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The international and regional legal framework of Humanitarian Forensic Action

Different aspects of a multifaceted equilibrium

DISSERTATION

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To my beloved

parents and sister

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Abbreviations

A.Ch.	Appeals Chamber
ACHR	American Convention on Human Rights
AChRWC	African Charter on the Rights and Welfare of the Child
AComHPR	African Commission on Human and Peoples' Rights
API	Protocol Additional to the 1949 Geneva Conventions relating to the Protection of Victims of International Armed Conflicts
APII	Protocol Additional to the 1949 Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts
APs	The 1977 Additional Protocols to the Geneva Conventions
CED	Convention on Enforced Disappearances
CMP	Committee on Missing Persons
CoE	Council of Europe
CoM	Committee of Ministers
ComHR	UN Commission of Human Rights
CTA	Central Tracing Agency
EAAF	Equipo Argentino de Antropología Forense
ECHR	European Convention of Human Rights and Fundamental Freedoms
EComHR	European Commission of Human Rights
ECtHR	European Court of Human Rights
e.g.	exempli gratia
et al.	et alii
etc	et cetera
EU	European Union
GCI	Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
GCII	Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea
GCIII	Convention (III) relative to the Treatment of Prisoners of War
GCIV	Convention (IV) relative to the Protection of Civilian Persons in Time of War
GCs	The 1949 Geneva Conventions
HFA	Humanitarian Forensic Action

HR	Human Rights
i.a.	inter alia
IACFD	Inter-American Convention on Forced Disappearance of Persons
IAComHR	Inter-American Commission of Human Rights
IACtHR	Inter-American Court of Human Rights
IACs	International Armed Conflicts
ICTR	Ad Hoc International Criminal Tribunal for Rwanda
ICTY	Ad Hoc International Criminal Tribunal for the former Yugoslavia
ICRC	International Committee of the Red Cross
i.e.	id est
IMO	International Maritime Organization
INTERPOL	International Criminal Police Organization
ISWG	Inter-Sessional Open-Ended Working Group
NIACs	Non-International Armed Conflicts
OAS	Organization of American States
OAS/GA	General Assembly of the Organization of American States
OSCE	Organization for Security and Cooperation in Europe
PACE	Parliamentary Assembly of the Council of Europe
PAHO	Pan American Health Organization
SOLAS	IMO Convention for the Safety of Lives at Sea
T.Ch.	Trial Chamber
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea (1982)
UNHCHR	UN High Commissioner for Human Rights
UNHCR	UN High Commissioner for Refugees
UNHRC	UN Human Rights Council
UNMIK	UN Interim Administration Mission in Kosovo
UNOCHA	UN Office for the Coordination of Humanitarian Affairs
UNODC	UN Office on Drugs and Crime
UNSG	UN Secretary General
UNSPDM	Sub-Committee on the Prevention of Discrimination and the Protection of Minorities

UNSPHR	Sub-Commission on the Promotion and Protection of Human Rights
UNWCC	UN War Crimes Commission
v.	versus
WG	Working Group
WGEID	Working Group on Enforced and Involuntary Disappearances
WHO	World Health Organization

Contents

Abstract

The sanctity of death, the nobel and moral obligation to return one's mortal remains, the need of the victims' family and relatives to know the whereabouts of their loved ones, as well as the need to put an end to the subsequent ambiguity on their fate are some issues very often treated already since Antiquity and run the International Law as a whole since its early origins. Beginning from this point, a complex legal framework was gradually created and now it grants protection to all aspects of the Humanitarian Forensic Action equation; apart from the dignified handling of dead bodies, pending missing persons' cases and the rights of their families and relatives are thoroughly treated both at an international and a regional level.

Although the perception of such protection initially originated in the context of armed conflicts due to the undeniably harsh situations that they create, as well as while enforcing the humanitarian rules and norms, the gradual development and adoption of human rights standards, their dissemination and prevalence have featured more aspects of the same *equilibrium* that need to be taken into consideration and have managed to better substantiate new rights.

In addition, the exact same tools and standards shall be respectfully used even in peacetime, when the existing conditions provoke dire humanitarian crises and emergencies that need to be dealt with immediately. Natural disasters and migratory/refugee flows are the most notorious examples that challenge contemporain international norms and require a more coordinated action. At the same time, more neglected aspects of the present subject (such as the potential questions on data protection in critical situations) will be also thoroughly mentioned.

Keywords: Humanitarian Forensic Action, missing persons, dead bodies, enforced disappearances, families/relatives

INTRODUCTION

"They want to bury their brave sons! Killed by the spear of war,
they remain here, unburied, a shame against the laws of the gods.
Those in power of this land will not grant permission to these
mothers to perform the burial rites of their slaughtered sons."

- Aethra, "The Suppliants", Euripides

The sanctity of death, the nobel and moral obligation to return one's mortal remains, the need of the victims' family and relatives to know the whereabouts of their loved ones, as well as the need to put an end to the subsequent ambiguity on their fate are some issues very often treated already since Antiquity and especially in Greek Literature[1], but mainly in Greek Tragedy[2].

In the notable Euripides' play "The Suppliants", this theme goes even further. The women from the city-state of Argos, after having lost their sons during an operation against Thebes, asked Aethra, the mother of Theseus, the King of Athens, before the altar of Goddesses Demeter and Persephone the bodies of their loved ones that Thebes unfaithfully was not returning and which by a Creon's decree were left unburied and, thus, dishonored. The Athenian King Theseus, convinced by his mother's words, collaborated with Adrastus, the King of Argos, and they authorized a joint expedition against Thebes, in order to claim the remains of their dead. Euripides, having in mind the relevant events of 424 B.C. and the battle between Thebes and Athens, in reality praises the latter's choice to honor the deceased in conformity with the already existing norms.

The same value is attributed to death and most -if not all- of its components almost by any culture. In fact, each one has even created its own perception and has established its own rituals[3]. The same importance is also recognized by all religions too, leading them to adopt certain customized rites and rituals; some of them -such as burial and cremation- are still of

[1] e.g. In Homer's "Iliad", the body of Patroclus, Achilles' cousin and best friend, who was killed by Hector, was eventually retrieved and cremated according to his own desire. The epic also points out the brutality of war, especially when Achilles, after having defeated Hector and taken revenge for Patroclus, mistreats Hector's body and only after twelve days and a divine message he lets King Priam to retrieve his son's corpse.
[2] See also Sophocles' plays "Aias" and "Antigone" and Aeschylus' "Seven against Thebes" as well.
[3] Blaaw, M. & Lahteenmaki, V. (2002), p.p.772-773.

utmost humanitarian importance and they are included in almost all humanitarian Conventions already.

In addition, such issues were manifestly highlighted by the Swiss businessman and philanthropist Henri Dunant, who actually witnessed the battle of Solferino and its aftermath (1859) in the occasion of one of his business trips. This traumatic experience inculcated him with the idea for the creation of an international body responsible to render assistance and humanitarian aid in severe and extreme situations. His vision was explicitly presented in his work "A Memory from Solferino", which, other than describing the brutalities that took place in the battlefield, it radiates optimism and hope and it is now perceived as the cornerstone for the foundation of the ICRC and the codification of the already existing humanitarian norms to the *corpus* of the contemporain IHL[4].

Long before the adoption of the 1949 Geneva Conventions and their 1977 Additional Protocols, issues regarding the handling of dead bodies and the rights of their relatives to know their fate were dealt with in most of the very first international humanitarian instruments. For instance, the Geneva Conventions for the Amelioration of the Condition of the Wounded in Armies in the Field of 1864 and 1929 imposed explicit obligations on States-Parties on how to treat the deceased and their cases as a whole. These Conventions constitute the first written instruments and actually formed the basis for the legal armoury created by States under the auspices of the ICRC and other (international) humanitarian actors and International Organizations.

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For the purposes of the present dissertation it needs to be noted from the very beginning that the term Humanitarian Forensic Action was initially inspired, created and disseminated by the ICRC. The latter defined it as the "application of forensic science in humanitarian activities"[5].

From a very strict scientific standpoint, there are specific forensic branches and they are usually related to medicine and archaeology[6]. Their principal function is to collect the essential and substantive empirical proof in order to attribute one's criminal responsibility[7].

[4] ICRC (2015), p.p.11-13; Μαρούδα, Μ.Ντ. (2013), σελ.49-50. Μαρούδα, Μ. Ντ. (2017).
[5] Cordner, S., & Tindball-Binz, M. (2017), p.65.
[6] Cordner, S. (2018), p.p.639-640. Cordner, S. & McKelvie, H. (2002), p.p.870-871.
[7] See *supra* note 4.

From this aspect, Law may not be strictly characterized as a forensic scientific field. However, one cannot deny that it still regulates most of such components.

While forensic scientists are collecting all the necessary evidence aiming at demystifying missing or dead persons' cases, from a legal standpoint and a victim-centered approach they simultaneously are obliged to obey specific legal rules (whether international or regional) that protect the status of the principal victims, also ensuring in this way the rights of their relatives (usually described as indirect victims[8]).

Whether all the stakeholders are acting in pre- or post- conflict situations, managing the deceased, tracing the missing persons and informing their family and loved ones about their whereabouts are the main aspects of the HFA that are to be further examined afterwards. While most academics and researchers have already studied each category of victims individually and only concurrently in exceptional cases they have treated the potential inter-relation among them, being the main objective of the present dissertation among others, what is intended here is to pint out that one and single case causes multi-level consequences and, thus, that one provision -no matter its headtitle- may provide protection to more persons than those expected. In addition, it will be proved that in reality forensics may be useful in much more contexts apart from war-torn situations.

Having all this in mind, it is easy to follow the reasoning of this paper. It is divided in two main parts, each one dealing with a different level. The first Part focuses on the international legal framework of the HFA. It deals, more specifically, with the principal branches in the context of which the whole notion firstly developed. As it will be proven afterwards, IHL is the fundamental origin, beginning with the treatment of dead bodies in all circumstances, setting specific standards in respect and providing derivative protection, as it prevents deceased combatants to go missing. Gradually, new provisions were adopted and expressly granted protection to all persons going missing in such contexts. At the same time, there were specific provisions granting protection to the families and relatives that were left behind. Such concerns were treated at both a political and a legal level that inspired other *fora* to undertake similar initiatives. The United Nations along with its Specialized Agencies and other International Organizations followed the lead and created their own precedent on the matter.

[8] Μπαλαφούτα, Β. (2018), σελ.112.

But, IHL is the only legal tool available? No matter which theory on the inter-relation of IHL and IHRL one chooses to adhere to, it is undeniable that the latter offer a more thorough protection. In fact, new patterns developed under this branch of International Law deal with certain aspects of the HFA equation. As a matter of fact, enforced disappearances seem to be the closest to the missing persons notion with a detailed legal armoury. However, these two notions in reality converge or diverge? What novelties does the framework on enforced disappearances provide?

After having established the basic legal framework, the present dissertation will try to answer to a fundamental question: how are those rules and principles implemented? In order to answer to such question, one shall recall that one of the enforcement mechanisms of IHL is the ICL. Attributing individual criminal responsibility in cases that the national courts and even the international community were ignoring was a mere revolution in International Law[9]. But how is the HFA incorporated in this context? Are all its aspects treated and punished in the same way? What is the role of Human Rights while criminalizing specific acts or omissions? All these questions will be examined in detail through the international -and even national- jurisprudence in the respective Chapter.

Armed conflicts constitute the only context where the HFA tools may be used? The last Chapter of Part I will respond to that question exactly. Even though armed conflicts designated the need to take action, nowadays HFA seems to be a notion in motion. It is widely used in the context of natural disasters, summary, arbitrary and extra-judicial executions and mixed migratory/refugee flows. More specific tools have also been developed in order to better respond to each one of these continuously emerging challenges. A new tendency that will also be dealt with, is the exact relation between HFA on the one hand and data protection on the other one, in view of the new methods of investigating pending cases, using genetic information gathered either *ante mortem* or sometimes *post mortem*.

The second Part of my dissertation will be focused on the regional armoury regarding HFA and more precisely on the Inter-American and the European ones, as the African system has not yet much to demonstrate. What is the relation between the international and regional levels? Do the former inspire the latter? How are all the aspects of the HFA *equilibrium* smoothly integrated in the regional instruments? As separate examples will be used, on the one hand, the case of Argentina -covering the period between 1976 and the end of the

[9] Μαρούδα, Μ.-Ντ. (2013), σελ.348.

subsequent Dirty War- that concluded in significant operational innovations that gradually were used all over the world, and, on the other hand, the case of the divided -since the 1974 turkish invasion and afterwards- Cyprus, that preoccupied various mechanisms -whether regional or international- and led to the creation of a *sui generis* bi-communal instrument mandated to investigate the missing persons cases brought before it by both sides. Such cases severely intrigued the ECHR judicial organs and created an interesting and very useful precedent on the matter. Of course, other cases of the turbulent european continent will be also examined.

PART I

The international dimension of HFA: protection of dead bodies, missing persons and their relatives

"History counts its skeletons in round numbers.
A thousand and one remains a thousand,
as though the one had never existed:
an imaginary embryo, an empty cradle,
an ABC never read, air that laughs, cries, grows,
emptiness running down steps toward the garden,
nobody's place in the line."

- Szymborska Wislawa[10]

Armed conflicts (either international or non-international) -no matter their original causes or their ultimate purposes- have some elements in common; specifically, they undoubtedly encompass disappearances and death as their basic and inextricable components. Unfortunately, they are not perceived as mere exceptions in such circumstances, but mostly as inevitable occurrences that keep happening on a daily basis. Thus, the handling of cases of missing persons or the identification of dead bodies, as well as the dealing with the direct victim's relatives seem to be the constant duties (or even challenges) of all relevant stakeholders.

The basic branches of International Law that can be applied in such contexts (*i.e.* IHL, HRL and ICL) contain -each one to a different extent- specific provisions, which regulate all the subsequently arising issues. However, one can observe that in the context of an armed conflict there can be little to no clarity on the status of each and every person, no matter his/her role during the hostilities.

In this multifaceted equation there is a strict inter-relation between the principal beneficiaries that has been paradoxically neglected: as it will also be proven afterwards, one cannot speak of different victims and different protective mechanisms. In reality, there is one and only circumstance (*i.e.* armed conflict), which creates three categories of victims (missing persons, the dead and their families). Therefore, it would be much more preferable if

[10] Szymborska Wislawa, "Hunger camp at Jaslo".

one's study would focus on this tripartite equation, presenting the core issues in a holistic way and, therefore, proving its multi-level nature.

CHAPTER 1

Humanitarian origins of the Forensic Action: deceased, missing persons and their relatives under the Humanitarian Conventions

Long before the adoption of the 1949 GCs and their 1977 APs, issues regarding the handling of dead bodies and the rights of their relatives to know the fate of their loved ones were dealt in most of the very first international instruments and formed the basis for the subsequent legal framework[11]. Since then, the humanitarian rules have been further developed, but those primary principles are still present in -almost- all standing treaty documents and to some extent they even have been upgraded.

In fact, in most of the GCs, one can find a common obligation -sometimes even with a varying wording[12]- addressed to the States-Parties and the parties to the conflict; the obligation "to search for and collect the dead". This obligation is explicitly stipulated in GCI art.15, GCII art.18, GCIV art.16 para 2 and API art. 33 para 4[13]. In all circumstances that are covered under the respective GCs[14], the obligation -as firstly envisaged in the previous international instruments- remains intact. It reflects an obligation of conduct[15] that the State or party concerned cannot arbitrarily deny to assume[16]. The said provision is aligned with the general principle that all beneficiaries of the GCs must be treated equally and without any adverse discrimination upon any basis[17]. Therefore, it is irrelevant whether the deceased

[11] See 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field; 1929 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field

[12] For instance in GCI art.15, the dual obligation "to search for [..] and collect [...]" refers only to the wounded and the sick, while the one and sole obligation concerning the dead is explicitly cited. However, the obligation to collect them is its logical counterpart and, thus, the provision necessarily encompasses it. See 2016 ICRC Commentary on GCI, para 1510.

[13] 1987 Commentary on API paras 1289-1294: The innovation of that provision is the element of joint search teams, although it may not be excluded under GCI art.15.

[14] See GCI art.13, GCII art.13, GCIII arts 4 & 5, GCIV art.4, API art.1 and APII arts 1 & 2; Petrig, A. (2009), p.p.348-350.

[15] The conduct could -among others- amount to granting permission to humanitarian organizations (even the ICRC itself) to render assistance in such circumstances. See ICRC Commentary of 2016 on GCI, para 1490.

[16] See 2016 ICRC Commentary on GCI, para 1509: Gaggioli, G. (2017), p.p.6-7.

[17] In any case, GCI art.15 in reality specifies the general provision of GCI art.12.

person belongs to one or the other belligerent party. The ratio of this provision was to avoid that a person would go missing even after his/her death[18].

Although the core obligation is the same for all of the aforementioned GCs, the addressees and the time limits set in each and every one one of them is different. More specifically, while GCI reflects a more traditional approach, imposing on the adversary that dominated in the battlefield to search for and collect the victims without any distinction[19], while in cases of NIACs all parties to the conflict (even NSAs) should undertake such an obligation[20]. In reality, the belligerents are not the only ones responsible; under specific circumstances even third actors (*e.g.* civilians) may be asked to search for and collect the dead. The GCI art.18 mentions such an alternative only regarding the wounded and the sick, but it should be interpreted more broadly as covering the dead as well. The GCII art.21, on the other hand, offers the opportunity to appeal to the charity of the commanders of neutral transpassing vessels, while the API art.17 para 2 specifically refers to civilians. What should be clear is that those actors cannot by any means be obliged to undertake that task[21]. The same regulations shall also be implemented to humanitarian relief organizations, even in cases of NIACs[22].

Furthermore, while the GCI demands that the dead should be collected *"at all times"* responding to the continuously changing character of the warfare, GCII mandates that such operations should be carried out *"after each engagement"*, claiming that in this way the obligation would be adapted to the particularities of the naval warfare. In both cases, the principle of humanity is at stake. Totally different is the relevant provision of GCIV, which opts for a balance between the obligation and the principle of military necessity. Perhaps the most apt approach on the time question of a search operation would be the one provided for NIACs as envisaged in APII art.8, which requires that such operations take place *"whenever circumstances permit, and particularly after an engagement"*[23]. To this option leads the wording of the customary Rule 112 as well[24].

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18 That was in fact the principal perception of missing persons. Initially, the sole eventual casualty would be for a person to go missing in action. Gradually the notion of missing person was expanded and, today, is being approached more broadly (see API art.33).
19 Gaggioli, G. (2017), p.7; Henckaerts, J.M. & Doswald-Beck, L. (2005), p.p.406-408.
20 Petrig, A. (2009), p.348.
21 Petrig, A. (2009), p.349.
22 GCI art.18 para 2, GCII art.21 para 1, APII art.18 para 1.
23 Petrig, A. (2009), p.p. 347-348.
24 Henckaerts, J.M. & Doswald-Beck, L. (2005), p.p.406-408.

Even not explicitly cited in this way in all GCs, but only in the API art.34 para 1 (and according to some academics it is implicit in the common art.3), a further obligation to treat the dead body in a humane way falls upon the belligerents. This obligation is actually twofold:

a) it prohibits the mistreatment (either mutilation or disfigurement) of corpses[25]: such practice is also prohibited under customary humanitarian norms[26] applicable even in NIACs. The ICRC Commentary on common art.3, which sets a *minimum* of obligations of the parties during a NIAC, has quite to offer at this point; it is highlighted that mutilation technically cannot be practiced on dead bodies[27] and that any acts of that kind are considered outrages upon personal dignity[28].

b) it imposes on the parties the obligation to undertake all necessary measures in order to prevent their despoilment[29]. Robbing items that belonged to the dead is an inacceptable crime against the deceased, his/her family and the society as well, for it may obstruct any criminal investigation and it possibly degrades the family's feelings. As a matter of fact, the Nuremberg jurisprudence (in the Pohl Case) affirms that such a practice is also considered a war crime[30]. This aspect of the general obligation has acquired a customary nature under Rule 113[31], too.

Moreover, regarding the disposal of the dead body, the GCs provide that they shall be treated honourably and interred according to the rites of their own religion[32], without taking into consideration the past of and the acts committed by the deceased[33]. The GCs provide two alternatives: either burial or cremation. Although not explicitly mentioned in that way, in reality there is only one possibility (the burial), while cremation is not but a mere exception and can be practiced, if such it is in accordance with the deceased's beliefs or in extremely

[25] This term appears in APII art.4 para 2 (a); Unfortunately, even prohibited by law such acts keep happening even in contemporary warfares. *e.g.* mutilations (even *post-mortem*) in Azerbaijan, Libya, Kurds: Gaggioli, G. (2017), p.p.7-9; For the criminal dimensions of the issue see *infra* Part I, Chapter 3, Subchapter 3.1 and for the treatment at a regional level see Part II.
[26] Henckaerts, J.M. & Doswald-Beck, L. (2005), p.p.325-319 (Rule 90 remitting to the relevant war crime and the EoC).
[27] Argument taken by the EoC.
[28] See 2016 ICRC Commentary on GCI, paras 611, 663-673; See also EoC.
[29] This dimension also falls under the general prohibition of pillaging; Henckaerts, J.M. & Doswald-Beck, L. (2005), p.p.182-18185 (Rule 52) & 409-411 (Rule 113).
[30] Gaggioli, G. (2017), p.9.
[31] Henckaerts, J.M. & Doswald-Beck, L. (2005), p.p.409-411.
[32] See art.17 GCI, art.20 GCII, art.120 GCIII, art.130 GCIV.
[33] Russian Federation, Constitutional Court, Burial Case, June 28th, 2007: the victims were considered as terrorists.

exceptional circumstances, when mainly reasons of public hygiene prevail[34][35]. Whatever the means of disposal are, the procedure must be carried out individually and collective burials and cremations should be chosen only as a last resort. The rationale is to facilitate an eventual need to recover the body at a later stage, to investigate the circumstances of the death and to return it to the family[36]. Quite often, the collective burial of the body is considered by the family as a sign of disrespect towards their relative, while in reality they may serve as a means to manipulate any proof collected during an ongoing criminal investigation. These humanitarian norms have already been confirmed by national courts[37] and according to the ICRC they have acquired a customary *status*[38] and, thus, they are applicable also in the context of NIACs. What seems quite questionable is the adequacy of naval burials, as there will not be any chance to recover the remains[39].

