Casualty Recording in Human Rights and Humanitarian Law
Every Casualty Counts wishes to thank

- Marion Vironda Dubray and Adriana Schnyder, Université de Genève
- Welmoet Wels, Bellica Consulting, University of Groningen

for their invaluable comments on an earlier draft.

The opinions expressed in this document belong exclusively to ECC and do not necessarily reflect the views of any of the contributors, reviewers or other external person or organisation.
## CONTENTS

**ACRONYMS AND ABBREVIATIONS** ............................................................................................................ 4  
**INTRODUCTION** ........................................................................................................................................ 5  
Scope and definitions ........................................................................................................................................ 8  
Methodology .................................................................................................................................................. 9  
**PART ONE: Casualty recording and human rights** ................................................................................. 11  
The Right to Life and the obligation to investigate ...................................................................................... 13  
  
  Scope of investigations ................................................................................................................................. 15  
The Right to Life in situations of armed conflict ......................................................................................... 17  
The Right to Respect for Family Life and Freedom of Religion and Belief ............................................. 21  
Prohibition on Torture and other inhuman, cruel or degrading treatment or punishment ................. 22  
The Right to Remedy, Reparation and Truth ............................................................................................... 24  
  
  The collective right to remedy .................................................................................................................. 26  
**PART TWO: Casualty recording and international humanitarian law** ..................................................... 29  
Sources, applicability and principles ............................................................................................................. 30  
  
  Source of international humanitarian law ..................................................................................................... 30  
  Applicability ............................................................................................................................................... 31  
  Right to Know .......................................................................................................................................... 31  
The obligation to search for and collect the dead .................................................................................. 33  
The obligation to search and account for the missing ............................................................................ 35  
The obligation to identify ............................................................................................................................. 38  
  
  Recording information prior to disposal ..................................................................................................... 38  
  Burial, cremation and maintenance of graves ............................................................................................ 40  
The obligation to return human remains .................................................................................................... 43  
**RECOMMENDATIONS** ............................................................................................................................. 45
**ACRONYMS AND ABBREVIATIONS**

- **ACHPR** – African Convention on Human and Peoples Rights
- **ACnHPR** – African Commission on Human and Peoples Rights
- **ACHR** – American Convention on Human Rights
- **API** – Additional Protocol I relating to the Protection of Victims of International Armed Conflicts, 1977
- **APII** – Additional Protocol II relating to the Protection of Victims of Non-International Armed Conflicts, 1977
- **ArCHR** – Arab Charter on Human Rights
- **AHRD** – ASEAN Human Rights Declaration
- **Basic Principles** – United Nations 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
- **CAT** – Convention Against Torture
- **CDHRI** – Cairo Declaration on Human Rights in Islam
- **ECHR** – European Convention for the Protection of Human Rights and Fundamental Freedoms
- **ECtHR** – European Court of Human Rights
- **GCI** – Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949
- **GCII** – Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949
- **GCIII** – Geneva Convention III relative to the Treatment of Prisoners of War, 1949
- **GCIV** – Geneva Convention IV relative to the Protection of Civilian Persons in Time of War, 1949
- **GPID** – Guiding Principles on Internal Displacement
- **IAC** – Inter-American Court
- **ICCPP** – International Covenant on Civil and Political Rights
- **ICESCR** – International Covenant on Economic, Social and Cultural Rights
- **ICPPED** – International Convention for the Protection of all Persons from Enforced Disappearances
- **Joinet-Orentlicher Principles** – Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity
- **UDHR** – Universal Declaration of Human Rights
INTRODUCTION
The mission of Every Casualty Counts (‘ECC’) is to ensure that every life lost to armed violence or conflict, or in other situations of gross human rights violations, is identified correctly, recorded effectively, and recognised and remembered appropriately. We refer to these activities collectively as ‘casualty recording’. Casualty recording seeks to ensure that those who die in such situations receive, at minimum, the same basic recognition and respectful treatment as persons who die in any other circumstance.

International humanitarian and human rights law contain extensive requirements regarding states’ duties to account for the dead and missing in armed conflict and other situations of gross human rights violations. Some of these obligations are explicitly stated in international law, whilst others arise implicitly from a corresponding human right. Although these duties are universally binding on all states, in practice they are frequently neglected or inadequately fulfilled. This is due to a number of factors, including a lack of awareness and understanding of the relevant requirements, and their basis in international law.

The present report seeks to address this weakness by providing a comprehensive oversight of the principles and provisions of international human rights and humanitarian law which are relevant to the task of casualty recording. It emphasises those which are clear legally binding obligations (see opposite page), whilst also highlighting the requirements of non-binding but widely accepted protocols and guidelines. The report aims to ensure all policy makers, diplomats, military leaders and other relevant actors are fully aware of and understand states’ duties to account for the dead. These responsibilities cover a range of areas, including:

- Searching for and collecting the dead.
- Accounting for missing persons.
- Identifying the deceased and determining their cause of death.
- Recording all possible identifying information before disposing of the dead.
- Informing families of the fate of their relatives.
- Facilitating future identification and location of the deceased.
- Ensuring graves are marked, maintained and can be located.
- Returning the remains of the deceased to their next of kin.

In situations of active armed conflict and widespread violence, individually identifying each person killed may seem an impossible task. However, states’ obligations in this field are predominantly obligations of effort rather than outcome, and some are subject to specific limitations for reasons of imperative military or hygienic necessity. The appropriate authorities must take the steps which are feasible or reasonable in the circumstances in order to comply with their duties. In many situations, these steps are likely to be imperfect.
THE INTERNATIONAL LEGAL OBLIGATIONS TO RECORD EVERY CASUALTY OF ARMED CONFLICT

1. All states are subject to the following binding international legal obligations:
   a. Each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate.
   b. Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the dead without adverse distinction.
   c. Each party to the conflict must take all possible measures to prevent the dead from being despoiled. Mutilation of dead bodies is prohibited.
   d. All reasonable steps must be taken to identify the deceased and to determine the cause of death.
   e. Parties to the conflict must endeavour to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon the request of their next of kin.
   f. The dead must be disposed of in a respectful manner and their graves respected and properly maintained.
   g. The dead are to be buried with dignity and in accordance with their religious or cultural beliefs.
   h. The dead are to be buried individually and not in mass graves.
   i. With a view to the identification of the dead, each party to the conflict must record all available information prior to disposal and mark the location of the graves.

These international legal obligations taken together constitute a binding international legal obligation upon every party to an armed conflict to record every civilian or military casualty whether in an international or non-international armed conflict.

2. As part and parcel of those legal obligations identified above:
   i) Parties to the conflict must return the personal effects of the deceased to their next of kin.
   ii) Exhumation of dead bodies is only to be permitted in circumstances of public necessity, which will include identifying cause of death.
   iii) The authorities of the state in which the body is found should provide a death certificate, which as far as possible will identify the cause of death.
   iv) There should be established in the case of civilian casualties an official graves registration service.
Nevertheless, basic measures taken in a timely manner can greatly increase the likelihood of successful identification and recognition of the deceased in the long term. Conversely, simple acts of negligence can condemn the deceased to permanent anonymity, and their relatives to a lifetime of agonising uncertainty.

Prioritising scarce resources for the urgent needs of the living is logical and appropriate in emergency situations. In the longer term, however, the needs and rights of survivors and their communities are intertwined with those of the dead. Those who died must be identified and acknowledged in order for families to mourn, and to access compensation or inheritance rights. Societies affected by conflict and violence need to know the truth about what happened, and memorialise the victims appropriately, in order to rebuild trust and prevent recurrence. Recording and recognising the dead is a commitment to the living, as well as to the dead.

ECC hopes that this report will contribute to establishing a comprehensive understanding of states’ duties to ensure all casualties of armed conflict are recorded, identified and acknowledged. Establishing this shared understanding is an essential precursor to developing effective means to implement these obligations, and to uphold the rights of victims and survivors.

Scope and definitions

The focus of this report is on mass deaths resulting from armed violence. This includes all situations of armed conflict, both international and non-international in scope, subject to international humanitarian law. ECC’s work, and this study, also encompass situations of widespread, gross human rights violations or other serious violence which do not fall within the definition of armed conflict. This includes inter-communal violence and one-sided violence targeting civilians such as genocide, widespread enforced disappearances, and any other context of gross human rights violations resulting in mass deaths.

For the purposes of this report, the term ‘casualty’ refers to any person (military or civilian) who has died or gone missing as a result of the situations described above. This is more extensive than deaths resulting directly from the conduct of hostilities. It does not include persons who have been injured but survived.

International humanitarian law distinguishes between military personnel and civilians in its obligations and scope. The second part of this study, therefore, addresses these populations separately. Where not specified otherwise, all rights and obligations identified in this study apply to all persons equally.

International humanitarian law is binding on all parties to conflict including, where relevant, non-state actors (defined as ‘dissident armed forces or other organized armed groups’ under responsible command). However, as the focus of this report is on states and their obligations towards the dead, it does not make reference to non-state actors and their duties. This omission is for ease and clarity, and to avoid expanding the study’s scope into wider issues concerning rights holders and duty bearers. The authors do not, however, disregard the binding nature and relevance of international humanitarian law for non-state actors.

---

1 Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance defines ‘enforced disappearance’ 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, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person’. Widespread enforced disappearances are common in some non-international armed conflicts and other situations of gross human rights violations. However, not all persons who go missing in armed conflict have been ‘disappeared’

2 AP II, Art. 1.
Methodology

The first part of this study examines specific rights enshrined in international human rights law which entail duties on the state to investigate and record casualties of armed conflict and other situations of gross human rights violations. These duties stem primarily from the Right to Life, but also arise from other rights including the Right to Freedom from Torture, the Right to Respect for Family Life and the Right to Freedom of Information and Expression.

The sources reviewed for this section include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Convention for the Protection of all Persons from Enforced Disappearances. Relevant views and concluding observations of the associated treaty monitoring bodies have also been included. ‘Soft law’ instruments such as resolutions adopted by UN bodies, as well as widely recognised guiding principles and protocols, have also been referenced where applicable.

The first part of this report also considers the provisions of regional human rights conventions including the African Charter on Human and Peoples Rights, the American Convention on Human Rights, the Arab Charter on Human Rights, the ASEAN Human Rights Declaration, the Cairo Declaration on Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Relevant case law from the Inter-American Court of Human Rights and the European Court of Human Rights are included and examined within this study.

The second part of the study examines states’ obligations under international humanitarian law. The various sources of law drawn upon to identify the legal obligations in this part include the Geneva Conventions of 1949 and their Additional Protocols; the rules of customary international humanitarian law identified in a study by the International Committee of the Red Cross and further developed in the customary humanitarian law database. Relevant UN resolutions and reports of the United Nations Secretary-General are also examined.

---

3 For further discussion and explanation of these obligations in relation to civilians in armed conflict in particular, including their development in customary international humanitarian law, see Breau, S. and Joyce, R. (2011) Discussion paper: The legal obligation to record civilian casualties of armed conflict, and Breau, S. and Taylor, R. (2022) Update on discussion paper: The legal obligation to record civilian casualties of armed conflict.


PART ONE
Casualty recording and human rights

PICTURE: Caskets of Newly Identified Srebrenica Massacre Victims, Potočari Bosnia by Adam Cohn
Widely ratified international and regional human rights instruments recognise a number of fundamental rights relating to identification and acknowledgement of the dead in situations of armed conflict or other gross and widespread human rights violations. These rights entail associated duties and obligations for states.

