



The Contribution by
(Forensic) Archaeologists to
Human Rights Investigations
of Mass Graves

KIRSTEN JUHL

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The editors preface

Museum of Archaeology, Stavanger, here presents a subject, which is not earlier published in the museum's series, an actual subject, which add to the discussion in society, openness and dialog. Kirsten Juhl has collected available material about investigations of modern mass graves in the world where archaeologists participate and archaeological methods are included as part of the investigations. This is presumably the first collected presentation in its kind in Norway and may be also internationally. The subject is important internationally compared to human rights, included the countries populations which are touched. The publication shows how archaeological methods can be used analytical of very great present interest and adding to solve new problems. The excavation reports from mass graves are mainly covered by secrecy. Therefore much information about archaeological methods and results from the investigations are not available and included at the moment. Probably will archaeological methods and experience in time be a more important part during investigations of mass graves than to day as this paper indicate. The publication was at first prepared as a master degree paper within resilience managements at University of Stavanger, at that time University college in Stavanger.

Gitte Kjeldsen and Lotte Selsing
Museum of Archaeology, Stavanger
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Since the German “*Nacht und Nebel*” policy of World War II and their industrialised killing of Jews and Gypsies in the Holocaust, state institutionalised, deliberate and systematic practices of making people disappear – whether for political, religious, ethnic, cultural or other motives – has been known as an efficient tool of war and repression. The systematic practice of making people disappear is now known as *enforced disappearance*, and has lately been recognized as a *crime against humanity*. Both genocide and crimes against humanity is often associated with the use of mass graves in order to conceal the crime and also prevent individual identification.

Over the past twenty years forensic experts, and among these archaeologists, have been contracted or subcontracted to investigate such mass graves by truth commissions, local courts and international tribunals, local and international human rights and family associations in together more than forty countries all over the world.

The present study explores how excavating such mass graves may serve different purposes related to the societal rebuilding processes in the aftermath of violent conflicts whether internal or international, and thus contribute to societal security and safety. The focus is on the role and contribution of archaeologists in this process. For this purpose a conceptual distinction is made between *excavating mass graves* (focusing on the mass grave as an archaeological feature) and *exhuming human remains* (focusing predominantly on retrieving the human remains).

The history, principles and mechanics of scientific mass grave excavations are discussed and illustrated with examples from Latin America, former Yugoslavia, Rwanda and most recently Iraq, focusing on the role of archaeology as an integrated part of a multidisciplinary forensic team work. It is demonstrated how evidence from mass grave excavations has been important to truth commissions in Latin America (Guatemala, El Salvador, Peru), and to cases brought before human rights courts. For example the Dos Erres case where the Guatemalan governments was sentenced to pay reparation and provide physical and psychological treatment to survivors and relatives, and to build a memorial. It is further demonstrated that the evidence from excavations of mass graves is an important factor in getting war criminals convicted, as for example in the case against Krstic, who was sentenced to 35 years in prison based on evidence from 21 mass graves related to the Srebrenica Massacre.

It is argued that historically two investigation strategies have been employed. In Latin America one has integrated the excavation and exhumation concept into one investigation concept. In former Yugoslavia one has distinguished between the excavation and exhumation concepts, but achieved a holistic strategy through complementary institutions conducting the investigations – the *ad hoc* International Criminal Tribunal for former Yugoslavia (ICTY) and the International Commission on Missing Persons (ICMP)/the national CMPs. The recent development of mass grave investigations in Iraq seems to introduce a third concept and overall strategy.

It is concluded that human rights mass grave investigations have contributed significantly to the success of national as well as international truth commissions, human rights courts, criminal courts and tribunals throughout the world – and thus consequently to both truth and justice. The contribution has been most evident in Latin America and former Yugoslavia. However, the field is rapidly growing and forensic anthropology and archaeology is

increasingly incorporated into international crisis and conflict management strategies – notably by the United Nations.

Human rights mass grave investigation teams have in general pursued three major purposes: humanitarian, legal and historical purposes. Establishing a historical record – the factual truth of what happened and in which sequence at a specific location at a specific point in time – is paramount to pursuing the legal and historical purposes and important also to reaching the humanitarian purpose of identifying victims. It is concluded that the significance of the contribution by archaeologists to human rights mass grave investigations lies with their unique ability to provide this historical record.

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Authors preface

The present publication was originally delivered on June 30, 2004, as a thesis for the Master degree in Societal Safety (Resilience Management) at the University of Stavanger, Department of Media, Culture and Social Sciences, Faculty of Social Sciences, Norway. No supplementary information has been added after that date. The text has been corrected as regards grammatical and linguistic errors. Only minor alterations have been made for the sake of clarifying the meaning of a sentence or paragraph. A number of abbreviations, mainly of organisations central to the topic, occur in the text. These abbreviations are listed together with the literature references. All references are basically given according to alphabetic, subsidiary chronological order. However, a number of references have no author in the usual sense of the word. Instead the abbreviation of the publishing organisation is used followed by year of publication. The exception is references to cases brought before the *ad hoc* International Criminal Tribunals for former Yugoslavia (ICTY) and Rwanda (ICTR) which are referred to by the year the case was filed. Also references to United Nations documents follow the specific system used by the UN. Full text World Wide Web references to literature are given whenever possible. In case the www-reference is to an abstract only, this is explicitly stated. All www-references have been checked to be valid as of 24 March 2005.

I want to thank my former colleagues at the Museum of Archaeology, Stavanger, Norway, Senior Researcher, *Jenny-Rita Næss*, for suggesting the thesis for publication in the museum series of publication, and Research and Development Coordinator, *Lotte Selsing*, for nurturing it through to publication. I sincerely want to thank my supervisor, *Odd Einar Olsen*, Professor with the Department of Media, Culture and Social Sciences, University of Stavanger, Norway, for being always positive and continuously encouraging during my work with the thesis. I also want to thank the Librarians *Gro Hansen* and *Liv Bakke* at the Museum of Archaeology, Stavanger, Norway, to whom I delivered an incredibly long list of literature that they did a great job to get me. I also want to thank the institution for granting me a leave of absence for the spring term of 2004 in order to be able to do the thesis, and its Director, *Harald Jacobsen*, for acting as my reference. Not least, I want to thank the respondents to the questionnaire I prepared for the thesis: *Ralph Hartley* – Archaeologist – Archaeological Assistance and Partnership Program Manager, Park Programs, Midwest Archaeological Center, Lincoln, USA; *John Hunter* – Archaeologist – Professor of Ancient History and Archaeology at the University of Birmingham, UK; *Rebecca Saunders* – Archaeologist – Associate Curator of Anthropology, Museum of Natural Science, Louisiana State University, Baton Rouge, LA; Adjunct Professor, Department of Geography and Anthropology, Louisiana State University, Baton Rouge, LA.; and Research Affiliate, South Carolina Institute of Archaeology and Anthropology; *Douglas D. Scott* – Archaeologist – Great Plains Team Leader, Park Programs, Midwest Archaeological Center, Lincoln and Adjunct Professor, Department of Anthropology, University of Nebraska, Lincoln, USA; *Mark F. Skinner* – Bio-archaeologist – Full Professor of Biological Anthropology, Department of Archaeology, Simon Fraser University, Burnaby, British Columbia, Canada; and *Eric Stover* – Human Rights Researcher – Director of the Human Rights Center and Adjunct Professor of Public Health, University of California, Berkeley, USA.

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Kirsten Juhl

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1 INTRODUCTION

According to the White Paper on the Safety and Security of Society presented to the Norwegian Parliament by The Ministry of Justice and the Police in 2002, the concept societal safety and security “*may be described as the ability society has to maintain crucial societal functions and protect the life, health and fundamental needs of its citizens during various types of strains*”¹. This involves an ability at the societal level to produce measures to prevent or reduce the potentiality of undesirable events (whether intentional like terrorism or war, or unintentional like mass disasters and natural catastrophes); measures to reduce the damages when such events do nonetheless occur; and measures to secure the (re)establishment of (desired) normal conditions as soon as possible after the event. It is meant to apply both to war and major societal crises and catastrophes in times of peace. The analyses and recommendations made in the report are of course aimed specifically at the Norwegian society. However, the definition should be valid also to other national societies as well as to the larger international or world society.

The distinction between national and international threats to societal safety and security is becoming increasingly blurred. Although international terrorism to some may seem the most obvious threat at the moment, the White Paper stresses also the international violent conflicts that originate in ethnic polarisation and conflicts within a national state as a threat to societal security to which Norway has to relate. This sort of conflict affects large segments of civilian populations, often to a degree that destabilises whole regions with hundreds of thousands of people made homeless, displaced within their own country or refugees abroad – if not killed. They may constitute a significant problem to the international security as well as to that of the nations directly involved in conflict. To a certain degree it affects the security of our own society, as we are giving refuge and/or asylum to people having fled their home countries carrying a luggage of utterly traumatic experiences, we are sending humanitarian aid workers to help nations in conflict, and we are engaging as peace facilitators on both the political and military level. Humanitarian considerations have thus grown to become a more direct part of the national safety and security policy than before².

In the aftermath of war and violent conflicts, society is often down on its knees. It has not been able to produce measures to prevent the events from taking place, and it has not been able to reduce the damages of the events to any significant degree or to “*protect the life, health and fundamental needs of its citizens*”. Actually, in many instances society itself – i.e. the state authorities – has been the culprit initiating as well as escalating the events. After the events comes the multifaceted task of rebuilding society and get it (back) to a desired normal, a long and tedious task which is more difficult, the more severe the conflict has been. One has to come to terms with an often massively abusive past in order to be able to move on, build new and resilient, democratic institutions, and prevent repetitive occurrences of the conflict and its horrors.

In the general chaos of war and armed conflict, people may go missing for various reasons. However, since the German “*Nacht und Nebel*” policy of World War II and their industrialised killing of Jews and Gypsies in the Holocaust, state institutionalised, deliberate and systematic practices of making people disappear – whether for political, religious, ethnic, cultural or other motives – has been known as an efficient tool of war and repression. The

¹ St. Meld. 17, 2001–2002:section 1.2

² St. Meld. 17, 2001–2002:section 5.2.1

immediate post-war period saw the international society working intensely taking preventive measures against such practices in order to “*never again*” experience the horrors of the third “Reich”³. However, good intentions without a system to efficiently enforce them is not enough, and thus there have been many “*never agains*”.

The systematic practice of making people disappear has since 1978 been known as *enforced disappearance*. In 1992 the United Nations made a declaration about enforced disappearances and with the Rome Statute of the International Criminal Court of 1998, that entered into force 1 July 2002, it became fully recognised as a *crime against humanity* within international criminal law⁴. Death is not always, but often, the final outcome of an enforced disappearance and may be part of the practice of making people disappear. Such practices not only inflict upon the relatives the terror and trauma of not knowing the fate and whereabouts of their loved ones. In the absence of a death certificate of the disappeared, the family may also suffer economically and socially, they may be threatened on their own lives and they may be stigmatised as they become dangerous to associate with. The terror of making people disappear thus diffuses into the rest of society as it consists not only of individuals who choose to associate themselves with one or the other party to the conflict, but also of individuals who choose to try and dissociate with the problems altogether.

Societal rebuilding processes in the aftermath of conflict are often designated reconciliation processes. Reconciliation cannot be state institutionalised – it is for individuals to find and to grant. However, the process may be facilitated by political, humanitarian and judicial means. Over the past thirty years officially instituted reconciliation processes have thus become typical of the transition into democracy of former authoritarian or totalitarian societies. Truth commissions have become a popular strategy for reaching reconciliation and achieving new democratic order. Sometimes truth investigations and legal proceedings have been conducted parallel to each other, but very often the perpetrators of the former abuses have been granted amnesty as happened in most Latin American countries in the 1980s and early 1990s, and in many instances they even kept office. However, since the *ad hoc* International Criminal Tribunals for the former Yugoslavia and Rwanda began working in the 1990s, the struggle against impunity seems to have grown stronger both internationally with for instance the establishment of a permanent International Criminal Court in The Hague at the turn of the century, and nationally as for instance in several Latin American countries.

This study concentrate on the type of conflicts in which state authorities have directly ordered, induced, sanctioned, or “institutionalised” massive human rights abuses as a means of disposing with political opponents or other “unwanted elements” by death and mass killing, and the concealment of the fact by disposing with the dead in mass graves. Over the past twenty years forensic experts, and among these archaeologists, have been contracted or subcontracted to investigate such mass graves by truth commissions, local courts and

³ By the establishment of the United Nations in 1945 and its adoption of The Universal Declaration of Human Rights and the Convention on the Prevention and Punishment of the Crime of Genocide by The United Nations in 1948. By the adoption of the four Geneva Conventions by a diplomat conference held by The International Committee of the Red Cross in 1949 (additional protocols I and II, 1977). And not least by the setting up of the International Military Tribunals by the four Allied powers to prosecute the major war criminal of the Nazi regime (the Nuremberg trial) and Japan (the Tokyo trials) in 1945.

⁴ UN Doc A/RES/33/173 of 20 December 1978; UN Doc A/RES/47/133 of 18 December 1992; OHCHR Fact Sheet No. 6; UN Doc A/CONF.183/9, of 17 July 1998:Rome Statute Article 7, 1.(i). The concept is defined as relating to persons “*arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law*”.

international tribunals, local and international human rights and family association NGOs in more than forty countries all over the world⁵.

- The present study explores how excavating such mass graves may serve different purposes related to the societal rebuilding processes in the aftermath of violent conflicts whether internal or international.
- The idea is not to discuss which purpose is the most preferable to pursue – truth or justice, but rather to explore somewhat into the question of how mass graves investigations may help bring along *both* truth *and* justice – and specifically how archaeologists and the use of archaeological investigation techniques may contribute to reaching these objectives.

2 RESEARCH AREA, METHODS AND DELIMITATIONS

The research area and its delimitation are defined through the working title of the study:

The Contribution by (Forensic) Archaeologists to Human Rights Investigations of Mass Graves allegedly resulting from Genocide or Crimes against Humanity.

The emphasis is placed on the purposes and philosophy behind such mass grave investigations and how the participation of archaeologists helps fulfil these purposes.

The field of modern mass graves investigations is narrow, and the problem it is to cope with immense. The International Committee of the Red Cross (ICRC) presents an interactive map, valid as of January 2003, giving an overview of the overwhelming magnitude of the problem⁶. In 2002, the ICRC launched a major initiative called “*The Missing. End the Silence – Action to resolve the problem of people unaccounted for as a result of armed conflict or internal violence and to assist their families*”⁷. During 2002 they hosted a number of workshops involving people from various professions and organisations, including forensic teams and professionals, concluding the workshops with a conference held in spring 2003⁸.

Although it is not self-evident, for the sake of delimiting the research area of this study it has been assumed *a priori* that mass grave investigations are making a significant contribution to solving the problem of the missing. This assumption is based on the fact that both associations of relatives of the missing as well as national and international institutions have repeatedly called for such investigations and continue to do so. However, one may make a distinction between the mass grave as an object of investigation *per se* and the mass grave as a container of human remains, these being the object of investigation. Thus, theoretically the *exhumation* of human remains may be significant, while the *excavation* of the mass grave (or mass grave-related feature) may not be important. This question will be addressed in the study as it relates closely to stated purposes and possible conflicts between purposes – and also it relates to the question of what archaeologists and/or archaeology may contribute to reaching such purposes. However, the potential significance is not grade on any sort of scale.

The term forensic science is a collective term comprising a group of disciplines putting the services of their particular field of specialisation at the disposal of the medico-legal system. Among these is archaeology. All the forensic professions somehow deal with the material

⁵ See chapter 3

⁶ ICRC 2003b

⁷ ICRC home page, The Missing

⁸ ICRC 2002, 2003a

evidence and the physical traces produced as remnants of both human and natural agents and preserved long after the events that caused them. They all share an attention to detail and a proceeding by meticulous working and analysis methods. Unfortunately, even if new methods to speed up the investigation process are constantly developed and implemented (within archaeology for instance by using electronic mapping devices or using heavy machinery for stripping off the top soil, within anthropology by using DNA-analysis), these working methods are also still painstakingly slow. Thus, they may seem quite out of proportion with the problem to solve. Being an archaeologist myself, I have chosen to explore this specific discipline's contribution to mass grave investigations rather than focusing on the more obvious disciplines of forensic pathology and physical anthropology. However, academics tend to perceive their own profession and their own specific field of it as being of the utmost importance to whatever matter they get involved with. Thus, another obvious question to address is:

Are archaeologists at all important to achieving the stated purposes of human rights mass grave investigations? And if so, how important are they and in what ways?

Again, this is not self-evident. If conducting an excavation (focusing on the feature with its contents as opposed to exhumation focusing primarily on retrieving the human remains) is not significant, archaeologists may not be needed at all. And even if excavation is considered significant, maybe others could do it just as well or even be more appropriate, as for instance experienced crime scene investigators.

The application of forensic science to human rights investigations of mass graves goes back 20 years, but especially in the past decade this has been a rapidly growing field internationally. And yet, it may still be described as a comparatively new field, not commonly known outside of the narrow circles of those professionals directly involved. Most, more traditionally employed archaeologists, have no notion of this particular field of the application of archaeology, and most other people perceive archaeology as dealing entirely with the distant past of long forgotten cultures – and maybe as suited only for this purpose. Doretti and Fondebrider, co-founders of the Argentine Forensic Anthropology Team (EAAF) relate their difficulties in overcoming such mental barriers when they first pioneered archaeology into the field⁹. Even professionals dedicated to human rights investigations do not seem to have been fully aware of archaeology being a profession having something to contribute in this respect. After nearly 20 years of application, a workshop on human remains, part of the above mentioned ICRC-project *The Missing*, as late as 2002 listed archaeology as a forensic discipline along with pathology, physical anthropology, odontology, entomology, radiology, fingerprint identification, photography, molecular biology, and mortuary science, only *after* the completion of the workshop¹⁰.

This study therefore is meant primarily to be exploratory, and will be descriptive rather than analytical, my main sources being literature, official documents and internet sources. As the field is generally little known, I have tried to paint as broad a canvas as possible of human rights investigations of modern mass graves resulting from abuses by state agents. As a prehistoric archaeologist I have planned, conducted and documented excavations within various types of archaeological sites and periods. On this background I feel able to appreciate the work of the archaeologists working within human rights investigations. However, I have no first hand experience within the field. Thus, my appreciation of the relative importance of the archaeologist's contribution to the various objectives of mass grave investigations could

⁹ Doretti & Fondebrider 2001:141.