The last obligation (which is an obligation of means[40]) towards the dead is for the belligerents to identify them[41]. In order to achieve that, according to all the GCs[42], they shall store their identity discs[43] and documents and keep records of any particulars that may be found on the dead body or nearby, along with specific information on the exact cause of the death. In the case of POWs, any capture or internee cards, their correspondence cards and letters, as well as any notification of death may be of utmost importance too[44]. The

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[34] Gaggioli, G. (2017), p.12; Froidevaux, S. (2002), p.p.787-789; Israel, High Court of Justice, Abu-Rijwa case, November 15th, 2000: the Israeli Defence Forces claimed that they would do their best in order to identify the bodies, but for this to happen the repatriation of the mortal remains was indispensable.
[35] Petrig, A. (2009), p.p.354-355.
Such arguments are not valid anymore, as scientists claim that the impact of dead bodies on living persons is actually negligible. See 2016 Commentary on GCI, paras 1677, 1678.
[36] Gaggioli, G. (2017), p.p.12-13.
[37] For instance: Israel, High Court of Justice, Barake Case [Jenin (Mortal Remains) Case], April 14th, 2002; Israel, High Court of Justice, Physicians for Human Rights v. Commander of IDF Forces in the Gaza Strip, Judgement, May 30th, 2004; Colombia, Council of State, Administrative Case No 10941, Judgement, September 6th, 1995; Russian Federation, Constitutional Court, Burial Case, June 28th, 2007.
[38] Henckaerts, J.M. & Doswald-Beck, L. (2005), p.p.414-417 (Rule 115): The discussion on the disposal of the dead can, however, be avoided, if one decides to return the remains to their relatives, as stipulated in the respective customary Rule 115.
[39] UN ComHR, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Report on his mission to Papua New Guinea island to Bougainville from 23 to 28 October 1995, UN Doc. E/CN.4/1996/4/Add.2, February 27th, 1996, para 73.
[40] Gaggioli, G. (2017), p.17.
[41] Kirasi Olumbe, A. & Kalebi Yakub, A. (2002), p.p.894-895.
[42] See art.16 GCI, art.19 GCII, arts 120 GCIII, art.129 GCIV.
[43] Resolution I of the 24th International Conference of the Red Cross (Manila, 1981) - Wearing of identity discs at https://www.loc.gov/rr/frd/Military_Law/pdf/RC_Nov-Dec-1981.pdf.
[44] See Annexes.

Conventions offer a list of the *minimum* information required[45]. According to the ICRC, this norm is of a customary nature and, as a result, it applies equally in cases of NIACs, even if it is not specifically mentioned in common art.3 and the APII[46,47].

The reasoning of the latter obligation is not only to ensure the protection of the personal dignity of the deceased, but to safeguard the family's rights to know the fate of their loved ones[48] as well and, hence, to conduct an effective investigation and maybe in the future to seek the attribution of criminal responsibilities for the crimes committed[49]. In fact, the right to know is insinuated in almost -if not all- the aforementioned provisions, as well as in others that at first sight seem less relevant.

For instance, a secondary protective scope of GCIII arts 122-123 and GCIV arts 136 and 140[50], that regulate the establishment of National Information Bureaux and the CTA respectively, has to do with the families too, as those agencies constitute the formal focal points, in order for them to learn the whereabouts of their loved ones[51]. Similarly, it is mandated that information regarding the exact location of missing persons and dispersed families should be shared among the parties to the conflict and, therefore, the right to truth is further promoted[52]. Equally important for both sides is the right to maintain contact with the outside world, to not be held incommunicado and to exchange family news, as provided in GCIV art.25[53]. Such a right (and the respective obligation) forms part of the recognized customary IHL, as stipulated in Rule 105 and the more specific Rule 117, both of which are applicable during IACs and NIACs[54]. As it will be examined afterwards, it has been extensively treated also under regional institutions for the protection of Human Rights[55].

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45 See 2016 Commentary on GCI para 1559, 2017 Commentary on GCII para 1736, 1960 Commentary on GCIII p.563, 1958 Commentary on GCIV p.p.504-505.

46 Henckaerts, J.M. & Doswald-Beck, L. (2005), p.p.417-420 (Rule 116).

47 Aspects of that matter have also been treated by regional courts and tribunals. See *infra* Part II, Chapters 1 & 2.

48 There even exists a social dimension of the right to truth, as it may help to the tracking of the missing one, but it can also serve as the detonator of the accumulated suffering and in the course of the time as a means to restore the family and societal links through the disclosure of the pending cases. See API art.32, Sassoli, M. & Tougas, M.-L. (2002), p.p.728-730; Stover, E. & Shigekane, R. (2002), p.846.

49 Gaggioli, G (2017), p.16.

50 See arts 136 and 140 GCIV respectively.

51 Μπαλαφούτα, Β. (2018), σελ.28-31.

52 See art.26 GCIV, art.43 GCIV, art.106 GCIV, art.128 GCIV, art.74 API.

53 Μπαλαφούτα, Β. (2018), σελ.29-30.

54 Henckaerts, J.M. & Doswald-Beck, L. (2005), p.p. 379-383 (Rule 105) and 421-427 (Rule 117).

55 See *infra* Part II, Chapters 1 & 2.

The most recently regulated aspect of the HFA equation is the issue of missing persons[56]. At first, only the notion of an individual "missing in action" was used and it was perceived as those persons that went missing while being on the battlefield[57] and this is the main reason that most relevant clauses can be found in bilateral agreements after the end of the hostilities[58].

Gradually the term expanded and in 1977 it was expressly used in API art.33. Under the API art.33, the parties to the conflict are obliged to search for all those persons reported missing by the adversary, right after the latter has transmitted all the necessary information. Such a duty falls under a specific time limit, which more or less reminds the one set out regarding the relevant obligation concerning the dead (*"as soon as circumstances permit, and at the latest from the end of the hostilities"*); this wording leaves to the parties a considerable margin of appreciation on whether the circumstances do permit such operations, designating on the other hand an absolute limit[59]. The party under question has a dual obligation: on the one hand it has to keep a record of all the particulars described in the GCIV art.138 and on the other one to search for the collection of such information. At this point too, the role of the CTA is of utmost importance: parties shall not just furnish all the information collected to the Agency, but they are further obliged to ensure that it will be submitted, even in the cases where the routes of the ICRC are not available[60].

The incessant interest of the ICRC on all aspects of HFA is clearly proved through its continuing work on the field. As a matter of fact, an International Conference held in 2003[61] treated specifically the question of missing persons and proposed specific actions in order to resolve pending cases and to better assist their families. The Conference set out the basis for new and more contemporary discussions on the issue, that will be treated afterwards.

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[56] The matter is strictly interlinked with the question of enforced disappearances, even though the term is not expressly referred to the GCs. This matter will be treated in *infra* Part I, Chapter 2, Subchapter 2.2..
[57] Martin, S. (2002), p.p.723-724.
[58] For instance: Plan of Operation for the 1991 Joint Commission to Trace Missing Persons and Mortal Remains, Part 2, Agreement on Ending the War and Restoring Peace in Viet-Nam, Chapter III.
[59] See the 1987 Commentary on API, para 1235.
[60] *Ibid,* paras 1275, 1278.
[61] Tidball-Binz, M. (2013), Part.13.5. See https://www.icrc.org/en/doc/assets/files/other/icrc_002_0857.pdf.

CHAPTER 2

HFA in the light of International Human Rights Law

Alongside with the long existing IHL norms related to almost all aspects of the HFA equation, a significant human rights legal framework regarding such issues has also been gradually established and it applies equally in all circumstances, whether in peace or in wartime[62].

This statement reflects the continuing dialogue on the relations among these two branches of International Law, *i.e.* IHL and HRL. Departing from the very first established separatist theories, different variations have been created by both the academics and the jurisprudence of International[63] and Regional[64] Courts and Tribunals. Without taking into consideration the exact nature of the relation of the two branches, one cannot neglect the need for a complementary interpretation and implementation of States' obligations deriving from both sources[65] (and especially the assertion that HRL does not cease to bind the States even in war-torn situations; the only permissible exception might be through a derogation clause, as for instance the one enshrined in art.4 of the ICCPR)[66], excluding only some core human rights and principles.

Therefore, it seems inevitable that a human rights perspective to the main topic of the present dissertation shall be given. Besides, as it will be proved afterwards, there are specific issues that somehow now have a comparatively more complete, through and even a more effective response to certain issues due to the mobilization of International Organizations initially at a political level, that point out the incentives for further legal commitments[67].

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[62] Buis, E. (2008), p.p.271-275.

[63] ICJ, Legality of Threat or Use of Nuclear Weapons, para 1; Droege, C. (2008), p.p.507-509; Hailbronner, M. (2016), p.343.

[64] Perrakis, St. (2009), p.98; Droege, C. (2008), p.p.503-509; Al regional Courts and the relevant Commissions have created a rich jurisprudence on the matter. See for instance:
- ECtHR: Al Skeini et al. v. United Kingdom, Hassan et. al. v. United Kingdom, Isayeva, Yusupova & Bazayeva v. Russian Federation, Varnava v. Turkey (for the latter, see extensively *infra* Part II, Chapter 2)
- OAS level: Arturo Ribón Avila v. Colombia, Case of Las Palmeras v. Colombia, Bámaca Velásquez v. Guatemala, Case of The Santo Domingo Massacre v. Colombia
- AU level: Commission nationale des droits de l'Homme et des libertés c. Tchad.

See on the matter *infra* Part II.

[65] Kolb, R. (2012), p.p.6-8.

[66] ICJ, Legality of Threat or Use of Nuclear Weapons, para 25; ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, para 106; ICJ, Case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), citing the Wall Advisory opinion; Orakhelashvili, A. (2008), p.p.168-169; Περράκης, Στ. (1985), σελ.34-37; Κτιστάκις, Ι. (2017), σελ.646-647; Melzer, N. (2016), p.28; Hailbronner, M. (2016), p.p.344-347

[67] Cordner, S., & Tindball-Binz, M. (2017), p. 66: Famous NGOs also contributed to the adoption of legally binding instruments or guidelines on the matter that can even be used in other circumstances that may require such expertise. For instance: 1989 UN Manual on the Effective Prevention and Investigation of Extra-Legal,

2.1. Political efforts for a more comprehensive response to most of the HFA aspects

Almost all issues arising in the context of the HFA triangle have been -through all these years- subjects of negotiations of various political *fora* in a continuing effort to propose practicable and effective solutions. As described above, the ICRC first responded to such dire situations and to the needs of all victims. Gradually the idea of dealing with such issues was infiltrated in the UN system, as well as in the context of other specialized International Organizations.

More specifically, among the most active UN Human Rights *fora* one can identify the ComHR[68] and its descendant[69], the UNHRC[70], which included in its agenda -already since 1998- the need of the coordinated participation of forensic scientists for the promotion of human rights and the demystification of all those cases caused by practices exercised by *"persons responsible for grave violations of human rights and international humanitarian law"*[71]. The acts concluded by both organs prove how important the forensic sciences can be while investigating pending cases, triggering at the same time the surfacing of other subsequent facets.

Although the UN Human Rights *fora* have not yet dealt with dead bodies, they have extensively worked on other issues. As a matter of fact, the ComHR, since 1999, had adopted a series of Resolutions[72] regarding the practice of enforced disappearances, recalling the significant contribution of the WGEID and the importance of the relevant 1992 UN Declaration and setting a solid basis and more adequate political circumstances for the adoption of a legally binding instrument[73]. The UNHRC followed this precedent and published itself similar Resolutions[74]. Both organs highlight the strict inter-relation of the issue with the right of the victim's family to know the truth regarding their loved one's fate. In the course of the time, they have developed a considerable precedent on that matter as well[75].

Arbitrary and Summary Executions (Minnesota Protocol), which was revised in 2016, Guideline for the conduct of UN inquiries into allegations of massacres, UN Manual for the Investigation and Documentation of Torture (Istanbul Protocol).

[68] E/CN.4/RES/1992/24, E/CN.4/RES/1993/33, E/CN.4/RES/1994/31, E/CN.4/RES/1996/31, E/CN.4/RES/1998/36, E/CN.4/RES/2000/32, E/CN.4/RES/2003/33, E/CN.4/RES/2005/26.

[69] A/RES/60/251.

[70] A/HRC/RES/10/26, A/HRC/RES/15/5.

[71] E/CN.4/RES/2003/33, preamb. para 4.

[72] E/CN.4/RES/1999/38, E/CN.4/RES/2000/37, E/CN.4/RES/2001/46, E/CN.4/RES/2002/41, E/CN.4/RES/2003/38, E/CN.4/RES/2004/40, E/CN.4/RES/27.

[73] See *infra* Part I, Chapter 2, Subchapter 2.2.

[74] A/HRC/RES/7/12, A/HRC/RES/10/10, A/HRC/RES/14/10, A/HRC/RES/21/4.

[75] E/CN.4/RES/2005/66, A/HRC/RES/9/11, A/HRC/RES/12/12, A/HRC/RES/21/7.

The importance that UN attributes to such right led the UNHCHR to conduct Reports[76] until 2011, when the UNHRC appointed a Special Rapporteur mandated to promote the values of truth, justice and to ensure reparations and guarantees of non-recurrence for a three-year term [77]. The mandate was subsequently extended and during all these years a significant work has been done. In addition, it cannot be disregarded that the right to truth has been also related to the right to access to information, according to the extensive research of the UNSG on the right to freedom of opinion and expression[78].

In comparison with the rest of the HFA elements, missing persons were the last to be treated by the UN Human Rights *fora*. This aspect bothered not only the Commission[79] and the Council[80] (the latter's Advisory Committee conducted an extensive study corroborating the ICRC's findings[81]), but the UNGA itself[82 83].

The continuously increasing missing persons cases, especially due to the recent incidents in the Syrian Arab Republic, have alarmed the UNSG, who pointed out the dire humanitarian emergency in his latest report brought before the UNSC and asked the parties to the conflict to fully comply with their international legal obligations in order to ease the human suffering[84]. However, the evidences provided by the ICRC on the number of missing persons cases registered in the CTA seriously troubled the highest political UN organ and for the very first time, in 2019, the UNSC issued a Resolution specifically on missing persons reminding to all States their principal responsibilities under both IHL and HRL[85 86].

However, the question of missing persons was not dealt with only within the UN framework, but it mobilized other International Organizations as well. The most notable example is the ICMP, which originated by a G-7 Summit held in France, in 1997, and it initially supervened the investigation of missing persons in the former Yugoslavia during the

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76 E/CN.4/2006/91, A/HRC/5/7, A/HRC/5/7, A/HRC/15/33, A/HRC/17/21.
77 A/HRC/RES/18/7.
78 A/RES/68/362
79 E/CN.4/RES/2002/60, E/CN.4/RES/2004/50.
80 A/HRC/RES/7/28, A/HRC/14/118.
81 A/HRC/RES/14/42.
82 A/RES/71/201, A/RES/73/178.
83 Μπαλαφούτα, Β. (2018), σελ.120-122.
84 S/RES/2019/373 para 45.
85 S/RES/2019/2474; See also https://www.un.org/press/en/2019/sc13835.doc.htm & https://www.icrc.org/en/document/issue-missing-must-be-first-and-foremost-humanitarian.
86 Until now the UNSC only concurrently had dealt with the issue; since it established the UNMIK (S/RES/1999/1244) as an interim organ that would ensure a minimum of substantial autonomy to the people of Kosovo, just in 2017 a multi-ethnic Resource Center on Missing Persons was launched and in collaboration with the WGEID various relevant workshops have been created.

1990 and henceforth crisis and right after the Federation's dissolution. Soon it developed useful tools that combined legal and forensic expertise in order to disclose pending case, acquiring, therefore, an international *status* that increased even its financial support by the States[87]. Gradually its mandate was further expanded covering almost all potential causes of such incidents[88].

In 2014, its legal *status* evolved and since the adoption of the relevant treaty now it is formally a Hague-based International Organization with a brand new structure and clearly described objectives[89]. The ICMP, finally, has created a wide network of partners in its efforts to disclose missing persons cases (*e.g.* UN, ICTY, ICC, INTERPOL[90], UNOCHA, UNHCR, EU, CoE, OSCE, ICRC etc.)[91].

2.2. The issue of enforced disappearances

The issue of enforced disappearances is not a novelty in International Law. Already since the 1960's, it was considered as a widespread practice of most latin-american regimes, gradually expanding to the whole continent[92].

Such practice is quite challenging and it is perceived in many different ways by academics and practitioners. It is undeniably the major cause of missing persons' cases[93], but

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[87] Cordner, S., & Tindball-Binz, M. (2017), p.67; Cordner, S. (2018), p.p. 644-645.

[88] See also *infra* Part I, Chapter 4.

[89] See https://www.icmp.int/wp-content/uploads/2014/12/agreement-on-the-status-and-functions-of-icmp.pdf.

[90] INTERPOL has a very long presence in cases where forensics are highly needed. The Agency has even developed specific procedures that can be applied in various circumstances in order to trace missing persons and identify mortal remains. The most notable one is the Disaster Victim Identification (DVI), which is originally created in 1984 and is put in action mainly after a natural disaster or a terrorist attack and it seeks to speed up the ongoing processes (especially the recovery and identification), as well as to promote the healing process not only for the sake of the victim's families, but for society's as well, mainly because such circumstances usually weaken or even totally destabilize a country's response mechanisms, making the help of the international community almost vital. In cases of terrorist attacks, it might also help to find the perpetrator and attribute responsibilities.

While dealing with dead bodies, DVI consists of four distinct stages. At first, a scene examination must take place and its duration varies according to various factors (such as the type of the incident,r the region where it happened or the number of the victims). Then, the specialists collect any *ante-* or *post-mortem* data, in order to optimize the chances of identifying the victim in question (reconciliation phase). Due to the highly demanding humanitarian emergencies, visual identification is not considered as an accurate means. The most notorious incident in which the DVI mechanism was put in action was the 2004 Indian Ocean Tsunami.; INTERPOL COM/FS/2018-03/FS-02; Cordner, S. (2018), p.645.
See https://www.interpol.int/How-we-work/Forensics/Disaster-Victim-Identification-DVI

[91] See https://www.icmp.int/about-us/partners/.

[92] Sheeran, S. & Rodley, N. (ed.) (2013), p.130.

[93] See Resolution II of the 24th International Conference of the Red Cross (Manila, 1981) - Forced or involuntary disappearances at https://www.loc.gov/rr/frd/Military_Law/pdf/RC_Nov-Dec-1981.pdf.

it does not affect only them, but their families as well; an assertion that in the course of the time was depicted and explicitly mentioned in all relevant international legal instruments[94].

The very first initiative within the UN framework originates from a seemingly irrelevant organ, the UNSPDM[95]. The Sub-Committee noticed that many thousands of persons were going missing in Argentina and in most of the cases the government was informed. The incessant denunciation of such practices by international Rapporteurs and the adoption of a resolution on the matter were the principal reasons of States' political unwillingness to participate in any efforts against such phenomena. Despite the fact that this situation actually retarded a coordinated action by the UN, it somehow helped to target all those regimes responsible for such inhumane practices and mobilized at the same time the civil society to take immediate action[96].

In 1978, the UNGA requested the ComHR to consider the problem and to make the adequate recommendations[97]. The Commission responded to that call by creating -initially for one year- a Working Group consisted of independent experts and mandated to investigate cases of enforced disappearances, as well as to collaborate with the States and the UNSG towards their resolution[98]. This thematic WG in reality lasted much more than just a year. It was once renewed in 2017 by the UNHRC[99].

The creation of the WGEID was welcomed by the majority of States and was perceived as a sufficient measure to deal with the problem, leading to a further delay of the adoption of a legally binding instrument, which would attribute specific responsibilities to the perpetrators[100]. A step towards the gradual codification on the matter was the adoption of the Declaration on the Protection of all Persons from Enforced Disappearances[101], in 1992, according to which the WGEID would additionally undertake the obligation to monitor States' compliance with it[102]. This move was triggered mainly by the pressure of the WGEID

[94] CED art.24.
[95] In 1999 it was renamed to UNSHR and after the replacement of the ComHR by the UNHRC it was absorbed by the newly born Advisory Committee..
See https://www.ohchr.org/EN/HRBodies/SC/Pages/SubCommission.aspx.
[96] Νάσκου-Περράκη, Π. (2016), σελ.377. Andreu-Guzmán, F. (2002), p.p.803-805.
[97] A/RES/33/178, para 2.
[98] E/CN.4/RES/1980/20. Sheeran, S. & Rodley, N. (ed.) (2013), p.130.
[99] A/HRC/RES/36/6. See https://www.ohchr.org/EN/Issues/Disappearances/Pages/DisappearancesIndex.aspx.
[100] Even the adoption of the 1984 CAT further delayed the response of the international community as it was then seen as a possible solution to the question of enforced disappearances too. Νάσκου-Περράκη, Π. (2016), σελ.379-380.
[101] A/RES/47/133.
[102] Andreu-Guzmán, F. (2002), p.p.805-809.

to the ComHR, the continuing involvement of the civil society and the jurisprudence of other (quasi-)judicial organs -whether international[103] or regional[104].

Later on, in 1998, the UNSPHR created a draft international convention[105] on the matter, which formed the basis upon which the ISWG -created by the ComHR[106]- would form the respective Convention, that was brought before the competent UN organs.

The CED explicitly codifies an absolute right not to subsume an individual to enforced disappearance[107] and defines the term as *"the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State"*[108] with the duration of such acts being completely irrelevant[109]. Such state practices, though, have as a (somehow controversial) counterpart the denial of the competent authorities to provide useful information on the whereabouts of the disappeared. Such behavior -even if it is triggered by a totally legal motion[110]- inevitably results in the exclusion of the individual in question from the protection of the law[111]. The need for a nexus between the act (even committed by individuals) and the State logically excludes the possibility to attribute responsibility to NSAs for such acts and that is one of the crucial differences in comparison with the relevant provision of the ICC Statute[112].

