

# Dignity in death: International humanitarian law and the protection of the deceased in war

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## Abstract

*When people die in the context of armed conflicts, international humanitarian law (IHL) provides important legal protection for the dead and their families. Overall, it seeks to ensure that the dead are respected and recovered no matter who they were, and that information on them is collected with a view to identification. A key aim of these IHL rules is to uphold the right of families to know the fate of their relatives. Recognizing the inherent difficulties of accounting for those who have gone missing or died, these rules continue to apply even after the end of conflict. This article provides an overview of*

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*the IHL obligations protecting the dead in international and non-international armed conflicts, complemented by other bodies of international law. It then focuses on key legal questions arising in contemporary wars and practical implications for warring parties on processes to account for the dead, respect for the deceased and their graves, and the return of human remains to their families. Finally, the article explores issues of practice and key recommendations to drive forward action by States and parties to armed conflict in order to effectively integrate and apply obligations on the ground.*

**Keywords:** international humanitarian law, the dead, the missing, armed conflict, war, family, humanitarian forensic action.

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## Introduction

Wars lead to death and destruction. Those who die in warfare deserve respect, even from their adversaries on the battlefield. The law and human decency permit no less.<sup>1</sup>

Throughout human history, the respectful treatment of the dead,<sup>2</sup> including in armed conflicts, has been reflected in and cuts across diverse cultures and religions.<sup>3</sup> It is also a fundamental tenet of international humanitarian law (IHL). As a body of law applying in war, IHL is designed to minimize suffering and protect all those who are not directly participating in hostilities and all those placed *hors de combat*. However, even when IHL is fully respected, combatants<sup>4</sup> will die (as

1 H. Wayne Elliott, "The Third Priority: The Battlefield Dead", *Army Lawyer*, Vol. 7, 1996, p. 20.

2 International humanitarian law (IHL) uses different terms to describe persons who have died, which should be understood as synonymous: "the dead" (e.g. Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) (GC I), Arts 15(1), 17; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950) (GC II), Arts 18(1), 20(1); Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978) (AP II), Art. 8); "remains of the deceased" and "remains of persons who have died" (Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978) (AP I), Art. 34 (title), 34(1)); "bodies" (GC I, Art. 17(3)); or "dead person" (GC I, Art. 16; GC II, Arts 19, 20(2)). See, for instance, Anna Petrig, "The War Dead and Their Gravesites", *International Review of the Red Cross*, Vol. 91, No. 874, 2009, p. 344. See also ICRC, *Guiding Principles for Dignified Management of the Dead in Humanitarian Emergencies and to Prevent Them Becoming Missing Persons*, Geneva, 2021 (ICRC Guiding Principles), Principle 1.

3 See, for example, Sylvain Froidevaux, "L'humanitaire, le religieux et la mort", *International Review of the Red Cross*, Vol. 84, No. 848, 2002; Welmoet Wels, *Dead Body Management in Armed Conflict: Paradoxes in Trying to Do Justice to the Dead*, Scholarly Publications Leiden University, The Hague, 2016, p. 3.

4 In IHL, the legal status of "combatant" only exists for international armed conflicts (IACs). In non-international armed conflicts (NIACs), there is no combatant, prisoner of war (PoW) or protected person status; all persons who are not, or are no longer, directly participating in hostilities, "including members of armed forces who have laid down their arms and those placed 'hors de combat'", are protected under the relevant IHL provisions. For the purposes of the conduct of hostilities in NIACs, members of organized armed groups belonging to a non-State party to the conflict cease to be civilians for as long as they remain members by virtue of their continuous combat function; they are referred to as "fighters" in this article.

will some civilians), causing unimaginable suffering for those left behind. IHL thus sets out clear and comprehensive obligations for warring parties regarding the dead and their families. A minimum set of rules apply to *all* persons – combatants and civilians alike – who die in the context of armed conflicts, whether international or non-international. These obligations seek to ensure respect for the dignity of the dead.<sup>5</sup>

Despite the humanitarian imperative that they underpin, we see a shocking lack of respect for these rules in conflicts today. Moreover, in many of the approximately 130 armed conflicts currently raging across the world, beyond the expected (and generally lawful) military deaths, civilian loss of life has too often become the norm rather than the exception.<sup>6</sup> Civilians are intentionally attacked or easily dismissed as collateral damage, as are civilian objects, including cemeteries, that are claimed to somehow benefit the enemy.<sup>7</sup> According to the United Nations (UN), between 2022 and 2023, civilian casualties in war increased by 72% – the sharpest increase since 2015, and a reversal of the downward trend seen between 2016 and 2019.<sup>8</sup> As aptly noted by Zegveld, “if many fatalities occur, this says a great deal about the way in which war is being conducted and about the likelihood that rules are being breached.”<sup>9</sup>

This article presents an overview of IHL rules protecting the dead.<sup>10</sup> The first part sets out the legal and factual context, highlighting the human cost of war for the dead and their families and giving a bird’s-eye view of core IHL obligations, and of the complementary protections provided by international human rights law (IHRL). The second part then turns to certain contemporary legal issues requiring increased attention by warring parties, focusing on obligations to account for the dead,<sup>11</sup> to respect the dead and their graves, and to return human remains home.

5 For further discussion on the notions of “dignity” and “respect” for the dead and related obligations, see the below section on “Respecting and Protecting the Dead in Wars”.

6 ICRC, “ICRC President: Humanity Is Failing under Our Collective Watch”, 19 June 2025, available at: [www.icrc.org/en/statement/icrc-president-humanity-failing-under-our-collective-watch](https://www.icrc.org/en/statement/icrc-president-humanity-failing-under-our-collective-watch) (all internet references were accessed in July 2025).

7 ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Building a Culture of Compliance for IHL to Protect Humanity in Today’s and Future Conflicts*, Geneva, September 2024 (ICRC Challenges Report 2024), pp. 7–8.

8 United Nations, *Progress towards the Sustainable Development Goals: Report of the Secretary-General*, UN Doc. A/79/79–E/2024/54, 2 May 2022, paras 5, 135, available at: <https://unstats.un.org/sdgs/files/report/2024/secretary-general-sdg-report-2024-EN.pdf>.

9 Liesbeth Zegveld, “Body Counts and Masking Wartime Violence”, *Journal of International Humanitarian Legal Studies*, Vol. 6, No. 2, 2015, p. 447.

10 Beyond certain specific aspects on obligations pertaining to the dead at sea in GC II, this article does not consider the international law of armed conflict applicable at sea or the law of the sea more generally.

11 To “account for”, in its ordinary meaning, is to “give a satisfactory record or explanation of”: *Concise Oxford English Dictionary*, 12th ed., Oxford University Press, Oxford, p. 8. In IHL, in essence, this means clarifying the fate of those who die in the context of armed conflict. The obligation to “account for” the dead (and for the missing more generally) in relation to armed conflicts is operationalized in IHL most importantly in three further obligations with which parties must also comply: (1) to search for the dead; (2) to record all available information on them as well as on the location of their graves, and to mark the latter; and (3) to provide the family members of the deceased with any information on their fate. See Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*,

Finally, the third part addresses practical issues on IHL implementation, including compliance by non-State armed groups (NSAGs), criminal accountability and death investigations, key recommendations to drive actions forward on the protection of the dead, and the role of the International Committee of the Red Cross (ICRC) in this area.

## War and the dead: The factual and legal context

### The human cost of armed conflicts

Death has been an expected consequence of war since the inception of war itself, and the history of regulating the treatment of the dead, both domestically and in international law, is also long. As a legal framework governing armed conflict, IHL is premised on, and integrates, the fact that killing can be lawful. However, if IHL were fully respected, the majority of those who die and who might remain unaccounted for would be members of the armed forces or of NSAGs. It is precisely to lessen the suffering of families<sup>12</sup> that IHL contains such elaborate rules regarding the dead, whether combatants or civilians. Relevant written IHL rules date back at least to the 1880 *Oxford Manual on the Laws of War on Land*, and humanitarian norms have roots in worldwide legal, social, religious and ethical traditions.<sup>13</sup> Yet, despite a global consensus on the 1949 Geneva Conventions and on IHL more generally, the horrific toll of today's wars shows that adherence to these and other rules of IHL is alarmingly inadequate.<sup>14</sup> Today, many of those who die in armed conflicts remain unprotected, and missing persons cases that occurred decades ago remain

Cambridge University Press, Cambridge, 2005 (ICRC Customary IHL Study), Rules 116–117, available at: <https://ihl-databases.icrc.org/en/customary-ihl/rules>. For the sake of simplicity, this will be referred to as the obligation “to account for” or of “accounting for” the dead.

- 12 In IHL, there is no universally accepted definition of “family” or “family members”, and the ordinary meaning of “family” varies considerably depending on context, but at minimum includes a range of biological and legal relationships. These terms are to be interpreted in light of the social and cultural environment of the relevant State, and from a humanitarian standpoint, it is “important to adopt an approach which, at a practical level, takes into account, as far as possible, not blood relations and legal ties, but also personal and emotional ties”: ICRC, *Commentary on the Fourth Geneva Convention: Convention (IV) relative to the Protection of Civilian Persons in Time of War*, 2nd ed., Geneva, forthcoming (ICRC Commentary on GC IV), Art. 25. The ICRC's Central Tracing Agency (CTA) and National Red Cross and Red Crescent Societies, working together around the world through the Family Links Network, deliberately interpret “family” broadly to include children born in or out of wedlock, adopted children and stepchildren, lawfully wedded partners and unwed partners, parents including step-parents and adoptive parents, and full or half, or adoptive, siblings. See also ICRC Customary Law Study, above note 11, Rule 105, commentary.
- 13 See, for instance, Institute of International Law, *Oxford Manual on the Laws of War on Land*, 1880 (Oxford Manual), Arts 19–20; *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field*, 6 July 1906; *Geneva Convention relative to the Treatment of Prisoners of War*, 27 July 1929 (1929 Geneva Convention). See also H. W. Elliott, above note 1, pp. 3–20; Hilly Moodrick-Even Khen, “Bury Me Not, I Pray Thee, in Egypt: But I Will Lie with My Fathers’: The Right of Soldiers to Be Buried in their Homeland”, *Journal of International Humanitarian Legal Studies*, Vol. 13, No. 1, 2022, pp. 52–56; Luc Capdevila and Danièle Voldman, “Du numéro matricule au code génétique: La manipulation du corps des tués de la guerre en quête d'identité”, *International Review of the Red Cross*, Vol. 84, No. 848, 2002.
- 14 Generally, see ICRC Challenges Report 2024, above note 7, pp. 6–8.

unresolved. Not knowing the fate of a loved one and not being able to mourn the dead are among the deepest and most unseen wounds of war, and each individual case tells a story of suffering, uncertainty and anxious waiting. This has lasting impacts on individuals, each of whom are affected in different ways depending on age, gender, disability and other diversity factors, and depending on their specific circumstances – for instance, in migration and displacement contexts.

There are myriad reasons for the alarming increase in the numbers of missing persons, among them many deceased individuals, and also for why so many of those who die are not treated with respect.<sup>15</sup> The lack or insufficiency of the law is not one of these. While people will inevitably go missing or die even if conflicts are fought in full respect of IHL, (deliberate) IHL or IHRL violations, including enforced disappearances,<sup>16</sup> are one piece of the puzzle, together with political considerations and shockingly inadequate measures to prevent recurrence and to hold those responsible accountable. Today, we continue to see the dehumanization of opposing forces, and of civilians associated with them, by warring parties but also by the public, and this can aggravate existing biases and potentially contribute to discrimination.<sup>17</sup> This dehumanization takes many forms. In some conflicts, the dead are ill-treated and their personal belongings pillaged – often with the precise purpose of disrespecting both the dead and the living. In some contexts, (former) parties to conflicts can refuse to disclose information in order to hide evidence of violations and crimes. Parties also purposely withhold information on the dead to cause further suffering, to pressure the enemy or for other reasons, including to perpetuate hate, exclude certain groups or seek public support.<sup>18</sup> Moreover, the dead are also used as bargaining chips between parties, impeding identification efforts and the return to families.<sup>19</sup> Yet, IHL compliance by one party must not depend on respect by its opponent – all

- 15 In 2024 alone, the ICRC registered more than 56,000 new missing persons cases across the world, the highest yearly increase in at least two decades, resulting in a current total of nearly 255,000 cases that the ICRC is actively following up on: ICRC, “The ICRC is Registering Unprecedented Numbers of Missing Persons”, 2 April 2025, available at: [www.icrc.org/en/statement/icrc-registering-unprecedented-numbers-missing-persons](https://www.icrc.org/en/statement/icrc-registering-unprecedented-numbers-missing-persons).
- 16 ICRC Customary Law Study, above note 11, Rule 98. See also Ximena Londoño and Helen Obregón Gieseken, “Sustaining the Momentum: Working to Prevent and Address Enforced Disappearances”, *Humanitarian Law and Policy Blog*, 26 August 2001, available at: <https://blogs.icrc.org/law-and-policy/2021/08/26/sustaining-momentum-enforced-disappearances/>.
- 17 ICRC Challenges Report 2024, above note 7, pp. 8, 57. On dehumanization and discrimination related to the use of new technologies in humanitarian forensic action, see Edward Madziwa, “Advancing Honour and Dignity in Death for Victims of Armed Conflicts: Exploring the Challenges and Opportunities of AI and Machine Learning in Humanitarian Forensic Action under IHL”, *International Review of the Red Cross*, Vol. 106, No. 926, 2024, pp. 789–791, 793.
- 18 Marco Sassòli and Marie-Louise Tougas, “The ICRC and the Missing”, *International Review of the Red Cross*, Vol. 84, No. 848, 2002, pp. 731–732.
- 19 See also Gloria Gaggioli, “International Humanitarian Law: The Legal Framework for Humanitarian Forensic Action”, *Forensic Science International*, Vol. 282, 2018, p. 187; Anna Petrig, “Search for Missing Persons”, in Andrew Clapham, Paola Gaeta and Marco Sassòli (eds), *The 1949 Geneva Conventions: A Commentary*, Oxford University Press, Oxford, 2015, p. 259, para. 5.

States and parties to armed conflict must respect and ensure respect for IHL in all circumstances.<sup>20</sup>

There are also practical and administrative reasons why people, including the dead, go missing in wars. Such outcomes are not always the result of IHL violations, but they are evidence of, at a minimum, insufficient efforts by States and warring parties to put in place adequate measures enabling legal compliance on the ground. As a result, parties might struggle to search for and recover hundreds or thousands of bodies in a dignified manner while also carrying out the search for survivors and caring for them. This can result in bodies being abandoned without a decent burial, mishandling of the dead, or hasty examinations with little regard for forensic best practices.<sup>21</sup> All too often, parties also fail to collect all available information and to share it with families and the ICRC's Central Tracing Agency (CTA), in accordance with the latter's humanitarian mandate and role under IHL and the Statutes of the International Red Cross and Red Crescent Movement.<sup>22</sup> In some cases, communities might also bury human remains themselves for various reasons, often without advising civilian authorities and record keepers. Coupled with overextended forensic authorities and overrun morgues, subsequent identifications, families' access to graves<sup>23</sup> and the return of human remains become more difficult, if not impossible.

Advances in information and communication technologies can support compliance with certain IHL obligations, including the obligations to find those who have gone missing and to end impunity for international crimes. The use of such technologies can also help to raise public awareness of violations. At the same time, however, their use can do harm, infringing on IHL obligations and on the human rights of individuals.<sup>24</sup> Although the images of deceased persons flashing across our

20 ICRC Customary Law Study, above note 11, Rule 140 and commentary. See also M. Sassòli and M.-L. Tougas, above note 18, p. 731; Knut Dörmann and José Serralvo, "Common Article 1 to the Geneva Conventions and the Obligation to Prevent International Humanitarian Law Violations", *International Review of the Red Cross*, Vol. 96, No. 895–896, 2014.

21 See also ICRC Guiding Principles, above note 2, Principle 12.

22 For further details on the obligations of parties, including to record information on the dead and transmit it to the ICRC's CTA, as well as on the CTA's mandate, see the below sections on "Accounting for the Dead in International Armed Conflicts" and "The ICRC Central Tracing Agency and Its Humanitarian Forensic Action".

23 IHL uses different terms to refer to the locations of the remains of persons: "grave" (e.g. GC III, Art. 120(6); GC IV, Art. 130(1)), "gravesite" (AP I, Art. 34) or "other locations of the remains of persons" (AP I, Art. 34(2)). These terms should be understood broadly, in line with the wording of Article 34(2) of AP I, to denote any location containing human remains and any form of disposition of remains. See Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds), *Commentary on the Additional Protocols*, ICRC, Geneva, 1987 (ICRC Commentary on the APs), paras 2138–2139, 1314; Michael Bothe, Karl Josef Partsch and Waldemar A. Solf, *New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949*, 2nd ed., Martinus Nijhoff, Leiden and Boston, MA, 2013, p. 203; ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2nd ed., Geneva, 2016 (ICRC Commentary on GC I), para. 1687; ICRC, *Commentary on the Third Geneva Convention: Convention (III) relative to the Treatment of Prisoners of War*, 2nd ed, Geneva, 2020 (ICRC Commentary on GC III), para. 4603.

24 On the employment of technologies to commit international crimes, including outrages upon personal dignity, see Sarah Zarmisky, "Is International Criminal Law Ready to Accommodate Online Harm? Challenges and Opportunities", *Journal of International Criminal Justice*, Vol. 22, No. 1, 2024.



screens are regrettably not new, the role of social media in “viralizing” this content means that nowadays it reaches the public eye more quickly and at a greater scale, stripping those killed in wars of their dignity.<sup>25</sup> This also has horrific consequences for their loved ones, starting with the unspeakable suffering – beyond the death itself – of continuously reliving their trauma with images that are “constantly available to taunt victims and their communities”.<sup>26</sup>

Despite existing challenges, in armed conflicts today we see the practical value of IHL. If warring parties more adequately and systematically respected IHL, fewer individuals would die or become unaccounted for, preventing further suffering and the fracturing of social foundations. However, for effective application of relevant IHL rules, States and NSAGs must put in place institutional frameworks or other relevant measures, ideally well before a war starts. For example, parties to armed conflicts can, as a preparedness measure, issue modes of identification to their personnel to facilitate the collection and recording of information on those who die (among others), in order to prevent them from becoming unaccounted for.<sup>27</sup> If this is not done, it will already be too late for some: information on the dead will only be partially gathered, will get lost or will never be collected.<sup>28</sup> In turn, families will remain in limbo for years or even decades while struggling with the numerous consequences – legal, administrative, economic and psychosocial – that this has on their lives.<sup>29</sup> The failure to preserve the dignity of the dead is deeply entwined with their families’ dignity. Furthermore, when the law is violated, those responsible must be held accountable. This requires safeguarding graves and other sites where people have been killed, including in detention, and collecting data on civilian (and soldiers’) deaths to enable (war crimes) investigations, among other measures.<sup>30</sup> Beyond this, information collected for criminal investigations is also critical for identifying the dead and guaranteeing their families’ right to know.<sup>31</sup>

25 For challenges regarding the use of technologies, see e.g. ICRC, *Harmful Information: Misinformation, Disinformation and Hate Speech in Armed Conflict and Other Situations of Violence*, Geneva, 2021, p. 5; and see the article by Viola Santini in this issue of the Review: Viola Santini, “Visual Representation of Conflict-Related Deaths and the Evolving Standards of Protecting the Dignity of the Deceased”, *International Review of the Red Cross*, Vol. 107, No. 929, 2025.

26 S. Zarmesky, above note 24, p. 177. See also V. Santini, above note 25.

27 In IACs, parties are required to issue identity cards to persons “under [their] jurisdiction who are liable to become prisoners of war”: GC III, Art. 17. See also Articles 16 of GC I and 19 of GC II on identity discs – though it is not a requirement to issue these, many armed forces around the world have done so in practice. ICRC Commentary on GC III, above note 23, Art. 17, paras 1807–1811. Although there are no such rules in NIACs, Resolution I of the 1981 International Conference of the Red Cross and Red Crescent urged all parties to armed conflicts, whether international or non-international, “to take all necessary steps to provide the members of their armed forces with identity discs and to ensure that the discs are worn during service”: 24th International Conference of the Red Cross and Red Crescent, Res. I, “Respect for International Humanitarian Law in Armed Conflicts and Action by the ICRC for Persons Protected by the Geneva Conventions”, Manila, 1981, para. 5.

28 On time-related challenges, see, for example, ICRC, *The Forensic Human Identification Process: An Integrated Approach*, Geneva, 2022, p. 15.

29 See, generally, ICRC, *Accompanying the Families of Missing Persons: A Practical Handbook*, Geneva, 2013.

30 On registering civilian casualties, see L. Zegveld, above note 9.

31 On IHL obligations and their relevance for identifying the dead and for investigation of violations, see G. Gaggioli, above note 19, pp. 187, 190–191. For more on the complementarity between the search for

## From the realities of war to the law: IHL and the deceased

### *Dignity of the dead, families and the right to know: The backbone of IHL obligations*

For over a hundred years, IHL has sought, in letter and spirit, to ensure that the dead are searched for and identified, and to afford them the highest possible protection and respect for their dignity, setting out the most detailed rules of international law on this. These rules have three key objectives: ensuring respect for the dead, preventing people from going missing, and ensuring the right of families to know the fate of their loved ones. For this, IHL requires warring parties to step in from the moment a person dies until they are identified and honourably laid to rest, ideally by their families.

An underlying purpose – and key component – of these obligations is ensuring respect for the dignity of the dead. This is also a key objective of IHL obligations on accounting for the dead, which are inherently linked with those on accounting for missing persons.<sup>32</sup> Indeed, preserving or restoring the identity of the dead also guarantees their dignity.<sup>33</sup> Thus, IHL requires accounting for the dead, with a view to identification,<sup>34</sup> which is crucial to prevent them from going missing, return their remains and guarantee the families' right to know.<sup>35</sup> This said, identification is an obligation of means: parties must “use their best efforts and all means at their disposal” to achieve this objective.<sup>36</sup> A failure to successfully identify the deceased does not necessarily, in itself, constitute an IHL violation. In certain circumstances – for example, when no *ante-mortem* information is available, or when there are incomplete or degraded human remains or inadequate forensic processes – identification may prove impossible despite genuine efforts. However, developments in forensic science have significantly enhanced parties' ability to fulfil this obligation.<sup>37</sup>

Underpinning, and at the centre of, IHL rules on the dead are families and their right to know the fate of their relatives, including the latter's whereabouts.<sup>38</sup> In

those who are missing in war and the investigation of serious IHL violations, see also the below section on “Criminal Accountability and Investigations of Deaths”.

32 ICRC Guiding Principles, above note 2, preambular para. 7; ICRC, “Q&A: The ICRC's Engagement on the Missing and their Families”, *International Review of the Red Cross*, Vol. 99, No. 905, 2018.

33 See also ICRC Guiding Principles, above note 2, preambular para. 5 and Principle 3.

34 GC I, Art. 17(1); GC II, Art. 20(1); Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) (GC III), Art. 120(3); Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) (GC IV), Arts 129(2), 131; ICRC Customary Law Study, above note 11, Rules 116–117, commentary and related practice.

35 G. Gaggioli, above note 19, p 190; A. Petrig, above note 2, p. 342.

36 ICRC Customary Law Study, above note 11, Rule 116, commentary. See also ICRC Guiding Principles, above note 2, Principle 17.

37 See ICRC, above note 28.

38 AP I, Art. 32; ICRC Customary Law Study, above note 11, Rule 105 and commentary: “Collected practice shows that respect for family life requires, to the degree possible ..., the provision of information on the whereabouts of family members” (emphasis added); and Rule 117 and commentary, including on the link between the right to know and obligations to provide information on where individuals are being held and



international armed conflicts (IACs), this right is set down in Article 32 of Additional Protocol I (AP I) as a “general principle” of IHL guiding the activities – in relation to the missing and the dead – of States, warring parties and international humanitarian organizations.<sup>39</sup> Introducing this provision (which was ultimately adopted by consensus), its sponsors emphasized that it concerns “a fundamental right” of families, seeking to recognize their suffering as a result of separation and uncertainty about the fate of their relatives.<sup>40</sup> The right to know pre-existed the adoption of AP I, however.<sup>41</sup> Already in 1974, the UN General Assembly had referred to obligations on providing information to families of those missing in war, calling upon

parties to armed conflicts, regardless of their character or location, during and after the end of hostilities and in accordance with the Geneva Conventions of 1949, to take such action as may be within their power to help locate and mark the graves of the dead, to facilitate the disinterment and the return of remains, if requested by their families, and to provide information about those who are missing in action.<sup>42</sup>

where the remains of the deceased are located (e.g. GC III, Art. 70; ICRC Customary Law Study, above note 11, Rules 116 and 123 and commentaries). See, further, for example, ICRC Commentary on GC III, above note 23, para. 4761: “This means in practice that the request may only be closed when information on the fate and whereabouts of the person sought has been provided to the family. ... Depending on the request, the information provided to the applicant may include *where the protected person is held* ... or, in the case of death, *the place of burial or grave site*” (emphasis added); ICRC Commentary on the APs, above note 23, commentary on AP I, Art. 32, para. 1216. Referring to the duty to inform families about “the fate and whereabouts” of relatives under IHL, see also e.g. UNGA Res. 79/173, 19 December 2024, preambular paras 7, 20–21 and op. paras 5–7; UNSC Res. 2474, 11 June 2019, preambular para. 17. See also A. Petrig, above note 19, paras 1, 4, 8, 9, 51; ICRC, above note 28, p. 10.

