



The International Committee of the Red Cross and the protection of world war dead



Laurel Clegg*

ICRC Islamabad Delegation, Plot 31, Shabbir Sharif Road, G-11 Markaz, Islamabad, Pakistan

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ABSTRACT

The first Geneva Conventions were signed in 1864 and this initial effort to put humanity in war has since developed into a network of international conventions and customary rules which include the dead as a group that must be protected during and following armed conflicts. During the First and Second World Wars, parties to the conflict were obliged to recover the dead from battlefields, document identifying marks including the collection of identification discs, and to bury the body in a marked grave. Those parties' signatory to the laws regulating war at the time, could not have predicted the millions of losses of civilians and combatants resulting in the thousands of casualties left unrecovered at the end of both world wars. The prolonged requirement to recover, identify and bury newly-found World War dead is managed differently by each country; albeit with no universal approach that acknowledges the need to integrate the moral imperative of dignified post-war care of the dead with rapidly changing technology and equally rapidly ageing of families of the missing. The International Committee of the Red Cross is a longtime actor in providing humanitarian service to soldiers and civilians in war. This includes expertise in the legal framework regulating armed conflict, in the provision of a central system to aid in tracing those who go missing during war, including those from the world wars, and in the growing field of humanitarian forensics. This paper will discuss the applicable international frameworks for the protection world war dead, while promoting the ICRC's role as resource and advocate.

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1. Introduction

"... life usually ordains it that there are groups which nobody looks after." *Jean Pictet, Vice-President of the International Committee of the Red Cross (1971–79)* [1].

In November 2014, a group of military, civilian and veteran members of the Canadian and British Air Force gathered at the Royal Oak Cemetery to conduct a funeral for four men who had gone missing¹ on the morning of 30 October 1942 off the coast of British Columbia, Canada [2]. The British and Canadian airmen failed to return during a training flight and were presumed to have crashed in the Pacific Ocean with all lives lost. In 2013, the wreckage of the aircraft was discovered in a remote coastal forest,

200 km from the original airbase and in May 2014, the remains of the airmen were recovered and identified. While the investigation was complicated by a remote location – perhaps the most complex element was determining who was legally, logistically and financially responsible for the dead that did not fall fully under archaeological or medicolegal frameworks, but still required archaeological and forensic recovery and a process of identification. While the airmen died under protection of the laws of war existing at the time, these protections might oblige action, but would not necessarily provide guidance in line with a contemporary recovery. Ultimately, the Canadian and British governments were able to recover and identify the airmen within their militaries' historical casualty programmes; [2] although future recoveries would benefit from further integration into the national/regional medicolegal or archaeological frameworks [3].

The above example involved but four decedents in a remote Canadian forest; the question of what is required to fulfil the recovery and identification of newly found world war dead is magnified as former war-time regions continue to discover sites containing single or multiple bodies or body parts. Current estimates of both civilian and military losses from the First World War (FWW) are 10.5 million and 15.4 million [4] respectively while for the Second World War (SWW), estimates range from 22.6–25.5

* Corresponding author.
E-mail address: lclegg@icrc.org (L. Clegg).

¹ The International Committee of the Red Cross defines missing persons as: individuals of whom their families have not news and/or who, on the basis of reliable information, have been reported missing as a result of an armed conflict - international or non-international - or of other situations of violence or any other situation that might require action by a neutral and independent body. This includes disasters and the context of migration [55].

million for military dead and 37.6–55.2 million [5] for civilian dead. Of the military dead, nearly 18 million deaths are attributed to European theatres of war alone [5]. It seems likely that world war dead will continue to be recovered, and families and communities will continue to push for identification as long as it is viable [6]. This article will discuss what national and international frameworks, including practical tools available through the International Committee of the Red Cross (ICRC), already exist or might be strengthened to provide a uniform and sustainable standard of care for world war dead.

2. Contemporary recoveries

Some civil groups and governments make tremendous efforts to search, recover, and identify (and re-bury) the bodies of victims of the two world wars. Such efforts can range from a collaboration between government and volunteer agencies, including archaeology-led agencies; a multi-national agency that provides support to member governments; or a single civilian-military organisation which recovers, identifies and repatriates military war dead. The Association for the Recovery of the Fallen in Eastern Europe (VGBO), for example, follows up on historical leads on missing persons and potential grave sites from the SWW and then meticulously surveys the region to recover the human remains of soldiers [7,8]. Volunteers contribute their skills, including forensic expertise, to provide biological profiles to skeletal remains. The VGBO then works with German national authorities and agencies such as the German War Graves Commission,² the tracing services of the German Red Cross³ and Berlin's Federal Archives to help match field data with potential missing persons listed in the archives [8].

Formed by a Royal Charter between the United Kingdom and her former Colonies, The Commonwealth War Graves Commission (CWGC) [9], is an organisation which aims to care for the 1.7 million war dead of the British Commonwealth from the FWW and SWW [9]. Any contemporary recoveries of bodies in former battlefields are led by the national authorities (e.g. France and Belgium) responsible together with member countries of the CWGC, while identification efforts are a collaboration between the CWGC and the country of origin of a newly recovered war dead [10]. The resources allotted to identification is generally decided by the country of origin but must be such to comply with relevant national legal obligations.