In its resolution requesting a study on the impact of casualty recording on human rights, the Human Rights Council noted:

> the interlinkages between casualty recording [identifying and recording the dead] and the right to the truth, the right of access to justice for all, the right to obtain effective remedy and reparation, in particular for victims and their family members, the right to life, and other relevant human rights, and the contribution of casualty recording to ending impunity, especially in cases of gross violations of international human rights law and serious violations of international humanitarian law.⁷

Ample jurisprudence from the United Nations Human Rights Committee (HRC), the European Court of Human Rights (ECtHR), and the Inter-American Court of Human Rights (IAC), establishes that the **Right to Life** requires states not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within their jurisdiction.⁸ This includes conducting an effective investigation into any potentially unlawful death. The **Right to Remedy** and the **Right to Reparation**, which are part and parcel of the Right to Life, also entail an obligation to investigate (suspected) human rights violations and to disclose the findings. These constitute the essential components of casualty recording.

Other rights considered in this report which entail a duty on states to account for the dead include the **Right to Freedom of Information and Expression**, the **Right to Respect for Family Life**, the **Right to Freedom of Religion and Belief**, and the **Right to Freedom from Torture**.⁹

---

⁸ In the ECHR see for example: McCann and Others v. the United Kingdom, European Court of Human Rights (ECtHR), no. 18984/91, 27 September 1995, Series A no. 324; Osman v. the United Kingdom, ECtHR, no. 87/1997/871/1093, 28 October 1998, Reports of Judgments and Decisions 1998-VIII. On the search for missing persons, see particularly: Cyprus v. Turkey, ECtHR (Grand Chamber) (GC), no. 25781/94, 10 May 2001, European Court of Human Rights (ECtHR), nos. 16564/95, 9265/90, 16666/90, 16099/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, 18 September 2009; ECtHR, 2009; Aslakhanova and Others v. Russia, ECtHR, nos. 2944/06, 8000/07, 50168/04 (17 December 2012).
⁹ Casualty records can also assist in monitoring wider human rights violations, such as access to the right to health and education. See OHCHR, Guidance on casualty recording, HR/PUB/19/1 (2019) for further examples.
The Right to Life and the obligation to investigate

The Right to Life requires states to actively safeguard the lives of those within their jurisdiction, as well as refrain from taking life unlawfully. This requirement to safeguard life entails both a substantive and procedural element, with the former putting obligations on states to prevent a breach of the right to life, and the latter requiring states to conduct an effective official investigation where there has been a suspected violation of the right. This includes any death resulting from the use of force, by state or non-State agents. Whilst not a legally binding document, the Minnesota Protocol contains useful elaboration on states’ obligations:

The duty to investigate is an essential part of upholding the right to life. The duty gives practical effect to the duties to respect and protect the right to life, and promotes accountability and remedy where the substantive right may have been violated. ... A failure to respect the duty to investigate is a breach of the right to life.

Investigations must be independent, impartial, prompt, thorough, effective, credible and transparent. An investigation which does not meet the minimum criteria will constitute a violation of the state’s obligations.

The duty to investigate also includes cases where a body has not been found but an individual has disappeared or gone missing in life-threatening circumstances, as explored below. This is a common scenario in situations of armed conflict, particularly those involving heavy shelling of towns and cities. It also arises in situations of gross human rights violations where individuals are detained and/or forcibly disappeared by the state. The fact that relatives cannot produce a body, or proof of death, does not remove the state’s obligation to investigate whether a violation of the right to life has occurred. Rather, in line with the ICPPED, it requires the state to ‘take all appropriate measures to search for, locate and release disappeared persons’ and where applicable ‘to locate ... their remains.’

The HRC has stated that investigations into possible violations of the right to life should seek to establish certain minimum details, including:

the reasons and legal basis for targeting certain individuals and the procedures employed by State forces before, during and after the time at which the deprivation occurred, and identify the bodies of the individuals who have lost their lives.

---

10 The right to life is recognised in UDHR (Article 3), ICCPR (Article 6.1), ACHPR (Article 4), ACHR (Article 4), UDHR (Article 5.1), and ECHR (Article 2). See for example McCann and Others; Maman: see mutatis mutandis, the Guide on Article 2 of the European Convention on Human Rights as an update to the UN Manual on the Effective Prevention of Extra-legal, Arbitrary and Summary Executions. The UN Manual was itself drafted to supplement the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (1989). These Principles were endorsed by UN General Assembly Resolution 44/162 of 15 December 1989 and remain unchanged. The Minnesota Protocol contains extensive discussion of states’ obligations concerning investigating possible violations of the right to life. It has been extensively recognised and referred to for guidance, including by national, regional and international courts, commissions and committees, such as the European and Inter-American Courts of Human Rights, the African Commission on Human and Peoples’ Rights and the UN Human Rights Committee.

11 See for example McCann and Others; Maman: see, mutatis mutandis, the Guide on Article 2 of the European Convention on Human Rights as an update to the UN Manual on the Effective Prevention of Extra-legal, Arbitrary and Summary Executions (1989). These Principles were endorsed by UN General Assembly Resolution 44/162 of 15 December 1989 and remain unchanged. The Minnesota Protocol contains extensive discussion of states’ obligations concerning investigating possible violations of the right to life. It has been extensively recognised and referred to for guidance, including by national, regional and international courts, commissions and committees, such as the European and Inter-American Courts of Human Rights, the African Commission on Human and Peoples’ Rights and the UN Human Rights Committee.

12 See example McCann and Others; Maman: see mutatis mutandis, the Guide on Article 2 of the European Convention on Human Rights as an update to the UN Manual on the Effective Prevention of Extra-legal, Arbitrary and Summary Executions (1989). These Principles were endorsed by UN General Assembly Resolution 44/162 of 15 December 1989 and remain unchanged. The Minnesota Protocol contains extensive discussion of states’ obligations concerning investigating possible violations of the right to life. It has been extensively recognised and referred to for guidance, including by national, regional and international courts, commissions and committees, such as the European and Inter-American Courts of Human Rights, the African Commission on Human and Peoples’ Rights and the UN Human Rights Committee.

13 See example McCann and Others; Maman: see mutatis mutandis, the Guide on Article 2 of the European Convention on Human Rights as an update to the UN Manual on the Effective Prevention of Extra-legal, Arbitrary and Summary Executions (1989). These Principles were endorsed by UN General Assembly Resolution 44/162 of 15 December 1989 and remain unchanged. The Minnesota Protocol contains extensive discussion of states’ obligations concerning investigating possible violations of the right to life. It has been extensively recognised and referred to for guidance, including by national, regional and international courts, commissions and committees, such as the European and Inter-American Courts of Human Rights, the African Commission on Human and Peoples’ Rights and the UN Human Rights Committee.

14 See example McCann and Others; Maman: see mutatis mutandis, the Guide on Article 2 of the European Convention on Human Rights as an update to the UN Manual on the Effective Prevention of Extra-legal, Arbitrary and Summary Executions (1989). These Principles were endorsed by UN General Assembly Resolution 44/162 of 15 December 1989 and remain unchanged. The Minnesota Protocol contains extensive discussion of states’ obligations concerning investigating possible violations of the right to life. It has been extensively recognised and referred to for guidance, including by national, regional and international courts, commissions and committees, such as the European and Inter-American Courts of Human Rights, the African Commission on Human and Peoples’ Rights and the UN Human Rights Committee.

15 See example McCann and Others; Maman: see mutatis mutandis, the Guide on Article 2 of the European Convention on Human Rights as an update to the UN Manual on the Effective Prevention of Extra-legal, Arbitrary and Summary Executions (1989). These Principles were endorsed by UN General Assembly Resolution 44/162 of 15 December 1989 and remain unchanged. The Minnesota Protocol contains extensive discussion of states’ obligations concerning investigating possible violations of the right to life. It has been extensively recognised and referred to for guidance, including by national, regional and international courts, commissions and committees, such as the European and Inter-American Courts of Human Rights, the African Commission on Human and Peoples’ Rights and the UN Human Rights Committee.

16 See example McCann and Others; Maman: see mutatis mutandis, the Guide on Article 2 of the European Convention on Human Rights as an update to the UN Manual on the Effective Prevention of Extra-legal, Arbitrary and Summary Executions (1989). These Principles were endorsed by UN General Assembly Resolution 44/162 of 15 December 1989 and remain unchanged. The Minnesota Protocol contains extensive discussion of states’ obligations concerning investigating possible violations of the right to life. It has been extensively recognised and referred to for guidance, including by national, regional and international courts, commissions and committees, such as the European and Inter-American Courts of Human Rights, the African Commission on Human and Peoples’ Rights and the UN Human Rights Committee.

17 See example McCann and Others; Maman: see mutatis mutandis, the Guide on Article 2 of the European Convention on Human Rights as an update to the UN Manual on the Effective Prevention of Extra-legal, Arbitrary and Summary Executions (1989). These Principles were endorsed by UN General Assembly Resolution 44/162 of 15 December 1989 and remain unchanged. The Minnesota Protocol contains extensive discussion of states’ obligations concerning investigating possible violations of the right to life. It has been extensively recognised and referred to for guidance, including by national, regional and international courts, commissions and committees, such as the European and Inter-American Courts of Human Rights, the African Commission on Human and Peoples’ Rights and the UN Human Rights Committee.

18 See example McCann and Others; Maman: see mutatis mutandis, the Guide on Article 2 of the European Convention on Human Rights as an update to the UN Manual on the Effective Prevention of Extra-legal, Arbitrary and Summary Executions (1989). These Principles were endorsed by UN General Assembly Resolution 44/162 of 15 December 1989 and remain unchanged. The Minnesota Protocol contains extensive discussion of states’ obligations concerning investigating possible violations of the right to life. It has been extensively recognised and referred to for guidance, including by national, regional and international courts, commissions and committees, such as the European and Inter-American Courts of Human Rights, the African Commission on Human and Peoples’ Rights and the UN Human Rights Committee.
This requirement to identify the deceased is also asserted in the GPID, which states that the relevant authorities ‘shall endeavour to collect and identify the mortal remains of those deceased’.

The IAC has considered the right to life in many cases resulting from internal armed conflicts, including in Colombia and Guatemala. Its jurisprudence clearly supports the obligation on states to take steps to identify the victim, notify family members, and search for the cause of death. In 2006, the IAC issued its judgment in the Case of the Pueblo Bello Massacre v. Colombia, relating to the disappearance of 43 persons in Colombia in January 1990. By the time of the judgment, the domestic courts had only clarified the fate of six of the disappeared. In a crucial paragraph, the IAC cites with approval the guiding principles contained in the United Nations Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, which specifies that investigating state authorities must try as a minimum to:

(a) Identify the victim;
(b) Recover and preserve the probative material related to the death to contribute to any possible criminal investigation;
(c) Identify possible witnesses and obtain their statements;
(d) Determine the cause, method, place and moment of death, as well as any pattern or practice that could have caused the death; and
(e) Distinguish between natural death, accidental death, suicide and murder.

In addition, the judgment refers to the manual’s direction that the scene of the crime must be searched exhaustively, autopsies carried out and human remains examined rigorously by competent professionals.

In the Case of Rio Negro Massacres v. Guatemala the IAC similarly stated that:

[i]n cases of grave human rights violations, such as the ones in this case, the exhumation and identification of the deceased victims forms part of the State’s obligation to investigate. Thus, this is an obligation that must be fulfilled ex officio, because “the obligation to investigate includes the right of the victim’s next of kin to know the victim’s fate and, as appropriate, the whereabouts of his or her remains.”

In Cyprus v. Turkey, the ECtHR highlighted that the state’s failure to conduct an effective investigation included the fact that ‘there was no evidence that the authorities of the respondent State had carried out searches for the dead or wounded, let alone concerned themselves with the burial of the dead.’ The same principles were reflected in the Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka (2011). This report concluded that the government of Sri Lanka had violated its obligations under international humanitarian and human rights law because it had not ‘undertaken all practicable efforts to search for dead civilians or combatants.’

It is clear from the above that states have a non-derogable obligation to investigate all possible violations of the right to life, including where these have occurred in situations of armed conflict or gross human rights violations. Ensuring such investigations are conducted is an essential element of casualty recording.

