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Exhuming norms: Examining the influence of international norms on the Independent Commission for the Location of Victims' Remains in Northern Ireland

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A thesis submitted in partial fulfillment of the requirements for the Doctor of Philosophy degree in Political Science

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Abstract

Forced disappearances are crimes against humanity that occur when individuals disappear, often occurring during a period of political conflict. During the Troubles in Northern Ireland, the conflict among Irish nationalists and British unionists between 1968 and 1998, 16 people were disappeared by Irish nationalist paramilitary forces. In 1999, the Independent Commission for the Location of Victims' Remains (ICLVR) was established to investigate the disappearances, locate the remains and return the victims to their families.

The ICLVR is not the first institution to conduct forensic human rights investigations into forced disappearances, these investigations have become the standard approach internationally. However, little literature considers how this approach has been disseminated around the world. This dissertation considers the influence of the international norms related to forced disappearances on the success of the ICLVR. It interrogates two research questions: 1) Do international norms exist regarding forced disappearances and if so, what is their specific content? 2) To what extent have the international norms related to forced disappearances contributed to the success of the Independent Commission for the Location of Victims' Remains (ICLVR)?

This dissertation uses process tracing based on interview and archival data, first, to demonstrate that three international norms related to forced disappearances have developed and diffused, and; second, to trace the development and operations of the ICLVR. The dissertation concludes that the key to the institution's success is its humanitarian mandate. The ICLVR's humanitarian mandate represents an intentional rejection of a judicial approach, which is one aspect of the norms related to forced disappearances. However, this conscious rejection of the judicial norm in favour of a humanitarian approach highlights the predominance of the international norms related to forced disappearances.

Keywords: forced disappearance, Northern Ireland, international norms, international relations, norm theory, The Troubles, transitional justice

Summary for Lay Audience

Forced disappearances are a crime against humanity that occurs when a person literally vanishes; in other words, an individual goes missing and no information is provided to their family. Sometimes they are held captive and tortured, other times they are immediately murdered, and their body is disposed of in secret. Families are left, often for many years, wondering what happened to their loved ones and why they disappeared. Frequently, the group who committed the disappearance refuses to acknowledge that it happened, let alone that they were responsible for it. Forced disappearances have occurred all over the world, and, over time, forensic scientists have conducted investigations using state-of-the-art scientific techniques to locate the victims. As these investigations have become more common, ideas about how to conduct them and best practices in their structure, operations, and forensic techniques have been shared across different cases to make these investigations more effective.

In the latter half of the twentieth century, during the civil conflict in Northern Ireland, sixteen individuals were victims of forced disappearances. In 1999, at the end of the conflict, the Independent Commission for the Location of Victims' Remains (ICLVR) was established to investigate the disappearances. An important difference in the operation of the ICLVR has been its sole goal of returning the remains of the disappeared to their families, instead of also trying to collect evidence for criminal trials as is common in other such investigations. The ICLVR has been very successful, with the remains of 13 of 16 victims having been returned to their families to date.

This project considers two aspects of investigations into forced disappearances. First, it examines how forensic investigations into forced disappearances have developed and spread around the world. Second, it assesses how the ICLVR developed and operated in the Irish context specifically, and whether the international ideas and practices about forensic investigations have influenced the ICLVR's development and operations. This research is important because it provides an in-depth understanding of an institution that successfully investigated forced disappearances. Furthermore, the project outlines key lessons learned for similar institutions elsewhere.

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List of Abbreviations

CCJP – Catholic Commission for Justice and Peace
CONADEP – National Commission on the Disappeared in Argentina
CVSNI – Commission for Victims and Survivors Northern Ireland
DUP – Democratic Unionist Party
EAAF – Argentinian Forensic Anthropology Team
ECCC - Extraordinary Chambers in the Courts of Cambodia
ECHR – European Court of Human Rights
EPAT – Peruvian Forensic Anthropology Team
EU – European Union
FAFG – Guatemalan Forensic Anthropology Foundation
HET – Historical Enquiries Team
HMIC – Her Majesty’s Inspectorate of Constabulary
IACHR – Inter-American Court of Human Rights
ICESCR – International Covenant on Economic, Social and Cultural Rights
ICC – International Criminal Court
ICCPR – International Covenant on Civil and Political Rights
ICLVR – Independent Commission for the Location of Victims’ Remains
ICMP – International Commission on Missing Persons
ICPED – International Convention for the Protection of All Persons from Enforced
Disappearance
ICRC – International Committee of the Red Cross/ Red Crescent
ICTR – International Criminal Tribunal for Rwanda
ICTY – International Criminal Tribunal for the Former Yugoslavia
IHR – International Human Rights
INLA – Irish National Liberation Army
IR - International Relations
IRA – Irish Republican Army
OAS – Organization of American States
NGO – Non-governmental organization
NI – Northern Ireland