¹⁰ ICRC 2002: section 2.1.1.4. Archaeology was not included in the preparatory documents: see section 5.2.7

easily become pure speculation. In order to have the personal opinion and experience of some of those who have actually worked within the field to set me right, an open-ended questionnaire was prepared. The questionnaire was made with a specific view to former Yugoslavia and Rwanda, as these are the only places where international criminal tribunals have been set up (Appendix A). The questionnaire was sent by e-mail to nine individuals being either key player, participants to or in other ways involved with mass grave investigations, as well as to two organisations, The Argentine Forensic Anthropology Team (EAAF) and The Guatemalan Forensic Anthropology Foundation (FAFG) respectively. These two organisations did not answer at all. One respondent preferred not to try to answer the questionnaire at all, while two others originally said they would come back later with a reply. However, for some reason or other they never got around to it. Thus, six respondents replied to the questionnaire: four archaeologists, one bio-archaeologist and one non-archaeologist.

The advantage of primarily getting answers from people generally within my own line of profession is that they can be supposed to associate more or less the same connotations with concepts used in the questionnaire that I do. For instance, the archaeological concept of context refers to the physical context in which finds occur, and is distinctly different from a societal concept of context which refers to the specific societal situation in which a phenomenon (in this case mass graves) occurs. The disadvantage is that the respondents may be biased as to the importance of their own contribution, but on the other hand they may also be the only ones to recognise the unexploited potentialities of their profession. I had hoped to have more non-archaeologists answer the questionnaire to sort of balance this disadvantage, but as previously mentioned I did not succeed in this.

However, the questionnaire was always meant to be supplementary to the main sources. On purpose, it was *very* open-ended as I wanted the respondents to answer according to their own perception and personal experience of the relative importance of various aspects of investigating mass graves. The purpose was not to find a pattern that could be considered representative, but rather to deepen my insight into the field. Thus, the questionnaire has not been followed up with new rounds of questions exploring further into individual answers, as I might have done, had the answers been my main source of information. Still, I have tried to make some generalisations based on the answers. These are presented in chapter 6. I did not promise the respondents anonymity, and no respondent has required it. As I have not subsequently consulted the respondents, I can only hope they will not consider my way of using their answers a contortion of the opinions they have offered.

3 THEORY AND CONCEPTS

3.1 Democracy as a crucial societal security parameter

In an effort to describe all unlawful killings by government in the 20th century, the American scholar R.J. Rummel invented the term *democide*¹¹ to comprise genocide¹², politicide and mass murder. The concept covers any action by government designed to kill or cause the death of people. Rummel uses the legal definition of genocide which applies to the destruction of national, ethnical, racial or religious groups, but restricts his interest to

¹¹ From Gr. *demos*, people + *-cidium*, murder, from Lat. *caedere*, to kill. Rummel 1994:chapter 2.

¹² From Gr. *genos*, race, nation or tribe, + *-cidium*, murder, from Lat. *caedere* to kill. The concept genocide was originally developed by the scholar of international law, Raphael Lemkin 1944: chapter IX.

genocidal killing¹³. Instead of stretching the concept of genocide beyond its legal definition¹⁴, Rummel preferred to introduce the term *politicide* – defined as the premeditated killing or murder of any person or people by a government because of their politics or for political purposes. Mass murder was defined as the indiscriminate murder of any person or people by a government¹⁵. Rummel presents a figure of 170 million or more victims of democide in the period 1900–1987. Of these 38.5 million alone became victims of genocide, a number that equals that of battle-dead in national and international wars in the same period¹⁶. These figures are thought-provoking, and yet they do not include such victims of genocide as the Iraqi Kurds (1987–1988), the Muslims of former Yugoslavia (1991–1995 and 1999), the Rwandan Tutsis (1994), or victims of other types of democide since 1987¹⁷. Rummel was able to demonstrate a direct correlation between the degree of power resting with government and state authorities (divided into democracies where power is divided and limited, authoritarian and totalitarian states where power is concentrated or absolute) and the extent to which government inflicts democide upon both its own subjects and foreigners. Although democracies fight non-democracies, they do not make war on each other; and although they have committed democide, democracies are responsible for less than 1.5 % of all democide in the period studied. Predominantly, democide by democracies is foreign democide committed during war such as indiscriminate bombing of civilian targets, for instance the nuclear bombing of Hiroshima and Nagasaki, or the atrocities committed by the Americans in Vietnam¹⁸. Rummel’s conclusion is clear: *“The way to end war and virtually eliminate democide appears to be through restricting and checking Power. This means to foster democratic freedom”*¹⁹.

According to Rummel then, democracy as a societal system in itself promotes societal security with respect to state institutionalised mass killing of civilians.

3.2 Managing crises and its consequences

According to Rosenthal et al. an omnibus definition of the concept crisis may be “a serious threat to the basic structures or the fundamental values and norms of a system, which under time pressure and highly uncertain circumstances necessitates making critical decisions”²⁰. Crises are characterised by upheaval and collective stress, uncertainty, inconceivability, a sense of urgency; and not least they are culturally and politically defined events containing various levels of conflict and arousing strong emotional responses. A crisis is not necessarily a distinct event; rather Rosenthal et al. strongly stress the dynamic aspects of the concept of crisis. They have causes and both short-term and long-term consequences which may be very hard to repair and which may produce “crises after the crisis”. Crisis is to be seen as a

¹³ UN Doc GA/RES/260(III) of 9 December 1948 Article II: In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

¹⁴ Genocide as a crime aiming also at political groups was part of the definition in both first and second draft, but was explicitly excluded from the final convention – First draft: UN Doc E/447:article I,I; second draft: UN Doc E/AC.25/SR.1 to 28:article II; Schabas 2000: chapter 2.

¹⁵ Rummel 1994: chapter 2

¹⁶ Rummel 1994: chapter 1, table 1.2 Details of figures and calculations in Rummel 1997.

¹⁷ Rummel 1994: Preface, note 2.

¹⁸ Rummel 1994: Table 1.6 and fig. 1.6

¹⁹ Rummel 1994: end of chapter 1.

²⁰ Rosenthal, Boin & Comfort 2001:10

process leading a system from one temporary state to another which may take the form of both linear escalation and reinforced feedback loops. Most importantly the crisis need not come as a surprise; often it has had a long incubation period. Crisis thus must be considered in terms of the linkage between three interrelated dimensions: its characteristics, its preconditions, and its consequences²¹. Managing the crisis before and while it develops and not least its consequences, is all part of societal safety and security management.

Rosenthal et al. identify four trends characterising today's crises: *transnationalisation*, *mediatisation* (the media being increasingly involved in defining the nature of a crisis and its consequences), *technological developments* (technology becoming increasingly more complex with unprecedented consequences for the causes and characteristics of crises) and *dissipation of state authority* (crisis responsibilities becoming increasingly a shared concern and co-production between private and public actors).

In accordance with the new concept of crisis and the new trends in crisis development Rosenthal et al. defines four different areas of crisis management challenges:

- *The prevention challenge* – balancing prevention and resilience
- *The planning challenge* – institutionalising a contingent way of thinking
- *The response challenge* – coping with crisis dilemmas
- *The aftermath challenge* – opportunity management

Of special interest to the present study is of course the trend of dissipation of state authority and the challenges that arise in the aftermath of conflict. Often in the transition phase from a state system having massively abused the human rights of its citizens to a democratic system, the new order is fragile. The transitional government may be weak, former societal institutions may be compromised and new ones not yet implemented; and in general people may have learned the hard way to be deeply distrustful of state institutions and not yet be daring to put confidence in the institutions of a dawning democracy that no one can be sure is going to last.

3.3 Public expectations and authority responses

In her book *“Flirting with Disaster. Public Management in Crisis Situations”*, Schneider presents a theory of how the correlation between the norms emerging in a population struck by disaster and the norms of the response system may be paramount to the success or failure of managing the crisis. Although she is explicitly exploring natural disasters in the US and the response of well-established US governmental agencies that are not only expected, but also trusted to take hand of the situation, her model and some of her findings may still have a bearing on situations as the ones being at the bottom of the present study. Existing social norms guiding standard human interactions are upset when a crisis occur. The crisis may be so severe, and the conditions so previously unimaginable and incomprehensible that universally understood and accepted values no longer appear relevant. According to Schneider, in nearly every such disruptive situation there appear to be an invariant sequence of behaviours among the population affected – a phenomenon known as *collective behaviour* defined as non-institutionalised interactions and behaviour patterns²². This sequence consists of four basic components or phases:

²¹ Rosenthal, Boin & Comfort 2001:21

²² Schneider 1995:48–54

- *The milling phase* – defined as the widespread search for meaning and appropriate standards of behaviour, being most pronounced when existing organisations and institutional procedures are inadequate or inappropriate, and further exacerbated by breakdowns in communication and transportation. This phase is usually completed as quickly as possible
- *The rumour phase* – in lack of appropriate or believable accounts from traditional authorities, people start to seek critical information on the situation via informal and unconventional channels of communication
- *The keynoting phase* – the selection of specific ideas and concurrent elimination of others will eventually give meaning to the situation. The keynoted, or shared, image of the situation enables the affected population to end the milling process
- *The emergent norms phase* – reaching a new set of norms to guide their behaviour and enable them to cope with their conditions and circumstances. The exact content of these norms is situation specific and usually cannot be predicted on *a priori* grounds

According to Schneider, the emergent norms are discarded and traditional norms come back into play when the crisis is managed and pre-disaster conditions are restored. How the crisis is managed and what approach of the response system is invoked, depends on how well correlated are the emergent norm among the affected population and the, predominantly bureaucratic, norms of the response system – the bigger the gap, the more problematic the crisis management. A very big gap may even produce new *crises after the crisis*.

3.4 Mass graves – definitions and typologies

Various definitions and typologies of mass graves have been put forward. Each definition or typology employs and/or emphasises different qualifiers such as the minimum number of individuals buried, different formation and transformation processes, the physical relationship between buried bodies and the specific micro-environment it creates, societal and legal aspects of the killing or the creation of the grave, and so on.

According to Mark Skinner a mass grave contains many (at least half a dozen) individuals, while Mant is more modest regarding numbers: two or more bodies in contact with each other suffice to define a mass grave²³. Haglund, Connor and Scott state that “*Mass, of course, means a large quantity or aggregate, usually of considerable size*”²⁴. All three definitions recognise a most important characteristic of the mass grave – the human remains being in close contact. Contrary to the situation in multiple burials where the bodies are laid out parallel to one another reflecting a general concern for the dignity of the deceased, in mass graves they are placed indiscriminately, tightly together and with no reverence for the individual²⁵. To this definition Skinner et al. have later added murder being the manner of death and concealment on the part of the perpetrator during times of war or civil conflict being the origin of the feature²⁶.

The final report of the United Nations Commission of Experts to the former Yugoslavia defines a mass grave as any site intended as a place of permanent interment from which the bodies are prevented from being moved by natural elements, and which contain two or more

²³ Skinner 1987; Mant 1987

²⁴ Haglund, Connor & Scott 2001:57

²⁵ Skinner, York & Connor 2002:294 note **; Haglund 2002:245

²⁶ Skinner, Alempijevic & Djuric-Srejcic 2003:82 note 4

bodies²⁷. Non-burial methods of body disposal such as dumping them into rivers where they can float away or just leaving them on the surface, clearly do not qualify as methods of interment. On the other hand, the term interment will include some quasi-burial methods of body disposal, for instance gathering people in confined spaces and setting the place ablaze. As the structure collapse, the debris will bury the remains and thus create a mass grave. “The Marquez house” of the El Mozote massacre in El Salvador may serve as an example²⁸. The Experts Commission identified four general types of mass graves focusing on the legal aspects both of the grave and of manner of death of those contained²⁹:

- Sites containing bodies of not unlawfully killed civilians or combating soldiers, buried in a proper way
- Sites containing such bodies, buried in an improper way
- Sites containing the bodies of victim of mass killing, buried in a proper way
- Sites containing such bodies, buried in an improper way

Not unlawful reasons for creating mass graves may be sanitary necessities, time constraints, security conditions and the magnitude of the death toll.

Another definition focusing on legal aspects is that of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Bacre Waly Ndiaye – defining a mass grave as a location where three or more victims of extra-judicial, summary, or arbitrary executions, not having died in combat or armed confrontations are buried³⁰. This definition is used by The International Criminal Tribunal for the former Yugoslavia. Like the Experts Commission’s definition it allows for other types of features than actual graves, like village wells and natural ravines.

The co-founder of the Guatemalan Forensic Anthropology Team, Stefan Schmitt, sets off the *criminal* mass grave from the *accident-related* mass grave, and the type of mass grave that requires *medico-legal* investigation from the type that does not (mostly a matter of chronology setting off modern mass graves from ancient ones)³¹. The criminal mass grave is containing the remains of a group of individuals (meaning more than one) who share “*some common trait that justified their assassinations in the eyes of the perpetrators*”. Schmitt points out that, although mass graves originating from war crimes, genocide or crimes against humanity are often designated clandestine graves implying secrecy and lack of knowledge, always somebody knows about their existence even if unable to point out their exact geographical location. He also points out that in many instances the party creating the mass grave is not the one responsible for the killing, giving as a reason that at the time of the crime perpetrators needed not fear reprisal. The need for concealment often comes only later.

Erin Jessee has recently put forward a definition merging some of the above mentioned definitions: a mass grave being any location containing two or more tightly-packed, indiscriminately or disrespectfully placed bodies representing victims who have died as a result of extra-judicial, summary or arbitrary executions, not including military combatants, who have died as a result of armed confrontations³². She is primarily concerned about the mass grave as a unique *archaeological* phenomenon. In order to improve investigation

²⁷ UN Doc S/1994/674, Annex X, section II A

²⁸ EAAF 2001b:57–60; see chapter 4.2.1

²⁹ UN Doc S/1994/674, Annex X, section II A

³⁰ UN Doc E/CN.4/1993/50, Annex I, article 5; ICTY 1996b

³¹ Schmitt 2002:279

³² Jessee 2003:59–64

methods and their outcome, she has developed an archaeological typology of mass graves and mass grave-related sites with an experimental research design attached to each type. She also discusses shortly the archaeological evidence potentially to be associated with the different types in regard to the specific formation process and the events related to the site.

- Mass grave-related sites: surface execution sites; grave execution sites; temporary surface deposition sites; and permanent surface deposition sites.
- Inhumation sites: *primary inhumation sites* (primary mass graves) sometimes being simultaneously also a grave execution site, *secondary inhumation sites* (secondary mass graves), *multiple deposit interment sites* (a grave containing a stratigraphic series of body masses separated by soil and deposited over a period of time), and *looted inhumation sites* (a grave from which human remains have been removed). Multiple deposit interment sites may include both primary and secondary inhumation sites.

3.5 Excavating mass graves – exhuming human remains

Obviously, burial, quasi-burial and non-burial methods of disposing with the dead pose different professional challenges to the investigator – not least the archaeologist. Another distinction that has a bearing on what professional challenges will meet the investigator, what goals may be achieved and (maybe) whether the inclusion of the archaeologist is needed or not, is the distinction between mass grave excavation and mass grave exhumation.

- The term *mass grave exhumation* I would like to restrict to diggings entirely focused on the retrieval of the human remains for the sake of identification and repatriation. This definition does not imply that the digging itself is not done with the utmost care or that archaeological excavation techniques may not be employed. Nor does it imply that there will be absolutely no focus on context in as far as it has a bearing on the identification.
- The term *mass grave excavation* I would like to restrict to diggings carrying a more holistic perspective focusing of course on the retrieval of the human remains and their identification, but as much on the contextual evidence for the sake of establishing factors involved in the formation of the site and the sequence of events and activities leading to its coming into being. In this definition human remains are treated as part of the context, a find like other finds.

I have to point out, that although Connor and Scott are making the same sort of distinction³³ it is not a distinction that is frequently made within the field. On the contrary, *exhumation* (which literally means digging up a corpse and which is the traditional medico-legal term) is the term normally applied in the literature *to the whole scale* of diggings, from pure excavations in the archaeological sense of the word to pure exhumations.

A particular methodological challenge to mass graves investigators is created by the unique microenvironment and transformation pattern that decomposition of large body masses creates in interplay with other, both natural and man-made, preservation factors such as burial method, contact only with other bodies or also with grave fill, soil conditions (like quality, compaction, porosity and percolation characteristics), time passed, clothing, climate etc³⁴. This phenomenon was first documented in 1950 by the British pathologist Arthur Keith Mant, who used the term “feather-edge effect” to describe the different decomposition rates

³³: Connor & Scott 2001b.

³⁴ Haglund 2002:247–252; see Rinehart 2001 for factors influencing the decomposition of surface remains

that occur within a large body mass³⁵. In the same mass grave one may encounter partially to fully fleshed human remains at the centre, while simultaneously finding partially to fully skeletonised remains at the outskirts of the grave, and also mummification may occur. The depth or shallowness of the backfill and its compaction also influence the preservation of the human remains. An example is the difference between the partially to fully fleshed human remains found in the Ovcara grave near Vukovar in Croatia after five years of interment as opposed to the fully skeletonised remains in the Cerska grave after only one year. While the Ovcara was deep, the Cerska grave was covered only with a thin layer of loose soil. It was shallow, only 1–3 bodies deep and beginning only 45 cm below surface³⁶.

3.6 What is so special about archaeology?

3.6.1 Forensic archaeology versus physical anthropology

In Scandinavia, as in most of Europe or at least North Europe³⁷, archaeology and physical anthropology are separate disciplines originating in the distinctly different educational departments of archaeology and anatomy/forensic medicine respectively. The European archaeologist needs to be familiar with physical anthropology (or human osteology) for the sake of being able to excavate ancient human remains in a proper way – and not least in order to be able to realise when his or her skills are not sufficient and a true expert has to be called in on an excavation. The European physical anthropologist on the other hand need not become familiar with archaeology at all – unless he or she takes a special interest. In Norway for example, there are many prehistoric and/or medieval archaeologists, but only two physical anthropologists. One is working within archaeology researching ancient human remains; the other is working within anatomy, doing also forensic examinations. To the European academic, the distinction drawn between the forensic anthropologist (*sensu stricto*) and the forensic archaeologist (*sensu stricto*) by Skinner et al³⁸ is then the natural distinction to draw.