20 Inter-American Court of Human Rights, Case of the Pueblo Bello Massacre v. Colombia, judgment of January 31, 2006, para. 2.
23 Cyprus v. Turkey, para. 124.
Scope of investigations

States have a particular duty to investigate any death which may have been caused by acts or omissions of the state or its agents, or may otherwise be attributable to the state, in violation of its duty to respect the right to life. The Minnesota Protocol asserts that this includes:

- all deaths possibly caused by law enforcement personnel or other agents of the state;
- deaths caused by paramilitary groups, militias or “death squads” suspected of acting under the direction or with the permission or acquiescence of the State;
- and deaths caused by private military or security forces exercising State functions.\(^\text{25}\)

However, the duty to investigate is not limited to deaths suspected to have been caused by state agents. States must ‘investigate any suspicious death, even where it is not alleged or suspected that the state caused the death or unlawfully failed to prevent it.’ This includes deaths resulting from ‘any situation where a state fails to exercise due diligence to protect an individual or individuals from foreseeable external threats or violence by non-State actors.’\(^\text{26}\) This means states cannot shirk responsibility for investigating deaths resulting from non-international armed conflict, inter-communal violence or other situations of gross human rights violations, even when no state agents were involved. All casualties must be investigated.

The responsibility to investigate is also not limited to deaths occurring within the state’s own sovereign territory. States must also investigate the death of any person ‘subject to its jurisdiction’\(^\text{27}\) or:

- within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State Party assigned to an international peace-keeping or peace-enforcement operation.\(^\text{28}\)

Even where states do not exercise effective control of a territory they are still required to investigate deaths which may be attributed to their armed forces operating in that area. States are responsible for investigating the death of any ‘persons located outside any territory effectively controlled by the State whose right to life is nonetheless affected by its military or other activities in a direct and reasonably foreseeable manner.’\(^\text{29}\) This means that states must take steps to investigate and record casualties resulting from their military actions overseas.

Furthermore, the duty to investigate applies ‘to all States that may have contributed to the death or which may have failed to protect the right to life.’\(^\text{30}\) This may be interpreted to mean that states working in military coalitions, partnered operations or engaged in other forms of military cooperation, have a duty to investigate deaths attributed to the military operation overall. Even if the death was not caused directly by its own agents, the state may have ‘contributed’ to failing to protect the right to life.

The HRC has made clear that states are under an obligation to investigate wherever ‘they know or should have known of potentially unlawful deprivations of life’\(^\text{31}\) and investigations should begin ex officio when appropriate.\(^\text{32}\) States must, therefore, be proactive in seeking to investigate and record details of casualties.

---

\(^{25}\) The Minnesota Protocol, op. cit., para. 2(a).

\(^{26}\) Ibid., para. 2(c).

\(^{27}\) CCPR/C/21/Rev.1/Add.13, para. 10.

\(^{28}\) CCPR/C/21/Rev.1/Add.13, para. 10.

\(^{29}\) CCPR/C/21/Rev.1/Add.13, para. 10.

\(^{30}\) The Minnesota Protocol, op. cit., para. 10.

\(^{31}\) Ibid., para. 29, citing European Court of Human Rights, Tanrikulu, para. 103.

\(^{32}\) Ibid., para. 29, citing European Court of Human Rights, Tanrikulu, para. 103.
The Minnesota Protocol reconfirms that ‘the duty to investigate does not apply only where the State is in receipt of a formal complaint’.33 Investigations must be carried out within a reasonable timeframe and driven at an institutional level, rather than at the behest of family members, once the authorities are aware of the situation. Although states should comply with independent and international investigatory mechanisms, the existence of a mechanism established to examine related matters does not discharge the obligation of the state authorities to conduct their own official investigation into an apparent violation of the right to life (Cyprus v. Turkey).34

Prompt action is crucial for securing the evidence required for an effective investigation. Steps taken or omitted in the initial period of the person’s death or disappearance can drive or undermine the effectiveness of all future efforts to discover the facts of the situation. An acquiescent state authority attitude in this regard can point to insincerity of concern for the individual, a lack of objectivity, or tacit approval of the situation (Baysayeva v. Russia).35

Victims of human rights violations have the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. Consequently, elements of states’ duty to record casualties are also found within the Right to a Fair Trial.36 In its General Comment 36 (2018), the HRC made clear that ensuring the possibility of perpetrators being brought to justice for violations of the right to life is an important component of states’ obligations. It is not only a matter of justice for the victim’s family, but an essential measure for ‘promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations.’37 In the context of mass killings, including deaths resulting from armed conflict, a comprehensive record of deaths and their circumstances is essential to give effect to these requirements. An effective hearing, including prosecutions for possible violations of the right to life, is impossible without this basic evidence.38

In the case of the Mapiripan Massacre the IAC found that the government of Colombia was responsible for the activities of paramilitaries who killed an estimated 49 individuals in a massacre related to the internal armed conflict.39 The IAC held that there was a violation of the right to a fair trial (IACHR Article 8) because the massacre was not investigated in an effective and impartial manner.40 This included non-identification of the alleged victims, destruction of the forensic evidence, a lack of autopsies for all but two of the victims, and the fact that the state did not ‘establish the cause, manner, place and time of the executions’.41

Investigations into possible violations of the right to life must be as transparent as possible, subject only to essential restrictions necessary for ensuring the safety of victims’ families, witnesses and other affected persons. Relevant information held in a state’s records must be shared ‘even if those records are held by security agencies or military or police units.’42 States must ensure the victim’s family is represented in the investigation and that all relevant details are disclosed to them.43

Transparency, which is a fundamental principle of casualty recording,44 also applies to a states’ duties to society as a whole. They must ‘make public information about the investigative steps taken and the findings, conclusions and recommendations emanating from the investigation’.45 These issues are considered in detail in the section below concerning the right to remedy, reparation, truth, and freedom of information.

33 The Minnesota Protocol, op. cit., para. 15.
34 Cyprus v. Turkey. See in particular paras. 135 and 148.
36 The right to a fair trial is found within UDHR (Article 10), ICCPR (Article 14), ICPPED (Article 11), ACHPR (Article 7), ACHR (Article 8), ArCHR (Article 13), AFRCD (Article 20). See below for detailed analysis of obligations relating to the right to remedy.
37 CCPR/C/65, op. cit., para. 27.
39 Inter-American Court of Human Rights, Case of the Mapiripan Massacre v. Colombia, judgment of September 15, 2005, para. 124.
40 Ibid., para. 191.
41 Ibid.
The Right to Life in situations of armed conflict

The right to life, including the corresponding duty to investigate unlawful deaths, is non-derogable. This means it cannot be limited or suspended by the state for any reason or under any circumstances, including situations of armed conflict or other emergency. This principle is explicitly cited in multiple international instruments.\(^{46}\)

HRC General Comment 36 (2018) states categorically that ‘the guarantees against arbitrary deprivation of life contained in article 6 continue to apply in all circumstances, including in situations of armed conflict and other public emergencies.’\(^{47}\) This confirms that not only is the substantive component of the right to life non-derogable even in situations of armed conflict, but that the procedural element of states’ obligations to uphold this right also remains in force. The HRC states:

\[\text{Like the rest of the Covenant, article 6 continues to apply also in situations of armed conflict to which the rules of international humanitarian law are applicable, including to the conduct of hostilities. While rules of international humanitarian law may be relevant for the interpretation and application of article 6 when the situation calls for their application, both spheres of law are complementary, not mutually exclusive. ...} \]

\[\text{[States] must also investigate alleged or suspected violations of article 6 in situations of armed conflict in accordance with the relevant international standards.}\] \(^{46}\)

General Comment no. 3 of the ACnHPR states that ‘what constitutes an ‘arbitrary’ deprivation of life during the conduct of hostilities is to be determined by reference to international humanitarian law.’\(^{49}\) It also declares that deaths resulting from violations of humanitarian law will be considered arbitrary deprivations of life, and will trigger states’ obligations to conduct a full investigation.

The ECtHR has also found that procedural duties under the right to life continue to apply in situations of armed conflict. It notes the obstacles inherent in such circumstances, but maintains that investigation is still essential:

\[\text{[I]t is clear that where the death to be investigated under Article 2 occurs in circumstances of generalised violence, armed conflict or insurgency, obstacles may be placed in the way of investigators and concrete constraints may compel the use of less effective measures of investigation or may cause an investigation to be delayed. Nonetheless, the obligation under Article 2 entails that, even in difficult security conditions, all reasonable steps must be taken to ensure that an effective, independent investigation is conducted into alleged breaches of the right to life.}\] \(^{50}\)

In the case of Ahmet Ozkan & Others v. Turkey, the ECtHR stated that:

\[\text{(N)either the prevalence of violent clashes in the area at the time nor the high incidence of fatalities there could displace the obligation under Article 2 to ensure that an effective, independent investigation was conducted into the deaths arising out of clashes involving the security forces, the more so in cases such as the present where the circumstances were in many respects unclear.}\] \(^{51}\)

\(^{46}\) ICCPR (Articles 4.1 and 4.2), CAT (Article 21 and 22), ACHR (Article 27), ArCHR (Article 41), ECtHR (Articles 15.1 and 15.2). The ICPPED prohibits the invocation of any exceptional circumstances, including war, for justifying enforced disappearance (Article 1.2).

\(^{47}\) CCPR/C/78/Rev.3, op. cit., para. 67; see also ACnHPR, General Comment no. 3, op. cit., para. 13.

\(^{48}\) ICCPR/C/88/35, op. cit., para. 64.

\(^{49}\) ACnHPR, General Comment no. 3, op. cit., para. 32.

\(^{50}\) ECtHR, Guide on Article 2 of the European Convention on Human Rights, 31 August 2022, para 201.

\(^{51}\) Ahmet Ozkan and others v. Turkey, ECtHR, no. 21689/93, 6 April 2004, para. 319.
Importantly, the HRC has also stated that, “States parties engaged in acts of aggression as defined in international law, resulting in deprivation of life, violate ipso facto article 6 of the Covenant.” This indicates that all deaths resulting from an act of aggression engage the state’s obligation to investigate. It is less clear, however, which party is responsible for undertaking the investigation when the state that has sovereignty over the area where the deaths occurred is not the state that it is in de facto control of the territory.

The HRC has recognised that states may encounter obstacles in fulfilling their obligations to investigate during situations of armed conflict, and this will be relevant to ‘a determination of the scope of the positive measures that States parties must take.’ The measures required may be assessed to a different standard than would have applied in peacetime. However, where the situation of public emergency has resulted in the state derogating from some rights (as permitted under the ICCPR) those measures which support the application of the right to life ‘must not be diminished by measures of derogation.’ These include such measures as the duty to take appropriate measures to investigate, prosecute, punish and remedy violations of the right to life.

The AChHPR has also recognised the difficulties which states might face in investigating violations of the right to life during armed conflict but, like the HRC, it reasserted that these difficulties could not justify a failure to investigate:

> Although States may face particular practical challenges in achieving accountability in situations of armed conflict, they must undertake all feasible measures of accountability to ensure respect for the right to life. Appeals to national security or State secrecy can never be a valid basis for failing to meet the obligation to hold those responsible for arbitrary deprivations of life to account, including during armed conflict or counter-terrorism operations.

The Minnesota Protocol discusses in detail states’ obligations to investigate potential violations of the right to life in situations of armed conflict. The relevant provisions are cited below in full, with emphasis added:

> 14. In armed conflict, all parties must take all feasible measures to account for persons reported missing as a result of the conflict, and to provide family members with any information they have on the fate of their relatives. In the event of death, all parties must use all means at their disposal to identify the dead, including by recording all available information prior to the disposal of the body and by marking the location of graves; and in a situation of international armed conflict they must at least endeavour to facilitate the return of the remains of the deceased at the request of, inter alia, the next of kin. Moreover, each Party to an international armed conflict has to establish an information bureau to forward any information regarding, among other things, the death of protected persons in its hands to the power to which these persons belong.