PIRA – Provisional Irish Republican Army
PHR – Physicians for Human Rights
PSNI – Police Service of Northern Ireland
SATRC – South African Truth and Reconciliation Commission
SLP – Social Labour Party
TD – *Teachta Dála*
TRC – Truth and Reconciliation Commission
UDHR – Universal Declaration of Human Rights
UDA – Ulster Defence Army
UDR – Ulster Defence Regiment
UK – United Kingdom
UN – United Nations
US/USA – United States of America
UUP – Ulster Unionist Party
UVF – Ulster Volunteer Force

Chapter 1: Introduction

1.1 Forced disappearance and Northern Ireland

In August of 2003, a man walking on Shelling Hill beach in north County Louth, Ireland spotted something sticking out of the sand and began to dig. “When he realised it was human remains, he ran to the car for holy water to bless the body and he said a prayer.”¹ Two months later, in October, DNA analysis confirmed that the body was that of Jean McConville, a widowed Northern Irish mother of ten, who had been kidnapped from her West Belfast home by the Irish Republican Army (IRA) nearly thirty years earlier in December 1972, as many of her children watched in horror. As her son Michael described,

a rap came to the door and a gang of men and women piled into the flat. They were looking for our mother and when they got her they tried to pull her outside. We were all crying and holding on to her so they stopped and tried to calm us down; they said that [my brother] Archie could go with her but when they got Archie and mother outside they told Archie to fuck off. We looked from the balcony as they bundled her into a van. There were two cars with men and women in them, in total there was about eighteen people who took my mother away. I have no idea why it took so many as she wasn't a big woman. That was the last time we saw her.²

At first, Jean McConville's children were told their mother would return soon, and this seemed plausible. After all, she had been taken away and had returned once before. But this time, she never came home. Although her family reported her missing, the police appeared disinterested in the case and did little beyond taking the family's statement. The children were separated and spent decades in protracted grief, knowing their mother was dead but with no idea what had happened to her, with no body to bury, and no way of grieving their loss. Furthermore, they were subjected to rumours that their mother had been a spy for the British.

The family lived without answers for decades. In 1998, the Good Friday Agreement was signed, officially marking an end to three decades of “The Troubles,” the violent civil

¹ Thomas Harding, “Beach body ‘is mother killed by IRA 30 years ago’,” *The Telegraph*, 28 Aug 2003, <https://www.telegraph.co.uk/news/uknews/1439905/Beach-body-is-mother-killed-by-IRA-30-years-ago.html>, “The Disappeared – Adams can help bring closure,” *Irish Examiner*, 6 November 2013, <https://www.irishexaminer.com/viewpoints/ourview/the-disappeared--adams-can-help-bring-closure-248596.html>.

² WAVE, *The Disappeared of Northern Ireland's Troubles*, (WAVE Trauma Centre: Belfast, UK, 2012), 17.

conflict between “Protestants” and “Catholics” (the nomenclature most often used to capture the conflict between British unionists and Irish nationalists) in the six counties that make up Northern Ireland. Following the peace agreement, various factions of the IRA took an unusual step. They released the names of first 10, and later 16 individuals whom they had “disappeared” during the conflict.

1.2 Research scope

Forced disappearances are a crime against humanity, and the term refers to situations when a person quite literally disappears. The individual may be abducted, from their home or from the street, and goes missing. Sometimes they are held captive and tortured, other times they are immediately murdered, and then their body is disposed of in secret. An additional dimension of terror is added to the crime because the state or non-state actor who committed the disappearance refuses to acknowledge that it happened.³

Disappearances are not unique to the Troubles, nor are they unique to Northern Ireland. In fact, forced disappearances are reportedly becoming an increasingly common tactic employed by both state and non-state actors. In its 2020 session, the United Nations (UN) Working Group on Enforced or Involuntary Disappearances investigated 532 new cases of disappearances in 25 states.⁴ The secrecy and silence surrounding disappearances extends the suffering and trauma of the loved ones of the victims. As with the McConville family, loved ones of the disappeared are left not knowing the fate of the victim, not knowing for sure if they are dead, not knowing where their body might be buried. Rumours often swirl that the victim is alive but has abandoned their family, or that they are involved in nefarious activities that prevent them from returning home.