One of the most active agencies responsible for the recovery and identification of war dead is the Defense Prisoner-of-War / Missing-in-Action Accounting Agency (DPAA) of the United States Government. The DPAA is responsible for coordinating the research, recovery, identification and repatriation of the formerly unrecovered or unidentified American military personnel from past conflicts [11]. The DPAA records over 81 900 military personnel still missing⁴ of which 75 579 are from the Second World War (SWW) alone. It further relies on a team of more than 30 forensic specialists working in the identification laboratory to recover and analyse remains. Recovered remains are identified using a combination of anthropological and archaeological, mitochondrial DNA and dental analysis [12]. Although the DPAA works as part of the US Military, it is closely aligned with volunteer and government-led family agencies. Additionally, it collaborates in the work of military recoveries and identification of other

countries, for example with its U.S. – Russia Joint Commission on PoW/MIAs (Prisoners of War / Missing-in-Action) [13].

Despite the more than seventy years since the end of the SWW, there is often an underlying urgency and singularity to the efforts of these groups. During an interview on the role of the VGBO, a volunteer, Anton Togashov, is quoted, "If we don't do it, who will?" [7] The urgency to recover and identify the dead from the SWW in particular may be born of the rapid loss of still-living survivors and therefore witnesses of the SWW and thus a fast-diminishing opportunity to provide closure to families through genetic testing [14]. It may also be born of the belief that the sites and the bodies within them are vulnerable to disturbance and thus destruction and loss. In 1992, Finland and Russia reached an agreement that allowed Finland to recover the thousands of bodies of Finnish soldiers who died in the SWW, unrecovered in what is now Russia. The access to the bodies of the missing soldiers, however, collides with the loss of circumstantial information from living witnesses and the number of genetic donors due to the advanced age of those closest to the missing [6]. The loss of family can also equal the loss of the primary source of societal and political pressure to continue the memorialization [15], search, recovery and identification of military and civilians lost as seen in Japan and Bosnia and Herzegovina [14]. Finally, the real or perceived vulnerability of human remains left in battlefields or field and aquatic graves may be a result of the often unclear national and international protections and responsibilities that exist for newly-recovered world war dead.

3. Obligations related to the dead⁵

On June 24th, 1859, French, Austrian and Sardinian troops battled over Italian unification and after only one day of fighting, over 40,000 soldiers were wounded and another 6000 were killed [16]. A businessman, Henry Dunant, witnessed the effects of what was later called the Battle of Solferino, and he remained in the village to aid the wounded and to forward letters from dying soldiers to their families. So affected by his experiences, he later described them in a brief volume, *A Memory of Solferino*,⁶ the publication of which led to the founding of the Red Cross in 1863 and the signing of the first Geneva Conventions in 1864 (Convention for the Amelioration of the Condition of the Wounded in Armies in the Field)⁷ [17]. The principles outlined in his memoir and the rules of conduct in war set out in the 1864 Convention demanded that wounded or sick combatants, without distinction to their nationality, be collected and cared for with further provisions to be repatriated. Those evacuating the wounded were considered neutral [18]. The rules outlined in the 1864 Convention have since been developed and adapted to changes in warfare, including the scope of who is protected and the obligations related to the dead and their families (through subsequent International Humanitarian Law (IHL) treaties and Customary International Humanitarian Law (CIHL)) [16].

3.1. Obligations to the dead during the World Wars

The Geneva Conventions of 1864 were revised in 1906, 1929 and 1949, together with the adoption of the Additional Protocols I and II

⁵ Please see Márquez-Grant and Fibiger's *The Routledge Handbook of Archaeological Human Remains and Legislation* and X. Londono and A.O. Signoret's *Implementing international law: An avenue for preventing disappearances, resolving cases of missing persons and addressing the needs of their families for a more specific discussion on legislation currently protecting the dead.*

⁶ In the original French, *Un souvenir de Solferino*.

⁷ Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. Geneva, 22 August 1864. Article 6.

² Volksbund Deutsche Kriegsgräberfürsorge

³ DRK Suchdienst

⁴ Past conflicts under the DPAA's mandate include the Second World War, the Korean War, Vietnam War, the Cold War, Gulf Wars and recent Conflicts with deployed US military.

Table 1Key obligations relating to the military dead during armed conflict according to the listed IHL Conventions during the First World War.^a

| Action | Reference ^b |
|---|---|
| Search for the dead after each engagement | GC Wounded & Sick 1906, Art 3 |
| Protection (from maltreatment / pillage) | GC Wounded & Sick 1906, Art 3 |
| Ensure examination of bodies prior to interment or incineration | GC Wounded & Sick 1906, Art 3 |
| Burial due as per rank (for prisoners of war) | Hague Conventions IV 1907, Art 19 |
| Collect and forward information on the dead including that which will aid in identification | GC Wounded & Sick 1906, Art 4 / Hague Convention IV 1907, Art 14 (for Prisoners of War) |
| Collect and return personal items of the dead | GC Wounded & Sick 1906, Art 4 |
| Concerning the establishment and issuance of death certificates | Hague Conventions IV 1907, Art 19 |

^a Not all countries had ratified the 1906 GC Wounded & Sick nor the 1907 Hague Conventions by the end of the FWW. Refer to the ICRC's IHL Database (<http://ihl-databases.icrc.org>) to confirm the date of ratification for each region.