- 39 See AP I, Art. 32 (title). See also ICRC Commentary on the APs, above note 23, commentary on AP I, Art. 32; ICRC Challenges Report 2024, above note 7, pp. 25–26.
- 40 See the statements of the representatives of the Holy See and Greece (other co-sponsors were Austria, Cyprus, France, Nicaragua and Spain) in *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva (1974–1977)*, Vol. 11, CDDH/II/SR.35, Federal Political Department, Bern, 1978 (*Official Records of the Diplomatic Conference*), pp. 363–364, para 2, 10 (“concerning the natural and fundamental rights of families”); *Official Records of the Diplomatic Conference*, Vol. 3, CDDH/II/262, p. 105. On the adoption of the articles of Draft Protocol I, see also *Official Records of the Diplomatic Conference*, Vol. 6, CDDH/SR.37, p. 71, as well as the statements of Iraq and Italy, paras 36–37. See, further, the statements of the United States and of Iraq in, respectively, *Official Records of the Diplomatic Conference*, Vol. 12, CDDH/II/SR.76, p. 232, paras 28–29, and *Official Records of the Diplomatic Conference*, Vol. 12, CDDH/II/SR.78, p. 255, para. 51; see also para. 46. See also ICRC Commentary on the APs, above note 23, paras 1196–1202 and 1211, including earlier objections. See, further, Alessandra La Vaccara, *When the Conflict Ends, While Uncertainty Continues: Accounting for Missing Persons between War and Peace in International Law*, Publications of the International Institute of Human Rights, No. 41, Pedone, Paris, and Hart, Oxford, 2019, pp. 47–50, on recognition of the right to know as part of the obligation to respect “family honour and rights” at the Nuremberg International Military Tribunal.
- 41 ICRC Commentary on the APs, above note 23, paras 1200–1202. See also ICRC Customary Law Study, above note 11, Rule 117, commentary and related practice, including UK Ministry of Defence, *Joint Service Manual of the Law of Armed Conflict*, JSP 383, 2004 (UK Manual), p. 137, para. 7.38 fn. 90: “AP I, Art 32 deals with the right of families to know the fate of their relatives. This was prompted by the difficulties experienced by the United States in ascertaining the fate of missing American personnel at the end of the Vietnam conflict.” See further A. La Vaccara, above note 40, pp. 47–50, 53, 82 fn. 105.
- 42 UNGA Res. 3220 (XXIX), 6 November 1974, para. 2, voting record: 95-0-32-11. More recently, see e.g. UNGA Res. 79/173, above note 38, preambular para. 7 and op. paras 5–7; UNSC Res. 2474, above

The General Assembly also called upon all parties to cooperate with the ICRC, in accordance with the 1949 Geneva Conventions, by providing information on the missing and dead.<sup>43</sup>

By setting out the right to know as a general principle in AP I, IHL acknowledges and incorporates this right in its rules on the missing and the dead, establishing a legal obligation to consider the right to know in all measures concerning them.<sup>44</sup> Similarly, under customary IHL, parties must provide the families concerned with any information they have on those reported missing due to war.<sup>45</sup> Thus, the right to know is relevant in the application of the Geneva Conventions' provisions on accounting for people in armed conflict.<sup>46</sup> It also underpins specific IHL rules on searching for the missing and identifying the dead. In practice, being "prompted" by the right to know means that different steps must be taken to clarify a person's fate.<sup>47</sup> Ultimately, although not explicitly mentioned in all IHL rules on the dead, families are at the centre of these obligations.

### *The legal baseline: Core IHL rules protecting the dead*

With over twenty specific treaty provisions in the Geneva Conventions and AP I, IHL rules governing the treatment of the dead in IACs – whether members of the armed forces or other protected persons – are particularly rich and detailed. Though less elaborate, the rules in non-international armed conflicts (NIACs) also address the majority of challenges faced by the dead and their families.

In any armed conflict, IHL imposes certain minimum obligations. In brief, parties to armed conflicts must: (1) search for, collect and evacuate the dead without adverse distinction;<sup>48</sup> (2) account for the dead and inform families of their fate;<sup>49</sup> (3)

note 38, paras 2, 8. See, further, ICRC Customary Law Study, above note 11, Rules 116–117 and related practice.

43 UNGA Res. 3220 (XXIX), above note 42, para. 5. See also UNGA Res. 79/173, above note 38, para. 11; UNSC Res. 2474, above note 38, paras 9–10, 12.

44 See also ICRC Customary Law Study, above note 11, Rule 117, commentary. As addressed in the below section on "Complementing IHL's Protections for the Dead and Their Families through International Human Rights Law", IHRL also contains relevant obligations. In this context, human rights bodies and regional courts have recognized the right to truth.

45 ICRC Customary Law Study, above note 11, Rule 117 and related practice.

46 See, notably, ICRC Commentary on GC I, above note 23, paras 1530, 1599, 1600, 1635, 1663, 1716; ICRC, *Commentary on the Second Geneva Convention: Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, 2nd ed., Geneva, 2017 (ICRC Commentary on GC II), paras 1706, 1776, 1777, 1811, 1841; ICRC Commentary on GC III, above note 23, paras 4585, 4721. See also A. Petrig, above note 19, p. 261, para. 11; Daniela Gavshon, "The Dead", in A. Clapham, P. Gaeta and M. Sassöli (eds), above note 19, p. 281, para. 13.

47 AP I, Art. 32. See, further, ICRC Challenges Report 2024, above note 7, p. 25. On the "right to know" and IHL rules to account for the missing and dead as obligations of means, see ICRC Customary Law Study, above note 11, Rule 117, commentary.

48 ICRC Customary Law Study, above note 11, Rule 112, commentary and related practice. For IACs, see also GC I, Art. 15(1); GC II, Arts. 18(1), 21; GC IV, Art. 16(2); AP I, Arts 17(2), 33(4). For NIACs, see also AP II, Art. 8.

49 ICRC Customary Law Study, above note 11, Rules 116–117, commentaries and related practice. For IACs, see also GC I, Arts 16–17; GC II, Arts 19–21; GC III, Arts 120–122; GC IV, Arts 26, 129–131, 136–139; AP I, Arts 32–33.

respect the dead, including by preventing despoilment and prohibiting the mutilation of dead bodies;<sup>50</sup> (4) carry out respectful disposal of the dead, and respect and maintain their graves;<sup>51</sup> and (5) return human remains and personal effects.<sup>52</sup> Key issues related to these obligations are addressed in subsequent sections.

As time is a crucial factor, IHL obligations on searching for, and recording information on, the deceased are of primary relevance “following the heat of battle” or other military engagements.<sup>53</sup> However, these and other IHL obligations also continue to apply – and may become even more relevant – long beyond the end of a conflict.<sup>54</sup> For example, thirty years after the 1990–91 Gulf War, the Iraqi and Kuwaiti authorities, with the assistance of the ICRC, identified the remains of twenty persons, allowing closure for their families.<sup>55</sup>

## Complementing IHL’s protections for the dead and their families through international human rights law

IHRL, which applies at all times, contains obligations relevant to the treatment of the dead and to clarifying their fate.<sup>56</sup> Importantly, it is widely recognized that IHRL rules applicable in armed conflict complement IHL protections, even if the exact relationship between these two bodies of law remains subject to constant clarification and evolution.<sup>57</sup> Without seeking to be exhaustive, this section provides an

50 ICRC Customary Law Study, above note 11, Rule 113, commentary and related practice. For IACs, see also GC I, Art. 15(1); GC II, Art. 18(1); GC IV, Art. 16(2); AP I, Art. 34(1). For NIACs, see also Article 3 common to the four Geneva Conventions (common Article 3) and AP II, Arts 4(2)(a), 8.

51 ICRC Customary Law Study, above note 11, Rules 115–116, commentaries and related practice. For IACs, see also GC I, Art. 17; GC II, Art. 20; GC III, Art. 120; GC IV, Art. 130; AP I, Art. 34(2). For NIACs, see also AP II, Art. 8.

52 ICRC Customary Law Study, above note 11, Rule 114, commentary and related practice. For IACs, see also GC I, Arts 16(4), 17(3); GC II, Arts 19(3), 20(2); GC III, Arts 120(6), 122(9); GC IV, Arts 130(2), 139; AP I, Arts 34(2)–(3). For applicability in NIACs, see the below section on “IHL in Non-International Armed Conflicts on Return”.

53 On time-related challenges, see, for instance, ICRC, above note 28, p. 15.

54 See e.g. A. La Vaccara, above note 40, pp. 102–111; Julia Grignon, *L’applicabilité temporelle du droit international humanitaire*, Schulthess Éd. Romandes, Geneva, 2014, pp. 337–338, 350–353, 367–369. See also Kelisiana Thynne and Ramin Mahnad, “Silenced Guns Do Not Mend Lives: What Does the Law Say About Human Suffering at the End of Conflict?”, *Humanitarian Law and Policy Blog*, 21 July 2022, available at: <https://blogs.icrc.org/law-and-policy/2022/07/21/silenced-guns-lives-law-end-of-conflict/>.

55 ICRC, “The Remains of 20 Persons Identified and Returned to Their Families after 30 Years”, 14 January 2021, available at: [www.icrc.org/en/document/remains-20-persons-identified-and-returned-their-families-after-30-years](http://www.icrc.org/en/document/remains-20-persons-identified-and-returned-their-families-after-30-years).

56 When addressing questions of interplay between IHL and IHRL, general differences between the two bodies of law must be borne in mind. These are, notably, the question of whether and to what extent IHRL binds NSAGs; extraterritorial applicability; and the possibility of restricting specific rights, or of derogating from some obligations in the event of an emergency (though never from the “hard core”, including the right to life and the prohibition against torture and inhuman treatment or punishment). For discussion of the applicability of IHRL to NSAGs, see ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommending to Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions*, Geneva, 2019, pp. 53–54.

57 For a detailed overview of the ICRC’s approach to the relationship between IHL and IHRL, see ICRC Commentary on GC III, above note 23, paras 99–105 and references, as well as the corresponding paragraphs in the ICRC Commentary on GC IV, above note 12.

overview of key IHRL obligations.<sup>58</sup> In addition, IHRL provisions and case law are cited in other sections where relevant for interpreting shared concepts (e.g. degrading or humiliating treatment) or where they can provide useful guidance. In addition, in the section below on “IHRL on Return”, the article addresses relevant obligations under this body of law on the return of human remains in NIACs, given IHL’s gaps on this issue.

In considering references to human rights law and jurisprudence, however, the particular context and the specificities of armed conflict must be kept in mind.<sup>59</sup> For example, concerning the right to life and the procedural duty to conduct investigations, while it is clear that these obligations generally continue to apply in armed conflicts (and beyond them),<sup>60</sup> what needs to be considered first is whether the use of force leading to the deaths was governed by IHL rules on the conduct of hostilities or by IHRL standards on the use of force in law enforcement; in the former case, certain deaths may be lawful and as a result would not trigger an obligation to investigate.<sup>61</sup> Secondly, as pointed out by Droegge, “not all requirements of an investigation in peacetime may be transposable to situations of armed conflict”, including procedural ones.<sup>62</sup>

As the first universal human rights treaty containing specific provisions regarding persons who may be dead, the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) requires States Parties to “take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains”, as well as to investigate disappearances and bring those responsible to justice.<sup>63</sup> States

58 For an analysis of the interactions between IHL and IHRL on accounting for missing persons and of relevant IHRL obligations and case law of human rights bodies and regional courts, see also A. La Vaccara, above note 40, pp. 112–146, 187–255.

59 Although many of the cases cited herein address situations of armed conflict and the courts specify the way in which IHRL applies in these situations, some do not pertain to armed conflict contexts (or the court does not specify if this is the case). However, there is no reason why IHRL obligations should be interpreted differently, albeit with due consideration to the context and the specificities of war.

60 See European Court of Human Rights (ECtHR), *Hanan v. Germany*, Appl. No. 4871/16, Judgment (Grand Chamber), 16 February 2021, paras 200, 204; ECtHR, *Georgia v. Russia (II)*, Appl. No. 38263/08, Judgment (Merits, Grand Chamber), 21 January 2021, paras 326–327; Inter-American Court of Human Rights (IACtHR), *Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia*, Judgment (Preliminary Objections, Merits, Reparations and Costs), Series C, No. 287, 14 November 2014, para. 496; IACtHR, *Cruz Sanchez and Others v. Peru*, Judgment (Merits, Reparations and Costs), Series C, No. 292, 17 April 2015, para 350, 367; IACtHR, *Vázquez Durand and Others v. Ecuador*, Judgment (Preliminary Objections, Merits, Reparations and Costs), 15 February 2017, para. 143.

61 See ICRC, *Expert Meeting on the Use of Force in Armed Conflicts: Interplay between the Conduct of Hostilities and Law Enforcement Paradigms*, Geneva, November 2013, pp. 49–51.

62 Cordula Droegge, “Elective Affinities? Human Rights and Humanitarian Law”, *International Review of the Red Cross*, Vol. 90, No. 871, 2008, pp. 535, 542, 540–542. For investigations to assess possible IHL violations and the lawfulness of actions in the context of armed conflicts, see Geneva Academy of International Humanitarian Law and Human Rights and ICRC, *Guidelines on Investigating Violations of International Humanitarian Law: Law, Policy and Good Practice*, September 2018 (Guidelines on IHL Investigations). See also UN Human Rights Committee (HRC), “General Comment No. 36 on the International Covenant on Civil and Political Rights”, UN Doc. CCPR/C/GC/36, 3 September 2019 (General Comment 36), paras 64, 67.

63 International Convention for the Protection of All Persons from Enforced Disappearance, 2716 UNTS 3, 20 December 2006 (entered into force 23 December 2010) (ICPPED), Arts 3–7, 12, 24. See also General

Parties must also cooperate with each other with a view to exhuming, identifying and returning the remains of the dead.<sup>64</sup> Importantly, the ICPPED explicitly recognizes the right to know the truth, meaning that families – who are also victims themselves<sup>65</sup> – must be informed about the circumstances of the disappearance, the progress and results of the investigation, and the fate of those disappeared.<sup>66</sup>

Although general IHRL treaties do not set out provisions dealing specifically with all the dead, UN treaty bodies and regional human rights courts and tribunals have over the years addressed this issue to varying degrees, with differences in their findings. Generally, jurisprudence has held that several treaty provisions give rise to relevant obligations relating to the dead and their families. Under IHRL, States can be held responsible for failing to uphold the protection of human dignity;<sup>67</sup> the right to life; the prohibition of torture and cruel, inhuman or degrading treatment or punishment; the prohibition of enforced disappearance; the right to private and family life;<sup>68</sup> the right to liberty;<sup>69</sup> the right to freedom of conscience and religion;<sup>70</sup> and the right to an effective remedy.<sup>71</sup>

Comment 36, above note 62, paras 57–58, on the duty to investigate enforced disappearances under the International Covenant on Civil and Political Rights. And see Declaration on the Protection of all Persons from Enforced Disappearance, UNGA Res. 47/133, 18 December 1992; Inter-American Convention on the Forced Disappearance of Persons, 33 ILM 1429, 9 June 1994 (entered into force 28 March 1996) (IACFDP); IACtHR, *Cuadernillo de jurisprudencia de la Corte Interamericana de Derechos Humanos No. 6: Desaparición forzada*, San José, 2022. Further, see the articles by Gabriella Citroni and Juana María Ibáñez Rivas in this issue of the *Review*: Gabriella Citroni, “Practical, Legal and Psychological Issues Related to the Protection of the Dead in Cases of Enforced Disappearance”, *International Review of the Red Cross*, Vol. 107, No. 929, 2025; Juana María Ibáñez Rivas, “The Dead and Missing in Armed Conflict: Protections Set Out in the Judgments of the European and Inter-American Courts of Human Rights”, *International Review of the Red Cross*, Vol. 107, No. 929, 2025.

64 ICPPED, above note 63, Art. 15.

65 *Ibid.*, Art. 24(1).

66 *Ibid.*, Art. 24. See, further, Gloria Gaggioli, “The Prohibition of Enforced Disappearances: A Meaningful Example of a Partial Merger between Human Rights Law and International Humanitarian Law”, in Robert Kolb and Gloria Gaggioli (eds), *Research Handbook on Human Rights and Humanitarian Law*, Edward Elgar, Cheltenham, 2013, p. 325, on IHL’s influence on the right to truth in the Convention, as well as on the jurisprudence of human rights bodies and regional courts on enforced disappearances. See also UN Working Group on Enforced or Involuntary Disappearances, “General Comment on the Right to the Truth in Relation to Enforced Disappearances”, preambular para. 6; Committee on Enforced Disappearances, *Guiding Principles for the Search for Disappeared Persons*, UN Doc. CED/C/7, 8 May 2019, Principle 7, para. 3.

67 IACtHR, *Bámaca-Velásquez v. Guatemala*, Judgment (Reparations and Costs), Series C, No. 91, 22 February 2002, para. 81: “care for the mortal remains of a person is a form of observance of the right to human dignity”, and the human “remains of a person deserve respectful treatment before that person’s next of kin, due to the significance they have for them”. See also IACtHR, *Rodríguez Vera*, above note 60, para. 327; IACtHR, *Nadege Dorzema v. Dominican Republic*, Judgment (Merits, Reparations and Costs), 24 October 2012, para. 117.

68 For reference to ECtHR case law on this issue, see ECtHR, *Guide on Article 8 of the European Convention on Human Rights: Right to Respect for Private and Family Life, Home and Correspondence*, updated 28 February 2025, paras 182–188.

69 See, for example, A. Petrig, above note 19, p. 274, para. 57 and references.

70 See, for example, IACtHR, *Rio Negro Massacres v. Guatemala*, Judgment, Series C, No. 250, 4 September 2012, paras 154–165; ECtHR, *Polat v. Austria*, Appl. No. 12886/16, Judgment (Merits), 20 July 2021, paras 51, 54; ECtHR, *Aygin v. Belgium*, Appl. No. 28336/12, Judgment (Merits), 8 November 2022, paras 50–51.

71 The relevant provisions are found in several IHRL instruments, such as the Universal Declaration of Human Rights, UNGA Res. 217 A (III), 10 December 1948; the International Covenant on Civil and

For violations of the right to life under IHRL, States have a duty to conduct a prompt, thorough, effective, impartial and independent investigation on unlawful or suspicious deaths within their jurisdiction<sup>72</sup> (this obligation also extends to other allegations of IHRL violations, including enforced disappearances<sup>73</sup>). If a person dies in such circumstances, States must take all reasonable steps to identify the dead and determine the cause of their death,<sup>74</sup> to properly dispose of their remains, and to

Political Rights, 999 UNTS 171, 16 December 1966 (entered into force 23 March 1976); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 UNTS 85, 10 December 1984 (entered into force 26 June 1987) (CAT); and the ICPPED, above note 63, as well as in various regional treaties such as the European Convention on Human Rights, ETS No. 5, 4 November 1950 (entered into force 3 September 1953) (ECHR); the American Convention on Human Rights, 1144 UNTS 123, 22 November 1969 (entered into force 18 July 1978); and the African Charter on Human and Peoples' Rights, 1520 UNTS 217, 27 June 1981 (entered into force 21 October 1986).

- 72 See UNGA Res. 60/147, 16 December 2005, adopting the *Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. See also, for example, IACtHR, *Myrna Mack Chang v. Guatemala*, Judgment (Merits, Reparations and Costs), 25 November 2003, paras 156–157; IACtHR, *Mapiripán Massacre v. Colombia*, Judgment (Merits, Reparations and Costs), 15 September 2005, paras 219, 223, 233–234, 237; IACtHR, *Pueblo Bello Massacre v. Colombia*, Judgment (Merits, Reparations and Costs), 31 January 2006, paras 143, 147; IACtHR, *Anzualdo Castro v. Peru*, Judgment (Merits, Reparations and Costs), 22 September 2009, paras 65, 134–135; IACtHR, *Manuel Cepeda Vargas v. Colombia*, Judgment (Merits, Reparations and Costs), 26 May 2010, paras 117–118; IACtHR, *Cruz Sanchez*, above note 60, paras 347–349, 351–352; IACtHR, *Favela Nova Brasília v. Brazil*, Judgment (Merits, Reparations and Costs), 16 February 2017, paras 174, 177–180; ECtHR, *Kaya v. Turkey*, Appl. No. 158/1996/777/978, Judgment (Merits), 19 February 1998, para. 91; ECtHR, *Isayeva, Yusupova and Bazayeva v. Russia*, Appl. Nos 57947/00, 57948/00, 57949/00, 6 July 2005; ECtHR, *Varnava and Others v. Turkey*, 10 January 2008, para. 130; ECtHR, *Varnava and Others v. Turkey*, Appl. Nos 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90, 16073/90, Judgment (Grand Chamber), 18 September 2009, paras 148, 185–186; ECtHR, *Al-Skeini and Others v. United Kingdom*, Appl. No. 55721/07, Judgment (Grand Chamber), 7 July 2011, paras 161–177; ECtHR, *Mustafa Tunç and Ferice Tunç v. Turkey*, Appl. No. 24014/05, Judgment (Grand Chamber), 14 April 2015, para. 171; ECtHR, *Hanan*, above note 60, paras 198–210; General Comment 36, above note 62, paras 27–29; African Commission on Human and Peoples' Rights, "General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)", November 2015, paras 2, 7, 9, 15, 37–39.
- 73 This includes the CAT, above note 71, Art. 6; ICPPED, above note 63, Art. 12; and IACFDP, above note 63, Art. VI. See also HRC, General Comment No. 31, "The Nature of the General Legal Obligation Imposed on States Parties to the Covenant", UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, paras 8, 15. Under international criminal law, investigations are also required as part of the duty to prosecute certain crimes under international law.
- 74 See, for example, ECtHR, *Armani Da Silva v. The United Kingdom*, Appl. No. 5878/08, Judgment (Grand Chamber), 30 March 2016, para. 233; IACtHR, *Neira Alegria and Others v. Peru*, Judgment (Merits), 19 January 1995, para. 71; IACtHR, *Juan Humberto Sánchez v. Honduras*, Judgment (Preliminary Objections, Merits, Reparations and Costs), 7 June 2003, para. 127; IACtHR, *Gomes Lund and Others v. Brazil*, Judgment (Preliminary Objections, Merits, Reparations and Costs), 24 November 2010, paras 239, 259–263; IACtHR, *Mapiripán Massacre*, above note 72, paras 305–310, 326; IACtHR, *Las Dos Erres Massacre v. Guatemala*, Judgment (Preliminary Objection, Merits, Reparations and Costs), 24 November 2009, paras 244–249; IACtHR, *Family Barrios v. Venezuela*, Judgment (Merits, Reparations and Costs), 24 November 2011, para. 235; IACtHR, *Veliz Franco et al. v. Guatemala*, Judgment (Preliminary Objections, Merits, Reparations and Costs), 19 May 2014, paras 191–195; IACtHR, *Vázquez Durand*, above note 60, para. 154; HRC, *Kandel et al. v. Nepal*, Communication No. 2560/2015, Views, 16 August 2019, para. 9; General Comment 36, above note 62, para. 28. In IACtHR, *Cruz Sanchez*, above note 60, paras 367, 431, the Court held that States must take minimum and fundamental due diligence measures when handling the scene of an alleged violation of the right to life and in the management of human remains, adding that – even in NIACs – IHL has minimum due diligence obligations on the manner in which to recover human remains and the measures that must be taken to identify them.



collect information on their identity and fate and provide it to families, or permit entities like the ICRC to do so.<sup>75</sup> Investigations must also involve the victim's next of kin, as is necessary to safeguard their legitimate interests,<sup>76</sup> and grant access to information to establish the truth.<sup>77</sup> The obligation to investigate applies until authorities can no longer reasonably take measures to elucidate the circumstances and establish responsibility, but if additional information emerges, they must take additional measures.<sup>78</sup> In cases of enforced disappearance, this procedural obligation can continue to apply as long as the person is unaccounted for, even if death is presumed and even if those responsible have not been identified and punished.<sup>79</sup> For war crimes and crimes against humanity, there is also a public interest in achieving the prosecution and conviction of perpetrators, even years or decades after the event.<sup>80</sup>

In some cases, courts have also determined that the suffering caused to families by the *post-mortem* treatment of a relative's body can be regarded as inhuman or degrading treatment<sup>81</sup> when such suffering is different in nature from that caused by the death itself.<sup>82</sup> The failure to properly identify the deceased or provide information to families<sup>83</sup> and refusing to provide access to, or information on, burial sites have also been found to constitute degrading and inhuman treatment.<sup>84</sup> When

75 ECtHR, *Varnava* (Grand Chamber), above note 72, para. 185; ECtHR, *Al-Skeini*, above note 72, para. 167; IACtHR, *Velásquez-Rodríguez v. Honduras*, Judgment (Merits), 29 July 1988, para. 181; IACtHR, *19 Merchants v. Colombia*, Judgment (Merits, Reparations and Costs), 5 July 2004, paras 176, 264–266; IACtHR, *Gelman v. Uruguay*, Judgment (Merits and Reparations), 24 February 2011, para. 258; IACtHR, *Rodríguez Vera*, above note 60, para. 564; IACtHR, *Rural Community of Santa Barbara v. Peru*, Judgment (Preliminary Objections, Merits, Reparations and Costs), 1 September 2015, paras 295, 297.