In most of North America a four-field educational system of anthropology is applied, within which archaeology is taught as a sub-discipline along with physical anthropology, cultural anthropology (in Scandinavia called social anthropology) and linguistics³⁹. As a result most North American physical anthropologists will have at least a basic course within archaeology and thus be somewhat acquainted with the discipline. Archaeology came into human rights investigations of mass graves through the pioneering work of an *American* physical anthropologist recognising the value of applying archaeology to such investigation – Dr. Clyde Snow working in Latin America in the 1980s and early 1990s⁴⁰. All the Latin American forensic human rights organisations are called forensic *anthropology* teams although they consist of both archaeologists and anthropologists, and apply both sciences⁴¹. Still, the focus seems to be predominantly on physical anthropology, and archaeology to be a subordinate discipline. Very often, the term forensic anthropology is used to refer indiscriminately to both physical anthropology and archaeology – or to what I as a Scandinavian archaeologist clearly would perceive as being archaeology. Conventional archaeologist – i.e. archaeologists being first and foremost archaeologists – only came to be

³⁵ Mant 1950; Haglund, Connor & Scott 2001:58

³⁶ Haglund 2002:252

³⁷ Hunter 1997

³⁸ Skinner, Alempijevic & Djuric-Srejic 2003: section 2

³⁹ Connor & Scott 2001:2, Jessee 2003:65 Skinner, Alempijevic & Djuric-Srejic 2003:82–83

⁴⁰ Crist 200; the role of Dr. Clyde Snow is mentioned in several of the references quoted, chapter 4 passim

⁴¹ Chapter 4.1

involved in the field in greater numbers when large-scale mass grave investigations were launched in Rwanda and specifically the former Yugoslavia in the 1990s, and they are still struggling to define their role⁴². Skinner et al. are trying to overcome the differences that may arise when professionals of different traditions and perspectives are to work together on international missions by suggesting a set of guidelines for the exhumation of mass graves⁴³. They introduce a new term – forensic *bio*-archaeology – to unite the roles of physical anthropology and archaeology and at the same time include biological sciences such as botany, entomology and zoology.

Shortly stated:

- *Forensic anthropology* is the application of the methods and goals of physical anthropology to questions of medico-legal significance with a core expertise in obtaining information from hard tissue (bones and teeth) variation whether genetic or acquired (whereas the forensic pathologist is concerned about the soft tissue)⁴⁴.
- *Forensic archaeology* is the application of archaeological paradigms, methods, and goals to questions of medico-legal significance⁴⁵.

3.6.2 Artefactual and contextual evidence

Classifying and analysing earth found objects and groups of objects as chronological, cultural, social or individual identifiers have been a cornerstone in archaeology ever since the Danish numismatist Christian Jürgensen Thomsen in 1816 organised prehistory into Stone Age, Bronze Age and Iron Age based on the artefact material and became the founder of archaeology as a scientific profession. In case the objects are fixed/firm and have a superstructure we call them monuments; in case such objects have no superstructure we call them features (for instance a grave, a posthole) or subsurface structures (for instance a house foundation); and in case they are loose objects, in English they are usually called artefacts. This literally means a crafted object. Thus strictly speaking it does not include human bones, animal or fish bones, macrofossils, pollen or insects – objects that may be encountered at any excavation site and have a great bearing on how to interpret and understand the events that led to the formation (and subsequent transformation) of that site. In order to include loose objects of any sort and avoid semantic discussions, in Scandinavia we use the term “*a find*” in stead of artefact. While artefact studies are a traditional archaeological analysis method, the “artefact” study or analysis of such other finds is the speciality of other professions – physical anthropology/human osteology, zoo-osteology, botany, palynology and entomology. Thus, when in the questionnaire I am asking about the importance of *artefactual* evidence in comparison to biological, physical or anatomical evidence I am referring to this distinction.

Examples of artefacts found in modern mass graves:

- Identification papers, wallets and their contents, coins, amulets and other personal ornaments, clothes, cartridges, cartridge cases and bullets.

Example of a typical archaeological artefact study:

- The ballistic analyses performed by one of my respondents, the American archaeologist Douglas D. Scott, on cartridges and cartridge cases recovered from for

⁴² Connor & Scott 2001a, 2001b; see also chapter 4.2.3–4.2.7 and 4.3.1

⁴³ Skinner, Alempijevic & Djuric-Srejc 2003

⁴⁴ Snow 1982; Rinehart 2001; Scott & Connor 2001:101; Skinner, Alempijevic & Djuric-Srejc 2003:82

⁴⁵ EAAF home page; Connor & Scott 2001b; Scott & Connor 2001:101

instance sites related to the El Mozote massacre in El Salvador or to the Anfal campaign in Iraqi Kurdistan⁴⁶.

After having identified the various firearm types, individual weapons may be identified by a sort of wear pattern analysis and it may be identified how many shots each fired. By processing the *contextual* evidence as well, using *find distribution* maps of the artefact in question and analysing how it relates (the *find association*) to other finds including those that are not artefacts, the pathways of the individual weapons and some of the specifics of the formation of the site in question may be revealed. Especially Scott and Connor point to the core archaeological paradigm behind such analyses – the idea that human behaviour is patterned and thus also the physical remnants of human activities will be patterned⁴⁷. The *find association* concept refers to the way finds may be linked to other finds (e.g. a wallet to particular human remains) and to the physical environment, while the *find distribution* concept refers to the spatial distribution of finds and their spatial relation to each other and the environment including their individual orientation. *Find distribution analyses* may be used to identify activity areas within a site and *find association analyses* for linking finds or activity areas together. In this way a behavioural pattern arises.

Another part of the archaeological concept of context is the *stratigraphic* evidence referring to the vertical (and sometimes the horizontal) sequence of finds and features, cultural (man-produced) and natural (sediment) layers revealing temporal aspects of the site formation even when the time span itself is short.

For *dating* modern mass graves, in many cases one will have to fall back on traditional archaeological dating methods. Relative dating may be provided by styles of clothes and other accessories, while absolute dating may be provided by the *terminus post quem* and *terminus ante quem* dating methods. *Terminus post quem* (“date after which”) refers to the fact that an artefact cannot possibly be included in an *undisturbed* physical context before its own production date, and thus the youngest dated artefact will establish the eldest possible date of the formation of the site in which it is found. Such dating artefacts may be coins or cartridges⁴⁸. *Terminus ante quem* (“date before which”) accordingly refers to finds that prove the formation of the site to be older than the date of the find. Such datings may be provided for instance by the year rings of twigs growing out of the clothing (or the very remains) of a human being⁴⁹. Archaeological dating methods may be valuable by themselves or they may corroborate estimations of *time since death* made by pathologists and physical anthropologists. New scientific dating methods such as for instance soil chemistry may also become valuable⁵⁰.

Just as there is laboratory work to be done after the excavation/exhumation, there are also a number of essential tasks to carry out before getting as far as the actual excavation or exhumation in order to plan and carry this out in the appropriate way:

- Collecting witness information (preferably from more than one witness)
- Surveying for and locating suspected grave (and/or execution) site
- Site assessment, preliminary investigation or trial excavation

⁴⁶ EAAF 2000b:43, 2001b:58–59; Scott & Connor 1997; Scott 2001; see chapter 4.2.1 – 4.2.2

⁴⁷ Scott & Connor 1997:27; Connor & Scott 2001b

⁴⁸ Used for instance dating sites related to the El Mozote massacre in El Salvador: EAAF 2000b:45, 2001b:59

⁴⁹ An example from a forensic case of such dating is given by Hunter 1997:13

⁵⁰ Kimmerle 2004:9

Archaeologists usually have no experience collecting witness information – their witnesses are normally silent or silenced objects. For the other two tasks they are well trained. Archaeologists have developed as well as borrowed, adapted and implemented from other professions a great variety of field investigation techniques as well as laboratory analysis methods. Field archaeologists are trained in reading the landscape and detect topographical and vegetation anomalies that may reveal the existence of man-made disturbances and features. This applies not just to field walking, but also to the analysis of for instance aerial photography. The archaeologist is also trained to detect various indicators of *soil disturbances* that may reveal first of all the site itself, and secondly help define features and structures and detect both primary and secondary disturbances to these objects. However, some searching methods are unfamiliar to the archaeologist, like using cadaver dogs or the sense of smell when examining the probe stick. Finally, archaeologists are trained in (archaeological) site assessment as they usually need to plan the excavation according to a cost/benefit way of thinking – maximising the outcome, while keeping the costs down. This is partly due to the fact that (at least in Norway) even conventional archaeological excavations are not done for pure research purposes, but as a consequence of planned construction building on historical ground with other and often stronger societal interests at stake.

There is one aspect of excavation/exhumation which it is particularly important to stress, the fact that:

- When excavating, we simultaneously destroy the source of evidence, only the documentation and the finds are preserved – whatever the purpose of excavation, it can only be done once.

This destructive and unrepeatable character of excavation of course applies to any digging into the ground, whether done archaeologically or not⁵¹. It has made it paramount for archaeologists to apply rigorous, detailed and unambiguous *documentation techniques* both to field work practices, the subsequent processing of finds and the way these are taken into custody in order to be able to sort of reverse the process back to the original situation. Archives “excavations” of old reports in order to extract new evidence are not uncommon. Thus, the *chain of custody* to be observed in criminal investigations, although more rigorously applied than the archaeological “chain of custody”, should not be a completely surprising concept to the archaeologist⁵².

3.7 Investigation purposes and the concept of physical evidence

The five objectives of mass grave investigations stated in the questionnaire⁵³ may be assigned to three broad categories:

- Humanitarian purposes
- Legal purposes
- Historical purposes

⁵¹ Hunter 1997:17.

⁵² Melbye & Jimenez 1997; Crist 2001:45–46

⁵³ a) Collecting evidence for the indictment and prosecution of alleged perpetrators or the responsible in command, b) Identifying the victims and returning the remains to the families, c) Establishing factual truth counteracting historical revisionism, d) Acknowledging the legal and human rights of the offended party, e) Contributing to preventive measures – based primarily on Haglund, Connor & Scot 2001 & Haglund 2002

In the literature, *humanitarian purposes* in relation to mass grave investigations seem to refer almost exclusively to the needs of relatives for identification and repatriation of the remains of their loved ones in order to bring closure and be able to move on with life – hence also the distinction between excavation and exhumation above. This seems a rather narrow definition that will be discussed more fully later, but for the sake of identifying the potential contribution of archaeologists/archaeology it is kept as this.

Closely linked to identification matters are the acknowledgement of the legal (civil) and human rights of the offended party. *Legal purposes* refer both to the pursue of such legal rights and to the prosecution of criminal offences as codified in the body of international laws, even if pursued in local or regional courts.

Historical purposes refer to establishing a historical record that may counteract historical revisionism. Thus, it refers primarily to factual truth, i.e. establishing facts that it is hard to deny, although their societal implications may be an object of interpretation⁵⁴.

Fulfilling the purposes of these three categories may require different types of evidence, and even identical types of evidence may be treated differently from purpose to purpose. However, *forensic* investigations serve *medico-legal* purposes and thus the corresponding concept of physical evidence is the medico-legal one. The interpretation of this evidence is done by jurists in court and produces a very specific sort of truth – *a legal truth*. Truth in the eyes of survivors, relatives, historians and not least alleged perpetrators may look very different – even if based on the same evidence and even if carrying the legal truth as an element within their own perception of truth. Even the legal truth is a variable sort of truth as civil courts and criminal courts differ on what they will accept as evidence on which to rule their judgement.

3.8 Evidence of identity – personal and categorical identification

In the medico-legal sense of the concept, according to Skinner there are four fundamental varieties of physical evidence that can be obtained from mass graves: 1) evidence of identity, 2) evidence of time of death, 3) evidence of pre-mortem trauma (physical trauma occurring before death), and 4) evidence of cause, manner and mode of death by peri-mortem trauma (occurring in association with death)⁵⁵. As already indicated the concept of identity may be a complex one. Here I am concentrating specifically on the two types of identity, of interest to humanitarian purposes as defined above and legal purposes respectively – *personal identity* vs. *categorical identity*⁵⁶.

A *positive personal identification* is based primarily on physical and anatomical traits (generic and acquired) that are unique to that particular individual. DNA-analysis may be the ultimate and conclusive tool to establish positive personal identity. Without DNA-matches reaching such identification is not as easy as it sounds, especially not in poor third world countries where most people enjoy only provisory health care, or in times of conflict when otherwise decent health records may be destroyed along with everything else. In this respect, your dentist and your doctor may know you better than your closest relatives. Would you for instance be able to tell the number of fillings your husband has or give his height as it is stated in his passport? You may want him to be without blemish, but in case he goes missing

⁵⁴ For instance the number of individuals missing after the fall of Srebrenica is a fact that can be established with some certainty, but the recognition of such figures by the government of the Republika Srpska is an example of such facts being interpreted in a specific way, see ICMP home page

⁵⁵ Skinner 1987:269

⁵⁶ Haglund 2002:257-258

you should rather wish for one or two clear-cut physical defects. *Circumstantial* evidence, evidence affiliated with a particular set of human remains – such as identification papers and family photographs carried in wallets, particular personal item, particular outfits and the like – may be produced archaeologically to aid the personal identification process. However, it is important to be aware that the *formal identification* remains in the hands of a forensic pathologists authorised to issue the death certificate. The evidence provided by for instance physical anthropologists and odontologists (so-called hard evidence) and archaeologists and others (so-called soft evidence) thus has to satisfy the pathologist who makes his or her decision based on the totality of evidence.

Contrary to domestic homicides, for the prosecution of war crimes, crimes against humanity and genocide, personal identification is *not* a primary issue⁵⁷. Those killed are not killed because of their private qualities, and the killer usually does not personally know the people he or she is killing. Rather, frequently people are targeted because of their ascribed quality of “otherness”, revealed through their membership of a particular group of people. Within the Geneva Conventions various groups are protected, most notably *civilians and prisoners of war*. Within the Genocide Convention *national, ethnical, racial or religious groups* are the protected groups. As to crimes against humanity, the *ad hoc* International Criminal Tribunal for former Yugoslavia (ICTY) and Rwanda (ICTR), and the permanent International Criminal Court give different specifications of what crimes fall within this concept⁵⁸. With ICTY and ICTR the same nine crimes are listed: murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial and religious grounds, and other inhumane acts. To ICTY they are punishable if committed against *any civilian population in armed conflict*, whereas to ICTR they are punishable if “*committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds*”. The International Criminal Court statute adds to this list of crimes against humanity: forcible transfer of population (which will include ethnic cleansing when falling outside of the legal concept of genocide), sexual slavery/ enforced prostitution/ forced pregnancy/ enforced sterilisation/ other grave sexual violence, persecution of ethnic, cultural or gender groups, enforced disappearance, and apartheid. As with ICTR these acts have to be committed *as part of a widespread or systematic attack against any civilian population*, but excluding the group perspective. Shortly stated, the only lawful group for a state to kill is soldiers or equivalent groups (like guerrilla fighters) and only when done in battle or after previous judicial proceedings.

The contribution by physical anthropologists to group identification in respect to mass graves is the construction of a *demographic profile* of the victims based on biological characteristics (sex, age, stature, and ancestry). However, even biological characteristics are not culturally independent parameters. Rather, they depend on population specific parameters such as variable growth and ageing patterns due to biological, environmental and cultural variation⁵⁹. In spite of such difficulties, the demographic profile may provide some biological group characteristics that contradicts allegations by perpetrators of those buried in a mass grave as being lawfully killed. However, archaeologically produced *circumstantial evidence* may also be highly valuable. Thus for instance the victims found in the Ovcara grave could be categorically identified as *patients* and *hospital staff* due to the presence of bandaged limbs or limbs set in plaster casts and slings, a pair of broken crutches, a catheter dangling from a pelvis, hospital smocks and white clogs⁶⁰.

⁵⁷ Haglund 2002:258, ICTY 1996b

⁵⁸ ICTY Statute:article 5; ICTR Statute:article 3; UN Doc A/CONF.183/9:article 7 (ICC Statute)

⁵⁹ Kimmerle 2004:12–16

⁶⁰ Stover 1997:45–46, Stover & Peress 1998:160

The classification of people into national, ethnical, racial or religious groups is particularly difficult as these concepts are *not* “objective” scientific expressions, but pure social constructs evasive of clear-cut definitions. Thus in the Genocide Convention, according to Schabas, they not only overlap, but also help define each other operating as four corner posts delimiting an area within which a myriad of groups are finding protection⁶¹. He warns against trying to find autonomous meanings for each of the terms as has been tried by the ICTR or in the US Genocide legislation. To North-European archaeologists, the idea that ethnicity can be recognised in archaeological assemblages and contexts has been a particularly touchy subject ever since the abuse of archaeology by the Nazi regime during the Second World War as a mean to sustain and justify the Jewish genocide⁶². In my opinion there is still every reason to be careful about categorical identifications of national, ethnical, racial or religious groups even in modern populations as such identifications are highly context-dependent and based purely on cultural interpretations.

4 MASS GRAVE INVESTIGATING ORGANISATIONS AND INSTITUTIONS

4.1 Forensic human rights investigation teams in the Americas

4.1.1 Argentina and the Argentine Forensic Anthropology Team (EAAF)

Although excavations of mass graves containing missing military personnel goes back to World War II and the post-war period⁶³, the historic first application of forensics and archaeology to *human rights* investigations goes back to Argentina’s re-transition into democracy in the mid-1980s. According to the report *Nunca Mas* (Never Again) of the National Commission on the Disappearance of people, almost 9000 people were made to disappear during Argentina’s “*Dirty War*” 1976–1983⁶⁴. The truth commission was set up in 1984 by the newly elected president Raul Alfonsin under pressure from human rights family associations. The military junta had not only killed detainees by the individual, but had conducted mass executions as well and later secretly disposed of the victims. Without any *corpus delicti*, they thought criminal prosecution would be impossible. Some were dropped from airplanes into the ocean, while others came to be buried in anonymous graves in municipal cemeteries. These latter victims were typically left in public places, collected and buried by the police after being photographed, fingerprinted, and forensically examined, and given both a death and a burial certificate.

Local judges started to order exhumations of such graves, but done unprofessionally the results were not significant. Thus, the head of the truth commission, Ernesto Sabato, and the NGO *Grandmothers of the Plaza de Mayo* requested the help of Eric Stover of the American Association for the Advancement of Science (AAAS). He brought to Argentina a multidisciplinary team of forensic scientists who started training young students of archaeology, anthropology and medicine how to excavate the graves and identify the exhumed remains. Among the AAAS team members was Dr. Clyde Snow, a forensic anthropologist, who would return to Argentina continuously for the next five years to train the hard core of these students. In 1986, the hard core of these students established the Argentine Forensic Anthropology Team (EAAF) as a non-profit NGO to apply mainly

⁶¹ Schabas 2000:111–112

⁶² Arnold 2002

⁶³ Haglund, Connor & Scott 2001:58

⁶⁴ CONADEP 1984

physical anthropology and archaeology to investigations of human rights violations.⁶⁵ The team, consisting today of thirteen full and part-time members, has since worked to recover and identify the remains of disappeared Argentines in Argentina, and from 2000 onwards also in Uruguay. So far, close to a 1000 Argentinean victims have been recovered.

