

THESIS

Last Rights: The Legal Obligation of States to Ensure Post-Mortem Dignity in Cases of Mass Violence

By Veronica Wiegenstein

In Partial Fulfillment of the Requirements for the Master of Arts in Human Rights

Master of Human Rights Thesis

Supervisor: Professor Mathias Möschel

Legal Studies Department

Central European University

Vienna, Austria

Table of Contents

| | |
|--|-----------|
| <i>Introduction.....</i> | <i>1</i> |
| <i>Chapter 1: Rights, Dignity, and Identity</i> | <i>4</i> |
| 1.1 Human Dignity and Burial | 4 |
| 1.2 The Importance of Identification | 5 |
| 1.3 Rights of the Victims | 6 |
| 1.3.1 Right to Life | 6 |
| 1.3.2 Right to Freedom of Thought, Conscience, and Religion | 7 |
| 1.4 Rights of the Survivors..... | 8 |
| 1.4.1 Right to Health..... | 8 |
| 1.4.2 Right to Truth | 11 |
| <i>Chapter 2: Bosnian Case Study.....</i> | <i>13</i> |
| 2.1. Background of Events..... | 13 |
| 2.2 Hrastova Glavica Grave Recovery | 14 |
| 2.2.1 | 15 |
| 2.3 Hrgar Exhumations..... | 15 |
| 2.3.1 | 17 |
| 2.4 Sarajevo I Investigation | 18 |
| 2.4.1 | 18 |
| <i>Chapter 3: Argentina Case Studies</i> | <i>19</i> |
| 3.1 Background of Events..... | 19 |
| 3.2 The Fatima Case..... | 23 |
| 3.2.1 | 24 |
| 3.3 Lomas De Zamora Cemetery | 24 |
| 3.3.1 | 25 |
| 3.4 General Lavalle Municipal Cemetery | 25 |
| 3.4.1 | 25 |
| <i>Conclusion: Mass Graves: The Confluence of Identity, Dignity, and Grief</i> | <i>27</i> |
| <i>Bibliography</i> | <i>30</i> |

Introduction

From time immemorial, the importance and meaning of a proper burial have been crucial to human culture and the grief process. From the time of recorded history, mentions of burial rites and their central place in the life of the bereaved can be found. In Sophocles' *Antigone*, a crucial scene provides a visual of the titular character observing the rites previously denied her brother.

“She wailed aloud in bitterness,
Like the sharp cry of a bird discovering
The bed orphaned of its nestlings.
So she, too, when she saw the corpse bare,
Wailed in mourning and called out
Evil curses on whoever had done it.
Straightaway she bore thirsty dust in her hands,
And lifting high the well-hammered bronze pitcher,
Anointed the body with three pourings of libations.”¹

Burial rites and grief rituals continue to be carefully observed in the modern era. Recent observations about mass graves and burial in cases of mass violence have shed a light particularly on the pitfalls of identity and dignity in criminal circumstances. A particularly notable example of such research in this context is the Bosnian War, which spanned three years between 1992 and 1995. During this period of time, more than two million Bosnians found themselves displaced, and more than 100,000 were killed. Thousands of others remain missing.² This number of missing remains a major concern for human rights advocates and a key part of the conversation about mass grave identification and the human dignity of the

¹ Sophocles, *Antigone*, 422-430. Sophocles, *Antigone*, ed. Edited and translated by Diane J. Raynor, Grand Valley State University, Michigan (Cambridge: Cambridge University Press, 2012), lines 423-430.

² International Commission on Missing Persons, “Bosnia and Herzegovina,” ICMP Bosnia and Herzegovina (International Commission on Missing Persons, August 28, 2020), <https://www.icmp.int/where-we-work/europe/western-balkans/bosnia-and-herzegovina/>.

deceased.³ This first case study will investigate three mass grave sites examined by the Physicians for Human Rights.

A second example of mass violence culminating in missing persons and mishandling of the deceased is that of Argentina. Between 1976 and 1983, Argentina underwent a period of military rule characterized by widespread state terror under the *Proceso de Reorganización Nacional* (el Proceso; in English, “The Process of National Reorganization” or “the Process”). This era of Argentine history is often known as the “Dirty War” and was marked with state-enforced disappearances, of which an estimated 15,000 citizens were either killed or remain unaccounted for.⁴ The Report of the National Commission on the Disappearance of Persons (CONADEP), originally published in 1984, provides a broad view of the human rights violations committed by the state of Argentina during the period of military rule and is used to supplement the memories of citizens and their loved ones who were targeted during el Proceso.

In both of these cases, it is apparent in the aftermath of the tragic events that the circumstances surrounding the death of a loved one are of central importance to the grieving process undertaken by the survivors. Deaths from mass violence are inherently violating; they rob a person of their life and their loved ones of their health, family life, and often their right to know the truth regarding the last moments of the victim. The amount of unanswered questions that plague survivors in the wake of such deaths can lead to psychological ill health, which in turn can pervade a society and haunt it from within. States have obligations to protect human rights; when these are not protected, as in the examples provided in this paper, the ramifications are clear. In the aftermath of such violations, repairing the trust and the fabric of the community is vital to personal healing.

This thesis begins with an exploration of the concepts of rights, dignity, and identity in Chapter 1. This theoretical framework is crucial for understanding the importance of upholding the rights that will be discussed in the following case studies and will examine the connection of the aforementioned concepts. Chapter 2 examines three cases of exhumation in Bosnia and Herzegovina in the aftermath of the Bosnian War. This event was chosen due to the inter-ethnic

³ There are many conflicting definitions of “mass grave.” The Final Report of the United Nations Commission of Experts to the Former Yugoslavia defined a mass grave as a grave containing the remains of two or more individuals.

⁴ Of Victims and Executioners

aspect of the conflict, as well as the international dimension as Yugoslavia collapsed. Furthermore, it provides a glimpse into a relatively recent and ongoing attempt to exhume the victims and facilitate community healing. Chapter 3 focuses on Argentina's 1976 military coup and the subsequent civil unrest. This provides a contrast to the Bosnian cases, as it is an example of a government's persecution of its own citizens and is thus contained to a domestic setting. It is also an earlier example of such mass violence and reconciliation and is uniquely situated in the Southern Cone region.

In order to understand the significance of these case studies, it is necessary to include some background information on the main concepts and rights that frame the perception of death and the rights of the dead and the living. The history of death and its accompanying themes of dignity and identity require one to approach the field from both a psychological and philosophical angle.

Chapter 1: Rights, Dignity, and Identity

1.1 Human Dignity and Burial

Dignity in burial is intimately connected with the perception of the corpse as either a person or an object. The boundary between person and object is highly contested and rooted in ambiguity. Ellen Stroud writes about the: “seemingly magically aspect of the corpse- its transformation from a person to a thing to earth even as it retains its physical form...”⁵ How can we decide when a person passes “through the veil” between person and object? There is no definitive answer for this, but the role of the corpse in burial traditions can provide some information. The condition of the body can invoke a reaction that can make this differentiation. Indeed, a corpse in poor condition is more likely to be seen as an object, whereas a corpse in good condition (that clearly resembles the formerly living person) is more likely to still be seen as a person even after death. For example, Fiona (a case study subject of Dr. Christine Valentine) reported that: “...it didn’t look like nan. She was sort of quite bloated...and when you see somebody like that you almost wish you hadn’t gone to see them and you’d remembered them as you’d last seen them...” Fiona had difficulty reconciling the presence of her aunt’s body with the conception and memories she had of her aunt as a living person.⁶

When it comes to bodies being treated as objects rather than humans, certain corpses are more likely to receive the former treatment. “Long-dead bodies and the corpses of foreigners, prisoners, and the poor have been consistently treated as the least animated of corpses...the corpses of the most vulnerable will always be the ones treated most like things...”⁷ This can clearly be seen in the case of the mass graves in Bosnia: prisoners and “foreigners” (a different ethnic/cultural/religious group in this case), absolutely fit within this framework. Indeed, it is inconceivable that the perpetrators would choose to have their loved ones thrown into cave shafts, intermingled with others (a loss of identity), destroyed, and

⁵ Stroud, Ellen. “Law and the Dead Body: Is a Corpse a Person or a Thing?” *Annual Review of law and Social Science* (2018): 119.

⁶ Valentine, Christine. “The role of the corpse in bereavement.” *Funeral Director Monthly*, 93, no. 11 (2010): pg. 2.

⁷ Stroud, Ellen. “Law and the Dead Body: Is a Corpse a Person or a Thing?” *Annual Review of law and Social Science* (2018): 119.

thrown out like trash. These actions have been found by the European Court of Human Rights as being in violation of Article 8 of the Convention- a violation of the right to respect for private and family life. Certainly, the mutilation of a corpse is not only disrespectful to the deceased, but also to the family, who are not emotionally disconnected from the body or their deceased loved one. All of these actions will be seen in the following case studies- dehumanization, loss of identity, and lack of basic respect. When it comes to treating the deceased in a humane manner, the most basic aspect of respecting their humanity is to acknowledge their identity.