---

52 CCPR/C/80/36, op. cit., para. 70.
53 Ibid., para 67.
54 Ibid, para 67.
55 AChHPR, General Comment no. 3, op. cit., para. 20.
16. The duty to investigate any potentially unlawful death includes all cases where the State has caused a death or where it is alleged or suspected that the State caused a death (for example, where law enforcement officers used force that may have contributed to the death). This duty, which applies to all peacetime situations and to all cases during an armed conflict outside the conduct of hostilities, exists regardless of whether it is suspected or alleged that the death was unlawful. The duty to investigate potentially unlawful death caused during the conduct of hostilities is specifically addressed in Paragraph 21.

20. The duty to investigate a potentially unlawful death – promptly, effectively and thoroughly, with independence, impartiality and transparency – applies generally during peacetime, situations of internal disturbances and tensions, and armed conflict. In the context of armed conflict, the general principles set out in Paragraphs 15–19 and 22–33 must, however, be considered in light of both the circumstances and the underlying principles governing international humanitarian law (IHL). Certain situations, such as armed conflict, may pose practical challenges for the application of some aspects of the Protocol’s guidance. This is particularly the case with regard to the obligation on a State, as opposed to another actor, to investigate deaths linked to armed conflict when they occur on territory the State does not control. Where context-specific constraints prevent compliance with any part of the guidance in this Protocol, the constraints and reasons for non-compliance should be recorded and publicly explained.

21. Where, during the conduct of hostilities, it appears that casualties have resulted from an attack, a post-operation assessment should be conducted to establish the facts, including the accuracy of the targeting. Where there are reasonable grounds to suspect that a war crime was committed, the State must conduct a full investigation and prosecute those who are responsible. Where any death is suspected or alleged to have resulted from a violation of IHL that would not amount to a war crime, and where an investigation (“official inquiry”) into the death is not specifically required under IHL, at a minimum further inquiry is necessary. In any event, where evidence of unlawful conduct is identified, a full investigation should be conducted.

Collectively, these guidelines, comments and findings make clear that although different standards may be applied to interpreting the context, all casualties of armed conflict must be investigated.

The HRC has considered several cases concerning the right to life arising from situations of armed conflict, including in Algeria, Bosnia-Herzegovina, Chechnya, and Nepal. Božo Mandić was reported missing in Bosnia and Herzegovina on 7 July 1995, and his remains had not been recovered. In its views on the case, issued in November 2015, the HRC found that:

No ex officio prompt, impartial, thorough and independent investigation has been carried out by the State party to clarify his fate and whereabouts and to bring the perpetrators to justice. The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties
to the Covenant, according to which a failure by a State party to investigate allegations of violations and to bring to justice perpetrators of certain violations (notably torture and cruel, inhuman and degrading treatment, summary and arbitrary killings and enforced disappearances) could in and of itself give rise to a separate breach of the Covenant.\[^{55}\]

The HRC found a violation of the right to life due to the failure of the state to investigate the facts of the disappearance.\[^{56}\] The HRC made similar findings in the case of Kadiric and Bosnia-Herzegovina.\[^{57}\] In this case the allegations were that Ermin Kadiric was executed by the Army of the Republica Srpska in 1992, that his mortal remains were removed and concealed, and the whereabouts of his body remained unknown. The HRC found again that the failure to investigate was a violation of the procedural obligation contained within the right to life. Importantly, it declared that:

the State party remains under an ongoing obligation to locate, exhume, identify and return the victim’s mortal remains to the family, as well as to identify, prosecute and sanction those responsible for the crimes concerned.\[^{59}\]

In Lale and Popovic and Bosnia-Herzegovina, decided in 2017, the HRC made similar findings about the state’s responsibility to locate and identify missing persons.\[^{60}\] In a case arising from the conflict in Chechnya, the HRC referred to its 2018 General Comment on the right to life. It declared:

The Committee recalls its general comment No. 36 (2018) on the right to life, according to which the State party has an obligation to investigate all claims of potentially unlawful deprivation of life. Investigations and prosecutions of potentially unlawful deprivation of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), and must always be independent, impartial, prompt, thorough, effective, credible and transparent.\[^{61}\]

In this case, the complainant alleged that her brother had died in Russian state custody but his body had not been recovered, and in the 23 years since his disappearance she had not discovered the circumstances of his death or his body’s whereabouts. She argued this constituted a violation of the right to life.\[^{62}\] There are similar cases regarding the conflicts in Algeria and Nepal, which together constitute a large body of case law supporting the conclusion that state authorities must search for the bodies of the disappeared and determine the cause of death.\[^{63}\]

The ECtHR has also considered states’ obligations to investigate violations of the right to life in the context of armed conflict and mass killings. In Cyprus v. Turkey, the ECtHR considered that Turkey’s ongoing failure ‘to conduct any investigation whatsoever’ into the fate of more than 1,000 individuals who had gone missing in life-threatening circumstances was a violation of its procedural obligations under the right to life.\[^{64}\] The court emphasised that the state’s procedural duty to investigate arose notwithstanding the fact that there was ‘no proof that any of the missing persons have been unlawfully killed’.\[^{65}\] The fact that the victims were last seen in the custody of the state and had subsequently disappeared, in a context which could be considered life-threatening, was...

\[^{55}\] UN Doc. CCPR/C/115/D/2064/2011, Mandić and Bosnia and Herzegovina; views of the HRC, 5 November 2015, para. 8.2.
\[^{56}\] Ibid., para. 8.4.
\[^{59}\] Ibid., para. 9.3.
\[^{60}\] UN Doc. CCPR/C/119/D/2206/2012, Lale and Popovic and Bosnia-Herzegovina, views of the HRC 17 March 2017, paras. 7.2 and 7.3.
\[^{62}\] Ibid., para. 7.4 and 7.7.
\[^{64}\] Cyprus v. Turkey, para. 124.
\[^{65}\] Ibid., para. 124.
sufficient to trigger the duty to investigate. Similarly, in *Khishiyev & Akayeva v. Russia* the ECtHR found that where the available evidence supports the presumption that the person in question was abducted by the state authorities and subsequently killed or kept in undocumented detention, the burden of proof lies with the authorities to rebut the presumption by providing a ‘satisfactory and convincing explanation’.

### The Right to Respect for Family Life and Freedom of Religion and Belief

States’ responsibilities to identify, record and share information on casualties of armed conflict and other situations of gross human rights violations also arise from their obligations concerning the *Right to Respect for Family Life*. Multiple international and regional human rights instruments recognise this right and reference the importance of the family unit and the state’s duty to protect it.66 Ensuring the dead are identified, and their next of kin notified, is an important element of this duty. This is reflected in the Minnesota Protocol, which asserts that:

> *When the identity of a deceased person has been determined, family members should be informed immediately and thereafter a notification of death posted in an easily accessible way.*67

The Minnesota Protocol also asserts that ‘[f]amily members have specific rights in relation to human remains’.68 This is made explicit in the ICPPED, which requires states to locate and return the remains of disappeared persons to their family.69 Similarly, the GPID affirm that the relevant authorities shall ‘facilitate the return of those remains [of the deceased] to the next of kin or dispose of them respectfully’.70 The ECtHR has found on several occasions that ‘dealing appropriately’ with the dead out of respect for the feelings of the deceased’s relatives falls within the scope of states’ obligations concerning the right to respect for private and family life.71 The cases examined addressed matters such as the timely return to the family of a body following autopsy, and the transfer of ashes to the next of kin. It is reasonable to believe that the ECtHR would take a similar view on families’ right to receive the remains of victims of armed conflict.

The *Right to Freedom of Religion and Belief* includes the right of family members to conduct final rites and dispose of the body of a loved one in accordance with their religious and cultural customs.72 Identification of the deceased, and return of their remains to surviving family members, is essential for upholding this right and once again supports a requirement for states to systematically record information on casualties of armed conflict. This is reiterated in the Minnesota Protocol which states that once investigations have concluded, ‘human remains should be returned to family members, allowing them to dispose of the deceased according to their beliefs.’73

---

66. The obligation of states to respect and protect the right to family life is found within UDHR (Article 16.3), ICCPR (Article 23.1), ICESCR (Article 10.1), IDPR (Article 19.1), ADHR (Article 18.1), ACHR (Article 17.1), ACHR (Article 19), ECHR (Article 8.1 and 8.2).


68. Ibid.

69. ECHR, Art. 24.


72. The right to freedom of religion and belief, also referred to as freedom of thought, conscience and religion, is found in UDHR (Article 18), ICCPR (Article 18.1), ADHR (Article 18), ACHR (Article 12.1), ECHR (Article 30), ACHR (Article 22), IDPR (Articles 9.1 and 9.2).

The IAC has specifically referred to the right to freedom of religion and belief in relation to states’ obligations concerning the victims of mass killings. In the case of *Rio Negro Massacres v. Guatemala* the Court found a violation of the right to freedom of conscience and religion of the survivors as they could not bury their relatives in a culturally appropriate manner:

The American Convention does not explicitly establish the right to “bury the dead.” The Inter-American Court has addressed this issue not as a substantive right, but in the context of the reparations in cases of forced disappearances; mainly, as a result of the violation of another right that is established in the Convention. Thus, for example, the Court has ordered that, if the remains of a disappeared person are found, they must be returned to his or her next of kin, and the State must cover the funeral or burial costs. Also, in other cases, the Court has referred to the impossibility of burying the dead as a fact that increases the suffering and anguish of the next of kin, which can be considered in the reparations when determining an amount for the non-pecuniary compensation in their favor.24

In the *Mapiripan Massacres* case, the IAC referred to the ‘lack of opportunity to bury their next of kin in accordance with their traditions, values or beliefs’25 as a factor contributing to the violation of the right to humane treatment of the next of kin of the victims.

**Prohibition on Torture and other inhuman, cruel or degrading treatment or punishment**

Failing to conduct an effective official investigation into a potentially unlawful death can amount to a violation of the *Prohibition on Torture and other inhuman, cruel or degrading treatment or punishment*.26 The psychological agony and distress relatives experience as a consequence of prolonged uncertainty regarding the fate of their loved one has been considered to amount to torture or inhuman treatment.27 This is true ‘even when the deprivation of life is not arbitrary’, according to HRC General Comment 36 (2018).28 In the case of *Lale and Popović and Bosnia-Herzegovina* the HRC found:

The Committee notes the authors’ claims that their rights under articles 7 [prohibition of torture], 17 [protection against arbitrary interference] and 23 (1) [protection of the family unit], read in conjunction with article 2 (3) [right to remedy], of the Covenant have been violated. It also notes the anguish and distress caused to the authors by the continuing uncertainty resulting from not knowing where their mothers’ remains may be and the impossibility, if they are deceased, of giving them a proper burial. It further notes that, although the authors provided DNA samples to the authorities in 2003 in order to facilitate the identification of the mortal remains of Mrs. Lale and Mrs. Popović, they have not received a response from the competent authorities. The Committee considers that these circumstances, together with the lack of information as to the fate and whereabouts of Mrs. Lale and Mrs. Popović, amount to inhuman and degrading treatment in violation of article 7, read in conjunction with article 2 (3), of the Covenant, with regard to the authors.29

---

25 Inter-American Court of Human Rights, *Mapiripan Massacre*, para. 140.
26 Prohibition of torture and cruel, inhuman or degrading treatment or punishment is found in UDHR (Article 5), ICCPR (Article 7), CAT (entirely), ACHPR (Article 5), ACHR (Articles 5.1 and 5.2), ArCHR (Article 8.1), AFRCH (Article 14), CDHRI (Article 2), ECHR (Article 3).
27 *Cyprus v. Turkey*, *Orhan v. Turkey*, *Er and Others v. Turkey*, ECtHR, no. 23155/04, 31 July 2012; *Meryem Çelik and Others v. Turkey*, ECtHR, no. 3598/03, 16 April 2002; *Varnava and Others*, *Er and Others v. Turkey*, ECtHR, nos. 30335/08, 61795/08, 8964/09, 24707/09, 30217/09, 36165/09, 61256/09, 63686/09, 67722/09, 4334/10, 4345/10, 11875/10, 25555/10, 30692/10, 32797/10, 33944/10, 32415/10, 52446/10, 62344/10 and 64245/10, 9 January 2014.
29 UN Doc. [E/C.15/2012/25], 112 (2012), para. 78.
The ECtHR has similarly found that where the state has been made aware of a possible case of concern but fails to investigate adequately, and does not respond appropriately to the victim’s relatives or keep them apprised of developments in the process, this will amount to a breach of the state’s duty under Article 3. The violation arises from official indifference to an allegation which demands investigation, rather than the factual disappearance of the person. In *Cyprus v. Turkey*, the ECtHR found that the failure of the state to investigate, and the resulting absence of any information about the fate of their loved ones, caused the relatives of the missing persons to live ‘in a prolonged state of acute anxiety’ and their suffering had ‘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.’

