

Shroud of Secrecy Leaves Room for Doubt on Srebrenica DNA Evidence

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A controversy surrounding DNA identifications made by the International Commission on Missing Persons (ICMP) of victims of the Srebrenica massacre has erupted behind the scenes in the war crimes trial of former Bosnian-Serb President Radovan Karadzic at the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague.

Last month, the ICMP issued a press release which claimed that "By analyzing DNA profiles extracted from bone samples of exhumed mortal remains and matching them to the DNA profiles obtained from blood samples donated by relatives of the missing, the International Commission on Missing Persons (ICMP) has so far revealed the identity of 6,598 persons missing from the July 1995 fall of Srebrenica."^[1]

The ICTY relied heavily on the ICMP's findings to convict the defendants in the Popovic trial on charges related to Srebrenica.^[2] Prosecutors in the Karadzic trial also intend to make use of the ICMP's findings. The Prosecution has announced that it intends to call the ICMP's Director of Forensic Sciences, Dr. Thomas Parsons, as an expert witness.^[3]

On July 23, 2009, Karadzic asked the Trial Chamber to "allow my experts to see every single piece of material, all the DNA analysis" he said, "my experts cannot rely on newspaper information. They need to have the same material that the [Prosecution] experts were privy to in order to be able to see whether the facts were established correctly and whether the conclusions were established correctly. That's why my experts have to focus on the same body of material that their counterparts had. This is the only way. They must be able to see everything that the [Prosecution] experts saw and then they will be able to confront them with their expert views."^[4]

He explained to the court that "We want the entire material, and we will take a random sample and choose 300, and if there are major discrepancies among the 300, then we will broaden the sample and continue the procedure."^[5]

On February 10, 2010, Hildegard Uertz-Retzlaff the senior trial attorney for the Prosecution, sent a letter to Karadzic's defense explaining why his experts would not be allowed access to the ICMP's data. The letter said:

"The ICMP is an independent third party organization with its own mandate. The Prosecution is unable to simply, 'contact the ICMP and disclose to the Defence for Mr. Karadzic the entirety of family DNA profiles held on ICMP databases.' In addition the Prosecution does not possess these databases and therefore is not in a position to disclose them.

"Second, our understanding is that the ICMP has thus far declined to disclose to any party the 'entirety' of its family DNA profiles because this would constitute a breach of the assurances provided in the consent forms signed by the family donors. As discussed with your associate Mr. Sladojevic, the issue is not simply one of providing data 'without names', as donors have been promised that their DNA will not be disclosed, not merely that their names will not be disclosed or that any disclosure of DNA data would be anonymous."^[6]

Of course this only explains why the ICMP won't share DNA from the family members of the victims, not why it won't share the DNA of the victims themselves. Nobody ever promised the victims that their DNA would remain confidential.

Aside from the question of whether the Tribunal ought to rely on DNA evidence that neither the Prosecution, the Defense, nor the judges have any access to, the pretrial judge, Ian Bonomy of Scotland, sided with Karadzic and conceded that "there must be some substance in the suggestion that the Defence should be able to run some tests similar to those done by the [ICMP] with a view to checking the accuracy of what was actually done by them." He said, "I find it difficult to understand

that a person might consent to have material given to a Prosecutor and not realise that the inevitable result of that must be that the Defence would have a pretty strong claim at least for access to it.”[7]

The Trial Chamber, which Judge Bonomy was no longer part of because he only sat on the pre-trial bench, issued an order on March 19, 2010 noting “the Accused’s wish to challenge the conclusions reached by the ICMP” and noting “the Accused’s insistence that he should be provided with the entire family DNA database before he reveals to the ICMP the 300 cases he has selected because of his concerns about the ICMP’s impartiality and suspicion that it would adjust the database in some way in order to ensure [DNA] matches in the 300 selected cases.”

The Order directed “the Accused to immediately complete his selection of 300 cases for further DNA analysis and provide the details of his selection to the ICMP, who will, upon obtaining the necessary consents, be in a position to supply relevant data from the family database.”

The Order, however, did not require the ICMP to provide Karadzic’s experts with access to the complete database on the excuse that “the Accused has not established any basis for his concern that the ICMP would manipulate the database to strengthen its own conclusions.”[8]

The entire purpose of testing the 300 DNA samples is to “challenge the ICMP’s findings”. If they were falsifying their findings, it stands to reason that they would manipulate their database in order to prevent the deception from being uncovered.