76 ECtHR, *Al-Skeini*, above note 72, paras 167; IACtHR, *Pueblo Bello Massacre*, above note 72, para. 144; IACtHR, *Mapiripán Massacre*, above note 72, para. 219; IACtHR, *Rural Community of Santa Barbara*, above note 75, para. 290.

77 ECtHR, *Tagayeva and Others v. Russia*, Appl. Nos 26562/07 *et al.*, Judgment (Merits), 13 April 2017, paras 627–632; IACtHR, *Rodríguez Vera*, above note 60, paras 481, 509–511; IACtHR, *Vázquez Durand*, above note 60, paras 165, 204; IACtHR, *Isaza Uribe and Others v. Colombia*, Judgment (Merits, Reparations and Costs), 20 November 2018, para. 150.

78 ECtHR, *Šilih v. Slovenia*, Appl. No. 71463/01, Judgment (Grand Chamber), 9 April 2009, para. 157; and see e.g. IACtHR, *Movilla Galarcio and Others v. Colombia*, Judgment (Merits, Reparations and Costs), Series C, No. 452, 22 June 2022, paras 198–208.

79 ECtHR, *Varnava* (Grand Chamber), above note 72, para. 148; IACtHR, *Velásquez-Rodríguez*, above note 75, para. 181; IACtHR, *Tenorio Roca and Others v. Peru* (Preliminary Objections, Merits, Reparations and Costs), 22 June 2016, para. 178. See also J. M. Ibáñez Rivas, above note 63, fn. 49–51 and 63–67 and corresponding text.

80 ECtHR, *Jelić v. Croatia*, Appl. No. 57856/11, Judgment, 12 June 2014, para. 52.

81 See, for example, IACtHR, *Blake v. Guatemala*, Judgment (Merits), Series C, No. 36, 24 January 1998, paras 115–116; IACtHR, *Moiwana Village v. Suriname*, Judgment (Merits, Reparations and Costs), 15 June 2005, paras 98–100, 103; ECtHR, *Akkum and Others v. Turkey*, Appl. No. 21894/93, Judgment (Merits), 24 March 2005, para. 259; ECtHR, *Akpınar and Altun v. Turkey*, Appl. No. 56760/00, Judgment (Merits), 27 February 2007, paras 82, 84–87; HRC, *Nakarmi and Nakarmi v. Nepal*, Communication No. 2184/2012, Views, 10 March 2017, para. 11.8.

82 See, for example, IACtHR, *Nadege Dorzema*, above note 67, paras 117, 252.

83 ECtHR, *Khadzhaliyev and Others v. Russia*, Appl. No. 3013/04, Judgment (Merits and Just Satisfaction), 6 November 2008, para. 121; ECtHR, *Janowiec and Others v. Russia*, Appl. Nos 555087/07, 29520/09, Judgment (Grand Chamber), 21 October 2013, para. 178.

84 See, for example, HRC, *Schedko and Anor v. Belarus*, Communication No. 886/1999, UN Doc CCPR/C/77/D/886/1999, 3 April 2003, para. 10.2; HRC, *Sankara et al. v. Burkina Faso*, Communication

denied the possibility of visiting graves or participating in burial ceremonies, or if they are given no information on the location of graves or receive the body with excessive delays, relatives may also invoke their right to private and family life.<sup>85</sup> Jurisprudence has further emphasized that States' omissions in respecting these obligations can constitute interference with the right to family and private life and other rights of relatives of the deceased, and in doing so has considered religious and cultural elements.<sup>86</sup>

Finally, as previously touched upon, human rights bodies and regional courts have also recognized a right to the truth surrounding enforced disappearances, other gross violations of human rights and serious violations of IHL; this is inferred from specific rights in IHRL treaties and, in some cases, is recognized as a right in itself.<sup>87</sup> Under IHRL, the right to the truth is broader in scope than the IHL right to know.<sup>88</sup>

## Searching for and accounting for the dead in wars

### Where it all begins: Search and recovery of the dead

As a fundamental prerequisite to complying with other IHL obligations on the dead, parties to armed conflicts must take all possible measures to search for, collect and

No. 1159/2003, UN Doc CCPR/C/86/D/1159/2003, 28 March 2006, para. 12.2; General Comment 36, above note 62, para. 56. See also IACtHR, *Rodríguez Vera*, above note 60, para. 327; IACtHR, *Rio Negro Massacres*, above note 70, para. 155; IACtHR, *Gudiel Alvarez and Others ("Diario Militar") v. Guatemala*, Judgment (Merits, Reparations and Costs), Series C, No. 253, 20 November 2012, para. 301.

85 See, for example IACtHR, *Gómez-Palomino v. Peru*, Judgment, 22 November 2005, para. 67; ECtHR, *Sabanchiyeva v. Russia*, Appl. No. 38450/05, Judgment, 6 June 2013, paras 138, 143–147. For more details on the relevant case law of the European Court, see ECtHR, above note 68.

86 See, for example, ECtHR, *Polat*, above note 70, paras 48–49. See also, generally, A. Petrig, above note 19, p. 274, paras 57–58. On religious and cultural elements, see J. M. Ibáñez Rivas, above note 63, fn. 79–82 and corresponding text, citing relevant IACtHR and ECtHR jurisprudence.

87 See e.g. *Right to the Truth: Report of the Office of the High Commissioner for Human Rights*, UN Doc. A/HRC/5/7, 7 June 2007, available at: <https://undocs.org/A/HRC/5/7>; *Study on the Right to the Truth: Report of the Office of the United Nations High Commissioner for Human Rights*, UN Doc. E/CN.4/2006/91, 2 August 2006, para. 42; *Report of the Independent Expert to Update the Set of Principles to Combat Impunity*, Diane Orentlicher: Addendum: Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, UN Doc. E/CN.4/2005/102/Add.1, 8 February 2005, available at: <https://undocs.org/E/CN.4/2005/102/Add.1>. For relevant jurisprudence, see, for example, IACtHR, *Bámaca-Velásquez v. Guatemala*, Judgment (Merits), Series C, No. 70, 25 November 2000, paras 201–202; IACtHR, *Bámaca-Velásquez*, above note 67, paras 76–77; IACtHR, *Barrios Altos v. Peru*, Judgment (Merits), Series C, No. 75, 14 March 2001, para. 48; IACtHR, *Nadege Dorzema*, above note 67, para. 115; IACtHR, *The Massacres of El Mozote and Nearby Places v. El Salvador*, Judgment, Series C, No. 252, 25 October 2012, paras 331–334; IACtHR, *Pacheco Teruel v. Honduras*, Judgment (Merits, Reparations and Costs), Series C, No. 241, 27 April 2012, para. 73; ECtHR, *Cyprus v. Turkey*, Appl. No. 25781/94, Judgment (Grand Chamber), 10 May 2001, para. 136. See also G. Gaggioli, above note 66, pp. 321–322; A. Petrig, above note 19, pp. 261, paras 10–13, and 273, paras 55–56.

88 See, for example, *Study on the Right to the Truth*, above note 87; "Amicus Curiae, Presented by the International Commission of Jurists, Before the Inter-American Court of Human Rights in the Case of Efraín Bámaca Velásquez v. Guatemala", *International Commission of Jurists Review*, No. 62–63, 2001, pp. 131–145; Yasmin Naqvi, "The Right to the Truth in International Law: Fact or Fiction?", *International Review of the Red Cross*, Vol. 88, No. 862, 2006, pp. 248–249, 254–268.

evacuate them.<sup>89</sup> These obligations “are important in ensuring respect for the dignity of the dead, which is crucial, not least because disrespect for the dead might set off a cycle of barbarity.”<sup>90</sup> In practice, the legal protection afforded does not differ depending on the type of armed conflict, although treaty provisions applicable in IACs regulate specific aspects in further detail.<sup>91</sup> Put concisely, parties to all armed conflicts must “without delay” do everything possible to search for, collect and evacuate the dead from areas of military operations “whenever circumstances permit, and particularly after an engagement”.<sup>92</sup> These operations must be carried out for all the dead, regardless of the party to which they belong and whether or not they directly participated in hostilities, without any adverse distinction.<sup>93</sup>

The obligation to search is triggered “particularly after an engagement”, but it does not start or end with this – it is a continuing obligation.<sup>94</sup> The phrasing “particularly after” does not exclude a requirement to search *during* an engagement, where possible.<sup>95</sup> However, recognizing the realities of war, this is an obligation of

89 See ICRC Customary Law Study, above note 11, Rule 112, commentary, and other legal sources cited in above note 48. For more on these obligations, see ICRC Commentary on GC I, above note 23, Art. 15(1); ICRC Commentary on GC II, above note 46, Art. 18(1); ICRC Commentary on GC IV, above note 12, Art. 16. See also Jean Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949*, Vol. 4: *Geneva Convention relative to the Protection of Civilian Persons in Time of War*, ICRC, Geneva, 1958 (1958 Commentary on GC IV), Art. 16(2), pp. 135–137; ICRC Commentary on the APs, above note 23, Art. 8. On NIACs, see the Commentaries on common Article 3: ICRC Commentary on GC I, above note 23, para. 760; ICRC Commentary on GC II, above note 46, para. 787; ICRC Commentary on GC III, above note 23, para. 797.

90 ICRC Commentary on GC I, above note 23, Art. 15(1), para. 1508; ICRC Commentary on GC II, above note 46, Art. 18(1), para. 1682; ICRC Commentary on the APs, above note 23, Art. 34, p. 367, para. 1299. See also Israeli High Court of Justice (HCJ), *Jenin Mortal Remains Case*, Case No. HCJ 3114/02, Decision, 14 April 2002, para. 9.

91 See, for example, AP I, Arts 17(2), 33(4), 61, including on the role of the civilian population and civil defence organizations in tasks related to the deceased. But see also ICRC Customary Law Study, above note 11, Rule 112, “Interpretation”, which also applies in NIACs.

92 ICRC Customary Law Study, above note 11, Rule 112. Regarding the differences between Geneva Conventions provisions on the search for the dead, see e.g. ICRC Commentary on GC II, above note 46, Art. 18(1), paras 1646, 1653; 1958 Commentary on GC IV, above note 89, Art. 16(2), pp. 135–136. Regarding the differences between Article 16 of GC IV and the corresponding GC I and II provisions, see also ICRC Commentary on GC IV, above note 12, Art. 16. Although Article 16 of GC IV does not explicitly require searching “without delay”, in practice – as soon as there is reason to believe that there are wounded or killed in the area – such activities will likely be carried out as soon as possible. Moreover, although Article 16(2) only imposes on parties explicit obligations to facilitate steps taken by others to search (assuming this would usually be carried out by civilian medical services), in practice civilian and military services may be required to effectively cooperate. Ultimately, many of the differences between the Geneva Conventions provisions on search appear less pronounced today.

93 On adverse distinction and the personal scope of this rule, see ICRC Customary Law Study, above note 11, Rules 88 and 112, commentaries and related practice. And see e.g. HCJ, *Jenin Mortal Remains*, above note 90, para. 9, in which the Court affirmed that the location, identification and burial of bodies – of both civilians and combatants – are humanitarian acts grounded in the principle of respect for all the dead, to be carried out respectfully, without distinction and as promptly as security conditions permit.

94 See, for example, ICRC Commentary on GC II, above note 46, Art. 18(1), para. 1657.

95 This reading is confirmed by the use of “particularly”, which clarifies that the obligation is not limited to post-engagement situations. For parallels with obligations on the search for, collection and evacuation of the wounded and sick, see ICRC Commentary on GC I, above note 23, Art. 15, para. 1488.

means – to “take all possible measures”.<sup>96</sup> This may include permitting and facilitating searches by others, including impartial humanitarian organizations.<sup>97</sup> Parties may not arbitrarily withhold consent for such organizations to carry out this work.<sup>98</sup> In naval warfare, for instance, a specific warship may consider that undertaking a search operation is impossible but must still assess other “possible measures”, including alerting nearby coastal authorities and neutral vessels and appealing to them to take the shipwrecked, wounded, sick or dead on board.<sup>99</sup> Thus, although the measures to be taken depend on what is possible at a given moment, the obligation to act “without delay” is strict.<sup>100</sup> Furthermore, to prevent a further increase of the missing in war, IHL also requires parties to record all available information prior to final disposition of the dead – in practice, the moment after casualties are evacuated represents a critical moment.<sup>101</sup>

Today, rapid developments in artificial intelligence and machine learning can open avenues to accelerating the search for and identification of the deceased, including to find mass graves during and after conflicts.<sup>102</sup> Such technologies may be able to support more conventional human identification techniques, such as DNA analysis, fingerprinting and dental examination, in order to make these more efficient and accurate.<sup>103</sup> They can also strengthen the integrated identification approach by, for example, assisting in the separation of commingled human remains.<sup>104</sup> However, the use of any technology for humanitarian forensic action

96 ICRC Customary Law Study, above note 11, Rule 112 and commentary. For more detail, see ICRC Commentary on GC I, above note 23, Art. 15(1), paras 1485, 1509; ICRC Commentary on GC II, above note 46, Art. 18(1), paras 1635–1636, 1640, 1683.

97 ICRC Customary Law Study, above note 11, Rule 112, commentary and related practice. See also *Report of the Secretary-General Pursuant to Security Council Resolution 752 (1992)*, UN Doc. S/24000, 26 May 1992, para. 9 (describing how ICRC delegates recovered the war dead in Bosnia and Herzegovina); ICRC Commentary on GC I, above note 23, Art. 15(1), para. 1509; ICRC Commentary on GC II, above note 46, Art. 18(1), paras 1638, 1683 (“by other entities, when they have the necessary capabilities”); 1958 Commentary on GC IV, above note 89, Art. 16(2), pp. 135–136; ICRC Commentary on GC IV, above note 12, Art. 16.

98 ICRC Customary Law Study, above note 11, Rule 112, commentary; ICRC Commentary on GC I, above note 23, Art. 15(1), para. 1509; ICRC Commentary on GC II, above note 46, Art. 18(1), paras 1638, 1683.

99 ICRC Commentary on GC II, above note 46, Art. 18(1), para. 1637. See also AP I, Art. 17(2).

100 ICRC Commentary on GC I, above note 23, Art. 15(1), para. 1487; ICRC Commentary on GC II, above note 46, Art. 18(1), para. 1649; 1958 Commentary on GC IV, above note 89, Art. 16(2), p. 135. See also references in above note 92 on the Geneva Conventions provisions on the search for the dead.

101 See, for instance, Sandesh Sivakumaran, *The Law of Non-International Armed Conflict*, Oxford University Press, Oxford, 2012, Section 3.3, including examples of relevant State practice, pp. 282–283. See also ICRC Guiding Principles, above note 2, Principle 12.

102 For more on the opportunities and challenges in using artificial intelligence and machine learning in humanitarian forensic action and examples of tools, see E. Madziwa, above note 17; British Association of Biological Anthropology and Osteoarchaeology, *BABAO Recommendations on the Ethical Issues Surrounding 2D and 3D Digital Imaging of Human Remains*, 2019.

103 E. Madziwa, above note 17, pp. 768–771, 786–787. See also ICRC Guiding Principles, above note 2, Principle 15.

104 See, for example, ICRC, above note 28; and on the use of the Commingled Remains Analytics (CoRA) software for the separation and identification of the dead, see the CoRA website, available at: [www.coracore.org/](http://www.coracore.org/). See also Defense POW/MIA Accounting Agency, “Soldier Missing From Korean War Accounted

still requires specific types of forensic data to work, such as previously obtained skeletal and *ante-mortem* data, and still relies on human expertise.<sup>105</sup> In all cases, users must ensure that the protection of conflict-affected populations remains at the centre,<sup>106</sup> and must comply with relevant legal obligations, including the preservation of dignity, as well as data protection rules and standards.<sup>107</sup>

## Accounting for the dead in international armed conflicts

“What is the good of all these names, all these cards covered in details and descriptions?” the General said. “When all is said and done, can a pile of bones still have a name?”<sup>108</sup>

In IACs, the Geneva Conventions and AP I outline the obligations of parties to account for military personnel and for civilians who die in the context of hostilities and internment. According to Sassòli, “[t]he provisions for obtaining, collating and transmitting this type of information are a major step forward in international humanitarian law”.<sup>109</sup>

## Combatant deaths as a result of hostilities

After the search for the dead and their evacuation from areas of military operations, either on land or at sea, it is necessary to document information about the dead, as this is essential for their identification.<sup>110</sup> The Geneva Conventions foresee a specific process for a party to record and transmit information to the adverse party in respect of each shipwrecked, wounded, sick or dead member of the enemy’s military<sup>111</sup> “falling into its hands” – in other words, when the party exercises a degree of control

For (Gantt)”, 23 December 2013, available at: [www.dpaa.mil/News-Stories/ID-Announcements/Article/569577/soldier-missing-from-korean-war-accounted-for-gantt/](http://www.dpaa.mil/News-Stories/ID-Announcements/Article/569577/soldier-missing-from-korean-war-accounted-for-gantt/).

105 Hans H. de Boer *et al.*, “The Role of Forensic Anthropology in Disaster Victim Identification: Recent Developments and Future Prospects”, *Forensic Science Research*, Vol. 4, No. 4, 2019, pp. 304, 306; and Marco Sassòli, *International Humanitarian Law: Rules, Controversies and Solutions to Problems Arising in Warfare*, 2nd ed., Edward Elgar, Cheltenham, 2024, pp. 368–369.

106 ICRC, *Artificial Intelligence and Machine Learning in Armed Conflict: A Human-Centred Approach*, Geneva, 6 June 2019, pp. 5–7. See also UN Office of the High Commissioner for Human Rights and Human Rights Center at the University of California Berkeley School of Law, *Berkeley Protocol on Digital Open Source Investigations: A Practical Guide on the Effective Use of Digital Open Source Information in Investigating Violations of International Criminal, Human Rights and Humanitarian Law*, New York and Geneva, 2022 (Berkeley Protocol), p. 14.

107 See ICRC, *Handbook on Data Protection in Humanitarian Action*, 3rd ed., Cambridge University Press, Cambridge, 2024. See also E. Madziwa, above note 17, pp. 788–789; V. Santini, above note 25.

108 Ismail Kadare, *The General of the Dead Army*, trans. Derek Coltman, Arcade, New York, 1990, p. 34.

109 Marco Sassòli, “The National Information Bureau in Aid of the Victims of Armed Conflicts”, *International Review of the Red Cross*, Vol. 27, No. 256, 1987, p. 6.

110 ICRC Commentary on GC I, above note 23, Art. 16, para. 1528; ICRC Commentary on GC II, above note 46, Art. 19, para. 1704.

111 GC I, Art. 16; GC II, Art. 19.

over the individual in question.<sup>112</sup> This is the case whenever armed forces collect and evacuate the dead, thereby triggering the obligations to record and transmit relevant information. In practice, while this obligation applies in regard to the enemy, determining if an individual is part of the enemy armed forces is not always straightforward. In these situations, parties must still record the individual's information in order to ensure that all necessary measures are taken to protect and identify the individual and to inform, when relevant, the other party and the deceased's family.<sup>113</sup> The obligation to record and transmit is vested in IAC parties but also in any neutral State that may receive or find, among others, deceased individuals in its territory.<sup>114</sup>

As seen in its formulation ("shall record"), the obligation to record and transmit information is mandatory in nature and is linked with the obligations of parties to carefully examine and ensure the proper burial of the dead.<sup>115</sup> It refers to the action of recording "any particulars which may assist in the [person's] identification". The word "particulars" means "details".<sup>116</sup> Articles 16 of Geneva Convention I (GC I) and 19 of Geneva Convention II (GC II) clarify the type of information that parties must record, which include the person's individual identification (e.g. name, surname, date of birth), the circumstances in which they fell into the adverse party's hands (e.g. place of capture, place of death), and details on the person's state (e.g. wounds, illness, cause of death). The list of required particulars is illustrative, meaning that parties may collect additional information which might be critical to enabling identification.<sup>117</sup> For the dead, information "must be recorded to the extent possible, regardless of the person's condition and the presence of any identity disc or card".<sup>118</sup> This accords with established forensic standards according to which it is essential to compile comprehensive information on the deceased.<sup>119</sup> Compiling such information involves creating a dedicated case file with biological data obtained through forensic examination and background information gathered through investigative efforts and recovery operations.

112 ICRC Commentary on GC I, above note 23, Art. 14, para. 8. Although the obligation to record and forward information only concerns the enemy dead, "this does not preclude a party from having its own regulations on recording particulars of its deceased combatants" or "with respect to its own nationals who are killed in the course of conflict": D. Gavshon, above note 46, p. 281, para. 10. A party to the conflict may, in any case, be required under national law to record information concerning its own armed forces. Furthermore, when military personnel are killed on the battlefield and their remains are recovered by the party to which they belong, customary IHL imposes an obligation to record all available information relating to the deceased, with a view to their identification. IHRL may also play a role.

113 ICRC Commentary on GC I, above note 23, Art. 16, para. 1548.

114 GC I, Art. 4; ICRC Commentary on GC I, above note 23, Art. 16, para. 1544, on reading Articles 4 and 16 together.

115 ICRC Commentary on GC I, above note 23, Art. 16, para. 1540. See also GC I, Art. 17; GC II, Art. 20.

116 See "Particulars", *Concise Oxford English Dictionary*, above note 11, p. 1044. The equally authentic French text of the Geneva Conventions uses the word "renseignements", which means "information".

117 ICRC Commentary on GC I, above note 23, Art. 16, para. 1559. Examples of other information to include are fingerprints and photographs of the deceased.

118 *Ibid.*, Art. 16, para. 1575.

119 ICRC, above note 28, p. 25.



Under Articles 16 of GC I and 19 of GC II, information must be recorded “as soon as possible” to prevent persons from going missing and to inform families.<sup>120</sup> However, operational realities in wars might make it difficult to record information as early as would be ideal. Thus, the timing may vary depending on factors including the number of individuals falling into the hands of a party, the capacity of those receiving them, and the duration of the process.<sup>121</sup> However, such constraints do not absolve parties of their obligation to record information promptly and adequately. Given this, it is essential that States and their armed forces engage in thorough military planning – ideally during peacetime – so that all needed support is foreseen and all processes and procedures are in place to give effect to this obligation.<sup>122</sup>

Once the information has been recorded, those responsible must transmit it “as soon as possible” to their National Information Bureau (NIB) for forwarding to the other party through the ICRC’s CTA.<sup>123</sup> Parties must also transmit certificates of death or duly authenticated lists of the dead and one half of a double identity disc, along with any last wills or other documents important to the next of kin, money, and in general all articles of intrinsic or sentimental value, found on the deceased.<sup>124</sup>

### *Civilians killed due to military operations*

Based on Article 16 of Geneva Convention IV (GC IV), parties to a conflict must “facilitate the steps taken to search” for civilians killed as a result of an IAC, particularly those killed in military operations. Neither Article 16 nor any other provision in the Convention outlines specific procedures for recording information or identifying the civilians concerned, but AP I foresees the exchange of information to facilitate the search for missing and dead civilians, and under customary law parties must record all available information before disposing of the deceased and must mark their graves with a view to identification.<sup>125</sup>

AP I expands the protection of the missing and dead for persons not receiving more favourable consideration under the Geneva Conventions. Under Article 33(2) of AP I,<sup>126</sup> parties must record and transmit information on persons “detained,

120 A. Petrig, above note 19, p. 263.

121 ICRC Commentary on GC I, above note 23, Art. 16, para. 1555.

122 For example, the ICRC’s Military Identification Project underscores the critical importance of advance planning to ensure that deceased military personnel can be identified efficiently. As Fonseca and Rossouw note, “[i]f the necessary information is collected in advance, if there are multiple lines of evidence already available to support identification, you can identify most personnel much sooner, often during or immediately after hostilities”. See the interview with Stephen Fonseca and Vaughn Rossouw in this issue of the *Review*.

123 See the below section on “The ICRC Central Tracing Agency and Its Humanitarian Forensic Action”, and see the note on NIBs in this issue of the *Review*.