^b This list is not exhaustive and focuses on the: Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (GC Wounded & Sick), Geneva, 6 July 1906 and the Hague Conventions IV 1907.

in 1977, adapting each time to changes in warfare to better protect those who do not or are no longer directly participating in hostilities. The laws span different stages of care of the wounded and the dead including search and recovery, examination and identification, final disposition of the body and exchange of information and belongings between parties at the end of hostilities.

Despite the growing complexity of the Conventions, there was an acknowledgement that such laws could never adapt fast enough to changing tactics and technology. This acknowledgement, the Martens Clause,⁸ was first included as a preamble to the Hague Conventions 1899 [20]. Martens Clause further outlines that parties to a conflict accept the laws of humanity and the public conscience as a guideline for conduct during hostilities, such that just because something is not expressly prohibited under treaty law, does not mean it is permitted [21]. The continued inclusion of Martens' clause in international instruments, including the 1949 Geneva Conventions, is a reminder of IHL's dynamic nature, adapting to new technologies and situations not specifically mentioned in the laws [21].

3.1.1. First World War

At the time of the FWW, parties to the conflict who had signed the Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (GC Wounded & Sick 1906)⁹ and/or the Hague Convention IV of 1907¹⁰ were responsible for the provision of certain services to the dead, which are outlined in Table 1. There were 52 signatories¹¹ to the GC Wounded & Sick 1906 including Belgium, France, Germany, Austria-Hungary, Russian Federation, United Kingdom and the United States [22].

Despite the overwhelming numbers of military casualties, most parties enabled a system to fulfill their obligations as the . . . 'belligerent who remains in possession of the field of battle' [23], but also to their own personnel. For example, in the FWW, the U.S. Army established the Quartermaster Corps at the beginning of their involvement in 1917. The Corps were responsible for the recovery, identification and burial of American military fatalities. Additionally, they maintained records for their mortuaries,

⁸ Professor von Martens was a Russian delegate at The Hague Peace Conference of 1899 and sought a means to resolve tension between the attending parties as to the status of (armed) civilians in war. He introduced his declaration as a preamble to the second Hague Convention 1899.

⁹ Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field. Geneva, 6 July 1906

¹⁰ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907 (Hague Conventions 1907)

¹¹ To see the full list of signatories and ratifications of the 1906 GC Wounded & Sick please refer to Historical Treaties and Documents on <http://ihl-databases.icrc.org>

temporary burial locations and cemeteries with a resulting high rate of identification at the end of the war [24].

The care of British¹² casualties started with a slightly eccentric commander of a mobile unit of the British Red Cross, (Sir) Fabian Ware [10]. Ware spent the war along the French-Belgian front and began to record the deaths of soldiers and document details related to a soldier's identity as well as the location of any field burial. In 1916, Ware's unit was established as the Directorate of Graves Registration and Enquiries [25]; responsible for search, recovery, examination and burial of military dead [26]. In 1917, recognizing that many dead bodies remained unrecovered, and equally, that the graves left in France would deteriorate without care, Ware pushed for the creation of a multi-national graves registration system. The Imperial War Graves Commission (later Commonwealth War Graves Commission) was created by Royal Charter on the 10th of May 1917 and signed in 1918 [27].

3.1.2. Second World War

Following the end of the FWW, the Geneva Conventions were amended and the 1929 Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (GC Wounded & Sick 1929)¹³ and the 1929 Convention relative to the Treatment of Prisoners of War (GC Prisoners of War 1929)¹⁴ contained more elaborate instructions on the dead in time for the Second World War (see Table 2) such as:

- The need to search for the dead following the end of each engagement¹⁵;
- The preference for a medical confirmation of death and identification¹⁶;
- The reciprocal transmission of 1/2 of the identity discs of the dead as well as lists of the dead and location of their graves¹⁷;
- The obligation to provide an honourable burial with a marked grave (both from the dead on the battlefield, hospitals and Prisoners of War)¹⁸ and
- The obligation to provide a graves registration service to ensure exhumations and identifications of the dead.¹⁹

¹² The term British here includes the countries then under British rule and later part of the Commonwealth. A non-exhaustive list from the 1917 Royal Charter includes Australia, Canada, Newfoundland, New Zealand and South Africa.

¹³ Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field. Geneva, 27 July 1929

¹⁴ Convention relative to the Treatment of Prisoners of War. Geneva, 27 July 1929

¹⁵ GC Wounded & Sick 1929, Art 3

¹⁶ GC Wounded & Sick 1929, Art 4 / GC Prisoners of War 1929, Art 77

¹⁷ GC Wounded & Sick 1929, Art 4

¹⁸ GC Wounded & Sick 1929, Art 4 / GC Prisoners of War 1929, Art 76

¹⁹ GC Wounded & Sick 1929, Art 4

In addition, the GC Prisoners of War 1929 convention introduces the mechanism of Information Bureaus and the Central Prisoner of War Agency²⁰ via the ICRC. The bureaus were to exchange information on the prisoners of war held in their territory, with the purpose of notifying the families and to provide them with a means of correspondence. Information was to be transmitted from the bureaus to the concerned authorities as well as through the neutral body, the Central Agency. The bureaus could transmit all records of the prisoner including particulars relating to identification, notification of death and the forwarding of any personal effects including valuables, documents, and any identification tags [28].