On July 28, 2011 Karadzic’s defense team filed a brief explaining that “The testing procedure set forth by the Trial Chamber is its order has one fatal flaw. It allows the ICMP to, without detection, substitute the [DNA] electropherograms of other persons for those who the Accused selected as part of his sample ... First, [the Defense] provides the ICMP with the name of a victim—victim A.

“Second, someone at the ICMP realizes that there is a problem with the identification of victim A and does not want this problem to be exposed.

“Third, the person at ICMP solves this problem by providing the defence with the DNA data for victim B, and his brother, representing it to be the DNA data for victim A

and his brother.

“Fourth, Dr. Stojkovic [the Defense expert] examines the DNA data and confirms that it is a correct match—the DNA of the victim matches the DNA of his brother.

“In this way, the substitution of the DNA data remains undetected. Through this method, the results can be cheated or manipulated.

“To prevent this, Dr. Karadzic requires the DNA data of all of the missing persons to be provided in advance. Then, he is able to add one more step to the testing process. After Dr. Stojkovic verifies the match between the Victim A and his brother, he will compare the DNA data of Victim A with the DNA data of Victim A from the database provided at the outset to verify that it is indeed Victim A’s DNA that has been tested.

“Without the ability to take this last step, there is no way for Dr. Karadzic to be sure that the DNA data provided for Victim A is indeed that of Victim A, and not Victim B.

“That is why Dr. Karadzic insists on being provided with the unique DNA bone profiles and electropherograms of all of the missing persons before he makes his selection.”[9]

The Prosecution has adopted a hard line against independent verification of the ICMP’s findings. They filed a brief against Karadzic arguing that “In light of the Accused’s position that he has no intention of testing any samples provided to him under the procedure outlined in the Trial Chamber’s Order on Selection of Cases for DNA Analysis ... [the Prosecution] respectfully requests declaratory relief from the Trial Chamber in the following terms: a) The Accused is in breach of the Order; and b) The ICMP

is not obliged to provide 300 sample case files to the Accused under any procedure, or subject to any preconditions, outside the terms of the Order.”[10]

One has to wonder why the ICMP gave the donors the expectation of confidentiality regarding their DNA samples in the first place. It seems irrational for anyone who isn't living in a hermetically sealed bubble to expect confidentiality given that people leave trace amounts

of their DNA everywhere they go and on practically everything they touch. A person's DNA is in every cell of their body and in virtually

of their DNA everywhere they go and on practically everything they touch. A person's DNA is in every cell of their body and in virtually

every biological substance secreted by it. Forensic scientists can extract a person's DNA from the oils left behind in their fingerprints.[11]

The ICMP was established in 1996 at the urging of the then US President Bill Clinton.[12] The Commission was described by Senator John Shattuck as “A major U.S. initiative to support the peace and reconciliation process in the former Yugoslavia” in his capacity as Assistant Secretary of State for Democracy, Human Rights and Labor in a speech before the U.S. Senate Foreign Relations Committee on May 12, 1998.[13]

The chairmen of the ICMP have, without exception, been Washington insiders since its founding in 1996. The ICMP's first chairman, Cyrus Vance (1996-97) was the US Secretary of State under Jimmy Carter. He was succeeded by Bob Dole (1997-2001) the 1996 Republican presidential candidate and career politician who spent almost 30 years in the US Senate. In 2001 the U.S. Secretary of State Colin Powell handpicked James Kimsey (2001-2011) to head-up the ICMP. In 2001 Kimsey was succeeded by the former American ambassador to Bosnia, Thomas Miller (2011-current).[14]

It should also be noted that the ICMP's lab operated for years without professional accreditation, and that the majority of identifications made by the ICMP were made before their lab obtained accreditation in late 2007.[15]

Discrepancies have also been found between the ICMP's findings and the original military records of the Army of Bosnia-Herzegovina. The ICMP claims to have found the mortal remains of at least 140 soldiers in Srebrenica-related mass graves whose original military records listed them as having been killed months, and in many cases years, before Srebrenica fell. The Bosnian government has resolved these discrepancies by disavowing the accuracy of their original military records and amending them to match the ICMP's findings.[16]

Imagine for a moment that the shoe were on the other foot. Imagine if somebody like former Russian President Vladimir Putin took the initiative to establish an NGO to investigate allegations of atrocities committed by an ally of the United States against an ally of Russia during a war where the Russians attacked the same American allies they sought to investigate. Now imagine that the chairmen of this NGO were all somehow connected to the Russian Foreign Ministry.