1.2 The Importance of Identification

Identification is a fundamental concept of humanity. We carry identification cards as a matter of course; we register our identity the day we are born. We base our entire lives on our identity: our relationships, our family, our religious and cultural affiliations, our work, and our participation in government. Ultimately, while a universally accepted legal definition of “identity” is lacking, the key to the concept is that an individual’s identity is forged in the crucible of society. To have an identity is to *be* someone; a lack of identity erases the humanity of the individual.

Everyone has the right to an identity. The European Court of Human Rights supports this through the interpretation of Article 8 of the European Convention on Human Rights.⁸ The Inter-American Committee of Jurists considers the right to identity to be “not only independent and autonomous from other rights, but fundamental, non-derogable, and rooted in human dignity.” Furthermore, they consider that “the right to identity cannot be understood merely in relation to the rights with which it is traditionally associated.”⁹ This right is considered in the Geneva Convention of 1949, which dictates that: “the Detaining Power shall forward lists of graves of the deceased internees to the Powers on whom the deceased internees depended...Such lists shall include all particulars necessary for the identification of the

⁸ Al Tamimi, Yussef. “Human Rights and the Excess of Identity: A Legal and Theoretical Inquiry into the Notion of Identity in Strasbourg Case Law.” *Social & Legal Studies* 27, no. 3 (June 2018): 283–98. <https://doi.org/10.1177/0964663917722598>.

⁹ Theodore McCombs and Jackie Shull Gonzalez, “Right to Identity,” in *Right to Identity* (San Francisco, CA: University of California, 2007), https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwixu-u249_vAhWyPOwKHZB_BoIQFjABegQIAxAD&url=http%3A%2F%2Fscm.oas.org%2Fpdfs%2F2007%2FCP19277.PDF&usg=AOvVaw28f2tN31h4inDy2l-w6Ap0.

deceased internees, as well as the exact location of their graves.”¹⁰ This obligation neatly applies to the situation in Bosnia and Herzegovina, as well as that of Argentina.

The basic importance of identity and the effects that lack of identity has on both a person and their family directly links to the recognition of the rights of both survivors and the victims. An identity is crucial to claiming one’s human rights and claiming them for a missing loved one in a court of law.

1.3 Rights of the Victims

The concept of victims’ rights in cases of mass violence is unique in the sense that posthumous rights are still a highly debated topic in the field of law. It is unquestionable that living people hold human rights- but the question of whether these still apply after death is fraught with discussions about the process and timing of death, the rights involved, and the concept of transference. In this thesis, the view that the dead do hold human rights is supported; as discussed previously, the journey of an individual from being a living person, to being deceased, to being a corpse, to being earthly matter is ambiguous. It is also subject to various influences determined by tradition, cultural practices, and cause of death. For the purposes of this thesis, the focus is on rights that were violated before death occurred, in the context of mass violence.

1.3.1 Right to Life

The first and most obvious right that victims have had violated in cases of mass violence such as those covered in this thesis is the right to life. By having their lives abruptly and unlawfully terminated, the violation is abundantly clear.

In the American Convention on Human Rights, Article 4 deals with the right to life. “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.” It continues to state that, “in no case shall capital punishment be inflicted for political offenses

¹⁰ Williams, Erin D., and John D. Crews. "From dust to dust: ethical and practical issues involved in the location, exhumation, and identification of bodies from mass graves." *Croatian medical journal* 44, no. 3 (2003): 251-258.

or related common crimes.”¹¹ Just considering these two passages alone, it is clear that Argentina violated the rights of thousands of individuals during the military regime. Argentina only signed and ratified this convention in 1984, just after the collapse of the military dictatorship, during the process of rebuilding and reconciliation- only then was the right to life and the right to freedom of religion and expression applicable. In conjunction with this, Argentina submitted a reservation that the treaty not be applied retroactively.¹² However, although this timing means that the American Convention cannot be applied retroactively to these crimes, the right to life is a recognized *jus cogens* and is thus part of international customary law.¹³

The right to life features in Article 3 in the United Nations Declaration of Human Rights. This document key piece in the canon of human rights documents. It states that “everyone has the right to life, liberty and security of person.”¹⁴ Most importantly, it predates the Argentine coup and the Bosnian War by a significant period of time- it was originally published in 1948.¹⁵ In the Bosnian War, the Argentine coup, and unfortunately countless other events since the drafting of the document, this crucial right has been irreparably violated. The victims’ lives ended in a setting where their liberty and security were not ensured; they were seen as “undeserving” of life. Clearly, this goes against the very basis of the concept of human rights and is the most apparent and egregious violation of those listed here.

1.3.2 Right to Freedom of Thought, Conscience, and Religion

The impetus for denying victims the right to life goes hand in hand with denying the victims freedom of thought, conscience, and religion. In the case of Bosnia, freedom of religion was at the heart of violations- the inter-ethnic conflict largely targeted the Bosniak Muslim population. In Argentina, the basis of violations stemmed from freedom of thought and

¹¹ Organization of American States, “Organization of American States: Democracy for Peace, Security, and Development,” Organization of American States (Organization of American States, August 1, 2009), <https://www.oas.org/en/iachr/mandate/Basics/convention.asp>.

¹² *ibid*

¹³ Diana Contreras-Garduno and Ignacio Alvarez-Rio, “PDF” (San José, n.d.).

¹⁴ United Nations, “Universal Declaration of Human Rights - OHCHR,” Office of the United Nations High Commissioner for Human Rights (United Nations), accessed June 11, 2021, https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

¹⁵ *ibid*

conscience, with the oppressors eager to control the narrative of the population and quash any thoughts and expressions that flew in the face of the reality presented by the state.

It is important to note that, in contrast to the right to life, the right to freedom of religion, of thought, and of conscience, is not a *jus cogens*. Despite this, it is included in the European Convention of Human Rights as Articles 9 and 10 (the latter titled “Freedom of Expression”, but applying to concepts of thought and conscience). Articles 9 and 10 predate the events in Bosnia by more than four decades, with the Convention coming into force in 1953.¹⁶ However, in a repetition of the Argentine government and its ratification record that is investigated above, Bosnia and Herzegovina did not sign and ratify the document until 2002; Serbia followed in 2004.¹⁷ Once again, this shows the pattern of international legal frameworks being formally adopted in the aftermath of tragedy during the reconciliation process.

1.4 Rights of the Survivors

The rights of survivors and loved ones come into focus in the aftermath and reconciliation of mass violence; as they are living, they can claim their rights without the philosophical debate that plagues the rights of the deceased. The rights they can claim are also unique to being alive; one does not have the right to health after being dead, as health is a state of living. The right to truth is also of key importance to the reconciliation process; survivors deserve to know the fate of their loved ones and to build an accurate record of the events that occurred for the living members of society to use for emotional recovery and legal cases.

1.4.1 Right to Health

Psychological well-being is a human right. The 1946 Constitution of the World Health Organization (WHO) explicitly states this in the preamble:

“Health is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity. The enjoyment of the highest attainable standard of health is

¹⁶ Council of Europe, “PDF” (Strasbourg, n.d.).

¹⁷ Council of Europe, “Chart of Signatures and Ratifications of Treaty 005,” Council of Europe (Council of Europe), accessed June 11, 2021, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures>.

one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition. The health of all peoples is fundamental to the attainment of peace and security and is dependent upon the fullest co-operation of individuals and States.”¹⁸

Though written more than seventy years ago, the right to mental health is still often unrealized, even though studies have shown that mental health is just as important for one’s well-being as physical health. The implementation of the right to health has seen many efforts in tangible ways to support physical health- campaigns to provide clean water, vaccinations, disease prevention, and general access to health services. However, access to psychiatric care and widespread understanding of mental health is desperately lacking. Situations of mass violence understandably trigger mental health problems and exacerbate preexisting ones. The need for understanding, awareness, and treatment is more important than ever during and after such events.

Not only is the right to health a centerpiece of the WHO Constitution, but it is also written into the International Covenant on Economic, Social, and Cultural Rights (CESR). Article 12, in language similar to that of the WHO Constitution, states that: “The States Parties to the present Covenant to recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”¹⁹

Grief has a profound impact on mental health. In case of deaths by violence or disaster, a syndrome called complicated grief (alternately “prolonged grief disorder”) can develop at a higher rate than in the overall population (the latter of which accounts for about 10% of bereavements).²⁰ This disorder is “characterized by intense grief that lasts longer than would be expected according to social norms and that causes impairment in daily functioning.”²¹ In the case of both Bosnia and Argentina, where the deaths are the result of mass violence, such cases of complicated grief would statistically be higher. The World Health Organization

¹⁸ World Health Organization, “Constitution of the World Health Organization,” World Health Organization, 1946, https://www.who.int/governance/eb/who_constitution_en.pdf.