124 GC I, Art. 16(3); GC II, Art. 18(3).

125 ICRC Customary Law Study, above note 11, Rule 116; see also Rule 117.

126 For a more detailed analysis of the differing levels of obligations under paragraphs 2(a) and 2(b) of AP I Article 33, see ICRC Commentary on the APs, above note 23, paras 1255–1262. See also M. Bothe, K. Partsch and W. Solf, above note 23, pp. 199–200.

imprisoned, or otherwise held in captivity for more than two weeks due to hostilities or occupation, as well as those who have died while in detention”, and on persons who have died in other circumstances due to hostilities or occupation. In this way, Article 33 reinforces the duty to furnish and exchange information on persons reported missing by a party so as to facilitate the search for them. According to Bothe, Partsch and Solf, the obligation to search applies to all victims, irrespective of their status under the Geneva Conventions and AP I. However, a connection must exist between the party requesting the search and the person in question.<sup>127</sup> For those protected under Article 33, parties are required to transmit all relevant information concerning persons reported missing, and any related requests, to the adverse party, either directly or through intermediaries such as the Protecting Powers, National Red Cross and Red Crescent Societies, or the ICRC’s CTA. Importantly, Article 33(3) underscores that, in any case, each party must ensure that information is consistently provided to the CTA; this helps the CTA to maintain a centralized and comprehensive record of missing persons, including the deceased.<sup>128</sup>

### *Deaths in custody: Prisoners of war and civilian internees*

When prisoners of war (PoWs) or civilian internees die while in custody, the Detaining Power must take specific measures to identify them and inform their families. When it comes to PoWs, Geneva Convention III (GC III) addresses prescriptions for the drawing up of wills<sup>129</sup> and procedures to follow after a prisoner has died, including in special circumstances.<sup>130</sup> PoWs have a right to draft wills and, upon their request, these must be transmitted “without delay” to the Protecting Power. A certified copy must also be sent to the CTA.<sup>131</sup> Before interring or cremating PoWs, a careful medical examination is required to confirm death, document findings in a report, and, where necessary, establish the deceased’s identity.<sup>132</sup> The death certificate must be sent to the NIB; the NIB will then report the death to the CTA, which in turn will forward the certificate to the country concerned. The Graves Registration Service (GRS) must also record and transmit “lists of graves and particulars of the prisoners of war interred in cemeteries and elsewhere” to the Power upon which the PoWs in question depended.<sup>133</sup> As explained in the ICRC Commentary on GC III:

127 M. Bothe, K. Partsch and W. Solf, above note 23, p. 198.

128 See the below section on “The ICRC Central Tracing Agency and Its Humanitarian Forensic Action”.

129 GC III, Art. 120(1).

130 *Ibid.*, Arts 120(2)–(6), 121.

131 For instance, in November 1944, the ICRC received a certified copy of the will of a US PoW in Germany. In the will, the PoW wrote: “I ..., being of sound mind and memory, ... do therefore make, ordain, publish and declare this to my last will and testament: that is to say, first, after all my lawful debts are paid and discharged, I give to my sister ... all my worldly possessions to have and to hold as she sees fit when she reaches twenty one-years of age.” Certified copy found in the ICRC Archives.

132 GC III, Art. 120(3). For further detail on this obligation for prisoners of war, see ICRC Commentary on GC III, above note 23, paras 4580–4588, 4592–4595.

133 GC III, Art. 120(6). See the below section on “National Information Bureaux and Official Graves Registration Services”.

Compliance will be measured against a higher standard for a prisoner of war who died in the hands of a Party to the conflict and had been brought to the rear or held in a designated facility than for a combatant collected on the battlefield, given that in the former scenario the Party would have had greater capacity and facilities to deal with the situation.<sup>134</sup>

When it comes to civilian internees, GC IV also regulates various issues related to the possibility that they might die in custody. First, internees are entitled to draft wills and, in the event of death, such documents must be transmitted without delay to the person designated by the deceased.<sup>135</sup> After an internee dies, an official record of death must be established and a copy forwarded to the Protecting Power and the CTA.<sup>136</sup> Lastly, the Detaining Power, through its NIB, must forward lists of graves of deceased internees to the Powers on whom those individuals depended.<sup>137</sup>

Where PoWs or internees die of unknown causes or due to the actions of any person, including other detainees or the detaining forces, the responsible party must conduct an official enquiry.<sup>138</sup> As explained in the ICRC Commentary on GC IV, the enquiry

should aim to determine the exact circumstances and causes, so that responsibility for [the death] can be established. If there is a reasonable suspicion that a criminal act was involved, the investigation has to be moved to a criminal procedure and the Detaining Power must take all the necessary measures to prosecute the person(s) responsible.<sup>139</sup>

The enquiry must be “effective”, meaning “that the process must be ‘appropriate and undertaken in good faith, with all feasible means employed to achieve its goal’”.<sup>140</sup>

Such investigations can also have a crucial preventive function, helping to avert similar future deaths.<sup>141</sup> Furthermore, sharing information on the investigation with families upholds their right to know and enhances transparency.<sup>142</sup> The PoW's or internee's body must undergo a thorough examination, including by a forensic medicine expert whenever feasible.<sup>143</sup> The Detaining Power is also required to communicate the death to the Protecting Power. While the relevant provisions do not explicitly refer to the ICRC or its CTA as recipients of such communications, the obligation to inform the NIB of the death remains applicable. In practice, States have

134 ICRC Commentary on GC III, above note 23, Art. 120, para. 4529.

135 GC IV, Art. 129.

136 GC I, Art. 129.

137 GC IV, Art. 130(3).

138 GC III, Art. 121; GC IV, Art. 131.

139 ICRC Commentary on GC III, above note 23, Art. 121, para. 4657. See also ICRC Commentary on GC IV, above note 12, Art. 13.

140 ICRC Commentary on GC III, above note 23, Art. 121, para. 4661; see also paras 4662–4672.

141 *Ibid.*, para. 4672.

142 *Ibid.*, para. 4668.

143 *Ibid.*, Art. 121, para. 4659. See also ICRC Commentary on GC IV, above note 12, Art. 131.

often transmitted reports required under Articles 121 of GC III and 131 of GC IV to the ICRC.<sup>144</sup>

## *National Information Bureaux and Official Graves Registration Services*

Accounting for enemy individuals falling into the hands of a party to the conflict requires dedicated institutions. To this end, the Geneva Conventions oblige parties to establish an NIB at the onset of an IAC and in all cases of occupation<sup>145</sup> and an official GRS at the commencement of hostilities.<sup>146</sup>

The NIB's main responsibilities are threefold: (1) to collect and transmit information about certain categories of persons protected by the Geneva Conventions, including the deceased; (2) to respond to enquiries on these; and (3) to collect and forward personal valuables left by protected persons.<sup>147</sup> Its functions are key to ensuring that persons falling into the hands of a party who have died on the battlefield, at sea or in captivity are accounted for. The information that the NIB gathers comes from authorities responsible for handling protected persons. In the case of the deceased, these can include military or civilian mortuary services, morgues, forensic facilities and the Detaining Authority's medico-legal services. Today, various States have established NIBs in laws, policies or military doctrines.<sup>148</sup> This is a key first step to ensuring that if conflict breaks out, processes are in place to account for people promptly.

Parties must also establish a GRS, which is instrumental in enabling parties to fulfil their obligations regarding the dead. The primary responsibilities of these are to ensure respect for graves and their proper grouping and maintenance, to support the identification of the deceased, to assist the armed forces in the potential transportation of remains to their home countries<sup>149</sup> and to facilitate access to gravesites.<sup>150</sup> The Geneva Conventions do not specify the entity responsible for establishing or administering such services – indeed, the organizational structure of GRSs may differ between States and can encompass governmental

144 ICRC Commentary on GC III, above note 23, Art. 121, para. 4678 and fn. 58, with examples of practice including from the Middle East, the Falkland Islands/Islas Malvinas and the UK *Joint Doctrine on Captured Persons*. See also ICRC Commentary on GC IV, above note 12, Art. 131.

145 GC III, Art. 122; GC IV, Arts 136–139. For more information on NIBs, see the note on NIBs in this issue of the Review. See also ICRC, *Overview of the Legal Framework Governing National Information Bureaux*, Geneva, 2022; Marco Sassòli, “The National Information Bureau in Aid of the Victims of Armed Conflicts”, *International Review of the Red Cross*, Vol. 27, No. 256, 1987.

146 GC I, Art. 17(3). While Article 20 of GC II does not provide for the establishment of an official GRS, the relevant provisions on the treatment of the dead under GC I “shall be applicable” when the dead are landed.

147 GC III, Art. 122; GC IV, Arts 136–139.

148 See for example, US Department of Defense, *Law of War Manual*, June 2015 (updated July 2023), p. 644; France, “Circulaire No. 126/DEF/EMA/ESMG/JUOPS relative au bureau national de renseignements sur les prisonniers de guerre”, *Bulletin Officiel des Armées*, BOC No. 11, 19 March 2010; Ukraine, Order of the Cabinet of Ministers on the Performance of the Functions of the National Information Bureau, No. 228-r, 17 March 2022.

149 GC I, Art. 17; GC III, Art. 120.

150 AP I, Art. 34(2)(a).

and non-governmental arrangements.<sup>151</sup> Prominent examples include the German War Graves Commission and the Commonwealth War Graves Commission, both of which operate as private or semi-official bodies tasked with these functions. In fulfilling their obligations regarding the deceased, States may rely on existing military graves services that traditionally manage the burial and maintenance of fallen armed forces personnel.<sup>152</sup> These entities are often already equipped with the logistical capacity and technical expertise needed to carry out the GRS's functions. Thus, while States retain discretion on how to implement the obligation to have a GRS, due to the specialized nature of these tasks, "military authorities should entrust the work to individuals or organizations familiar with it rather than set up new bodies which may not have the desired experience or competence".<sup>153</sup>

The services that the GRS provides are primarily for PoWs and members of the armed forces who have died in areas of military operations, whether on land or at sea. For deceased internees and civilians killed as a result of hostilities, GC IV is silent on this issue and AP I only foresees the access of the GRS to gravesites in specific circumstances.<sup>154</sup> States should establish the necessary institutional frameworks and strengthen the capacity of existing bodies, irrespective of whether they are civilian or military, to deliver services for those protected under GC IV comparable to those that GRSs provide for military personnel. This pragmatic approach enables compliance with the overarching obligation to ensure dignity and respect for the deceased and their graves through effective and reliable institutional processes.

NIBs and GRSs must coordinate closely. Each party must exchange, through the respective GRSs of each party, lists indicating the exact locations and markings of graves and any available information about the deceased interred therein, facilitated by their respective NIBs.<sup>155</sup> These lists may be assisted by maps, GPS coordinates or satellite imagery. Moreover, clear procedures for the creation and operation of NIBs and GRSs should be established well in advance to ensure immediate functionality.<sup>156</sup> According to Zeith and Seneviratne,

151 M. Bothe, K. Partsch and W. Solf, above note 23, p. 204. For an example of a governmental arrangement, see Estonia, Protection of War Act, 20 January 2007: "The Ministry of Defense shall organize the marking and maintenance of war graves." In the Republic of Belarus, the Department for the Perpetuation of the Memory of Defenders of the Motherland and Victims of Wars of the Armed Forces, operating within the Ministry of Defence, is entrusted to operate and maintain 1,078 military burial places from the Second World War in six regions.

152 For instance, the American Battle Monuments Commission operates and maintains twenty-six permanent US burial cemeteries and thirty-one separate memorials, monuments and markers abroad. Similarly, in the United States, the GRS (now called Mortuary Affairs) was responsible for the final disposition and interment of US military killed during the World Wars. For more information on the work of the Commission, see: [www.abmc.gov/](http://www.abmc.gov/).

153 ICRC Commentary on GC I, above note 23, Art. 17, para. 1701. See also G. Gaggioli, above note 19, p. 193.

154 AP I, Art. 34(2)(a).

155 GC I, Art. 17(4).

156 ICRC Commentary on GC III, above note 23, Art. 122, para. 4702; ICRC Commentary on GC I, above note 23, Art. 17, para. 1701. See also ICRC Challenges Report 2024, above note 7, p. 26.

[e]xperience shows that in order to deliver their humanitarian objective, these processes should not only be well resourced and coordinated across government agencies, but also legally and operationally compatible with the systems and processes of partners and allies as well as the CTA itself.<sup>157</sup>

## Accounting for the dead in non-international armed conflicts

For NIACs, IHL is silent on the processes that parties need to put in place to comply with obligations to record and transmit information on the deceased.<sup>158</sup> Nevertheless, under customary law, to facilitate future identification, parties must record all available information on the dead prior to their final disposition and mark graves, and they must provide families with any information on the fate of their relatives.<sup>159</sup> By doing so, parties ensure that individuals are not unaccounted for due to war and uphold the families' right to know.<sup>160</sup>

In practice, States have put in place mechanisms or processes to search for those reported missing in the context of NIACs, whether alive or dead, and these are often premised on the continued application of these obligations after the end of conflict.<sup>161</sup> For instance, during the peace negotiations between the Government of Colombia and the former Revolutionary Armed Forces of Colombia – People's Army (Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo, FARC-EP), both parties committed to implementing immediate confidence-building measures to support the search for, location, identification and dignified return of persons missing in connection with the armed conflict.<sup>162</sup>

To establish practical solutions, parties to NIACs should consider concluding agreements to record and transmit information on detained persons, including those who have died, and to facilitate the search for the missing and identification of

157 Abby Zeith and Lakmini Seneviratne, *Reducing the Human Cost of Large-Scale Military Operations*, 2025, p. 23, available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5172527](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5172527); Isabelle Gallino and Sylvain Vité, "Complying with IHL in Large-Scale Conflicts: Key Preparedness Measures", *Humanitarian Law and Policy Blog*, 2 April 2025, available at: <https://blogs.icrc.org/law-and-policy/2025/04/03/complying-with-ihl-in-large-scale-conflicts-key-preparedness-measures/>.

158 Neither common Article 3 nor AP II contain provisions related to this. See ICRC Commentary on the APs, above note 23, para. 4657.

159 ICRC Customary Law Study, above note 11, Rules 116, 117.

160 ICRC Commentary on the APs, above note 23, para. 4657. See also A. Petrig, above note 19, p. 352; G. Gaggioli, above note 19, p. 190; ICRC Challenges Report 2024, above note 7, p. 25.

161 See, for example, Sri Lanka, Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, No. 14 of 2016, Section 27-i; El Salvador, Decree No. 5, 15 January 2010, creating the National Commission on the Search for Children Who Disappeared during the Armed Conflict in El Salvador; Agreement on Assuming the Role of Co-founders of the Missing Persons Institute of Bosnia and Herzegovina, *Official Gazette of BiH*, International Treaties Series, No. 13/05, 30 August 2005. See also ICRC, *National Mechanisms for Missing Persons: A Toolbox*, Geneva, 2022; Ximena Londoño and Alexandra Ortiz Signoret, "Implementing International Law: An Avenue for Preventing Disappearances, Resolving Cases of Missing Persons and Addressing the Needs of Their Families", *International Review of the Red Cross*, Vol. 99, No. 905, 2017.

162 Government of Colombia and FARC-EP, Joint Communiqué No. 62, Havana, 17 October 2015. In this context, the Colombian government and the FARC-EP formally requested the ICRC's support to address this critical issue.



the dead. This could be done, for instance, by resorting to special agreements concluded under Article 3 common to the four Geneva Conventions (common Article 3), in order “to apply, in addition to common Article 3, ‘other provisions’ of the Geneva Conventions that are not formally applicable in a non-international armed conflict”.<sup>163</sup>

## Respecting and protecting the dead in wars

Contemporary armed conflicts show that degrading and humiliating treatment of the dead continues to occur with disturbing frequency, despite IHL seeking precisely to avoid this. The rules of IHL explicitly integrate the notion of dignity after death and the obligation to respect the dead. Although IHL treaties do not define “respect” and “dignity” in their application to the dead, these notions are implicit in warring parties’ positive and negative obligations.

In its ordinary meaning, “dignity” refers to being worthy of respect.<sup>164</sup> In international law, the adoption of the 1949 Geneva Conventions can be seen as the “first consolidation of human dignity”, with subsequent phases in IHRL and international criminal law.<sup>165</sup> Importantly, the International Criminal Tribunal for the former Yugoslavia (ICTY)<sup>166</sup> has asserted that

[t]he essence of the whole corpus of international humanitarian law as well as human rights law lies in the protection of the human dignity of every person .... The *general principle of respect for human dignity* is ... the very *raison d'être* of international humanitarian law and human rights law; indeed in modern times

163 ICRC Commentary on GC III, above note 23, Art. 3, para. 880. Parties to such conflicts could thus, by agreement, extend the application of Articles 123 of GC III and 140 of GC IV, enabling the CTA to assume a role similar to that performed in IACs: Gradimir Djurovic, *The Central Tracing Agency of the International Committee of the Red Cross*, Henry Dunant Institute, Geneva, 1986, pp. 212–214.

164 The *Concise Oxford English Dictionary*, above note 11, p. 401, defines “dignity” as “the state or quality of being worthy of honour or respect”. For further detail on the concept of “human dignity” and its historical evolution, including its underpinnings in various religions and its integration in IHL, IHRL and international criminal law, see Ginevra Le Moli, *Human Dignity in International Law*, Cambridge University Press, Cambridge, 2021.

165 See also *Report of the International Law Commission: Seventy-Fourth Session*, UN Doc. A/78/10, 3 November 2023, Chap. IV, para. 10, fn. 34 of draft conclusion 7, and para. 7 of draft conclusion 10. In its commentaries on the draft conclusions on “General Principles of Law”, the International Law Commission (ILC) included “respect for human dignity” as an example of a general principle formed within the international legal system, also referring to the International Criminal Tribunal for the Former Yugoslavia’s (ICTY) identification and application of a “general principle of respect for human dignity” (see below note 167). At the time of writing, the ILC had adopted the draft conclusions on second reading (report forthcoming), but the commentaries thereto are expected to be adopted on second reading in 2026. See, further, G. Le Moli, above note 164, p. 102, as well as pp. 103–107 and 173–215 for a detailed analysis of “human dignity” in IHL.

166 This article considers the case law of international criminal courts and tribunals and of domestic courts where it aids in the interpretation of IHL rules addressing identical or similar concepts, including humiliating or degrading treatment. However, differences must also be borne in mind. For an overview of the ICRC’s approach to the relationship between IHL and international criminal law, see ICRC Commentary on GC III, above note 23, paras 96–98, and the corresponding paragraphs in the ICRC Commentary on GC IV, above note 12.

it has become of such paramount importance as to permeate the whole body of international law.<sup>167</sup>

In the Geneva Conventions, the concept of “dignity” is explicitly found in common Article 3’s prohibition against “outrages upon personal dignity”, later reaffirmed in the Additional Protocols.<sup>168</sup> Meanwhile, referring to the “dignity” of the dead as the purpose underpinning Article 120 of GC III and other IHL rules on the dead, the ICRC Commentary on GC III notes that the deceased’s bodies “are to be treated honourably and with respect, their identities ascertained and their graves marked and respected”.<sup>169</sup> In turn, the fundamental concept of human dignity is at the root of the standard of humane treatment, which “is in truth the ‘leitmotif’ of the four Geneva Conventions”.<sup>170</sup> This obligation requires that protected persons be treated humanely at all times; in other words, their inherent human dignity must always be respected.<sup>171</sup> In this way, the obligation establishes a minimum standard of treatment

167 ICTY, *Prosecutor v. Furundžija*, Case No. IT-95-17/1-T, 10 December 1998, para. 183 (emphasis added).

This same paragraph was cited in International Criminal Court (ICC), *Prosecutor v. Katanga and Chui*, Decision on the Confirmation of Charges (Pre-Trial Chamber I), Case No. ICC-01/04-01/07, 30 September 2008, para. 369 fn. 482. Specifically on the war crime of outrages upon personal dignity, the ICTY has held that “it was the broader concept of human dignity that was emphasized” as “the important value protected by the offence”: ICTY, *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-A, Judgment (Appeals Chamber), 24 June 2000, para. 25. See also IACtHR, *Bamaca-Velasquez*, above note 67, para. 81, referring to care for human remains as “a form of observance of the right to human dignity”; IACtHR, *Rodríguez Vera*, above note 60, para. 327, in which the Court held that “the way in which the bodies of those who died were treated, the burial in mass graves without respecting the basic standards that would facilitate the subsequent identification of the bodies, as well as the failure to return the bodies to the next of kin may constitute *demeaning treatment, to the detriment of the person who died*, as well as to the members of his or her family” (emphasis added); IACtHR, *Nadege Dorzema*, above note 67, para. 117. See also Morris Tidball-Binz, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Protection of the Dead*, UN Doc. A/HRC/56/56, 25 April 2024, para. 8.

168 Common Art. 3; AP I, Art. 75(2)(b); AP II, Art. 4(2)(e); ICRC Customary Law Study, above note 11, Rule 90 and commentary. See also ICTY, *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-T, Judgment (Trial Chamber), 25 June 1999, paras 47–57, which held that the purpose of common Art. 3 “is to uphold and protect the inherent human dignity of the individual”. Similarly, see Robin Geiß and Andreas Zimmermann, “Article 8”, in Kai Ambos (ed.), *Rome Statute of the International Criminal Court: Article-by-Article Commentary*, 4th ed., C. H. Beck, Munich, Hart, Oxford, and Nomos, Baden-Baden, 2022, p. 645, paras 606, 609, 915.

169 ICRC Commentary on GC III, above note 23, para. 4527. See also the Commentaries on the corresponding Articles in GC I and II: ICRC Commentary on GC I, above note 23, paras 1508, 1634; ICRC Commentary on GC II, above note 46, para. 1810.

170 1958 Commentary on GC IV, above note 89, p. 204 (on Article 27 of GC IV) as well as p. 38 (on common Article 3) referring to the “indivisible and inviolable nature of the principle” of humane treatment. See also S. Sivakumaran, above note 101, p. 255. See, further, ICRC Commentary on GC III, above note 23, para. 591.

171 See common Art. 3(1)(1); GC I, Art. 12(2); GC II, Art. 12(2); GC III, Art. 13(1)–(2); GC IV, Art. 27; AP I, Art. 75(1); AP II, Art. 4(1); ICRC Customary Law Study, above note 11, Rule 87. On the meaning of “humane treatment”, see also e.g. ICRC Customary Law Study, above note 11, Rule 87, commentary; 1958 Commentary on GC IV, above note 89, pp. 38, 204 (and the corresponding Pictet Commentaries on GC I–III); ICRC Commentary on GC III, above note 23, Art. 3(1)(1), para. 586; ICRC Commentary on GC IV, above note 12, Arts. 3, 27. See, further, ICRC Commentary on the APs, above note 23, paras 3047–3048, referring to acts “aimed at humiliating and ridiculing” persons and noting that such “provisions are contained in the Conventions”, including in common Article 3 and Article 27 of GC IV.

and sets out non-exhaustive types of prohibited ill-treatment that apply to enemies and civilians alike in both IACs and NIACs.<sup>172</sup>

Specifically concerning the dead, the prohibitions on outrages upon personal dignity, on mutilating, and on despoiling the dead stem from, and concretize, the obligation to treat the dead respectfully.<sup>173</sup> The “principle of respect for the remains of the deceased and for gravesites” was expressly incorporated in IHL through Article 34(1) of AP I.<sup>174</sup> As noted in the ICRC Customary Law Study, it has also been argued “that the obligation to respect the dead is inherent in common Article 3 of the Geneva Conventions”.<sup>175</sup> Under this article, parties to the conflict must treat “[p]ersons taking no active part in the hostilities”, including those placed “*hors de combat* by sickness, wounds, detention, or any other cause”, humanely in all circumstances and without any adverse distinction. The article prohibits, “[t]o this end”, a number of acts “with respect to the above-mentioned persons”, including outrages upon personal dignity.<sup>176</sup> As will be further explained below, in the context of international criminal law, States have explicitly recognized that the specific prohibition against outrages upon personal dignity under common Article 3 applies to the dead.

As Gureghian Hall argues concerning the war crime of outrages upon personal dignity, the jurisprudence of tribunals after the Second World War and the widespread criminalization of the mistreatment of the dead in domestic frameworks clearly support “the notion that IHL prohibits the maltreatment of the dead and

172 See common Art. 3(1)(1); AP I, Art. 75(1); AP II, Art. 4(1); ICRC Customary Law Study, above note 11, Section on Fundamental Guarantees, including Rules 87 (humane treatment), 88 (adverse distinction) and 90 (torture and cruel, inhuman or degrading treatment, and outrages upon personal dignity). See also G. Le Moli, above note 164, pp. 195–199; S. Sivakumaran, above note 101, pp. 255–258.

173 See also R. Geiß and A. Zimmermann, above note 168, paras 606, 915; A. Petrig, above note 2, p. 350. See also Belgian Department of Defence, *Cours pour conseillers en droit des conflits armés: Introduction au droit des conflits armés*, CDCA-DCA-01, École Royale Militaire, April 2009, pp. 22–23: “In the rear zones and occupation zones, the ‘principles of humanity’, or the respect for the human person rule. [Certain] principles are common to humanitarian law and human rights law[, including the principle] ... of inviolability”, according to which “[t]he individual is entitled to respect for his life, his physical and moral integrity, and the inherent attributes of [the human] personality”. This document further states, on the “implementation” of this principle, that “[m]ortal remains are inviolable”. Similarly, see Royal Netherlands Army, *The Humanitarian Law of War: A Manual*, Voorschrift No. 27–412, Military Legal Service, 2005 (Netherlands Manual), paras 0224(d), 0609.

174 ICRC Commentary on the APs, above note 23, paras 1307, 1358. See also ICRC Commentary on GC I, above note 23, para. 1688; ICRC Commentary on GC III, above note 23, para. 4604; 1958 Commentary on GC IV, above note 89, p. 506. This is similarly reflected in the ICRC Commentary on GC IV, above note 12, Art. 130.

