

Misrepresentation of DNA Evidence about Srebrenica

Questions which demand answers

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The International Commission for Missing Persons[1], also known as ICMP, is systematically deluding the public about the true reach of DNA technology in order to foster the illusion that its laboratories hold the key to the solution of the Srebrenica enigma. On the 16th anniversary of the Srebrenica massacre this year ICMP claimed that it has “closed 5,564 cases of Srebrenica victims” and that “only about 1,500 remain to be resolved.”[2] However, that announcement is completely at odds with science. By calling persons that it has allegedly identified by using DNA techniques “Srebrenica victims” ICMP is taking a clear position that they were in fact executed prisoners (victims, rather than legitimate combat casualties) and also that their deaths are related to Srebrenica events of July of 1995. Both suggestions are false. DNA technology serves only to identify mortal remains or reassociate disarticulated parts of the same body, but it has absolutely nothing to say about the manner or time of death. ICMP has no means to differentiate “victims,” i.e. executed prisoners, from persons who perished in combat and whose death therefore is not a war crime. Nor does ICMP, or any DNA laboratory for that matter, have the means to establish that the death of persons whose remains have been identified occurred within the time frame of July 1995 Srebrenica events. They could have died anywhere, at any time.

When ICMP puts forth the thesis that in its laboratories it is accomplishing things that are scientifically impossible, that suggests one of two conclusions: either ICMP was specifically set up to disinform the public and the courts under the guise of cutting edge science, or it is an organisation of charlatans which should urgently be shut down.

As we are accustomed when any aspect of the Srebrenica issue is under consideration, nothing is as it appears to be. ICMP’s alleged data are completely unreliable and, most important of all, totally unverifiable.

Inaccessible and unverifiable evidence

In the various court cases where facts relating to Srebrenica were adjudicated no exhaustive and transparent analysis of DNA evidence has ever been conducted. For instance, DNA evidence was offered in the most recent ICTY case Popović et al., but – in closed session. And even so it occurred under conditions designed to be the most unfavorable for the defence. Defence teams were deprived of both the time and resources to subject the proffered DNA evidence, such as it was, to a thorough professional examination. The Tribunal’s rationale for such extraordinary restrictiveness was that public insight into this data would constitute a “callous” act which might injure the dignity of the victims and could even inflict great pain on their surviving relatives. The feelings and interests of persons and

whole communities who – as a result of the acceptance of such dubious and independently untested evidence – might have to be burdened by decades of prison time or carry the stigma of the heinous crime of genocide apparently did not greatly concern the chamber. Each and every request to ICMP by private parties facing serious accusations or research organisations to be allowed access to DNA samples for the purpose of independent verification is invariably met by the same polite response: that it is a potential violation of privacy and is therefore impossible without the signed consent of the victim’s relatives in every single case. So far nobody has ever obtained such written consent.

It appears, however, that at ICTY the entirely laudable goal of privacy protection has been taken a bit too far, even to the point of absurdity. It appears to extend even to the Hague Tribunal prosecution. There are, in fact, solid reasons to suppose that not even the Office of the Prosecutor has properly examined the DNA evidence generated by ICMP which it has nevertheless been happy to offer to the chamber as the material basis for the conclusion that in Srebrenica a crime of genocidal magnitude has been committed. How else to interpret the statement made by prosecutor Hildegard Uertz-Retzlaff in response to a demand made by the accused Karadžić for the right to examine the DNA evidence in his case: “ICMP has not shown the DNA to us either, It is not correct that they gave it to us, but not to others.”[3]

Abuses in the Karadžić case

But a careful reading of the ruling issued by the Karadžić chamber, which intimated to the defence that it might be allowed to examine a small number of samples (300 out of over 6,000), something that was hastily praised as an important step forward in relation to the situation as it stood previously, reveals that even that small concession was conditional and had built into it the possibility that the defence might still receive nothing.[4] For, first of all, in making its ruling the chamber did not discard in principle the position championed by ICMP that DNA analyses may be shown to others only with the relatives’ written permission. The implicit retention of that position, the potential effect of which is always to deny to the defence the opportunity to independently check one of the most significant elements of proof in the prosecution’s case against the accused, is in itself scandalous and constitutes a grave violation of the procedural rights of the accused person. Then, in its ruling the chamber only states that “ICMP has agreed to obtain the consent of the approximately 1,200 family members who provided samples relevant to the 300 cases selected by the Accused, so that the Accused’s expert can then conduct the necessary analysis”. [5] It is left unexplained in the court’s decision what would follow if those 1,200 relatives, or a substantial number of them, simply refused to sign the requested permission. If we take it as a matter of principle that their permission is, indeed, required[6] we must then also accept it as a possibility that they might refuse to grant it. The defence would in that case be back to square one and the alleged “movement” in its favour would be clearly shown to be what it really is – another illusion.