¹⁹ United Nations, “International Covenant on Economic, Social and Cultural Rights,” OHCHR, 1966, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

²⁰ M. Katherine Shear et al., “Complicated Grief and Related Bereavement Issues for DSM-5,” Wiley Online Library (John Wiley & Sons, Ltd, January 31, 2011), https://onlinelibrary.wiley.com/doi/full/10.1002/da.20780?casa_token=6BYh67QNmTwAAAAA%3AAvo0MMmhelMWrVKhfai-WUjcZ72MXRHgfnenys_Q66GmP7c54BDvLgRX_lhZ-9jxCOFmcK_O3_fG_j5c.

²¹ *ibid*

characterized prolonged grief disorder as causing “significant impairment in personal, family, social, educational, occupational or other important areas of functioning.”²² It has been argued that complicated grief can be appropriately applied as a diagnosis for those who are survivors of ethnic cleansing and genocide.²³ Especially in situations of violence, post-traumatic stress disorder may be co-morbid; in one study of 364 internally displaced Bosnian youth, over one-third had witnessed the injury or killing of a nuclear family member; nearly 94% were suffering from post-traumatic stress disorder.²⁴ Clearly, grief is intimately linked with mental health.

The Last Rights Project proposes that states have an obligation to respect and protect the rights of the deceased’s family members- and that by not doing so, they could be violating ECHR Article 3. This article prohibits inhuman or degrading treatment or punishment.²⁵ This comes from the concept that the mental anguish of not having the answers regarding a loved one’s disappearance and/or death is inherently inhumane. As seen above, the psychological effects of “not knowing” can certainly be considered to be a form of inhumane treatment- and even of punishment, as will be discussed in the case of Argentina.

It is now acknowledged by scholars that the presence of a body is key to the natural processing of grief; without the presence of a body, or the certainty of death, the process can become complicated in a way known as “ambiguous grief.” This concept was pioneered by Pauline Boss, who wrote: “Because there is no social or religious ritual to deal with such losses, people are stuck alone in a limbo of not knowing, with none of the usual supports for grieving and moving forward with their lives.”²⁶ If one doesn’t have confirmation that their family member is indeed dead, beginning the mourning process may feel like a betrayal; a sign that one does not have hope for their lost loved one. At the same time, grief is a natural response to the loss. Thus, victims of ambiguous grief are stuck in a traumatic Catch-22. The psychological effects, clearly so acute, are clearly a violation of the human rights of the relatives and loved ones of the missing. Here, we can see the importance of identity and the ultimate desire to

²² World Health Organization, “Eleventh Revision of the International Statistical Classification of Diseases and Related Health Problems (ICD-11),” World Health Organization (World Health Organization, 2020), <https://icd.who.int/dev11/l-m/en#/http%3a%2f%2fid.who.int%2fcd%2fentity%2f1183832314>.

²³ D. Morgos, J.W. Worden, and L. Gupta, “Psychosocial Effects of War Experiences Among Displaced Children in Southern Darfur,” *Omega: Journal of Death & Dying* 55, no. 3 (2007): pp. 229-253.

²⁴ Natalya Paulsen, “Emotional Experiences of Post-War Youth from Bosnia- Herzegovina, A Systematic Review,” *University of St. Thomas/ St. Catherine: SOPHIA* 5 (2016).

²⁵ Last Rights Project, “PDF” (New York, May 2017).

²⁶ Pauline, Boss, and Pauline Boss. *Ambiguous Loss: Learning to live with unresolved grief*. Harvard University Press, 2009.

provide a dignified burial. Furthermore, the ability to provide a dignified burial rests on having the remains- and having the remains reinforces the truth about the death. In this way, providing families with the remains of their missing loved ones is not only supportive of their own health but also to the health of society by ensuring that past atrocities are recognized and properly dealt with.

1.4.2 Right to Truth

The right to truth is central to cases of gross human rights violations, including extrajudicial executions, torture, and forced disappearance. In a report from the Office of the United Nations High Commissioner for Human Rights, the right to truth is defined as “knowing the full and complete truth as to the events that transpired, their specific circumstances, and who participated in them, including knowing the circumstances in which the violations took place, as well as the reasons for them.”²⁷ This supports the Geneva Convention of 1949, which forms the initial basis of the right to truth. While the Geneva Convention and its Additional Protocol I was written with a focus on missing persons, international customary law has expanded the interpretation to include a wider variety of victims.

In the context of mass human rights violations, the right to truth has led to an area called “politics of the past”. This is essentially “the state’s dealing with human rights crimes and violent acts committed in the context of dictatorships or civil wars.”²⁸ The expectation that the state will adhere to this area of policy is key for combating impunity, and for rebuilding a fair and just society in the wake of such events. The right to truth is viewed as being of central importance in the healing process for both society and the relatives of the victim.²⁹ Since 1974 the United Nations General Assembly has stated that the “desire to know...is a basic human need.”³⁰ This is fundamentally attached to the right to health- in this case, mental health. The General Assembly directly acknowledges this by repeatedly expressing “its profound concern with the anguish and sorrow of the families concerned.”³¹ While the truth may be devastating, the situation of not knowing and perpetual wondering is often considered to be a greater burden

²⁷ Office of the United Nations High Commissioner for Human Rights, “PDF,” February 2006.

²⁸ Klaas Dykmann, “Impunity and the Right to Truth in the Inter-American System of Human Rights,” *Iberoamericana* 26 (June 2007): pp. 45-66, <https://doi.org/https://www.jstor.org/stable/41676303>.

²⁹ Brandon Hamber, *Transforming Societies after Political Violence: Truth, Reconciliation, and Mental Health*, ed. Daniel J. Christie (Heidelberg: Springer, 2009).

³⁰ Office of the United Nations High Commissioner for Human Rights, “PDF,” February 2006.

³¹ *ibid*

on the relatives. In fact, this is borne out in the varied experiences of these loved ones. Berta Schubaroff took great comfort in the return of her son, coupled with the crushing realization that he was gone. “I felt I was emotional because I found my son. I kissed him again. I kissed all his bones, touched him, caressed him. But the emotion confounded with the pain, because once I found him, he turned out to be dead. So I cried the death of my son, and those thirteen years of search vanished. I can’t relate anymore to this period.”³²

While Berta felt the complex emotional mix of devastation and comfort, the Latin American sociocultural need for a body to mourn was at last fulfilled. Robert Herz gives an explanation for the purposes of exhumation and reburial: “to give burial to the remains of the deceased, to ensure the soul peace and access to the land of the dead, and finally to free the living from the obligations of mourning.”³³ This freedom from the obligations of mourning, as Herz calls it, is key to ending the individual’s experience of ambiguous grief, as pioneered by Pauline Boss. This is directly related to the right to health, as discussed in the previous section, as it explains the intersection of psychological needs with the needs of the community. Identity and dignified burial are necessary for meeting these needs.

The Inter-American Commission on Human Rights (IACHR) took the principles laid out in Articles 32 and 33 of the Additional Protocol I and used these as a foundation for their own doctrine. Once again, the initial doctrine was specific in reference- this time in the case of victims of forced disappearance- before widening its scope to include acts of extrajudicial executions and torture. The initial scope of the doctrine can be seen as a response to the tragedy of Argentina and the overwhelming task of healing society in the face of the disappearances. Similarly, the initial scope of the Geneva Conventions can be seen as a response to the horrors of the Second World War and was suitable for the later events in Bosnia and Herzegovina.

³² Antonius C. G. M. Robben, “State Terror in the Netherworld: Disappearance and Reburial in Argentina,” in *Death, Mourning and Burial: A Cross-Cultural Reader*, ed. Antonius C. G. M. Robben, 3rd ed., vol. 1 (Malden, MA: Blackwell Publishing Ltd, 2006), pp. 134-148.

³³ Antonius C. G. M. Robben, “State Terror in the Netherworld: Disappearance and Reburial in Argentina,” in *Death, Mourning and Burial: A Cross-Cultural Reader*, ed. Antonius C. G. M. Robben, 3rd ed., vol. 1 (Malden, MA: Blackwell Publishing Ltd, 2006), pp. 134-148.

Chapter 2: Bosnian Case Study

The Bosnian War left thousands unaccounted for, and locating and exhuming the remains of the dead has been a crucial part of the healing process in the aftermath of the Dayton Agreement, which marked the end of the war. Modern forensic anthropological techniques have been put to work and the field has been advanced due to the fieldwork done in Bosnia. In the following examples of mass graves, the circumstances of exhumation, the subsequent findings, and the effect on the surviving family members are investigated.