In the SWW, the nature of aerial warfare changed the mechanics of graves registration for military personnel leading to the creation of, for example, the United Kingdom's Missing Research and Enquiry Service [29] of the Royal Air Force. The Service was divided geographically into five units to pursue leads on the nearly 50,000 missing and/or presumably deceased airmen and crew [30]. If remains were recovered, an attempt was made to identify the dead using physical and material documentation and to consolidate their graves into a regional cemetery to be cared for by the now Commonwealth War Graves Commission. During the SWW, Britain and the Commonwealth maintained their original approach from 1918 [31] and did not return their dead to their country of origin [32]. Instead, the dead were exhumed from small field graves and the bodies concentrated in larger cemeteries [31], and this process continued for certain countries for world war dead even after changes to the 1949 Geneva Conventions requiring the organization of an Official Graves Registration Service to allow the *possible* transportation of bodies to their home countries, among other aspects.²²

3.2. What obligations exist when the war is over?

The process of death, search, recovery, examination, burial or sharing of information can be disrupted, sometimes by decades; leaving those who must recover the dead in modern times with an obligation, but unclear framework. The 1929 Geneva Conventions (Wounded & Sick), Article 3 include terminology such as "*Whenever circumstances permit*", and Article 4, "... to *render eventual exhumations possible*". For example, if the bodies of airmen in a missing SWW aircraft are only found by accident in contemporary times; then care of the dead covered under the rules applicable at the time could be viewed as a process unfinished [19].

The provisions for the combatant dead for the SWW, however; recognized the possibility that the process of death, recovery and burial might not be continuous or contemporaneous with the fighting in which the individual died [23]. When the role of graves registration was transferred from military units to non-military agencies, such as the CWGC [27], it is unlikely that the future of human remains identification could be seen to include decades of recoveries together with increasingly complex (and expensive) analyses [33]. The shift in responsibility of such agencies from long-term cemetery maintenance to long-term complex archaeological / medicolegal investigations can force either a limit to the scope of identification of newly recovered dead, or a shifting and sharing of identification responsibility to national agencies and/or the country of origin of the decedent.²³ In addition, war-time frameworks left certain groups without clear protections such as the dead of those countries not signatory to the Conventions,

nationals of armies who had not provided adequate graves registration for their own nationals, and most civilians. Estimates of between 50 and 70 million collective civilian deaths in the world wars [4,5] would indicate that combatants form but one part of the population of the missing, and that clear guidance on post-war treatment of both civilian and military dead is needed [34].

The 1987 Commentaries to Article 33 of the 1977 Additional Protocol I of the Geneva Conventions²⁴ specifically address this grey area where many world war dead sit – when the problem of the dead and missing does not end when the war does. The Commentaries put forward that while one cannot apply laws and protocols created *after* the end of the world wars retroactively, new laws and protocols can nonetheless provide a structure that aids in resolving an older problem.

3.2.1. Contemporary obligations to the dead

While there is a clear obligation at the time of the war to manage military dead, and an equally clear number of dead for whom those obligations could not be completed – the urgency of providing answers to ageing family demands a flexible response using more contemporary frameworks as a guide. In order to improve national-level protection for world war dead and to also consider advances in the legal framework and in forensic recovery and identification practices, it could be proposed that States consider using the 1949 Geneva Conventions, to some extent Customary International Humanitarian Law, and independent agreements specific to the needs of each region and population (e.g. the agreement between Finland and Russia [6]).

In addition to the inclusion of civilian populations within the protections of the 1949 Geneva Conventions (GC IV 1949), the updated Geneva Conventions are near universal in their application with most countries being signatory.²⁵ In addition, they also provide details on *how* to carry out the obligations to the dead. For example:

- Detailed instructions on the type of information to be collected from the dead including serial / personnel numbers, surname and given names, dates of birth, details of the identification card/disc, date and place of capture/death, and details of wounds, illness and cause of death.²⁶
- Clarified role of the Information Bureaus in transmission to the authorities of the decedent and the Central Prisoner of War Agency. Transmission includes death certificates and lists of the dead, details of the dead including location of graves; one-half of identity discs, wills and other important documents, personal valuables, money and items of intrinsic and sentimental value found on the dead. And that these items should be sent in sealed and itemized packets clearly identifying to whom the items belonged.²⁷ Additionally, the need for States to provide the information bureaus with resources to be able to complete their role.
- Additional detail on the disposal of the body including, when possible, an individual grave and burial / cremation according to the religion of the decedent and grouped by nationality.²⁸
- The requirement to launch an enquiry into deaths of prisoners of war when suspected to have been caused by a sentry, another

²⁴ To see the full Commentaries for the Additional Protocol I of the Geneva Conventions, please refer to <http://ihl-databases.icrc.org>, Geneva Conventions of 1949 and Additional Protocols and their Commentaries, Article 33, note 1193.

²⁵ See ICRC IHL Database – Geneva Conventions of 1949 and their Additional Protocols and Commentary

²⁶ GC(I) 1949: Art 16, 17; GC(II) 1949: Art 19; GC (III) 1949: Art 120

²⁷ GC(I) 1949: Art 16, 17; GC (II) 1949: Art 19; GC (III) 1949: Art 122

²⁸ GC (I) 1949: Art 17; GC (II), Art 20; GC (III) 1949: Art 120; GC (IV) 1949: Art 130

²⁰ GC Prisoners of War 1929, Art 79.

²² GC I, 1949: Art 17(3)- "... they shall organize at the commencement of hostilities an Official Graves Registration Service, to allow ... the possible transportation to the home country.