The absolute nature of the right is furthered strengthened by the prohibition of any derogations in CED art.1 para 2, even if there is a state of war[113]. In other words, armed conflicts are not a precondition of enforced disappearances, but they may be an eventual context. In the author's view, this provision, in addition with the respective RS one[114], soothes the until then established distinction between the terms "missing" and "disappeared persons", as the former was strictly used in cases of armed conflicts. Therefore, enforced

[103] See *supra* Part I, Chapter 2, Subchapter 2.1.
[104] See *infra* Part II.
[105] E/CN.4/Sub.2/1998/19.
[106] E/CN.4/RES/2001/46.
[107] CED art.1.1.
[108] A definition is also contained in a GC of the WGEID [A/HRC/7/2 (para. 26)].
[109] CED/C/10/D/1/2013, para 10.3: "[...] regardless of the duration of the said deprivation of liberty or concealment".
[110] CED/C/10/D/1/2013, para 10.3: "Therefore, an enforced disappearance may be initiated by an illegal detention or by an initially legal arrest or detention [...]".
[111] CED art.2; CED/C/10/D/1/2013, para 10.3.
[112] See *infra* Part I, Chapter 3, Subchapter 3.2.
[113] CED art.1.2. Νάσκου-Περράκη, Π. (2016), σελ.386.
[114] See *infra* Part I, Chapter 3, Subchapter 3.2.

disappearances may be committed both in peacetime and in wartime; in the latter case they seem to be the major -but not the sole- cause of missing persons cases.

Moreover, a real innovation of the CED is the broadening of the notion of the "victim", which apart from the direct one, now also encompasses any person suffering from the direct results of the disappearance[115] (as explicitly cited in Yirusta v. Argentina[116]). Another equally important innovation is the consolidation of the derivative right to know the truth. The latter derives principally by the relevant humanitarian provisions[117], as well as by all competent human rights organs[118].

The Convention also provides for specific positive obligations on States-Parties, such as the duty to criminalize such practices in domestic law and to establish penalties for the perpetrators[119], to provide for reporting mechanisms and legal assistance to the victims[120] and to duly investigate any case[121]. At the same time, the Convention reiterates the relevant RS provision -somehow complementing it- and characterizes enforced disappearances as crimes against humanity[122][123], establishing universal jurisdiction[124] and defining the victims' reparations when a complaint is brought before the respective Committee[125]. As a matter of fact, in the aforementioned Yirusta v. Argentina case, the Committee asked the State -among others- to restore the deficiencies and to ensure the non-repetition of such incidents by disseminating its Views to the law enforcement officials[126].

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115 Μπαλαφούτα, Β. (2018), σελ.111-117; Vitkauskaitė-Meurice, D. & Žilinskas, J. (2010), p. 209; Fondebrider, L. (2002), p.p.889-890.

116 CED/C/10/D/1/2013, para 10.8: "the Committee considers that the anguish and suffering experienced by the authors owing to the lack of information that would allow clarification of what happened to their brother have been exacerbated by the de facto failure to acknowledge their status as victims, which thus becomes a cause of revictimization that is incompatible with the principles enshrined in the Convention".

117 See *supra* Part I, Chapter 1; Not only the right to truth, but the whole notion of enforced disappearances has its origins in the law of war as a violation of one's family rights. Finucane, B. (2010), p.p. 181-186.

118 See WGEID (E/CN.4/1999/62), ComHR E/CN.4/2005/66 and the relevant GC [(A/HRC/16/48 (para. 39)]; See *supra* Part I, Chapter 2, Subchapter 2.1.

119 CED arts 4, 6, 7. Finucane, B. (2010), p.p. 208-209.

120 CED arts 12, 14; CED/C/10/D/1/2013, para 10.4. Finucane, B. (2010), p.p. 208-209.

121 CED art. 12. Finucane, B. (2010), p.p. 208-209.

122 CED art.5. *Ibid.*

123 See also the GCs of the WGEID on the continuous nature of the crime [A/HRC/16/48 (para.39)] and its subsumption to the category of crimes against humanity [A/HRC/13/31 (para.39)]; See *infra* Part I, Chapter 3, Subchapter 3.2.

124 CED art.9. Finucane, B. (2010), p.p. 208-209. Clapham, A. (2015), p.19.

125 CED art. 24 pars 4,5. The said obligation is formed on the basis of A/RES/60/147. Finucane, B. (2010), p.p. 209-211.

126 CED/C/10/D/1/2013, paras 12-14.

Before the entry into force of the Convention and its own monitoring body, enforced disappearances have long before been treated by the HRC as a breach of ICCPR. In fact, in the very first case before the HRC (Bleier v. Uruguay), such practices had been characterized as a cumulative breach of arts 6, 7 and 10 of the Convenant[127]. Since then, the HRC has treated a considerable number of cases[128] and, in 2018, it made an explicit reference on the matter in its latest GC on the right to life, recognizing that such acts and omissions also violate the rights to personal security and to recognition before the law[129].

CHAPTER 3

Criminalization of atrocities related to the HFA equation

"Injustice anywhere is a Threat
to Justice everywhere..."

- Martin Luther King[130]

The issue of the implementation of the *corpus* of IHL norms falls primarily under the scope of the GCs themselves, whose final provisions specifically criminalize "serious violations"[131]. At the same time, their common art.1 already establishes the obligation of the States-Parties "to respect and to ensure respect" of the Conventions in all cases. While the first part of the provision refers to the need for each State to undertake -under its own initiative- specific measures, even adopting unilaterally mechanisms binding all parts of its machinery and organizations as well, widenning in this way the fundamental obligation *pacta sunt servanda* [132], the second part can be interpreted in two ways: on the one hand, it could be said that it designates the customary *status* of such an obligation by extending its applicability even

[127] CCPR/C/15/D/30/1978 para 14.
[128] As for instance: Prutina et al. v. Bosnia and Herzegovina (CCPR/C/107/D/1917, 1918, 1925/2009 & 1953/2010), where the Committee held that the victim's family shall not be obliged to declare their loved one dead, in order to receive reparation; El Boathi v. Argentina (CCPR/C/119/D/2259/2013), Mandić v. Bosnia and Herzegovina (CCPR/C/115/D/2064/2011), Dovadzija and Dovdzija v. Bosnia and Herzegovina (CCPR/C/114/D/2143/2012), Serna et al. v. Colombia (CCPR/C/114/D/2134/2012), Ičić v. Bosnia and Herzegovina (CCPR/C/113/D/2028/2011), Kožljak and Kožljak (CCPR/C/112/D/1970/2010).
[129] CCPR/C/GC/36 paras 57, 58.
[130] Letter from Birmingham Jail.
[131] GCI arts 49-50, GCII arts 50-51, GCIII arts 129-131, GCIV arts 146-148, API art 85.
[132] This obligation is often embodied even in acts of international and regional organizations. See Μαρούδα, Μ.-Ντ. (2015), σελ.295-297.

during NIACs[133]; on the other one, it further widens the temporal scope of the Conventions, explicitly imposing at the States the need to comply with their obligations even in peacetime [134].

The unwillingness of certain States to prosecute before their national courts persons who had committed crimes that were challenging the international community as a whole led the latter -and, especially, the ICRC- to seek for practical solutions, as for instance the creation of international judicial mechanisms that could cover this *vacuum*[135] and possibly reinstate the society's faith in International Law. Despite the fact that the vision to establish a well-coordinated system of international criminal prosecution for egregious acts was quite vivid, the political will of all stakeholders delayed its realization. Unfortunately, the world needed a cruel reminder in order to take action… World War II generated the Military Tribunals for Nuremberg and the Far East, setting a milestone and a clear example for the creation of relevant mechanisms in the future. The lesson was learned and during the volatile period of the '90s, when the european continent was suffering from the national secessional movements and Africa was trying to recover from its colonial past and to suppress the internal rivarlies, the UNSC created the two Ad Hoc International Criminal Tribunals (ICTY and ICTR) on the basis of its jurisdiction under Chapter VII of the UN Charter[136].

The newly born system of international criminal justice gradually created a significant jurisprudence, dealing with various aspects of almost all issues that fall under it. Among those issues there can be found specific aspects of the HFA triangle, as well. While the aspect of missing persons is not explicitly treated and the issues regarding their families and relatives is only concurrently examined (as part of the practice of the enforced disappearances as a crime against humanity), the case of dead bodies has been a matter of interest for a quite long time.

As a matter of fact, the UNWCC[137], in the M. Schmid Case, charged the accused, a German medical officer in France, with the commission of a war crime as it was proven that

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[133] See also common art.3 of the GCs. Μαρούδα, Μ.-Ντ. (2015), σελ.295-297.
[134] This part must be read in conjunction with common art.2.1. See ICRC Commentary of 2016 on GCI, paras 125-129.
[135] Μαρούδα, Μ.-Ντ. (2015), σελ.348.
[136] Μαρούδα, Μ.-Ντ. (2015), σελ.348.
[137] Pedaliu, E. (2004), p.p. 504-504: The UNWCC was established, in October 1943, in London, by the Allied Powers and their partners (Greece was one of them), in order to investigate and prosecute war crimes committed by the Axis. While the initiative had british origins, the rest of the countries that fought against the Axis Powers -except for the USSR- participated in the Commission claiming the handing over of both Italian and German war criminals. What could possibly endanger the Commission's work was its consultative nature, which meant that in order for a decision on conviction to be effective it should at first be implemented by the member-States.

he "wilfully, deliberately and wrongfully encourage[d], aid[ed], abet[ted] and participate[d] in the maltreatment of a dead unknown member of the United States Army", because not only he maltreated in various ways the body, but he also refused to grant to the deceased a respectful burial and, instead, he kept it as a war loot[138]. The Commission supported its arguments by reminding other relevant cases brought before it against members of the Japanese Armed Forces, who were convicted to several years of imprisonment for offences against a deceased person's body; for heinous acts that were already prohibited under the 1929 Geneva Convention[139].

3.1. Mistreatment of dead bodies as a war crime

While the GCs themselves criminalize specific acts (regarding the equation of HFA they only prohibit the direct attacks against protected persons[140] and they solely impose an obligation to the Parties to the conflict to ensure that their bodies will be duly respected[141]), the Rome Statute somehow refers to some aspects of the HFA *equilibrium*; under the charges of "outrages upon personal dignity" as a variation of war crimes it explicitly grants protection to the deceased[142], confirming and further reproducing the sacredness of death as envisaged in most religions and cultures since Antiquity[143].

Having in mind that all crimes that fall under the jurisdiction of ICC are contextual, at first one shall identify all those material elements that establish the *status* of a war crime and that are common to all their variations.

First and foremost, in order for a war crime to be committed one shall prove that the act in question took place during an armed conflict. Studying thoroughly the art.8 of the RS, one can observe an original structure, which actually depicts its interrelation with IHL. In fact, *"a war crime is a serious violation of the laws and customs applicable in armed conflict which gives rise to individual criminal responsibility under international law"*[144]. The explicit reference to the GCs and to the rest of the international framework applicable in such

[138] Dörmann, K. (2004), p. 323.
[139] Case No 82, Trial of Max Schmid, United States General Military Government Court at Dachau, Germany, 19 May 1947. Available at UNWCC (1949). Law Reports of Trials of War Criminals, Vol XIII, p.p. 151-152.
[140] *E.g.* 2017 ICRC Commentary on GCII on art.18
[141] See Part I, Chapter I
[142] See RS arts 8.2(b)(xxi) & 8.2.(c)(ii).
[143] See *supra* Introduction.
[144] Cryer, R., Friman, H., Robinson, D. & Wilmshurst, E. (2010), p. 267.

circumstances[145] proves exactly the direct relation of the two branches. Such a condition is further confirmed by the introduction of the EoC, where it is stated that war crimes *"shall be interpreted within the established framework of the international law of armed conflict including, as appropriate, the international law of armed conflict applicable to armed conflict at sea"*[146].

However, as the ICTY A.Ch. in the emblematic Tadić Case stated , this is not always the case; not all violations of IHL norms may amount to war crimes[147]. Instead, some other conditions are also required. More specifically, the violation under question should infringe a humanitarian norm -whether treaty- or customary-based-, it should be "serious", *i.e.* it should imperil important values and put the victim in risk, as well as it should entail the perpetrator's international criminal responsibility[148]. Even though some of these requirements have been challenged from times to times, they somehow have formulated the subsequent practice of the Tribunal and inspired the ICC as well.

Furthermore, another common element is contained in the first paragraph of art.8. In order for the Court to establish its jurisdiction, the crimes in question should be *"part of a plan or policy or [...] part of a large-scale commission"*[149]. But, from a strict and literal standpoint, this element is not a precondition. Instead, it is a mere jurisdictional guidance[150]. In fact, even a single act may amount to a war crime[151], if the contextual condition is fulfilled,

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[145] The latter expression could be considered as a sort of renvoi to the former provision and, therefore, there is a second reference to the GCs and the whole IHL *corpus*. Cryer, R., Friman, H., Robinson, D. & Wilmshurst, E. (2010), p. 273.
[146] Elements of Crimes, Art. 8, Introduction.
[147] Cryer, R., Friman, H., Robinson, D. & Wilmshurst, E. (2010), p. 272.
[148] ICTY, A.Ch., Prosecutor v. Dusko Tadić a.k.a "Dule", para 94: "94. The Appeals Chamber deems it fitting to specify the conditions to be fulfilled for Article 3 to become applicable. The following requirements must be met for an offence to be subject to prosecution before the International Tribunal under Article 3:
(i) the violation must constitute an infringement of a rule of international humanitarian law;
(ii) the rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met (see below, para. 143);
(iii) the violation must be "serious", that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim. Thus, for instance, the fact of a combatant simply appropriating a loaf of bread in an occupied village would not amount to a "serious violation of international humanitarian law" although it may be regarded as falling foul of the basic principle laid down in Article 46, paragraph 1, of the Hague Regulations (and the corresponding rule of customary international law) whereby "private property must be respected" by any army occupying an enemy territory;
(iv) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.
It follows that it does not matter whether the "serious violation" has occurred within the context of an international or an internal armed conflict, as long as the requirements set out above are met."
[149] RS art.8 para 1.
[150] Τσιλώνης, Β. (2017), σελ. 191-193; Cryer, R., Friman, H., Robinson, D. & Wilmshurst, E. (2010), p. 356-357.
[151] Cryer, R., Friman, H., Robinson, D. & Wilmshurst, E. (2010), p. 356-357.

while in the case of crimes against humanity it is mandatory that the act be part of *"a widespread or systematic attack"*.

Taking into consideration the aforementioned material elements, it is time to elaborate on the elements of the "outrages upon personal dignity" as the specific offence against dead bodies.

This wording derives from the GCs[152] and the APs[153] and is further reproduced in the RS arts 8.2(b)(xxi) and 8.2(c)(ii). The material and mental elements of both provisions of the ICC Statute, as described in the EoC, are identical. Their only difference is the temporal and geographical scope of application, in the sense that the former applies in times of IACs, while the latter -in conjunction with RS art. 8.2(d), which excludes mere "internal disturbances and riots", putting the lowest threshold[154]- during NIACs[155][156].

While the RS gives some examples of what an outrage upon personal dignity may be [157], the footnote added specifies the potential victims. According to the first sentence, the term "persons" shall be interpreted broadly and cover dead bodies too. This happened in order to cover and explain the WWII jurisprudence[158], as the RS codifies already solid customary law.

In any case, according to the ICTY's jurisprudence, the perpetrator shall at least know that his act or omission could have a humiliating or degrading character, falling under the *spectrum* of the outrages upon personal dignity[159].

However, the issue of the dignified handling of dead bodies has not been treated uniformly by the international criminal judicial mechanisms. In fact, in the ICTR jurisprudence one can identify cases of mistreatment of dead bodies and such acts have been characterized in a different way. For instance, while in the ICTR Statute the outrages upon personal dignity fall under the general category of violations of the common art. 3 of the GCs and of the APII, the Court concluded that mistreatment of a dead body, that may even have

[152] See Common Article 3 to the GCs; Art. 95 GCIV.
[153] See Arts.75(2)(b) and 85(4)(c)API; Art.4(2)(e) APII.
[154] Dörmann, K. (2004), p.p. 384-389.
[155] According to ICTY and ICTR in their emblematic cases -Tadić (A.Ch., para 70) and Akayesu (T.Ch., para 619) respectively- describe the NIACs as "...protracted armed violence between governmental authorities and organized armed groups or between such groups within a State". Dörmann, K. (2004), p.p. 384.
[156] See also EoC art. 8.2(c)(ii) element 5; Dörmann, K. (2004), p.p. 384-389.
[157] The words "in particular" demonstrate that the reference to the humiliating and disrespectful treatment is just illustrative and, in reality, it may cover more acts. Dörmann, K. (2004), p.p. 315-316.
[158] See Elements of Crimes, Art. 8.2(b)(xxi) and Art. 8.2(c)(ii), footnotes 49 and 57 respectively. Dörmann, K. (2004), p. 314; Cryer, R., Friman, H., Robinson, D. & Wilmshurst, E. (2010), p. 292.
[159] ICTY, Judgment, The Prosecutor v. Dragoljub Kunarac and Others, IT-96-23 and IT-96-23/1-T, para.508; Dörmann, K. (2004), p.p. 323-324.

serious mental repercussions to eventual eyewitnesses[160], actually constitutes an inhumane act that amounts to a crime against humanity on the basis of ICTR Statute art. 3(i)[161].

This was confirmed in two notorious cases. While in the Bagosora Case, the appellant accused the ICTR for having erred in law, because all his actions -even the sexual ones- were committed after the death of the Prime Minister Agathe Uwilingiyimana and, hence, he should have been accused for having committed outrages upon personal dignity, the Prosecution insisted in its first argument and dismissed such a ground of appeal, claiming that the case of the inhumane acts as crimes against humanity is actually *"a residual category [...] and allows courts flexibility in assessing the conduct before them"*[162]. In order to strengthen its argument, the Prosecution reiterated the ICTR's findings in the Niyitegeka Case, where the Court concluded that the sexual mistreatment of a dead body constitutes an inhumane act and, therefore, the accused was held responsible for crimes against humanity by both the Trial and the Appeals Chambers[163].[164] But the Appeals Chamber, following a dissenting opinion, reversed Bagosora's conviction under that count[165].

3.2. Enforced Disappearances as a crime against humanity

Other aspects of the HFA triangle are also covered by the ICC Statute. In fact, under the RS is criminalized the practice of enforced disappearance[166], the *actus reus* of which is thoroughly

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[160] Triffterer, O. & Ambos, K. (2015), p.238; ICTR, The Prosecutor v. Kajelijeli, No. ICTR-98-44A-T, Judgment and Sentence, Trial Chamber, 1 December 2003, para 638: "When the Witness regained consciousness, she saw her raped daughter dead, with her mouth open and her legs apart. Another child, soaked in the blood from her raped daughter's vagina, was screaming next to the dead body.", para 934: "934.The Chamber found that, at Rwankeri cellule on 7 April 1994, the Interahamwe raped and killed a Tutsi woman called Joyce. Furthermore, the Chamber found that they pierced her side and her sexual organs with a spear, and then covered her dead body with her skirt.", para 936: "The Chamber finds that these acts constitute a serious attack on the human dignity of the Tutsi community as a whole. [...] piercing a woman's sexual organs with a spear are nefarious acts of a comparable gravity to the other acts listed as crimes against humanity, which would clearly cause great mental suffering to any members of the Tutsi community who observed them. Furthermore, given the circumstances under which these acts were committed, the Chamber finds that they were committed in the course of a widespread attack upon the Tutsi civilian population".

[161] Triffterer, O. & Ambos, K. (2015), p.238.

[162] ICTR, A.Ch., Bagosora, para 724.

[163] ICTR, T.Ch., Niyitegeka, para 316: "Although the witness did not see the act of inserting the piece of wood into the woman's genitalia, he heard the order being issued by the Accused and later saw the woman lying on the road with wood sticking out of her genitalia"; ICTR, A.Ch., Niyitegeka, paras 81-89.

[164] ICTR, T.Ch., Bagosora, paras 2219 and 2224: "The sole reference in the Indictments to inhumane treatment is the sexual assault of Prime Minister Uwilingiyimana. The Chamber found that a bottle was inserted into her vagina after her death.".

[165] ICTR, A.Ch., Bagosora, paras 725-730.

[166] Γιόκαρης, Ά. & Παζαρτζή, Φ. (2012), σε.196. See also *supra* Part I, Chapter 2, Subchapter 2.2.. This crime, although not explicitly prescribed in the Nuremberg Charter, was the legal basis for the prosecution of legal officials of the Nazi Germany, who were enforcing Hitler's Nacht und Nebel Erlass and, thus, making persons

described in art.7.2(i)[167], a definition that reflects the relevant human rights evolutions[168], though there are some obvious differences.

Although both branches of International Law set out as a precondition of the crime a dual action (the arrest/detention/abduction - the denial to acknowledge such situation to provide information), the ICL rules set a new potential perpetrator (a political organization, that could even be a NSA[169]) and two new prerequisites -a temporal one[170] and one that refers to the intention of the actors[171]- challenging, thus, the customary *status* of the prohibition and highlighting a contrast between a practice that entails individual criminal responsibility from a similar one that is attributable solely to the State[172].

But, despite the evident differences, is there any connection or point of reference of the definition given by the two branches of International Law? The answer to this question is twofold: on the one hand it is almost self-evident their interrelation due to the direct criminalization of such acts by the CED[173]. But such an argument overlooks the fact that the RS was adopted prior to the CED. The second answer requires the utilization of the RS art.21 on what legal *corpus* should the ICC implement. Art. 21 explicitly sets -among others- an interpretative guidance in paragraph 3[174], according to which the Court should interpret and implement the Statute taking into consideration any HR standards (thus, including the Convention).

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disappear. Their acts were indiscriminately characterized as crimes against humanity and war crimes. Case No 35, The Justice Trial, Trial of Joseph Altstötter and Others, United States Military Tribunal, Nuremberg, 17th February-14th December, 1947. Available at UNWCC (1949), Law Reports of Trials of War Criminals, Vol IV, p.p. 63-64.

[167] RS art.7.2(i): "2. For the purpose of paragraph 1: [...] (i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.".

[168] See *supra* Part I, Chapter 2, Subchapter 2.2.

[169] According to some academics, such organizations needs to be close to the "*de facto* statehood". Vitkauskaitė-Meurice, D. & Žilinskas, J. (2010), p. 209; Cryer, R., Friman, H., Robinson, D. & Wilmshurst, E. (2010), p. 263.