2.1. Background of Events

The Bosnian War marked a turning point in the collapse of Yugoslavia, as inter-ethnic tensions exploded between Bosnian Serbs and Bosnian Muslims. Formed in 1946, the Socialist Federal Republic of Yugoslavia (SFRY) was divided into six republics- Slovenia, Croatia, Serbia, Montenegro, and Macedonia. Bosnia and Herzegovina was an exception; multi-ethnic and diverse. Within the Republic of Serbia, two autonomous provinces, Vojvodina and Kosovo, also were created with a nod toward the multi-ethnicity of the population.³⁴

The eruption of instability in 1991/1992 Yugoslavia served as a precursor to the events of the Bosnian War, as during this time the SFRY dissolved with the associated Eastern Bloc. It was in the environment that Bosnia and Herzegovina declared independence in 1992. This declaration was recognized by the United States and the political community in Europe. Bosnian Serbs- who would be a minority in the new state- wished to be a part of a “Greater Serbia” The Serbian Democratic Party launched an offensive against the capital of the new Bosnia and Herzegovina, Sarajevo, just two days later.

This ensuing war would be marked by the widespread ethnic cleansing of Bosnian Muslims, which sparked dramatic international attention in the wake of the Srebrenica

³⁴ Čarna Pištan, ““From Balkanization to Yugonostalgia: The Dissolution of the Socialist Federal Republic of Yugoslavia,”” in *Constitutional History: Comparative Perspectives* (Chicago, IL: University of Illinois Law Review, 2016).

massacre, a city designed as a U.N. safe haven.³⁵ While this is a widely recognized example of such ethnic cleansing that marked the war, it is far from the only one. By the cessation of the conflict, some 200,000 lives had been lost, and half of the population (roughly two million people) had been displaced.³⁶ By the time the International Committee of the Red Cross created its report on the Bosnian War, 58% of Bosnian Muslims interviewed had lost contact with a family member. As of October 2020, 10,003 people remained unaccounted for.³⁷

2.2 Hrastova Glavica Grave Recovery

Physicians for Human Rights assisted with the Hrastova Glavica exhumations between the 7th and 16th of December of 1998. The exhumation was conducted by the State Commission on Missing Persons and focused on a cave in the area of Sanski Most. The cave was completely below ground and was difficult to notice, as it was in a forested area. Upon discovery of the cave, it was found that bodies had been dropped into the cave.

The subsequent investigation found that there were 124 sets of remains, and all but two were teenaged or adult males. They were further considered to have been detained at the Omarska camp during the summer of 1992; those that were eventually identified had last been seen on August 23rd of that year. They were thought to have been taken by bus to the area in a so-called “prisoner exchange.”

While most bones could be easily identified, identification of the remains was complicated due to the disassociation of bones; this was due to the sloping cave floor. Additionally, there were very few identifying artifacts found with the bodies.

³⁵ Borgen Project, “What Was the Cause of The Bosnian War?,” The Borgen Project (Borgen Project https://borgenproject.org/wp-content/uploads/The_Borgen_Project_Logo_small.jpg, January 16, 2020), <https://borgenproject.org/cause-of-the-bosnian-war/>.

³⁶ Greenberg Research Inc., “PDF,” November 1999.

³⁷ International Committee of the Red Cross, “Missing Persons and Their Families in Bosnia-Herzegovina, Croatia, Serbia and Kosovo - Bosnia and Herzegovina,” ReliefWeb, November 26, 2020, <https://reliefweb.int/report/bosnia-and-herzegovina/missing-persons-and-their-families-bosnia-herzegovina-croatia-serbia>.

2.2.1 The case of Hrastova-Glavica highlights the commonplace practice of finding mass graves in naturally occurring landscape features- this is seen in other cases in this paper. Furthermore, it showcases the importance of exhumations in upholding the right to truth by putting together a clearer picture of the atrocities committed at Omarska, right down to the exact date of the prisoner exchange. This information is crucial in supporting ongoing court cases involving the Omarska camp. Such evidence was successfully used in the prosecution and conviction of Bosnian Serb leader, Radovan Karadzic and commander Radko Mladic in 2016 and 2017. The men are now both in prison for life.³⁸

2.3 Hrgar Exhumations

The Hrgar Exhumations were led by Bihac Experts with Physicians for Human Rights providing guidance and assistance. This project took place between the 1st of September and the 4th of October of 1997. The grave was in a natural cave, also surrounded by trees and other vegetation. It was just southeast of the village of Ripac. Information that led to the discovery of the cave came from Serbian prisoners.

A distressing and complicating factor in the exhumations at Hrgar was the fact that the cave had been used as a garbage dump for years, causing a large amount of deposit to build up on the cave floor. The garbage consisted of “tires and inner tubes, glass bottles and plastic containers, expired license plates and identity cards, animal carcasses, leather army belts and web gear, and rusted firearms and unexploded ordinance.”³⁹

The victims were found to be males between the ages of 14 and 65, mostly killed by multiple gunshot wounds. They were believed to have come from the Ripac concentration camp during July of 1992. On the 11th of July of that year, some prisoners from the camp were released; the bodies in the cave are supposed to be those of the men that remained incarcerated. Cartridge casings in the area led to the conclusion that the victims had been shot prior to their burial; this was substantiated by autopsy findings.

³⁸ Physicians for Human Rights, “Forensic Evidence Brings Justice to Srebrenica,” Physicians for Human Rights (Physicians for Human Rights, November 14, 2018), <https://phr.org/impact/forensic-evidence-brings-justice-to-srebrenica/>.

³⁹ “Forensic Monitoring Project Report: Hrgar, Jama-Bezdan Exhumations of the Bihać Expert Team”, November 1997. HU OSA 386-2-2-2; Records of the Physicians for Human Rights' Bosnia Projects: Forensic Assistance Project: Findings; Open Society Archives at Central European University, Budapest.

The exhumation and subsequent investigation were flawed in many ways. Procedural issues were numerous- for example, bodies were given numbers but were not photographed before removal from the cave. Bones were also not counted or reexamined before being sealed in body bags. Adding to this, the experts did not have prior training in forensic anthropology and had a hard time distinguishing between human and animal bones, as well as distinguishing between left and right sides of a skeleton. A notable example of procedural fault was when “at one point, Masovic removed a paired radius and ulna from the side area that had a ligature of string wound around them and waved them in the air while trying to draw Tal’s⁴⁰ attention.” This contamination of evidence, due to improper handling, meant that the bones became useless in the investigation and they could no longer reliably be connected to a specific body.

Granted, there were issues with identification that were not due to the procedure. The decomposition led to remains rolling downhill into a small antechamber. The decomposition process was hastened by the climate of the cave, which was perpetually wet, with water draining down one side. Generally, the remains were completely skeletonized, although three to five of them had the presence of adipocere⁴¹ and some muscle tissue. The remains were greatly tangled together; the presence of unexploded ordinance, as well as scars on the cave walls, indicated that after the bodies were thrown down the shaft, grenades had been detonated within.

When it came time to identify the bodies, family members were asked to view skeletal remains; some were present at the autopsies. The Physicians for Human Rights recommended that the autopsies be performed without the family present, and crucially, without any information provided from the families regarding the supposed victim. This protocol was not followed. As the group reported: “Unfortunately, individuals who had been admitted to the site at its road entrance were relatively free to walk in and out of this tent, open body-bags, touch and manipulate items contained within them, and otherwise “tamper” with the evidence.”⁴² Tampering further occurred when media personnel attempted to photograph bones and ligatures. Family members contributed by “searching through the lines of body-bags for

⁴⁰ *ibid*

⁴¹ Adipocere is a waxy, soap-like substance that is created when the flesh of a body decays in a wet environment. This specific decomposition process is called “saponification”.

⁴² “Forensic Monitoring Project Report: Hrgar, Jama-Bezdan Exhumations of the Bihać Expert Team”, November 1997.

recognizable clothing and personnel (sic) effects, or in some cases for a “recognizable” skull...in several cases, items that were removed from body-bags for closer examination were taken away from bodies to the tent windows for viewing with better light; these items did not always get returned to the proper bag.”⁴³

In the end, forty-five bodies were positively identified. At the conclusion of the investigation, on October 5th, a funeral service was held for the victims of the massacre.

2.3.1 The case of Hrgar is a prime example of the importance of proper procedure in the exhumations of mass graves. By upholding proper procedure, workers are upholding the rights of both the family members and the collective rights of the public by ensuring that the truth is discovered and faithfully documented. In addition, Hrgar is another example of a naturally occurring landscape feature being used as a mass grave. It also is an especially profound example of the importance of dignity in burial, as the use of the garbage dump can be seen as the perpetrators seeing their victims as “inhuman” and “garbage” that deserved to be disposed of in such a manner. The psychological impact on family members is especially severe in this case.

One aspect of the Hrgar project that is worth mentioning is that after autopsies were completed, the skeletal remains, along with whatever adipocere and soft tissue existed, were stored in body bags with the soil from around the body. This was in accordance with local burial customs. While certain aspects of Muslim burial were unable to be realized (such as burial within twenty-four hours and the traditional rituals of washing the body), the physical return of the body provided the ability for families to not only have closure but to be in the presence of the sacred body of their loved one. The sacred body is recommended to be cared for and prepared by family members.⁴⁴ Having the body, they were able to perform what rituals they could and take some comfort in this. The right had been previously denied them- a violation of their right to religion, for which they had been persecuted during the war.