175 ICRC Customary Law Study, above note 11, Rule 113, commentary, and Rule 115, commentary: “It may be said that this rule [on respectful disposition] reflects a general principle of law requiring respect for the dead and their graves.” See also Colombian Council of State, *Case No. 9276*, Statement of the Prosecutor, 19 August 1994, para. 113. See, further, D. Gavshon, above note 46, para. 52; G. Gaggioli, above note 19, p. 187.

176 ICRC Customary Law Study, above note 11, Rule 113, commentary, and Rule 115, commentary; ICRC Commentary on GC III, above note 23, Art. 3, notably paras 584, 588–589, 617, 619. This is similarly reflected in the ICRC Commentary on GC I, above note 23, and the ICRC Commentary on GC II, above note 46, on common Article 3, as well as in the ICRC Commentary on GC IV, above note 12.

that such maltreatment entails individual criminal responsibility”.<sup>177</sup> Beyond this, national courts have explicitly found that the dead qualify as “persons” protected by IHL, and the Geneva Conventions in particular, and that the clarification in the *Elements of Crimes* adopted under the 1998 Rome Statute of the International Criminal Court (ICC) that the dead are “persons” for the purposes of the war crime of “outrages upon personal dignity”<sup>178</sup> was reflective of customary IHL at the time.<sup>179</sup> These national courts were specifically addressing outrages upon personal dignity as an IHL prohibition and war crime, but they did not necessarily preclude the possibility that other IHL rules protecting persons more generally could also be relevant to dead persons. The logical implication of States’ confirmation in the *Elements of Crimes* that the war crime of outrages upon personal dignity as a

177 See the article by Mischa Gureghian Hall in this issue of the *Review*: Mischa Gureghian Hall, “The War Crime of Outrages against the Personal Dignity of the Dead: Legal Basis, Evolution and Elements”, *International Review of the Red Cross*, Vol. 107, No. 929, 2025, section on “The War Crime of Outrages upon Personal Dignity against the Dead: Status under Customary International Law”. See also the references in notes 198–201 below. See further ICRC Customary Law Study, above note 11, Rule 113 and related practice; Knut Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court*, Cambridge University Press, Cambridge, 2003, pp. 314–315, 323, 405; R. Geiß and A. Zimmermann, above note 168, paras 620, 628, 631, 915; Anna Andersson, “Outrage upon the Personal Dignity of the Dead in International and Swedish War Crimes Legislation and Case Law”, *Scandinavian Studies in Law*, Vol. 66, 2020, p. 264; Lachezar Yanev, “Syrian War Crimes Trials in the Netherlands: Claiming Universal Jurisdiction over Terrorist Offences and the War Crime of Outrages upon Personal Dignity of the Dead”, *Netherlands Yearbook of International Law*, Vol. 52, 2021, p. 319. Concerning the criminalization of mistreatment of the dead as an ordinary offence in domestic frameworks, see Heather Conway, *The Law and the Dead*, Routledge, London, 2016; International Criminal Tribunal for Rwanda (ICTR), *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-A, Judgment (Appeals Chamber), 14 December 2011, para. 729 and references.

178 ICC, *Elements of Crimes for the Rome Statute of the International Criminal Court*, ICC-ASP/1/3 (2002), 9 September 2002, Art. 8(2)(b)(xxi) fn. 49, 8(2)(c)(ii) fn. 57.

179 See Swedish Supreme Court, *Case B 5595-19*, Judgment, 5 May 2021, para. 2, available at: [www.domstol.se/globalassets/filer/domstol/hogstodomstolen/avgoranden/engelska-oversattningar/b-5595-19-eng.pdf](http://www.domstol.se/globalassets/filer/domstol/hogstodomstolen/avgoranden/engelska-oversattningar/b-5595-19-eng.pdf) (holding that the dead in the hands of the enemy are “protected persons since, at the time of the acts, they were placed *hors de combat* as wounded or deceased or because they were civilians”); District Court of The Hague (DC The Hague), *Public Prosecutor’s Office v. Ahmad al-Y.*, Case No. ECLI:NL:RBDHA:2021:5336, Judgment (First Instance), 21 April 2021, paras 5.4.1.2, 5.4.2.2, available at: <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBDHA:2021:5336>; District Court of Helsinki (DC Helsinki), *District Prosecutor v. Hasan*, Case No. R 18/6593, 10 January 2019, p. 7, unofficial English translation in Eurojust, *Prosecuting War Crimes of Outrage upon Personal Dignity Based on Evidence from Open Sources: Legal Framework and Recent Developments in the Member States of the European Union*, The Hague, February 2018, available at: [www.eurojust.europa.eu/sites/default/files/Partners/Genocide/2019-01-10\\_FI\\_R-18-6593.pdf](http://www.eurojust.europa.eu/sites/default/files/Partners/Genocide/2019-01-10_FI_R-18-6593.pdf); German Federal Court of Justice (Bundesgerichtshof, BGH), *Case No. StR 57/17*, Judgment, 27 July 2017, Section C.IV.2, paras 13–19, 28, available in English via Eurojust at: [www.eurojust.europa.eu/sites/default/files/Partners/Genocide/2017-07\\_DE-Federal-Court-of-Justice\\_EN.pdf](http://www.eurojust.europa.eu/sites/default/files/Partners/Genocide/2017-07_DE-Federal-Court-of-Justice_EN.pdf). See also M. Gureghian Hall, above note 177; A. Andersson, above note 177. But see Kai Ambos, “Deceased Persons as Protected Persons within the Meaning of International Humanitarian Law: German Federal Supreme Court Judgment of 27 July 2017”, *Journal of International Criminal Justice*, Vol. 16, No. 5, 2018, pp. 1114–1116; Lars Berster, “Entscheidungsbesprechung: BGH, Decision of 8 September 2016–StB27/16”, *Zeitschrift für Internationale Strafrechtsdogmatik*, Vol. 12, 2017, pp. 264–269; and to a lesser extent, but ultimately concluding that the deceased are protected persons for the purposes of Section 8(1)(9) of Germany’s 2002 Code of Crimes against International Law, Vanessa Bergmann, Franziska Blenk and Nathalie Cojger, “Desecration of Corpses in Relation to § 8(1) no. 9 German Code of Crimes against International Law: The Judgment of the German Federal Court of Justice (Bundesgerichtshof) of July 27, 2017–3 StR 57/17”, *German Law Journal*, Vol. 22, No. 2, 2021, pp. 280–287.

serious violation of common Article 3 applies to dead persons is that the dead can qualify as persons “taking no active part in hostilities” or persons *hors de combat* for the purposes of common Article 3. This in turn raises the possibility that not only the specific prohibition against outrages upon personal dignity but potentially other specific provisions or aspects of the general obligation of humane treatment under common Article 3, insofar as they can be relevant to the dead, may also apply.<sup>180</sup>

A similar analysis could be applied to, for instance, the obligation of humane treatment under Article 13 of GC III and Article 27 of GC IV. As will be discussed below, the ICRC has concluded that the “protection against insults and public curiosity” found in these provisions applies also to PoWs and protected persons who have died. From this it follows that other specific GC IV provisions, including aspects of the general requirement of humane treatment under Article 27, which apply to “protected persons” more generally could potentially be relevant insofar as they can be applied to dead persons.<sup>181</sup> The ICRC Commentary to Article 34 (“Remains of Deceased”) of AP I, for instance, states that even if certain dead persons are not covered by that article, “such persons are covered by Article 27 of the fourth Convention”.<sup>182</sup> As Article 27 requires “respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs”, and states that “they shall at all times be humanely treated”, this “implies, at the very least, a respect for the remains of the dead and a decent burial in accordance with their religious practices”.<sup>183</sup> That said, the possible extent of humane treatment obligations remains subject to further exploration.

Finally, other IHL rules flowing from the requirement to treat the dead honourably and to preserve their dignity include obligations on the final disposition of the dead and on the respect of graves and other burial locations. These obligations have positive and negative components, which require parties to refrain from committing certain acts and to protect individuals from (or to prevent the commission of) such acts by other actors. The following sections will elaborate on some important elements of the obligations to respect the deceased and their graves.

180 The specific prohibition against mutilation in common Article 3(1)(a) may not apply to corpses, which are in any case covered by the prohibition under common Article 3(1)(c) and customary international law: see ICRC Commentary on GC III, above note 23, Art. 3, para. 647 and Section G.4; the parallel discussion in ICRC Commentary on GC IV, above note 12; and ICRC Customary Law Study, above note 11, Rule 113. Even if the specific prohibition against mutilation in common Art. 3(1)(a) does not apply, this does not necessarily mean that the more general prohibition against “violence to ... person” in Article 3(1)(a), the general requirement of humane treatment in the chapeau of Article 3(1), or indeed other IHL rules on humane treatment, do not apply. In contrast, see M. Gureghian Hall, above note 177, text accompanying fn. 27 and 65.

181 See e.g. ICRC Commentary on the APs, above note 23, Art. 34, pp. 367–368, paras 1299, 1300, 1304. See also references in above note 168.

182 ICRC Commentary on the APs, above note 23, paras 1299–1300.

183 *Ibid.*

## The prohibition against outrages upon personal dignity and public curiosity

The IHL prohibition against “outrages upon personal dignity” is of crucial importance for the protection of the dead. Although it is not defined in IHL treaties, the ICTY has characterized this offence as “an act or omission which would be generally considered to cause serious humiliation, degradation or otherwise be a serious attack on human dignity”.<sup>184</sup> The prohibition is specifically mentioned in common Article 3 in relation to NIACs (“outrages upon personal dignity, in particular humiliating and degrading treatment”) and in Article 4(2) of Additional Protocol II (AP II). An “outrage on personal dignity” of a protected person would also violate various other GC III and GC IV provisions applicable in IACs, and is explicitly mentioned in Article 75(2)(b) of AP I.<sup>185</sup> This prohibition also applies more generally as a matter of customary IHL.<sup>186</sup>

The Rome Statute of the ICC furthermore recognizes “committing outrages upon personal dignity, in particular humiliating and degrading treatment”, as a war crime in all armed conflicts (including, in the context of NIAC, specifically as a “serious violation of article 3 common to the four Geneva Conventions”).<sup>187</sup> The ICC *Elements of Crimes* refers to the war crime being committed when the perpetrator has “humiliated, degraded or otherwise violated the dignity of one or more persons”, noting that in this context “persons’ can include dead persons”.<sup>188</sup> Outrages

184 See ICTY, *Prosecutor v. Kunarac et al.*, Case Nos IT-96-23-T, IT-96-23/1-T, Judgment (Trial Chamber), 22 February 2001, para. 514; ICTY, *Prosecutor v. Kunarac et al.*, Case Nos IT-96-23-A, IT-96-23/1-A, Judgment (Appeals Chamber), 12 June 2002, paras 161, 163. For examples of specific acts that have amounted to outrages upon personal dignity, see also ICRC Commentary on GC III, above note 23, Art. 3, para. 704 and fn. 554; ICRC Customary Law Study, above note 11, Rule 113 and related practice. Generally, for additional examples of international and national jurisprudence, see also e.g. M. Gureghian Hall, above note 177, sections on “Post-Second World War Origins of Corpse Mistreatment as an International Crime”, “The Limited Jurisprudence of International Courts and Tribunals” and “Jurisprudence of European National Courts”.

185 See e.g. GC III, Arts 13–14; GC IV, Art. 27; AP I, Art. 85(4)(c) on grave breaches.

186 ICRC Customary Law Study, above note 11, Rule 90 and commentary.

187 Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, 17 July 1998 (entered into force 1 July 2002) (Rome Statute), Art. 8(2)(b)(xxi), 8(2)(c)(ii). For more on the elements of the war crime of outrages upon personal dignity, see also K. Dörmann, above note 177, pp. 314–324, 404–405; M. Gureghian Hall, above note 177, section on “The War Crime of Outrages upon Personal Dignity against the Dead”; Konstantina Stavrou, “Committing War Crimes One Click at a Time? User-Generated Content and the War Crime of Outrages upon the Personal Dignity of the Dead at the International Criminal Court”, *International Criminal Law Review*, April 2025. See also R. Geiß and A. Zimmermann, above note 168, paras 607–609, 613, 629: in general, acts potentially covered by Article 8(2)(b)(xxi) can “be examined under the core principles of IHL that prompted the drafting of common Article 3(1)(c), Article 4(2)(e) [of AP II], and Article 75(2)(b) [of AP I], in particular the overriding principle of ‘humane treatment’ (as articulated in Article 27 [of GC IV])”.

188 ICC, *Elements of Crimes*, above note 178. For the meaning of this notion under IHL, which may be broader than in international criminal law, see ICRC Commentary on GC III, above note 23, Art. 3, paras 700–709. See also ICRC Commentary on GC IV, above note 12, Arts 3, 27. The commentary to Rule 156 of the ICRC Customary Law Study, above note 11, in describing the war crime of outrages upon personal dignity, specifically includes “desecration of the dead” (p. 575). See also UN Human Rights Council, *Study on Best Practices on the Issue of Missing Persons*, Advisory Committee, Fourth Session, UN Doc. A/HRC/AC/4/CRP.2/Rev.1, 25 January 2010, paras 68–69; UN Human Rights Council, *Report on Best*



upon personal dignity (including desecration of the dead) also constitute war crimes under customary IHL.<sup>189</sup> As recent conflicts demonstrate, such treatment of the dead is unfortunately all too common, making this clarification particularly important. Furthermore, “relevant aspects of the cultural background of the victim” have to be considered, covering treatment that is humiliating to a person of a certain religion, culture or nationality even if it is not considered so by others.<sup>190</sup> For instance, many societies view photographing human remains and publicizing such images as “unethical, insensitive and deeply harmful”.<sup>191</sup> To amount to outrages upon personal dignity, such acts do not necessarily have to be committed against the “war dead”; they can be committed against any deceased person in the context of an armed conflict.

Concerning the exposure of the dead to public curiosity, the ICRC Commentary to Article 34 of AP I interprets “respect” of the dead to include “preventing them from being despoiled and from being exposed to public curiosity, by placing them in an appropriate place before burial or cremation”.<sup>192</sup> Meanwhile, the Geneva Conventions require that in IACs, PoWs and protected persons must be protected against “insults and public curiosity”.<sup>193</sup> The Commentary to Article 13 of GC III clarifies that these provisions extend to deceased PoWs, whose remains must be treated respectfully, and covers the disclosure of photos and videos “irrespective of which public communication channel is used, including the internet”.<sup>194</sup> a similar interpretation would apply to Article 27 of GC IV.<sup>195</sup> Furthermore, with regard to Articles 17 of GC I and 20 of GC II, the respective Commentaries note:

Identification [of the dead] must be carried out in a manner that respects the Party’s other obligations under international humanitarian law. Thus, for example, if photographs or video footage are taken of the deceased, these must not

*Practices on the Issue of Missing Persons*, Advisory Committee, 16th Session, UN Doc. A/HRC/16/70, 21 February 2011, para. 83; ICC, *Katanga*, above note 167, para. 371. On whether the dead are covered by the Rome Statute provisions on outrages upon personal dignity or not, see also e.g. K. Stavrou, above note 187, providing arguments and relevant references for both positions.

189 ICRC Customary Law Study, above note 11, Rule 156, commentary, pp. 575–576, 590–591.

190 ICC, *Elements of Crimes*, above note 178. On the various religious rites for the deceased, see e.g. S. Froidevaux, above note 3. See also ICRC, “Management of the Dead from the Perspectives of Islamic Law and International Humanitarian Law”, fact sheet, Geneva, April 2025; ICRC, *Management of the Dead under Islamic Law*, Geneva, April 2020. See also e.g. DC The Hague, *Ahmad al-Y.*, above note 179, para. 5.4.2.3: “certainly in view of its significance in Islamic culture[,] placing a foot on a deceased person is demeaning and degrading”.

191 V. Santini, above note 25, fn. 103–105 and corresponding text.

192 ICRC Commentary on the APs, above note 23, Art. 34, para. 1307. See also e.g. UK Manual, above note 41, para. 7.35 fn. 85 (noting that the requirement that the remains of the dead be honourably interred precludes “exposure as a curiosity or to instil terror”); New Zealand Defence Force, *Manual of Armed Forces Law: Law of Armed Conflict*, Vol. 4, 2nd ed., DM 69, 2019 (New Zealand Manual), para. 11.3.4(d).

193 GC III, Art. 13; GC IV, Art. 27.

194 ICRC Commentary on GC III, above note 23, Art. 13, paras 1624, 1629; see also paras 1661–1662.

195 See ICRC Commentary on the APs, above note 23, Art. 34, paras 1299–1300; ICRC Commentary on GC IV, above note 12, Art. 27. See also references in above notes 166 and 168.

be made public or used for propaganda purposes. Sensitivity is required if the images are shown to the family of the deceased.<sup>196</sup>

In NIACs, as already noted, States have recognized that the prohibition against outrages upon personal dignity under common Article 3 applies to dead persons. Although common Article 3 does not explicitly address the duty to protect against insults and public curiosity, exposure of dead bodies to public curiosity could, depending on the circumstances, constitute an outrage upon personal dignity even without mutilation of the bodies, particularly if done in a degrading way.<sup>197</sup> For example, with regard to an arrest warrant where the ICC held that there were reasonable grounds to believe that the acts concerned constituted the war crime of murder, in assessing the gravity of the case the Court noted that “the manner in which the crime was committed and publicized [by posting the videos showing the executions on social media] was cruel, dehumanizing, and degrading”.<sup>198</sup> The International Criminal Tribunal for Rwanda (ICTR) and the ICTY have also pronounced themselves on acts concerning the dead, but have, so far, made no convictions for the war crime of outrages upon personal dignity.<sup>199</sup> Several domestic war crimes trials in Finland, Germany, the Netherlands and Sweden have elaborated on this war crime specifically concerning deceased persons;<sup>200</sup> for example, the Finnish District Court

196 ICRC Commentary on GC I, above note 23, para. 1662; ICRC Commentary on GC II, above note 46, para. 1840.

197 See also ICRC Commentary on GC IV, above note 12, Art. 3. This would also apply for the other IHL rules prohibiting outrages upon personal dignity. See also K. Stavrou, above note 187, pp. 18–27; A. Andersson, above note 177, pp. 272–277; S. Zarmsky, above note 24, pp. 176–180; V. Santini, above note 25, section on “Turning to International Criminal Law: Changing Meanings of Humiliating and Degrading Treatment of the War Dead in the Digital Era”. Referring to the link between the prohibition against outrages upon personal dignity and protection from public curiosity, see also S. Sivakumaran, above note 101, p. 263. More generally, on the connections between the various IHL rules on humane treatment, see references in above note 187.

198 ICC, *The Prosecutor v. Al-Werfalli*, Case No. ICC-01/11-01/17, Second Warrant of Arrest (Pre-Trial Chamber), 4 July 2018, para. 31; see also ICC, *The Prosecutor v. Al-Werfalli*, Case No. ICC-01/11-01/17, Warrant of Arrest (Pre-Trial Chamber), 15 August 2017, para. 29. See also ICC, *The Prosecutor v. Al Hassan*, Case No. ICC-01/12-01/17-461, Decision on the Confirmation of Charges – Corrected Version (Pre-Trial Chamber I), 13 November 2019, para. 262; although this case did not concern dead persons, the Court referred to the ICTY *Brđanin* case (ICTY, *The Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, Judgment (Trial Chamber II), 1 September 2004), which qualified “treating corpses with disrespect and mutilating them” as outrages upon personal dignity. See, further, ICC, *The Prosecutor v. Al Hassan*, Case No. ICC-01/12-01/18, Judgment (Trial Chamber), 26 June 2024, paras 1310, 1313, 1321–1322, 1383–1387, 1391–1392, citing the publicity of mistreatment as a factor contributing to the finding of ill-treatment.

199 ICTY, *Brđanin*, above note 198, paras 1014, 1019 – although this case addressed ill-treatment as a crime against humanity, the Tribunal noted that such behaviour was prohibited based on common Article 3. See also ICTY, *The Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Judgment (Trial Chamber), 7 May 1997, para. 748; ICTR, *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Motions for Judgment of Acquittal under Rule 98 bis of the Rules of Procedure and Evidence (Trial Chamber II), 2 February 2005, para. 40, holding that a person could be convicted of outrages upon personal dignity for one or more of the alleged acts, including “burying corpses in latrine pits” (but note ICTR, *Bagosora*, above note 177).

200 See Swedish Supreme Court, *Case B 5595-19*, above note 179; BGH, *Case No. StR 57/17*, above note 179. For an overview and analysis of relevant national case law, see, further, Eurojust, above note 179, pp. 7–10. See also M. Gureghian Hall, above note 177; K. Stavrou, above note 187; A. Andersson, above note 177; L. Yanev, above note 177, pp. 315–319.

of Kanta-Häme found that the act of a fighter posing with the severed head of an enemy soldier, who was thus *hors de combat*, and publishing it on his Facebook profile – making it “freely viewable by a very large number of Facebook users – was directed “at the personal dignity of the person depicted” and was “humiliating and degrading” to “such degree as to be generally recognised as a crime against personal dignity”.<sup>201</sup>

The advent of smartphones and social media, with the increased presence of mass media in wars, raises additional questions for IHL and the role not only of media organizations but also of individual journalists, social media platform content moderators and even our next-door neighbours.<sup>202</sup> As seen, the publication of images of the dead may violate IHL and even amount to war crimes, and it also poses questions on respect for relevant human rights.<sup>203</sup> At the same time, personal information, photographs, videos and other visual materials of those detained or killed in wars can support the identification process<sup>204</sup> and the investigation and prosecution of international crimes,<sup>205</sup> for instance through the use of data obtained from online open-source investigations<sup>206</sup> and even by civilians with their smartphones.<sup>207</sup>

201 District Court of Kanta-Häme, *District Prosecutor v. Hilal*, Case No. R16/214, 22 March 2016, pp. 6–7, para. 6(9), unofficial English translation by Eurojust available at: [www.legal-tools.org/doc/546cd9/pdf](http://www.legal-tools.org/doc/546cd9/pdf); District Court of Gothenburg, *Public Prosecutor v. Fatosh*, Case Nos B7721-21, B4663-22, 29 March 2023, unofficial English translation by Eurojust available at: [www.eurojust.europa.eu/sites/default/files/assets/files/46.-sweden-translation-of-the-judgment-of-the-district-court-of-gothenburg-of-29-march-2023-case-b7721-21-b4663-22.pdf](http://www.eurojust.europa.eu/sites/default/files/assets/files/46.-sweden-translation-of-the-judgment-of-the-district-court-of-gothenburg-of-29-march-2023-case-b7721-21-b4663-22.pdf). In the latter case, the District Court of Gothenburg held (see pp. 17–21 of the Eurojust translation) that the mere posting of images of a person next to a severed head and other mutilated corpses together with degrading messages on Facebook constituted distinct acts of severe humiliating and degrading treatment (even if it was not possible to prove that the defendant was in the images or responsible for the mutilation in question). But see e.g. DC The Hague, *Ahmad al-Y.*, above note 179, para. 5.4.2.3.

202 See ICRC Commentary on GC III, above note 23, paras 1611, 1627, 1630–1632, on parties’ due diligence obligation to prevent third actors from exposing protected persons to public curiosity and all States’ obligation to ensure that media organizations and social media platforms understand the prohibition and take measures to prevent the distribution of prohibited images or data. See also ICRC Commentary on GC IV, above note 12, Art. 27; V. Santini, above note 25; Ramin Mahnad, “Shielding Prisoners of War from Public Curiosity”, *Humanitarian Law and Policy Blog*, 28 June 2022, available at: <https://blogs.icrc.org/law-and-policy/2022/06/28/shielding-prisoners-of-war-from-public-curiosity/>.

203 V. Santini, above note 25, section on “Privacy in Times of Conflict and the Evolving Notion of Inherent Dignity of the Dead in International Human Rights Law”; S. Zarmsky, above note 24. See also the above section on “Complementing IHL’s Protections for the Dead and Their Families through International Human Rights Law”.

204 See, for example, Interpol’s Identify Me, which publishes facial re-imaging pictures in the form of drawings of unidentified deceased individuals to assist in their identification, available at: [www.interpol.int/What-you-can-do/Identify-Me](http://www.interpol.int/What-you-can-do/Identify-Me).

205 See, for instance, Berkeley Protocol, above note 106.

206 See, for instance, Bellingcat, “What Is Bellingcat’s Justice and Accountability Unit?”, available at: [www.bellingcat.com/what-is-bellingcats-ja-unit-december-2022/](http://www.bellingcat.com/what-is-bellingcats-ja-unit-december-2022/); Global Legal Action Network, “Open-Source Evidence and the Laws of War: The Reports”, available at: [www.glanlaw.org/oosi-reports](http://www.glanlaw.org/oosi-reports).

207 ICRC Commentary on GC III, above note 23, Art. 13, paras 1626–1627. See also V. Santini, above note 25; S. Zarmsky, above note 24, pp. 169–172. See, further, the below section on “Criminal Accountability and Investigations of Deaths”.