The court concluded that ‘the silence of the authorities … attains a level of severity which can only be categorised as inhuman treatment within the meaning of Article 3.’ The judgement emphasised that:

> the essence of such a violation [of Article 3] does not so much lie in the fact of the “disappearance” of the family member but rather in the authorities’ reactions and attitudes to the situation when it is brought to their attention.

The IAC has made similar findings in relation to treatment of relatives of the missing, disappeared and deceased. In the case of *Massacres of El Mozote and nearby places v. El Salvador*, the IAC noted that from 1980 until 1991 El Salvador was ‘immersed in an internal armed conflict’ which killed approximately 75,000 of its citizens. This specific case concerned the killing of approximately 1,000 people in a massacre by military units in 1981. The IAC made an important statement on the impact on the human rights of the victims’ next of kin, stating:

> Regarding the next of kin of the victims who were executed, in its most recent case law in cases of massacres, the Court has reiterated that the next of kin of the victims of certain grave human rights violations, such as massacres, can, in turn, be victims of violations to their personal integrity. Also, in this type of case, the Court has considered that the right to mental and moral integrity of the victims’ next of kin has been violated owing to the additional suffering and anguish they have experienced as a result of the subsequent acts or omissions of the State authorities in relation to those facts and due to the absence of effective remedies. The Court has considered that “conducting an effective investigation is a fundamental and determinant element for the protection of certain rights that are violated or annulled by such situations.”

Note that where they are part of a widespread or systematic attack directed against the civilian population, ‘inhumane acts of a ... character intentionally causing great suffering, or serious injury to ... mental or physical health’ may constitute a war crime or crime against humanity. This starkly demonstrates the importance of comprehensive documenting and recording of casualties.

---

80 Varnava & Others.
81 *Cyprus v. Turkey*, para. 156.
82 Ibid., para. 157.
83 Ibid., para. 156, citing *Çakici v. Turkey* ([GC], no. 23657/94, § 98, ECHR 1999-IV).
85 Ibid., para. 197.
The Right to Remedy, Reparation and Truth

International law recognises that victims of human rights violations have the Right to Remedy. States must ensure victims have recourse to judicial protection and can have their right to remedy determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the state. In General Comment 36 (2018) the HRC stated that Article 6.1 of the ICCPR obliges states "to provide effective remedies and reparation to all victims of violations of the right to life." Likewise, the ACnHPR reasserts that states must provide "an effective remedy and reparation for the victim or victims" of violations of the right to life.

The right to remedy is understood to entail a Right to Reparation, which should include ‘adequate measures of compensation, rehabilitation and satisfaction’. The content of the right to reparation is explored in detail in the updated Set of principles for the protection and promotion of human rights through action to combat impunity ("the Joinet-Orentlicher Principles"). The Joinet-Orentlicher Principles are not legally binding but constitute influential guidance nevertheless. They assert:

PRINCIPLE 34. SCOPE OF THE RIGHT TO REPARATION

The right to reparation shall cover all injuries suffered by victims; it shall include measures of restitution, compensation, rehabilitation, and satisfaction as provided by international law. In the case of forced disappearance, the family of the direct victim has an imprescriptible right to be informed of the fate and/or whereabouts of the disappeared person and, in the event of decease, that person’s body must be returned to the family as soon as it has been identified, regardless of whether the perpetrators have been identified or prosecuted.

The United Nations 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 ("the Basic Principles") define ‘satisfaction’ to include ‘any or all of the following’:

(b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim’s relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;

c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities; [...]
(e) Public apology, including acknowledgement of the facts and acceptance of responsibility; […]
(g) Commissions and tributes to the victims;
(h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.92

The Inter-American Commission of Human Rights, and subsequently the Inter-American Court, have made clear that reparation for unlawful killings must include full acknowledgement and disclosure of the facts and circumstances surrounding the violation. This ‘Right to Know’ or ‘Right to Truth’94 was first developed in response to the widespread enforced disappearances in the region during the 1980s.95 The right to know the truth is also explicitly acknowledged within the ICPPED, which affirms that ‘[e]ach victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person.’96 This commitment to ensuring the facts of each death are uncovered and acknowledged is a fundamental principle of casualty recording.

The Basic Principles reassert victims’ right to know the truth:

victims of gross violations of international human rights law and serious violations of international humanitarian law … should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations.97

The Joint-Entlicher Principles emphasise:

**PRINCIPLE 4. THE VICTIMS’ RIGHT TO KNOW**
Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims’ fate.

The right to know the fate of missing relatives, and states’ duty to respect and fulfil this right, are also referenced within the GPID.98 These principles state that internally displaced persons99 ‘have the right to know the fate and whereabouts of missing relatives’ and that the relevant authorities ‘shall endeavour to establish the fate and whereabouts’ of such persons.100 They ‘shall inform the next of kin on the progress of the investigation and notify them of any result.’101

---

92 Ibid., para. 24.
97 Ibid., Principle 16.2.
The Minnesota Protocol asserts that:

*Family members have the right to seek and obtain information on the causes of a [suspected unlawful] killing and to learn the truth about the circumstances, events and causes that led to it. In cases of potentially unlawful death, families have the right, at a minimum, to information about the circumstances, location and condition of the remains and, insofar as it has been determined, the cause and manner of death.*[^102^]

The right to truth relates closely to the **Right to Freedom of Information and Expression**[^103^]. The ICPPED makes this link explicit in its preamble, which affirms:

*... the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person, and the right to freedom to seek, receive and impart information to this end.*[^104^]

The right to freedom of expression in relation to investigations into gross human rights violations was addressed by the IAC in the *Massacres of El Mozote and nearby places v. El Salvador*. The IAC held that:

*Regarding the alleged violation of Article 13 [Freedom of Thought and Expression] of the Convention, the Court recalls that any person, including the next of kin of victims of grave human rights violations, has the right to know the truth, under Articles 1(1), 8(1) and 25 and also, in certain circumstances, Article 13 of the Convention; therefore, they and society in general must be informed of what happened.*[^105^]

The collective right to remedy

The Basic Principles and the Joint-Orentlicher Principles argue that the right to remedy, including the elements of reparation and satisfaction discussed above, is not limited to the victim’s family and representatives. It is also a collective public right of the affected society. The notion of ‘victim’ used within both sets of Principles is based on the terms of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted in 1985 by the United Nations General Assembly. The Declaration, which can be considered customary international law, asserts that ‘victims’ means ‘persons who, individually or collectively, have suffered harm.’[^106^]

In relation to collective reparation, the Joint-Orentlicher Principles assert:

*40. The right to reparation entails both individual measures and general, collective measures.
41. On an individual basis, victims - including relatives and dependents - must have an effective remedy.*

[^102^]: The Minnesota Protocol, op. cit., para. 11.
[^103^]: The right to freedom of opinion and expression is recognised within UDHR (Article 19), ICCPR (Article 19), ACHPR (Article 9), ADHR (Article 13), ACHR (Article 13), AHRD (Article 25), CDHRI (Article 22), ECHR (Article 10).
[^104^]: ICPPED, Preamble. The ICPPED entered into force in December 2010 and as of 1 August 2022 had been ratified by 68 states.
[^105^]: Inter American Court of Human Rights, Massacres of El Mozote, para. 258.
42. On a collective basis, symbolic measures intended to provide moral reparation, such as formal public recognition by the State of its responsibility, or official declarations aimed at restoring victims’ dignity, commemorative ceremonies, naming of public thoroughfares or the erection of monuments, help to discharge the duty of remembrance.

In Resolution 9/11 and subsequent resolutions on the right to truth, the Human Rights Council recognised ‘the right of victims of gross violations of human rights and serious violations of international humanitarian law, and their families and society as a whole, to know the truth regarding such violations, to the fullest extent practicable’. States must do more than refrain from blocking access to the facts. They must also preserve relevant documents and archives, and ‘provide appropriate and effective mechanisms for society as a whole and, in particular, for relatives of the victims, to know the truth.’

The importance of recognising these collective rights, in addition to the rights of individual victims and their families, is emphasised in Joinet’s report on the Question of Impunity of Perpetrators of Human Rights Violations:

*The right to know is also a collective right, drawing upon history to prevent violations from recurring in the future. Its corollary is a “duty to remember”, which the State must assume, in order to guard against the perversions of history that go under the names of revisionism or negationism; the knowledge of the oppression it has lived through is part of a people’s national heritage and as such must be preserved.*

This point is reiterated in the Minnesota Protocol which argues, ‘The right to know the truth extends to society as a whole, given the public interest in the prevention of, and accountability for, international law violations.’

The Jointet-Orentlicher Principles identify several important principles relating to the realisation of these collective rights. These are cited here in full:

**PRINCIPLE 2. THE INALIENABLE RIGHT TO THE TRUTH**

*Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations.*

**PRINCIPLE 3. THE DUTY TO PRESERVE MEMORY**

*A people’s knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfilment of the State’s duty to preserve archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments.*
PRINCIPLE 5. GUARANTEES TO GIVE EFFECT TO THE RIGHT TO KNOW

States must take appropriate action, including measures necessary to ensure the independent and effective operation of the judiciary, to give effect to the right to know. Appropriate measures to ensure this right may include non-judicial processes that complement the role of the judiciary. Societies that have experienced heinous crimes perpetrated on a massive or systematic basis may benefit in particular from the creation of a truth commission or other commission of inquiry to establish the facts surrounding those violations so that the truth may be ascertained and to prevent the disappearance of evidence. Regardless of whether a State establishes such a body, it must ensure the preservation of, and access to, archives concerning violations of human rights and humanitarian law.

The ECtHR has further recognised that, in a case of international significance, the right to truth extends beyond the victim and their family, to include ‘victims of similar crimes and the general public’.

PART TWO
Casualty recording and international humanitarian law

PICTURE: Kigali Genocide Memorial Centre by Andy Wallace
International humanitarian law contains detailed provisions on states’ obligations to account for the missing and the dead in situations of armed conflict. These encompass searching for the dead and missing, identifying the deceased, and disposing of the human remains in a manner which facilitates future identification. Effective implementation of these obligations is essential for ensuring casualties are appropriately recorded.

Sources, applicability and principles

Source of international humanitarian law

International humanitarian law is the body of law which imposes limits on the means and methods of warfare which can be used in international or non-international armed conflict. It also protects people and objects affected by armed conflict. Unlike human rights law, which applies at all times, humanitarian law only applies during situations of armed conflict.