[170] The practice should last for *"a prolonged time"*, while under the relevant HR instruments the duration of the acts in question is totally irrelevant. See *supra* Part I, Chapter 2, Subchapter 2.2.

[171] Academics argue on whether the perpetrator(s) should specifically intent to exclude the victim from the protection of law. Some of them claim that this exclusion is in any case the result of such practice, while others believe that at least one of the perpetrators shall have such intention. Maybe such an aspect shall be treated in the light of the commander's responsibility as enshrined in RS art.29. Triffterer, O. & Ambos, K. (2015), p.289-290.

[172] Triffterer, O. & Ambos, K. (2015), p.286.

[173] Clapham, A. (2015), p.p.19-23.

[174] RS art. 21 para 3: "The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights [...]"; Triffterer, O. & Ambos, K. (2015), p.933.

As far as the required mental element is concerned, it should be noted that in accordance with RS art. 30, if the provision in question does not provide otherwise, the perpetrator(s) shall intend either to *"engage to the conduct"* or to the specific consequence, being aware that all this should happen *"in the ordinary course of the event"*. Additionally, it is essential for him/her to know that the act in question forms part of the necessary context, in order for the crime to be committed.

Although enforced disappearances have long been criminalized under the RS, there is no ICC or ICTR jurisprudence on the matter. Nor the ICTY had explicitly treated the matter. However, in few cases there can be found a reference as an *obiter dictum*. For instance, in the Kvočka Case[175], while the Trial Chamber was investigating the accused's criminal responsibility, it stated that forced disappearances as crimes against humanity were as well part of the material jurisdiction of the Court, citing the *dictum* of the Kupreškić Case[176].

The relatives of a disappeared person may also be victims of torture as a crime against humanity. At such conclusion the jurisprudence of human rights mechanisms is of utmost importance[177]. What differentiates torture from the count on inhumane acts is the gravity of the pain inflicted to the potential victim. This approach was confirmed by the ICC in the Bemba case and reflects the inter-relation of the Court with the regional judicial mechanisms [178].

CHAPTER 4

The HFA tools in motion

4.1. HFA as a response to humanitarian emergencies in the context of summary executions, natural disasters and refugee/migratory flows

Although the HFA legal tools were thoroughly developed in the context of IHL and gradually they were treated and further strengthened by HRL and ICL as well, they acquired wider acceptance and now they are used in much more circumstances than armed conflicts -international or non-international. The major cause of such an evolution is the unpredictability that reigns in the humanitarian field, that makes predicting or preventing a

[175] Prosecutor v. Kvočka, No. IT-95-30/1-T, Judgement, Trial Chamber, 2 November 2001, para 208; Triffterer, O. & Ambos, K. (2015), p.230.
[176] Prosecutor v. Kupreškić, No. IT-95-16-T, Judgement, Trial Chamber, 4 January 2000, para. 566; Triffterer, O. & Ambos, K. (2015), p.230.
[177] Triffterer, O. & Ambos, K. (2015), p.270.
[178] *Idem.*

crisis to be almost impossible, let alone the preparation of the State machinery to confront it[179]. Such unpredictability, however, may be of a wholly different nature.

a) **summary, arbitrary and extrajudicial executions**

As a matter of fact, very useful tools have been created in the efforts of the international community and some famous NGOs to respond to the question of summary, arbitrary and extrajudicial executions. Although these three terms are not explicitly defined in a specific legally binding instrument, the international jurisprudence and practice have clarified their core meaning.

At first, various terms that had been used in almost all UN Human Rights *fora*[180], but their content was defined by the Special Rapporteur, a special procedure established by an ECOSOC Resolution[181] and whose mandate was further expanded in 1992 by the ComHR in order to cover extrajudicial executions as well[182]. More specifically, the Special Rapporteur, in his 1983 Report, defined summary executions as

> *"the arbitrary deprivation of life as a result of a sentence imposed by the means of summary procedure in which the due process of law and in particular the minimum procedural guarantees as set out in Article 1A of the Covenant are either curtailed, distorted or not followed"*,

while arbitrary execution constitutes an *"arbitrary deprivation of life as a result of the killing of persons carried out by the order of a government or with its complicity or tolerance or acquiescence without any judicial or legal process"*. Finally, extrajudicial executions are totally different in the sense that the investigated killings are committed outside the established legal processes and under the given judicial guarantees -whether national or international. The Rapporteur also mentioned that the definitions are not absolute and they may even overlap[183][184].

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[179] Bernard, V. (2011), p.896..

[180] The UNSPDM had already used those terms. The UNGA, for instance, already since 1980 had passed a Resolution on the said question urging all Member States to respect the ICCPR and to ensure the right to life and that more adequate judicial guarantees will be applied. A/RES/5/172.

[181] ECOSOC Resolution.1982/35

[182] Resolution 1992/72; A/CONF.121/21, para 1.

[183] E/CN.4/1983/16, para 66.

[184] The humanitarian origins of the phenomenon may be found in the GCs, as well as in the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (ECOSOC Resolution 1989/65, para 1).

The UN had created an interesting mechanism for the investigation of such executions, by drafting the Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the so called Minnesota Protocol)[185], which was renewed in 2016[186]. This work is of utmost importance as it serves not only as the basis for the investigations of such incidents, but as a standards setting in almost any cases that involve human rights violations[187].

b) **natural disasters**

Moreover, other incidents that demonstrate the rigidity of the HFA mechanisms to properly handle eventual casualties (whether missing or dead persons) and to alleviate the suffering of the victims' families and relatives fall under the *spectrum* of natural disasters[188], which take place on a constantly increasing rate, especially as a result of the undeniable climate change[189].

For instance, on December 26th, 2004, an intense earthquake caused a disastrous tsunami in the Indian Ocean that affected almost 14 countries. The most affected ones were Indonesia, Sri Lanka, Maldives and Thailand[190]. The tsunami paralyzed all the facilities and infrastructures; thousands of people lost their fortunes, while a great number lost their lives. Such data classify the said incident as the deadliest -or at least one of the deadliest- natural disaster in the history[191]. The ICRC, along with the Indonesian Red Cross (Palang Merah Indonesia - PMI), responded immediately to the crisis in order to make sure that the mortal remains of the victims would be disposed properly and in a dignified way. At the same time, they had to prevent any delay in order to minimize the potential health risks due to the presence of many corpses. The acute humanitarian emergency could be met only with the recruitment and the on site training of volunteers. In parallel, the ICRC served as a mediator for the restoration of the disrupted family links by fully deploying many different technical solutions to that end (*e.g.* a section in its website for the creation of an online registry of all

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185 https://www.un.org/ruleoflaw/files/UN_Manual_on_the_Effective_Prevention_and_Investigation%5B1%5D.pdf
186 See https://www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf.
187 Cordner, S. & Tindball-Binz, M. (2017), p.66.
188 Or other man-made disasters. Burns, K. R. (2013), p.p.277-278.
189 Cordner, S. & Tindball-Binz, M. (2017), p.68.
190 See https://www.ifrc.org/tsunami.
191 Federation-wide Tsunami 6.5-Year Progress Report, Appeal No. 28/2004 (27 September 2011).

missing persons' identities)[192]. The Indian Ocean Tsunami crisis was also managed by INTERPOL and it required the implementation of the DVI mechanism[193], as described above [194].

Another shocking incident was the Black Saturday Bushfire in Victoria (Australia) in 2009[195]. Although the incident itself caused almost 200 deaths, the national Forensic Service that undertook the task of the identification of the human remains, the Victorian Institute of Forensic Medicine (VIFM), almost paralyzed and it barely responded to the already pending cases, as the situation was draining the Institute's resources[196].

Natural disasters keep happening and challenge the readiness of the existing mechanisms and infrastructures. In 2019, two major incidents took place and shocked the international community. The Hurricane Dorian in Bahamas (on December 2nd) and the Whakaari/White Island eruption in New Zealand (on December 13th) caused the death of various persons and mobilized the national Red Cross Societies to undertake initiatives, in order to respond to the humanitarian situation and to alleviate the human caused by the loss of their loved ones[197].

c) **mixed refugee/migratory flows**

The past few years internal[198] and external displacements -no matter their original causes- have reached their peak and have created huge -and sometimes uncontrollable- flows. It is almost self-evident that during those massive refugee/migratory flows the security criterion comes last, especially taking into consideration the steadily increasing incidents of smuggling and trafficking by organized networks. Unfortunately, under these circumstances it is easily expected that death is an inevitable occurrence.

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[192] See https://www.icrc.org/en/doc/resources/documents/feature/2009/indonesia-tsunami-feature-231209.htm.

[193] See also INTERPOL Tsunami Evaluation Working Group, "The DVI Response to the South East Asian Tsunami between December 2004 and February 2006".
At the same period, PAHO, ICRC and WHO publicated a manual on the "Management of Dead Bodies after Disasters: A Field Manual for First Responders", which provides some guidelines concerning the dignified handling of dead bodies and the identification of mortal remains and complements the DVI procedure. Cordner, S. (2018), p.646; See https://www.icrc.org/en/doc/assets/files/other/icrc_002_0880.pdf.

[194] Cordner, S. (2018), p.645; See *supra* Part I, Chapter 2, Subchapter 2.1 (note).

[195] See also https://www.redcross.org.au/stories/emergency-services/ten-years-on-from-the-victorian-bushfires.

[196] Cordner, S. (2018), p.643; See https://www.redcross.org.au/stories/emergency-services/ten-years-on-from-the-victorian-bushfires.

[197] For instance, after the eruption in New Zealand, a network for the restoration of family links was created by the New Zealand Red Cross. See https://familylinks.icrc.org/new-zealand/en/Pages/Home.aspx.

[198] See Principle 16 of the UN Guiding Principles on Internal Displacement.

The only existing legal framework on the treatment of a dead body is provided by IHL. In the absence of a thorough international normative framework with specific rights and duties that need to be respected and fulfilled in the context of migrant's death, each and every State through its national legislation bared the primary responsibility to deal with the identification and death registration procedures, as well as with the burial.

The case of migrants is quite peculiar, for their eventual death does not easily fall under the protective field of national laws. Difficulties such as the information deficit, the lack of coherence and coordination among all the competent institutions, along with the varying practices are the main obstacles while trying to demystify the pending cases[199].

The most basic rules in respect originate in the IHL context and set the standards of the dignified handling of dead bodies, respect towards the families and preservation -to the extent possible- of the memory and the dignity of the deceased for the sake of both sides[200]. However, their moral impact is much wider (they even have acquired a customary *status*) and they shall be -and, in fact, they are- taken into consideration while establishing rules and patterns for the administration of international migration and refugee crises. Domestic legislation of most european States somehow reflects these essential principles. The major challenge, though, is to reconcile them with the new context[201]. Indeed, some of those aspects are also included in the common european legal framework, although they are not expressly written[202].

Such questions are of utmost importance for the wider Mediterranean region and especially for our country.

Greece, due to its geographical particularities, had always been dealing with persons fleeing from their countries. But, since 2015, the number of the arrivals had tremendously increased, creating an acute humanitarian crisis. Many refugees and migrants have died during their journey through the Aegean Sea, others have gone missing, but in both cases their families and relatives suffer from the uncertainty on their fate.

In order to respond to such a dire situation, the ICRC is currently working on the field, deploying a wide range of activities. Its mission to Greece was initially launched in March 2016 and since then the ICRC along with the Hellenic Red Cross have put in action any

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[199] Grant, S. (2016), p.5.

[200] See extensively *supra* Part I, Chapter 1; Grant, S. (2016), *Fatal Journeys*, p.32.

[201] Grant, S. (2016), p.5.

[202] See *infra* Part II, Chapter 2, Subchapter 2.

available procedures for the restoration of the family links. For this reason, the ICRC strengthens the national Tracing Service by better equipping it and training its personnel. In addition, even in the context of administrative detention, the ICRC tries to ensure the maintenance or restoration of the contact with the outside world, promoting and protecting, therefore, the families' right to know the whereabouts of their loved ones, as well as impeding that someone goes missing[203].

Unfortunately, due to the various shipwrecks many people have died while crossing the greek maritime borders[204]. Many of the dead bodies remain unidentified until today. In order to identify the remains, to alleviate the families' suffering of not knowing their loved one's fate and to provide for a disclosure, the ICRC is closely cooperating with the competent national authorities so as to ensure the dignified handling of the bodies and to help in the relevant identification procedures[205]. This is achieved through the training of the existing personnel and the assistance of an ICRC forensic specialist.[206]

Indeed, on May 8th, 2019, the World Red Cross & Red Crescent Day, the Permanent Committee on Public Administration, Public Order and Justice held a meeting specifically dedicated to all migrants and refugees that went missing during their struggle to reach the hellenic territory. It was reaffirmed -among other things- that during their journey, most of them get lost and the already long-lasting identification process is hindered. The ICRC along with the Hellenic Red Cross usually are the first to respond to the families' claims through the Family List-Network and they pay visits to detention centers, hospitals, morgues and burial sites, maintaining a continuous contact with the state authorities and serving as the link among the family members.

What all the participants highlighted was the abundance of international and regional legal instruments applicable in Greece[207] and the relevant domestic provisions (mainly in the

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[203] ICRC activities for migrants in Greece (July 2016), p.2. Available at https://www.icrc.org/en/document/icrc-greece-activities-migrants;
See also https://www.icrc.org/en/document/greece-our-work-2018-glance.
[204] For the 2018-2019 data on the Mediterranean Sea see Annex 5; See also https://missingmigrants.iom.int/region/mediterranean.
In such circumstances, the recovery of dead bodies becomes almost unbearable. Grant, S. (2016), *Fatal Journeys*, p.p.34-35.
[205] https://www.icrc.org/en/document/icrc-and-greek-authorities-agree-need-standard-approach-dignified-management-dead-migrants.
[206] ICRC activities for migrants in Greece (July 2016), p.2,
Available at https://www.icrc.org/en/document/icrc-greece-activities-migrants; See also ICRC Greece Facts and Figures, 2018 at a glance.
[207] Including the 1982 UNCLOS and the following IMO Conventions:

Civil Code and the Civil Procedure Code), concluding in that it is not a matter of potential legal *lacunae*, but mostly of the lack of specifically mandated institutions[208] and infrastructure [209] [210].

4.2. HFA in the light of data protection mechanisms

While investigating missing and dead persons' cases, inevitably at the stage of the identification process the forensic specialists and the first responders will have to collect *ante-* or *post-mortem* data, especially when the rest of the information provided by the relatives does not lead to any tangible conclusions. But how shall these (including genetic) data be used?

The principal issue arising at this point refers to the way in which such data are used. Confidentiality, privacy, non-discrimination and human dignity are among the basic principles that should govern the management of personal data[211]. The basic branches of International Law applicable in such circumstances (*i.e.* IHL and HRL) make only few references to some general principles in respect[212].

More precisely, the GCI art.16 para 2 contains an illustrative list of particulars that the adverse State or Party to the conflict shall record during the identification process of any wounded, sick or dead person fallen into their hands. Since the 1990s DNA examinations permit to identify -almost with certitude- the unknown corpses found in the field[213]. According to the ICRC's interpretation of this provision, the whole procedure of processing the data collected shall be in total compliance with the principles and *"legal bases for*

a) for the Safety of Life at Sea (SOLAS, 1974) -as amended-
b) on Maritime Search and Rescue (1979, 1985)
c) on Facilitation of International Maritime Traffic (1965, 1967)
d) on Salvage (1989).
In the same vein, see Objective 8 f the Global Compact for Safe, Orderly and Regular Migration.

208 While in such circumstances the Coast Guard is the primarily mandated service to take action, together with the Hellenic Police (which possesses -already since 1996- a Directorate of Forensic Investigations, with a quite developed database), none of them can undertake the whole burden of the mixed migratory/refugee flows.

209 It was highlighted -among other things- the need for mortuary refrigerators, in order to store all corpses as long possible, for it is preferable and far more respectful to maintain the dead bodies intact until their relatives search for them, rather than multiplying the number of anonymous or enumerated graves filled in with unidentified or partially identified bodies through fast track procedures.

210 Βουλή των Ελλήνων, Περίοδος ΙΖ΄, Σύνοδος Δ΄, Διαρκής Επιτροπή Δημόσιας Διοίκησης, Δημόσιας Τάξης & Δικαιοσύνης, Πρακτικό (άρθρο 40 παρ.1 ΚτΒ), 8 Μαΐου 2019.

211 Kerasiotis, V. & Spiliotakara, M. (2016), p.5.

212 *Ibid.*

213 Capdevila, L. & Voldman, D. (2002), p.p.763-764.

processing generally found in data protection legislation"[214]. The same wording was also adopted by the GCII art.19 and in its ICRC authentic interpretation in the respective 2017 Commentary[215]. On the contrary, the GCIII art.120 does not refer explicitly to the *minimum* of information needed for the identification of the dead bodies. Instead, the 1960 Commentary enumerates such a list, without, however, mentioning anything regarding their management[216]. The GCIV and API make no reference in respect.

The ICRC's initiative on the data protection question within its humanitarian activities and operations emerged just in February 2015 with the creation of The ICRC Data Protection Reference Framework, which was further updated on November 10th, 2015[217]; *i.e.* long after the regional organizations had taken the lead.

A more thorough, yet not quite helpful, legal basis is offered in the context of HRL. To begin with, a first reference in the concept of privacy is found in the UDHR art. 12, stating that *"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."*, but not defining the term itself nor explaining the eventual limitations of such right, which must comply with the overall human rights protection. Although a bit nebulous, the UDHR does, however, take us one step ahead[218].

More initiatives have been undertaken in the regional framework for the protection of human rights. In fact, CoE member-States had, since 1950, agreed upon the need to ensure privacy for the individuals that fall under the ECHR protective scope. The ECHR art.8 reiterates the relevant UDHR provision and states that

> *"1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
>
> *2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the*

[214] See 2016 ICRC Commentary on GCI, para 1551.
[215] See 2017 ICRC Commentary on GCII, para 1728.
[216] See 1960 ICRC Commentary on GCIII, p.p.559-569.
[217] https://shop.icrc.org/icrc-rules-on-personal-data-protection.html?___store=default&_ga=2.147475831.1347759537.1576338347-2117538084.1550017272
[218] Taylor, M. (2012), p.p.64-65.

economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”,

but with some obvious differentiations, reflecting though the same principles that UDHR stands for[219].

Although the provision is phrased in a quite generic way, the ECtHR has concluded in some interesting results that could be used even in a humanitarian context -at least as far as they are reflecting general principles. In the Stjerna v. Finland case, the Court acknowledged that one's name, although not expressly mentioned in art.8, is *“a means of personal identification”* and, thus, it falls under the material scope of the article in question[220]. In addition, the ECtHR has moved one step forward and has also treated genetic data on the basis of ECHR art.8. In the S. and Marper v. the United Kingdom case, the Court stated that State's denial to delete one's fingerprints from the relevant databases is a direct violation of art.8. However, DNA samples and other genetic data are of a higher importance due to their special and very sensitive nature, they are directly linked with the person itself, facilitating its identification, and, therefore, they need a different management according to the standards of art.8[221].

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[219] Taylor, M. (2012), p.67.

[220] ECthR, Stjerna v. Finland, para 37; Καραβίας, Μ. (2013), σελ.312.

[221] ECtHR, S. and Marper v. the United Kingdom: “71. The Court maintains its view that an individual's concern about the possible future use of private information retained by the authorities is legitimate and relevant to a determination of the issue of whether there has been an interference. Indeed, bearing in mind the rapid pace of developments in the field of genetics and information technology, the Court cannot discount the possibility that in the future the private-life interests bound up with genetic information may be adversely affected in novel ways or in a manner which cannot be anticipated with precision today. Accordingly, the Court does not find any sufficient reason to depart from its finding in the *Van der Velden* case.

72. Legitimate concerns about the conceivable use of cellular material in the future are not, however, the only element to be taken into account in the determination of the present issue. In addition to the highly personal nature of cellular samples, the Court notes that they contain much sensitive information about an individual, including information about his or her health. Moreover, samples contain a unique genetic code of great relevance to both the individual and his relatives. In this respect the Court concurs with the opinion expressed by Baroness Hale in the House of Lords.

73. Given the nature and the amount of personal information contained in cellular samples, their retention *per se* must be regarded as interfering with the right to respect for the private lives of the individuals concerned. That only a limited part of this information is actually extracted or used by the authorities through DNA profiling and that no immediate detriment is caused in a particular case does not change this conclusion.

[...]

75. The Court observes, nonetheless, that the profiles contain substantial amounts of unique personal data. While the information contained in the profiles may be considered objective and irrefutable in the sense submitted by the Government, their processing through automated means allows the authorities to go well beyond neutral identification. The Court notes in this regard that the Government accepted that DNA profiles could be, and indeed had in some cases been, used for familial searching with a view to identifying a possible genetic relationship between individuals. They also accepted the highly sensitive nature of such searching and

In the CoE context, there have also been adopted other instruments, such as the 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, whose interpretation and implementation by the Court could strengthen the protection granted in such challenging issues.

OECD as well has adopted an innovative -yet consultative- framework on data protection, already since 1981, which keeps being updated[222]. The same preoccupations concerning the management of biometric information[223] have also been dealt with by the Organization and the latter somehow reiterates the concerns and the views of the ECtHR[224].

All the aforementioned regional initiatives inspired the UNGA and, in 1990, it passed Resolution A/RES/45/95, setting out the Guidelines for the Regulation of Computerized Personal Data Files. It is the first time that humanitarian considerations are treated as potential limitations and derogations of the basic data protection regulations, without specifying the circumstances in question.

On the basis of such an innovation, a more complete data protection system, that takes into account even the humanitarian factors -no matter their original causes-, is set out in the EU General Data Protection Regulation (GDPR). More specifically, although not expressly mentioned in the normative clauses, in the preambulatory ones the humanitarian concerns are manifestly evident. The 46th clause introduces the aspect of natural and other man-made disasters as a humanitarian aspect to be examined while processing personal data. The 73rd clause somehow reiterates the ECHR's wording, but includes eventual humanitarian concerns as permissible derogations. In any case, the *minimum* standards of the ECHR and the

the need for very strict controls in this respect. In the Court's view, the DNA profiles' capacity to provide a means of identifying genetic relationships between individuals is in itself sufficient to conclude that their retention interferes with the right to the private life of the individuals concerned. The frequency of familial searches, the safeguards attached thereto and the likelihood of detriment in a particular case are immaterial in this respect. This conclusion is similarly not affected by the fact that, since the information is in coded form, it is intelligible only with the use of computer technology and capable of being interpreted only by a limited number of persons."; Καραβίας, Μ. (2013), σελ.328; ECtHR, Guide on Article 8, para 159; Taylor, M. (2012), p.p.70-72..