Over the past sixty years, forced disappearances have begun to be understood as a crime against humanity within the international human rights and legal systems. As I argue in this dissertation, a robust set of international protections have emerged in an attempt to

³ Amnesty International, “Enforced Disappearances,” <https://www.amnesty.org/en/what-we-do/disappearances/>.

⁴ United Nations Human Rights, Office of the High Commissioner, “Working Group on enforced or involuntary disappearances concludes review of 532 cases from 25 countries,” <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25897&LangID=E> (accessed May 24, 2020).

safeguard people around the globe from forced disappearances, and to prosecute perpetrators. The international community has, by and large, reached consensus around the norm that forced disappearances are a particularly abhorrent type of human rights violation that must be investigated and addressed.

However, despite this overarching consensus and accompanying international normative framework, whether and how forced disappearances are investigated and addressed varies substantially in different contexts. In some cases, decades pass before disappearances are investigated. In others, a decision is made not to investigate or return remains. In others still, local communities come together to exhume remains, and in yet others, investigations are spearheaded following a political transition or peace agreement. And, in some more modern cases, for example in the 2018 disappearance of Saudi Arabian journalist Jamal Khashoggi from the Saudi consulate in Istanbul, the disappearance is captured on social media and the world becomes swept up in transnational advocacy.⁵

In the Irish context, the cases of the sixteen victims of forced disappearances clearly demonstrate the horrific and protracted nature of this crime, and its international component. The Disappeared

were buried in unmarked graves in Northern Ireland, across the border in the Republic of Ireland, including County Meath and Wicklow, and in one instance a body was interred in France. Throughout the conflict, responsibility for the deaths of these victims was denied, and in some instances, actively hidden from family members. Rumours of women leaving their children to marry abroad, hushed suggestions that an individual had emigrated to the USA, and even fabricated postcards from abroad manifested in the wake of the disappearances of these individuals. Families were left guessing as to the whereabouts of their loved ones and in many instances believed that there was a chance that they had not been killed or injured, but were merely missing through choice. The families of the Disappeared were unaware for many years that they were not alone in their experience of loss, such was the silence and deception surrounding the abductions of the victims.⁶

As the peace agreement was being negotiated and implemented in Northern Ireland, it became increasingly clear that despite the seemingly low number of victims of disappearances, the cases of the Disappeared represented a significant crime during the

⁵ This disappearance was allegedly committed with the knowledge of important members of the Saudi regime. See “Jamal Khashoggi death: Saudi Arabia says journalist was murdered,” BBC News, 22 October 2018, <https://www.bbc.com/news/world-middle-east-45935823>.

⁶ Sandra Peake & Orla Lynch, “Victims of Irish Republican Paramilitary Violence—The Case of “The Disappeared,” *Terrorism and Political Violence* 28, no.3 (2016): 453.

Troubles that needed to be formally addressed.⁷ The governments of the United Kingdom (UK), Ireland responded to pressure and advocacy from the families of the Disappeared to investigate the crime and have, at that time, the still-missing remains of the victims returned to their families for proper burial. The Independent Commission for the Location of Victims Remains (ICLVR) was established by an intergovernmental agreement between the two states to fulfil these goals. As of April 2020, only three of the Disappeared had not been located and recovered.

The existing scholarly literature regarding investigations of forced disappearance primarily takes two forms: the first are single case studies, analyzing the conditions and outcomes of cases of investigations of forced disappearances from around the world.⁸ The second form is more methodologically focused, drawing techniques from investigations to improve future forensic human rights investigations.⁹ In addition, early literature highlighted “a growing tension between the humanitarian needs of families of the missing and the evidentiary needs and limitations of international war crimes tribunals in the aftermath of mass killings.”¹⁰ Similarly, Cox *et al.* suggested “it has been rare indeed for an investigation to provide evidence in a way, and to standards, that satisfy the needs of

⁷ Please note that in the Irish case, the cases of the 16 forced disappearances acknowledged by paramilitary organizations are labelled “The Disappeared.” Outside of references to these 16 individuals, and direct quotations from other works, I will not capitalize the term.