²³ Nor is it likely that Graves Registration services were expected to continue forever as noted in the 2016 ICRC Commentary on the GC I 1949, Articles 16.

Table 2Responsibilities to the military dead during the Second World War according to the Geneva Conventions - Wounded & Sick and Prisoners of War of 1929.^{a,21}

| Action | Reference ^b |
|---|--|
| Search for the dead after each engagement | GC Wounded & Sick 1929, Art 3 |
| Protection (from maltreatment / pillage) | GC Wounded & Sick 1929, Art 3 |
| Examination of bodies, if possible medical, with a view to confirming death, establishing identity and enabling a report to be made. | GC Wounded & Sick 1929, Art 4 |
| Collect and forward information on the dead including that which will aid in identification. | GC Wounded & Sick 1929, Art 4 / |
| Transmission of one half of the identification disc of the dead to the authorities of the home country while leaving the remaining half disc with the body ^d | GC Prisoners of War 1929, Art 77 ^c GC Wounded & Sick 1929, Art 4 |
| Concerning the establishment and issuance of death certificates ^e | GC Wounded & Sick 1929, Art 4 / GC Prisoners of War 1929, Art 76 GC Wounded & Sick 1929, Art 4 / |
| Honourable burial and marking of graves so that they can be found and exchange of list of graves and of dead interred with the country of the deceased ^f | GC Prisoners of War 1929, Art 76 GC Wounded & Sick 1929, Art 4 |
| Organization of a graves registration service at the beginning of hostilities for each party to render eventual exhumations possible and to ensure the identification of bodies | GC Prisoners of War 1929, Art 76 GC Wounded & Sick 1929, Art 4 |

^a Not all countries had ratified the 1906 or 1929 GC (Wounded & Sick), 1929 GC (Prisoners of War), or the 1907 Hague Conventions by the end of the SWW. Refer to the ICRC's online IHL Database to confirm the date of ratification for each region.

^b This list focuses on the Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, Geneva, 27 July 1929 (GC Wounded & Sick 1929) and the Convention relative to the Treatment of Prisoners of War, Geneva, 27 July 1929 (GC Prisoners of War 1929).

^c Article 77 of the GC Prisoners of War 1929 introduces the Information Bureau as a neutral agency in which to gather and exchange information on Prisoners of War, including those who died.

^d Article 4 of GC Wounded & Sick 1906, while not referring to identification tags, do refer to the forwarding of . . . " military papers of identification found upon the bodies of the dead".

^e Listed specifically in the 1899 Hague Conventions but not in the GC Wounded & Sick 1906.

^f GC Wounded & Sick 1906, Art 4 sets out the responsibility to examine the dead "prior to their interment or incineration" but does not specifically list burial as a responsibility.

POW/internee, or any other person as well as any death the cause of which is unknown.²⁹

- The above requirements as applicable for civilian internees³⁰ as well as military prisoners of war.

A series of conferences between 1974 and 1977 resulted in the adoption of two new protocols additional to the 1949 Geneva Conventions in 1977 [35]. Additional Protocol I³¹ recognized obligations of States in relation to persons reported missing and the dead as a result of conflict, which shall be prompted mainly by the right of families to know the fate of their relatives. Additional Protocol II³² recognized the obligation in non-international armed conflicts to take all possible measures to search for the dead, prevent their being despoiled and decently dispose of them whenever circumstances permit.

The additional clarity provided by the 1949 Geneva Conventions and their Additional Protocols may have prompted some former parties to the conflict to agree to apply them as a guideline for the management of pre-1949 casualties. For example, the 1987 agreement between the United Kingdom and Germany on the treatment of British war graves in Germany following the end of the SWW, set out the 1949 Geneva Convention provisions as the agreed-to standard of care [36]. Moreover, it placed legal responsibility for the exhumation and transfer of human remains with the German authorities, albeit the UK would cover the expense of any additional movements of graves or remains if at

their own request.³³ Article 8(1) of the agreement does not set a time limit on the agreement, however included in the same article is a means for parties to the agreement to withdraw [36].

Those conventions which make up the body of International Human Rights Law,³⁴ which applies always, were largely put in place after the end of the SWW although in some cases, this does not entirely limit their application to world war dead. For example, in the *Janowiec and Others* case held in 2013 in the European Court of Human Rights (ECHR) [37], families of the Polish soldiers who had been killed and buried in Katyń mass graves by the Soviet forces in 1940 brought a complaint against the Russian authorities that the investigation into the death of their relatives was insufficient [37]. They had brought the complaint under Articles 2 and 3 of the European Convention on Human Rights – A right to life and prohibition of inhuman or degrading treatment [37]. The court found that they could not provide a judgement on either Article, however; because of the date of the event (1940) preceded the Convention (1950). Under Article 38 of the same act, however, they found that Russia had failed to provide sufficient information to the court to aid in the investigation when requested, thus indicating that some contemporary human rights instruments may provide assistance³⁵ in specific circumstances [37].

³³ Treaty No. 28493: United Kingdom of Great Britain and Northern Ireland and German Democratic Republic - Agreement concerning the treatment of war graves of members of the armed forces of the United Kingdom of Great Britain and Northern Ireland in the German Democratic Republic. Signed at Berlin on 27 April 1987: Articles 4 and 6.