[222] It was updated for the last time in 2013. https://www.oecd.org/internet/ieconomy/oecdguidelinesontheprotectionofprivacyandtransborderflowsofpersonaldata.htm,

[223] Few years later, in 1997, UNESCO adopted tits first Universal Declaration on the Human Genome and Human Rights, which along with its 2009 recast, the International Declaration on Human Genetic Data, are among the principal instruments addressing the protection of genetic data; Kerasiotis, V. & Spiliotakara, M. (2016), p.p.8-10.

[224] OECD (2013), p.85.

EUChFR (art.8) shall be maintained. Finally, the 112nd clause is the only one mentioning the case of armed conflicts and providing that

> *"(112) [...] Any transfer to an international humanitarian organisation of personal data of a data subject who is physically or legally incapable of giving consent, with a view to accomplishing a task incumbent under the Geneva Conventions or to complying with international humanitarian law applicable in armed conflicts, could be considered to be necessary for an important reason of public interest or because it is in the vital interest of the data subject."*[225].

Such a dialogue took place in the CoEU, where the concerns of the ICRC regarding the potential applicability of the GDPR in its operations were responded[226].

PART II

Regional protection of the main beneficiaries of HFA and jurisprudential milestones

"Memory is enduring, it resists the erosion of time,
it surges up from the depths and darkness of human suffering;
since the routes of the past were traced and duly trod,
they are already known, and remain unforgettable."

- Judge Antônio A. Cançado Trindade[227]

While at an international level there is a variety of legal instruments that deal with all aspects of the HFA equation, the principal regional organizations have created their own tools in their efforts to respond to their particular needs. Although the mechanisms created are mandated to monitor and implement exclusively human rights instruments, their contribution in humanitarian circumstances is significant and the relevant jurisprudence not only has been proven quite innovative, but it offers a lot in International Law as well.

The european and inter-american institutions, mainly due to their inveteracy have done an astonishing work on the field, either by establishing specific mechanisms for the protection of individuals (that is the case of the Inter-American Convention against the

[225] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=EN#d1e1374-1-1.
[226] See Document 7355/15 (http://data.consilium.europa.eu/doc/document/ST-7355-2015-INIT/en/pdf).
[227] In his Separate Opinion in the IACtHR, Case of Plan de Sánchez Massacre v. Guatemala.

Forced Disappearance of Persons, as will be examined afterwards[228]) or by confirming the already widely recognized IHL norms and principles and applying them sometimes directly or even embodying them into the legal texts that they monitor. Both of theses systems have created a considerable precedent for the handling of this kind of cases.

The third pillar of the regional human rights protection, *i.e.* the african system, is not that much developed, not only due to its recent creation (and as a result its lack of experience on such matters), but due to its totally different needs. As a matter of fact, only one application was brought before the AComHPR and even though it originated from the arbitrary arrests and detentions that took place in Sudan after the coup that took place in July 30th, 1989, it reiterates what is for quite long established in the other regional legal orders:

> *"holding an individual without permitting him or her to have any contact with his or her family, and refusing to inform the family if and where the individual is being held, is inhuman treatment of both the detainee and the family concerned"*[229].

Although in the african legal framework there is no reference in the practice of enforced disappearances, in reality such a wording strongly reminds one of its components as prescribed in the relevant legal instruments[230] and could be seen as a jurisprudential crystallization of the right to the truth. Such an obligation also serves as a *minimum* threshold in order to minimize the chances that a person goes missing in such circumstances[231].

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[228] See *infra* Part II, Chapter 1.
[229] AComHPR, Amnesty International et al. v. Sudan, para 54 *in fine*. See also 2005 ICRC Study, p.425.
[230] See *supra* Part I.
[231] A similar provision is included in the AChRWC art. 25.2(b) and it imposes on States the obligation to take all necessary measures to trace the missing children's families and relatives, when their separation is caused by an internal or an external displacement originated by an armed conflict. See also 2005 ICRC Study, p.p. 425-426.

CHAPTER 1

The inter-american contribution in the HFA field

1.1. The HFA aspects before the Inter-American Instruments

"...hay que seguir considerando como vivos los que acaso ya no lo están,
pero que tenemos la obligación de reclamar, uno por uno,
hasta que la respuesta muestre finalmente la verdad
que hoy se pretende escamotear..."

- Julio Cortázar[232]

The american continent has a long history of (mostly) internal tensions (due to the uprising of dictatorial regimes) that usually resulted in cases of persons going missing[233] and this is the reason why few years before the very first UN-led step and the adoption of the CED, the competent regional Organization has already taken some serious steps in order to deal with such an important issue at both a political and a juridical level.

As a matter of fact, the Organization quite early ascertained the problem of enforced disappearances and adopted various Resolutions in respect[234]. Since its thirty-fifth Regular Session, in 2005, the OAS/GA started adopting Resolutions that explicitly refer to the assistance that needs to be granted to the missing and disappeared persons' families and relatives, reiterating the already established international human rights and humanitarian standards[235]. Gradually, it also proclaimed the families' separate right to know the truth about the whereabouts of their loved ones[236]. All these developments follow the UN-led ones and adapt them to the particular needs of the region[237].

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[232] Negación del Olvido.
[233] Pasqualucci, J. (2013), p.6.
[234] AG/RES 443 (IX-O/79), AG/RES 510 (X-O/80), AG/RES 666 (XIII-O/83), AG/RES 742 (XIV-O/84), AG/RES 890 (XVII-O/87), AG/RES 950 (XVIII-O/88).
[235] AG/RES 2134 (XXXV-O/05), AG/RES 2231 (XXXVI-O/06), AG/RES 2295 (XXXVII-O/07), AG/RES 2416 (XXXVIII-O/08), AG/RES 2513 (XXXIX-O/09), AG/RES 2594 (XL-O/10), AG/RES 2651 (XLI-O/11), AG/RES 2717 (XLII-O/12), AG/RES 2794 (XLIII-O/13), AG/RES 2864 (XLIV-O/14).
[236] AG/RES 2175 (XXXVI-O/06), AG/RES 2267 (XXXVII-O/07), AG/RES 2406 (XXXVIII-O/08), AG/RES 2509 (XXXIX-O/09), AG/RES 2595 (XL-O/10), AG/RES 2662 (XLI-O/11), AG/RES 2725 (XLII-O/12), AG/RES 2800 (XLIII-O/13), AG/RES 2822 (XLIV-O/14).
[237] See *supra* Part I.

Regarding the strictly legal dimension, already since 1987, the OAS/GA asked the IAComHR to prepare a draft text of a Convention on Enforced Disappearances. Indeed, the draft Convention was brought before the competent organs a year later and it was based mostly on information offered by NGOs and other civil society Organizations. The OAS Permanent Council's Committee on Juridical and Political Affairs created a relevant Working Group mandated to examine the draft. The whole procedure lasted several years[238] and the final text that was brought before the Assembly was considerably reduced. Several countries expressed their strong disappointment as NGOs were excluded from the drafting procedure[239] and claimed that the Convention would not be widely ratified, as it did not protect satisfactorily the victims of such practices.

After all these difficulties, the Permanent Council's Committee, presented the final text to the OAS/GA, and, in 1994, in the city of Belem do Pará (Brazil), the IACFDP was adopted by consensus[240].

The Convention provides for a definition of enforced disappearances. More specifically, under the Convention

> *"forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees"*.

Despite some phrasal differences, the definition somehow approaches the one adopted at an international level. A clause similar to the one enshrined in art.1 para 2 of the CED is contained in art.X para 1 of the IACFDP and stipulates that in no case (even in a state or threat of war) the practice of forced disappearances may be justified. The IACFDP also dictates that States shall criminalize such acts under their domestic law[241].

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[238] Drafts of the IACFDP: AG/RES 1014 (XIX-O/89), AG/RES 1033(XX-O/90), AG/RES 1095 (XXI-O/91), AG/RES 1172 (XXII-O/92).

[239] This was counterbalanced by the use of reports and data collected by NGOs and the UN as well, as a result of the General Assembly's decision upon Chile's request. See Brody, R. & González, F. (1997), p.p.374-375.

[240] AG/RES 1256 (XXIV-O/94); Brody, R. & González, F. (1997), p.p.374-375.

[241] IACFDP art.IV as in CED art.4.

However, the IACFDP is quite innovative too. In fact, in art.XV it is explicitly cited that the Convention shall not be applied in the case of IACs, as such cases are governed by the GCs and their APs.

Finally, the Convention reiterates that all cases with allegations of potential violations brought before the IAComHR follow the procedures prescribed in the ACHR and the Statutes and Regulations of both the IAComHR and the IACtHR. Indeed, already since their establishment, both the judicial organs have developed a significant work in respect[242].

As a matter of fact, their very first cases (the so called the Honduran Cases[243]) concerned the question of enforced disappearances and established an interesting and quite revolutionary precedent.

More specifically, from 1981 until 1984, Honduras was suffering from widespread incidents of enforced disappearances, all following a similar pattern; all of them concerned persons that were kidnapped by force in public places, that were placed under strict surveillance as they were considered as perilous for the security of the country. Those kidnappings were usually committed by State agents or even by private persons that were acting under governmental orders. The first case of that kind, was brought before the IAComHR, in 1981, and concerned the disappearance of Ángel Manfredo Velásquez Rodríguez, a student who was participating in suspicious activities according to the national authorities. The case was eventually transferred to the IACtHR, which initially dismissed most of Honduras' preliminary objections and joined the last one (concerning the lack of prior exhaustion of domestic remedies) to the merits. The Court stated that in order for this requirement to be accepted, it must be proven that there were actually some adequate and effective[244] domestic legal remedies as provided by ACHR art. 46 para 1. On the other hand, if it was proven that such remedies could not be exercised due to a certain practice or policy of the State, then according to ACHR art.46 para 2 such a precondition shall be overcome and the application shall -in any case- be considered admissible[245].

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[242] Pasqualucci, J. (2013), p.123.

[243] These are the cases of Velásquez-Rodríguez v. Honduras, Godínez-Cruz v. Honduras and Fairén-Garbi and Solís-Corrales v. Honduras that were brought before both the IAComHR and the IACtHR.

[244] IACtHR, Velásquez-Rodríguez v. Honduras, Merits, paras 64, 66.

[245] IACtHR, Velásquez-Rodríguez v. Honduras, Merits, para 68; Περράκης, Στ. & Μαρούδα, Ντ.-Μ. (2014), σελ. 257.

On the merits of the Case, the Court acknowledged that the practice of enforced disappearances constitutes a multiple and continuing violation of the ACHR[246] and, more specifically, it ascertained that the direct victim suffers a breach of his/her right to life[247], to a humane treatment[248] and to personal liberty[249], all related to the State's general obligation to respect and ensure human rights on the basis of ACHR art.1 para 1.

The Cases of Godínez-Cruz v. Honduras and Fairén-Garbi and Solís-Corrales v. Honduras concern similar incidents that took place in the exact same period and both of them form part of the generalized State practice of enforced disappearances of persons that are considered harmful for the State machinery. In both of them, the Court reiterated its conclusions on the Velásquez Rodríguez Case.

Quite later and especially after the adoption of the IACFDP, the Court started dealing with the eventual violation of the next of kin's rights due to the disappearance of their loved ones. Indeed, the Court diagnosed a breach of the families' right to physical and moral integrity, as in many cases the disappeared person was the breadwinner and now his/her remaining relatives need at least a compensation, and the families, in their desperate efforts to ease the pain of their loss, they pay for the funerals presuming that their loved one is dead. In addition, the impunity of the perpetrators keeps causing them anguish, pain and disappointment, preventing them from finding a definite disclosure[250]. In such circumstances, the Court adopted the views of its european counterpart and stated that when the missing person is under the State's control and custody, only the State bears the responsibility for their fate[251].

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[246] Indeed, the Court observes that very often the incidents in question have occured long before the State adheres to the Convention or accepts the jurisdiction of the Court. However, such an egregious crime keeps tormenting the families and relatives of the missing person, causing them excessive anguish during the -usually- long investigations on their whereabouts; See also IACtHR, Blake v. Guatemala, paras 29-40.
Similarly, in the Radilla Pacheco v. Mexico Case, the Court responded to the State's preliminary objection that the Case shall be rejected as inadmissible due to the lack of temporal jurisdiction, claiming that, although it could not examine the facts and the violations that took place prior to the acceptance of its jurisdiction by Mexico, it would certainly decide upon the subsequent violations, such as the State's failure to investigate the crimes and to punish the perpetrators. IACtHR, Radilla Pacheco v. Mexico, para 115; Pasqualucci, J. (2013), p.p.139-140.

[247] ACHR art.4

[248] ACHR art.5.

[249] ACHR art.7.

[250] IACtHR, Case of the Caracazo v. Venezuela, para 50; Pasqualucci, J. (2013), p.170.
This issue is estrechly related to the psychological and psychosocial impact of forced disappearances on individuals. See Hofmeister, U. & Navarro, S. (2017), p.p.36-37.

[251] IACtHR, Case of the "Street Children " (Villagrán-Morales et al.) v. Guatemala, paras 169-170, citing the ECtHR, Aksoy v. Turkey Case, para 61; Pasqualucci, J. (2013), p.170-171.

In this way, the Court gradually developed a notable jurisprudence regarding the derivative rights of the families to know the truth about the fate and the whereabouts of their missing or disappeared relatives. Such harsh situations make the family of the disappeared person feel insecure and impotent. They feel frustrated due to the authorities' inability or unwillingness to investigate the case. That is the principal reason why, according to the Court itself, in cases of enforced disappearances the mental and moral trauma of those persons is a direct, distinct and autonomous violation of those persons' right to personal integrity. This is explicitly cited in the Kawas-Fernández v. Honduras Case, in which the Court reiterates its previous judgments on relevant cases, where it had held that

> *"the Court held that a violation of the right to mental and moral integrity of the direct next of kin of victims of certain human rights violations may be declared by applying a rebuttable presumption with regard to mothers and fathers, daughters and sons, husbands and wives, permanent companions (hereinafter "direct next of kin") provided it responds to the specific circumstances of the case. With regard to such direct next of kin, it is for the State to rebut said presumption."*,

depending on the circumstances in question[252]. However, such a presumption is not absolute. On the contrary, the Court may conclude in that persons, that do not have such a close familiar relation or they may not be part of the missing person's family, may still be considered as victims of such violations due to their proximity or their actual participation to the investigatory procedures[253].

In addition, the right to the truth is also tightly linked with other rights, such as the right to a fair trial; this connection is self-evident, because the right to know the truth is somehow materialized through the right to a fair trial[254]. Moreover, it is related to other

[252] IACtHR, Case of Kawas-Fernández v. Honduras, para 128, citing IACtHR, Case of Valle-Jaramillo et al. v. Colombia, para. 119.

[253] IACtHR, Case of Kawas-Fernández v. Honduras, para 129, citing:
a) Case of Bámaca-Velásquez v. Guatemala, para. 163,
b) Case of Heliodoro-Portugal, para. 163 and
c) Case of Valle-Jaramillo et al. v. Colombia, para. 119.
Pasqualucci, J. (2013), p.194-195.

[254] That is the case of Blake v. Guatemala, in which the Court, due to its inability to examine the death of the disappeared person because the facts did not fall under its temporal jurisdiction, held that his relatives were the actual victims of the violation, for the State did not comply with its obligation to offer them effective judicial protection and, thus, it injured them. Similarly in the "Street Children" Case. IACtHR, Blake v. Guatemala, para 114, citing IACtHR, BámacaVelásquez v. Guatemala, para 160; IACtHR, Case of the "Street Children " (Villagrán-Morales et al.) v. Guatemala, paras 236 & 238; Pasqualucci, J. (2013), p.194; Μπαλαφούτα, Β. (2018), σελ. 51-52.

human rights, such as the freedom of expression, which also consists in accessing to the necessary information, in order to find out what happened to one's relative, and the right to a family life[255].

Regarding the protection granted with respect to the dead bodies, the Inter-American judicial organs have not much experience and only concurrently they have treated this HFA aspect. In the Blake v. Guatemala case, the Court ascertained that bruning the victim's mortal remains, in order for the competent authorities to erase any trace of the disappeared, is a shameless indication of disrespect towards the deceased and in complete contradiction with the *"cultural values prevailing in Guatemalan society, which are handed down from generation to generation"*[256]. In the same vein, in the Bámaca-Velásquez Case the Court noticed the strict interrelation between the living and the dead and recalled that *"In the face of the anguish generated by the death of a beloved person, the burial rites, with the mortal remains, purport to bring a minimum of consolation to the survivors"*[257]. These passages reflect the long standing humanitarian principles of respecting the dead person, as well as the rites and rituals of each and every religion and culture while burying or in any other way disposing the dead body, emphasizing on the wider protective scope of such provisions[258].

The IACtHR has also been proven quite pioneering, while ordering remedies regarding any of the aspects of the HFA equation no matter the specific circumstances, which generated such cases. In general, such reparations may vary and they could be divided in certain categories. These may include -among others- restitution, rehabilitation, satisfaction and compensation (for both pecuniary and non-pecuniary damages), as well as guarantees that such incidents will not occur again in the future and that the state authorities will fulfil their obligations to investigate or even prosecute and punish the perpetrators. Such reparations may be granted not only for the benefit of all victims concerned (whether direct or indirect), but for the sake of the society as a whole[259].

More specifically, in such circumstances the IACtHR usually opts for rehabilitative measures along with compensation; i.e. measures that aim at treating (or at least alleviating) any physical, psychological or mental traumas, resulting from any HR violations. The next of

[255] Μπαλαφούτα, Β. (2018), σελ. 61-64.
[256] IACtHR, Case of Blake v. Guatemala, para 115.
[257] IACtHR, Case of Bámaca-Velásquez v. Guatemala, para 20.
[258] See art.17 GCI, art.20 GCII, art.120 GCIII, art.130 GCIV; See *supra* Part I, Chapter 1.
[259] Pasqualucci, J. (2012), p.196.

kin of the deceased or disappeared person are also considered as potential beneficiaries[260]. At this point, it should be noted that, as in the Chitay Nech et al. v. Guatemala Case, "the care must be individualized, specialized, integrated, and free of charge[261]" and the victim must be consulted in order to identify his/her individual needs and to be granted the adequate treatment. As to the most proper stage that the care should begin, the Court retains that in principle it should be granted as soon as possible and it should last as long as it is needed. This rule was altered in the Plan de Sánchez Massacre v. Guatemala Case; the Court asked for the creation of a national committee mandated to evaluate the victims' health status and to provide them with the appropriate treatment for a 5-year-long period. On the other hand, in the Kawas Fernández v. Honduras Case, the Court did not set a specific time frame within which the treatment shall be granted, taking into consideration that each person experiences in a wholly different way the consequences of such a traumatic incident[262].

The Court proves its innovative -or even revolutionary- role by imposing on the respondent States the obligation to adopt measures of satisfaction, in order for them to acknowledge the dignity of the victims and to provide their families and relatives with some consolation. In reality, such measures are of a non-financial nature and they are to alleviate the pain and the anguish caused by the grave HR violations, which do not affect exclusively the victims' principles, but of the whole community's as well. For this reason, this kind of measures are usually of a public nature and they are meant to officially demonstrate the States' repudiation of such egregious violations.

Public apology, dissemination of the judgment in question[263], building memorials[264], constantly proving the State's commitment to locate and identify a victim's mortal remains[265],

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[260] See for instance Velez Loor v. Panama (No. 218, 2010), para. 263; Chitay Nech et al. v. Guatemala (Preliminary Objections, Merits, Reparations, and Costs), IACtHR, 25 May 2010, Ser. C, No. 212, para. 256.

[261] See also Manuel Cepeda Vargas v. Colombia, para 235.

[262] The Court further distinguishes other circumstances that could affect the other circumstances that could also affect the kind of the treatment granted. Pasqualucci, J. (2012), p. 203.

[263] Manuel Cepeda Vargas v. Colombia (No. 213, 2010), para. 220; Radilla Pacheco v. Mexico, (Preliminary Objections, Merits, Reparations, and Costs), IACtHR, 23 November 2009, Ser. C, No. 209, para. 350; Kawas Fernández v. Honduras (No. 196, 2009), para. 199.

[264] See for instance Kawas Fernández v. Honduras (No. 196, 2009), para 206; No. 110, para. 236. 147 "Street Children" (Villagrán Morales et al.) v. Guatemala (Reparations and Costs), IACtHR, 26 May 2001, Ser. C, No. 77, paras. 103, 115 (7).

[265] As for instance in the Velásquez Rodríguez v. Honduras Case (Merits), IACtHR, 29 July 1988, Ser. C, No. 4, para. 181. The family's right to know the whereabouts of their missing, disappeared or deceased relative forms part of their rights to access to justice and the when they do not know what really happened to their loved ones. In such cases, the Court usually orders the respondent State to effectively carry out the necessary investigations. E.g. Gelman v. Uruguay, op. para 10.

as well as returning them back to their next of kin are some of the principal types of satisfaction that the IACtHR grants in such circumstances, in order to better deal with any aspect of the HFA triangle[266]. In the same vein, a sort of satisfaction has already been granted in a collective way in cases of large-scale massacres, that affect the community as a whole and disrupt the fabric of the society, even if the direct victims are numerically few. These are the cases of Contreras et al. v. El Salvador, Serrano Cruz Sisters v. El Salvador, and Las Dos Erres Massacre v. Guatemala. In all these cases, the Court imposed on States the obligation to create a web-page and a DNA database, in order to assist to the location process of the missing children and to facilitate the family reunification.

1.2. The 1973-1986 Argentina crisis, its results and its overall contribution

In the dawn of the 20th century, Argentina became the theater of many political tensions mainly due to the acute economic crisis of that period. The said tensions took the form of military *coup d' état* and were constantly disrupting any efforts of increasing the country's wealth in favour of Argentina's distancing from foreign funds and the implementation of policies based on social justice and equality[267].