International humanitarian law is divided into treaty law and customary law. Treaty law is based on the four Geneva Conventions of 1949, which established extensive obligations to account for protected persons (military and civilian) including those who have died. The Geneva Conventions are universally ratified and their provisions are binding on all states. The Additional Protocols I and II of 1977 build on the provisions of the Geneva Conventions, including in relation to obligations towards the dead and missing. However, the Additional Protocols are not universally ratified and are not binding on states which are not party to them.

Customary international law, including customary international humanitarian law, is derived from ‘a general practice accepted as law’. This practice must be generally consistent and occur from a sense of legal obligation. The requirement that the practice be ‘accepted as law’ is known as ‘opinio juris’. Customary international humanitarian law is binding on all states (and, where relevant, non-state armed groups).

In 2005, after extensive research and widespread consultation with experts, the ICRC published a two-volume study (‘the ICRC Study’) on the state of customary international humanitarian law (‘CIHL’). The first volume contains the 161 rules of CIHL identified during the research period; the second volume contains evidence of state practice underlying these rules. This includes conforming practice by states which are not party to the Additional Protocols, such as Israel and the USA. Since 2010, the full content of the original ICRC Study and updates to the sections on state practice have been published and freely available on the ICRC’s online CIHL database.

112 Statute of the International Court of Justice, Article 38.
113 The British Red Cross and Laval University in Quebec Canada now host the database jointly, Customary International Humanitarian Law Database, https://ihl-databases.icrc.org/customary-ihl/eng/docindex/home.
Applicability

International humanitarian law is applicable in international and non-international armed conflicts. The majority of treaty law relates to international armed conflict only, with only Additional Protocol II and common article 3 of the four Geneva Conventions dedicated to situations of non-international conflict. However, as this report will highlight, the ICRC Study concluded that the majority of the customary law rules it identified in relation to the treatment of the dead were found to be applicable in both international and non-international armed conflict. States’ obligations under international human rights law, explored in Part I of this report, also substantially supplement IHL provisions on non-international armed conflict.

Humanitarian law also distinguishes between states’ obligations towards combatants and civilians. Geneva Conventions I, II, and III all relate to military personnel involved in international armed conflict. They contain extensive and detailed obligations with respect to recording the fate and identity of combatants killed in an international armed conflict. Geneva Convention IV specifically concerns protection of civilian persons in armed conflict and contains provisions regarding treatment of the missing and deceased. The Additional Protocols include further obligations regarding both combatants and civilians. It is important to note, however, that the ICRC Study concluded that states’ obligations under customary law are the same for military and civilian casualties.

Right to Know

Although IHL does not contain rights, it nevertheless recognises that families’ right to know the fate of their relatives is an important principle of humanitarian law. It is this principle which prompts many of the IHL obligations explored below. Additional Protocol I refers to families’ right to know in Article 32:

In the implementation of this Section ['Missing and dead persons'], the activities of the High Contracting Parties, of the Parties to the conflict and of the international humanitarian organizations mentioned in the Conventions and in this Protocol shall be prompted mainly by the right of families to know the fate of their relatives.\(^{14}\) [emphasis added]

Despite not being party to Additional Protocol I, both the USA and Israel explicitly reference the provisions of Article 32 in their military manuals. The Annotated Supplement to the US Naval Handbook (1997) states that ‘The United States also supports the new principles in [the 1977 Additional Protocol] I, art. 32 6 34, that families have the right to know the fate of their relatives.’ Israel’s Manual on the Rules of Warfare (2006) declares:

Each side has the duty to record details of the fallen and details of the death, and to send to the other side half the identity tag worn by the fallen, his personal possessions and the death certificate. The Additional Protocols indicate the right of the families to know the fate of [their relatives] and provide that each side is required to search for the enemy’s missing in action and allow access to search parties.\(^{15}\)

\(^{14}\) AP I, Art. 32.
The commentary to CIHL Rule 117 (concerning the search for missing persons) notes that:

practice indicates that this rule is motivated by the right of families to know the fate of their missing relatives. This is implicit in Article 26 of the Fourth Geneva Convention, whereby States must facilitate enquiries made by members of families dispersed as a result of armed conflict.116

The commentary also highlights that:

The obligation to account for missing persons is consistent with the prohibition of enforced disappearances (see Rule 98) and the requirement to respect family life (see Rule 105).117

The ICRC’s model law on missing persons re-states the importance of families’ right to know:

**ICRC Guiding principles/model law on the missing**

Everyone has the right to know about the fate of his/her missing relative(s), including their whereabouts or, if dead, the circumstances of their death and place of burial if known, and to receive mortal remains.

The authorities must keep relatives informed about the progress and results of investigations.118

Families’ right to know the fate of relatives is also referred to in various United Nations documents. The United Nations Secretary-General’s Bulletin on observance by United Nations forces of international humanitarian law mandates that UN forces ‘shall respect the right of the families to know about the fate of their sick, wounded and deceased relatives’.119 In his 2016 report on protection of civilians in armed conflict, the UN Secretary-General reiterated that families had a ‘right to know the fate of their missing relatives, as provided by international humanitarian law’.120 Similarly, in his 2017 report, he expressed concern that parties to conflict were not taking adequate action ‘to uphold the rights of the families to know the fate and whereabouts of their missing relatives’.121 In 2019, the Secretary-General introduced a section in his annual report on protection of civilians in armed conflict titled ‘Ongoing tragedy of missing persons’. In this, he cited again the right of families to receive information on the fate and whereabouts of their missing relatives.122 The report goes into detail on the specific legal requirements that should be incorporated into appropriate laws, policies and institutional frameworks or mechanisms relating to missing persons in armed conflict. These include the systematic registration, centralization and timely transmission of information on protected persons to their families, in particular detainees and the dead.123 These principles were reaffirmed later that year in Security Council resolution 2474 (adopted unanimously), which also cited ‘the importance of allowing families to know the fate and whereabouts of their missing relatives, consistent with applicable international humanitarian law’.124

---

116 Article 26 states: ‘Each Party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible. It shall encourage, in particular, the work of organizations engaged on this task provided they are acceptable to it and conform to its security regulations.’
118 ICRC Advisory Service on International Humanitarian Law (2009), Guiding Principles / Model Law on the Missing: Principles for Legislating the Situation of Persons Missing as a Result of Armed Conflict or Internal Violence - Measures to prevent persons from going missing and to protect the rights and interests of the missing and their families, Art. 7.
123 Ibid.
The obligation to search for and collect the dead

A great many deaths in armed conflict go unrecorded because the victim’s body is not recovered. However, both treaty and customary law make clear that states and parties to armed conflict have an obligation to search for and collect the dead, without adverse distinction.\(^{125}\)

Geneva Convention I states the obligation to search for and collect deceased military personnel (regardless of the party to which they belong):

\[
\text{At all times, and particularly after an engagement, Parties to the conflict shall, without delay, take all possible measures to search for and collect the wounded and sick, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their being despoiled.}\(^{126}\)
\]

Geneva Convention II, which relates to military personnel at sea, contains an almost identical provision:

\[
\text{After each engagement, Parties to the conflict shall, without delay, take all possible measures to search for and collect the shipwrecked, wounded and sick, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their being despoiled.}\(^{127}\)
\]

Geneva Convention IV relates to the protection of civilians. Its relevant provisions apply to ‘the whole of the populations of the countries in conflict, without any adverse distinction’, thereby incorporating all civilians regardless of their nationality or allegiance.\(^{128}\) The requirement to search for civilian dead is found in Article 16:

\[
\text{As far as military considerations allow, each Party to the conflict shall facilitate the steps taken to search for the killed and wounded, to assist the shipwrecked and other persons exposed to grave danger, and to protect them against pillage and ill-treatment.}\(^{129}\)
\]

These requirements are replicated in Additional Protocol II, which states:

\[
\text{Whenever circumstances permit and particularly after an engagement, all possible measures shall be taken, without delay, to search for and collect the wounded, sick and shipwrecked, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead, prevent their being despoiled, and decently dispose of them.}\(^{130}\)
\]

---

125 ‘Adverse distinction’ is defined in common article 3 of the Geneva Conventions as distinction based on ‘race, colour, religion or faith, sex, birth or wealth, or any other similar criteria’. Note that differential treatment based on legitimate distinctions such as medical urgency or vulnerability of the victim is not prohibited. See also Petrig, Anna, “The War Dead and Their Gravesites,” International Review of the Red Cross 91, no. 874 (June 2009): 341-68, pp. 349-350.

126 GC I, Art. 15. The 2016 Commentary on the Convention makes clear that this paragraph relates to all deceased military personnel, regardless of the party to which they belonged. See Commentary of 2016 on Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949, Article 15: Search for casualties: Evacuation, para 1511.

127 GC II, Art. 18.

128 GC IV, Art. 13.

129 GC IV, Art. 16. It is understood that the reference to ‘military considerations’ in this article was introduced in the text because ‘the service responsible for searching for wounded and dead [under Geneva Convention IV] is placed not under the control of military commanders, but under that of civilian authorities; it is obvious that the latter could not send relief teams into the battle area without taking into account the essential military requirements.’ Petrig, A. (2009), op. cit.

130 APII, Art. 9.
Additional Protocol I further states that:

The Parties to the conflict shall endeavour to agree on arrangements for teams to search for, identify and recover the dead from battlefield areas.\textsuperscript{127}

The ICRC has concluded that searching for and recovering the dead constitutes customary international humanitarian law, binding on all states and parties to conflict, in both international and non-international armed conflict.\textsuperscript{132} Rule 112 of the ICRC Study specifies the relevant obligations:

\begin{quote}
\textit{Rule 112 – Searching for and collecting the dead}

Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the dead without adverse distinction.\textsuperscript{123}
\end{quote}

Rule 112 is supported by extensive examples from national legislation, national case law and other national practice – including by states not party to the Additional Protocols. One such example is that of Israel, where in the Jenin (Mortal Remains) case at the Israel High Court of Judgement,\textsuperscript{134} the court stated that the obligation to search for and collect the dead derives from ‘respect for every dead.’\textsuperscript{135} The Court also held that locating the dead is a ‘highly important humanitarian deed’.\textsuperscript{136} In 2009, the Israeli Ministry of Foreign Affairs issued a report which highlighted that:

\begin{quote}
[A] special medical coordination centre was set up in the Gaza District CLA [Coordination and Liaison Administration], which dealt with evacuation of the dead from areas of hostilities [in Israeli operations in Gaza between 27 December 2008 and 18 January 2009, known as Operation Cast Lead].\textsuperscript{127}
\end{quote}

The USA reported that it is their \textit{opinio juris} that each party to a conflict must permit teams to search for and recover the dead from the battlefield and take all possible measures to search for the dead.\textsuperscript{138}

Security Council resolution 2474 on persons missing in armed conflict (adopted unanimously in 2019) reiterated IHL obligations regarding treatment of the dead, and urged parties to armed conflict ‘to search for and recover the dead’.\textsuperscript{139}

The legal instruments and additional supporting evidence cited above clearly show that states have a legal obligation to endeavour to search for and evacuate the remains of persons killed as a result of armed conflict. Knowingly abandoning bodies, or failing to make adequate efforts to locate them, is a violation of this obligation.