⁴³ *ibid*

⁴⁴ Gatrad, Abdul. (1994). Muslim customs surrounding death, bereavement, postmortem examinations, and organ transplants. *BMJ (Clinical research ed.)*. 309. 521-3. 10.1136/bmj.309.6953.521.

2.4 Sarajevo I Investigation

The Sarajevo I investigation was performed between July 7th and July 9th of 1999 by the Republika Srpska Commission on Tracing Prisoners and Missing Persons, again with the Physicians for Human Rights on site. This project was somewhat unique compared to the two previously discussed in this paper; it was a much smaller mass grave consisting of nine persons. They were buried at the edge of a cemetery in four coffin-like wooden compartments, covered with a wooden floor. All of the bodies were wrapped in blankets and wore military uniforms; however, all had skeletonized with just a bit of saponified tissue. The victims were identified as having been killed on July 2nd, 1992. Unfortunately, at the time Physicians for Human Rights made the report, no autopsy information had been released by the RS, although autopsies had been conducted on the 18th of July 1999.⁴⁵ However, the identities of the deceased were confirmed, giving eight families some sense of closure.⁴⁶

2.4.1 The Sarajevo I investigation is unique in the fact that the victims were found buried in a somewhat proper and dignified manner, as shown by the use of a sort of “coffin”. Despite this, it is still a highly irregular burial, with the wooden floor covering the compartments and the location at the edge of the cemetery. Irregular burials are not particularly uncommon- however, the presence of military uniforms is an indicator that these victims were involved in the conflict. Autopsy information will be critical in determining the events leading up to the deaths and finding the identity of each corpse.

⁴⁵ "Forensic Monitoring Project Report: Sarajevo I", November 1999. HU OSA 386-2-3-58; Records of the Physicians for Human Rights' Bosnia Projects: Forensic Assistance Project: Findings; Open Society Archives at Central European University, Budapest.

⁴⁶ Operational Team of the Republic of Srpska for Tracing Missing Persons, "Operational Team of the Republic of Srpska for Tracing of Missing Persons: Exhumations- Vareš Municipality," Operational Team of the Republic of Srpska for Tracing of Missing Persons, accessed June 1, 2021, <http://www.nestalirs.com/ekshumacije/vares/kunosic/enindex.html>.

Chapter 3: Argentina Case Studies

The following cases of mass violence in Argentina during the 1976-1983 military regime advance the understanding of the impact of death and disappearance on family members by framing it in a domestic context and as a calculated part of a campaign of terror by the central government. Argentina during this period was characterized by “forced disappearance” in the absence of a widespread war; rather, it was due to the perceived ideological differences that the victims held. The cases of Argentina examine the unique aspects of such context and the difference from the forensic international attention that Bosnia attracted.

3.1 Background of Events

The Argentine system of state terror was characterized by the fact that the vast majority- at least two-thirds- of all disappeared victims were abducted from their homes.⁴⁷ This helped to create a unique atmosphere of fear. “The disappearances in Argentina were so terrifying exactly because they were not public but intensely private,” writes Antonius C. G. M. Robben. “Violent death was taken away from the eye and control of the people, confined to the secrecy of detention centers, spread throughout society. Fear of the military did not diminish as it was taken out of the public arena but it increased, through the conversion from public into secret into private.”⁴⁸ This secrecy served to permeate the society with fear- and spared no member of the society. The seemingly arbitrary pattern to the disappearances is seen in the sheer variety of victims. “Apparently there were no clear ethnic or religious patterns to these atrocities, and certainly no racial ones in this overwhelmingly white population. Moreover, most of the victims had never engaged in any political activity, let alone activity of a clandestine, violent, or radical nature.”⁴⁹ One of the outcomes of such widespread terrorization was equally

⁴⁷ Antonius C. G. M. Robben, “The Assault on Basic Trust: Disappearance, Protest, and Reburial in Argentina,” in *Cultures under Siege: Collective Violence and Trauma*, ed. Antonius C. G. M. Robben and Suárez-Orozco Marcelo M. (Cambridge, UK: Cambridge University Press, 2003), pp. 70-101.

⁴⁸ Antonius C. G. M. Robben, “State Terror in the Netherworld: Disappearance and Reburial in Argentina,” in *Death, Mourning and Burial: A Cross-Cultural Reader*, ed. Antonius C. G. M. Robben, 3rd ed., vol. 1 (Malden, MA: Blackwell Publishing Ltd, 2006), pp. 134-148.

⁴⁹ David Pion-Berlin and George A. Lopez, “Of Victims and Executioners: Argentine State Terror, 1975-1979,” *International Studies Quarterly* 35, no. 1 (March 1991): pp. 63-86, <https://doi.org/http://www.jstor.org/stable/2600389>.

widespread disassociation of the disappeared from society. “At the time, people became not only mute but also deaf and blind. They learned ‘not to see’ what was happening in their immediate surroundings and, when forced by circumstances to acknowledge that something was happening, they assumed that it was not their business to know.”⁵⁰

According to the official report of CONADEP, as of the time of publishing 8,960 victims of the military junta remained missing. Of that number, the vast majority were detained in their private homes, supporting the figure that roughly two-thirds were detained in this manner.⁵¹ Furthermore, a similar proportion were abducted at night according to the report.⁵² This was intentional, as “the bewildered residents were at their most defenceless as a flashlight shone in their face while they were fast asleep.”⁵³ The Argentine army even instructed soldiers in this regard. “The sudden glare shall cause blinding when the eyes are opened... Whenever possible the approach must be made from behind the bed’s headboard. This will put him in a position from which he will not be able to fire with precision when he awakens.”⁵⁴

Lucio Ramon Perez described the kidnapping of his brother to CONADEP: “My brother was kidnapped on 9 November 1976. He was asleep with his wife and five-year-old son when they were wakened at about 2 a.m. by a loud explosion. My brother got out of bed, opened the front door, and saw four people jumping over the fence. They were in civilian clothes; one of them had a moustache and a jersey wrapped round his head like a turban; they all carried rifles. Three of them burst into the flat and ordered my sister-in-law and the boy not to look. The neighbours say that two of them dragged out my brother and forced him into a Ford Falcon. That’s the last we heard of him. They also say there were several cars and a truck on the scene, and there were a lot of men with rifles behind the trees. The traffic had been halted, and a helicopter was circling over the house...”⁵⁵

⁵⁰ Carina Perelli, “Settling Accounts with Blood Memory: The Case of Argentina,” *Social Research* 59, no. 2 (1992): pp. 415-422.

⁵¹ CONADEP. Part I. The Repression. Abduction. Report of CONADEP (National Commission on the Disappearance of Persons) - 1984, 1986.
http://www.desaparecidos.org/nuncamas/web/english/library/nevagain/nevagain_005.htm.

See Fig. 1

⁵² *ibid*

⁵³ Antonius C. G. M. Robben, “The Assault on Basic Trust: Disappearance, Protest, and Reburial in Argentina,” in *Cultures under Siege: Collective Violence and Trauma*, ed. Antonius C. G. M. Robben and Suárez-Orozco Marcelo M. (Cambridge, UK: Cambridge University Press, 2003), pp. 70-101.

⁵⁴ *ibid*

⁵⁵ CONADEP, “Part I. The Repression. Abduction (Anonymous Groups or Gangs Who Forced Their Way into Homes at Night). Report of CONADEP (National Commission on the Disappearance of Persons) - 1984,” Part I. The Repression. Abduction (Anonymous groups or gangs who forced their way into homes at night). Report

From this description and countless others, it is clear that the abductions were not concerned with being secretive; however, the actions after the abduction were characterized by intense secrecy. This contributed to the overall erasure of the victims from society- exactly what the military wanted as a result of their campaign. “Wish turned into desire with the obsession to annihilate opponents also physically; not only by killing them but by destroying their remains. The annihilation of the dead became the most concrete measure of success. The corpses of the disappeared came to mark the transition from war to victory, and the anguished search of their relatives the means to paralyze political opposition.”⁵⁶ The forced disappearances (and often subsequent deaths) were calculated to remove any trace of public memory of the deceased.

The intricacies of what happened to the abducted victims are detailed in the CONADEP report. Out of all cases investigated by the Commission, the vast majority detailed their torture. “Torture was an important element in the methodology of repression. Secret torture centres were set up, among other reasons, to enable the carrying out of torture to be carried out undisturbed.”⁵⁷

Dr. Norberto Liwsky, a resident of Buenos Aires, described the viewpoint of the guards: “The normal attitude of the torturers and guards towards us was to consider us less than slaves. We were objects. And useless, troublesome objects at that. They would say: ‘You’re dirt.’ ‘Since we ‘disappeared’ you, you’re nothing. Anyway, nobody remembers you.’ ‘You don’t exist.’ ‘If anyone were looking for you (which they aren’t), do you imagine they’d look for you here?’ ‘We are everything for you.’ ‘We are justice.’ ‘We are God.’”⁵⁸ These words solidify the prevailing political agenda: to erase the existence and the very memory of the disappeared.

of CONADEP (National Commission on the Disappearance of Persons) - 1984, 1986,
http://www.desaparecidos.org/nuncamas/web/english/library/nevagain/nevagain_006.htm.