One of the most significant personalities in the history of Argentina is General Juán Domingo Perón, who after participating in the 1930 and 1943 military *coups*, he created his own party and managed to win the 1946 elections. He served for a 9-year term, imposing strict measures in order to upgrade Argentina's international *status*. He was overthrown and came back in 1972 and a year later he was elected President once more, imposing very strict taxation to the rich social layers. In 1974, he died, leaving his third wife, Isabel Perón, in his rank. A few years later, in 1976, another *coup* was launched by Jorge Rafael Videla, aiming at combating communism. Videla and his successors, Eduardo Viola and Leopoldo Galtieri, made an extensive use of the practice of enforced disappearances as their main weapon in such an operation[268].

When the mortal remains are indeed located, the State is usually obliged to exhume the bodies, to verify them even through DNA tests and to return them as soon as possible to the family, in order for the relatives to start mourning. This is why the States sometimes are also obliged to pay for the funeral expenses, always in accordance with the family's religious beliefs. Radilla Pacheco v. Mexico, (No. 209, 2009), para. 336; Tiu Tojín v. Guatemala (No. 190, 2008), para 103; "Street Children" (Villagrán Morales et al.) v. Guatemala (No. 77, 2001), para. 102.

[266] Pasqualucci, J. (2012), p.p.204-212.

[267] Calvocoressi, P. (2009), p.p.1051-1055.

[268] *Ibid*, p.p.1054-1055.

In order to cope with the disastrous results, to trace all the victims of the dictatorial regime and to discover the whereabouts of all persons gone missing , a non-profit NGO, the Equipo Argentino de Antropología Forense (EAAF), was created[269]. The EAAF has developed specific inter-related programs. Its work begins with the Investigation Program, which serves to identify the victims and to establish their cause of death revealing sometimes patterns of human rights violations. At this stage, the use of forensic expertise is of utmost importance. After gathering extensive background and *ante mortem* information from national and international actors, the *in situ* investigation commences and the findings are sent for a thorough laboratory analysis. During this process, the EAAF keeps contact with the families and the local communities, in order to return the mortal remains of their loved ones and to provide useful evidence for the attribution of criminal responsibilities before the competent bodies[270]. The latter objective is also achieved through the Documentation and Dissemination Program[271].

The novelty of the EAAF is that it has developed a Training and Advisory Program aiming at strengthening the capacities of all stakeholders, in order to better respond to their current duties. At the same time, there is also the broader aspiration of establishing long-term capacities and raising awareness at a local level. For this reason, the EAAF has established partnerships with academic institutions from all over the world and practically encourages the exchange of knowledge, practices and techniques, as well as the sharing of the multi-year experience in the field[272].

Furthermore, it is undeniable that the Organization's contribution to the international and regional human rights standards is significant. Institutions related to the processes of truth, justice and reparations for human rights violations are also partakers of the Organization's work. Indeed, this is easily proved, due to its gradual participation in policy debates concerning the right to the truth, for which it has already established a set of recommendations. More specifically, it concluded in that the families of the victims shall

[269] Cordner, S. (2018), p.640; Cordner, S. & Tidball-Binz, M. (2017), p.66: The idea of creating such an investigative body derived from the NGO Las Abuelas de la Plaza de Mayo, whose principal objective was to trace all the kidnapped children of imprisoned and disappeared persons during exactly the same period. In fact, in order to identify their grandchildren, they even created by a 1987 law the Banco Nacional de Datos Genéticos, a genetic database with samples that could be used in the identification procedures.
See more https://www.abuelas.org.ar/abuelas/historia/abuelas-la-genetica-83.
[270] See more https://eaaf.typepad.com/investigative_training/.
[271] See https://eaaf.typepad.com/information_dissemination/.
[272] See https://eaaf.typepad.com/training_and_advisory/.

have access both to the sites of investigations and to the information gathered and that any questions or concerns of theirs shall be taken into due account, while the creation of relevant mechanisms, that would provide them with the information required, would enforce the internationally and regionally acknowledged right[273].

The fifth program concern the scientific development, which aims at enhancing the already existing tools and at increasing their effectiveness, creating new instruments for the application of forensic sciences sometimes even engaging other relevant scientific fields. In order to achieve all these goals, the EAAF has created various databases (such as the DNA Blood Bank, the Database of disappeared persons in Argentina and the Forensic Database for Documentation of Violations Worldwide). In the same vein, agreements and partnerships have also been established with DNA laboratories around the world[274].

Finally, the EAAF intends to strengthen its relations with other International Organizations and intergovernmental bodies and it has developed various partnerships with other institutions (not only of a mere forensic character). It tried to obtain consultative *status* under the UN, the OAS and the AComHPR according to their relevant guidelines[275]. It collaborates with the ICRC and it has already actively participated in the 2002-2003 ICRC Project on Missing Persons[276]. It continues, since its foundation, to collaborate with the American Association for the Advancement of Science[277] and, in 2003, it created the Latin American Forensic Anthropology Association (ALAF), a group of forensic NGOs with a broader geographical mandate[278].

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Such a regional initiative hindered the mobilization of all stakeholders and goaded the international community to take action in respect. As a matter of fact, under the coordination of the UNODC the International Forensic Strategic Alliance (IFSA) has been created. In reality, it is a group of six regional organizations on forensic sciences brought together under

[273] See https://eaaf.typepad.com/recommendations/; EAAF (2002), p.p.130-135.
[274] Nuno Vieira, D. (2017), p.175. See https://eaaf.typepad.com/scientific_development/.
[275] See E/1996/31, CP/RES.704 (1129/97) and ACHPR/Res.361(LIX)/2016 respectively; See also https://eaaf.typepad.com/strengthening_field/.
[276] See the Specific Section of the 2002 Annual Report, p.p. 136-139. Available at https://eaaf.typepad.com/pdf/2002/18MissingProject.pdf.
[277] Cordner, S. & Tidball-Binz, M. (2017), p.66.
[278] See more http://alafforense.org/; Cordner, S. & Tidball-Binz, M. (2017), p.69.

a Memorandum of Understanding. It consists of the American Society of Crime Laboratory Directors, the European Network of Forensic Science Institutes, the Senior Managers of Australian and New Zealand Forensic Laboratories, the Ibero-American Network of Medico-Legal Institutes, the Asian Forensic Science Network and the Southern Africa Regional Forensic Science Network[279]. In this way a better coordinated response to regional problems has been put in action.

Similar initiatives has undertaken the ICRC too. More specifically, after having pointed out the need to establish enhanced communication and coordination among all existing institutions, in order to meet all potential needs in the field of HFA, the ICRC (with the support and collaboration of various organizations) tries to assist the development of wider networks of institutions and practitioners. For instance, few programs have been set up in Africa, Ibero-America and Asia in order to develop and disseminate expertise in various HFA fields. The ICRC hopes that the recent similar actions in the tormented Middle Eastern region be prosperous[280].

However, the discipline seems quite underestimated. In fact, the exact number of forensic scientists does not respond to the needs for their public presence. In order to fulfill this *lacuna*, the ICRC -and in some cases the EAAF as well- establish training centers. The most notable example is the African School of Humanitarian Forensic Ation, held for the first time in 2010[281].

CHAPTER 2

HFA before the principal European Institutions

2.1. European Union and Organization for Security and Cooperation in Europe as HFA actors

Neither the EU nor the OSCE have developed a consolidated legal framework on humanitarian issues. However, one cannot disregard their significant participation while handling cases of missing persons -mainly- especially in war-afflicted or even post-conflict european countries.

[279] See more http://www.ifsa-forensics.org/about-us/.
[280] Cordner, S. & Tidball-Binz, M. (2017), p.69.
[281] *Ibid*, p.70.

More specifically, the contribution of the OSCE consists of assisting the procedures for the identification of human remains and providing support to the families of missing and disappeared persons[282]. In fact, as Western Balkans are still in a recovery process, the Organization's interest is heightened. In order to mediate for the mitigation of pending issues in the region, the OSCE opts for the enhancement of regional cooperation[283], salutes and further boosts the ICMP's initiatives (along with ICRC[284]) in the field, such as the signing of the Declaration on the role of the State in addressing the issue of persons missing as a consequence of armed conflict and human rights abuses by Bosnia and Herzegovina, Serbia, Montenegro and Croatia[285]. To this end, OSCE's Special Rapporteur on Western Balkans undertakes the duty to propose specific and concrete measures in order to better implement what has been accorded and to ensure -to the extent possible- the reconciliatory process in the region[286]. At the same time, the EU acknowledges the efforts made through the ICMP in the wider region[287] as a long-lasting peace and a real reconciliation can be achieved only on the basis of a credible and effective effort to account for the missing[288] and to attribute responsibilities for their disappearance[289].

Ukraine as well remains in the centre of the OSCE's attention, especially after the 2014 conflict with Russia and the political disturbances thereafter. The continuously worsening situation and the growing number of missing persons has led to the creation of a Trilateral Contact Group[290]. During its meetings in Minsk (Belarus), the Humanitarian Working Group remains firm in its views that the tracing of missing persons in the broader area shall carry on, even with the assistance and expertise of the ICRC[291].

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282 CoE (2016), *Missing persons and victims of enforced disappearances in Europe, Issue Paper*, p.30.
283 See https://www.osce.org/cio/118512.
284 For instance, ICRC had created a Book of Missing Persons for Croatia, containing information of more than 2.000 persons that were reported missing to the ICRC's services by their relatives during the ongoing hostilities (1991-1995). See https://www.osce.org/zagreb/24348?download=true.
285 See also OSCE's Special Rapporteur's Statement at the Signing Ceremony: https://www.icmp.int/wp-content/uploads/2014/09/152-2014D-stoudmann.pdf.
286 See https://www.osce.org/whoweare/123043.
287 See https://www.icmp.int/press-releases/icmp-submits-first-two-dna-match-reports-to-the-albanian-authorities/ & https://www.icmp.int/press-releases/icmp-and-kosovo-institutions/.
288 See https://www.icmp.int/press-releases/resolving-the-fate-of-missing-persons-a-prerequisite-for-european-integration/.
289 See https://www.icmp.int/news/european-union-continues-support-for-icmp/.
290 It is consisted by representatives from Ukraine, the Russian Federation and OSCE and it is divided in subgroups.
291 2017: https://www.osce.org/chairmanship/311461,

The OSCE also works on the long-lasting humanitarian needs existing in Georgia[292], especially after the 1990's and 2008 armed conflicts and the subsequent events. The direst humanitarian challenge was -and still is- the handling of thousands of missing persons cases [293]. In order to better respond to the problem, the ICRC was also involved and offered the forensic know-how for the investigation of the pending cases. To this end, a Coordination Mechanism was created under the ICRC auspices, aiming at bringing together all the parties to the conflict and at continuing the efforts for the clarification of those person's fate[294]. In 2019, the Mechanism has already identified some of the mortal remains[295], offering a disclosure to the families, while at the same time it has declared that even more gravesites will be excavated[296], speeding up the processes[297].

2.2. Tensions in the european continent and the coordinated political and judicial response of the Council of Europe

Even though the ECHR contains few provisions that may be related to some HFA aspects, the jurisprudence of the ECtHR has treated more thoroughly each and every part of the equation and has developed interesting arguments on the matter, while at the same time it expresses its views regarding the inter-relation of IHL and HRL, which are of utmost importance, while examining the present dissertation as the concept of HFA and the relevant framework firstly originated within a humanitarian context[298].

More specifically, while there is no explicit human rights obligation to search for and collect the dead, States still bear responsibility on how they treat the dead body and mainly in relation with the person that filed the application[299]. This is confirmed by the Court itself in

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2017: https://www.icrc.org/en/document/ukraine-crisis-too-many-families-still-searching-missing-loved-ones, 2019: https://www.osce.org/chairmanship/422117.

[292] See https://www.osce.org/austria/225386.

[293] See https://www.osce.org/cio/73872?download=true.

[294] See https://www.icrc.org/en/document/dialogue-persons-missing-connection-1990s-and-august-2008-armed-conflicts-continues.

[295] See https://www.icrc.org/en/document/missing-connection-1990s-2008-conflicts-remains-23-more-people-identified.

[296] See https://www.icrc.org/en/document/over-40-gravesites-be-excavated-search-missing-people-related-1992-93-armed-conflict.

[297] See https://www.icrc.org/en/document/missing-1992-93-abkhazia-conflict-speeding-identification-process.

[298] See *supra* Introduction & Part I.

[299] This Court's choice coincides with its previous jurisprudence relating to the end of human quality after death, apart from the cases that relate to the dignified handling of thee remains; Schabas, W. (2015), p.170.

the Akkum et al. v. Turkey case, where there were *post-mortem* mutilations of the body of a Turkish national of a Kurdish origin, during the then ongoing military operation, that took place in November 10th, 1992, between the turkish security forces and the PKK soldiers. In this case, the applicant claimed that such a practice was in contradiction with the applicable humanitarian norms (*i.e.* both the common art.3 of the GCs and the GCI art.15) and with the ECHR as well[300].

Although the Court did not weighed in the question if the mutilation itself amounts to a violation of the Convention, it concluded in that there was a direct violation of the ECHR art.3 with respect to the applicant, as the anguish that caused him the sight of his son's mutilated body amounts indeed to a degrading treatment[301], as -among others- he as a Muslim was feeling totally offended, because he would have to bury a disfigured and incomplete dead body[302], treating in this way a dimension of the right to the truth[303].

This judgement proves what has been already corroborated in the first Part of the present dissertation; that the prohibition and even the criminalization of acts against dead bodies (such as mutilation or despoilment) serve a dual objective: in this way the dignity of both the dead person and his/her family is ensured and the evidence required for the identification of the body and for the demystification of the pending cases is safeguarded as well[304].[305] The Court's jurisprudence, even on the occasion of other cases, has offered very

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[300] ECtHR, Akkum et al. v. Turkey, para 252: "The first applicant, Zülfi Akkum, submitted that his son's ears had been severed post mortem by the soldiers. This applicant, referring to Article 15 of the Geneva Convention I of 1949, applicable in international conflicts, and also to common Article 3 of the four Geneva Conventions of 1949, applicable in non-international conflicts, submitted that even in time of war, the dead should not be despoiled or mutilated. Violations of common Article 3 were crimes of universal permissive jurisdiction.".

[301] Gaggioli, G. (2017), p. 9; ECtHR, Akkum et al. v. Turkey, para 258: " The Court has already held that the question whether a family member of a "disappeared person" is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the applicant a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human-rights violation."
and para 259: "In the same vein, the Court considers that Zülfi Akkum, as a father who was presented with the mutilated body of his son, can legitimately claim to be a victim within the meaning of Article 34 of the Convention. Furthermore, the Court has no doubts that the anguish caused to Mr Akkum as a result of the mutilation of the body of his son amounts to degrading treatment contrary to Article 3 of the Convention. It follows that there has been a violation of Article 3 of the Convention in relation to the first applicant, Zülfi Akkum.".

[302] ECtHR, Akkum et al. v. Turkey, para 253: "He further argued that the mutilation of his son Mehmet Akkum represented inhuman treatment contrary to Article 3 of the Convention in relation to him, and that the mutilation of a body was offensive to a Muslim, given that he had had to bury an incomplete and mutilated body. ".

[303] In the absence of a distinct obligation to respect the rights of a dead person, families may argue that the mistreatment of their loved one or the intentional withholding of details and information on what really happened have violated their own rights and may amount to inhuman and degrading treatment by the State, according to ECHR art. 3; Grant, S. (2016), p.13.

[304] Gaggioli, G. (2017), p.9.

useful conclusions hat could be generalized as reflecting customary humanitarian norms. That is the case of Gerard v. France, in which the ECtHR ascertained that there is a right to bury a relative as an aspect of the right to private life as enshrined in ECHR art.8[306].

On the contrary, the involvement of the CoE in cases of missing and disappeared persons is far more vivid and the conversation on the matter is evident in either the political or the judicial organs -or in both of them, but to a different extent for each case- but it is treated mostly in relation to the families' right to know the truth on the fate of their loved ones. Cyprus[307], the Kurdish peoples residing in Turkey[308], Ukraine[309], Chechnya, Georgia and the disputed Nagorno-Karabach region are the most notorious cases, which confirm such an assertion[310].

The 1990's conflicts in the wider Caucasus region and their consequences with regard to missing persons were brought before PACE already since 2007 by a CoE Special Rapporteur assisted mainly by the ICRC due to its continuing involvement on the field[311]. The conflicts in Abkhazia[312], South Ossetia[313] and the Nagorno-Karabach[314] regions have created long-lasting problems to the populations, as the rates of missing persons remain incessantly high[315]. The problem, however, could be solved if all stakeholders pay due respect to their

[305] A similar incident is also described in the Issa et al. v. Turkey case, but the Court rejected the application on the count of inadmissibility, as the applicants did not fall under the Court's jurisdiction as provided in ECHR art.1 and, thus, it states that it was unnecessary to examine the rest of the alleged violations. ECtHR, Issa et al. v. Turkey, para 82.

[306] ECtHR, Girard v. France, paras 110-111, citing the ECtHR, Panullo and Forte v. France and The estate of Kresten Filtenborg Mortensen v. Denmark Cases; Burbergs, M. (2001); Kerasiotis, V. & Spiliotakara, M. (2016), p.10; ECtHR, Sabanchiyeva & Others v Russia, Supra, para. 377; Grant, S. (2016), p.13.

[307] For a more complete analysis on the Cyprus question see *infra* Part II, Chapter 2, Subchapter 2.3.

[308] ECtHR, Case of Çakıcı v. Turkey, Application no. 23657/94, Judgment, Strasbourg, 8 July 1999; ECtHR, Case of Meryem Çelik et al. v. Turkey, Second Section, Application no. 3598/03, Judgment, Strasbourg, 16 April 2013.

[309] PACE Doc. 13808 (08 June 2015) on "Missing persons during the conflict in Ukraine", PACE Resolution 2067 (2015) on "Missing persons during the conflict in Ukraine", PACE Recommendation 2076 (2015) on "Missing persons during the conflict in Ukraine", PACE Doc. 13651 (16 December 2014) on "The humanitarian situation of Ukrainian refugees and displaced persons", PACE Resolution 2028 (2015) on
"The humanitarian situation of Ukrainian refugees and displaced persons".

[310] See for instance PACE Doc. 13294 (03 September 2013) on "Missing persons from Europe's conflicts: the long road to finding humanitarian answers" and the respective Resolution Resolution 1956 (2013).

[311] Pace, Doc. 11196 (7 March 2007) on "Missing persons in Armenia, Azerbaijan and Georgia from the conflicts over the Nagorno-Karabakh, Abkhazia and South Ossetia regions", paras 13, 37-42.

[312] *Ibid*, para 19.

[313] *Ibid*, para 20.

[314] *Ibid*, paras 17-18;
See https://www.icrc.org/en/document/nagorno-karabakh-conflict-families-missing-people-want-answers
& https://www.icrc.org/en/document/nagorno-karabakh-families-missing-persons-right-to-know
& https://www.icmp.int/the-missing/where-are-the-missing/nagorno-karabkh/.

[315] Pace, Doc. 11196 (7 March 2007), para 6.

IHL and HRL obligations[316]. Putting in action all the sources available to trace even the deceased ones would help, as well, to clarify the pending cases[317]. The Rapporteur also reminds that, despite the lack of specific provisions on the matter in the ECHR, the jurisprudence of the ECtHR has created a solid basis for any eventual violation, using the already existing tools[318].

In view of that, various individual and inter-state applications were filed before the ECtHR. Indeed, after having asked, in 2008, for the adoption of interim measures by the Court, Georgia filed a formal application against Russia, alleging that the administrative practice developed by the latter was violating various provisions of the ECHR, especially with regard to missing persons. Russia claimed that such accusations were baseless and unjustified, as its armed forces did not launch a military operation in the region, but instead they tried to defend the civilian populations[319]. The application was found admissible and the case is currently pending before the Court[320].

The ECtHR has also been asked to respond to applications regarding Bosnia and Herzegovina, especially after the 1992-1995 war. In the Palić case, the applicant, whose husband went missing during that period, claimed -among others- that the State did not comply with its obligations under ECHR arts 2, 3 and 5. After a dispute on whether the application should be considered admissible *ratione temporis* and regarding the non compliance with the six-month rule, especially with regard to art.2, the Court asserted that the procedural obligation embodied in art.2 is one of means and the facts of the case demonstrate that the State had undertaken various measures for the disclosure of the case, taking into consideration the exceptional circumstances of that period. Besides, the body was finally identified and the applicant received a satisfactory compensation[321], while with regard to art.3 it concluded in that:

> *"The finding of such a violation is not limited to cases where the respondent State has been held responsible for the disappearance, but can arise where the failure of the authorities to respond to the quest for information by the relatives or the obstacles placed in their way, leaving them to bear the brunt of the efforts to*

[316] *Ibid* para 10.
[317] *Ibid*, paras 89-101.
[318] *Ibid*, para 26.
[319] ECtHR, Georgia v. Russian Federation, Application No 38263/08, paras 21-22.
[320] See https://www.echr.coe.int/Pages/home.aspx?p=hearings/gcpending&c=.
[321] ECtHR, Palić v. Bosnia and Herzegovina, paras 61-71.

uncover any facts, may be regarded as disclosing a flagrant, continuous and callous disregard of an obligation to account for the whereabouts and fate of a missing person."[322],

however, there was no violation of art.3, reiterating its views and criteria on art.2.

The Court has concluded in similar approaches in various cases regarding the Chechen-Russian conflict and the respective pending cases of missing and disappeared persons. In fact, in most of the cases it held that there was a violation both of the procedural obligation to conduct an effective investigation, as enshrined in art.2[323], and of art.3 (both the substantive and the procedural obligations) due to the anguish and mental suffering caused to the missing person's relatives[324], because in most of the cases the person is presumed dead.

2.3. The multi-level response in Cyprus' missing persons' cases: national impact

The continuous tensions between the two communities in Cyprus and the efforts of the Guarantor Powers to resolve the crisis or even to fulfill their own ambitions led to the 1974 turkish invasion -in two phases- in the island (under the pretext that they were trying to reinstate the order in the island) and, therefore, to a generalized conflict with innumerable casualties.