Criminal trials against former military regime officials were conducted until 1986–1987 when two amnesty laws, the Full Stop Law and the Law of Due Obedience, were passed by the Alfonsín government. The Menem government subsequently (1990) pardoned military officials implicated in human rights violations. Between 1986 and 2001 all investigations by the EAAF in Argentina therefore has been carried out purely for humanitarian reasons, commissioned by various associations of the relatives of the disappeared. Although the majority of human rights NGO's were convinced of the importance of forensic investigation, some radically opposed to exhumations. Thus, the NGO *Mothers of the Plaza de Mayo*, who in 1977 staged a protest against the disappearances and in 1982 had been in favour of exhumations, in 1985 split between those in favour and those against exhumation⁶⁶. The two amnesty laws were ruled unconstitutional, null and void by court in 2001, opening up for renewed criminal court proceedings⁶⁷. The Argentine Chamber of Deputies voted to annul the laws in August 2003, but as of spring 2004 the Supreme Court still has to rule about the laws' constitutionality⁶⁸. Still, civil cases for reparation have been processed and Argentine criminal cases taken place in various foreign countries with EAAF members as expert witnesses⁶⁹.

From 1986 onwards, the EAAF also expanded their work beyond Argentina. As of spring 2004, they have been on missions to 30 different countries worldwide⁷⁰. Non-team members, archaeologists or physical anthropologists, from Argentina or other countries are often invited to participate. Also Dr. Clyde Snow has worked with the team on many cases abroad⁷¹. Most of their missions have involved fieldwork, while others have been training and advisory missions. The objectives of their work are to:

- Apply forensic sciences to the investigation and documentation of human rights violations
- Provide this evidence in court, special commissions of inquiry, and international tribunals
- Assist the relatives of the victims in pursuit of their right to recover the remains of their “disappeared” loved ones, so that they can carry out the customary funeral rites and mourn their dead

⁶⁵ Kreisler 1999; Stover & Ryan 2001:9–11; Doretti & Fondebrider 2001; Fondebrider 2002; Doretti & Snow 2003:291–293; EAAF (Equipo Argentino de Antropología Forense) home page

⁶⁶ Robben 2000:81, 91

⁶⁷ Amnesty International Library 2001

⁶⁸ HRW 2003b

⁶⁹ EAAF 2000a:18–30

⁷⁰ Venezuela (1989), Colombia (1989–1995, 1997, 1998, 2001), Guatemala (1991–1995, 1998, 1999, 2000, 2002), El Salvador (1991–1992, 1999–2003), Brazil (1991, 1993, 1996, 1997, 2001), Chile (1991, 1998), Bolivia (1992, 1994–1997), Panama (1992, 1994, 1995, 2001), Iraqi Kurdistan (1992), Croatia (1992, 1993, 1996), Paraguay (1993, 1994, 1999), Peru (1993, 1998, 2001, 2002), Ethiopia (1993, 1994, 1996, 2002), Romania (1993), Honduras (1994, 1995, 1998), Haiti (1995, 1997, 2000), French Polynesia (1996), South Africa (1996, 1997, 1999), Bosnia (1997–1999), Democratic Republic of Congo (1997, 1998, 2002, 2003), Zimbabwe (1999–2000), Uruguay (2000 onwards), Kosovo (2000), Philippines (2000, 2001), East Timor (2001), Cote d'Ivoire (2001–2003), Mexico (2002, 2003), Indonesia (2002, 2003), Sierra Leone (2002, 2003), Kenya (2003), Angola (2003) – See EAAF home page, Reports by Country & Year

⁷¹ Doretti & Snow 2003:292, 294

- Collaborate in the training of new teams in other countries where investigations into human rights violations are necessary
- Conduct seminars on the human rights application of forensic sciences for humanitarian organisations, judicial systems, and forensic institutes in any country where people express interest in this subject
- Contribute to the historical reconstruction of the recent past, often distorted or hidden by the parties or government institutions which are themselves implicated in the crimes under investigation

Since their involvement with the *ad hoc* International Criminal Tribunal for former Yugoslavia, the EAAF seem to have become still more involved on the international scene conducting missions on behalf of national truth commissions, prosecutor's offices or various entities within the United Nations. In 1997 they contracted to assemble and lead an international forensic team as part of a larger UN mission in the Democratic Republic of Congo. However, the entire mission was withdrawn in April 1998 without the team getting into doing excavations⁷². Also the missions to the Ivory Coast⁷³, to East Timor⁷⁴ and to Sierra Leone⁷⁵ were commissioned by entities of the United Nations – the EAAF in each case being contracted through the Office of the High Commissioner for Human Rights (OHCHR). Likewise contracted through the OHCHR, in 2001 they prepared a “*Model Protocol for the Forensic Investigation of Suspicious Deaths Resulting from Human Rights Violations*” to be proposed as law by the Mexican government in 2003⁷⁶.

4.1.2 Guatemala and the Guatemalan Forensic Anthropology Foundation (FAFG)

Much the same story as with the EAAF passed in Guatemala⁷⁷. In 1954 a US-managed military coup inaugurated one of the bloodiest regimes in the Americas. In the early 1960s civil war broke out, lasting for 36 years until finally a peace accord was signed in 1996. Things started to loosen up in 1986 with the first government to be democratically elected since the coup in 1954. In 1990, peace negotiations between the government and a coalition of guerrilla groups were mediated by the United Nations, leading eventually to the establishment of a United Nations truth commission in 1997 (CEH). In its report delivered in 1999, the commission had itself recorded 669 massacres affecting approximately 42 000 people. Taking into account additional sources, the commission stipulated that more than 200 000 people had been killed and/or disappeared by government agencies since 1962⁷⁸. Most of the killings were termed genocide against the Mayan rural population disguised as counterinsurgency campaigns against guerrilla groups⁷⁹.

CEH was the historic first truth commission to explicitly recommend an active governmental policy of locating and excavating clandestine graves, considering this “*in itself an act of justice and reparation and an important step on the path to reconciliation*”, and to recommend it done by forensic teams like the Argentinean team⁸⁰. At that time forensic

⁷² EAAF 1996–97; 1998a; 2002a

⁷³ EAAF 2001f; 2002d

⁷⁴ EAAF 2001a

⁷⁵ EAAF 2002g

⁷⁶ EAAF 2001d, 2002e

⁷⁷ EAAF 1998b; Stover & Ryan 2001:11–15.

⁷⁸ CEH 1999:Conclusion, section I 1–2

⁷⁹ CEH 1999:Conclusion, section II 108–120

⁸⁰ CEH 1999:Conclusion, section III 28–31

scientists had already been working for years excavating mass graves and trying to identify the victims. As in Argentina at first unprofessional exhumations had been carried out and again the help of Stover and Snow was requested. A training program conducted by the American Association for the Advancement of Science (AAAS) in 1991 with the participation of the EAAF led to the formation of a similar anthropological team in Guatemala as in Argentina – The Guatemalan Forensic Anthropology Foundation (FAFG)⁸¹. In 1997, the Office of the Archbishop of Guatemala also formed a forensic team, and in 1999 a third team was formed by a local human rights organization⁸². These three teams united in late 2001. For the Public Ministry of Guatemala, together they have made a manual of how to proceed with forensic anthropology investigations⁸³. During the spring of 2002, eleven members of these teams received death threats supposed to originate from former military and intelligence officers involved in mass killings during the civil war, a threat that still prevails⁸⁴. According to their home page, as of spring 2004 the FAFG had investigated 166 cases related to the internal conflict plus 43 other cases, exhumed 1971 skeletons and analysed 1 569 of these. While the two other teams seem to be working solely in Guatemala, members of FAFG have subcontracted to work also internationally, either with AAAS (Haiti) or Physicians for Human Rights (Iraqi Kurdistan, Honduras, Rwanda and former Yugoslavia). EAAF and FAFG further have a mutual agreement to regularly exchange members and to work together on foreign missions.

As in Argentina an amnesty law was passed, in the Guatemalan case before the truth commission had finished its work and just before the peace accord was ratified in December 1996. However, it did not include the crime of genocide. The first conviction fell in 1998 when three army officers received death penalty for their role in the Rio Negro massacre in the province of Rabinal, based on evidence from the excavation conducted by FAFG of a mass grave containing 177 individuals⁸⁵. Still, the country's judicial system remains weak, and a number of cases have instead been brought before the Inter-American Commission on Human Rights (IACHR). In 2000, President Alfonso Portillo admitted state responsibility for past violations before the IACHR, including the December 1982 Dos Erres massacre of about 500 people⁸⁶.

In 1994-1995, FAFG/EAAF exhumed the skeletal remains of at least 162 people, 67 being children under 12 years old, from the town well in Dos Erres in the province of El Peten. The remains of another nine individuals were found in the nearby woods⁸⁷. In 1996, the case was filed with the IACHR by various human rights organisations and the family association FAMDEGUA⁸⁸. In 2001, the families of the victims were awarded the first reparation to be paid by the Guatemalan government for human rights crimes committed during the war. In addition, the government was obliged to provide physical and psychological treatment to survivors and families of the victims, to investigate and try those responsible, and to build a memorial⁸⁹.

⁸¹ Fundacion de Antropología Forense de Guatemala, until 1997 called Equipo de Antropología Forense de Guatemala (EGAF). FAFG home page, <http://quiche.net/exhume/fafg.html> and <http://quiche.net/exhume/resume.html>.

⁸² ODHAG (Proyecto de Exhumaniciones de la Oficina de Derechos Humanos del Arzobispado Guatemala) and CAFCA (Centro de Analisis Forenses y Ciencias Aplicadas) respectively

⁸³ FAFG/ODHAG/CAFCA 2003, archaeology is explicitly mentioned in section 3.1, 3.7 and 3.14

⁸⁴ AAAS 2002, 2003; EAAF 2002h

⁸⁵ EAAF 1998b

⁸⁶ HRW 2001

⁸⁷ EAAF 1999c

⁸⁸ Asociacion de Familiares de los Detenidos-Desaparecidos de Guatemala

⁸⁹ EAAF 2001c

From the onset of mass grave excavations conducted in Guatemala, teams of mental health workers have accompanied FAFG in order to work with survivors and family members, just as family members have helped out as workers at the excavations. In 2002, donors of the FAFG and the mental health programs wanted to conjoin the programs. A major evaluation of the activities of FAFG 1998–2002 was carried out under the auspices of the United Nations Program for Development⁹⁰. In addition to examining a vast documentation produced by the two teams, interviews with donors, directors of FAFG, members of various Guatemalan mental health and human rights groups and NGOs, teams of physical and social anthropologists, anthropologists and laboratory technicians, and archaeologists as well as evaluators and coordinators of the team from the United Nations Program for Development, were carried out and local groups visited in the countryside. Almost all those interviewed believed the work of FAFG to be a crucial link between civil society and recent Guatemalan state history, critical to potential future reconciliation and in general a contribution to peace in Guatemala.

The process implies at the very least:

- Documenting the different actors in the conflict and its aftermath
- Providing factual proof and evidence of the violence
- Restoring the remains of victims to their families
- Ensuring that reports of the exhumations reach competent legal authorities

4.1.3 The Chilean Forensic Anthropology Team (GAF)

The same sort of agreement as between EAAF and FAFG used to apply also to the Chilean Forensic Anthropology Team (GAF⁹¹) which was formed in 1989 to investigate cases of the Pinochet regime 1973–1990. Like FAFG, also GAF members participated in missions abroad like Iraqi Kurdistan, Honduras, Rwanda and former Yugoslavia. The team is now defunct – it apparently dissolved in the late 1990's – but individual former members that still work within the field have joined other entities in their home country, and occasionally they join EAAF's foreign missions. As they no longer exists as an organisation, the information given here is very brief, and largely extracted from references in reports of other organisations, like EAAF country reports and reports on the fieldwork of Physicians for Human Rights.

4.1.4 Peru and the Peruvian Forensic Anthropology Team (EPAF)

The Peruvian Forensic Anthropology Team (EPAF) was formed in 2001, at the same time as the Peruvian Truth and Reconciliation Commission (CVR) started its search for truth and definition of responsibilities for the political atrocities of the period 1980–2000. In 1980, Fernando Belaunde Terry regained presidency after having been deposed in 1968 by reformist military officers, who on their side were ousted in another military coup in 1976. The Belaunde government (1980–1985), soon began to strike brutally back on the Maoist guerrilla force the Shining Path and the Revolutionary Movement Túpac Amaru, who inaugurated their guerrilla war in 1980. So did also the subsequent governments of Alan Garcia Perez (1985–1990) and Alberto Fujimori (1990–2000). As in Guatemala, the counterinsurgency campaigns to a great extent were carried out as massacres against the civilian population. The truth and reconciliation commission delivered its final report in

⁹⁰ EAAF 2002c

⁹¹ Grupo de Antropología Forense de Chile

August 2003. The commission estimated 69 280 victims had died due to the internal armed conflict, as in Guatemala mostly peasants, of the Quechua and Ashaninka groups in the home department of the Shining Path, the Ayacucho department⁹². Contrary to the experience of the rest of the Latin American countries where state agents were almost single-handedly responsible, in Peru the guerrilla forces committed equally horrid atrocities as the government⁹³. The commission states that the Shining Path was the initiator of the conflict and the principal perpetrator of crimes and human rights violations, responsible for 54% of the deaths, while 1.5% of the deaths are ascribed to the Revolutionary Movement Túpac Amaru⁹⁴. Yet, state agents are still accountable for the remaining 44.5% deaths. Also contrary to other Latin America countries, the conflict (until the 1992 auto-coup of Fujimori) developed under democratic regimes with free elections and a free press.

In 1995, the Fujimori Congress passed an amnesty law to ensure permanent impunity for members of the security forces and police officials responsible for human rights violations from 1980–1995, and to prohibit investigations into such abuses. The law was declared null and void by the IACHR in March 2001 ruling on a massacre that took place in 1991 in Barrios Altos, thus creating precedence for similar cases in the future. Actually, the Peruvian Truth and Reconciliation Commission were mandated to ensure evidence for prosecution in cooperation with the Attorney General's office through exhumations and forensic investigations. This office has appointed a Special Prosecutor on Forced Disappearances, Extrajudicial Executions and Exhumations of Clandestine Graves. Also, the Peruvian government has agreed to investigate and determine criminal responsibility in some 165 cases the IACHR has on its books⁹⁵.

The EPAF team consists of nine archaeologists, anthropologists and a lawyer. Most members were already well experienced within the traditional archaeology of their own country, and many also had substantial experience with forensic anthropology and human rights investigations, having worked abroad in former Yugoslavia (Kosovo), Rwanda, Argentina, Haiti, Guatemala and Congo. From the start they have worked closely both with the truth commission, the Human Rights Ombudsman, and the Public Ministry (Prosecutor's Office) officially in charge of the exhumations of the more than 150 mass graves. A primary objective of the EPAF when formed – in addition to assisting families of the disappeared – was to assist the Truth Commission in its clarifying work and the Office of the Public Prosecutor in its legal investigations of the remains of victims of disappearance and/or extrajudicial executions⁹⁶. The Public Ministry wanted the team to be directly related to this state institution along with their own team of medico-legal experts. However, the EPAF wanted to act as an expert's NGO, independent of state institutions. In 2002, this led to a conflict between the parties, partly solved with the help of the other Latin American forensic teams⁹⁷. However, disagreement still prevails on exhumation strategies and what scientific standards to apply⁹⁸.

⁹² CVR 2003:General conclusions, section I

⁹³ HRW 2004, EAAF 2001e, 2002f

⁹⁴ CVR 2003:General conclusions, section II A and B

⁹⁵ HRW 2002

⁹⁶ EAAF 2001e:91

⁹⁷ EAAF 2002f

⁹⁸ EPAF 2003

4.1.5 The Latin American Forensic Anthropology Association (ALAF)

In 2003, the forensic teams of Latin America as well as a number of individuals of other forensic institutions and organisations created the Latin American Forensic Anthropology Association (ALAF)⁹⁹. The objectives of this association are among others:

- To establish ethical and professional criteria for the practice of forensic anthropology that will ensure the quality of the practice
- To promote the use of forensic anthropology and archaeology among the forensic disciplines utilized in judiciary investigations in Latin America
- To promote the accreditation of professional working in forensic anthropology through the creation of an independent accrediting board that will certify the quality of practitioners
- To promote mechanisms which provide the families of the deceased access to the procedures and results of forensic investigations, in accordance with international treaties and recommendations
- To promote the protection of the associates of ALAF and their families, considering the risks involved in working in forensic anthropology in some Latin American countries
- To defend the scientific and technical autonomy of forensic anthropology investigations in Latin America and the Caribbean

4.1.6 The Boston-based Physicians for Human Rights (PHR), USA

Simultaneously with the foundation of the EAAF, another human rights NGO was founded in the Americas in 1986 – the Boston based Physicians for Human Rights (PHR) – with the broader scope of mobilising the health professions to promote health by protecting human rights¹⁰⁰. From the early 1990s onwards they came to play an increasingly important role internationally in the application of mass grave excavations as a means to human rights investigations. In 1991, PHR sent forensic teams to investigate mass graves in both Guatemala and Brazil. In 1992, Eric Stover, who had been deeply involved with the upstart of the Latin American forensic teams in Argentina and Guatemala, was appointed PHR's second Executive Director. That same year, the PHR assembled forensic teams to investigate mass graves in Iraqi Kurdistan¹⁰¹ and in former Yugoslavia, and to examine the human remains and artefact evidence uncovered by the EAAF-led mass grave excavation related to the El Mozote Massacre in El Salvador¹⁰². In the former Yugoslavia they came to play a pivotal role to the UN Commission of Experts established by Security Council resolution 780¹⁰³. In 1995, an international forensic program was set up and Dr. Robert Kirschner, who had been involved with the El Mozote investigation, became its first director. Also in 1995, Dr. William Haglund became the United Nations' Senior Forensic Advisor for ICTY and ICTR. In 1998 he was appointed Director of the PHR' International Forensic Program¹⁰⁴. PHR became the main provider of international teams of forensic experts to the two tribunals

⁹⁹ Asociacion Latinoamericana de Antropologia Forense, see ALAF home page; EAAF 2002h:127

¹⁰⁰ PHR home page

¹⁰¹ See chapter 4.2.2

¹⁰² See chapter 4.2.1

¹⁰³ See chapter 4.2.3

¹⁰⁴ PHR home page: forensic program, current staff

in 1996. The teams included forensic anthropologists, archaeologists, pathologists, radiologists, odontologists, geneticists, biologists and ballistics experts and worked primarily on a voluntary basis. As funding of mass grave excavations was not part of ICTY's regular budget, the PHR also became the main collector and provider of funding for this work, the money being used primarily to finance transportation of equipment and personnel, purchase of equipment and to pay statistical and logistical work¹⁰⁵. In April 1996 they opened an office in Zagreb independent of ICTY to co-ordinate their work in the area. They also developed a community-based outreach program to channel information to the families of the missing, established an ante-mortem database and started its Srebrenica Identification Project¹⁰⁶. This office is now closed and local entities have taken over. PHR has carried out forensic investigations in the Rwanda, former Yugoslavia, Brazil, Israel and the Occupied Territories, South Korea, Czechoslovakia, El Salvador, Guatemala, Honduras, Kuwait, Mexico, Panama and Thailand, Cyprus, Georgia, Abkhazia, Nigeria, and Afghanistan and are presently deeply involved in Iraq. As a founding member of the International Campaign to Ban Landmines, the PHR shared the 1997 Nobel Peace Prize.

