring Expert Group.

INTERPOL DVI could help promote forensic professional standards applicable in situations relating to armed conflicts or internal violence, a particularly daunting challenge given the political sensitivity of such situations and the frequent absence of a legal framework.

INTERPOL DVI could also be a major player in training staff intervening in such situations and in mobilizing staff when needed.

The ICRC looks forward to exploring all these avenues as it continues to develop its fruitful dialogue and positive working relationship with the INTERPOL General Secretariat.

Thank you.