It is thus necessary to strike a reasonable balance between the benefit of making information public and the possible humiliation or degradation of the individual.<sup>208</sup> Any materials enabling identification of individual persons must generally be regarded as subjecting them to public curiosity, and such materials may therefore not be transmitted, published or broadcast by warring parties.<sup>209</sup> If there is a compelling public interest or if it is in the person's vital interest, this may tip the balance and parties may exceptionally release certain material publicly, but only insofar as this respects the individual's dignity.<sup>210</sup> In particular, images of protected persons in humiliating or degrading situations may not be transmitted, published or broadcast unless there is a compelling reason of public interest to do so and the images do not disclose the identities of the individuals concerned.<sup>211</sup> Importantly, in general, the law already contains more suitable and effective processes that support the identification of the deceased, including by requiring the establishment of various pathways to account for people in wars while ensuring respect for families.<sup>212</sup> Furthermore, the dignity of families and the additional suffering that may be caused to them, including by making such images public, need to be considered.<sup>213</sup> However, photographs or other visual material, including clothing, other personal belongings or tattoos, can be shared with relevant authorities and humanitarian organizations for identification purposes.<sup>214</sup>

208 ICRC Commentary on GC III, above note 23, Art. 13, para. 1627.

209 For further details, see *ibid.*, Art. 13, para. 1627. See also ICRC Commentary on GC IV, above note 12, Art. 27.

210 On “public interest” and “vital interest”, see ICRC Commentary on GC III, above note 23, Art. 13, para. 1627. The Commentary also notes that to avoid disclosing prisoners’ identities while serving its function, “the media should always resort to appropriate methods”, including blurring, pixelating or otherwise obscuring faces and name tags or filming from a certain distance. See also ICRC Commentary on GC IV, above note 12, Art. 27.

211 ICRC Commentary on GC III, above note 23, Art. 13, para. 1627.

212 See *ibid.*, para. 1625. See also Helen Obregón Gieseken and Ximena Londoño, “Looking for Answers: Accounting for the Separated, Missing and Dead in International Armed Conflicts”, *Humanitarian Law and Policy Blog*, 11 April 2022, available at: <https://blogs.icrc.org/law-and-policy/2022/04/11/separated-missing-dead-international-armed-conflicts/>; R. Mahnad, above note 202. For more details on these processes, see the above sections on “Accounting for the Dead in International Armed Conflicts” and “Accounting for the Dead in Non-International Armed Conflicts”, including relevant examples of State practice. While IHL applicable to NIACs does not specify such processes, its core obligations – to account for the missing and the dead and to inform families – are the same as in IACs, as are its rules on respecting the dead and protecting their dignity and that of their families. Thus, similar considerations apply, with due consideration to the potentially more limited capabilities of NSAGs.

213 International courts have held that witnessing violent act against others, including via images, can result in “mental suffering” to third parties, especially those close to the victim. See e.g. ICTR, *The Prosecutor v. Elizaphan Niyitegeka*, Case No. ICTR-96-14-T, Judgment and Sentence (Trial Chamber I), 16 May 2003, paras 934–936. See also e.g. ICTY, *Furundžija*, above note 167, para. 267(ii); Special Court for Sierra Leone, *The Prosecutor v. Moinina Fofana and Allieu Kondewa*, Case No. SCSL-04-14-T, Judgment (Trial Chamber I), 2 August 2007, para. 153. And see relevant IHRL jurisprudence in above notes 81–86.

214 See, for example, ICRC Commentary on GC III, above note 23, Art. 13, para. 1628.

## The prohibitions against mutilating and pillaging the dead

A related IHL rule is the prohibition against the mutilation of dead bodies in IACs and NIACs under customary IHL.<sup>215</sup> Mutilation has also been recognized as an example of outrages upon personal dignity.<sup>216</sup>

Moreover, parties are required to prevent the despoilment of the dead; this is a long-standing IHL obligation.<sup>217</sup> Despoilment as a form of pillage – which is in turn defined as the appropriation or obtaining of public or private property by an individual without the owner's consent, in violation of IHL<sup>218</sup> – is prohibited.<sup>219</sup> For the deceased, the absence of consent must be presumed.<sup>220</sup> Pillage is also recognized as a war crime under the Rome Statute.<sup>221</sup> In simple terms, it is prohibited to steal the personal possessions of the dead in wars,<sup>222</sup> as this disrespects not only their dignity but also that of their families and hinders the return of their valuables.<sup>223</sup>

Mutilation, pillaging and despoilment of the dead all constitute war crimes under customary IHL.<sup>224</sup> Mutilation and pillage of the dead are therefore subject to individual criminal responsibility under universal jurisdiction and obligations to investigate and prosecute.<sup>225</sup> Other forms of ill-treatment of the dead, including

215 ICRC Customary Law Study, above note 11, Rule 113 and related practice. See also e.g. UN War Crimes Commission, *Law Reports of Trials of War Criminals*, Vol. 13, London, 1949, pp. 151–152.

216 See the above section on “The Prohibitions against Outrages upon Personal Dignity and Public Curiosity”. The Rome Statute, above note 187, also recognizes mutilation itself as a war crime (Art. 8(2)(b)(x), 8(c)(i), 8(e)(xi)), but the *Elements of Crimes* for these articles do not specify whether they apply also to dead persons.

217 Hague Convention (X) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention, 205 CTS 299, 18 October 1907 (entered into force 26 January 1910), Art. 16; Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, 194 UNTS 139, 6 July 1906 (entered into force 9 August 1907), Art. 3, maintained in the 1929 Geneva Convention, above note 13. This prohibition was reaffirmed in GC I, Art. 15(1); GC II, Art. 18(1); GC IV, Art. 16(2); and AP II, Art. 8. See also ICRC Commentary on the APs, above note 23, Art. 34, para. 446; ICRC Customary Law Study, above note 11, Rule 113 and related practice, including United States, Military Tribunal at Nuremberg, *Pohl Case*, Judgment, 3 November 1947.

218 For the meaning of “pillage” in IHL, see e.g. ICRC Commentary on GC III, above note 23, Art. 18, para. 1838.

219 Hague Convention (IV) respecting the Laws and Customs of War on Land and Its Annex: Regulations concerning the Laws and Customs of War on Land, 205 CTS 277, 18 October 1907 (entered into force 26 January 1910) (1907 Hague Regulations), Art. 28; ICRC Customary Law Study, above note 11, Rule 52. See also ICRC Customary Law Study, above note 11, Rule 113, commentary.

220 This definition of absence of consent is based on the elements of the war crime of rape under the 1998 Rome Statute of the ICC: see ICC, *Elements of Crimes*, above note 178, Art. 8(2)(b)(xxii)(1). See, further, ICRC Commentary on GC IV, above note 12, Art. 33.

221 Rome Statute, above note 187, Art. 8(2)(b)(xvi), 8(2)(e)(v).

222 See e.g. Oxford Manual, above note 13, Art. 19: “it is forbidden to rob ... the dead lying on the field of battle”. See also *Concise Oxford English Dictionary*, above note 11, pp. 389, 1104, which defines “despoil” as to “steal valuable or attractive possessions from” and “plunder” (or pillage) as to “forcibly steal goods from, especially in time of war or civil disorder”.

223 G. Gaggioli, above note 19, p. 187.

224 ICRC Customary Law Study, above note 11, Rule 156, commentary, pp. 575–576, 578, 586–588, 590–592.

225 See also *ibid.*, Rules 151, 157, 158 and commentary. See also UN Human Rights Council, *Study on Best Practices*, above note 188, paras 68–69; UN Human Rights Council, *Report on Best Practices*, above note 188, paras 83–84.

cannibalism, desecration of bodies, taking body parts as trophies, stealing from the dead, exposing corpses to public display in order to humiliate or denigrate, burial in mass graves, preventing honourable burial and reburial, and the disrespect of religious practices in the treatment of corpses, have been prohibited and criminalized.<sup>226</sup> Such acts may also constitute prohibited mutilation, outrages upon personal dignity or pillage under IHL and amount to war crimes.

Parties to armed conflicts are prohibited from directly committing acts such as these, and they also have a due diligence obligation to protect against such acts by other actors. For instance, on the battlefield, parties must search for the dead and guard them in order to prevent their despoilation or any ill-treatment, and to enable respectful burial.<sup>227</sup>

## Laying the dead to rest: Rules on the final disposition of remains and their resting places

Once parties to conflicts have recovered the dead and collected all relevant information and their personal effects, IHL requires parties to respectfully dispose of their remains and to respect and mark graves.<sup>228</sup> These rules seek to preserve the dignity of the deceased and prevent them from going missing.<sup>229</sup> In particular, IAC treaty provisions address in detail the meaning and content of obligations on the final disposition of the deceased and on their resting places.<sup>230</sup> These will be addressed in the following four subsections, while corresponding NIAC obligations are addressed in the final subsection.

### *Respectful final disposition of the dead*

In IACs, parties must, first and foremost, ensure that all the dead – regardless of the party to which they belong – are honourably buried (or cremated), individually as

226 See ICRC Customary Law Study, above note 11, Rule 113, commentary and related practice, prohibiting “the mutilation or other maltreatment of the dead”; and GC IV, Art. 16(2), on the obligation to protect the dead against pillage and ill-treatment. See also ICTY, *Tadić*, above note 199, para. 748, noting that certain acts against dead bodies, including “cannibalism and the mutilation of, and the failure to bury, dead bodies”, have been punished as war crimes, and that certain acts against a dead body may fall within the notion of “inhumane acts” as a crime against humanity (but not in the case at hand). See, further, ICTY, *Brđanin*, above note 198, para. 1019; ICTR, *Niyitegeka*, above note 213, paras 462, 465–466; ICTR, *The Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44-A-T, Judgment and Sentence (Trial Chamber), 1 December 2003, paras 303, 316, 462–467, 934–936; ICTR, *Bagosora*, above note 177, paras 723–724, 728–730. See also United States, General Military Court at Dachau, *Schmid Case*, Judgment, 19 May 1947; UN War Crimes Commission, above note 215, pp. 151–152.

227 See, for example, New Zealand Manual, above note 192, para. 11.3.4.; Danish Ministry of Defence, *Military Manual on International Law Relevant to Danish Armed Forces in International Operations*, 2nd ed., Copenhagen, 2020, p. 271.1. See also ICRC Commentary on GC IV, above note 12, Art. 16.

228 See references in above note 51.

229 ICRC Commentary on GC I, above note 23, paras 1634–1635; ICRC Commentary on GC II, above note 46, paras 1810–1811; ICRC Commentary on GC III, above note 23, paras 4527–4528.

230 For more details, see ICRC Commentary on GC I, above note 23, Art. 17; ICRC Commentary on GC II, above note 46, Art. 20; ICRC Commentary on GC III, above note 23, Art. 120; 1958 Commentary on GC IV, above note 89, Art. 130; ICRC Commentary on the APs, above note 23, paras 1299, 1307.



far as circumstances permit and, if possible, according to the rites of their religion.<sup>231</sup> This applies to those who die at sea or on land.<sup>232</sup> Parties must also ensure the grouping of graves of members of the armed forces, if possible according to the deceased's nationality.<sup>233</sup> Generally, it is preferable to return remains so that families can lay their relatives to rest and mourn them according to their religious beliefs and practices.<sup>234</sup> Prior to burial or cremation of protected persons under GC I, II and III, a careful examination of the body is required.

The obligation to bury or cremate the dead individually necessitates a strict reading.<sup>235</sup> Collective graves must only be used when circumstances do not permit individual ones or, for PoWs and internees, if unavoidable circumstances require it.<sup>236</sup> Indeed, “[a] common grave conflicts with the sentiment of respect for the dead, yet, all too often, the dead are ‘thrown pell-mell in a common grave’”.<sup>237</sup> Individual graves (or individual cremations) are also preferable for practical reasons; they make the eventual return of remains to families possible and facilitate subsequent identification efforts and criminal accountability processes. Today, the ability to temporarily conserve bodies will likely render collective burials unnecessary; it is only in circumstances not allowing individual burial that “burial in a collective grave is permitted

231 GC I, Art. 17(1), 17(3); GC II, Art. 20; GC III, Art. 120(4)–(5); GC IV, Art. 130(1)–(2); AP I, Art. 34(1); ICRC Customary Law Study, above note 11, Rule 115 and commentary. See also ICRC Commentary on GC II, above note 46, para. 1824 (“Although not stated in the article, the burial must be an honourable one, if possible, according to the rites of the religion to which the deceased belonged”); ICRC Commentary on GC III, above note 23, paras 4573–4574 (referring to the Article 120 obligation to ensure the actual burial or cremation of the dead); 1958 Commentary on GC IV, above note 89, pp. 506–507; ICRC Commentary on the APs, above note 23, paras 1307, 1310. See, further, ICRC Guiding Principles, above note 2, Principle 18.

232 GC II, Art. 20. See ICRC Commentary on GC II, above note 46, paras 1825–1827: burial at sea should be the exception as it makes it “virtually impossible” to recover human remains and confirm identity, and makes it difficult for families to access burial places. See also M. Bothe, K. Partsch and W. Solf, above note 23, p. 207, on Article 34 of AP I and burials at sea. For a legal analysis of recent cases, see, further, D. Gavshon, above note 46, paras 37–40; G. Gaggioli, above note 19, p. 190: “It is submitted that even if security concerns may be taken into account in assessing the most suitable type of disposal of human remains, these concerns cannot exempt belligerent parties from the general duty of a respectful and dignified burial.”

233 GC I, Art. 17(3); GC II, Art. 20(2); GC III, Art. 120(4). See also ICRC Commentary on GC I, above note 23, paras 1691–1693; ICRC Commentary on GC III, above note 23, paras 4611–4615.

234 ICRC Commentary on GC I, above note 23, paras 1644–1645, 1654, 1679–1680; ICRC Commentary on GC II, above note 46, paras 1822–1823 (“subject to the capabilities of the relevant ship, the possibility of landing and operational requirements”), 1832–1833; ICRC Commentary on GC III, above note 23, paras 4626–4627, 4598. See also ICRC, above note 29, pp. 36, 57–58, 134; ICRC Guiding Principles, above note 2, Principles 5, 20.

235 ICRC Commentary on GC I, above note 23, para. 1650–1651; ICRC Commentary on GC III, above note 23, paras 4619–4620.

236 GC I, Art. 17(1); GC II, Art. 20(1); GC III, Art. 120(5); GC IV, Art. 130(2); ICRC Customary Law Study, above note 11, Rule 115 and commentary. For further details, see ICRC Commentary on GC I, above note 23, paras 1649–1650, 1652; ICRC Commentary on GC II, above note 23, paras 1829–1830; ICRC Commentary on GC III, above note 23, paras 4616–4619, 4621 (noting that Article 120 also applies to cremation); 1958 Commentary on GC IV, above note 89, p. 507.

237 ICRC Commentary on GC I, above note 23, para. 1648; ICRC Commentary on GC II, above note 46, para. 1829; ICRC Commentary on GC III, above note 23, para. 4616.

as it is preferable to the deceased being left on the battlefield”.<sup>238</sup> In these exceptional cases, certain minimum – and absolute – requirements need to be respected; parties cannot simply dump remains in mass graves.<sup>239</sup>

To comply with the duty of honourable burial, parties must respect the deceased’s body, the burial site and the funerary ceremony; this has positive and negative components.<sup>240</sup> Prohibited behaviours in this regard include deliberate contamination of and offensive acts on the site and burying the dead with potentially offensive items.<sup>241</sup>

### *Burial and cremation: Equivalents in IHL?*

While the Geneva Conventions’ prescriptions regarding the dead refer to both burials and cremation, burials are clearly the preferred option and cremation an exceptional measure.<sup>242</sup> Under IHL, cremations are only permissible for “imperative reasons of hygiene” and for reasons related to the deceased’s religion or in accordance with the individual’s express wishes.<sup>243</sup> In practice, the first exception rarely applies; today we know that dead bodies pose far lesser public health risks than what was believed in 1949.<sup>244</sup> In the limited situations where the religion of an individual favours cremation over burial, cremation is possible, but the final decision rests on the individual’s wishes and those of their families.<sup>245</sup> Finally, while cremation in

238 ICRC Commentary on GC I, above note 23, para. 1650; ICRC Commentary on GC III, above note 23, para. 4619.

239 ICRC Commentary on GC I, above note 23, para. 1651; ICRC Commentary on GC II, above note 46, para. 1829; ICRC Commentary on GC III, above note 23, para. 4620. See also ICRC, *Operational Best Practices Regarding the Management of Human Remains and Information on the Dead by Non-Specialists*, Geneva, November 2004, Annexes E, H; ICRC Guiding Principles, above note 2, Principle 17.

240 ICRC Commentary on GC I, above note 23, paras 1683–1684; ICRC Commentary on GC II, above note 46, paras 1809–1810; ICRC Commentary on GC III, above note 23, paras 4597, 4599.

241 ICRC Commentary on GC I, above note 23, para. 1684; ICRC Commentary on GC III, above note 23, para. 4599.

242 GC I, Art. 17(2); GC III, Art. 120(5); GC IV, Art. 130(2); ICRC Customary Law Study, above note 11, Rule 115 and commentary. For further details, see ICRC Commentary on GC I, above note 23, paras 1647, 1652, 1675–1676, 1679–1681; ICRC Commentary on GC III, above note 23, paras 4576, 4622–4623; 1958 Commentary on GC IV, above note 89, p. 507; ICRC Commentary on the APs, above note 23, para. 1310.

243 GC I, Art. 17(2); GC III, Art. 120(5); GC IV, Art. 130(2); ICRC Customary Law Study, above note 11, Rule 115 and commentary. On the third exceptional situation in Article 17 of GC I, see ICRC Commentary on GC I, above note 23, para. 1680. At sea, it is implicit in Article 20(1) of GC II that cremation cannot take place: see ICRC Commentary on GC II, above note 46, para. 1828.

244 ICRC Commentary on GC I, above note 23, para. 1678; ICRC Commentary on GC III, above note 23, para. 4625: for instance, human bodies may create a serious health hazard if “they are polluting sources of drinking-water with faecal matter, or are infected with plague or typhus, in which case they may be infested with the fleas or lice that spread these diseases”. See, further, Pan American Health Organization, World Health Organization, ICRC and International Federation of Red Cross and Red Crescent Societies, *Management of Dead Bodies after Disasters: A Field Manual for First Responders*, 2nd ed., Geneva, 2016, pp. 7–9; ICRC Guiding Principles, above note 2, Principle 11.

245 ICRC Commentary on GC I, above note 23, para. 1679; ICRC Commentary on GC III, above note 23, para. 4626. For an overview of religions and burial or cremation preferences, see S. Froidevaux, above note 3, pp. 800–801.

accordance with the express wishes of the deceased person may be lawful, unidentified persons must not be cremated.<sup>246</sup> In exceptional cases of cremation, to ensure that the deceased can be identified and do not become missing persons, death certificates or authenticated lists of the dead must include the circumstances surrounding cremation and the reasons for it.<sup>247</sup> Beyond this, in any case, IHL rules dealing with the remains of the deceased apply, *mutatis mutandis*, to their ashes.<sup>248</sup>

### *Obligations to respect, mark and maintain graves*

Flowing from the obligation to respect the dead, IHL requires that parties to IACs ensure respect for graves.<sup>249</sup> This obligation is linked with the obligation of the parties to set up a GRS<sup>250</sup> and has negative and positive elements. Parties must not disrespect graves, prohibiting acts including “vandalizing or removing headstones, razing or dismantling gravesites, and disinterring bodies” (unless IHL exceptionally permits exhumation), and they must also ensure respect by others.<sup>251</sup> Moreover, IHL prohibits the destruction (or seizure) of enemy property unless required by imperative military necessity; this may also amount to a war crime.<sup>252</sup> Such destruction has taken various forms, including the bulldozing of cemeteries. Meanwhile, in the context of attacks, any damage to or destruction of graves or of other locations containing human remains is governed by the conduct of hostilities rules, including the principles of distinction, proportionality and precautions.

Graves and other locations containing human remains are “normally dedicated to civilian purposes”.<sup>253</sup> As such, they are protected against direct attacks,

246 ICRC Commentary on GC I, above note 23, para. 1676; ICRC Commentary on GC III, above note 23, paras 4623, 4627. See also ICRC Guiding Principles, above note 2, Principle 17.

247 GC I, Art. 17(2); GC II, Art. 20(2); GC III, Art. 120(5); GC IV, Art. 130(2).

248 GC I, Art. 17(3); GC II, Art. 20(2); GC III, Art. 120(6); GC IV Art. 130(2). GC I and II require the GRS to keep ashes, while GC IV requires the detaining authorities to retain them. See also ICRC Commentary on GC III, above note 23, paras 1710–1712; ICRC Commentary on GC II, above note 46, paras 4640–4642; ICRC Commentary on GC III, above note 23, paras 1697, 1710–1712; 1958 Commentary on GC IV, above note 89, p. 507; ICRC Commentary on the APs, above note 23, para. 1310.

249 GC I, Art. 17(3); GC III, Art. 120(4); GC IV, Art. 130(1); AP I, Art. 34(1); ICRC Customary Law Study, above note 11, Rule 115 and related practice. See also ICRC Commentary on GC I, above note 23, paras 1633–1634, 1684, 1688–1690, 1694; ICRC Commentary on GC II, above note 46, paras 1810, 1820 and references (“Although not strictly a case of ‘burial’, sunken warships and other ships that sank with their crews on board constitute war graves. These graves must therefore be respected”); ICRC Commentary on GC III, above note 23, paras 4596, 4604–4607, 4637, 4639; ICRC Commentary on the APs, above note 23, paras 1296–1297, 1306, 1308–1310, 1355.

250 As noted in the above section on “National Information Bureaux and Official Graves Registration Services”, the GRS also has functions pertaining to the identification of the dead before their final disposition, and to the possible return of human remains to their families (including by allowing exhumations in certain exceptional circumstances).

251 ICRC Commentary on GC I, above note 23, paras 1688–1690; ICRC Commentary on GC III, above note 23, paras 4604–4606; 1958 Commentary on GC IV, above note 89, p. 507.

252 1907 Hague Regulations, above note 219, Art. 23(g); GC I, Art. 50; GC II, Art. 51; GC IV, Arts 53, 147; Rome Statute, above note 187, Art. 8(2)(a)(iv), 8(2)(b)(xiii). See also ICRC Customary Law Study, above note 11, Rule 51 applicable in occupied territory.

253 ICRC Customary Law Study, above note 11, Rule 10 and commentary, citing Article 52(3) of AP I: “in case of doubt whether an object which is normally dedicated to civilian purposes, such as a *place of worship*, ...

unless and for such time as they become military objectives.<sup>254</sup> The mere presence within such sites of combatants or military objectives does not, alone, turn them, or parts of them, into military objectives. Even when these sites are used for military purposes in a manner that would turn certain parts of them into military objectives, warring parties must respect all conduct of hostilities rules and limit their attacks to only those parts which have become military objectives. In the conduct of military operations, constant care must be taken to spare civilian objects, and parties must take all feasible precautions to avoid, and in any event to minimize, incidental damage to locations holding human remains.<sup>255</sup> Attacks expected to cause disproportionate damage to these, alone or in combination with civilian harm and damage to other civilian objects, are prohibited.<sup>256</sup> Additionally, parties must take all feasible precautions to protect such sites under their control against the dangers resulting from military operations, including by avoiding – to the extent feasible – using such locations for military purposes.<sup>257</sup> Under the Rome Statute, “[i]ntentionally directing attacks” against civilian objects, including cemeteries or other locations holding human remains, and “[i]ntentionally launching an attack” knowing it will cause incidental damage to civilian objects “which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated” are war crimes.<sup>258</sup>

Under IHL, States and parties to armed conflicts are obliged to respect and protect cultural property, with varying legal protections depending on the property in question. Accordingly, if graves or other locations containing human remains qualify as cultural property, the damage that can be inflicted on them by warring parties would be further limited. Already in the seventeenth century, Hugo Grotius referred to the express prohibition of attacks against “things which have been devoted to sacred uses”, including “structures erected in honour of the dead”.<sup>259</sup> For States parties to AP I, directing acts of hostility against historic monuments or places of worship (including churches holding human remains) constituting the cultural or spiritual heritage of peoples, or using such sites in support of the military effort, is prohibited.<sup>260</sup> Under customary IHL, parties must take special care in military operations to avoid damage to, *inter alia*, buildings dedicated to religion and historic monuments, unless they are military objectives.<sup>261</sup> Furthermore, property of great importance to the cultural heritage of every people must not be directly attacked or used for purposes likely to expose it to destruction or damage, unless imperatively

is being used to make an effective contribution to military action, it shall be presumed not to be so used” (emphasis added).

254 AP I, Art. 48; ICRC Customary Law Study, above note 11, Rule 7.

255 AP I, Art. 57(1); ICRC Customary Law Study, above note 11, Rule 15.

256 AP I, Arts 51(5), 57; ICRC Customary Law Study, above note 11, Rule 14.

257 AP I, Art. 58(c); ICRC Customary Law Study, above note 11, Rule 22.

258 Rome Statute, above note 187, Art. 8(2)(b)(ii), 8(2)(b)(iv), 8(2)(b)(ix).

259 Hugo Grotius, *De jure belli ac pacis libri tres*, trans. Francis W. Kelsey, Classics of International Law, Carnegie, Washington, DC, 1925 (first published 1646), Book II, Chap. XII, p. 753.