PHR investigation team's work is usually divided into five phases¹⁰⁷:

- *Phase 1:* A Mapping and Surveying team of forensic anthropologists and archaeologists maps the location and size of the mass graves and massacre sites.
- *Phase 2:* Forensic Archaeologists and Forensic Anthropologists undertake the exhumation of the graves and the osteological examination of the remains, as well as determine the number of bodies in each grave.
- *Phase 3:* A Forensic Pathology team conducts autopsies to determine the age, sex, nature of trauma, and cause of death of the deceased. Following completion of the work, the bodies will be turned over to the families of the deceased, if they are identified, or to appropriate local authorities for reburial.
- *Phase 4:* A team of investigators collects ante-mortem data on missing individuals and inputs this data into an antemortem database which will sort information to try to identify bodies exhumed from the grave. The collection of antemortem data will occur concurrently with the exhumations.
- *Phase 5:* Forensic reports, including photographic and video evidence and other evidence collected from the sites will be submitted to the ICTY.

4.2 Mass grave investigating institutions in former Yugoslavia

4.2.1 The International Criminal Tribunal for the Former Yugoslavia (ICTY)

During the fifty years between the conclusion of the Nuremberg and Tokyo trials of the International Military Tribunals in 1945 and the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY), there was no international entity to ensure the law enforcement of international humanitarian law. The Geneva Conventions of 1949, their additional protocols of 1977, and not least the Genocide Convention of 1948, had never been adjudicated and no precedents existed. Thus, both the ICTY and the ICTR have been very

¹⁰⁵ ICTY 1996b

¹⁰⁶ Vollen & Peress 2001:338–339

¹⁰⁷ PHR 1996b

important instruments in interpreting the laws and setting important precedents of their interpretation.

ICTY was established by the United Nations in 1993 to prosecute and try alleged perpetrators of four different types of offences: 1) grave breaches of the 1949 Geneva Conventions, 2) war crimes, 3) genocide and 4) crimes against humanity, committed on the territory of the former Yugoslavia since 1991. Its objectives are fourfold:

- To bring to justice persons allegedly responsible for serious violations of international humanitarian law
- To render justice to the victims
- To deter further crimes
- To contribute to the restoration of peace by promoting reconciliation in the former Yugoslavia

The Office of the Prosecutor is an independently operating organ that conducts investigations, prepares indictments and presents prosecutions before the judges of the Tribunal. ICTY has primacy over national courts, and may take over national investigations and proceedings at any stage it wants.

As of April 2004, 35 cases have been completed because of the indictment being withdrawn or the accused having died. 40 cases are at pre-trial or trial stage, while 52 have been completed by the Trial Chambers, 16 of these being at appeal. Two people have been acquitted by the Trial Chamber, while three have been found not guilty by the Appeals Chamber. 28 persons have received final sentences of 3–40 years. So far, 8 have served their sentences in one of the countries that have signed an agreement with the United Nations to accept persons convicted by the ICTY. One of these, Drazen Erdemovic, has served in Norway. Twenty people for whom ICTY has issued arrest warrants are still at large – among these Radovan Karadzic and Radko Mladic

ICTY began its first series of mass-grave excavations in July 1996, stating the purpose as being threefold¹⁰⁸:

- To corroborate witness testimony
- To recover evidence related to events reported in Tribunal indictments
- To document injuries and identify the cause and date of death

Excavations are conducted only pursuant to an investigation by the Prosecutor's office. Only gravesites relevant to indictments issued or to be issued in the future are of interest to the prosecutor – and they are excavated only for reasons relating to prosecution charges. On an average site excavation (estimated as of 100 bodies) the forensic team should include two pathologists, two physical anthropologists and two archaeologists – in addition to members of the Prosecutor's staff, a legal advisor, and a representative of the host government. Fieldwork may go on for about a month after which comes the laboratory work. Kimmerle points to the presence of other important parties at the excavation site, such as family members of the victims being exhumed and not least the NATO security personnel, who also provide security to the ICMP¹⁰⁹. Just as ICTY only conducts excavations relating to specific cases, they also only examine the human remains strictly for prosecutorial purposes. This

¹⁰⁸ ICTY 1996b

¹⁰⁹ Kimmerle 2004:10; Sanchez 2001

means that autopsies or examinations are not done on all remains in any particular mass grave, but only to a sample of these in order to establish patterns of death/behaviour or any inconsistencies. Both the examined and unexamined human remains are subsequently released to other entities, national governments or in the case of positive identification to the family.

4.2.2 The International Commission on Missing Persons (ICMP)¹¹⁰

One of the entities to which ICTY releases human remains is The International Commission on Missing Persons (ICMP), which was established at the G-7 Summit in Lyon in 1996 as a mission to the conflicts of the former Yugoslavia 1991–1995. In 1999 the mission was expanded to the Kosovo conflict, in 2001 to the Macedonia crisis, and in 2003 to the present situation in Iraq. From 1996–97 onwards, local commissions in the Federation of Bosnia-Herzegovina and the Republika Srpska began the so-called Joint Exhumation Process, exhuming mortal remains buried on each others territory. Most other regions of former Yugoslavia are now taking part in the project. In 2001, the ICMP took over the co-ordination of the Joint Exhumation Process from the Office of the High Representative.

The main objective of the ICMP is

“to secure the co-operation of Governments and other authorities in locating and identifying persons missing as a result of armed conflicts, other hostilities or violations of human rights and to assist them in doing so”

with an emphasis on determining the truth without apportioning the blame. ICMP supports families of the missing in their search for truth and justice by undertaking the whole investigation process from collecting and analysing ante-mortem data over exhumations to the personal identification of the dead.

Exhumations are done in all parts of the former Yugoslavia, including Serbia. Death certificates are issued by authorised forensic pathologists, who formally determine the identity of the deceased. The ICMP protocol emphasises the use of hard evidence over soft evidence to establish identifications, but all lines of evidence (including archaeological evidence) are checked. Due to lack of dental records, DNA-matching has become paramount to positive identifications in former Yugoslavia and is the reason why ICMP has become a world leader in this field. By August 2003, more than 2077 DNA matches had been made, of which 1888 were related to the conflict in Bosnia-Herzegovina with 624 cases specifically related to Srebrenica, and 1003 individuals had been positively identified. The pathologist is assisted by physical anthropologists. International forensic anthropologists have in fact formed the ICMP core team. However, forensic archaeologists are also employed by the ICMP as they conduct exhumations/excavations themselves:

“ICMP is a humanitarian organization with no mandate to collect forensic evidence so they focus on identification but are not averse to mapping, describing and collecting (or recommending such) of forensic evidence such as ballistics and body orientation.”¹¹¹

¹¹⁰ This chapter is based almost entirely on the ICMP home page: <http://www.ic-mp.org/icmp/home.php>

¹¹¹ Skinner 2004: reply to questionnaire

5 SELECTED HUMAN RIGHTS MASS GRAVE INVESTIGATIONS

5.1 El Salvador – the El Mozote massacre (1992, 1999–2003)

In 1980, a violent conflict which was to inaugurate a civil war lasting for 12 years, 1980–1992, broke out in El Salvador following the assassination of the Archbishop Romero. In January 1981, the guerrilla forces of the Farabundo Marti National Liberation Front began counter offensive against the government. Due to cold war concerns the government was ensured massive and continued US support, the US supplying both material and elite military training to, among others, the Atlacatl counterinsurgency battalion, which in the course of the so-called “Operation Rescue” was to become responsible for the El Mozote massacre in December 1981¹¹². The goal of the campaign was to eliminate the guerrilla presence in a small sector of the Morazan province in the north-east of El Salvador, where the guerrillas had a camp and a training centre. Instead it became the extermination of the peasant population of six neighbouring villages: El Mozote, La Joya, Jocote Amarillo, Ranchería, Los Toriles, and Cerro Pando. The soldiers separated the population into two groups, men and women/children, locked them up in private houses and community buildings, tortured the men and executed everybody including the children, burned the buildings and killed the livestock. Survivors managed to cross the border to Honduras and take refuge in UN camps there. Some victims were haphazardly buried in mass graves by survivors before fleeing the country. In January 1982, the massacre became public knowledge due to articles in the New York Times and Washington Post by journalists who had managed to get into the area. However, both the US and the El Salvadoran government categorically denied that a massacre had taken place, no investigation was launched and the whole thing was dismissed as guerrilla propaganda.

In 1989, *Tutela Legal*, the human rights legal office of the archbishop of El Salvador, collected witness testimony and compiled a list of 767 persons who had been killed in the El Mozote massacre, 40% of these being children less than ten years old. On behalf of the survivors of the massacre, in 1990 they filed a brief before the court in San Francisco Gotera, Morazan, against the Atlacatl Battalion insisting on exhumations. In late 1989, UN-mediated peace negotiations began which finally in January 1992 led to a peace accord between the FMLN and the El Salvadoran government. Written into the peace accord was the mandate of the United Nations “*Commission on the Truth for El Salvador*”, which included investigating serious acts of violence¹¹³. The commission began working in 1992 and delivered its report nine month later¹¹⁴. The investigation and exhumations *Tutela Legal* had called for, became part of the truth commission’s investigations. However, only one site was excavated, the convent in El Mozote, the excavation being in the hands of the Argentine Forensic Anthropology Team (EAAF) and the examination of the human remains and the artefact study of the ballistic evidence being in the hands of a team assembled by the Physicians for Human Rights¹¹⁵.

The convent was a small one-room building of 31 square meters close to the church. Remains of at least 143 individuals (131 being children under 12 years of age) were found in the building. One female skeleton was found with the bones of her three month fetus in her pelvic area. Due to the archaeological and anthropological evidence it could be demonstrated that at least nine individuals were shot inside the building while lying on the floor, whereas

¹¹² UN Doc S/25500; EAAF 1999b, 2000b, 2001b, 2002b

¹¹³ Hayner 1994:627–629

¹¹⁴ UN Doc S/25500

¹¹⁵ UN Doc S/25500; EAAF 1999b, 2000b, 2001b; Scott & Connor 1997; Scott 2001, Doretti & Snow 2003:300–304

some of the children may have been shot outside and subsequently dumped inside. At least 24 individual firearms were used, M-16 military rifles manufactured for the US government by a plant in Missouri. At the time of the massacre (no coin or bullet cartridge from the site was dated later than 1981), the Atlacatl Battalion was the only El Salvadoran army unit to use this type of rifle. The artefact distribution pattern (bullet fragments and spent cartridges) indicated the relative position between shooters and victims in the room. The truth commission concluded that the eyewitness accounts of the massacre were fully corroborated by the excavation/forensic investigations and recommended further investigations of the same sort.

Shortly after the delivery of the report, which named over forty individuals as human rights criminals, an amnesty law was passed that closed the matter for the next seven years. In 1998, in spite of the fact that prosecutions still cannot take place, *Tutela Legal* got permission to conduct exhumations for humanitarian purposes on the ground that relatives had a right to recover the remains of their loved ones¹¹⁶. In 2000–2003, excavations were conducted or prepared by EAAF – as in 1992 with the laboratory assistance of Snow and with Scott doing the ballistic analysis. In 2000, twelve graves were excavated, six in Jocote Amarillo (8 individuals), and six in La Joya (30 individuals including a mother and her three month fetus). 23 victims were under fourteen. At least 26 skeletons bore gunshot wounds. At least 15 individual firearms were employed, and at least four different types of weapons. Among these were US-produced M-16 rifles (dated 1978) of which thirteen seemed to correspond to weapons also used at the El Mozote convent. Heckler & Koch G3 rifles (dated 1974) had also been used which may corroborate the truth commission's assertion that troops from the Commando Instruction Center in San Francisco Gotera and the 3rd Brigade from San Miguel also participated in Operation Rescue. Personal belongings included household items which corroborated the assertion that the victims were fleeing their houses when killed. A coin dated 1985, however, points to one of the sites being contaminated by later inclusions.

In 2001, the so-called Marquez house in El Mozote was excavated, in addition to four graves in Los Toriles containing altogether 22 victims buried by survivors up to 15 days after the massacre. In the case of the Marquez house a number of women with their toddlers were rounded up and shot. The house was subsequently put at fire by using explosives. This made the superstructure fall down and seal the site from later disturbances. The human remains were badly damaged from fire/heat and crushed by falling debris. The excavation was carried out stratigraphically. All the skeletal remains were found in one room of the house together with the majority of spent cartridges (a metal detector was used inside and outside the house). The bullet fragments were found in close association with the bones. Personal effects found associated with the skeletal remains were all typically El Salvadoran female adornments. No coins were younger than 1977. As the bones were badly damaged a MNI-analysis (Minimum Number of Individuals) was used to determine the number of individual victims, 12 adults and 4 children according to the odontological evidence found. The 2002 mission collected witness information of a similar massacre carried out in El Barrio also in the province of Morazan in 1982, to be investigated in 2003.

5.2 Iraqi Kurdistan – genocide and the use of chemical weapons (1992)

The largest nation in the world not having their own state are the 25 million Kurds living in the border areas between Turkey, Iran, Iraq, and Syria. Since the 1920s Kurdish resistance

¹¹⁶ EAAF 2001b:55

fighters, *peshmerga* (those who face death), have fought for independence. In Iraq there were Kurdish uprisings and regular wars throughout the 1960s and 1970s. During the final phase of the 1980–1988 Iran-Iraq War, the Iraqi Baath regime took the opportunity “to solve the Kurdish problem” once and for all through the so-called Anfal campaign of 1987–1988¹¹⁷. The Anfal campaign was characterised among other things by torture, mass executions and disappearances, killing about 50 000 civilians by the most conservative estimate, and possibly twice that number – as well as the *refusal to provide minimal conditions of life* through systematic neglect, starvation and disease, killing another 10 000. The Iraqi regime was also the historic first to attack its own civilian population with chemical weapons (mustard and nerve gasses). At least forty such chemical attacks on Kurdish targets have been documented¹¹⁸. In 1991 the Kurds managed to drive the Iraqi troops out of the region, and Kurdish leaders called on international human rights organizations to investigate into the human rights abuses of the Iraqi regime¹¹⁹.

Eric Stover and Clyde C. Snow of the Physicians for Human Rights assembled at first one forensic team which included also an archaeologist, who in December 1991 did a 10 days preliminary assessment mission to Northern Iraq where the Kurds had already uncovered 145 single graves and mass graves. They strongly recommended the United Nations to dispatch a team of legal and forensic experts to conduct more extensive investigations of the alleged genocide. When the United Nations failed to do so, the Physicians for Human Rights assembled a second forensic team to conduct exhumations of selected mass graves in Iraq in May-June 1992. The forensic investigation teams were led by Snow. Both were inter-American and multidisciplinary, consisting of lawyers, archaeologists and anthropologists from the USA and members of the Latin American Forensic Anthropology Teams, the EAAF, FAFG and the now defunct GAF¹²⁰. On the second mission the team focused primarily on the events taking place in a single village, serving as a representative example of the fate of many other Iraqi Kurdish villages during the Anfal campaign – the Koreme village massacred in 1988. In expectation of an attack by Iraqi air forces, the 150 families of the village tried to flee to neighbouring Turkey. In the village of Warmeli, three hours walk away from Koreme, they were met with the horrifying results of the village having shortly before been bombed with chemical weapons. Their flight was unsuccessful, and at the end of the day they decided to return to Koreme. Just outside their own village they were stopped by Iraqi soldiers separating 33 men and youngsters from the rest to be executed immediately by a firing squad. However, six men escaped the execution by pretending to be dead and were later able to testify to the events. Soldiers returned one week later and buried the victims in four different graves just 10 meters away from the execution line in former artillery shell craters, deported the rest of the villagers and erased the village to the ground.

The team investigated both the execution place and the graves. The lawyers mainly collected oral testimony, the anthropologists examined the skeletal remains and artefacts in the laboratory, and an archaeologist (James Briscoe) took care of the site surveys, the mapping, the artefact surface sampling, the soil sampling, the excavation of mass graves and the documentation of the execution place¹²¹. The artefacts, consisting mainly of cartridges and cartridge cases were analysed by Scott¹²². Seven individual weapons were identified, AK-47 type firearms that have detachable magazines usually containing 30 rounds. Six weapons had

¹¹⁷ HRW 1993a, HRW 1993b, Stover & Ryan 2001:15–18

¹¹⁸ HRW 1993a

¹¹⁹ HRW 1993a.

¹²⁰ HRW 1993b, Stover & Ryan 2001, EAAF 1992

¹²¹ HRW 1993b; Stover & Ryan 2001; Scott & Connor 1997

¹²² Scott & Connor 1997:34–36

fired approximately one half of a full magazine, while one had fired more than a magazine and thus had been reloaded at least once. The distribution pattern analysis indicated that the victims were lined up and so was the firing squad at first. It then moved sideward (east) in a random manner to cluster again in an unorganized group, from which four weapons (including the reloaded one) moved north and fired while nearing the line of victims. All 27 exhumed victims were identified from clothing, artefacts, medical and dental evidence.