\textsuperscript{121} API, Art. 33.
\textsuperscript{122} Henckaerts and Perenson, \textit{II: Practice}, 3656-60.
\textsuperscript{123} Henckaerts and Perenson, \textit{I: Rules}, 406.
\textsuperscript{134} Israel, High Court of Justice, \textit{Jenin (Mortal Remains) case}, Ruling 14 April 2002.
\textsuperscript{135} Ibid.
\textsuperscript{136} Ibid.
\textsuperscript{138} Ibid.
\textsuperscript{139} Security Council resolution 2474, op. cit.
The obligation to search and account for the missing

In addition to locating and recovering deceased persons, parties to armed conflict must take all feasible measures to account for missing persons. The Geneva Conventions contain various provisions requiring parties to conflict to account for persons who ‘find themselves … in the hands of a Party to the conflict or Occupying Power of which they are not nationals’. These measures are intended to prevent such persons from becoming missing. Additional Protocol I expands on these obligations:

1. As soon as circumstances permit, and at the latest from the end of active hostilities, each Party to the conflict shall search for the persons who have been reported missing by an adverse Party. Such adverse Party shall transmit all relevant information concerning such persons in order to facilitate such searches.
2. In order to facilitate the gathering of information pursuant to the preceding paragraph, each Party to the conflict shall, with respect to persons who would not receive more favourable consideration under the Conventions and this Protocol:
   (a) record the information specified in Article 138 of the Fourth Convention in respect of such persons who have been detained, imprisoned or otherwise held in captivity for more than two weeks as a result of hostilities or occupation, or who have died during any period of detention;
   (b) to the fullest extent possible, facilitate and, if need be, carry out the search for and the recording of information concerning such persons if they have died in other circumstances as a result of hostilities or occupation.

The ICRC Study has found that the obligation on parties to the conflict to take all feasible measures to account for persons reported as missing is part of customary international humanitarian law. As a result, states which are not party to Additional Protocol I are still bound by the relevant provisions of CIHL. According to Rule 117 these are:

**Rule 117 – Accounting for the missing**

*Each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate.*

The ICRC Study established Rule 117 as customary law by virtue of practice cited in numerous states’ military manuals, national legislation and official statements or commitments. The 1994 Israel-PLO Agreement on the Gaza Strip, between the Government of Israel and the Palestine Liberation Organization, is an example of supportive practice by a state which is not party to Additional Protocol I. It stated that:

*The Palestinian Authority shall cooperate with Israel by providing all necessary assistance in the conduct of searches by Israel within the Gaza Strip and the Jericho Area for missing Israelis … Israel shall cooperate with the Palestinian Authority in searching for … missing Palestinians.*

140 GCIV, Art. 4.
141 This includes at minimum the person’s ‘surname, first names, place and date of birth, nationality, last residence and distinguishing characteristics, the first name of the father and the maiden name of the mother, the date, place and nature of the action taken with regard to the individual, the address at which correspondence may be sent to him and the name and address of the person to be informed.’
142 AP I, Art. 33.
143 Henckaerts and Doswald-Beck, Volume I, op. cit., 421.
144 Relevant examples from states party to API can be found in Breau, S. and Taylor, R. (2022) Update on discussion paper: The legal obligation to record civilian casualties of armed conflict.
Casualty Recording in Human Rights and Humanitarian Law | March 2023

The Palestinian Authority shall cooperate with Israel by providing ... information about missing Israelis. Israel shall cooperate with the Palestinian Authority in ... providing necessary information about missing Palestinians.145

Israel’s Manual on the Laws of War (1998) also states that ‘each party must ... search for missing persons of the enemy and try to reach arrangements for the dispatch of search teams.’ Its Manual on the Rules of Warfare (2006) reiterates that according to the 1977 Additional Protocols ‘each side is required to search for the enemy’s missing in action and allow access to search parties’.146 Similarly, Indonesia (also not party to Additional Protocol I) states in its Military Manual (1982) that ‘The parties to the conflict should search for missing persons, who are reported by the adverse party, soon after the hostilities cease’.147

In an official statement in 1987, the USA supported the principle that the search for missing persons should be carried out ‘when circumstances permit, and at the latest from the end of hostilities.’147 Likewise, Azerbaijan has incorporated into national legislation the obligation to search and account for missing persons in armed conflict, despite not being party to Additional Protocol I.148 The Philippines did not become party to Additional Protocol I until 2012, but the 1998 Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law in the Philippines provides that ‘Every possible measure shall be taken, without delay, to search for ... missing persons’.149

The general duty to clarify the fate of missing persons has been stated in several resolutions of international organisations. This includes United Nations General Assembly Resolution 3220 (1974), which called on parties to armed conflict to cooperate ‘in providing information on the missing and dead’.150 This resolution was adopted by consensus, reflecting agreement by all United Nations member states. Similarly, states and international bodies have expressly called for persons missing as a result of armed conflicts to be accounted for in non-international armed conflicts in Bosnia and Herzegovina, Cyprus, East Timor, Guatemala, Kosovo, and the former Yugoslavia.151 In the case of the former Yugoslavia, a position was created of Expert for the Special Process on Missing Persons in the Territory of the Former Yugoslavia.152 Notably, none of these provisions limit the search to combatants.

Security Council Resolution 2474 (2019) addresses the issue of the missing. It states:

1. The Security Council...
2. Calls upon parties to armed conflict to take all appropriate measures, to actively search for persons reported missing, to enable the return of their remains, and to account for persons reported missing without adverse distinction and to put in place appropriate channels enabling response and communication with families on the search process ...

4. Calls upon parties to armed conflict to pay the utmost attention to cases of children reported missing as a result of armed conflict, and to take appropriate measures to search for and identify those children;

147 Henckaerts and Doswald-Beck, Volume I, op. cit., 426.
148 ibid.
149 ibid.
150 Henckaerts and Doswald-Beck, Volume I, op. cit., 2743.
151 ibid., 414.
152 ibid., 422.
12. Urges all parties to armed conflict to allow safe and unimpeded access of humanitarian personnel, including those engaged in the search for and identification of missing persons or their remains as soon as circumstances permit\(^\text{[153]}\)

Peace agreements and other treaties also contain provisions supporting the obligation to search for missing persons as customary law. For example, the Agreement on Ending the War and Restoring Peace in Viet Nam (1973) provided that the parties were to help each other in obtaining information about military personnel and foreign civilians missing in the conflict, and to take any measures as may be required to get information about those missing.\(^\text{[154]}\) Neither the USA nor Viet Nam (at that time) were party to Additional Protocol I.

In the former Yugoslavia, the Joint Commission to Trace Missing Persons and Mortal Remains was established in 1991. Its plan of operation states:

\begin{quote}
2.1.1 Each party is responsible for compiling a list of its reported missing, as well as a file on each missing [person] ...

2.1.2 Each opened file shall be sent ... to the ICRC which shall arrange for it to be forwarded to the party concerned ...

2.2.2 ... the adverse party/parties shall take all possible measures (administrative steps and public appeals) to obtain information on the person reported missing ...

2.2.3 Once the enquiry has been completed, ... the form ‘official request for missing person’ with the accompanying documents shall be returned in duplicate to the ICRC, which shall forward them to the party on which the missing person depends.\(^\text{[155]}\)
\end{quote}

Similarly, the Agreement on Refugees and Displaced Persons annexed to the General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Accords) provided in Article 5 that “The Parties shall also cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for.”\(^\text{[156]}\)

The model law on missing persons drafted by the ICRC, published in 2009, contains the following provisions relevant to both Rule 117 and Rule 112 (above):

**ICRC Guiding principles/model law on the missing**

**Article 12**

*State authoritative body for tracing missing persons*

*Within 60 days from the date the present Law enters into force, an independent and impartial State authority for tracing missing persons and identification of human remains (hereinafter the ‘[authority]’ shall be established.*
The [authority] shall...

(d) ensure that a proper search for the dead is conducted in collaboration with competent national or local authorities, as soon as practical during and after any event, including an armed conflict, likely to have caused a large number of deaths or disappearances.

Article 19

Obligation for proper search and recovery of the dead

Once the fate of the missing person has been determined to be death, all available means must be undertaken to ensure recovery of the body and any personal effects.157

As with the obligation to search for and recover the dead, there is clear and substantial evidence of the legal obligation on states to search for the missing in situations of armed conflict. They must be documented and accounted for in casualty records, alongside those persons confirmed to have died.

The obligation to identify

There are clear legal obligations for states under humanitarian law to endeavour to identify the deceased. This obligation consists of several elements, including requirements to endeavour to establish identity before disposing of the remains; to record and transmit any available identifying information; to dispose of the dead individually and avoid cremation except in exceptional circumstances; and to mark and maintain gravesites. These measures maximise the likelihood of deceased individuals being successfully identified and their next of kin receiving notification. This in turn facilitates the potential return of human remains to the victim’s family, as discussed below. Once again, these tasks are vital components of successful casualty recording.

Recording information prior to disposal

Geneva Conventions I and II oblige parties to conflict to record any information which could aid identification of deceased military personnel. This information must be forwarded to the National Information Bureau for onward transmission to the party on which the person depends, through the intermediary of the Protecting Power and of the ICRC Central Tracing Agency. The two conventions have identical provisions which declare:

Parties to the conflict shall record as soon as possible, in respect of each wounded, sick or dead person of the adverse Party falling into their hands, any particulars which may assist in his identification. These records should if possible include:

(a) designation of the Power on which he depends;
(b) army, regimental, personal or serial number;
(c) surname;
(d) first name or names;
(e) date of birth;
(f) any other particulars shown on his identity card or disc;
(g) date and place of capture or death;
(h) particulars concerning wounds or illness, or cause of death.158

---

157 ICRC Advisory Service on International Humanitarian Law (2009), Guiding Principles / Model Law on the Missing: Principles for Legislating the Situation of Persons Missing as a Result of Armed Conflict or Internal Violence: Measures to prevent persons from going missing and to protect the rights and interests of the missing and their families.
158 GC I, Art. 16, GC II, Art. 19.
They also require that:

*Parties to the conflict shall prepare and forward to each other ... certificates of death or duly authenticated lists of the dead. They shall likewise collect and forward ... one half of a double identity disc.*

Geneva Convention III requires death certificates or ‘lists certified by a responsible officer’ of all prisoners of war who die in captivity to be forwarded to the Prisoner of War Information Bureau.

Geneva Convention IV specifies the requirements regarding recording and identification of deceased civilian internees:

*Deaths of internees shall be certified in every case by a doctor, and a death certificate shall be made out, showing the causes of death and the conditions under which it occurred. An official record of the death, duly registered, shall be drawn up in accordance with the procedure relating thereto in force in the territory where the place of internment is situated.*

Where the identity of the deceased is not immediately apparent from identification discs (‘dog tags’) or documents, internment records, or other sources, parties to conflict must use their best efforts and all means at their disposal to identify the body prior to final disposition. Geneva Convention I states:

*Parties to the conflict shall ensure that burial or cremation of the dead, carried out individually as far as circumstances permit, is preceded by a careful examination, if possible by a medical examination, of the bodies, with a view to confirming death, establishing identity and enabling a report to be made.*

Equivalent provisions, referring to medical examination and establishing identity prior to burial at sea, are included in Article 20 of Geneva Convention II. Similarly, Geneva Convention III requires the burial or cremation of a prisoner of war to be ‘preceded by a medical examination of the body with a view to confirming death and enabling a report to be made and, where necessary, establishing identity.’

The ICRC Study concluded that there is a customary legal obligation, binding in both international and non-international armed conflict, to record all available identifying information prior to disposal of the dead:

**Rule 116 – Identification of the dead and location of graves**

*With a view to the identification of the dead, each party to the conflict must record all available information prior to disposal and mark the location of the graves.*

---

159 Ibid.
160 GCIII, Art. 130.
161 GCIV, Art. 129.
162 GCIII, Art. 120.
163 GCIII, Art. 121.
As with the other rules in the Study, the ICRC Study identified the components of Rule 116 through analysis of state practice and opinio juris. This includes the practice of non-party state the USA, whose Manual on Detainee Operations (2008) includes civilian detainees within the obligation to identify the dead, including providing a statement as to the cause of death. Other examples of practice include the conflict in the former Yugoslavia, where parties concluded an agreement on exchange of information regarding the identification of the deceased. Human Rights Special Rapporteurs and other human rights mechanisms have called for similar measures in the context of the non-international armed conflicts in Chechnya and El Salvador.