If in relation to this evidence, which since the Popović trial has moved to center stage and has practically displaced traditional forensics as the prosecution’s main evidentiary tool[7] and which, we are told, constitutes the last word of science on the subject, the principal players, the prosecution, the chamber, and the defence, are all operating in the dark, how much credence can the findings of fact that are based on it realistically command? Based in significant part on ICMP data, the Hague Tribunal chamber in the recent Popović case drew, and proceeded to incorporate into its judgment, factual and legal findings of far reaching

significance that rest substantially upon evidence which is billed as the last word of science but that was admittedly unseen and unexamined.

ICMP's history of non-compliance with professional licensing requirements

The degree of indulgence that the Hague Tribunal has shown to ICMP is truly phenomenal. In the course of the Popović trial it was disclosed that until October of 2007 ICMP was operating without professional certification from the international agency which approves DNA laboratories, Gednap. That fact was freely admitted by ICMP's director of forensic studies, Thomas Parsons, under cross examination.[8]

However, even then, while testifying under oath, ICMP's witness did not state the whole truth. Our NGO "Srebrenica Historical Project" on July 20, 2010, sent an inquiry to Professor Bernd Brinkman, chairman of GEDNAP at that time, seeking information whether his organisation had issued a professional license to ICMP and whether ICMP was officially registered to perform laboratory DNA testing. Professor Brinkman's reply was as follows:

"We do not have the ICMP Tuzla laboratory on our list of GEDNAP participants. That means that the Tuzla laboratory is unknown to the organizers of GEDNAP Proficiency Tests."

Professor Brinkman then offers a detail which gives the whole ICMP charade away:

"However, there are two ICMP laboratories which participate in the GEDNAP Proficiency Tests (i.e., from Sarajevo and Banja Luka)."[9]

It should be noted that the Sarajevo facility is ICMP's administrative office and that in Banja Luka ICMP maintains a small specialised laboratory. The most likely reason it is located in Banja Luka is to create the appearance that in selecting its venues ICMP is not neglecting the Republic of Srpska. But GEDNAP inspection and certification of those two locations is without any practical significance because almost all of the routine DNA work is being performed elsewhere, in the secretive Tuzla facility, including the premises of the Podrinje Identification Project, where neither the Hague defence, nor the Hague prosecution or apparently the inspectors of the world body which professionally licenses DNA laboratories have ever set foot. That means that from a professional standpoint ICMP's principal operational facility in Tuzla continues to evade and defy standard licensing procedures today just as all of its facilities had been doing it for years prior to 2007.

The bulk of the significant work performed by ICMP, the thousands of alleged DNA matches which ICMP tirelessly invokes in its public relations stunts and in courtrooms - the alleged evidence which in the Hague and before the State Court of Bosnia and Herzegovina has served as the basis for verdicts establishing mass executions of genocidal proportions - is in fact taking place in ICMP's impenetrable Tuzla laboratories. To repeat, that operationally only significant facility was never visited by international inspectors nor was the validity of its work ever professionally reviewed. Most importantly, it never received a professional certificate entitling it to engage in the work it is doing, which simply means that this laboratory which plays the key role in generating the illusion that the enigma of Srebrenica is on the verge of being solved is actually operating on the edge of professional legality.

Biased personnel selection

According to London "Financial Times"[10] 93% of ICMP personnel are Bosnian Moslems. To complete the picture, ICMP chairman is Thomas Miller, former US ambassador in Bosnia and

Herzegovina[11], the director, Kathryn Bomberger is also from the US, and her assistant Adam Boys is from the United Kingdom. When will the other Bosnia-Herzegovina ethnic communities get their one third representation on the staff of ICMP? When will the representatives of other countries within the international community, about 190 in all, obtain an opportunity to take part in the work of the International commission for missing persons on the executive level? Why couldn't the chairman be from Argentina, the director from Ethiopia, and her assistant from India?