⁸ See, for example, Adam Rosenblatt, *Digging for the Disappeared: Forensic Science After Atrocity*, (Stanford: Stanford University Press, 2015); Francisco Ferrándiz and Antonius C. G. M. Robben (eds.), *Necropolitics: Mass Graves and Exhumations in the Age of Human Rights*, (Philadelphia: University of Pennsylvania Press, 2015); Jonah S. Rubin, “Transitional Justice Against the State: Lessons From Spanish Civil Society-Led Forensic Exhumations,” *International Journal of Transitional Justice* 8, no.1 (February 18, 2014): 99-120; Melanie J. Klinkner, “Towards Improved Understanding and Interaction Between Forensic Science and International Criminal Law in the Context of Transitional Justice,” Doctoral dissertation. (Bournemouth University: Bournemouth, UK., 2009).

⁹ See, for example, R.H. Kirschner and K. Hannibal, “The application of forensic sciences to human rights investigations,” *Medicine Science and Law*, 13, no.5-6 (1994): 451-60; Juha Raino, Kaisa Lalu and Antti Sajantila, “International Forensic Investigations: Legal Framework, Organisation, and Performance,” in *Forensic Archaeology and Human Rights Violations*, ed. Roxana Ferlini (Springfield, Il: Charles C. Thomas, 2007); Eric Stover, William D. Haglund and Margaret Samuels, “Exhumation of Mass Graves in Iraq: Considerations for Forensic Investigations, Humanitarian Needs, and the Demands of Justice,” *JAMA* 290, no. 5 (2003): 663-66.

¹⁰ Eric Stover and Rachel Shigekane, “Exhumation of mass graves: balancing legal and humanitarian needs,” in *My neighbour, my enemy: justice and community in the aftermath of mass atrocity*, ed. Eric Stover and Harvey M. Weinstein, (Cambridge: Cambridge University Press, 2004), 85.

both judicial process and human rights,” and that this conflict “further disempowers both the deceased and survivors.”¹¹

However, there is very little scholarly work in the existing literature that seeks to understand the international dimensions of investigations of forced disappearances. This represents a gap in the literature because it ignores the normative and transnational dimensions of how these norms and processes have developed and spread. There is also very little literature that intersects different levels of analyses between the international norms and processes that exist and their interpretation and implementation at the local level. The existing literature primarily considers cases individually without considering whether there are norms or lessons learned shared between contexts.

Thus, the objectives of this project are twofold. The first objective is to garner an in-depth understanding of the international norms surrounding forced disappearances and how they have been investigated and addressed throughout history. The second objective is to acquire an in-depth understanding of forced disappearances in Northern Ireland during the Troubles, and their investigation through the ICLVR. This project brings together these two parts to consider the influence of the international norms related to forced disappearances on the success of the ICLVR.

1.3 Research questions

In light of the absence of literature exploring the norms related to forced disappearances, and considering the uniqueness of the Irish case, this dissertation seeks to answer the following two overarching research questions:

- 1) Do international norms exist regarding forced disappearances and if so, what is their specific content?
- 2) To what extent do each of these international norms related to forced disappearances contribute to success in dealing with forced disappearances? This question is examined through the lens of the Irish case by specifically exploring the Independent Commission for the Location of Victims’ Remains.

¹¹ Margaret Cox, Ambika Flavel, and Ian Hanson, “Introduction and Context,” in *The Scientific Investigation of Mass Graves: Toward Protocols and Standards*, (Cambridge: Cambridge University Press, 2008), 98.

These questions are important to examine the interplay between the impact of international norms on domestic practice, and the process of domestic interpretation and implementation of norms that diverge from the original content of the norms themselves. As will be demonstrated throughout this analysis, international norms are important as they create a framework within which domestic interpretation and implementation of norms occurs.

1.4 Chapter outline

The first two chapters of the dissertation establish the theoretical and methodological framework of the project. Chapter 2 presents a literature review and theoretical framework that situate this project in the existing literature. Chapter 3 provides a discussion of the methodology used in this dissertation.