The ICRC Study also found that it was common practice for states to conduct and record autopsies, establish death certificates, record the disposal of the dead, bury the deceased in individual graves, prohibit use of collective graves without prior identification, and ensure proper and permanent marking of graves.

The provisions cited above make clear that endeavouring to identify the deceased is an important and universal legal obligation. It is not sufficient for states to simply recover and dispose of human remains anonymously. Every effort must be made to clarify and record the identity of the casualty.

**Burial, cremation and maintenance of graves**

Individual disposal, and adequate marking and maintenance of grave sites, is important for maintaining the dignity of the dead and for ensuring the possibility of casualties being individually identified and exhumed at a later date. These actions are also important legal obligations which, once again, are binding on all states.

Geneva Convention I specifies that parties to conflict shall ensure that the disposal of the dead shall be ‘carried out individually as far as circumstances permit’ and that bodies must not be cremated ‘except for imperative reasons of hygiene or for motives based on the religion of the deceased’. It also states that the dead must be ‘honourably interred, if possible according to the rites of the religion to which they belonged, that their graves are respected, grouped if possible according to the nationality of the deceased, properly maintained and marked so that they may always be found’. The Official Graves Registration Service must share lists with the adverse party ‘showing the exact location and markings of the graves together with particulars of the dead interred therein’.

Geneva Convention III contains similar provisions for prisoners of war. It requires those who have died in captivity to be ‘honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, suitably maintained and marked so as to be found at any time’. Death certificates or certified lists of the dead must include details of the identity of the deceased, as well as ‘the date and place of burial and all particulars necessary to identify the graves.’ Geneva Convention III also requires that the deceased must be buried in individual graves ‘unless unavoidable circumstances require the use of collective graves’ and that cremation must only be used ‘for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his express wish to this effect.’ Once again, the Graves Registration Service is required to record details of all burials and graves, and ‘lists of graves and particulars of the prisoners of war interred in cemeteries and elsewhere shall be transmitted to the Power on which such prisoners of war depended.

Geneva Convention IV requires that civilian internees who die in detention be ‘honourably buried, if possible according to the rites


166 Henckaerts and Doswald-Beck, Volume I, op. cit., 419.

167 Ibid., 418.

168 Ibid., 417-420.

169 Ibid., 437-420.

170 For more on these issues, see Garibian, S and Vironda Dubray, M, 4 July 2022, ’Death and Dignity in Ukraine’s Armed Conflict: An Insight into the Protection of Victims’ Remains under International Law’. Opinio Juris.

171 GC I, Art. 15.

172 Ibid.

173 GC III, Art. 120.

174 Ibid.

175 Ibid.
of the religion to which they belonged and that their graves are respected, properly maintained, and marked in such a way that they can always be recognized.\textsuperscript{176} It specifies that internees must be buried in individual graves ‘unless unavoidable circumstances require the use of collective graves’ and that bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his expressed wish to this effect.\textsuperscript{177}

Concerning exchange of information on deceased internees, Geneva Convention IV declares:

\textit{As soon as circumstances permit, and not later than the close of hostilities, the Detaining Power shall forward lists of graves of deceased internees to the Powers on whom the deceased internees depended, through the Information Bureaux provided for in Article 136. Such lists shall include all particulars necessary for the identification of the deceased internees, as well as the exact location of their graves.}\textsuperscript{178}

Additional Protocol I provides for civilians who have died under occupation or in detention, or who are not nationals of the country in which they died:

\textit{The remains of persons who have died for reasons related to occupation or in detention resulting from occupation or hostilities and those of persons not nationals of the country in which they have died as a result of hostilities shall be respected, and the gravesites of all such persons shall be respected, maintained and marked as provided for in Article 130 of the Fourth Convention, where their remains or gravesites would not receive more favourable consideration under the Conventions and this Protocol.}\textsuperscript{179}

Rule 115 of the ICRC Study, binding in both international and non-international armed conflict declares:

\textbf{Rule 115 – Disposal of the Dead}

\textit{The dead must be disposed of in a respectful manner and their graves respected and properly maintained.}

Although not explicit in the wording of the rule itself, the interpretive notes to Rule 115 reiterate the importance of burying the dead individually.\textsuperscript{180} Security Council resolution 2474 (2019) also urges parties to conflict to take steps to facilitate identification of the dead:

\textit{The Security Council...}

8. Urges parties to armed conflict to ... identify [the dead], including by recording all available information and mapping the location of burial sites, to respect the remains of the dead, including by respecting and properly maintaining their graves ... to refrain from deliberate relocation of remains from mass graves, to avoid excavation and recovery efforts by untrained persons that result in the damage or destruction of human remains, and to ensure that, in any exhumation or recovery effort, data possibly leading to the identification of the deceased person is adequately collected and recorded.}\textsuperscript{181}

Compared to military personnel, civilians are substantially less likely to be buried by adverse parties, outside of their home country.

\textsuperscript{176} GCIV, Art. 130.
\textsuperscript{177} Ibid.
\textsuperscript{178} Ibid.
\textsuperscript{179} API, Art. 34.
\textsuperscript{180} Henckaerts and Bosswald Beck, Volume I, op. cit., 416.
\textsuperscript{181} Security Council resolution 2474, op. cit.
However, in non-international armed conflict, or conflicts which become international because sovereignty is re-defined, this issue can arise. In one such example, parties to the conflict in the former Yugoslavia agreed, in the 1991 Plan of Operation for the Joint Commission to Trace Missing Persons and Mortal Remains, to:

provide to the adverse party/parties, through the intermediary of the ICRC and National Information Bureaux and, as rapidly as possible, all available information regarding: the identification of deceased persons [and] the gravesites of deceased persons belonging to the adverse parties.\textsuperscript{182}

In its final report on breaches of international humanitarian law during the 1990s conflict in the former Yugoslavia, the United Nations Commission of Experts noted that:

\textit{A mass gravesite is a potential repository of evidence of mass killings of civilians and POW’s ... The manner and method by which a mass grave is created may itself be a breach of the Geneva Conventions, as well as a violation of the customary regulations of armed conflict... Parties to a conflict must also ensure that deceased persons are ... buried in individual graves, as far as circumstances permit.}\textsuperscript{183}

The UN Secretary-General’s 2021 report on protection of civilians in armed conflict cited examples of efforts to posthumously identify persons buried in mass graves, including the establishment by the Libyan Ministry of Justice of a Committee of Mass Graves. The Committee was mandated to investigate mass graves discovered in Tarhunah, identify victims and bring perpetrators of crimes to justice.

It should be recognised, however, that civilian remains and graves are often left undiscovered and unidentified until years after a conflict ends. Unmarked mass graves have been, and continue to be, a feature of many conflict areas. The conflicts in Iraq, Syria, Ukraine and the former Yugoslavia have revealed a systemic practice of concealing civilian graves.\textsuperscript{184} In February 2022, just prior to its full scale invasion of Ukraine, Russia brought into effect national regulations allowing for mass burial for victims of armed conflict.\textsuperscript{185} [In contrast, Bosnia and Herzegovina amended its criminal code in 2005 to impose a maximum three-year prison sentence on any person who ‘having knowledge of the location of a mass grave, fails to inform of its location.’]\textsuperscript{186} Notwithstanding their widespread occurrence, the universal international condemnation of the use of mass and/or clandestine graves confirms that they are considered violations of customary law.

\textsuperscript{182} Henckaerts and Doswald-Beck, Volume 0, op. cit., 2735.  
\textsuperscript{185} Radio Free Europe/Radio Liberty, Russia introduces regulations to expedite mass burials of those killed during military conflicts.  
\textsuperscript{186} Bosnia and Herzegovina, Criminal Code 2003 as amended 2005, Article 231a.
The obligation to return human remains

Identifying the deceased is essential for enabling their remains to be returned to their home country or next of kin. The 2016 commentary to Geneva Convention I declares that “return of the dead to their families can be considered a basic humanitarian goal, recognized in both conventional and customary humanitarian law.”

Geneva Convention I requires states to establish an 'Official Graves Registration Service', whose mandate includes facilitating future exhumation and identification of bodies, and their ‘possible transportation to the home country’. It is also responsible for safeguarding the ashes of the deceased ‘until proper disposal thereof in accordance with the wishes of the home country’. Geneva Convention II clarifies that, where the bodies of the dead are brought to land (rather than disposed of at sea), the provisions of Geneva Convention I shall apply.

In relation to prisoners of war, Geneva Convention III requires that the Official Graves Registration Service keep the ashes of the deceased ‘until proper disposal thereof in accordance with the wishes of the home country’. Geneva Convention IV requires that the detaining authorities retain the ashes of civilian internees who have been cremated, and that these ‘shall be transferred as soon as possible to the next of kin on their request.’

Additional Protocol I requires parties to conflict to conclude agreements in order to, inter alia, ‘facilitate the return of the remains of the deceased and of personal effects to the home country upon its request or, unless that country objects, upon the request of the next of kin.’

The ICRC study concluded that returning human remains to the party to which they belonged, or to the next of kin, is customary law in international armed conflicts. Rule 114 states:

**Rule 114. Return of the Remains and Personal Effects of the Dead**

*Parties to the conflict must endeavour to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon the request of their next of kin. They must return their personal effects to them.*

This rule is supported by a large quantity of state practice, including provisions of numerous military manuals. Examples of state practice in international armed conflict include agreements to return the remains of both military and civilian dead in the conflict between Egypt and Israel in 1975-76. In 1991, Indonesia returned the ashes of 3,500 Japanese soldiers killed during the Second World War in Irian Jaya. The Abu-Rijwa case before Israel’s High Court in 2000 has been cited as evidence that, if they can be correctly identified, Israel will return human remains to family members.

The obligation to return human remains is less clear in relation to non-international armed conflicts, although the ICRC study found that ‘there is a growing trend towards recognition of the obligation of parties to a conflict to facilitate the return of the remains of the dead to their families upon their request.’ The study noted that such an obligation is ‘in keeping with the requirement
of respect for family life’ as identified in Rule 105, and this implies that ‘it should apply equally in both international and non-
international armed conflicts.’ This interpretation is also supported by UN General Assembly Resolution 3220 (1974) which called
upon parties to armed conflicts, regardless of their character, ‘to take such action as may be within their power...to facilitate the
disinterment and the return of remains, if requested by their families’. Similarly, Security Council resolution 2474 (2019) urges all
parties to conflict to ‘return [the remains of the dead], whenever possible, to their relatives, consistent with applicable obligations
under international humanitarian law and human rights law’.

198 Ibid.
199 General Assembly resolution 3220, Assistance and co-operation in accounting for persons who are missing or dead in armed conflicts (6 November 1974).
200 Security Council resolution 2474, op. cit.
Establishing a shared understanding of states’ obligations to ensure all casualties of armed conflict are accounted for is essential for ensuring these commitments are implemented in practice. This report has endeavoured to develop this understanding by providing a comprehensive guide to the relevant principles, duties and obligations in both human rights and humanitarian law that are the foundation of casualty recording.

**ECC calls on states, international organisations, civil society, and other stakeholders to work together to identify, develop and share best practice in implementing the obligations highlighted in this report in full.**

**ECC further calls on all states to:**

1. Review national legislation, policy and military manuals to ensure that these adequately incorporate and give effect to their international legal obligations to account for the dead in all situations of armed conflict or other gross and widespread human rights violations.

2. Ensure all relevant national actors, including policy-makers and military personnel, are aware of the nature and full extent of the state’s obligations to account for the dead; develop protocols and training as necessary.

3. Use all relevant opportunities to promote international recognition and implementation of the principles and obligations detailed in this study.

4. Support and adequately resource independent mechanisms to assist with implementation of these obligations in situations where the responsible state is unwilling or unable to do so adequately.