Our challenge to ICMP

The NGO "Srebrenica Historical Project" issues the following challenge to ICMP and in the public interest puts to them the following questions which require answers without delay:

[1] Is it correct that the most that DNA analysis can be expected to establish is the identity of mortal remains and that it may additionally be useful in reassociating parts of the same body, but that DNA is utterly useless in furnishing information about the manner and time of death, which happen to be the key issues in a valid criminal investigation? If that is correct, then ICMP's identifications and findings, except for the comfort it may offer to the families, are completely irrelevant for resolving the substantive issues associated with Srebrenica because DNA analysis cannot differentiate whether a person was executed or perished in legitimate combat. Furthermore, it cannot furnish any answer to the question whether death occurred in July of 1995 in the course of the Srebrenica operation or before or after that.

[2] Regardless of the answer to the preceding question, why is ICMP concealing the names of the persons that it has allegedly identified? By publishing their names it would at least make it possible to drastically reduce the length of the missing persons' lists which, judging by its name, should be its primary task.

[3] When will ICMP make its biological samples available to independent laboratories so that the results that it claims to have achieved might be independently tested and so that the public and the courts would no longer be obliged to take them on faith, as was the custom with dogmas in the Middle Ages?

[4] When will ICMP open its laboratory premises in Tuzla to international inspectors to facilitate independent verification of the quality of its work, which might lead to the issuance of a professional certificate without which no DNA laboratory which aspires to credibility can function?

[5] When will ICMP cease playing games with the term "missing" and misusing it wantonly as if it had the same meaning as "executed"? Why is ICMP, and the acronym stands for International commission for missing persons, conjuring up the misperception that DNA technology can accomplish more than mere identification of mortal remains and why is ICMP implicitly disinforming the public and the courts that it can also establish the manner and time of the deceased's death, when that is false? And if it is false, then why is ICMP engaged in generating and perpetuating the misleading impression that its technology can demonstrate that the persons it has allegedly identified were in fact executed prisoners of war and that they died in the immediate aftermath of July 11, 1995 in the vicinity of Srebrenica?

Notes

[1] <http://www.ic-mp.org/>

[2] "Oslobodjenje" (Sarajevo), July 11, 2011, p. 3

[3] ICTY, Prosecutor v. Karadžić, Status conference, 23 July, 2009, p. 364, lines 21 - 23.

[4] Although the Karadzic chamber is verbally committed to enable the defence to check 300 DNA reports, it continues to hold inviolate ICMP's principled position that independent sample verification without the written approval of relatives is impermissible: „NOTING that the ICMP has stated that it cannot provide its entire database of genetic profiles obtained from blood samples taken from family members of missing persons to the Accused without obtaining the consent of each family member who provided such a sample, and that this process would take significant time in view of the volume of samples taken“, see ICTY, Prosecutor v. Karadžić, "Order on selection of cases for DNA analysis," 19 March, 2010., p. 2.

[5] ICTY, Prosecutor v. Karadzic, "Order on selection of cases for DNA analysis," 19 March 2010, p. 2.

[6] Which, of course, is not correct at all because the Tribunal is endowed with full jurisdiction over all aspects of the criminal case under its consideration if only it should decide to make use of it. But the use of that authority is not in every instance discretionary. The court has an obligation to effectively employ its powers to make unconditionally available to the accused all evidentiary materials that are being used in the case against him.

[7] Small surprise there, given the highly disappointing results yielded by traditional methods. Barely 1,920 bodies of persons who died of a variety of causes, clearly including combat casualties, and therefore embarrassingly short of the 8,000 "executed men and boys" goal.

[8] ICTY, Prosecutor v. Popović et al, February 1 2008, Transcript, p. 20872.

[9] Correspondence reproduced in S. Karganovic et al., "Deconstruction of a virtual genocide: An intelligent person's guide to Srebrenica" [Den Haag-Belgrade, 2011], p. 230-232;

http://www.srebrenica-project.com/DOWNLOAD/books/Deconstruction_of_a_virtual_genocide.pdf

[10] December 11, 2007;
<http://www.ft.com/intl/cms/s/0/c4474d94-a6f1-11dc-a25a-0000779fd2ac.html#axzz1RjlqNP8c>

[11] <http://www.ic-mp.org/press-releases/ambassador-thomas-miller-appointed-new-chairman-of-the-international-commission-on-missing-personsambasador-thomas-miller-imenov-an-za-novog-predsjedavajuceg-medunarodne-komisije-za-nestale-osobe-icmp/>

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