³⁴ A non-exhaustive list of relevant instruments includes the 1948 UN Declaration of Human Rights, 1950 European Convention on Human Rights, and the 2006 International Convention for the Protection of All Persons from Enforced Disappearance.

³⁵ 1950 European Convention on Human Rights, Article 38: Examination of the case The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.

²⁹ GC(III) 1949: Art 121; GC (IV) 1949: Art 131

³⁰ GC (IV) 1949: Art 129–131.

³¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

³² Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.



Fig. 1. Recovery of civilian and military dead in a mass grave near Annecy, France, September 1946.⁵⁷ Attending the recovery as neutral intermediaries are Red Cross delegates (For interpretation of the references to colour in this figure legend, the reader is referred to the web version of this article).

An additional source of guidance for the management of world war dead, can be found in the ICRC's 2005 Study on Customary International Humanitarian Law (CIHL). Customary International Law is derived from those practices which are accepted as law and can be found in official documents, procedures and case law, and can also provide clear expectations on how the dead from the world wars should be treated [38].

Based on the CIHL rules on the dead [39] and missing [40], guidance can be drawn for contemporary practice towards the recovery, identification and disposition of world war dead, including the requirement to search and collect the dead as soon as practicable³⁶; to treat the dead with respect and prevent despoliation and mutilation³⁷; to return the dead to their families together with their personal belongings³⁸; to dispose of the dead with respect, ideally in single, marked and maintained graves³⁹; and to ensure that efforts are taken to identify the dead.⁴⁰ Efforts to identify include a responsibility to collect and transmit one half of the identification disc or identification papers; the completion of exhumations and autopsies on the dead; the need to record information on the dead and provide official documentation such as death certificates; and

finally, the permitting of scientific methods towards analysis [39]. Like the 1949 Geneva Conventions, and the Additional Protocols, Customary International Humanitarian Law (CIHL) also clearly recognizes the link between the dead, the missing and their families with CIHL Rule 117 highlighting responsibilities to the missing and acknowledging the family as having a need for information.⁴¹ An important note, however, is that the ICRC study is derived from state practices up to 2005, and as such, there may be binding laws which would have been active at the time of the FWW or SWW in certain countries. It is therefore important, while referring to CIHL, to review the active customary law in play in a region during both times of war- as these will not only be a contemporary guideline for recovery and identification, but may indeed, be binding and relevant to national implementation (Fig. 1).

3.2.2. National practice

Most discoveries of world war dead are done so under domestic archaeological and medicolegal regulations which do not suppose that the dead belong to the world wars until after the bodies or graves have been disturbed and their provenance determined. In addition, world war dead may require an approach that recognizes the potential for scenes or victims of war crimes. A consolidation of those laws protecting human remains globally, Márquez-Grant and Fibiger's 2011 volume⁴² on archaeological legislation for human remains outlines national protections on the dead for 59 countries. Of those countries who contributed to the volume, however; there are some who note the ambiguity surrounding human remains from the First or Second World War. Those countries that do have a program to manage world war dead, use a mix of archaeological, histo-cultural or medico-legal regulations using context as a means to decide which approach is applicable [10,41].

For example, the Czech Republic, France⁴³ and Poland [42], have specific laws and agencies which address newly located world war dead [41], with protections for potential sites of war crimes or crimes against humanity⁴⁴ [10]. Such national laws show a recognition of the unique status of newly-discovered sites, not only on the level of the individual decedent, but equally, recognising the role that human remains themselves have on collective memory [43]. National legislation specific to war dead can provide a timely and realistic financial and administrative framework to permit the recovery, identification and burial of world war dead. The ICRC can aid in elements of the technical development of such a national, standardized approach.

⁴¹ Rule 117, Vol II, Chapter 36, Section A

⁴² The Routledge Handbook of Archaeological Human Remains and Legislation (2011) covers the archaeological, cultural and forensic legal framework and practice for 59 countries, including many of those responsible for First and Second World War grave sites.[41]

⁴³ Article 706–47 of the Criminal Procedure Code of France sets out which human remains can be investigated as a crime. While there is a time restriction of ten years since death (for adults) and 20 years since death (for those under the age of 18 at the time of their deaths), this limitation does not exist when human remains potentially fall under Crimes Against Humanity or War Crimes (Article 211–1 to 211–13 of the Criminal Procedure Code). For those dead that are not considered to fall under the Criminal Procedure Code, they are the responsibility of the Secretariat of War Veterans. Investigation then focuses on identification, return to family if possible and reburial (See Reference [41], p. 152).

⁴⁴ The Polish Penal Code has no limitation on investigation for crimes against humanity and war crimes. They are investigated through the Main Commission for Prosecution of Crimes against the Police Nation.