⁵⁶ Antonius C. G. M. Robben, “The Assault on Basic Trust: Disappearance, Protest, and Reburial in Argentina,” in *Cultures under Siege: Collective Violence and Trauma*, ed. Antonius C. G. M. Robben and Suárez-Orozco Marcelo M. (Cambridge, UK: Cambridge University Press, 2003), pp. 70-101.

⁵⁷ CONADEP, “Part I. The Repression. Torture. Report of CONADEP (National Commission on the Disappearance of Persons) - 1984,” Part I. The Repression. Torture. Report of CONADEP (National Commission on the Disappearance of Persons) - 1984, 1984,

http://www.desaparecidos.org/nuncamas/web/english/library/nevagain/nevagain_014.htm.

⁵⁸ *ibid*

Admiral Massera stated: “We are not going to fight till death, we are going to fight till victory, whether or it will be beyond or before death.”⁵⁹

The methods for erasing the disappeared physically were varied and extreme. “The corpses were cremated or interred clandestinely as unidentified bodies in municipal cemeteries. They were also abandoned at roadsides, thrown in rivers, and even flung from planes at sea under sedation.”⁶⁰ Clandestine detention centers were necessary for the creation of bodies; 340 were identified by CONADEP, scattered throughout the country. Some of the notorious locations included the Navy Mechanics School (located in Buenos Aires), La Perla (in Córdoba), the Mendoza Military School, and Campo de Mayo.⁶¹ CONADEP reported the findings of Francisco Rubén Bossio at the Judicial Morgue in Córdoba: “These corpses had the following characteristics: they had bullet wounds, some with perforations, sometimes as many as eighty, sometimes seventeen, for example. They all had painted fingers and bore clear marks of torture. They had marks on their hands as if they had been tied with cords. From time to time one would appear completely torn to pieces, split open.”⁶²

Anonymity in death was ensured not only in the initial destruction of the remains but also in the disposal of remains. “The anonymous burial of the executed and disappeared entailed their physical, social, political, legal, and spiritual eradication. They were not acknowledged as fellow citizens, as legitimate members of the polity, or as interlocutors about the country’s future. They were therefore not entitled to a ritual that would reincorporate them into society as deceased members. Evil deserved to be buried in anonymity, thus epitomizing the inhumanity of the dead.”⁶³

⁵⁹ Antonius C. G. M. Robben, “The Assault on Basic Trust: Disappearance, Protest, and Reburial in Argentina,” in *Cultures under Siege: Collective Violence and Trauma*, ed. Antonius C. G. M. Robben and Suárez-Orozco Marcelo M. (Cambridge, UK: Cambridge University Press, 2003), pp. 70-101.

⁶⁰ Antonius C. G. M. Robben, “State Terror in the Netherworld: Disappearance and Reburial in Argentina,” in *Death, Mourning and Burial: A Cross-Cultural Reader*, ed. Antonius C. G. M. Robben, 3rd ed., vol. 1 (Malden, MA: Blackwell Publishing Ltd, 2006), pp. 134-148.

⁶¹ CONADEP, “Part I. The Repression. Secret Detention Centres (SDCs) - Location of the Secret Detention Centres -. Report of CONADEP (National Commission on the Disappearance of Persons) - 1984,” Part I. The Repression. Secret Detention Centres (SDCs) - Location of the Secret Detention Centres -. Report of CONADEP (National Commission on the Disappearance of Persons) - 1984, 1984, http://www.desaparecidos.org/nuncamas/web/english/library/nevagain/nevagain_018.htm.

⁶² Antonius C. G. M. Robben, “State Terror in the Netherworld: Disappearance and Reburial in Argentina,” in *Death, Mourning and Burial: A Cross-Cultural Reader*, ed. Antonius C. G. M. Robben, 3rd ed., vol. 1 (Malden, MA: Blackwell Publishing Ltd, 2006), pp. 134-148.

⁶³ Antonius C. G. M. Robben, “Exhumations, Territoriality, and Necropolitics in Chile and Argentina,” in *Necropolitics - Mass Graves and Exhumations in the Age of Human Rights*, ed. Antonius C. G. M. Robben and Francisco Ferrándiz, 1st ed. (Philadelphia, PA: University Of Pennsylvania Press, 2015), pp. 53-75.

Of course, the psychological effects of such actions were acutely felt by Argentine society. Under the incredible actions of the government, “an entire culture based on familial love, devotion, the capacity for mutual sacrifice” collapsed. Relatives of the disappeared were consumed by a desperate search for their disappeared loved ones- which was exactly the desired effect on the family that was intended. This worked into the military dictatorship’s goal that “the relatives of the disappeared would either remain passive not to endanger other family members or would be so occupied by the search that they would refrain from any political activity. The mass graves symbolized for perpetrators therefore the complete subjection of civil society to the authoritarian state.”⁶⁴

3.2 The Fatima Case

The Fatima Case first came to the attention of the public on August 21st, 1976. After the Equipo Argentino de Antropología Forense (EAAF)^{**}, investigation, it was found that on the day before, August 20th, thirty unidentified bodies had been found in Fátima. Their hands and feet were bound, and each victim bore at least one bullet wound in the back of the head. An explosion had been reported in the vicinity at the time, and at least three bodies corroborated this, with trauma consistent with such an event.⁶⁵ Fingerprints were taken from the bodies, although these were later lost. It was only in 1982 that any positive identifications were made, with five out of the thirty victims identified.⁶⁶ The CONADEP report found it likely that the victims had come from the clandestine detention center located within the Federal Police building in Buenos Aires.

It was only in 2004 with the assistance of Durham University that three more identifications were made, giving the families of Juan Carlos Vera, Carlos Raúl Pargas, and José Ricardo Raúl Carrizo a chance for closure.⁶⁷ With these identifications, two retired federal police officers were successfully prosecuted and convicted to life imprisonment for their role

⁶⁴ Antonius C. G. M. Robben, “Exhumations, Territoriality, and Necropolitics in Chile and Argentina,” in *Necropolitics - Mass Graves and Exhumations in the Age of Human Rights*, ed. Antonius C. G. M. Robben and Francisco Ferrándiz, 1st ed. (Philadelphia, PA: University Of Pennsylvania Press, 2015), pp. 53-75.

^{**} in English Argentine Forensic Anthropology Team; known worldwide for locating and identifying the remains of Ernesto “Che” Guevara in Bolivia.

⁶⁵ Equipo Argentino de Antropología Forense EAAF, “PDF” (Buenos Aires, 2005).

⁶⁶ *ibid*

⁶⁷ *ibid*

in the events. This is another example of how the truth plays an important role in legal proceedings involving human rights abuses. As of 2010, sixteen of the thirty victims had been positively identified.⁶⁸

3.2.1 With the identifications made in 2004, two retired federal police officers were successfully prosecuted and convicted to life imprisonment for their role in the events. This is another example of how the truth plays an important role in legal proceedings involving human rights abuses. As of 2010, sixteen of the thirty victims had been positively identified.⁶⁹

3.3 Lomas De Zamora Cemetery

The remains buried in Lomas De Zamora Cemetery, located in the eponymous city south of Buenos Aires, were dated from between 1976 and 1978- years that marked the height of military oppression.⁷⁰ The graves were neatly laid out and documented by the military dictatorship, and unusual action. The remains were located in area 112, an area that had housed a clandestine detention center during the same time period- a center called “Pozo de Banfield” (in English “Banfield Hole”).⁷¹

In addition to neatly burying and recording the deaths in Lomas De Zamora, the bodies were also buried in the same vicinity as those citizens in “normal” graves, who were not killed by the military junta. Like in the case of Sarajevo I in Bosnia, they were not located in a marginalized area.

Men were the majority of victims interred in Lomas De Zamora, making up 72% of the victims (84 individuals). Women represented 28% (32 individuals). Similar to the Hrastova Glavica exhumation, a small number of teenagers were discovered. All those for whom a cause of death could be identified had died of gunshot wounds, trauma, hemorrhage, “heart accidents”, and acute pulmonary edema. The majority (54%) had been killed by gunshot.

⁶⁸ El Correo, “Le Massacre De Fatima,” Le Massacre de Fatima - El Correo, December 14, 2010, <http://www.elcorreo.eu.org/Le-Massacre-de-Fatima>.

⁶⁹ *ibid*

⁷⁰ Equipo Argentino de Antropología Forense EAAF, “PDF” (Buenos Aires, 2005).