260 AP I, Art. 53.

261 ICRC Customary Law Study, above note 11, Rule 38(A).

required by military necessity.<sup>262</sup> In addition, any form of theft, pillage or misappropriation of such property is prohibited, as are any acts of vandalism directed against it.<sup>263</sup>

Finally, another component of respect for graves expressly addressed in the Geneva Conventions and AP I is the obligation of parties to mark and properly maintain graves so that they can always be found.<sup>264</sup> This requires placing and maintaining name plates on graves, which is necessary for any future exhumation and for families to access graves, even long after the end of the conflict.<sup>265</sup> Although these provisions do not indicate the duration of the obligation to maintain graves, Article 34 of AP I establishes a procedure for this, which has been employed in practice regardless of the Protocol's applicability.<sup>266</sup>

Beyond the protection of locations containing human remains, as seen above, IHL protects the deceased's dignity as such and contains obligations to ensure that they are respected. Attacks against, or the destruction of, such sites would, beyond the damage to the sites themselves, have nefarious effects on the human remains contained within them, which would once again be disturbed and become unaccounted for, unleashing a fresh wave of suffering for families.

### *The legality and legitimacy of exhumations*

Under IHL, exhumations are generally prohibited, except to return remains to the deceased's home country and to their families or if justified by "overriding public necessity, including cases of medical and investigative necessity", but always ensuring respect for the dead.<sup>267</sup> As explained by a co-sponsor for the amendment resulting in Article 34(4) of AP I, the drafters "sought to strike a balance between the general principle of respect for graves and the need to exhume" exceptionally, where there are legitimate grounds for it.<sup>268</sup>

262 *Ibid.*, Rules 38(B), 39.

263 *Ibid.*, Rule 40.

264 GC I, Art. 17(3); GC II, Art. 20(2); GC III, Art. 120(4); GC IV, Art. 130(1); AP I, Art. 34; ICRC Customary Law Study, above note 11, Rule 115 and commentary. See also ICRC Commentary on GC I, above note 23, paras 1694–1698; ICRC Commentary on GC III, above note 23, paras 4607–4610; ICRC Commentary on the APs, above note 23, paras 1296–1297, 1305, 1306, 1308, 1311, 1325–1328, 1347–1353. For relevant State practice, see also ICRC Customary Law Study, above note 11, Rule 115.

265 ICRC Commentary on GC I, above note 23, paras 1695, 1698; ICRC Commentary on GC III, above note 23, paras 4608–4610; 1958 Commentary on GC IV, above note 89, pp. 506–507; ICRC Commentary on the APs, above note 23, paras 1203, 1216. For relevant State practice, see also ICRC Customary Law Study, above note 11, Rule 116.

266 For further detail, see ICRC Commentary on the APs, above note 23, paras 1312–1320, 1325–1328, 1347–1353. See also ICRC Commentary on GC I, above note 23, para. 1698; ICRC Commentary on GC III, above note 23, para. 4610; M. Bothe, K. Partsch and W. Solf, above note 23, pp. 203–207. See, further, D. Gavashon, above note 46, paras 48–50; A. Petrig, above note 2, pp. 359–360.

267 AP I, Art. 34(4), which also sets out other obligations in cases of exhumation. See also ICRC Commentary on the APs, above note 23, paras 1334, 1357, 1359, 1361–1362. This does not, for instance, limit the work of the GRS to exhuming remains in temporary graves and giving the dead a final resting place: see the above section on "National Information Bureaux and Official Graves Registration Services".

268 See e.g. statement of New Zealand in *Official Records of the Diplomatic Conference*, Vol. 11, CDDH/II/SR.20, Federal Political Department, Bern, 1978, p. 190, para. 9. See also A. Petrig, above note 2, pp. 360–361.

Legitimate grounds of “overriding public necessity” may include cases where exhumations are necessary to allow identification, determine the cause of death or investigate serious IHL violations, as well as for public health and sanitation reasons or in case of flood threats in cemeteries.<sup>269</sup> Yet another reason is enabling recovery and decent burial, which gives effect to IHL obligations on respecting the deceased; this could include regrouping graves in certain cases.<sup>270</sup> Exhumations may also be the only way to identify the deceased and comply with their families’ right to know, which could also militate for exhumations.<sup>271</sup> Ideally, the families’ wishes, including those based on religious and cultural practices and beliefs, should be taken into account, including in the initial decision, and taking particular care to ensure that they are not being manipulated or further harmed.<sup>272</sup>

### *Non-international armed conflicts: Respecting the dead and their graves*

In NIACs, IHL obliges parties to dispose of the dead respectfully and to respect and properly maintain their graves. AP II explicitly requires the decent final disposition of the dead,<sup>273</sup> and it is also “likely that further detailed rules supporting the requirement of decent disposal of the dead and respect and proper maintenance of their gravesites are contained in domestic legislation”.<sup>274</sup> Although NIAC provisions do not explicitly refer to a prior careful examination of the deceased, a forensic examination is essential to confirm death as well as to establish the identity of the deceased as required by IHL.<sup>275</sup> Furthermore, State practice shows that measures envisaged

269 ICRC Commentary on the APs, above note 23, paras 1358–1360; M. Bothe, K. Partsch and W. Solf, above note 23, p. 206. However, the exhumation of bodies from mass graves and their reburial in another location has also been carried out to conceal evidence of crimes: see e.g. ICTY, *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T, Judgment (Trial Chamber I, Section A), 17 January 2005, para. 382.

270 ICRC Commentary on the APs, above note 23, paras 1358–1360; M. Bothe, K. Partsch and W. Solf, above note 23, p. 206, citing the explanation of the Rapporteur of the Working Group which drafted the AP I provision. See also ICRC Commentary on GC I, above note 23, paras 1648, 1651, 1691–1692, 1695; ICRC Commentary on GC III, above note 23, paras 4584, 4588, 4608, 4612–4613, 4616, 4620, 4632.

271 ICRC Commentary on the APs, above note 23, para. 1358. See also IACtHR, *Massacres of El Mozote*, above note 87, paras 262, 331–334, finding that the State’s delay and obstruction of exhumations, and its failure to identify and return human remains, interfered with the families’ ability to carry out mourning rituals and constituted a breach of the right to know the truth, among other fundamental rights. See, further, M. Sassòli and M.-L. Tougas, above note 18, p. 743.

272 ICRC Guiding Principles, above note 2, Principle 20; M. Sassòli and M.-L. Tougas, above note 18, p. 743; A. Petrig, above note 2, pp. 361–362.

273 G. Gaggioli, above note 19, p. 189. See also e.g. IACtHR, *Rodríguez Vera*, above note 60, para. 327; IACtHR, *Nadege Dorzema*, above note 67, para. 117.

274 ICRC Customary Law Study, above note 11, Rule 115, commentary.

275 See *ibid.*, Rule 116, commentary and related practice, including human rights jurisprudence that has required examination of the dead prior to disposal so that they can be identified and the circumstances of their death established. It is also likely that such requirements are part of the legislation of numerous States. See e.g. Argentine Court of Appeal, *Military Juntas Case*, Judgment, 9 December 1985, para. 563; Colombian Council of State, *Case No. 10941*, Judgment, 6 September 1995, pp. 37–42.



to identify the dead are often prescribed by domestic law and include “the recording of autopsies, the establishment of death certificates” and “exhumation combined with the application of forensic methods, including DNA testing”.<sup>276</sup> As addressed in the above section on “Complementing IHL’s Protections for the Dead and Their Families through International Human Rights Law”, IHRL also imposes obligations on States related to the dead, including, in particular, measures to identify the dead and investigate the cause of death, in order to protect the right to life.

Moreover, although common Article 3 and AP II do not expressly require the marking of graves or the recording of their location, customary IHL obliges parties to record all available information prior to final disposition of the dead and to mark graves’ locations.<sup>277</sup> The Commentary to AP II specifies that the dead are “entitled to be paid their last respects, i.e., they must be decently buried ... after a religious service, if required”.<sup>278</sup> Marking graves and recording their location are also important to give effect to the right to know.<sup>279</sup>

Ensuring that graves are marked and that information on their location is available is also a fundamental prerequisite for compliance with other IHL obligations of parties to NIACs, including those on identifying the dead and informing families.<sup>280</sup> It can also facilitate families’ access to graves and the potential return of remains. In turn, obligations to respect graves and to mark and maintain them flow from the obligation to respect the dead and to preserve their dignity.<sup>281</sup> Importantly, the rules on the conduct of hostilities, on destruction of enemy property unless required by imperative military necessity, and on cultural property also apply in NIACs and can serve to protect locations containing human remains.<sup>282</sup> As Sivakumaran notes, “[r]espect for graves can be considered akin to the prohibition on despoliation of the dead, albeit a broader obligation, and would prohibit the digging up of graves in order to hide casualties and the flattening of grave sites”.<sup>283</sup> Finally, the principle that cremations and exhumations remain exceptional also flows from the obligation to respect the dead and should be applied in NIACs. Indeed, as noted in the above section, there are various legal and humanitarian objections to cremation; notably, it could prevent future identification, potentially erase crimes – as happened in the Second World War<sup>284</sup> – and clash with some religious and

276 ICRC Customary Law Study, above note 11, Rule 116, commentary.

277 *Ibid.*, Rule 116 and related practice.

278 ICRC Commentary on the APs, above note 23, para. 4656. See also D. Gavshon, above note 46, p. 293, para. 54; S. Sivakumaran, above note 101, pp. 281–282.

279 ICRC Commentary on the APs, above note 23, para. 4657.

280 ICRC Customary Law Study, above note 11, Rules 116–117.

281 In practice, however, the ability of NSAGs to maintain graves – generally a long-term endeavour – may be contingent on a certain level of territorial control. See, for instance, A. Petrig, above note 2, pp. 357–358.

282 See, notably, ICRC Customary Law Study, above note 11, Rules 7, 10, 14–15, 22, 38–40, 50; Rome Statute, above note 187, Art. 8(2)(e)(iv), 8(2)(e)(xii).

283 See also S. Sivakumaran, above note 101, p. 282.

284 See e.g. British Military Court, Hamburg, *United Kingdom v. Max Wielen and Others (Stalag Luft III Case)*, 1 July–3 September 1947, in UN War Crimes Commission, *Law Reports of Trials of War Criminals*, Vol. 11, London, 1949, p. 36.

cultural practices and beliefs.<sup>285</sup> In any case, should the deceased's family wish to cremate their relative, they can still do so afterwards.

Ultimately, although the prescriptions regarding burials and respect for, marking and maintenance of graves are far less detailed in NIACs, and the mechanisms and processes to be put in place are left to the parties' discretion, the core legal protection is largely equivalent to that guaranteed in IACs. Moreover, when looking at the IAC treaty provisions on this, "[i]t is likely that some of these requirements also apply in non-international armed conflicts on the basis of national law".<sup>286</sup> In any case, "respecting personal dignity should be the guiding principle for the treatment of dead bodies in a NIAC in the absence of any other more prescriptive rules in IHL".<sup>287</sup>

## The return of the dead to their families

When there is no body to bury, there appears to be a universal traumatizing effect.<sup>288</sup>

Returning the bodies of those who have died in the context of war is a humanitarian imperative with significant importance in international law, forensic science and religious studies.<sup>289</sup>

## IHL in international armed conflicts on return

In IACs, relevant treaty provisions are broadly framed, emphasizing the need for agreements between parties to facilitate the return of the deceased to their home country or their families upon their request. These rules distinguish between those who die due to hostilities and those who die in detention.

The return of military personnel who have died in areas of military operations, either on land or at sea, is not the object of a detailed procedure in the Geneva Conventions, which refer only to their possible transportation to their home country and eventually to their families.<sup>290</sup> Returning the deceased is therefore dependent

285 See e.g. ICRC Guiding Principles, above note 2, Principle 17.

286 ICRC Customary Law Study, above note 11, Rule 15, Interpretation. See also G. Gaggioli, above note 19, pp. 189–190, citing examples of State practice, including the *Jenin Mortal Remains* case, above note 90, and Colombian Council of State, *Case No. 10941*, above note 275, p. 37–42.

287 D. Gavshon, above note 46, para. 52.

288 Pauline Boss, "Families of the Missing: Psychosocial Effects and Therapeutic Approaches", *International Review of the Red Cross*, Vol. 99, No. 905, 2017, p. 524.

289 See e.g. ICRC, above note 28; ICRC Guiding Principles, above note 2. Several authors have explored the issue of the return of dead bodies to their families, emphasizing its legal, ethical, religious and cultural dimensions. See, for instance, Ahmed Al-Dawoody, "Management of the Dead from the Islamic Law and International Humanitarian Law Perspectives: Considerations for Humanitarian Forensics", *International Review of the Red Cross*, Vol. 99, No. 905, 2017, pp. 764–765; Oran Finegan, "Dignity in Death: Remembrance and the Voice of the Dead", *Humanitarian Law and Policy Blog*, 1 November 2017, available at: <https://blogs.icrc.org/law-and-policy/2017/11/01/dignity-in-death-remembrance-and-the-voice-of-the-dead/>.

290 GC I, Art. 17(3); GC II, Art. 20(2).

on other GC I and GC II obligations.<sup>291</sup> In this regard, parties must take all possible measures without delay to search for the dead, record information on them and ensure a careful examination prior to burial or cremation, refraining in some cases from burial in order to facilitate their return.<sup>292</sup> Indeed, the obligation to ensure honourable burial “can be satisfied in different ways”, including by returning bodies to their families for burial or cremation.<sup>293</sup> This ensures that the deceased can be laid to rest in accordance with their religious beliefs and customs and allows families to properly mourn their loved ones.<sup>294</sup> When parties make such decisions, information regarding the individual’s return should be transmitted to the ICRC’s CTA.

Where civilians are killed due to hostilities or occupation, GC IV does not address the return of their remains to their families. It is thus essential to rely on Article 27 of GC IV, AP I, and relevant rules of customary IHL. Article 27(1) of GC IV affirms the rights of protected persons: their religious practices must be respected, including by returning the remains of the deceased to their families in order to carry out burial rites in accordance with their religious practices.<sup>295</sup> Article 34 of AP I extends protection to those who would not receive more favourable treatment under the Geneva Conventions, and develops obligations on the return of the deceased.<sup>296</sup> It specifically requires High Contracting Parties in whose territory graves or human remains are found to conclude special agreements to facilitate the return of those remains, along with personal effects, to the home country<sup>297</sup> upon its request or, unless that country objects, upon the request of the deceased’s relatives.<sup>298</sup> This procedure serves not only the deceased covered therein but also those covered by the Geneva Conventions (combatants and deceased internees),<sup>299</sup> which do not provide details on this. Lastly, AP I also establishes a procedure to follow in the absence of such agreements.<sup>300</sup>

In any case, customary IHL establishes the obligation for all parties to an IAC to endeavour to facilitate the return of the deceased upon request of the party

291 A. Petrig, above note 19, p. 346. See also Frédéric Mégret and Chloe Swinden, “Returning the ‘Fallen Terrorist’ for Burial in Non-International Armed Conflict: The Rights of the Deceased, the Obligations of the State and the Problem of Collective Punishment”, *Journal of International Humanitarian Legal Studies*, Vol. 10, No. 2, 2019, p. 344.

292 See the links between the obligation to return and Articles 15–17 of GC I and 18–20 of GC II.

293 ICRC Commentary on GC I, above note 23, Art. 17, para. 1644.

294 *Ibid.*, Art. 17, para. 1645.

295 See ICRC Commentary on GC IV, above note 12, Art. 27.

296 ICRC Commentary on the APs, above note 23, paras 1298–1302: those covered are persons who have died for reasons related to occupation such as victims of armed conflict, particularly of bombardments; persons who have died in detention resulting from occupation or hostilities (except for internees); and non-nationals of the country where they have died as a result of hostilities.

297 *Ibid.*, paras 1337–1345.

298 As La Vaccara observes, the absence of any requirement in Article 34 to justify the home country’s objection or to explain the exercise of a right of veto means that families may see their requests denied without any stated reason. In this regard, the right of families to know the fate of their relatives is of paramount importance. A. La Vaccara, above note 40, p. 89.

299 ICRC Commentary on the APs, above note 23, Art. 34, para. 1330.

300 AP I, Art. 34(3). For more details, see A. Petrig, above note 19, p. 353.

to which they belonged or upon request of their families; the personal effects of the deceased must also be returned.<sup>301</sup> This rule, which imposes an obligation of means, is reflective of existing provisions on the dead in the Geneva Conventions and AP I;<sup>302</sup> it applies to all those who die in relation to armed conflicts.

In relation to PoWs and internees who die in captivity, the Geneva Conventions offer limited guidance on the potential return of their remains. For PoWs, GC III only refers to the obligation of the party in control of the territory to care for graves and for the records of any subsequent moves of the deceased,<sup>303</sup> including return to their home country. In relation to internees, the GC IV obligation to ensure burial may include facilitating return to the deceased's country of origin or residence. Where cremation occurs, Article 130 of GC IV requires that the ashes be transferred to the next of kin upon request and as soon as possible. While GC III does not mirror this requirement, a consistent humanitarian approach would suggest that similar consideration be given to the ashes of PoWs, with due regard for the wishes of their families by the home country.<sup>304</sup>

As outlined above, beyond the (sometimes vague and limited) guidance provided by treaty and customary IHL on the return of the deceased, State practice in IACs has consistently demonstrated a commitment to facilitating return. For example, military manuals foresee the return of human remains to their home country and their families,<sup>305</sup> and some have even prioritized return at the end of an armed conflict.<sup>306</sup> Based on its mandate, the ICRC has also acted as a neutral intermediary between (former) parties to IACs in order to facilitate the transfer and return of human remains from both sides.<sup>307</sup>

301 See also G. Gaggioli, above note 19, p. 188, noting that, as this rule imposes an obligation of means, “[i]t might be considered as too soft, but it has the merit of being realistic and of requiring States to adopt a proactive and positive stance with respect to the return of human remains and of outlawing measures constituting unnecessary impediments to such returns”.

302 ICRC Customary Law Study, above note 11, Rule 114.

303 Note, however, that Article 120(6) refers to the party controlling the territory while other paragraphs in the provision refer to the Detaining Power. For more details on this distinction, see ICRC Commentary on GC III, above note 23, Art. 120, para. 4637: “Often, the detaining authorities and the Power controlling the territory will be one and the same. This will be true where the prisoner of war dies while in captivity in the adverse State and is buried there. Where the two entities are not coterminous, the facts will determine the matter. For example, the obligation will vest in the detaining authorities until such time as they hand over control of the territory to another State, at which point the obligation will vest in the latter.” See also D. Gavshon, above note 46, para. 43, noting that, although this does not preclude returning deceased PoWs to their home country, it highlights the absence of discussion regarding the circumstances under which such transfers may take place.

304 ICRC Commentary on GC III, above note 23, Art. 120, para. 4642.

305 ICRC Customary Law Study, above note 11, Rule 114, practice; Netherlands Manual, above note 173; Spain, Ministry of Defense, Army, *Law of Armed Conflicts Manual*, Vol. 3, 2007.

306 ICRC Customary Law Study, above note 11, Rule 114, practice; Brazil, Ministry of Defence, *Manual on the Use of the International Law of Armed Conflict (LOAC) in the Armed Forces*, 2011; Croatia, Ministry of Defence, *Compendium “Law of Armed Conflicts”*, 1991.

307 ICRC, “Russia–Ukraine: ICRC Supports Large-Scale Repatriation of Human Remains”, news release, 17 June 2025, available at: [www.icrc.org/en/news-release/russia-ukraine-icrc-supports-large-scale-repatriation-human-remains](https://www.icrc.org/en/news-release/russia-ukraine-icrc-supports-large-scale-repatriation-human-remains); ICRC, “Iraq: For Families of Missing Persons, the Search Continues. Every Missing Person Deserves to Be Found”, 30 August 2024, available at: [www.icrc.org/en/news-release/iraq-](https://www.icrc.org/en/news-release/iraq-)

## IHL in non-international armed conflicts on return

In the context of NIACs, no treaty provisions address the return of remains or of the deceased's personal effects, although AP II does impose an obligation for parties to take all possible measures without delay to search for the dead.<sup>308</sup> Although Rule 114 of the ICRC Customary Law Study only applies in IACs, its commentary adds that there is “a growing trend towards recognition of the obligation of parties to a conflict to facilitate the return of the remains of the dead to their families upon their request”.<sup>309</sup> Although this is a gap in the law, other IHL obligations need to be considered. For instance, returning the deceased is in line with the obligation of parties to respect family life as far as possible and with families' right to know.<sup>310</sup> Moreover, different resolutions of the International Conference of the Red Cross and Red Crescent and the UN recognize the importance of returning the bodies to families.<sup>311</sup>

In the absence of a clear-cut legal obligation, one must also look to practice, which shows that States and NSAGs have taken various measures in this regard. This has occurred during active hostilities, in the aftermath of hostilities or in post-conflict settings. For example, States and (former) parties to armed conflict have taken measures necessary to return bodies to their families,<sup>312</sup> while some NSAGs have also returned bodies to their families or allowed humanitarian organizations like the ICRC to facilitate such returns.<sup>313</sup> In this vein, State practice supports the “growing trend” mentioned above.<sup>314</sup>

Whether in the context of IACs or NIACs, forensic practice and standards, which recognize the need for authorities to take all appropriate measures to return the remains and the belongings of the deceased under dignified conditions and in

families-missing-persons-search-continues-every-missing-person-deserves-be-found. In 2023, under the auspices of the ICRC, the mechanism managed to recover 111 sets of human remains which were handed over by Iraq to Iran, and thirteen sets of human remains handed over by Iran to Iraq from the 1980–88 Iran–Iraq conflict. In 2020, the ICRC facilitated the retrieval and exchange of human remains in Armenia–Azerbaijan, resulting in the recovery of more than 1,700 sets of human remains; see ICRC, “Exchanging Human Remains, Armenia and Azerbaijan: 2020”, *IHL in Action: Respect for the Law on the Battlefield*, available at: <https://ihl-in-action.icrc.org/case-study/armeniaazerbaijan-exchange-remains-dead>.

308 AP II, Art. 8.

309 ICRC Customary Law Study, above note 11, Rule 114, commentary.

310 See the above section on “Dignity of the Dead, Families and the Right to Know: The Backbone of IHL Obligations”, and ICRC Challenges Report 2024, above note 7, p. 27.

311 See e.g. 22nd International Conference of the Red Cross and Red Crescent (22nd International Conference), Res. V, “The Missing and Dead in Armed Conflicts”, Tehran, 1973; UNSC Res. 2474, above note 38, op. paras 2, 7; UNGA Res. 75/184, 28 December 2020, op. para. 11.

312 For examples of practice, see ICRC Customary Law Study, above note 11, Rule 114, practice. See also Colombian Medico-Legal Institution, *Standards for the Search of Missing Persons*, March 2005, recognizing that the team involved in the forensic process must incorporate a rights-based approach, as well as gender and ethnic diversity perspectives, and take into account the family, social, cultural, economic and political context in order to ensure the dignified return of the dead.

313 ICRC, *Detention by Non-State Armed Groups: Obligations under International Humanitarian Law and Examples of How to Implement Them*, Geneva, September 2023, p. 47.

314 ICRC Customary Law Study, above note 11, Rule 114, commentary.

accordance with the wishes of their families, also need to be considered.<sup>315</sup> The development of such forensic practice and standards also influences the way in which States and parties to conflicts commit to the humanitarian imperative of returning the deceased.

## IHRL on return

Human rights law complements the protections afforded by IHL concerning the deceased, including in relation to the return of their remains to their families. The ICPPED explicitly requires States Parties to “take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and *return* their remains”.<sup>316</sup> In 2019, the Committee on Enforced Disappearances issued its *Guiding Principles for the Search for Disappeared Persons*, which recognize return as an integral part of the search and integrate it in several principles.<sup>317</sup> Moreover, the UN Human Rights Committee (HRC) has also affirmed that the “[r]elatives of individuals deprived of their life by the State must be able to receive the remains, if they so wish”.<sup>318</sup>

The return of the deceased to their families has also been analyzed by regional courts. The European Court of Human Rights (ECtHR) has dealt with this issue from various perspectives. It has, for instance, considered the return of the deceased through the rights of their families, including protection from inhuman or degrading treatment<sup>319</sup> and the right to private and family life.<sup>320</sup> It has also specifically recognized that actions impeding the return of bodies to families, like excessive delay in restituting a body or refusal to transfer ashes, can be considered an interference with the right to private and family life.<sup>321</sup>

The Inter-American Court of Human Rights (IACtHR) has consistently affirmed – as part of the reparations it mandates – that States are obliged to locate, identify and return the remains of victims of extrajudicial executions or

315 See ICRC Guiding Principles, above note 2; ICRC, above note 28.

316 ICPPED, above note 63, Art. 24(5) (emphasis added); see also Art. 15.

317 Committee on Enforced Disappearances, above note 66, Principles 2 and 3.

318 General Comment 36, above note 62, para. 56.

319 ECHR, above note 71, Art. 3. See, for example, ECtHR, *Khadzhaliyev and Others v. Russia*, Appl. No. 3013/04, Judgment, 6 April 2009, paras 121–122; ECtHR, *Akkum and Others v. Turkey*, Appl. No. 21894/93, Judgment, 24 March 2005, para. 259; ECtHR, *Cangöz and Others v. Turkey*, Appl. No. 7469/06, Judgment, 12 April 2016, paras 165–168.