²¹ To see the full list of signatories and ratifications of the GC Wounded & Sick 1929 please refer to Historical Treaties and Documents on <http://ihl-databases.icrc.org>

³⁶ Rule 112, Vol II, Chapter 35, Section A of Customary International Humanitarian Law (See Table 2, ICRC IHL Database)

³⁷ Rule 113, Vol II, Chapter 35, Section B

³⁸ Rule 114, Vol II, Chapter 35, Section C

³⁹ Rule 115, Vol II, Chapter 35, Section D

⁴⁰ Rule 116, Vol II, Chapter 35, Section E

Table 3
Additional resources for those researching world war dead and missing.

| Resource | Reference |
|--|---|
| Records of Prisoners of War registered with the ICRC Central Tracing Agency from the First World War | https://grandeguerre.icrc.org/ |
| ICRC Archives | https://www.icrc.org/en/archives . |
| Missing Persons – A Handbook for Parliamentarians | https://shop.icrc.org/missing-persons-a-handbook-for-parliamentarians-pdf-en |
| Handbook on Data Protection in Humanitarian Action | https://shop.icrc.org/handbook-on-data-protection-in-humanitarian-action-print-en |
| Legal Factsheet: Humanity after life - Respecting and Protecting the Dead | https://www.icrc.org/en/document/humanity-after-life-respect-and-protection-dead |

4. The role of the ICRC applied to World War dead

4.1. Humanitarian forensic action

First defined by the International Committee of the Red Cross, Humanitarian Forensic Action is “the application of forensic science to humanitarian activities.” [44] The role of forensic science as humanitarian contributor was further cemented in in the 1990s and early 2000s with the UN Commission on Human Rights resolution 1992/24 [45]. The resolution highlighted the importance of medicolegal investigations for three main reasons: their humanitarian value in reliving the suffering of families who wait for news of their missing relative; their legal value in collection of admissible evidence of a crime and, ultimately, a deterrent for further crime [46]. These roles have both moral and legal value with both requiring expertise that will hold up in a court of law [47].

In 2003, the ICRC launched a report following a year of studies and workshops to study the different aspects of the missing, and put forward recommendations on best practices for care of human remains (including identification) in humanitarian emergencies [48]. The conference made technical recommendations on how to implement the humanitarian forensic approach, particularly in situations of armed conflict while reminding scientists that forensic science must include the humanitarian component (identification-focus, involvement of families of the dead) [44]. With the realization of the increasing role that forensic science had in resolving questions of missing persons and unidentified dead following armed conflict and disasters, the ICRC launched its Forensic Unit in 2003.

The current Forensic Unit employs more than 90 specialists located in nearly all ICRC delegations with expertise including forensic medicine, genetics, odontology, archaeology and anthropology. Depending on the context in which a forensic specialist is working, they focus on emergency or long-term sustainable and standardized medicolegal or archaeological management of human remains, complete with the promotion of dignity of the dead as part of a larger humanitarian effort. Capacity-building support to medicolegal services (and the overall framework required to enable them) is developed mainly in countries experiencing or recovering from conflict, disasters or migration following the principles of humanitarian forensic action⁴⁵ [44].

In addition to guidance on the humanitarian approach, the areas where the ICRC can make a practical contribution or a start point for those responsible for the recovery of world war dead, includes: guidance on international humanitarian law, the ICRC as a home to the Central Tracing Agency including its archives; a promoter of data management for the dead including guidelines;

⁵⁷ Photo used with permission: ©Henri Odesser, September 1946, *Guerre 1939–1945. Annecy. Transfert des corps de civils et militaires français découverts dans un charnier*. V-P-HIST-03434-31A.

⁴⁵ Humanitarian Forensic Action is the application of forensic science to address the needs of victims of armed conflict, disasters and migration for humanitarian purposes as opposed to criminal law purposes. See Reference [[44]

and as the home of units which hold expertise in forensic science and the tracing of missing persons [49] (Table 3).

4.2. The Central Tracing Agency

The beginnings of what was to become the ICRC's Central Tracing Agency (CTA) began with the International Agency for Aid to Wounded Military Personnel,⁴⁶ or Basel Agency during the Franco-Prussian war in 1870–1871 [28]. The agency provided a central information gathering and transmittal service that allowed prisoners to correspond with their families while also gathering information on the wounded and making efforts to trace the missing. The Basel Agency evolved into the International Prisoners of War Agency (1914–1923) whose operations rapidly expanded during the FWW, eventually being codified in the Geneva Conventions in 1929.⁴⁷ Using a system of handwritten index cards, the agency created over seven million files based on family queries during the FWW alone. The agency's role included working with the National Information Bureaus,⁴⁸ (which belligerents had the duty to institute under the 1929 Geneva Conventions (Prisoners of War)), who were to provide a national point for collection and distribution of information on the Prisoners of War in their hands, including internments and transfers, repatriation and death [28]. Later referred to as the Central Prisoners of War Agency⁴⁹ (1939–1960), tracing activities resumed by September 1939 following the invasion of Poland [50]. During the SWW, the Agency added to their role for military prisoners of war, their role in tracing and reuniting missing and interned civilians [50]. In 1949, the role of the Agency was again codified in the 1949 Geneva Conventions, this time for both military⁵⁰ and civilian⁵¹ prisoners of war and internees.

Today the renamed, Central Tracing Agency, has become a permanent fixture of the ICRC, focusing on tracing the missing, transmitting messages and reunifying family members separated by conflict, disaster or migration while continuing its work with detainees. At the same time, it works on behalf of primarily civilians affected by non-international armed conflict, pushing for the protection of data and the adoption of new technology to improve tracing [50]. While the CTA seeks to use new methods to safely collect, transmit and store data, access to the CTA's historical records from the FWW and SWW through the ICRC Archives, can be of tremendous value for those responsible for tracing the missing and identifying the dead from the world wars [51].

4.3. ICRC archives & data management

As the former head of the ICRC's Forensic unit aptly noted in 2017; one cannot identify a dead body without information about

⁴⁶ In the original French *l'Agence internationale des prisonniers de guerre*.