⁷¹ *ibid*

Furthermore, some of the other categories (trauma, hemorrhage) could in fact have occurred due to gunshots.⁷²

3.3.1 As of 2006, 49 individuals had been exhumed from Lomas De Zamora Cemetery, and eleven identifications had been confirmed.⁷³

3.4 General Lavalle Municipal Cemetery

The Municipal Cemetery of the city of General Lavalle (also called Ajó) is another example of victims being buried by the perpetrators in a cemetery. However, the General Lavalle victims were not accurately recorded in cemetery records, which led to the initial difficulty of finding the graves in question. In six suspected graves, bodies that had been found on coastal beaches were uncovered. The theory proposed was that they had been killed by a “traslado” (in English “transfer”), which was the chosen euphemism used by the perpetrators to refer to the sedation of a prisoner and subsequent dumping of the victim over the sea via airplane.⁷⁴

This theory was borne out by laboratory tests on the recovered remains; the bodies bore fractures that were consistent with falling from a great height onto a hard surface.⁷⁵ Water acts as a hard surface if one hits it from a great enough height.⁷⁶ Some of these victims were identified as Esther Ballestrino de Careaga, María Eugenia Ponce de Bianco, and Azucena Villaflor. These women were known to be kidnapped members of Mother of the Plaza de Mayo. After these identifications, it was found that survivors from the Navy School of Mechanics (ESMA) had seen the victims alive. This indicated that living victims at ESMA who were still disappeared had been the victims of *traslados*.⁷⁷

3.4.1 The discovery and exhumation of the bodies at General Lavalle provided tangible proof of the rumored *traslados* and gave support to the testimony of the ESMA survivors. This is crucial for both the prosecution of those responsible and for the closure of the families who

⁷² *ibid*

⁷³ Equipo Argentino de Antropología Forense EAAF, “PDF” (Buenos Aires, 2005).

⁷⁴ *ibid*

⁷⁵ Of Victims and Executioners

⁷⁶ Equipo Argentino de Antropología Forense EAAF, “PDF” (Buenos Aires, 2005).

⁷⁷ *ibid*

lost their loved ones. Furthermore, the support it gives to the survivors' evidence also serves to affirm and acknowledge their experiences, aiding their own healing.

Conclusion: Mass Graves: The Confluence of Identity, Dignity, and Grief

The amount and locations of mass graves in Bosnia and Herzegovina are not fully known. David Berman guesses that “there are today perhaps two hundred mass gravesites located across the twenty municipalities of Bosnia Krajina alone.”⁷⁸ Meanwhile, the missing in Argentina still number in the thousands.⁷⁹ The sheer scale of the atrocities and secrets hidden in the Bosnian and Argentinian landscapes ensure that countless families are left wrestling with not only rebuilding their lives after the conflict but doing so in the face of haunting unknowns regarding their loved ones.

Work on exhuming victims in mass graves and subsequently identifying them is absolutely crucial to the psychosocial healing of both the Bosnian and Argentine societies. This work provides families with two key tools in the grieving process: identity and dignity. These two concepts work together to humanize the unknown corpse and support the psychological health and healing of both the family members and overall community by upholding the right to truth.

Identification can be fraught with various difficulties, as the three case studies above have shown. In particular, the Hrgar exhumations suffered greatly from such issues, as discussed above. However, despite the issues, identification was a key goal of the exhumation project, and this is explained by the need to give grieving families justice in the form of confirmation and recognition of their loved one’s demise. In fact, Mary Ellen Keogh writes that: “through the passage of time, the accumulation of bodies, and an education campaign by the Physicians for Human Rights, survivors slowly began to understand that their loved ones had, in fact, been killed.”⁸⁰ The body of a loved one in these cases is central to grief and the processing of those emotions. Supporting the theory of ambiguous grief, Erin D. Williams and

⁷⁸ Berman, David M. "Calling The Wandering Souls: a journey through the heartland of ethnic cleansing." *WAR LITERATURE AND THE ARTS* 15, no. 1/2 (2003): 267-282.

⁷⁹ Richard G. Snyder, "PDF" (Oklahoma City, April 1965).

⁸⁰ Keough, Mary Ellen, Sara Kahn, and Andrej Andrejevic. "Disclosing the truth: informed participation in the antemortem database project for survivors of Srebrenica." *Health and human rights* (2000): 68-87.

John D. Crews state that: “Without a body to bury, without the assurance of death, real grieving cannot even begin, because it is viewed as disloyal.”⁸¹ Exhumations and subsequent identification allow the families to have a definitive answer and a body to bury. Burial rites, as seen in Sophocles’ *Antigone*, have been important to humanity for thousands of years, and clearly continue to be so in the modern era. While Antigone herself risks severe punishment in order to attend to her brother’s body and ensure that he has a proper burial, this is not unlike the situation in Bosnia, where forensic anthropologists risk interference and attack by local populations and the inherent risk of working in the often mined territory.⁸²

Proper burial allows the desecrated body to be returned to some state of dignity. None of the bodies in Hrastova Glavica or Hrgar were treated with the basic respect due to human beings (further evidence that they were seen merely as objects); nor were the victims of the Fatima Massacre. By exhumation and identification, a proper burial can be achieved, even if all of the associated rituals may not be able to be observed. In order to restore this dignity, identification is key (although anonymous burials, when the body is treated as if a human, can also provide some sense of dignity). However, the most powerful sense of dignity and closure is achieved when the loved ones of the deceased are intimately involved in this process. In the case of Bosnia and Herzegovina, there is much work ahead to provide the thousands of war victims with this dignity and closure. In Argentina, the work of identification also continues to be great, and setting the record straight through this work is crucial in light of the amnesty laws. The grieving process will be able to truly commence with the humanization of these deceased, and it will unfold in a healthier way. In order to provide the dignity and identity of victims of mass violence to facilitate the grieving process, states must fulfill their obligations to the right to truth and the right to health.

While Antigone’s grief is a timeless facet of human existence, in the more than two thousand years since Sophocles published his work, the judicial tools for recourse in her situation have been vastly improved. While there is still much work to be done, the modern era

⁸¹ Williams, Erin D., and John D. Crews. "From dust to dust: ethical and practical issues involved in the location, exhumation, and identification of bodies from mass graves." *Croatian medical journal* 44, no. 3 (2003): 251-258.

⁸² Sophocles, *Antigone*, 422-430. Sophocles, *Antigone*, ed. Edited and translated by Diane J. Raynor, Grand Valley State University, Michigan (Cambridge: Cambridge University Press, 2012), lines 423-430.

of human rights has allowed victims and their families to realize their inherent dignity and identity through court procedure- a crucial step in processing their grief.

Bibliography

1. ———. "Chart of Signatures and Ratifications of Treaty 005." Council of Europe. Council of Europe. Accessed June 11, 2021.
<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures>.
2. "Forensic Monitoring Project Report: Hrastova Glavica Cave Recovery State Commission on Missing Persons", October 1999. HU OSA 386-2-2-32; Records of the Physicians for Human Rights' Bosnia Projects: Forensic Assistance Project: Findings; Open Society Archives at Central European University, Budapest.
3. "Forensic Monitoring Project Report: Hrgar, Jama-Bezdan Exhumations of the Bihać Expert Team", November 1997. HU OSA 386-2-2-2; Records of the Physicians for Human Rights' Bosnia Projects: Forensic Assistance Project: Findings; Open Society Archives at Central European University, Budapest.
4. "Forensic Monitoring Project Report: Sarajevo Area Exhumations Republika Srpska Commission on Missing and Tracing", December 1999. HU OSA 386-2-2-53; Records of the Physicians for Human Rights' Bosnia Projects: Forensic Assistance Project: Findings; Open Society Archives at Central European University, Budapest.
5. "Exhumations, Territoriality, and Necropolitics in Chile and Argentina." Essay. In *Necropolitics - Mass Graves and Exhumations in the Age of Human Rights*, edited by Antonius C. G. M. Robben and Francisco Ferrándiz, 1st ed., 53–75. Philadelphia, PA: University Of Pennsylvania Press, 2015.
6. Al Tamimi, Yussef. "Human Rights and the Excess of Identity: A Legal and Theoretical Inquiry into the Notion of Identity in Strasbourg Case Law." *Social & Legal Studies* 27, no. 3 (June 2018): 283–98.
<https://doi.org/10.1177/0964663917722598>.
7. Antonelli, Mirta Alejandra. "State Terrorism, Clandestine Language: Notes on the Argentine Military Dictatorship." *PMLA/Publications of the Modern Language Association of America* 124, no. 5 (October 2009): 1794–99.
<https://doi.org/10.1632/pmla.2009.124.5.1794>.
8. Berman, David M. "Calling The Wandering Souls: a Journey Through the Heartland of Ethnic Cleansing." *WAR LITERATURE AND THE ARTS* 15, no. 1/2 (2003).
9. Boss, Pauline. *Ambiguous Loss: Learning to Live With Unresolved Grief*. Harvard University Press, 2009.
10. CONADEP. Part I. The Repression. Secret Detention Centres (SDCs) - Location of the Secret Detention Centres -. Report of CONADEP (National Commission on the Disappearance of Persons) - 1984, 1984.
http://www.desaparecidos.org/nuncamas/web/english/library/nevagain/nevagain_018.htm