In addition, let's suppose this NGO publishes findings claiming the American allies had massacred -- let's say 6,598 people, and that they were able to conclusively prove this through DNA analysis in a lab that didn't have professional accreditation when most of the DNA identifications were made.

Now let's suppose that American scientists ask to see the underlying DNA evidence upon which the Russian NGO's findings are based so that they can test it for themselves and verify the findings, but the Russians refuse to cooperate on the pretext that doing so would be unduly burdensome and a violation of the privacy rights of the victims and their families.

If that happened, would anyone in the West believe the Russian NGO's findings? Not in a million years would anyone believe it. And if the Russians tried to use those findings as evidence in a criminal

prosecution of the political leadership of the accused American allies, they'd be accused of staging a political show trial – and rightly so.

One can not claim with certainty that the ICMP is lying about the DNA identification of Srebrenica massacre victims, nor can anyone claim with certainty that they're telling the truth. That's the unfortunate position we find ourselves in today.

What is significant is that the ICMP's founders and executives are closely linked to the American political establishment and that the ICMP will not permit independent scientific verification of its findings and the underlying data behind them. Their refusal to submit their data and their work for independent scientific review means that their claims cannot be falsified and it diminishes the weight that can be attached to them.

[1] ICMP Press Release, July 10, 2011; [http://www.ic-mp.org/press-releases/613-](http://www.ic-mp.org/press-releases/613-srebrenica-victims-to-be-buried-at-a-memorial-ceremony-in-potocari613-srebrenickih-)

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[2] Popovic judgment para. 638-649, 659-664

[3] Prosecution's motion for admission of the evidence of eight experts pursuant to

Rule 94bis and Rule 92bis; May 29, 2009

[4] Karadzic Trial Transcript; July 23, 2009 pg. 353 [5] Ibid.; Pg. 359

[6] Prosecution's letter to Karadzic's Defense Team entitled "Response to your request for materials from ICMP during the recent status conference as well as Mr. Sladojevic's e-mail dated 29 January 2010" dated February 20, 2010

[7] Karadzic Trial Transcript; July 23, 2009 pg. 355-357

[8] Order on Selection of Cases for DNA Analysis; March 19, 2010

[9] Supplemental Response To Prosecution's Request For Further Orders: DNA Testing, July 28, 2011

[10] Prosecution's Reply To The Accused's "Response To Prosecution's Request For Further Orders: DNA Testing," June 30, 2011

[11] Charles Choi, United Press International "DNA Extractable from Fingerprints", July 31, 2003

http://www.upi.com/Science_News/2003/07/31/DNA-extractable-from-fingerprints/UPI-41021059658200/

[12] Aida Cerkez-Robinson, The Independent on Sunday, "In Bosnia, each funeral never ends; Bone by bone, victims of the Srebrenica massacre are being identified, pieced together and, finally, laid to rest.", July 12, 2009

[13] Prepared Statement of John Shattuck Assistant Secretary of State for Democracy, Human Rights and Labor Before the Senate Foreign Relations Committee, May 12, 1998

[14] Ibid.; See also: Deutsche Presse-Agentur, "New institute to speed up search for missing people in Bosnia", August 28, 2000; ICMP Press Release, "ICMP Chairman Ambassador Thomas Miller Visits ICMP HQ", July 15, 2011 <http://www.icmp.org/press-releases/icmp-chairman-ambassador-thomas-miller-visits-icmp-hqpredsjedavajuci-icmp-a-ambasador-thomas-miller-u-posjeti-sjedistu-icmp-a/> ; <http://www.icmp.org/funding/> ; and U.S. Department of State, Statement by Richard Boucher Spokesman, May 11, 2001 <http://statelists.state.gov/scripts/wa.exe?A2=ind0105b&L=dospress&P=2354>

[15] Popovic trial judgment, Para 645

[16] Prosecution's final trial brief in the Popovic Trial; paras. 1140-1141 and 3077-3078