⁴⁷ GC Prisoners of War 1929: Art 77

⁴⁸ National Information Bureaus were created under Article 77 of the 1929 Convention relative to the treatment of Prisoners of War

⁴⁹ Article 79 of the Geneva Conventions (1929) on Prisoners of War demanded the establishment of the Central Tracing Agency in a neutral country.

⁵⁰ GC (III) 1949: Art 123

⁵¹ GC (IV) 1949 : Art 140

who the decedent *might* be [52]. Because resolution of the missing and care of the dead can extend beyond a family member or state institution's lifetime, it is important to collect and later store information gathered by family and non-family sources of information such as interviews, tracing requests, prisoner of war and medical records and if available, graves registration records. Information specific to military personnel during the world wars could include records on places of detention, pay, admittance, movement, medical treatment, death, burial, death certificate and wills; all of which can provide information useful to identification of human remains [53].

New analytical techniques for documents and for human remains can also become available, renewing the possibility of identification, as well as the necessity to review archival records for assistance with contextual information on the circumstances of death. Archives can equally exist for one purpose during a conflict and prove helpful for human identification years afterwards. For example, during the FWW, there was little, if any identifying information in the personnel record of soldiers of the Canadian Expeditionary Force [3]. At the end of the war, however, pension benefits were distributed over decades to the soldier's next of kin, which can provide a start point for tracing potential genetic descendants for DNA identification. Recruitment papers, pension benefits, and even wills also prove helpful when using stable isotope analysis to identify military world war dead, as it can provide a record of habitation to be used to differentiate isotope markers [3,54]. As such, despite the impressive identification technology available, many investigations start with a referral to the written records collected at the time.

Most ICRC records are made available after 70 years, with some exceptions to ensure the safety of individuals and communities involved [51]. Over five million Prisoner of War records from the FWW have been digitized and can be searched online through the Grande Guerre platform⁵² while records from the SWW and the Spanish Civil War are accessible through a query system.⁵³ Archival access is regulated by the Assembly of the ICRC with the rules seeking a balance of access, protection of personal data and safeguarding the ICRC's work and beneficiaries [51]. Additionally, some of those records held by the ICRC, such as the International Tracing Service (ITS), have been transferred to partner agencies.⁵⁴ The scope of the ITS is restricted to tracing the victims of Nazi persecution during the SWW which still comprises records for just under 18 million persons.

The addition of archaeological and even genetic data to the historical record can add a different perspective to what might have been a narrative based only on available and surviving records [53]. The inclusion of different types of data, however; still demands standardization, including standards in the collection and recording of information on the dead themselves. This includes standard recording and storage of genetic profiles, dental records, recovery details and a record of personal belongings or other artefacts found with the remains. Genetic information on the dead (as well as those of potential family members) requires additional protection from use that is not related to humanitarian identification through international, national or inter-agency agreements. This can include data protection mechanisms such as secure servers for comparing and storing genetic profiles [53].

The importance of data on the missing and the dead was highlighted during the 2003 Conference on the Missing with recommendations towards improved standards of collection and protection of personal information [48]. The ICRC continues to

promote best practices in data management through the development of guidelines on data protection⁵⁵ including developing the means of protecting sensitive information through central electronic databases, archives and legislation.⁵⁶

5. Conclusion

Bringing humanity to war is one of the primary purposes of International Humanitarian Law, including rules to provide dignity to the dead, and in so doing, address the need for answers from surviving family. The ICRC, as guardian of IHL, promotes the practical implementation of such rules – both at the time of the war, and years afterwards for those obligations that remain applicable after the end of a conflict.

States have a moral responsibility to those who died in the First or Second World Wars which can include recovery, examination, identification, documentation and provision of an honourable burial. While the 1949 Geneva Conventions and Customary International Humanitarian Law can provide a framework and an overall guide for countries to care for the dead from the world wars – ideally, each country develops its own sustainable approach at a national level that acknowledges that newly found world war dead must first be part of the national archaeological, historical or medicolegal system.

The ICRC, with its expertise in forensic science, data management, IHL and as the home of the Central Tracing Agency – including a central, searchable archive of war-time records, can prove a resource to those who must carry out such responsibilities. ICRC can also provide a neutral, confidential platform to discuss sensitive issues such as the missing and the dead from past conflicts. It further seeks to support the promotion of technical standards in the recovery and identification of human remains. Finally, with the protracted nature of contemporary conflict, the tools used by the ICRC recognize that the dead and missing may require long-standing investigation platforms that can adapt to new technology, while seeking to provide answers to waiting families and communities and restore dignity to the dead.

Disclaimer

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⁵² Prisoner of War Records from the First World War Database - <https://grandeguerre.icrc.org/>

⁵³ The ICRC Archives can be accessed through their website <https://www.icrc.org/en/archives>.

⁵⁴ The ICRC managed the ITS from 1955 until it fully transferred the role to the German Federal Archives in 2012 in efforts to make the information available to the public.

⁵⁵ More information on the ICRC recommendations on personal data protection can be found in the ICRC Handbook on Data Protection in Humanitarian Action (see Table 2).

⁵⁶ At the 33rd International Conference of the Red Cross Red Crescent Movement (2019), a resolution was adopted to aid in the protection of data collected as part of the role in tracing missing families through the Restoring Family Links program, *Restoring Family Links while respecting privacy, including as it relates to personal data protection*.

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