11. Contreras-Garduno, Diana, and Ignacio Alvarez-Rio. "A BARREN EFFORT? THE JURISPRUDENCE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS ON JUS COGENS*." San José: Inter-American Court of Human Rights, n.d.
12. Council of Europe. "European Convention on Human Rights." Strasbourg: Council of Europe, n.d.
13. Dykmann, Klaas. "Impunity and the Right to Truth in the Inter-American System of Human Rights." *Iberoamericana* 26 (June 2007): 45–66. <https://doi.org/https://www.jstor.org/stable/41676303> .
14. EAAF, Equipo Argentino de Antropología Forense. "In English Argentine Forensic Anthropology Team) ." Buenos Aires: Equipo Argentino de Antropología Forense, 2003.
15. El Correo. "Le Massacre De Fatima." Le Massacre de Fatima - El Correo, December 14, 2010. <http://www.elcorreo.eu.org/Le-Massacre-de-Fatima>.
16. Gatrad, Abdul. (1994). Muslim customs surrounding death, bereavement, postmortem examinations, and organ transplants. *BMJ (Clinical research ed.)*. 309. 521-3. 10.1136/bmj.309.6953.521.
17. Greenberg Research Inc. "Country Report Bosnia-Herzegovina: ICRC Worldwide Consultation on the Rules of War." International Committee of the Red Cross, November 1999.
18. Hamber, Brandon. *Transforming Societies after Political Violence: Truth, Reconciliation, and Mental Health*. Edited by Daniel J. Christie. Peace Psychology Book Series. Heidelberg: Springer, 2009.
19. International Commission on Missing Persons. "Bosnia and Herzegovina." ICMP Bosnia and Herzegovina. International Commission on Missing Persons, August 28, 2020. <https://www.icmp.int/where-we-work/europe/western-balkans/bosnia-and-herzegovina/>.
20. International Committee of the Red Cross. "Missing Persons and Their Families in Bosnia-Herzegovina, Croatia, Serbia and Kosovo - Bosnia and Herzegovina." ReliefWeb, November 26, 2020. <https://reliefweb.int/report/bosnia-and-herzegovina/missing-persons-and-their-families-bosnia-herzegovina-croatia-serbia>.
21. Keough, Mary Ellen, Sara Kahn, and Andrej Andrejevic. "Disclosing the truth: informed participation in the antemortem database project for survivors of Srebrenica." *Health and Human Rights* (2000): 68-87.
22. Last Rights Project. "Last Rights- The Dead, the Missing and the Bereaved at Europe's International Borders: Proposal for a Statement of the International Legal Obligations of States." New York: United Nations Office of the High Commissioner for Human Rights, May 2017.

23. Morgos, D., J.W. Worden, and L. Gupta. "Psychosocial Effects of War Experiences Among Displaced Children in Southern Darfur." *Omega: Journal of Death & Dying* 55, no. 3 (2007): 229–53.
24. Operational Team of the Republic of Srpska for Tracing Missing Persons. "Operational Team of the Republic of Srpska for Tracing of Missing Persons: Exhumations- Vareš Municipality." Operational Team of the Republic of Srpska for Tracing of Missing Persons. Accessed June 1, 2021.
<http://www.nestalirs.com/ekshumacije/vares/kunosic/enindex.html>.
25. Organization of American States. "Organization of American States: Democracy for Peace, Security, and Development." Organization of American States. Organization of American States, August 1, 2009.
<https://www.oas.org/en/iachr/mandate/Basics/convention.asp>.
26. Paulsen, Natalya. "Emotional Experiences of Post-War Youth from Bosnia-Herzegovina, A Systematic Review." *University of St. Thomas/ St. Catherine: SOPHIA* 5 (2016).
27. Perelli, Carina. "Settling Accounts with Blood Memory: The Case of Argentina." *Social Research* 59, no. 2 (1992): 415–22.
28. Pištan, Čarna. In *Constitutional History: Comparative Perspectives*. Chicago, IL: University of Illinois Law Review, 2016.
29. Physicians for Human Rights. "Forensic Evidence Brings Justice to Srebrenica." Physicians for Human Rights. Physicians for Human Rights, November 14, 2018.
<https://phr.org/impact/forensic-evidence-brings-justice-to-srebrenica/>.
30. Pion-Berlin, David, and George A. Lopez. "Of Victims and Executioners: Argentine State Terror, 1975-1979." *International Studies Quarterly* 35, no. 1 (March 1991): 63–86. <https://doi.org/10.2307/2600389>.
31. Project, Borgen. "What Was the Cause of The Bosnian War?" The Borgen Project. Borgen Project https://borgenproject.org/wp-content/uploads/The_Borgen_Project_Logo_small.jpg, January 16, 2020.
<https://borgenproject.org/cause-of-the-bosnian-war/>.
32. Robben, Antonius C. G. M. "State Terror in the Netherworld: Disappearance and Reburial in Argentina." Essay. In *Death, Mourning and Burial: A Cross-Cultural Reader* 1, edited by Antonius C. G. M. Robben, 3rd ed., 1:134–48. Malden, MA: Blackwell Publishing Ltd, 2006.
33. Robben, Antonius C. G. M. "The Assault on Basic Trust: Disappearance, Protest, and Reburial in Argentina." Essay. In *Cultures under Siege: Collective Violence and Trauma*, edited by Antonius C. G. M. Robben and Suárez-Orozco Marcelo M., 70–101. Cambridge, UK: Cambridge University Press, 2003.
34. Shear, M. Katherine, Naomi Simon, Melanie Wall, Sidney Zisook, Robert Neimeyer, Naihua Duan, Charles Reynolds, et al. "Complicated Grief and Related Bereavement Issues for DSM-5." Wiley Online Library. John Wiley & Sons, Ltd, January 31, 2011.

https://onlinelibrary.wiley.com/doi/full/10.1002/da.20780?casa_token=6BYh67QNmTwAAAAA%3AAvo0MMmhelMWrvKhfa-WUjcz72MXRHgfnenys_Q66GmP7c54BDvLgRX_lhZ-9jxCOFmcK_O3_fG_j5c.

35. Shear, M. Katherine. "Complicated Grief." *New England Journal of Medicine*. New England Journal of Medicine, January 8, 2015.
https://www.nejm.org/doi/full/10.1056/NEJMcp1315618?casa_token=0C0wv55Su-4AAAAA%3AcJufBJElA9AFtWp6CzyyUna_HOKuQxeftMbfZmFxWajpsoYr7SjaGuJRZxIK5HbDpOB5vdIYAhnByEU.
36. Snyder, Richard G. "Survival of High-Velocity Free-Falls in Water." Oklahoma City: Federal Aviation Association, April 1965.
37. Sophocles, *Antigone*, 422-430. Sophocles, *Antigone*, ed. Edited and translated by Diane J. Raynor, Grand Valley State University, Michigan (Cambridge: Cambridge University Press, 2012), lines 423-430.
38. Stroud, Ellen. "Law and the Dead Body: Is a Corpse a Person or a Thing?" *Annual Review of Law and Social Science* (2018): 119.
39. Theodore McCombs and Jackie Shull Gonzalez, "Right to Identity," in *Right to Identity* (San Francisco, CA: University of California, 2007),
https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwixu-u249_vAhWyPOwKHZB_BoIQFjABegQIAxAD&url=http%3A%2F%2Fscm.oas.org%2Fpdfs%2F2007%2FCP19277.PDF&usg=AOvVaw28f2tN31h4inDy2l-w6Ap0.
40. United Nations. "International Covenant on Economic, Social and Cultural Rights." OHCHR, 1966. <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.
41. United Nations. "Universal Declaration of Human Rights - OHCHR." Office of the United Nations High Commissioner for Human Rights. United Nations. Accessed June 11, 2021.
https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.
42. Valentine, Christine. "The role of the corpse in bereavement." *Funeral Director Monthly*, 93, no. 11 (2010): pg. 2.
43. Williams, Erin D., and John D. Crews. "From Dust to Dust: Ethical and Practical Issues Involved in the Location, Exhumation, and Identification of Bodies From Mass Graves." *Croatian Medical Journal* 44, no. 3 (2003): 251-258.
44. World Health Organization. "Constitution of the World Health Organization." World Health Organization, 1946.
https://www.who.int/governance/eb/who_constitution_en.pdf.
45. World Health Organization. "Eleventh Revision of the International Statistical Classification of Diseases and Related Health Problems (ICD-11)." World Health Organization. World Health Organization, 2020. <https://icd.who.int/dev11/l-m/en#/http%3a%2f%2fid.who.int%2fid%2fentity%2f1183832314>.