320 ECHR, above note 71, Art. 8; ECtHR, *Sabanchiyeva*, above note 85, paras 117–147; ECtHR, *Solska and Rybicka v. Poland*, Appl. Nos 30491/17, 31083/17, Judgment, 20 September 2018, paras 32, 38, 42, 46, 104–108, 124–127; ECtHR, *Aygün v. Belgium*, Appl. No. 28336/12, Judgment, 8 February 2023, paras 60–92. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-220710%22%5D%7D>

321 See, for example, ECtHR, *Girard v. France*, Appl. No. 22590/04, Judgment, 30 June 2011, para 107; ECtHR, *Ellī Poluhas Dödsbo v. Sweden*, Appl. No. 61564/00, Judgment, 17 January 2006, para. 24. For a detailed account of jurisprudence on the return of human remains, see Grazyna Baranowska, “Advances and Progress in the Obligation to Return the Remains of Missing and Forcibly Disappeared Persons”, *International Review of the Red Cross*, Vol. 99, No. 905, 2017.



enforced disappearances to families.<sup>322</sup> This obligation is not merely procedural; the Court has explicitly recognized that the act of returning the deceased is integral to restoring their dignity, honouring their memory and enabling families to carry out proper burial rites.<sup>323</sup> In this way, the return of remains serves both a symbolic and practical role in the broader framework of truth, justice and reparation.<sup>324</sup>

## Issues of practice: Building a culture of respect for IHL

### Criminal accountability and investigations of deaths

IHL establishes clear obligations to investigate war crimes and, where appropriate, to prosecute those responsible<sup>325</sup> and to suppress other acts that are contrary to IHL rules,<sup>326</sup> including those committed against the dead. As previously noted, IHRL also includes obligations on the investigation of alleged violations.<sup>327</sup> In this regard, States must enact adequate criminal laws to ensure that crimes are investigated and prosecuted.<sup>328</sup> The ICRC contributes to these efforts by urging States to investigate and prosecute serious violations of IHL and by supporting their efforts to adopt legislation and take other measures implementing their accountability obligations.<sup>329</sup>

In armed conflicts, the investigation of deaths plays a critical role in determining if these resulted from a criminal act.<sup>330</sup> As seen above, IHL obliges the Detaining Power to conduct an official enquiry when a PoW or internee dies because of the acts of any person, including other detainees or the detaining forces, or because of unknown causes.<sup>331</sup> The Geneva Conventions and their Additional

322 IACtHR, *Neira Alegria et al. v. Peru*, Judgment (Reparations and Costs), Series C, No. 29, 19 September 1996, para. 69; IACtHR, *Caballero-Delgado and Santana v. Colombia*, Judgment (Reparations and Costs), Series C, No. 31, 29 January 1997, para. 66(4); IACtHR, *Bamaca-Velasquez*, above note 67, paras 81–83. See also G. Baranowska, above note 321.

323 IACtHR, *Sánchez*, above note 74, para. 187.

324 G. Baranowska, above note 321, p. 720; IACtHR, *Juan Humberto Sánchez*, above note 74, paras 102–105, 131–134; IACtHR, *Barrios Altos*, above note 87, paras 43–47.

325 GC I, Art. 49; GC II, Art. 50; GC III, Art. 129; GC IV, Art. 146; AP I, Art. 85; ICRC Customary Law Study, above note 11, Rules 156–158.

326 GC I, Art. 49; GC II, Art. 50; GC III, Art. 129; GC IV, Art. 146; AP I, Arts 85(1), 86(1); ICRC Customary Law Study, above note 11, Rule 158.

327 See, for instance, UNGA Res. 60/147, above note 72, and Guidelines on IHL Investigations, above note 62, paras 18–20, on how IHRL treaties and courts address States' obligations to investigate human rights violations.

328 ICRC, *Criminal Repression of Serious IHL Violations: Information Kit*, Geneva, 2017.

329 This being said, in order to protect the security of its staff and to ensure that all parties to the conflict grant the ICRC access – as a purely humanitarian actor – to the places and people under their control, the ICRC neither testifies in nor provides evidence to judicial proceedings. See also H. Obregón Gieseken and X. Londoño, above note 212.

330 D. Gavshon, above note 46, para. 29.

331 GC III, Art. 121; GC IV, Art. 131. See also ICRC, *Guidelines for Investigating Deaths in Custody*, Geneva, 2013.

Protocols do not provide guidance on the investigation of deaths outside these specific circumstances;<sup>332</sup> in practice, however, States have national laws or policies requiring an investigation into combat-related deaths of both their own and enemy combatants.<sup>333</sup> Evidence obtained from the deceased can play a crucial role in establishing the circumstances surrounding the death, including the commission of war crimes.<sup>334</sup> In certain cases, serious violations of the rules relating to the death itself or in respect to the dignity of the dead may amount to war crimes or other international crimes. This includes wilful killing and outrages upon personal dignity, including the mutilation of dead bodies. Measures to identify the dead and investigate the cause of death are also required by IHRL, in particular to protect the right to life.<sup>335</sup>

Balancing the imperative to collect and preserve evidence for criminal investigations, including from human remains, with IHL obligations to account for the deceased and to inform their families may give rise to practical challenges.<sup>336</sup> In armed conflicts, parties must ensure that criminal investigations do not obstruct the transmission of information about the dead to the ICRC's CTA or to families. This requires the establishment of clear procedures to enable the investigation of potential crimes and to account for persons, as required by IHL. Similar challenges can arise in post-conflict contexts, where efforts to search for missing persons – alive or dead – coincide with criminal investigations, including on enforced disappearances. To address these complexities, it is critical to establish coordinating procedures between both processes in order to ensure complementarity and that they align with international legal obligations and standards.<sup>337</sup> While criminal investigations follow strict evidentiary rules, search mechanisms may use more flexible methods; however, if these mechanisms keep perpetrator-identifying information confidential, such confidentiality should be limited in order to avoid obstructing criminal

332 D. Gavshon, above note 46, para. 23.

333 For examples of military manuals containing instructions on what constitutes a reportable incident, see Guidelines on IHL Investigations, above note 62, p. 19 fn. 51. See also Colombia, *Operational Law Manual*, Manual FEMM 3-41 PUBLICO, 1st ed., 2009, Chap. 8, "Responsibility for the Use of Force".

334 G. Gaggioli, "International Humanitarian Law", above note 19, p. 190; J. M. Ibáñez Rivas, above note 63, section on "Searching For and Identifying the Missing", referring to IACtHR jurisprudence on the obligation of States to take appropriate and effective measures to search for disappeared persons and the complementarity of such measures, which will provide critical information, with subsequent judicial investigations on the alleged disappearance. On evidence collection, see also Guidelines on IHL Investigations, above note 62, Guideline 8.

335 See the above section on "Complementing IHL's Protections for the Dead and Their Families through International Human Rights Law". See also G. Gaggioli, above note 19, pp. 190–191; D. Gavshon, above note 46, paras 24–27.

336 For more on the practical challenges in this regard, see Anjli Parrin, "'How Did They Die?': Bridging Humanitarian and Criminal-Justice Objectives in Forensic Science to Advance the Rights of Families of the Missing under International Humanitarian Law", *International Review of the Red Cross*, Vol. 105, No. 923, 2023, pp. 1054–1060.

337 See ICRC, *National Mechanisms for Missing Persons: A Toolbox*, Geneva, 2022; and, in particular, ICRC and Swisspeace, Guidance Note No. 11, "Ensuring Complementarity in the Search for and Investigation of Cases of Missing Persons, Including Victims of Enforced Disappearances". See also A. Parrin, above note 336, pp. 1063–1069.

investigations.<sup>338</sup> Ultimately, what matters is that crimes are thoroughly investigated, the dead are searched for and identified, and families are given the answers and closure they deserve.

## Enhancing the protection of the deceased in non-international armed conflicts: The obligations and practice of NSAGs

In the context of NIACs, NSAGs are bound by IHL, including the minimum rules on the dignified treatment of the dead and respect of their families. However, continued work to influence the behaviour of NSAGs, including by identifying and understanding the various sources shaping their behaviour (formal and informal), is essential to ensure compliance with their obligations.<sup>339</sup> Notably, drawing on local beliefs, legal traditions, customs, and practices that align with IHL principles is an important vector to foster NSAG compliance.<sup>340</sup> For instance, in contexts where Islamic law is a significant component of the value system of NSAGs, Islamic sources, such as provisions/rules/teachings, may be used to protect the deceased and uphold their dignity. As Al-Dawoody notes, these sources “reflect a long-standing practice of parties to conflict accounting for dead bodies, sometimes in great detail”, underscoring a historical commitment to the respectful treatment of the dead within Islamic law and tradition.<sup>341</sup>

To further engage with and influence the behaviour of NSAGs, in 2023 the ICRC published a study on the IHL obligations of NSAGs that hold detainees, illustrated by examples of how to implement these obligations.<sup>342</sup> This study draws on reported practices and doctrinal sources from eighty-four such groups involved in NIACs across forty-two countries since the 1960s. Among its findings, the study shows how various NSAGs have addressed the treatment of those who die in detention. It documents practices of NSAGs relating to ensuring the respectful handling of the deceased, returning bodies to families if possible, informing relatives or impartial humanitarian organizations like the ICRC of the death, and, where it is unfeasible to return the remains, ensuring dignified burial, grave marking, and the recording of burial sites.<sup>343</sup>

338 In Colombia, information received by the Unit for the Search for Missing Persons is confidential and cannot be used as criminal evidence, but technical reports and physical evidence from recovered remains may be requested by judicial authorities and can carry evidentiary weight, provided they exclude information that could directly implicate individuals: Colombia, Decree 589 of 2017, Arts 3, 10.

339 ICRC, *The Roots of Restraint in War*, Geneva, 2018; ICRC Challenges Report 2024, above note 7, p. 80.

340 ICRC, *ICRC Engagement with Non-State Armed Groups: Why, How, for What Purpose, and Other Salient Issues*, position paper, Geneva, March 2021, p. 8.

341 A. Al-Dawoody, above note 289, p. 762. See also Ahmed Al-Dawoody and Alexandra Ortiz Signoret, “Respect for the Dead under International Law and Islamic Law in Armed Conflicts”, in Roberto C. Parra and Douglas H. Ubelaker, *Anthropology of Violent Death: Theoretical Foundations for Forensic Humanitarian Action*, Wiley & Sons, Hoboken, NJ, 2023, p. 222; ICRC, “Management of the Dead from the Perspectives of Islamic Law and International Humanitarian Law”, above note 190.

342 ICRC, above note 313.

343 *Ibid.*, Rule 9, p. 47.

Building on this, the ICRC will soon publish a complementary study on NSAG obligations and practices related to family separation, missing persons and the deceased. This study will draw on practices from over sixty NSAGs operating in NIACs across thirty countries. Preliminary findings show a range of measures taken to protect the deceased, including treating dead enemies with the same respect as the party's own members, in accordance with their customs and beliefs; coordinating with the enemy to return dead combatants or fighters; recording GPS coordinates or other information regarding the location of graves; NSAG members wearing identification tags on their wrist, neck or waist to facilitate identification in case of death; and ensuring that unidentified remains are buried in individual graves, with documentation and mapping of burial sites.<sup>344</sup> Practices such as these are key to ensuring real respect for the dead and for their families.

## The ICRC's action on behalf of the dead and their families

The ICRC plays a key role in supporting States on the domestic implementation and effective application of IHL.<sup>345</sup> It works with States to establish and strengthen relevant institutions, such as NIBs, GRs and other national mechanisms and medico-legal systems.<sup>346</sup> It also assists in the development of measures to prevent persons from going missing and to account for those who do (including in detention settings), supports forensic human identification processes<sup>347</sup> and works closely with States and parties to armed conflict to ensure that the families of those missing receive the support and information they need.<sup>348</sup> Finally, but importantly, the ICRC engages in a bilateral and confidential protection dialogue with States and NSAGs to reaffirm and call for respect of relevant obligations.

In this context, it is relevant to highlight the role of the ICRC's CTA, which leads some of these activities, including through its forensic humanitarian action. It is expressly mandated by the Geneva Conventions and AP I to carry out certain tasks in connection with the obligations of parties to IACs set out in the sections above.<sup>349</sup>

344 These examples are from confidential ICRC sources, including reports of conduct that the ICRC has documented or that NSAGs have reported themselves, and documents issued by NSAGs.

345 ICRC, *Guiding Principles/Model Law on the Missing*, Geneva, 2009; ICRC, "Implementing International Humanitarian Law: From Law to Action", fact sheet, Geneva, 2019; ICRC, *Guidelines on the National Implementation of International Humanitarian Law*, Geneva, 2021.

346 See the below section on "The ICRC Central Tracing Agency and Its Humanitarian Forensic Action". See also Maria Dolores Morcillo Mendez, "Strengthening the Medicolegal System: Fulfilling International Law Obligations during Conflicts and Disasters to Prevent and Resolve Issues of Humanitarian Concern", *International Review of the Red Cross*, Vol. 106, No. 926, 2024; and see the interview with Florence Anselmo and Pierre Guyomarch in this issue of the *Review*.

347 On the ICRC's detention work, see Alain Aeschlimann, "Protection of Detainees: ICRC Action Behind Bars", *International Review of the Red Cross*, Vol. 87, No. 857, 2005; and on its forensic human identification work, see ICRC, above note 28.

348 ICRC, above note 29.

349 See 22nd International Conference, above note 311; 25th International Conference of the Red Cross and Red Crescent, Res. XIII, "Obtaining and Transmitting Personal Data as a Means of Protection and

### *The ICRC Central Tracing Agency and its humanitarian forensic action*

The CTA plays a key role for those who die in wars. Its conventional mandate stems from the 1929 Geneva Convention<sup>350</sup> and is reaffirmed in the 1949 Geneva Conventions and in AP I.<sup>351</sup> The Statutes of the International Red Cross and Red Crescent Movement, adopted by all States party to the Geneva Conventions, provide that it is the ICRC's role "to ensure the operation of the Central Tracing Agency as provided in the Geneva Conventions".<sup>352</sup>

More specifically, under Articles 123 of GC III and 140 of GC IV, the CTA is mandated to collect and transmit information on PoWs and wounded, sick, shipwrecked or dead military personnel in the hands of a party to the conflict, protected persons under GC IV deprived of their liberty,<sup>353</sup> deceased internees,<sup>354</sup> and children in occupied territories whose identity is in doubt.<sup>355</sup> In this regard, the CTA acts as a neutral intermediary between IAC parties, which must record and transmit information on these persons and set up an NIB to transmit information to the CTA.<sup>356</sup> By collecting and transmitting information between parties to an IAC, the CTA serves as a neutral intermediary and trusted repository, facilitating the flow of information between the parties. In this role, it ensures that information is handled securely and coordinated effectively, with the ultimate aim of keeping families informed. Although Articles 123 of GC III and 140 of GC IV do not elaborate on the relationship between the CTA and the families – only requiring transmission to concerned States – "in practice and for strictly humanitarian purposes, the Agency [also] transmits information directly to the family".<sup>357</sup> Beyond this, the CTA carries out other responsibilities concerning deceased individuals. For example, it may assist PoWs and internees with civil administrative matters, such as the transmission of wills. This stems from the obligation of parties to promptly forward the wills of PoWs and internees to the Protecting Power, while also sending a certified copy to

of Preventing Disappearances", and Res. XIV, "National Information Bureau (NIB)", Geneva, 1986; 26th International Conference of the Red Cross and Red Crescent, Res. 2, "Protection of the Civilian Population in Period of Armed Conflict", Geneva, 1995; 28th International Conference of the Red Cross and Red Crescent, Res. 1, "Adoption of the Declaration and Agenda for Humanitarian Action", Geneva, 2003; 33rd International Conference of the Red Cross and Red Crescent, Res. 4, "Restoring Family Links while Respecting Privacy, Including as It Relates to Personal Data Protection", Geneva, 2019.

350 GC III, Art. 79.

351 See GC I, Arts 16–17; GC II, Arts 19–20; GC III, Arts 17, 30, 68, 70–71, 74–75, 77, 119–120, 122–124; GC IV, Arts 24–26, 91, 106–107, 110–111, 113, 129–130, 136–142; AP I, Arts 32–33, 78.

352 Statutes of the International Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross, Geneva, October 1986 (entered into force 1986, amended 1995 and 2006), Art. 5(2)(e).

353 GC IV, Art. 136.

354 *Ibid.*, Art. 130.

355 *Ibid.*, Art. 50(4).

356 See the above section on "Accounting for the Dead in International Armed Conflicts".

357 ICRC Commentary on GC III, above note 23, Art. 123, para. 4836.

the CTA.<sup>358</sup> These and other tasks can also be carried out based on the ICRC's right of humanitarian initiative or right to offer its services.<sup>359</sup>

In NIACs, the CTA is not expressly mentioned in treaty or customary IHL but may still offer its services in such conflicts for the deceased and their families. This involvement can be based on the ICRC's right of humanitarian initiative<sup>360</sup> or derive from common Article 3 special agreements.<sup>361</sup> Importantly, since its inception over 150 years ago, the CTA has been at the heart of the ICRC's efforts to reunite families and help them stay in touch, prevent people from going missing and search for those who do, respect the dead, and ensure that the rights and needs of families are addressed.<sup>362</sup>

A key feature of the ICRC's work is its humanitarian forensic action, which has two fundamental objectives: to ensure that the dead are treated with dignity and respect in humanitarian emergencies, including armed conflicts, and to support States and warring parties in fulfilling their IHL obligations.<sup>363</sup> This includes technical expertise and assistance for the development and strengthening of national medico-legal systems. For instance, in 2024 the ICRC launched the Military Identification Project to help States ensure that during and in the aftermath of war, missing and deceased members of the armed forces are promptly searched for, recovered and identified, and their families informed of their fate and whereabouts.<sup>364</sup> The ICRC also engages in humanitarian forensic operations directly: a notable example of this is the ICRC-led operation, together with Argentina and the United Kingdom, that posthumously identified 121 Argentine soldiers killed in the 1982 Falkland Islands/Islas Malvinas armed conflict, providing long-awaited answers to their families.<sup>365</sup>

358 GC III, Art. 120; GC IV, Art. 129.

359 Art. 9/9/9/10 common to the four Geneva Conventions.

360 Common Art. 3; AP II, Art. 18. For instance, in the Philippines, the ICRC shared good practices in forensic identification with local authorities and mortuary personnel and provided technical support in recovering and identifying several sets of human remains: ICRC, *Annual Report 2019*, Geneva, 2020, p. 367.

361 For instance, in 2023, the ICRC called for the inclusion of special agreements in peace negotiations with armed groups, specifically addressing issues related to missing persons and unidentified remains: ICRC, "Colombia: ICRC Calls for Special Agreements to Be Adopted as Part of Negotiations with Armed Groups", news release, 3 April 2024, available at: [www.icrc.org/en/document/icrc-calls-special-agreements-be-adopted-part-negotiations-armed-groups](https://www.icrc.org/en/document/icrc-calls-special-agreements-be-adopted-part-negotiations-armed-groups).

362 See the interview with Florence Anselmo and Pierre Guyomarch in this issue of the *Review*. See also Monique Katz, "The Central Tracing Agency of the ICRC", *International Review of the Red Cross*, Vol. 17, No. 199, October 1977; Olivier Dubois, Katharine Marshall and Siobhan Sparkes McNamara, "New Technologies and New Policies: The ICRC's Evolving Approach to Working with Separated Families", *International Review of the Red Cross*, Vol. 94, No. 888, 2012; ICRC, *Restoring Family Links: Strategy for the International Red Cross and Red Crescent Movement 2020–2025, Including Legal References*, Geneva, December 2020. In 2024, Resolution 6 of the Council of Delegates extended the strategy until 2030: see Council of Delegates Res. 6, "Extension until 2030 of the Restoring Family Links Strategy for the International Red Cross and Red Crescent Movement 2020–2025", 2024.

363 M. Morcillo Mendez, above note 346.

364 This work is ongoing; see the interview with Stephen Fonseca and Vaughn Rossouw in this issue of the *Review*.

365 See the article by Jane Taylor *et al.* in this issue of the *Review*: Jane Taylor *et al.*, "Respecting IHL Obligations to the Deceased Does Make a Difference: The ICRC-Led Falkland Islands/Islas Malvinas Identification Operation", *International Review of the Red Cross*, Vol. 107, No. 929, 2025. The ICRC has also provided



Another key component of this action is the involvement of families, who play an essential role in forensic investigations and other search processes and should be able to participate in these.<sup>366</sup> Families are often asked to provide *ante-mortem* information about missing persons as well as biological reference samples to support identifications. Findings concerning the fate of their loved ones are also communicated to them directly. Each stage of this engagement can have profound emotional impacts on families and, if not approached with sensitivity and care, may result in additional trauma. In this context, psychosocial support has become a critical element of forensic investigations, seeking to ensure that interactions with families are guided by a “do no harm” approach and with continuous communication, transparency and respect for their needs and dignity.<sup>367</sup>

For the ICRC to effectively carry out its humanitarian mandate and role in accordance with IHL, compliance by parties to armed conflicts with their IHL obligations, including with regard to the CTA, is a *sine qua non* condition.

## Conclusion

The treatment of the dead in war is not only a legal obligation under international law, but also a common value of our shared humanity. Amidst the growing numbers of casualties and missing persons that we see today, the need to uphold existing protections is more imperative than ever. Proper care for the deceased – through search, identification, respectful burial and, where possible, return to their families – is foundational to their dignity and that of their families; it is also essential for truth, justice and accountability and, in turn, for long-term reconciliation and sustainable peace.<sup>368</sup>

To ensure that obligations are upheld during war, States must establish the necessary legal, institutional and administrative frameworks in peacetime. This proactive approach enables those responsible to activate the required processes swiftly and operate them effectively when a conflict begins, ensuring that IHL rules protecting the deceased are included in their military planning and operations from the outset.<sup>369</sup> The law’s effectiveness relies heavily on the readiness and commitment of States and parties to armed conflicts to fulfil obligations from the very outbreak

technical expertise, for instance, to the Committee on Missing Persons in Cyprus: Maria Mikellide, “Recovery and Identification of Human Remains in Post-Conflict Environments: A Comparative Study of the Humanitarian Forensic Programs in Cyprus and Kosovo”, *Forensic Science International*, Vol. 279, 2017, pp. 35–36.

366 See, generally, ICRC Guiding Principles, above note 2, Principles 2, 4–5, 13, 16, 20.

367 Susana Navarro, Pau Perez and Kemjak Franc (coord.), *Global Consensus of Principles and Minimum Standards for Psychosocial Work in Search Processes in Forensic Investigations in Cases of Forced Disappearances, Arbitrary or Extrajudicial Executions*, 2011; ICRC, above note 29; Ute Hofmeister and Susana Navarro, “A Psychosocial Approach in Humanitarian Forensic Action: The Latin American Perspective”, *Forensic Science International*, Vol. 280, 2017.

368 UNSC Res. 2474, above note 38, preambular para. 19, op. para. 16.

369 ICRC Challenges Report 2024, above note 7, p. 26.

of war – without timely and coordinated action, the law’s protective force is diminished. This becomes especially critical in the context of large-scale conflicts, where the amount of casualties can quickly overwhelm existing systems. As armed forces expand their capabilities and develop contingency plans for such scenarios, it is essential that these plans include clear procedures with defined roles and responsibilities for the search, recovery, identification and return of the dead, and for the protection of graves. These measures must not be treated as secondary, but rather as integral to military preparedness and operational conduct. NSAGs, too, can and must take measures to respect the deceased and their families. Collecting and disseminating good practices can be a good vector to influence the behaviour of such groups.

The law is clear, the obligations are known, and there is no justification for non-compliance. Violations of these duties do lasting harm, not only to the memory of the dead and their dignity but also to the fabric of families and societies. Preventing violations and further suffering in war is thus critical. When serious violations of IHL and of other relevant legal frameworks nevertheless occur, these must be investigated and prosecuted. Conversely, when parties to conflict respect their obligations, this contributes to reducing suffering, preventing further violence and atrocities, building trust and fostering pathways to peace. In turn, for any peace to last, peace negotiations and agreements also need to comprehensively address the issue of the missing and the dead.<sup>370</sup>

The dead are silent, but the way we treat them speaks greatly about our commitment to the values of humanity, even in the darkest moments of war. The wounds of war shape the stories of suffering and the aftermath of conflict. How these are addressed – including respect for the dignity of the dead – may shape the road to healing for survivors, families and communities.

370 UNSC Res. 2474, above note 38, preambular para. 20, op. paras 14–15. See also ICRC, *Guidance for Mediators on Addressing the Fate of Missing Persons*, Geneva, 2024; ICRC, *Global Initiative to Galvanize Political Commitment to International Humanitarian Law*, IHL and Peace Workstream, 2025, p. 8.