The team also wanted to collect evidence on the chemical weapons attack launched by the Iraqi state against civilians during the Anfal. In the nearby village of Birjinni four people had died instantly from the gasses released in an attack in August 1988. Two days later, two of the victims were buried in their clothes by government soldiers on the spot where they had been left by the fleeing villagers. The other two victims were left in the cave where they had fallen, wrapped in plastic and nylon. The team mapped the village, took soil samples from the impact sites of the bombs and exhumed the two buried victims. Analysis of the soil samples showed traces of degradation products of nerve agents and mustard gas¹²³. Finally, the team investigated the Jeznikam cemetery allegedly containing the graves of kids that had died out of starvation in the Beharke and Jeznikam camps. The ratio of child graves to adult graves was calculated based on mapping the length of a statistically representative number of graves throughout the cemetery. Three infants were exhumed and examined.

One purpose of the investigations, however, was not reached – to persuade the United Nations to establish a special commission of inquiry to collect further evidence and an *ad hoc* international criminal tribunal to hear the offences¹²⁴.

5.3 Former Yugoslavia – initial mass grave investigations (1992–1993)

Before the Balkan wars of the 1990s, Yugoslavia was a federal state consisting of six republics (Slovenia, Croatia, Bosnia-Herzegovina, Serbia, Macedonia, and Montenegro) and two autonomous provinces (Kosovo and Vojvodina), both located in Serbia. The population was demographically and culturally very heterogeneous. Six basic languages were spoken in addition to which came the languages of a number of minorities, among which were the Romani people (Gypsies). There were three major religions: Roman Catholicism largely held by the Croats, Greek Orthodox Christianity largely held by the Serbs, and Islam. Despite a certain geographic distribution pattern these groups had no definite geographical territories, they lived in mixed communities and they inter-married¹²⁵. With Tito's death in 1980 the federation started to fall to pieces. In 1991, on June 25, Slovenia and Croatia simultaneously declared their independence. The Yugoslav People's Army invaded Slovenia two days later, but was defeated within ten days. In Croatia, local Serb forces with the help of the Yugoslav People's Army of Serbia (after the independence declarations consisting exclusively of Serbs) started war on Croatia to acquire territory for *Greater Serbia*. On March 6, 1992, Bosnia-Herzegovina declared its independence, and a few weeks later Serbia invaded also Bosnia-Herzegovina. The war ended in late 1995 after NATO had bombed Serb batteries surrounding Sarajevo and the parties in December in Paris had signed the Dayton Peace Accord.

In October 1992, the UN Secretary-General was requested to establish an impartial Commission of Experts to examine information received on violations of humanitarian law

¹²³ PHR 1993, 1995

¹²⁴ Stover & Ryan 2001:18

¹²⁵ Ball 1999:chapter 5:121–154

and the Geneva Conventions and also obtain information through their own investigations¹²⁶. A five member commission started working in November 1992. The Commission conducted a series of studies and on-site investigations and established a database of all reported grave breaches of the Geneva Conventions and other violations of international humanitarian law. In May 1993, the UN Security Council established the “*ad hoc International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991*” (ICTY)¹²⁷. In the spring of 1993, the Security Council also declared first Srebrenica and then also Sarajevo, Tuzla, Zepa, Gorazde, and Bihac areas under the protection of the United Nations¹²⁸.

The Expert Commission’s final report of 1994 (i.e. before the Srebrenica massacre) included twelve annexes substantiating the findings of the commission based on the information in the database, and all the information gathered – 65 000 document pages – were by then transferred to the Office of the Prosecutor at The Hague-based ICTY. The Annex X deals with mass gravesites reported within the territory of Bosnia-Herzegovina and Croatia. A total of 187 such sites were reported, allegedly containing from 10 up to more than 500 bodies each. Over half the sites seemed to contain victims of a mass killing conducted as the final phase of an “ethnic cleansing” process following a distinct pattern of procedure. The disposal of the bodies seemed primarily to have taken place in and around the area of the killing. Coexistence of mass graves and detention facilities in as much as 54 sites suggested to the Commission of Experts that (in the spring of 1992) “*mass graves were and are deliberately being used as a means of secretly disposing of the bodies of those persons unlawfully killed*”. The ethnicity of the victims as well as of the perpetrators was reported to be Muslim, Croatian and Serb, however with the victims being predominantly Muslims or Croats and the perpetrator being predominantly Serbs.¹²⁹

Further studies of mass graves were advocated for three reasons:

- A mass gravesite is the potential repository of evidence of mass killings of civilians and prisoners of war. Such sites can yield forensic information which can provide evidence or insight into the circumstances surrounding the deaths of those buried there
- The manner and method by which a mass grave is created may itself be a breach of the Geneva Conventions of 1949, as well as a violation of the customary regulations of armed conflict¹³⁰
- The identification of mass graves can serve a reconciliatory purpose between the “warring factions”, so that the families of those killed during the conflict can learn the whereabouts of their loved ones

The Annexes X.A and X.B reported on the preliminary investigations of the Ocvara grave near Vukovar in Croatia and the excavation of a number of graves in the Pakracka Poljana County, Croatia. In the last case, the team set out to investigate allegations of the existence of 17 mass graves created by Croats containing about 100 bodies of Serbs each. What they found was nine smaller graves containing altogether 19 bodies. These two reports are the only “true” excavation reports comparable to the reports one may find in the topographic archives of any archaeological museum that I have found published. Both the 1992 and the 1993 forensic teams were assembled by Physicians for Human Rights. In 1992, the team

¹²⁶ By UN Security Council Resolution 780

¹²⁷ By UN Security Council Resolution 827 approving the original ICTY Statute (UN Doc S/25704)

¹²⁸ By UN Security Council Resolution 819 and 824

¹²⁹ UN Doc S/1994/674, Annex X, section II A

¹³⁰ ICRC 1949a:article 15–17, 1949b:article 18–20, 1949c:article 120, 1949d:article 129–130, 1977a, 1977b

consisted of ten people¹³¹. With Stover as team leader and Haglund as forensic anthropologist, the remaining eight team members were all archaeologists. Five were conventional archaeologists from the US, while the three others were forensic archaeologists from the Argentine and Guatemalan Forensic Anthropology Teams. In 1993, the team consisted of fifteen people, Stover again being the team leader¹³². In addition to William D. Haglund, two more physical anthropologists were at the team, Clyde C. Snow and Isabel M. Reveco, founder of the now defunct Chilean Forensic Anthropology Team, supplemented with a forensic pathologist and a physician. Again most team members were archaeologists – nine in all, the team from 1992 supplemented with a forensic archaeologist from GAF.

5.4 The Ovcara grave – Vukovar Hospital, Croatia (1992–93 and 1996)

The city of Vukovar is situated in the Eastern part of Croatia on the bank of the Danube which marks the border to Serbia. In 1991 its population was comprised of a little more Croats than Serbs, and some minority nationalities. In late August 1991, the Yugoslav People's Army laid siege to the city, and in November it fell to the Serb forces. In the last days of the siege, several hundred Croats sought refuge at the Vukovar Hospital hoping it would be evacuated in the presence of international observers¹³³. Instead the 400 people, who stayed at the hospital, were loaded onto busses early in the morning and brought to the Yugoslav People's Army of Serbia barracks, and from there to a farm building in Ovcara. Here they were beaten for several hours, two of them to death, before being transported on trucks in groups of 10 to 20 to a ravine where at least 264 Croats (according to the latest amended indictment) and other non-Serbs from Vukovar Hospital were shot and otherwise killed. After the killings, the bodies were buried by bulldozer in a mass grave at the same location.

According to the ICTY Bulletin, the discovery of the mass gravesite at Ovcara near Vukovar in Croatia was a major factor in the Tribunal's indictment of three Yugoslav People's Army of Serbia officers Mile Mrksic, Mile Radic, and Veselin Sljivancanin, originally filed in 1995¹³⁴. Reference to the final excavation that took place in September-October 1996 is mentioned in the amended indictment that in 1997 added the name of Slavko Dokomanovic¹³⁵. In his case court proceedings started, but were terminated in July 1998 as he committed suicide in the detention. The three other accused were arrested only in 2002 and 2003. They have all pleaded "not guilty" to the charges of crimes against humanity and violations of the laws or customs of war. The investigation of the Ovcara grave has been characterised as fairly straightforward legally and forensically, as the case involved a single crime at one location with numerous witnesses to the various stages of the events up to the actual killing. All physical evidence was contained in *one single grave left undisturbed* since the massacre¹³⁶.

Based on the testimony of a witness who had barely escaped the execution¹³⁷, the Ovcara gravesite was located by a four-member team assembled by Physicians for Human Rights in December 1992 in an isolated, wooded area south-east of Ovcara. After having gained all the necessary permissions from central authorities, a second site survey was made on 20 and 21

¹³¹ UN Doc S/1994/674, Annex X.A, Part Two, section V

¹³² UN Doc S/1994/674, Annex X.B, Part II, section VI

¹³³ Stover 1997; Stover & Peress 1998, ICTY 1995c, 2004

¹³⁴ ICTY 1996b

¹³⁵ ICTY 1995b: article 15

¹³⁶ Stover & Shigakane 2002:852

¹³⁷ Stover & Peress 1998:102–107

October 1993. The permission was withdrawn by local authorities on the 22 and the team pulled out¹³⁸. Until full excavation was conducted in 1996, the site had to be protected by United Nations protection forces. On the first site survey in 1992, two skeletonised individuals with gunshot wounds to their heads were recovered from the surface near the gravesite. Both bore necklaces with Roman Catholic crosses, one with the inscription BOG I HRVATI (God and Croatians). They were wrapped in black plastic bags, marked, numbered and left at the site¹³⁹. The individual who bore the necklace with the inscription was the first in former Yugoslavia to be *positively* identified, and two of the respondents to the questionnaire point to this piece of circumstantial artefact evidence as being the decisive piece of evidence¹⁴⁰. A shallow test trench was dug across the gravesite and revealed nine more bodies. A large concentration of spent cartridge cases was found in a pattern west to north-west of the gravesite suggesting that the site was simultaneously an execution site. The mass grave appeared undisturbed and was estimated to contain perhaps as many as 200 bodies.

On the second site survey in 1993, after being mine-cleared the site was cleared of vegetation typical of recently disturbed land. The perimeter of the grave was surveyed and electronically mapped, including the feature of the trench dug at the first site survey. The general area was partly mapped topographically in order to construct a site contour map (interrupted at 22 October). The site was surveyed with metal detection sweeps which were also used on tree trunks. Artefacts found were piece-plotted on the maps and had auto generated find number attached. Everything was photographed and video-taped. All information was of course kept in log books. Sixty-one cartridge cases and one live round of ammunition were found in two clusters with a gap between, suggesting a patterned distribution to the firearms data. To the opposite side of the grave pit several trees bore evidence of bullet scarring.

In 1996, a five-member team assembled by Physicians for Human Rights conducted the final excavation of the grave. The excavation was done for the ICTY and thus no excavation report has been published. A total of 200 bodies were recovered from the grave. All the bodies were autopsied and the excavation provided the ICTY investigators with “*corroboration as to the manner and cause of death of the bodies found in the mass grave*”. As mentioned in chapter 3.7.1 group identifications could be made based on artefacts found. All remains and personal effects were returned to the relevant government officials for the ongoing identification process and the return of victims’ remains to the families for reburial.¹⁴¹ So far 184 of the victims have been identified, largely based on DNA-matches¹⁴².

5.5 Mass grave investigations of the Srebrenica genocide (1996 ongoing)

Srebrenica is located in the easternmost part of Bosnia. The town escaped being targeted by the Serbs in the Serb–Bosnia-Herzegovina war (1992–1995) until it was finally massacred in July 1995 for two reasons: because it was declared a “safe area” by the UN Security Council in 1993 and because it was completely surrounded by Serb-held territory and thus in reality relied on Serb goodwill¹⁴³. During the war, the population of Srebrenica had swelled with Bosnian Muslim refugees from 8 000 to about 38 000 in July 1995, including the 300 Dutch

¹³⁸ UN Doc S/1994/674/Add.2 (Vol. V) Annex X.A – the team did not expect to be gone for nearly two years

¹³⁹ Stover & Peress 1998:153

¹⁴⁰ Stover 1997:51, Saunders 2004: reply to questionnaire

¹⁴¹ UN Doc A/52/375-S/1997/729:article 66–67

¹⁴² Stover & Shigekane 2002:852

¹⁴³ Honig & Both 1996, Honig 2001

peacekeepers and a small Bosnian Government battalion of 2 000 men¹⁴⁴. On July 11, 1995, the Bosnian Serb Army led by General Ratko Mladic entered the town and took 32 Dutch peacekeepers hostages. The rest fled to their base in a factory in nearby Potocary along with 20 000–25 000 of the refugees. Potocary was soon captured as well. The Serbs separated the men and boys from the women and small children. The men and boys were loaded onto trucks and subsequently executed at several different sites: Bratunac, Nova Kasaba, Kravica, and Sandici. About 10 000–15 000 of the men had not joined the retreat to Potocary. Instead, they had hid in the mountains around the town. They now fled through the woods on what came to be called “*the trail of life and death*” to reach Bosnian Tuzla. In November 4 700 of them had succeeded. The rest had been rounded up and executed along the trail¹⁴⁵. According to survivors, people were buried in several mass graves around the region, which after the war became part of the then established Serb Republika Srpska, while Tuzla today is located within the Federation of Bosnia-Herzegovina.

ICTY has conducted mass grave investigations related to the Srebrenica massacre from 1996 until 2001 when all further excavations were ended as there were “*no more known sites of particular relevance to their investigations*”. From 2000 onwards, ICTY has monitored exhumations and seized forensic material (including the human remains) from exhumations carried out by local authorities – the Bosnia-Herzegovina and Republika Srpska Commissions on Missing Persons¹⁴⁶.

The first two alleged perpetrators to be indicted in a case related to the Srebrenica massacre was Radko Mladic and Radovan Karadzic, charged with genocide, crime against humanity and violations of the laws or customs of wars¹⁴⁷. They are still both at large.

The first to be convicted in a case related to Srebrenica was Drazen Erdemovic. As a soldier in the 10th Sabotage Detachment of the Bosnian Serb Army he participated in the killing of hundreds of unarmed civilian Muslim men at the Branjevo farm near the town of Pilica in eastern Bosnia. On 16 July 1995, these men were transported by busloads out of Srebrenica to the so-called Pilica farm to be summarily executed in groups of 10 at a time. Erdemovic himself estimated the number to be 20 busses of 60 men, making the total killing comprising approximately 1200 individuals. Erdemovic pleaded guilty. His first sentence to 10 years for murder as a crime against humanity was later reduced to 5 years for murder as a violation of the laws or customs of war¹⁴⁸. A mass grave containing 146 bodies was excavated at the Pilica farm in July 1996, well below the number estimated by Erdemovic. US spy planes observations and a satellite photo showing simultaneous activity at the gravesite and a nearby plant may indicate bodies being re-excavated and moved to plant where dissolved in sodium hydroxide¹⁴⁹. Erdemovic served his sentence in Norway.

Erdemovic later witnessed in court against Major General Radislav Krstic, who was indicted by ICTY in 1998 of directing the attack on Srebrenica in 1995 and sentenced to 46 years of imprisonment for genocide, crime against humanity and violations of the laws or customs of wars in 2001, a sentence that in April 2004 was reduced by the Appeals Chamber to 35 years. The prosecutor’s case heavily relied on forensic evidence from the excavation of 21 gravesites related to the take-over of Srebrenica¹⁵⁰. As expert witnesses appeared among

¹⁴⁴ EAAF 1999a

¹⁴⁵ Stover & Peress 1998; Vollen & Peress 2001

¹⁴⁶ UN Doc A/56/352-S/2001/865:article 191–192; UN Doc A/57/379-S/2002/985:article 224

¹⁴⁷ ICTY 1995a

¹⁴⁸ ICTY 1996a

¹⁴⁹ Stover & Peress 1998:170

¹⁵⁰ ICTY 1998: Trials Chamber I Judgement 2001, article 71–79; Kimmerle 2004:13–15

others Dr. Haglund and Professor Jose Baraybar, now with the Peruvian Forensic Anthropology team¹⁵¹.

Contrary to mass graves related to other cases and found elsewhere in the former Yugoslavia, many of the graves linked to the Srebrenica massacre had been reopened, and the human remains re-deposited in secondary graves. Fourteen of the 21 excavated gravesites were primary graves of which eight were looted. Seven of the excavated gravesites were secondary burial sites.

- 1996: Cerska, Nova Kasaba, Orahovac (also known as Lazete 2) and Branjevo Military Farm (also known as Pilica farm)
- 1998: Petkovci Dam, Cancari Road 12, Cancari Road 3, Hodzici Road 3, Hodzici Road 4, Hodzici Road 5, Lipje 2, Zeleni Jadar 5
- 1999: Kozluk, Nova Kasaba, Konjevic Polje 1, Konjevic Polje 2, and Glogova 2
- 2000: Lazete 1, Lazete 2C, Ravnice and Glogova

In 1998, secondary graves were the main focus of the excavations. In 1999, the excavations focused instead on primary graves¹⁵². Based on ballistic analyses, soil analyses and materials analyses, links were established between certain primary gravesites and certain secondary gravesites:

- Branjevo Military Farm (Pilica Farm) with Cancari Road 12
- Petkovci Dam with Liplje 2
- Orahovac (Lazete 2) with Hodzici Road 5
- Orahovac (Lazete 1) with Hodzici Road 3 and 4
- Glogova with Zeleni Jadar 5
- Kozluk with Cancari Road 3.

For instance, the Petkovci Dam in Republika Srpska was looted in several rounds and the remains reburied in Lipije 2. A greenish clay specific to the primary gravesite was found in the secondary site, and the human remains showed signs of having been removed with heavy machinery¹⁵³. This is true of many of the human remains from mass graves linked with the Srebrenica massacre and thus the identification process has been extremely difficult¹⁵⁴. In 1998, there were about 3 000 sets of remains and only 30 identifications¹⁵⁵. Today, approximately 7 500 set of remains have been recovered: 2 000 sets are complete bodies, 2 000 sets are of singular individuals, and the remaining 3 500 are of commingled remains. DNA-analysis has speeded up the identification process and 411 individual have been formally identified, while another 349 DNA-matches await formal identification. The list of missing people contains between 7 800 and 8 000 names¹⁵⁶.

Identity documents and belongings link victims with Srebrenica. Some of the bodies were positively identified on the basis of distinctive personal items found with bodies such as jewellery, artificial limbs and photographs. Artefacts such as verses from the Koran or a

¹⁵¹ *Prosecutor v. Radislav Krstic*: Trials Chamber I Judgement: article 72, note 139.