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[322] *Ibid*, para 74 *in fine.*

[323] ECtHR, Case of Tashukhadzhiyev v. Russia, First Section, Application no. 33251/04, Judgment, Strasbourg, 25 October 2011, paras 73-81; ECtHR, Case of Umarova et al. v. Russia, First Section, Application no. 25654/08, Judgment, Strasbourg, 31 July 2012, paras 84-95; ECtHR, Case of Aslakhanova et al. v. Russia, First Section, (Applications nos. 2944/06 and 8300/07, 50184/07, 332/08, 42509/10, Judgment, Strasbourg, 18 December 2012, paras 121-127; ECtHR, Case of Pitsayeva et al. v. Russia, First Section, Applications nos. 53036/08, 61785/08, 8594/09, 24708/09, 30327/09, 36965/09, 61258/09, 63608/09, 67322/09, 4334/10, 4345/10, 11873/10, 25515/10, 30592/10, 32797/10, 33944/10, 36141/10, 52446/10, 62244/10 and 66420/10, Judgment, Strasbourg, 9 January 2014, paras 470-472; ECtHR, Case of Petimat Ismailova et al. v. Russia, First Section, Applications nos. 25088/11, 44277/11, 44284/11, 44313/11, 48134/11, 49486/11, 52076/11, 52182/11, 55055/11, 56574/11, 64266/11 and 66831/11, Judgment, Strasbourg, 18 September 2014, paras 394-396; ECtHR, Case of Sultygov et al. v. Russia, First Section, Applications nos. 42575/07, 53679/07, 311/08, 424/08, 3375/08, 4560/08, 35569/08, 62220/10, 3222/11, 22257/11, 24744/11 and 36897/11, Judgment, Strasbourg, 9 October, 2014, paras 442-445.

[324] ECtHR, Case of Umarova et al. v. Russia, First Section, Application no. 25654/08, Judgment, Strasbourg, 31 July 2012, paras 100-102; ECtHR, Case of Aslakhanova et al. v. Russia, First Section, (Applications nos. 2944/06 and 8300/07, 50184/07, 332/08, 42509/10, Judgment, Strasbourg, 18 December 2012, paras 128-134; ECtHR, Case of Pitsayeva et al. v. Russia, First Section, Applications nos. 53036/08, 61785/08, 8594/09, 24708/09, 30327/09, 36965/09, 61258/09, 63608/09, 67322/09, 4334/10, 4345/10, 11873/10, 25515/10, 30592/10, 32797/10, 33944/10, 36141/10, 52446/10, 62244/10 and 66420/10, Judgment, Strasbourg, 9 January 2014, paras 477-482; ECtHR, Case of Petimat Ismailova et al. v. Russia, First Section, Applications nos. 25088/11, 44277/11, 44284/11, 44313/11, 48134/11, 49486/11, 52076/11, 52182/11, 55055/11, 56574/11, 64266/11 and 66831/11, Judgment, Strasbourg, 18 September 2014, para 401; ECtHR, Case of Sultygov et al. v. Russia, First Section, Applications nos. 42575/07, 53679/07, 311/08, 424/08, 3375/08, 4560/08, 35569/08, 62220/10, 3222/11, 22257/11, 24744/11 and 36897/11, Judgment, Strasbourg, 9 October, 2014, paras 450-453.

One of the various consequences of this situation was that a considerable number of persons from both the communities went missing[325]. The uncertainty on their fate, the fact that some of them were alive while they were held or that the names of many of them were contained in the relevant lists perpetuated the belief that they might still be alive after all these years. Usually it is claimed that 1,510 Greek-Cypriots went missing, during that period, while Turkish-Cypriots claim 492 persons[326][327]. Such approaches take into consideration even persons that indeed were dead, but due to the turbulent circumstances were buried unidentified, increasing, thus, the long catalogue of missing persons[328].

However, one can understand that the question of missing persons can easily be -and may have already been- politicized. This assertion is quite accurate, when one takes into account how each of the adversary parties perceives the situation. In fact, while Greek-Cypriots consider their missing as of unknown whereabouts, that can either be dead or alive, but still they have not until now recovered their bodies, in order to proceed to proper burials, the Turkish-Cypriots describe them as *"kayip"* (which literally means dead, lost), annihilating any expectations that those persons might be found alive. These approaches are totally aligned with the respective policies of the two parties. For Greek-Cypriots those persons are the victims of the Turkish army that invaded and occupied their island and hopefully they are alive. On the contrary, the Turkish-Cypriots, apart from claiming that members of their community started disappearing already since 1963, they allege emphatically that those persons are dead in an effort to demonstrate the existing rivarly among the two communities and that they cannot coexist[329].

Despite the political dimensions of the matter, the undeniable acute humanitarian crisis attracted the interest of the international community and led all stakeholders to undertake specific measures -to a different extent each- in order to respond to the subsequent challenges.

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[325] Ker-Lindsay, J. (2005), p.p.14-15.
[326] Sant Cassia, P. (2001), p.194.
[327] The initial lists of 1,619 Greek-Cypriot and 813 Turkish-Cypriot missing persons were replaced after a thorough investigation of the CMP during the period of August-October 1995; EComHR, Cyprus v. Turkey (IV); PACE Doc. 13294 (03 September 2013), p.6; See http://www.cmp-cyprus.org/sites/default/files/facts_and_figures_31-10-2019_-_1.pdf.
[328] Συρίγος, Ά. (2018), σελ. 226.
[329] Sant Cassia, P. (2001), p.p. 194-195.

2.3.1. ICRC and United Nations on the field

Long before the UN included the Cypriot missing persons question in its agenda, other international bodies have been involved shortly after the outbreak of the tensions in 1963. The then British High Commissioner in Nicosia, forseeing the fast development of the conflict-like situation on the island, decided to invite the ICRC. Indeed, on the dawn of 1964 and on the basis of GCs common art.3, an ICRC delegate, Mr. J. Ruff, was sent to Cyprus. However, the incessantly worsening situation obliged the ICRC to increase its presence on the field, by sending one more delegate and a secretary. Among others, the ICRC had to trace all missing persons. But, it is easily understood that in a context of political tensions and propaganda by all sides of the conflict such an effort was almost impossible to be carried out [330].

The ICRC was once again contacted after the 1974 events too. The missing persons question was not included since the very beginning in its agenda. It was added few months later, when both parties to the conflict gave access to their records of POWs and after cross-examining them, many names could not be identified. The ICRC remained on the island until the end of 1976, when it was considered that the emergency situation had decreased and had been stabilized[331].

UN from its part became involved almost a year after the second phase of the turkish invasion. More specifically, the UNGA -recalling its previous Resolutions and those adopted by the ComHR- adopted Resolution A/RES/3450 (XXX), explicitly treating for the first time the question of missing Cypriots. The Resolution reminded the important work of the ICRC on the field and requested the UNSG to cooperate and to conduct a relevant report that would be submitted to the ComHR[332].

Despite this first call, little progress was made towards the tracing of all those persons. In order to promote the then ongoing bi-communal dialogue, the UNGA proposed that the UNSG's Special Representative in Cyprus served as an intermediary for the establishment of an investigatory body, which would collaborate with the ICRC[333]. Once more what was proclaimed in the Resolution was not implemented and the need to create an impartial and

[330] *Ibid*, p.p. 196-208.
[331] Sant Cassia, P. (2001), p.p.211-214.
[332] A/RES/3450 (XXX), paras 1-2.
[333] A/RES/32/128, paras 1-2.

effective investigatory body, in order to demystify the pending cases, was reiterated in a subsequent UNGA Resolution[334].

Meanwhile, inter-communal negotiations had already begun in Nicosia, New York and Geneva for the establishment of a Committee of Missing Persons (CMP). When the negotiations resulted fruitful and the CMP was finally created, it was ardently welcomed by the UNGA[335]. Unfortunately, it did not achieve much progress in its effort to tackle the humanitarian crisis due to procedural difficulties, leading the UNGA to focus the UNSG's[336] and the WGEID's interest on the matter, so as to help the CMP fulfill its mandate and serve its humanitarian purpose[337].

2.3.2. The establishment of a bi-communal Commission on Missing Persons to disclose the pending cases

The CMP is an organization set up on the basis of a bi-communal agreement under the auspices of the UN. This tripartite organization consists of three persons. Two of them shall come from each of the communities, which reside in Cyprus, while the third one shall be an official selected by the ICRC. In order for the latter to undertake its duties, an agreement between the two sides shall be concluded and then the person in question shall be appointed by the UNSG (para 1).

As explicitly proclaimed in its Terms of Reference[338], the Committee is not mandated to neither to attribute criminal responsibilities nor to identify the cause of death (para 11). Instead, its purpose is of a more humanitarian character and it aims at tracing the missing

[334] A/RES/33/172.
[335] A/RES/36/164; Μπαλαφούτα, Β. (2018), σελ. 181; Ktori, M. & Baranhan, G. (2018), p.p. 2-3.
[336] The UNSG has done an astonishing work, furnishing thorough and complete reports to the UNSC on the Cyprus question. See also S/2020/23, p.9; S/2019/562, p.p.9-10; S/2019/37, p.8; S/2018/676, p.p.8-9; S/2018/25, p.7; S/2017/814, p.p.9-10; S/2017/586, p.6; S/2017/20, p.6; S/2016/599, p.7; S/2016/598, p.7; S/2016/15, p.4; S/2016/11, p.9; S/2015/517, p.6; S/2015/17, p.p.5-6; S/2014/461, p. 6; S/2013/781, p.5; S/2013/392, p.p.6-7; S/2013/7, p.6; S/2012/507, p.6; S/2011/746, p.6; S/2011/332, p.6; S/2010/605, p.p.5-6; S/2010/264, p.p.5-6; S/2009/609, p.5; S/2009/248, p.p.7-8; S/2008/744, p.8; S/2008/353, p.8; S/2007/699, p.8; S/2007/328, p.9; S/2006/931, p.8; S/2006/315, p.7; S/2005/743, p.6; S/2004/756, p.3; S/2004/427, p.3; S/2004/302, p.p.7-8; S/1997/973, p.2;
In his latest report, the UNSG highlighted the collaboration of all stakeholders in the investigation and saluted the Turkish-Cypriot side for permitting the CMP personnel to have access to 30 additional burial sites in military regions of the northern part of the island, facilitating the Committee's work. See S/2019/883, p.p. 24-25.
[337] A/RES/36/164 & A/RES/37/181.
[338] See http://www.cmp-cyprus.org/content/terms-reference-and-mandate.

persons, informing their relatives, returning the mortal remains of their loved ones for a proper burial and offering them a disclosure[339].

Due to the particular nature of the problem in question and in order to promote its work in an ambience of cooperation, equality and stability, all the decisions undertaken by the Committee shall be agreed upon by consensus. Even if there is a disagreement among the two adversary parties, the neutral one shall consult them both and try to reach a consensus (para 2). In the same vein, it was agreed that the Committee will not have a permanent chairman, but all members would direct for up to one month the sessions on a rotating basis, beginning with the ICRC member (para 4)[340].

The Terms of Reference provide, in addition, the competence *ratione temporis* of the CMP. Even though there is a divergence of the opinions of the two sides on the beginning of the crisis[341], it is clearly set in para 7 that *"7. The committee shall look only into cases of persons reported missing in the inter-communal fightings as well as in the events of July 1974 and afterwards."*, responding in this way to the acute humanitarian emergency, without taking into consideration any (even political) interests.

The Committee works in four different phases, which are related either to the exhumation of the remains[342], their analysis in the CMP's Laboratory[343] and their identification through a DNA examination[344] or to the return of the remains. The latter stage is usually combined with services with specialized psychologists that could help the families to process the information delivered and to come to terms with the eventual death of their missing relative[345].

In order to better respond to its duties, the CMP has opted for new partnerships. Among others, it has established a solid partnership with the EAAF upon the recommendation of the ICRC. The EAAF was to design, to put in action and at an initial stage to coordinate both the archaeological and anthropological phases of the CMP's project. This partnership even included -from August 2006 till the end of 2007- coordinated trainings of the forensic

[339] See http://www.cmp-cyprus.org/content/what-we-do.
[340] Μπαλαφούτα, Β. (2018), σελ.232.
[341] See *supra* Part II, Chapter 2.
[342] On the Archaeological Phase see more at http://www.cmp-cyprus.org/content/phase-i-archaeological-phase.
[343] On the Anthropological one see more at http://www.cmp-cyprus.org/content/phase-ii-anthropological-phase.
[344] Genetic Phase: http://www.cmp-cyprus.org/content/phase-iii-genetic-phase.
[345] The final phase: http://www.cmp-cyprus.org/content/phase-iv-identification-and-return-remains.

teams on the island launched by experts from the EAAF[346]. In addition, since 2012, the CMP started cooperating with the ICMP especially on the field of genetic identifications. The ICMP offered its useful expertise on acquiring DNA from *post mortem* samples and comparing those elements with DNA from a database of anonymous samples of the missing or deceased persons' families[347]. The partnerships, however, are not limited only at an institutional level. Forensic scientists from all over the world (*i.e.* form Iraq[348], Canada, Colombia, Ireland, the United Kingdom and the United States of America) have inspired the CMP work (especially after the 2003 ICRC Conference on the question of missing persons), making it a good example of local capacity-building in the wider Mediterranean region[349].

2.3.3. Cyprus' missing persons before the political and judicial organs of the Council of Europe

The Cyprus question has long been an issue of controversy between Cyprus and Turkey in the CoE framework as well. The problem is continuously brought before all institutional organs, whether political or judicial. In fact, the CoM quite often adopts Reports, Resolutions and Recommendations[350] encouraging all those actions that aim at demystifying the pending cases and saluting all the relevant EComHR and ECtHR judgments.

However, the most significant work has been done before the ECHR's judicial organs as their decision shall be respected and implemented. More specifically, the outbreak of the conflict after the 1974 turkish invasion was followed by four applications of Cyprus against

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[346] See http://www.cmp-cyprus.org/content/partners-and-cooperation & https://eaaf.typepad.com/cr_cyprus/; Ktori, M. & Baranhan, G. (2018), p.p. 3-7.

[347] See https://www.icmp.int/where-we-work/europe/cyprus/; Μπαλαφούτα, Β. (2018), σελ. 232.

[348] See https://www.icmp.int/where-we-work/europe/cyprus/.

[349] Tidball-Binz, M. (2013), p. 361.

[350] See for instance: PACE Res. 816 (1984) on "Situation in Cyprus", PACE Recomm. 1056 (1987) on "National refugees and missing persons in Cyprus", PACE Res. 1267 (2002) on "Situation in Cyprus", PACE Doc. 9302 REV. (15 January 2002) on "Situation in Cyprus", PACE Res. 1362 (2004) on "Situation in Cyprus", PACE Res. 1628 (2008) on "Situation in Cyprus", PACE Doc. 11699 (15 September 2008) on Situation in Cyprus", PACE Doc. 11727 (30 September 2008) on "Situation in Cyprus", PACE Res. 1868 (2012) on "The International Convention for the Protection of all Persons from Enforced Disappearance", PACE Doc. 12880 (23 February 2012) on The International Convention for the Protection of all Persons from Enforced Disappearance", PACE Res. 1463 (2005) on "Enforced disappearances", PACE Doc. 10679 (19 September 2005) on "Enforced disappearances", PACE Res. 1956 (2013) on "Missing persons from Europe's conflicts: the long road to finding humanitarian answers", PACE Doc. 13294 (03 September 2013) on "Missing persons from Europe's conflicts: the long road to finding humanitarian answers", PACE Res. 2214 (2018) on "Humanitarian needs and rights of internally displaced persons in Europe", PACE Doc. 14527 (09 April 2018) on "Humanitarian needs and rights of internally displaced persons in Europe".

Turkey. All of them were alleging violations of ECHR provisions by Turkey. But only one of those inter-State applications deals specifically with the question of missing persons.

In the fourth inter-State application of Cyprus[351], the EComHR, after having answered to any turkish preliminary objections regarding procedural issues[352], dealt with the main problem. Cyprus claimed that with regard to the missing persons themselves violations of arts 2, 3, 6, 8, 13, 14 and 17 have been committed, while their relatives had suffered violations of their rights, as envisaged in arts 2, 3, 4, 5 and 13[353]. Turkey, on the other hand, stated that, apart from that such allegations shall be considered inadmissible as they were included in the former inter-State applications, in any case there is an adequate mechanism for the investigation of the missing persons cases and that is the CMP as acknowledged by the WGEID[354]. Cyprus refuted the latter statement recalling that CMP is just a bi-communal investigative body with a limited mandated and incapable of attributing any responsibilities on the basis of its Terms of Reference. In addition, Turkey does not participate in its functioning and it could not, therefore, be considered as part of the Turkish state machinery[355].

After considering the arguments presented by the two sides, the Commission asserted that with regard to the missing persons there can be no violation of arts 4 and 5, as they are stated in a hypothetical way[356]. An eventual breach of art.5 can be accepted only in cases in which it is corroborated that the missing persons were held under the turkish custody[357]. Although the Commission was of the view that, if the turkish authorities illegally established in the northern part are subordinate to Turkey, then in principle the CMP should exempt any state responsibility, it recalls its narrow mandate and its contribution at a merely humanitarian level. Hence, there is a continuing violation of ECHR art.5 by Turkey[358]. In addition, due to the uncertainty of the victims' fate, the Commission is entitled to examine whether there has been any violation of Turkey's procedural obligation to effectively investigate the cases[359].

[351] Περράκης, Στ. (2013), σελ. 181.
[352] Among others Turkey claimed that if there is any responsibilities to be attributed, they should fall upon the Turkish-Cypriot community and the "State" that they created. The Commission responded decisively that such an allegation was impossible, as the northern part of the island is occupied and the "effective overall control" that Turkey exercises on it serves in order to attribute State responsibility. EComHR, Cyprus v. Turkey (IV).
[353] EComHR, Cyprus v. Turkey (IV), para 149..
[354] EComHR, Cyprus v. Turkey (IV), paras 165-169.
[355] *Ibid*, para 154.
[356] Μπαλαφούτα, Β. (2018), σελ. 236-237.
[357] EComHR, Cyprus v. Turkey (IV), paras 195, 200 & 206.
[358] *Ibid*, para 211.
[359] *Ibid*, paras 222-225; Σισιλιάνος, Λ.-Α. (2016), σελ. 95-96.

As to the alleged violation of the families' rights, the Commission initially makes a distinction. From the aforementioned catalogue of potential breaches, it considers that only the claims regarding arts 3, 8 and 10 can be examined, as the rest of them have been issued after the Commission's decision on admissibility. Therefore, the latter shall be rejected as inadmissible[360].

More specifically, regarding art.3, the Commission reiterates the Court's and its own jurisprudence and it stipulates that in cases of enforced disappearances, there can be a breach of art.3 as the prolonged uncertainty, the anguish and the severe psychological distress may amount to a degrading treatment[361]. After concluding in that, the Commission finds that there is no need to further examine allegations under arts 8 and 10, as they are strictly inter-related with art.3.

The same views on both matters were adopted even by ECtHR, when the application was brought before it[362]. In 2014, the ECtHR published its decision on the just satisfaction owed by Turkey to Cyprus[363].

The issue of missing persons has also arisen in the context of individual applications. The most notable one is the Varnava et al. v. Turkey case. The case concerns exclusively the investigation of the applicants' missing relatives, who have disappeared already since 1974. Turkey claimed that such an application shall be rejected as inadmissible due to a lack of legal interest, because all the missing persons cases were brought before the ECHR organs with the fourth inter-State application. To this preliminary objection the Court contested that

> *"[...] for an application to be substantially the same as another which has already been examined by the Court or other procedure of international investigation or settlement for the purposes of Article 34 § 2 (b), it must concern substantially not only the same facts and complaints but be introduced by the same persons [...]. It is therefore not the case that by introducing an inter-State application an applicant Government thereby deprives individual applicants of the possibility of introducing, or pursuing, their own claims"*[364].

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360 *Ibid*, para 228.
361 *Ibid*, paras 232-234.
362 *Ibid*, paras 140-141, 150, 152-153, 156-158, 160-161; Μπαλαφούτα, Β. (2018), σελ.237-243.
363 ECtHR, Cyprus v. Turkey (IV) (2014), paras 58-59; Unfortunately, the judgment has not yet been executed. Περράκης, Στ. (2013), σελ. 239.
364 The EComHR itself has also adopted equivalent views in the Donnelly et al. v. the United Kingdom case, an inter-state and an individual application may not be mutually excluding as both the applicants (for the first one

The rest of the preliminary objections regarding the lack of temporal jurisdiction of the Court and the violation of the six-month rule were also overruled.

While examining the merits of the case, the Court did not differentiate its views from those expressed by the Commission; it concluded in that *"these disappearances occurred in life-threatening circumstances where the conduct of military operations was accompanied by widespread arrests and killings"* and, therefore, the procedural obligation of art.2 was still in force[365]. The Court also aligned with the Commission's views on the potential breach of art.3; it stated that non informing the missing persons' relatives constitutes a form of degrading treatment and it acknowledged that Turkey did not comply with its procedural obligation under the said article. Similarly, it found a breach of the procedural dimension of art.5, reiterating that CMP does not fulfill the requirements of the said articles[366]. The rest of the allegations on eventual violations of other ECHR provisions were rejected[367].

One can sporadically find even individual applications filed by the relatives of the Turkish-Cypriots, who went missing in the conflicts prior to the 1974 invasion. In the Emin et al. v. Cyprus case, for instance, the Court acknowledged that the Cypriot authorities were bearing the obligation under art.2 to investigate the cases, but it held that, since no significant progress has been made yet, it was premature to condemn the investigations as premature, rejecting, thus, the application[368]. Other cases brought before the ECtHR against Cyprus have not flourished, as for instance in the cases of Baybora et al. Cyprus and Karabardak et al. v. Cyprus. In the latter two cases, the applicants claimed that the procedural facilitations granted to the Greek-Cypriots (such as the overcoming of the exhaustion of local remedies prior to the application before the Court) should be equally provided to them too. However, in both cases the Court noticed that nothing was done and no one tried to bring them before the official authorities. In addition, they filed a belated application to the CMP and quite a few years later they lodged their applications with the ECtHR. Both of them were rejected as inadmissible.

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the State; for the second one a person) and the claims included are totally different; Περράκης, Στ. (2013), σελ. 192-194.

[365] ECtHR, Varnava et al. v. Turkey, paras 186 & 194; Σισιλιάνος, Λ.Α. (2016), σελ. 97.

[366] *Ibid*, paras 200-202, para 208; Σισιλιάνος, Λ.-Α. (2016), σελ. 105-106; Landais, C. & Bass, L. (2015), p.1299.