¹⁵² UN Doc A/54/187-S/1999/846:article 129–130; UN Doc A/55/273-S/2000/777:article 179

¹⁵³ *Jessee* 2003:49–50 referring to the unpublished excavation report by D. Manning

¹⁵⁴ UN Doc A/53/219-S/1998/737:article 120; Vollen & Peress 2001:338, Kimmerle 2003:4

¹⁵⁵ Vollen & Peress 2001

¹⁵⁶ ICMP home page: CoS Statement spring 2004

Muslim prayer pouch, suggest the presence of victims with Muslim religious affiliation. At least 448 blindfolds were uncovered on or with bodies at 10 sites, and at least 423 ligatures were located at 13 sites, some directly associated with parts of hands or forearms.

In 1996, the Physicians for Human Rights assembled the excavation teams consisting of more or less the same professionals as in 1992–1993, and in Rwanda 1996. From 1997 onward, ICTY organised all excavations themselves, however still employing professionals from the American teams as well as professionals from a number of other countries.

In 1996, a *crisis after the crisis* arose. *Emergent norms* developed among the Srebrenica survivors completely uncorrelated to the norms of the authority response system in place – in this case the International Committee of the Red Cross (ICRC). Rumours spread that the men were not dead, but worked as forced labourers in Serbian mines. The women were infuriated by the ICRC's death certificate programme issuing *pro forma* death certificates – i.e. not based on *corpus delicti* – on the Srebrenica victims, who were “obviously” alive. Rallies took place, and the women physically attacked the ICRC headquarters. From 1996 onward, body bags with unidentified human remains released from the ICTY investigations to Bosnian authorities also started to pile up and were stored in an undignified manner, first in abandoned tunnels in Tuzla and from 1998 in containers in a parking lot, which of course further angered the family associations¹⁵⁷.

5.6 Kibuye and Kigali – mass grave investigations in Rwanda (1996)

After the First World War, Rwanda was placed under Belgian jurisdiction. The three population groups in the country were Hutu, Tutsi and Twa. The Twas being Pygmy hunter-gatherers constituted only an insignificant proportion of the population, while the Hutus were by far the majority. Hutus and Tutsis had the same religion, the same language (Kinyarwanda), common customs and economic occupations; they intermarried and lived in mixed communities. The Belgians applied a policy of indirect rule that made ethnicity a political concept and gave the Tutsis power monopoly¹⁵⁸. The Belgians were also the ones who in 1933 introduced the system of identity cards based on tribal affiliation, that became lethal during the 1994-genocide. In 1959–1961 Hutus extremists committed the first Rwandan genocide, and when Rwanda gained independence in 1962 the Hutus were exclusively in power in a one-party dictatorship. By 1990, 600 000 Tutsis were in exile in neighbouring countries. In 1990, the Tutsi Rwanda Patriotic Front which included also moderate Hutus invaded Rwanda from Uganda. In 1993, a peace accord was signed in Arusha, Tanzania and a UN peacekeeping force was stationed in Rwanda. Although signing the agreement, from 1992 onward Hutu president Habyarimana's party was planning and organising the genocide to come¹⁵⁹. The formal beginning was on the morning of April 6, when the president's air plane was shot down by Force Armee Rwandese. Within the next 100 days one million Tutsis – 75% of the Tutsi population – were virtually slaughtered with small arms and machetes.

In July, the Rwanda Patriotic Front captured Kigaly and established an interim government. On July 1, the UN Security Council established a Commission of Experts for Rwanda and in November the *ad hoc* International Criminal Tribunal for Rwanda (ICTR)¹⁶⁰. The only vote against was that of the Rwandan delegation.

¹⁵⁷ Vollen & Peress 2001, Stover & Shigakane 2002:854–855

¹⁵⁸ Ball 1999; Reyntjens 2001

¹⁵⁹ Des Forges 1999, Schabas 1999:6

¹⁶⁰ UN Security Council Resolutions 929, 935 and 955

Between April 8 and 17, 1994, thousands of Tutsi men, women and children congregated in the church in Kibuye located in western Rwanda, to find protection from the ongoing massacre. On April 17 they were attacked by gendarmes, communal police, and armed civilians with grenades, guns, cudgels, machetes and other weapons, and killed. Their bodies were either left on the ground or buried in large bulldozer dug graves within the following days¹⁶¹. One of the two sites ever to be investigated in Rwanda under the auspices of ICTR was related to this massacre, the site called the Kibuye Roman Catholic Church and Home St. Jean Complex. The very first indictment to be issued by the ICTR was against two individuals involved in this massacre. Both were convicted in 1999 on various counts of genocide, the sentences being confirmed by the Appeals Chamber in 2001¹⁶². Clement Kayishema, a medical doctor and the governor of Kibuye, was sentenced to life imprisonment, while businessman Obed Ruzindana was sentenced to 25 years of imprisonment.

Site assessment was done in September 1995 by Haglund, at that time the UN Senior Forensic Advisor. The largest of the graves, KB-G1, was cross-trenched to confirm the presence of human remains and a surface sampling was made. The excavation of the grave and investigation of the surface site, KB-S (the slopes toward the Lake Kivu), was carried out December 1995 to February 1996¹⁶³. The fieldwork was divided into three phases:

- *Phase 1*: Computerized site documentation and electronic mapping, initial site documentation, photographing, transecting and flagging all skeletons encountered at the surface site
- *Phase 2*: Mapping, photographing, removal and analysis of the skeletal remains at the surface site KB-S
- *Phase 3*: Excavation of mass grave KB-G1

The first phase lasted about a fortnight and was done exclusively by archaeologists¹⁶⁴, while phase 2) and 3) saw a multinational 16-member team from seven different countries working, which included archaeologists, physical anthropologists, pathologists, and an orthopaedic surgeon. The team was assembled by the Physicians for Human Rights. From the mass grave were recovered the remains of 454 individuals (the biggest mass grave excavated to that date), while remains of at least 39 individuals were sampled from the surface site. At least 44% of the victims were children under the age of 15 – and most victims had been beaten to death¹⁶⁵. Identification could only be established for seventeen individuals – six because they carried identification papers and eleven based on clothing or personal items recognisable to their relatives. For only two victims could surviving blood relatives be located¹⁶⁶.

Soon after the Kibuye exhumation, the Rwanda tribunal ended its forensic program. Thus, only Kibuye and one more site were excavated. The second place was called the Amgar Garage and was located in a business district of the capital Kigali. It contained a series of smaller graves resulting from the killing of people with the wrong type of identity papers (stating their ethnicity as Tutsi), stopped in road blockades outside of the garage. Dr. Haglund testified in court proceedings against Georges Rutaganda, Second Vice President of

¹⁶¹ PHR 1996a

¹⁶² ICTR 1995

¹⁶³ Connor 1996, Haglund, Connor & Scott 2001:59–62; PHR 1996a

¹⁶⁴ Connor 1996

¹⁶⁵ Schmitt 1998; PHR 1996a

¹⁶⁶ Haglund 2002:258

the National Committee of the *Interahamwe*, who was sentenced to life imprisonment on counts of genocide and crimes against humanity¹⁶⁷. The site itself is only very briefly mentioned in the literature¹⁶⁸. Curious as to why no excavations were carried out after the Amgar Garage, I asked Dr. Haglund, who gave the following reasons: Chief Prosecutor Goldstone made an agreement with the Rwandans that no further forensic exhumations would take place, and thus ICTR made no further requests. The UN peacekeeping forces pulled out of Rwanda shortly after the completion of the Kibuye grave. Thus, no international security was provided for the Amgar Garage investigation, which had to rely on unsatisfactory private security. There was a lack of funding. And the needs of ICTY prevailed at the time¹⁶⁹. According to Stover and Shigekane the sheer number of dead also made it impossible to undertake large-scale forensic investigations¹⁷⁰.

5.7 Investigations related to the Kosovo conflict (1999-2000)

Kosovo was a politically autonomous province of Serbia until 1989 when Serbian parliament abolished their autonomy and removed the leaders and the intellectual elite of the predominantly Kosovo-Albanian population¹⁷¹. The population was 90% Muslims speaking Albanian, one of the nine original Indo-European languages. However, to the Serb nationalists Kosovo was the cradle of the Serbs. In 1998, a small fraction of Kosovars demanded restoration of their former rights and a guerrilla force was created, the Kosovo Liberation Army. In February, with a 60 000 person multinational UN peacekeeping force present in the region, the Yugoslav People's Army of Serbia entered Kosovo with 10 000 men, jet fighters, tanks etc., to strike back on the Kosovo Liberation Army. Reports on atrocities on the part of the Serbs, equal to the ones committed in Croatia and Bosnia-Herzegovina, prompted the ICTY to stress its jurisdiction over conflicts in *all* of former Yugoslavia and start assembling teams to investigate the alleged crimes. The conflict was put to an end as a consequence of NATO air raids in April–May 1999 leading to the surrender of the Yugoslav People's Army of Serbia on June 9, and the establishment of a UN administration in the province on June 10¹⁷². On May 27, 1999, ICTY indicted former Yugoslav president Slobodan Milosevic, Serb president Milan Milutinovic, former Deputy Prime Minister Nikola Sainovic, Chief of Staff Dragoljub Ojdanic, and former Serb Minister of Internal Affairs Vljako Stojiljkovic with crimes against humanity and violation of the laws and customs of war¹⁷³. Milosovic was additionally charges with grave breaches of the Geneva Conventions for his complicity in Croatia, and with these crimes plus genocide for his complicity in Bosnia¹⁷⁴.

ICTY conducted exhumations in Kosovo in 1999 and 2000. A total of 529 gravesites were identified, at least 300 of these were investigated and a total of approximately 4000 bodies or body parts exhumed and examined. Priority for sites was based on factors such as the Milosevic indictment, exposed bodies, alleged numbers, personnel security and accessibility of the sites. Fourteen countries, among these Belgium, Great Britain, Canada, the United States, Germany, Denmark, France, Holland, and Switzerland, had forensic teams of

¹⁶⁷ ICTR 1996

¹⁶⁸ Haglund 2002:247; for a personal account se Koff 2004

¹⁶⁹ Personal communication

¹⁷⁰ Stover & Shigekane 2002:847

¹⁷¹ Ball 1999:149–152; EAAF 2000c, Abrahams, Peress & Stover 2002

¹⁷² UN Security Council Resolution 1244

¹⁷³ ICTY 1999

¹⁷⁴ ICTY 2002

altogether more than 300 forensic scientists working in Kosovo¹⁷⁵. EAAF worked in Kosovo in 2000, but cannot release information on their specific investigation “until the Tribunal authorizes it”¹⁷⁶.

The exhumations in Kosovo were mainly of known sites where local communities had knowledge of the graves and the identities of the human remains¹⁷⁷. Thus, the most pressing needs of relatives were not having the remains of their loved ones found and identified for subsequent reburial – they might have buried them themselves. Rather, they permitted exhumation in order to reveal the truth of what happened and have the perpetrators prosecuted – to restore memory and bring closure¹⁷⁸.

5.8 Recent developments – Mass Grave overflow in Iraq (spring 2004)

Immediately following the US-invasion in Iraq and the removal of Saddam Hussein and his Baath regime in April 2003, Iraqis in desperate search for their loved ones started spontaneous exhumations from mass graves throughout the country. In this process they not only destroyed potential criminal evidence, but also to a great extent ruined their own and other families’ chances of a successful outcome to their search. Between 300 000 and 400 000 people are believed to be contained in mass graves, each containing between six (by definition) and 3000 bodies (one of the emotionally overrun graves)¹⁷⁹. Several human rights organisation, among these the Physicians for Human Rights and the Human Rights Watch, thus called upon the occupying powers to protect potential evidence, and sites of war crimes and human rights violations including mass graves, and to establish an official and comprehensive program to deal with the totality of problems arising from the amount of mass graves already known¹⁸⁰.

The responsibility for overseeing reconstruction in post-conflict Iraq has been in the hands of the Coalition Provisional Authority which is closely aligned with the US Department of Defence and expected to work closely with the US Agency for International Development (USAID), and due to be dissolved by June 30, 2004¹⁸¹. As of spring 2004, the Coalition Provisional Authority had compiled a list of at least 270 mass graves suspected to originate primarily from five major aggressions on the part of the Baath regime against Kurds and Shia Muslims: 1) the execution of 8000 Kurds in 1983; 2–3) the Anfal campaign and the chemical war on the Kurds in 1988; and 4–5) the 1991 massacres on Shi’ites and Kurds uprising after the Gulf war. They also probably contain the remains of Kuwaitian, Saudis, Iranians and Egyptians that were disappeared during the Iraqi occupation of Kuwait and the Iran-Iraq war. Since May 2003, several international forensic anthropology teams and teams of archaeologist have worked on locating and assessing mass gravesites in Iraq. Physicians for Human Rights of course, but also many other organisations have send teams like the British INFORCE, founded in 2001 by a group of professional with prior forensic experience and contracted by the British government to work with the CPA¹⁸², or the Archaeologists for Human Rights (AFHR), a German group of Ancient Near Eastern archaeologists founded in

¹⁷⁵ Abrahams, Peress & Stover 2002:84

¹⁷⁶ EAAF 2000c:56

¹⁷⁷ UN Doc A/55/273-S/2000/777:article 180; UN Doc A/56/352-S/2001/865: article 191

¹⁷⁸ Kimmerle 2004:18

¹⁷⁹ U.S. Department of State 2003; USAID 2004; Hess 2004; Powers 2004

¹⁸⁰ PHR 2003a, 2003b; HRW 2003b, Stover, Haglund & Samuels 2003

¹⁸¹ Halchin 2004

¹⁸² International Forensic Center of Excellence for the Investigation of Genocide, see INFORCE home page

June 2003 with this specific purpose in mind¹⁸³. Also a forensic team from Denmark including an archaeologist has been involved.

Each mass gravesite may contain several individual mass graves. In the spring of 2004, sixty graves had been confirmed, while seventy graves had been discounted, but needed further examination before being taken off the list. The Coalition Provisional Authority/USAID in corporation with the Iraqi Governing Council has divided the graves into three types of graves according to the way the exhumation will be approached¹⁸⁴:

- *Emotionally overrun sites* – (11 sites). These sites are already disturbed and people cannot be stopped completing their search. Iraqis will be trained to provide emotional support to the involved communities and collect ante-mortem evidence
- *Humanitarian exhumation sites* – (the vast majority). Community-led exhumations: trained Iraqi professionals are to teach the community the basics of handling human remains. The primary purpose is identification of missing persons, although some evidence will be recovered by local forensic team
- *Full criminal investigation sites* – (8–20 sites). Sites selected to be fully excavated for the sake of prosecuting war crimes, crimes against humanity and genocide by the Iraqi Special Tribunal to be set up by the Iraqi Governing Council. The selection will be based on four criteria: 1) the grave represent a main period of atrocity; 2) it is undisturbed or intact; 3) it may give evidence of crimes against humanity; and 4) the local population permits securing and exhumation of the site

To secure impartiality, excavations of type 3) sites, which started February 2004, are done by international teams in coordination with the Coalition Provisional Authority. For instance, the Finnish government who opposed the invasion agreed to send a team. Still, when possible they are to work alongside Iraqis (selected Iraqi doctors and archaeologists) to train them to do future forensic exhumations. The Iraqi Human Rights Ministry is setting up a Bureau on Missing Persons, but whether this is the institution to continue the work of the Coalition Provisional Authority after June 30, 2004, is not entirely clear as this ministry is also an interim institution. Anyway protocol, operating procedure, administration, and logistical support have been planned. According to the USAID, the process will be much as in former Yugoslavia, but adapted to the specific needs and circumstances in Iraq¹⁸⁵. According to Stover, who in spring 2004 was assessing the mass graves situation in Iraq in relationship to trials, desires of the families and communities, and the ability to carry out scientific excavations on such a large scale, the situation and the way it is addressed is more comparable to Rwanda, and not the same as in former Yugoslavia¹⁸⁶. His conclusion was that “(1) the vast majority of graves may need to be exhumed in collaboration with the families and communities as commemorative sites with a very low level of ability to identify individual remains; and (2) a few graves should be preserved for trials”. Also Haglund has been sceptical about how realistic it is to expect a successful outcome to the identification process as the bodies are much decomposed and Iraq is without capacity for making DNA-analysis¹⁸⁷.

¹⁸³ Archaeologists for Human Rights/Archäologen für Menschenrechte, see AFHR home page

¹⁸⁴ USAID 2004, U.S. Department of State 2003

¹⁸⁵ USAID 2004:4

¹⁸⁶ Stover 2004: reply to questionnaire, Stover, Haglund, & Samuels 2003

¹⁸⁷ Powers 2004

6 OPINIONS AND EXPERIENCES OF PARTICIPANTS OF THE FIELD

The questionnaire, which is presented in appendix A, was made with a specific view to former Yugoslavia and Rwanda. The following is an alphabetic list of the persons that responded including my reasons for inviting them¹⁸⁸:

Ralph Hartley	Archaeologist – because he is a conventional archaeologist and was a team member on early mass grave investigations in former Yugoslavia
John Hunter	Archaeologist – because he is a conventional archaeologist with vast experience within domestic forensic investigations and recently with mass grave investigations, and has been active publishing on the subject
Rebecca Saunders	Archaeologist – because she is a conventional archaeologist and was a team member on early mass grave investigations in former Yugoslavia
Douglas D. Scott	Archaeologist – because he has a vast experience with mass grave investigations from many countries in various parts of the world, and has been active publishing on the subject
Mark F. Skinner	Bio-archaeologist – because he has a vast experience with mass grave investigations from many countries in various parts of the world, and has been active publishing on the subject
Eric Stover	Human rights researcher – because he was the initiator of the field and has a vast experience with both mass grave and other human rights investigations, he is not an archaeologist, and he has been active been active publishing on the subject

6.1 Excavating mass graves – exhuming human remains¹⁸⁹

The answers in general confirmed the existence of at least two investigation concepts corresponding more or less to the categories mass grave *excavations* (digging out forensic evidence, including the human remains) and mass grave *exhumations* (digging up human remains). Scott stressed the importance of proper context recording also with exhumations so that the identity of remains cannot be called into question. The respondents generally related one category to *prosecutorial purposes*, and the other to *humanitarian purposes* as identification and repatriation. Several also stated that, in reality most investigations were for identification and repatriation, and a few for prosecutorial purposes. Several respondents made references to different sorts of feasibility (practical, economical, temporal), while Hartley referred directly to the reasoning of “*dominant political elites, irrespective of funding sources*”¹⁹⁰ as being behind decisions to invest in any type of mass grave investigations.