[367] *Ibid*, paras 210-211.

[368] ECtHR, Emin et al. v. Cyprus, para 36; The ECtHR resulted in the same view in the case of Charalambous et al. v. Turkey (paras 65-66).

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All the international and regional developments in the Cyprus question have led Cyprus to undertake serious and ambitious innovations. As a matter of fact, at the beginning of 2019, the unwillingness demonstrated by Turkey to cooperate with the CMP and the difficulties that constantly arise due to the passage of all these years led the Cypriot Ministry of Foreign Affairs to create a National Action Plan that would propose drastic measures of political and operational nature.

Among the political ones, the Ministry prioritizes the sensibilization of the international and regional *fora* with the issue, aiming at pressuring Turkey to cooperate and to fulfill its international obligations. Especially in the CoE framework, Cyprus desires to push for the implementation of the fourth inter-State application and for the amplified involvement of the PACE. Such a motivation is desired to take place also in an EU context.

As far as the more operational solutions are concerned, it is proposed that a joint Group of Experts from the CMP and the respective national Service on Missing Persons[369], in order to better coordinate and facilitate the investigations. Another fundamental objective of the Plan is the digitalization of all sources available and the establishment of a mechanism of exhumation and identification of mortal remains[370].

[369] See http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/pc11_gr/pc11_gr?opendocument.
[370] See more:
https://www.kathimerini.com.cy/gr/politiki/sxedio-drasis-ypex-meta-apo-arnisi-agkyras-gia-synergasia-me-dea.

CONCLUSION

All kinds of armed conflicts (either international or non-international) undoubtedly encompass disappearances and death as their inextricable components. Unfortunately, such incidents cannot be perceived as the exclusive exceptions in such contexts, but mostly as some inevitable occurrences that keep happening on a daily basis.

The international response to such a dire situation has led to the codification -already since 1949 and even earlier- of a series of international instruments (reflecting already established international customary rules and principles), in which the handling of cases of missing persons or the identification of dead bodies, as well as the dealing with the direct victim's relatives and families are the constant and undeniable duties (or even challenges) of all stakeholders involved.

While proceeding to a victim-centered approach of the phenomenon, most of the academics and practitioners have until now dealt with some specific issues that fall under the Humanitarian Forensic Action *spectrum* only individually, the present dissertation differs in that it demonstrates that in reality Humanitarian Forensic Action is a multi-faceted, a tripartite equation and the protection granted apparently for one of its aspects (*i.e.* for the deceased) may in reality cover in a subsidiary way some of the rest of them or all of them at once. As a result, it was considered more preferable that the whole phenomenon be treated as an entity, in order to better prove such interplay.

Such an approach may be found useful even at an operational level, for a combined study and the well-coordinated use of the applicable international legal framework could better elucidate any pending case. Therefore, at a mere international level, it could be claimed that there is no legal *vacuum* in the protection of dead bodies, missing persons and their families. International Humanitarian Law, Human Rights Law and International Criminal Law (despite the fact that the latter has not yet been implemented) may offer some useful tools that at a first glance might appear insufficient or almost inapplicable; their holistic implementation, however, as described and proved in the relevant Chapters of the first Part of the present dissertation, is complete and fully capable of resolving any case. Moreover, it seems to be rather a duty and obligation of all agents involved to ensure respect and implement the internationally accepted treaty-based and customary rules.

Few decades later, the most active and ambitious Regional Organizations and Institutions felt impotent while dealing with the particular challenges of their regions that were finally brought before their political and judicial mechanisms, obliging them to develop their own protective systems on the basis of the precedent set out by the international community. While the recently established african system has not yet much to demonstrate, the inter-american and european ones have done an astonishing work on the matter.

In the context of the Organization of American States, the member-States identified their weaknesses and created a revolutionary mechanism for the confrontation of the phenomenon of enforced disappearances, which was a very common practice for a very long time. They got inspired by the very first international initiatives, but they moved one step ahead by enriching the already existing rules and norms with the adoption of the Inter-American Convention on Forced Disappearance of Persons, granting to such rules a mandatory *status* and providing specific mechanisms for their enforcement.

On the contrary, the european institutions, even though they have not created a similar strict and well-coordinated mechanism, each and every one of them has done a considerable work on the field, creating a solid basis for the saveguard of the human rights at stake. The mechanisms created within the EU and OSCE have been implemented in various crises in the wider european space. However, most of the CoE organs (whether political or judicial) took the lead. One can admit that the most revolutionary mechanism is by far the European Court of Human Rights, which interpreting broadly and enterprisingly the given legal norms (*i.e.* the European Convention on Human Rights), it has created a very interesting and useful jurisprudence, setting the example for further actions in similar situations. in such a context, the Cyprus problem has raised various questions and created a considerable and very useful precedent, that unfortunately Greece itself has not yet used in order to deal with its own missing persons' cases after the 1974 turkish invasion in Cyprus, submitting for instance a similar inter-state application before the Court or at least intervening in the already pending procedures.

The multi-level dimension of the Humanitarian Forensic Action triangle is empirically proved by certain notable national or bi-communal (yet internationally led) initiatives, such as the establishment of the Equipo Argentino de Antropología Forense in the *post*-Dirty War Argentina and the Committee on Missing Persons in the divided Cyprus. These mechanisms confirm the long existing rules and principles, they encourage the putting in action of newly invented means and methods, giving an interdisciplinary glance at the HFA equation (proving how a non-forensic science in reality creates the framework within which the empirical ones shall be put in action), and they have contributed to the further dissemination of the existing legal tools. The experience acquired all these years has resulted in the creation of relevant centers at all levels (such as the International Forensic Science Association established by the UNODC) and at many regions and countries separately (Europe, United States of America, Australia, Asia, Southern Africa)[371].

In addition, what needs to be highlighted in the aftermath of the present dissertation is that the legal mechanisms have been further developed due to the new circumstances that keep arising in a wholly challenging era. Although different in nature, natural disasters, international migration, refugee crises (no matter their causes), as well as summary, arbitrary and extrajudicial executions have offered a great opportunity to develop even more protective mechanisms and maybe they should be used in a more generalized way, contributing in this way to the renovation and updating of the traditional rules and norms. The most intriguing case is the greek one, as the ICRC itself deviated from its usual mandate and publically consults the hellenic authorities how to practically comply with the supranational legal framework that already bind the country, in order to confront the dire humanitarian crisis that the mixed migratory and refugee flows have triggered.

What is for sure a completely new and intriguing question is how data protection can be integrated in the humanitarian field, especially when wholly new and unexplored technological methods invade. Departing from the theories that there cannot be personal data for the deceased persons (that from the author's point of view somehow ignore that in such cases other living individuals' rights may be at stake), one can observe that already since 1949 there was an undeniable set of commonly accepted principles on data protection that should be respected even concerning the dead persons. Gradually, these principles developed -mainly at a regional level- and they even inspired the universal institutions to introduce similar instruments -whether of political or legal nature- that take into consideration all the humanitarian need that might be triggered by any cause and which could possibly arise in any context. The European Court of Human Rights was the leader of such initiatives and managed to introduce the humanitarian factor in such an unstable and unknown environment.

Humanitarian Forensic Action could also be used in an effort to maintain the balance between the rights of the families within the context of non-judicial mechanisms. Under the latter term, which by nature is very broad, one can categorize a wide array of initiatives

[371] Ubelaker, D. (2017), p.276.

beginning from truth commissions and escalating even to projects for the creation of public monuments. Typically, they usually informal and flexible than the judicial ones and this exact malleability is quite often highlighted and for this reason they are considered as weaker weapons while trying to pressure the authorities for information and acknowledgement and to hold any responsible person accountable for his/her actions and omissions. Yet the promise -or even challenge- of this kind of mechanisms lies precisely in their undeniable focus on the victims of a specific incident, rather than just to its perpetrators; they are focusing more on civil society, rather than just on the State. Their innate characteristics (*i.e.* their informality and flexibility) may in some cases prove useful and make them better in adapting to the needs of victims and their families. Of course, such a proposal does not neglect the importance of official criminal investigations. The two procedures could, in fact, function at the same time, each one counter-balancing the deficiencies and weaknesses of the other one[372]. This exact inter-relation of Humanitarian Forensic Action and these new mechanisms would be an interesting topic for further investigation.

[372] Nesiah, V. (2002), p.828: "For example, investigative bodies could offer witnesses the option of confidential testimony, which may be an incentive in contexts where ongoing security threats warrant witness protection mechanisms".

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(all available at:
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A/RES/30/3450	Missing persons in Cyprus
A/RES/32/128	Missing persons in Cyprus
A/RES/33/172	Missing persons in Cyprus
A/RES/33/173	Disappeared persons
A/RES/36/163	Question of involuntary or enforced disappearances
A/RES/36/164	Missing persons in Cyprus
A/RES/37/180	Question of involuntary or enforced disappearances
A/RES/37/181	Missing persons in Cyprus
A/RES/45/95	Guidelines for the Regulation of Computerized Personnel Data Files
A/RES/47/132	Question of involuntary or enforced disappearances
A/RES/47/133	Declaration on the Protection of All Persons from Enforced Disappearance
A/RES/60/147	Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

A/RES/60/251	Human Rights Council
A/RES/71/201	Missing persons
A/RES/73/178	Missing persons

UN Security Council

S/1997/973	Secretary-General's mission of good offices in Cyprus
S/RES/1999/1244	Kosovo
S/2004/427	United Nations Operation in Cyprus
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S/2006/931	United Nations Operation in Cyprus
S/2007/328	United Nations Operation in Cyprus
S/2007/699	United Nations Operation in Cyprus
S/2008/353	United Nations Operation in Cyprus
S/2008/744	United Nations Operation in Cyprus
S/2012/507	United Nations operation in Cyprus
S/2013/7	United Nations operation in Cyprus
S/2013/392	The United Nations operation in Cyprus
S/2013/781	Report of the Secretary-General on the United Nations operation in Cyprus (UNFICYP)
S/2014/461	Report on the United Nations operation in Cyprus
S/2015/17	Report on the United Nations operation in Cyprus
S/2015/517	Report on the United Nations operation in Cyprus
S/2016/11	Report on the United Nations operation in Cyprus
S/2016/15	Report on his mission of good offices in Cyprus
S/2016/598	Report on the United Nations operation in Cyprus
S/2016/599	Report on his mission of good offices in Cyprus
S/2017/20	Report on the United Nations operation in Cyprus
S/2017/586	Report on the United Nations operation in Cyprus
S/2017/814	Report on his mission of good offices in Cyprus

S/2018/25	Report on the United Nations operation in Cyprus
S/2018/676	United Nations operation in Cyprus
S/2019/373	Protection of civilians in armed conflict
S/RES/2019/2474	Protection of civilians in armed conflict - Missing persons in armed conflict
S/2019/562	United Nations operation in Cyprus
S/2019/37	United Nations operation in Cyprus
S/2019/883	Report on his mission of good offices in Cyprus
S/2020/23	United Nations operation in Cyprus - Report of the Secretary-General

ECOSOC

Resolution 1982/35

Resolution 1989/65

UN Commission on Human Rights

(all available at: https://www.ohchr.org/EN/HRBodies/CHR/Pages/CommissionOnHumanRights.aspx)

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E/CN.4/RES/1983/16

E/CN.4/RES/1992/4

E/CN.4/RES/1992/72

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UN Human Rights Council

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A/HRC/RES/7/12	Enforced or involuntary disappearances
A/HRC/RES/7/28	Missing persons
A/HRC/RES/9/11	Right to the truth
A/HRC/RES/10/10	Enforced or involuntary disappearances
A/HRC/RES/10/26	Forensic genetics and human rights
A/HRC/RES/12/12	Right to the truth
A/HRC/RES/14/10	Enforced or involuntary disappearances
A/HRC/RES/15/5	Forensic genetics and human rights
A/HRC/RES/18/7	Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence
A/HRC/RES/21/4	Enforced or involuntary disappearances
A/HRC/RES/21/7	Right to the truth
A/HRC/RES/36/6	Enforced or involuntary disappearances

Special Procedures

Special Rapporteur on Extrajudicial, Arbitrary and Summary Executions

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(all available at:
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E/CN.4/1999/62	Report of the Working Group on Enforced or Involuntary Disappearances: mission to Yemen
A/HRC/RES/7/2	General Comment on the definition of enforced disappearance
A/HRC/13/31	General Comment on enforced disappearance as a crime against humanity
A/HRC/16/48	General Comment on the right to the truth in relation to enforced disappearance and on enforced disappearance as a continuous crime

Organization of American States

OAS/GA Resolutions on forced disappearances and on the right to the truth

(all available at: http://www.oas.org/en/sla/general_assembly_resolutions.asp)

AG/RES/443 (IX-O/79)

AG/RES/510 (X-O80)

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AG/RES/950 (XVIII-O/88)

AG/RES/1014 (XIX-O/89)

AG/RES/1095 (XXI-O/91)

AG/RES/1172 (XXII-O/92)

AG/RES/1256 (XXIV-O/94)

AG/RES/2134 (XXXV-O/05)

AG/RES/2231 (XXXVI-O/06)

AG/RES/2175 (XXXVI-O/06)

AG/RES/2295 (XXXVII-O/07)

AG/RES/2267 (XXXVII-O/07)

AG/RES/2416 (XXXVIII-O/08)

AG/RES/2406 (XXXVIII-O/08)

AG/RES/2513 (XXXIX-O/09)

AG/RES/2509 (XXXIX-O/09)

AG/RES/2594 (XL-O/10)

AG/RES/2595 (XL-O/10)

AG/RES/2651 (XLI-O/11)

AG/RES/2662 (XLI-O/11)

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AG/RES/2725 (XLII-O/12)

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AG/RES/2800 (XLIII-O/13)

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Res. 1267/2002	Situation in Cyprus
Doc. 9302 REV. (15 January 2002)	Situation in Cyprus
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Doc. 11196 (7 March 2007)	Missing persons in Armenia, Azerbaijan and Georgia from the conflicts over the Nagorno-Karabakh, Abkhazia and South Ossetia regions
Resolution 1628/2008	Situation in Cyprus
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Resolution 1868/2012	The International Convention for the Protection of all Persons from Enforced Disappearance
Doc. 12880 (23 February 2012)	The International Convention for the Protection of all Persons from Enforced Disappearance

Doc. 13294 (3 September 2013)	Missing persons from Europe's conflicts: the long road to find humanitarian answers
Resolution 1956/2013	Missing persons from Europe's conflicts: the long road to find humanitarian answers
Doc. 13651 (16 December 2014)	The human situation of Ukrainian refugees and displaced persons
Doc. 13808 (3 June 2015)	Missing persons during the conflict in Ukraine
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- Homer, The Iliad
- Aeschylus, Seven against Thebes
- Sophocles, Aias
- Sophocles, Antigone
- Euripides, The Suppliants

b. Poetry

- Szymborska Wislawa, Hunger camp at Jaslo

c. Others

- Martin Luther King, Letter from Birmingham Jail
- Julio Cortázar, Negación del Olvido

H. Useful Links

United Nations

United Nations

https://www.un.org/en/

International Court of Justice

https://www.icj-cij.org/

World Health Organization

https://www.who.int/

Office of the High Commissioner for Human Rights

https://www.ohchr.org/EN/pages/home.aspx

Human Rights Council

https://www.ohchr.org/EN/HRBodies/HRC/Pages/Home.aspx

Commission on Human Rights

https://www.ohchr.org/EN/HRBodies/CHR/Pages/CommissionOnHumanRights.aspx

Special Procedures

Special Rapporteur on extrajudicial, summary or arbitrary executions

https://www.ohchr.org/EN/Issues/Executions/Pages/SRExecutionsIndex.aspx

Working Group on Enforced or Involuntary Disappearances

https://www.ohchr.org/EN/Issues/Disappearances/Pages/DisappearancesIndex.aspx

Treaty Bodies

Human Rights Committee

https://www.ohchr.org/en/hrbodies/ccpr/pages/ccprindex.aspx

Committee on Enforced Disappearances

https://www.ohchr.org/EN/HRBodies/CED/Pages/CEDIndex.aspx

Humanitarian Organizations, Reviews & Magazines

International Federation of the Red Cross and Red Crescent Societies (IFRC)

https://media.ifrc.org/ifrc/

International Committee of the Red Cross

https://www.icrc.org/en/war-and-law/protected-persons/missing-persons

International Review of the Red Cross

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Europe

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Americas

Organization of American States

https://www.oas.org/

Pan American Health Organization

https://www.paho.org/hq/index.php?lang=en

Africa

African Union

https://au.int/

Organizations on Missing Persons

International Commission of Missing Persons

https://www.icmp.int/

Committee of Missing Persons

http://www.cmp-cyprus.org/

Organizations on Forensics

Equipo Argentino de Antropología Forense

https://eaaf.typepad.com/eaaf__sp/

International Forensic Strategic Alliance (IFSA)

https://www.ifsa-forensics.org/

Annexes

1. **Identity Card (GCIII art.4)**

ANNEX IV

A. IDENTITY CARD

(see Article 4)

NOTICE

This identity card is issued to persons who accompany the Armed Forces of but are not part of them. The card must be carried at all times by the person to whom it is issued. If the bearer is taken prisoner, he shall at once hand the card to the Detaining Authorities, to assist in his identification.

Official seal imprint	Blood type	Fingerprints (optional) (Left forefinger)	(Right forefinger)
	Religion		

Any other mark of identification ....

Hair	Eyes	Weight	Height

Photograph of the bearer

(Name of the country and military authority issuing this card)

IDENTITY CARD

FOR A PERSON WHO ACCOMPANIES THE ARMED FORCES

Name ....

First names ....

Date and place of birth ....

Accompanies the Armed Forces as ....

Date of issue ....   Signature of bearer ....

Remarks. — This card should be made out for preference in two or three languages, one of which is in international use. Actual size of the card: 13 by 10 centimetres. It should be folded along the dotted line.

2. Capture Card (GCIII art.70)

ANNEX IV

B. CAPTURE CARD

(see Article 70)

1. Front

PRISONER OF WAR MAIL — Postage free

CAPTURE CARD FOR PRISONER OF WAR

IMPORTANT

This card must be completed by each prisoner immediately after being taken prisoner and each time his address is changed (by reason of transfer to a hospital or to another camp).

This card is distinct from the special card which each prisoner is allowed to send to his relatives.

CENTRAL PRISONERS OF WAR AGENCY

INTERNATIONAL COMMITTEE OF THE RED CROSS

GENEVA

SWITZERLAND

2. Reverse side

Write legibly and in block letters

1. Power on which the prisoner depends ....

2. Name 3. First names (in full) 4. First name of father

....

5. Date of birth .... 6. Place of birth ....

7. Rank ....

8. Service number ....

9. Address of next of kin ....

*10. Taken prisoner on: (or) Coming from (Camp No., hospital, etc.) ....

*11. *(a)* Good health—*(b)* Not wounded—*(c)* Recovered—*(d)* Convalescent—*(e)* Sick—*(f)* Slightly wounded—*(g)* Seriously wounded.

12. My present address is: Prisoner No. ....

Name of camp ....

13. Date .... 14. Signature ....

* Strike out what is not applicable—Do not add any remarks—See explanations overleaf.

Remarks.—This form should be made out in two or three languages, particularly in the prisoner's own language and in that of the Detaining Power. Actual size: 15 by 10.5 centimetres.

3. **Correspondence Card and Letter (GCIII art.71)**

ANNEX IV

C. CORRESPONDENCE CARD AND LETTER

(see Article 71)

1. Front — I. CARD.

PRISONER OF WAR MAIL

Postage free

POST CARD

To ....

Sender:

Name and first names ....

Place and date of birth ....

Prisoner of War No. ....

Name of camp ....

Country where posted ....

....

Place of Destination ....

Street ....

Country ....

Province or Department ....

2. Reverse side.

NAME OF CAMP .... Date ....

....

....

....

....

....

....

....

....

Write on the dotted lines only and as legibly as possible.

Remarks.—This form should be made out in two or three languages, particularly in the prisoner's own language and in that of the Detaining Power. Actual size of form: 15 by 10 centimetres.

4. **Notification of Death (GCIII art.120)**

ANNEX IV

D. NOTIFICATION OF DEATH

(see Article 120)

(Title of responsible authority)

NOTIFICATION OF DEATH

Power on which the prisoner depended ....

Name and first names ....

First name of father	....
Place and date of birth	....
Place and date of death	....
Rank and service number (as given on identity disc)	....
Address of next of kin	....
Where and when taken prisoner	....
Cause and circumstances of death	....
Place of burial	....
Is the grave marked and can it be found later by the relatives?	....
Are the personal effects of the deceased in the keeping of the Detaining Power or are they being forwarded together with this notification?	....
If forwarded, through what agency?	....
Can the person who cared for the deceased during sickness or during his last moments (doctor, nurse, minister of religion, fellow prisoner) give here or on an attached sheet a short account of the circumstances of the death and burial?	....

(Date, seal and signature of responsible authority.) ....

Signature and address of two witnesses ....

Remarks.—This form should be made out in two or three languages, particularly in the prisoner's own language and in that of the Detaining Power. Actual size of the form: 21 by 30 centimetres.

5. **Developments in the field of Migration (Mediterranean Sea, 2018-2019)**

Mediterranean Developments

TOTAL ARRIVALS BY SEA AND DEATHS IN THE MEDITERRANEAN 2019-2018					
	1 JANUARY – 23 OCTOBER 2019		1 -23 OCTOBER 2019	1 JANUARY – 23 OCTOBER 2018	
Country of Arrival	**Arrivals**	**Deaths**	**Arrivals**	**Arrivals**	**Deaths**
Italy	9.432	692 (Central Med. Route)	1.799	21.935	1.267 (Central Med. Route)
Malta	2.911		158	989	
Greece	45.105	70 (Eastern Med. Route)	6.525	26.679	155 (Eastern Med. Route)
Cyprus	5.494** (as of 30/09)		0	729	
Spain	20.036	318 (Western Med. Route)	1.445	47.433	549 (Western Med. Route)
Estimated Total	**82.978**	**1.080**	**9.927**	**97.765**	**1.971**

Data on deaths of migrants compiled by IOM's Global Migration Data Analysis Centre.

All numbers are minimum estimates. Arrivals based on data from respective governments and IOM field offices.

** This figure includes the number of all migrants' arrivals registered in Cyprus