By most respondents the commissioning entity was clearly perceived to influence investigation methodology and the inclusion/exclusion of archaeologists. Several respondents pointed to the political nature of such entities. Second to political constraints were constraints on funding, time and logistics.

¹⁸⁸ For titles and institutional affiliation see Preface

¹⁸⁹ Questionnaire, question 1 and 3

¹⁹⁰ Hartley

6.2 Including/excluding archaeologists from mass grave investigations¹⁹¹

Stover referred to the societal context in Iraq and the humanitarian *exhumation site-concept* adopted here, when stating that archaeologists are necessary, but not crucial. He thinks that community members in a relatively short time can be trained to exhume mass graves under expert supervision and that this may be beneficial to the families of the missing and the community as a whole.

All the archaeologists stressed the importance of archaeologist being included in *all* excavations/exhumations, no matter the purpose. Several stated that archaeologists and physical anthropologist cannot substitute each other and that both were needed. Hartley pointed to the esteem in which archaeologists are held within other forensic investigations, like the US government's investigations of military personnel buried in mass graves in South-East Asia¹⁹². The archaeologists referred to the argument of others for excluding the archaeologist as: archaeologists slow things down, they are perceived as "*simply skilful diggers rather than forensic scientists on a par with others such as pathologists*"¹⁹³, persons of other professions believe they are equally skilled – or archaeologists are quite simply excluded out of ignorance (or fear).

6.3 Purposes of investigations and the contribution by archaeologists¹⁹⁴

The questions, to which objectives mass grave excavations *per se* contribute most significantly and to which the archaeologist contributed the most, split the respondents in halves: those who did not feel they could make a ranking and those who ventured to make one. There was no consistency between these rankings. Those who did not make a ranking either said it would depend entirely on the circumstances or that it contributed to all the objectives offered for ranking.

Answers varied as to how the strict rules of confidentiality applied by tribunals affected other objectives. Stover and Skinner both stated that since the remains were released to family or missing persons commissions after the autopsy, there need not be any incompatibility, while Hartley thought prosecutorial purposes might take precedence over all other objectives. Hunter stated that it would affect the pursuit of other mass grave investigations.

6.4 The identification process and the contribution by archaeologists

Group identification: Hartley stressed the danger of playing into the political and sometimes ideological trappings of the actors in a lethal conflict. Scott stated that it would depend entirely on the skills of the individual investigator.

Personal identification: Most answers were to the effect that it would depend on the specific case. Even if secondary to the physical or anatomical evidence, most respondent thought archaeology could make an important contribution. As to stray finds of personal identification value which cannot be confidently allocated to a particular set of remains, nobody stated they knew if and how relatives were notified.

Mode and manner of death and pre-mortem trauma: Answers were not consistent, so maybe Scott's answer that it would depend on the specific case sums up all the answers. Skinner

¹⁹¹ Questionnaire, question 2 and 3

¹⁹² See also Hoshower 1998

¹⁹³ Skinner

¹⁹⁴ Questionnaire, question 4–5, 7–8

stated: “I think you need some kind of statistical analysis performed on a documented series of bodies, with data collected purposefully so as to answer the particular question you have posed. But my general impression is that in mass graves, the bodies themselves give relatively little evidence of the circumstances surrounding death whereas the bullets and clandestine burial are eloquent “archaeological” evidence of what happened.”

6.5 Reconciliation and the contribution by archaeologists¹⁹⁵

Opinions upon which objectives contributed most significantly to reconciliation processes varied, but repatriation and conviction were the answers most frequently offered. Stover stated being sceptical about the ability of exhumations to promote reconciliation: “In a nationwide, five-year qualitative and quantitative study, we conducted in Rwanda and FY [former Yugoslavia] we found that reconciliation is largely an individual-to-individual interaction.” Yet, he also stated that learning what happened can be important on many levels – legal, religious, spiritual, health – and bring some closure. Most other respondents stated something to the same effect, but also that it would vary with the individual. Hartley additionally stated that careful and respectful exhumation contributed greatly to the process of acceptance by the relatives. Saunders stated that finding the identity of the killer would be important, although not contributing much to reconciliation unless all parties to the conflict acknowledge “that there is blame everywhere and/or leadership commanding or condoning the massacres is replaced”. Skinner stated that this was not the archaeologist’s area of expertise.

7 THE QUEST FOR TRUTH AND JUSTICE – DISCUSSION

In chapter 3.6, I tentatively made a distinction between *excavating mass graves* and *exhuming human remains*, implicating that different roles and contributions by archaeologist might be expected. As both the case studies and the experience of professionals that have worked within the field demonstrate, real investigations historically can rather be placed on a scale between the two categories. In some *forensic mass grave excavations (I)*, establishing a historical record has taken primacy over identification and repatriation – for instance the criminal investigations done by the *ad hoc* International Criminal Tribunal for former Yugoslavia (ICTY). In other *forensic mass grave excavations (II)*, establishing a historical record has been equally important as identification and repatriation, but with a distinct focus on the needs of survivors and families of the victims – for instance in Latin America. At the other end of the scale, there are the *forensic mass grave exhumations* in which identification and repatriation take priority over establishing the historical record – as for instance in the exhumations done by the International Commission on Missing Persons (ICMP) and the Commissions on Missing Persons in Bosnia-Herzegovina and the Republika Srpska.

One could argue that, historically, two strategies exist for human rights investigations of mass graves with a systematic, long-term and large-scale perspective built into the strategy. One is the Latin American model of *forensic mass grave excavations (II)*, the other is the model used in former Yugoslavia where the *forensic mass grave exhumations* done by institutions such as ICMP and the national commissions can be seen as complementary to the *forensic mass grave excavations (I)* done by ICTY. The Tribunal is releasing the bodies of their excavations to these commissions, and the commissions are doing exhumations that are related to the same events as the ones the Tribunal is prosecuting, but on the basis of other

¹⁹⁵ Questionnaire, question 6 and 13

excavations. ICTY also has seized evidence for prosecution from exhumations done by the commissions.

There have been clashes between the way ICTY conducts excavations as pure criminal investigations (not focusing on the identification of each and every individual) and the needs of relatives¹⁹⁶. However, this approach has had its merits in terms of societal security, since the results of the extensive excavation program have been successfully used in court. I have only briefly referred to investigations of mass graves created by other parties to the Balkan wars than the Serbs¹⁹⁷. However, such excavations and subsequent prosecutions is a part of the ICTY-investigations that I consider very important in order to promote overall societal security in the region, especially because former Yugoslavia has a history of genocide and mass graves going back to World War II, not just involving Serb Chetniks killing Jews, Gypsies, Muslims and Croats, but also Croat Ustachas killing Serbs¹⁹⁸. Accordingly, I also perceive the close corporation between the various *national* missing persons commissions, working to find and identify “each other’s” bodies and the recognition of the importance of this work by the various *national* governments, as very important in promoting regional societal security.

Also the Latin American model has had its merits. Enforced disappearances have been the subject of truth commissions in Latin America and consequently these commissions have occupied themselves also with mass graves and mass grave investigations – and either strongly recommended or themselves commissioned mass grave excavations. Thus, mass grave investigations and forensic anthropology teams have filled an important societal safety function in the transitional phase of emerging democracy. In addition – and in lack of a judicial system trusted to function impartially – numerous human rights cases have been filed with the Inter-American Human Rights Court based on evidence from mass grave excavations. Furthermore, these two predominant uses of forensic excavation results may explain also the Latin American equal emphasis on producing a historical record and at the same time on identification of victims.

Individual criminal cases have been brought to court, but due to the amnesty laws issued in most Latin American countries shortly after initial transition into democracy, excavation results have not been used large scale for prosecutorial purposes. However, such use has always been among the explicitly stated purposes of the Latin American investigation concept. This may become significant now that one country after the other is abolishing the amnesty laws, and thus in my opinion, are on the move from transitional democracy into stable democracy. I believe that the extensive forensic mass grave excavations in the region, rendering results difficult to overlook, have contributed greatly to this end. In this respect, I think it is important to remember that an excavation can only be made once. The evidence that is not collected during the excavation is lost¹⁹⁹. The youngest truth commission in Latin America – that of Peru – has combined truth and justice in a so far unprecedented way, as it was mandated to collect evidence for the prosecution of crimes against humanity as well as establish a historical truth. The mass grave excavations have been carried out by the EPAF which includes also archaeologists.

The investigation concept of “*humanitarian exhumation sites*” introduced in relation to the present situation in Iraq, does not seem equivalent to any of the investigation concepts previously mentioned. It has a distinct *health promotion* aspect that takes primacy over

¹⁹⁶ Stover & Shigekane 2002

¹⁹⁷ The Experts Commission’s investigation of graves in Pakracka Poljana County, Croatia – see chapter 5.3

¹⁹⁸ Ball 1999:123

¹⁹⁹ See chapter 3.6.2

medico-legal investigation aspects. Even if health promotion is also clearly an aspect of the Latin American mass grave investigations, there is a vast difference between investigations conducted by forensic professionals, letting community members in on the excavation and/or offering simultaneous mental health programs to survivors and families of the victims (Latin America), and community-led investigations supervised by professionals (Iraq). This is not to say that community members cannot be trained to become professionals – after all that is what happened with the Latin American forensic anthropology teams.

However, the investigation concept in Iraq seems to be some sort of adaptation of the WHO “*Safe Community*” model – a strategy based on social mobilisation of community resources and competence – to problems that has so far been approached only with forensic investigative strategies²⁰⁰. Also, the gap between the strategies involved with *humanitarian exhumation sites* and *full criminal investigation sites* seems much bigger than between *forensic mass grave exhumations forensic* and *mass grave excavations (I)*. Thus, it might be important to find means to couple the two investigation concepts into one holistic strategy. There may be many societal safety arguments for such a strategy, and also it may be the only practically and economically feasible solution to a task that Haglund stipulates could easily be a 50-year job²⁰¹. However, I believe one would gain by being more explicit about objectives, as I suppose one will not gain the same with this strategy as with a forensic strategy.

What happened in Iraq when people started to overrun mass gravesites is an example, in addition to the Srebrenica case, of *emergent norms*. These examples may relate to the distance to the norms of the authority response system, but also depend on a profound distrust that such a system will at all be put in place, and that it will work efficiently and to the best of their interests. Because of this *a priori* lack of trust, I believe the aftermath response system should automatically expect such occurrences in the aftermath of massive human rights abuses by states. To design the right response system in the given situation is a challenge common to all crisis management, also the management of *crises after the crisis*. Because of this general lack of trust, I also believe that *dissipation of state authority* (shared concern and crisis management co-production between private and public actors) is extremely important.

With regard to forensic mass grave investigations, idealistic, non-profit human rights NGOs have played a role that cannot be overestimated. On the other hand, it is also important that the international community engage with its *authoritative* entities such as the various bodies of the United Nations and the International Committee of the Red Cross. The importance of the contribution made by archaeologists (and physical anthropologists) is demonstrated by the United Nations increasing use of forensic teams – especially “after” ICTY.

Truth commissions are generally considered an important mediating tool for the transition into democracy in countries that have experienced massive human rights abuses by the state. If democratic institutions do at all exist, they are often compromised by their association with the abusive regime. Truth commissions are somehow officially sanctioned and generally their strengths are in exactly those areas that fall outside that of a judicial body. However, they are also temporary entities and their long-term effect depends on the political will and strength to follow up on conclusions.

One cornerstone of democracy is the existence of a law enforcement system and an independent and impartial judicial system. Society regulates our lives according to our legal

²⁰⁰ Svanström 1993, 1994

²⁰¹ Powers 2004

identity with which follows specific legal rights. In a democracy, we expect society to secure and safeguard these rights, just as we expect them to be broadly based on human rights. Otherwise legality will have no legitimacy. In case other legal subjects – including state agents – offend these rights, we expect an impartial judicial system independent of the governing system to settle the matter. Thus, in a democracy one would never accept even a single disappearance or homicide to go un-investigated or un-prosecuted. That one can trust this to be done is a part of the societal security that in democracy one take it for granted that the state will provide.

I believe ICTY has extended this democratic expectation to the international scene. Before ICTY there was no law enforcement of international criminal laws²⁰². Without ICTY we would probably not have got a permanent International Criminal Court – after all such a permanent law enforcement entity has been discussed without result for the past 50 years. And without the International Criminal Court, enforced disappearance would not have been defined as a crime against humanity. To me, mass grave excavations for prosecutorial purposes are not about the dead, it is about security for the living. To the relatives of the missing, justice may come second to identification and repatriation, but as soon as these purposes are fulfilled they will also want justice (after all, international criminal law goes by the name of *humanitarian* law). Furthermore, justice is not just about the needs of the relatives of the missing. It is also about those victims who barely escaped ending up in a mass grave – like the six that crawled out from the pile of bodies after the execution of their fellow villagers in Koreme. And it is about those associated with the perpetrators by group affiliation that did not commit any crime – the innocent German or Serb or Hutu, etc. Although the legal principle may be that you are innocent until proved guilty, in group conflicts you are guilty by group affiliation until proved innocent. To avoid collective guilt in these groups, it is in their interest to have mass graves excavated, the story told, and the perpetrators prosecuted.

Although there may be many problems involved, I believe that the pursuit of justice is paramount to societal security. In situations where there is no other indisputable evidence, the physical evidence produced by forensic mass grave excavations, and the contribution to this evidence production by archaeologists, have been – and probably will be in the future – important building blocks for more secure societies.

8 CONCLUSIONS

Human rights mass grave investigations have contributed significantly to the success of national as well as international truth commissions, human rights courts, criminal courts and tribunals throughout the world. Some institutions pursue either truth *or* justice, others pursue both truth *and* justice – and this accounts even for recent truth commissions. Consequently, human rights mass grave investigations contribute to both purposes.

In the aftermath of violent conflicts related to massive human right abuses by state agents, the success of such institutions is paramount to the societal rebuilding process. At the societal level they promote the establishment of democratic institutions to provide the societal safety and security basis needed for reconciliation processes. Societal rebuilding and reconciliation processes are long-term projects, and so are mass grave investigations. Thus, the contribution by forensic mass grave investigation teams have been most notable in cases where a systematic, long-term and large-scale strategy has been applied – notably in Latin

²⁰² The Geneva Conventions and the Genocide Convention

America and former Yugoslavia. However, the field is rapidly growing, and forensic anthropology and archaeology are to an increasing degree incorporated into international crisis and conflict management strategies – notably by the United Nations.

Human rights mass grave investigation teams have in general pursued three major purposes: humanitarian, legal and historical purposes. Establishing a historical record – the factual truth of what happened and in which sequence, at a specific location and at a specific point in time – is paramount to pursuing the legal and historical purposes and important also to reaching the humanitarian purpose of identifying victims. The archaeologist's unique contribution lies in the panoply of methods archaeologists apply to establish the historical record from features in the ground and earth found objects. Guiding these methods is the paradigm that human behaviour is patterned and leaves behind a physical record that is also patterned in a way that is consistent with the behaviour that produced it. Thus, the work of archaeologists must be characterised as a valuable contribution to any forensic mass grave investigation team.

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APPENDIX A – QUESTIONNAIRE

QUESTIONNAIRE

to

The Contribution by (Forensic) Archaeologists to Human Rights Investigations of Mass Graves allegedly resulting from Genocide or Crimes against Humanity. (With a Specific View to the Former Yugoslavia and Rwanda.)

Personal data

Profession:

Extent and type of experience with mass grave excavations:

Forensic experience prior to becoming involved with mass grave investigations:

Policy and purpose of mass grave investigations

Different entities commissioning mass grave investigations (tribunals, truth commissions, local authorities, associations of or on behalf of relatives or other interested parties etc.) may have different priorities regarding the prime purpose of an investigation.

The objectives of mass grave investigations are many, such as

- a) Collecting evidence for the indictment and prosecution of alleged perpetrators or the responsible in command*
- b) Identifying the victims and returning the remains to the families*
- c) Establishing factual truth counteracting historical revisionism*
- d) Acknowledging the legal and human rights of the offended party*
- e) Contributing to preventive measures.*

1. What reasoning will lie behind the decision to conduct a mass grave investigation as
 - a) a proper archaeological excavation focusing on both the retrieval of the human remains and the contextual evidence
 - b) merely an exhumation focusing entirely on the retrieval of the human remains, or
 - c) something in between?
2. When is the archaeologist dispensable/indispensable to the stated purpose of a mass grave investigation and what reasons are usually given for excluding/including the archaeologist from a mass grave investigation?
3. In what way, if any, do different priorities on the part of the commissioning entity influence the methodology and procedure of a mass grave investigation and the inclusion/exclusion of archaeologists from the investigation?

4. To which objectives do mass grave excavations *per se* contribute most significantly? Please rank the objectives mentioned above (and feel free to include others).
5. To which objectives does involving archaeologists in mass grave excavations contribute most significantly? Please rank the objectives mentioned above (and feel free to include others).
6. In your experience, which objectives contribute most significantly to reconciliation processes in the aftermath of war and violent conflicts and to rebuilding a society resilient to devastating repetitive conflicts? Please rank the objectives mentioned above (and feel free to include others).
7. If there is a discrepancy between your rankings to question 4), 5) and 6), please try to give a reason for this?
8. When tribunals commission mass grave investigations all evidence remains with them and strict rules of confidentiality is applied, until the tribunal in question chooses to release the information. How do think this affects the pursuit of other objectives, as the ones mentioned above?

Levels of identification

Categorical identification will be of major importance to the prosecution of genocide and/or crimes against humanity. The same applies to evidence of the mode and manner of death and of traumas illegally inflicted upon the victim before death.

9. In general, how important is the contribution by archaeological evidence, whether contextual or artifactual, to establishing group membership compared to biological or anatomical evidence?
10. In general, how important is the contribution by archaeological evidence, whether contextual or artifactual, to establishing the mode and manner of death, and traumas illegally inflicted upon the victim before death compared to physical or anatomical evidence?

The ultimate purpose of investigating mass graves or unburied surface remains is said to be identifying the victims and returning the remains to the families.

11. In general, how important is the contribution by archaeological evidence, whether contextual or artifactual, to the identification of individuals compared to physical or anatomical evidence (apart from DNA analyses)?
12. How often do you come across “stray” finds of personal items belonging to identifiable individuals that you cannot associate with particular human remains, how do you treat them in the medico-legal system and how do you act towards the relatives?
13. The relatives of the missing have the right to know the fate of their loved ones. Apart from a positive identification and having the remains returned, to your experience what type of knowledge that mass grave excavations can provide seems most important to the relatives and how do you think this contribute to the reconciliation process?

END