Chapter 4 uses process tracing to examine the development of three international norms related to forced disappearances. The first norm is that forced disappearances are a unique type of crime that must be addressed. The second norm is that forensic human rights investigations are the best method to deal with forced disappearances. The third norm is that these forensic human rights investigations should focus on locating, identifying, and repatriating the individual victims of disappearances, and thus emphasize a legal mandate based on collecting evidence for prosecution. This chapter traces the emergence of these norms regarding forced disappearance at the international level, from the end of the nineteenth century and the advent of international humanitarian law, through the development of the international human rights regime, to the focus on transitional justice prevalent in the international sphere today. While it is possible to trace a clear path of the development of the international norms regarding forced disappearance, little work has been done to understand where these norms originated and what impact this had on their development. And, as post-colonial and constructivist IR scholars argue, tracing the origins of international norms tells us an important story about how the norms are conceptualized today.

Chapters 5 through 9 are an in-depth case study of forced disappearances in Northern Ireland, and the mechanism designed to investigate them, the ICLVR. Chapter 5 introduces the history of the Troubles of Northern Ireland in greater detail. It outlines relevant historical and political context of the Troubles in order to facilitate an

understanding of how forced disappearances fit into the Troubles, and also to the transitional justice processes that followed the 1998 peace agreement.

Chapters 6 and 7 return to the methodology of process tracing used in Chapter 4. Chapter 6 traces the development of the ICLVR, from the mid 1990s when advocacy to find the Disappeared began, to the Commission's founding in 1998. The chapter first examines the efforts of the key norm entrepreneurs who advocated for the location and identification of the Disappeared, and who were ultimately responsible for the Commission's creation: the family members, especially the mothers and wives of the Disappeared, civil society organisation WAVE Trauma Centre, former United States President Bill Clinton, and former leader of Irish republican political party *Sinn Féin* and alleged former IRA member Gerry Adams. The chapter then traces the development of the ICLVR through the political systems in the Republic of Ireland and the United Kingdom. The chapter identifies and traces two foundational principles from the initial family advocacy to their ultimate codification into the Commission's mandate: 1) the focus on the families of the Disappeared; 2) the principle of non-prosecution of informants and non-disclosure of information and evidence from the ICLVR to law enforcement.

Similarly, Chapter 7 uses process tracing to trace the operations of the Commission. The chapter argues that the two foundational principles identified in the previous chapter have shaped every aspect of the Commission's work and have been influential in its operations. The impact of these two principles is traced through four important components of the ICLVR's operations: forensic human rights investigations, the receipt of information and tips from informants, the use of the coroner's inquest system, and the relationship with family members of the Disappeared.

Chapters 8 and 9 consider what factors led to the ICLVR's success. This is important for two reasons. First, an evaluation of the ICLVR's success is important because it leads to a better understanding of the Commission itself as an investigative mechanism into forced disappearances. Second, the evaluation of ICLVR's success leads to the analysis in Chapter 10 of whether and how the international norms regarding investigations into forced disappearances outlined in Chapters 4 contributed to the success of the Commission. This dissertation evaluates success in two ways. First, it considers each factor in how it allowed the Commission to meet its own mandate, evaluating its performance against this

internal metric. Second, it considers each factor against other transitional justice mechanisms in Northern Ireland, providing a relevant internal comparison with the particulars of the Irish context and case. Ultimately, this comparative approach to evaluating the Commission's success considers multiple levels of analysis and multiple sources of data.

Chapter 8 considers five factors that could explain the ICLVR's success. This chapter argues that these factors did not have the same level of influence on the Commission's success as those identified in Chapter 9. Chapter 9 identifies and evaluates four contributing factors to the ICLVR's success, first, and most importantly, the Commission's humanitarian mandate, second, the completion of successful forensic investigations, third, cooperation of a variety of state and non-state actors, and, fourth, trust that the ICLVR has engendered in itself as an institution, but also in the personnel involved in the Commission.

Chapters 10 and 11 present conclusions regarding the impact of international norms related to forced disappearances and the successes of the ICLVR. Chapter 10 brings together the two parts of the dissertation in a discussion of lessons learned from the ICLVR for other cases, and what the analysis of ICLVR tells us about the international norms related to forced disappearances. This chapter discusses how, by emphasizing the humanitarian over legal justice, the ICLVR rejected components of the dominant international normative framework. Based on this analysis, this chapter argues that the implicit assumptions embedded in transitional justice norms, such as the primacy of legal justice can be problematic, and thus warrant significant attention when interpreting and implementing international norms, as well as designing new forensic human rights investigations. Finally, Chapter 11 concludes the thesis by presenting the project's overall findings and examining contributions that this dissertation makes to the literature, and avenues of future research.

1.5 Scholarly contributions

This dissertation applies a norm theory framework to a new area of the literature by tracing the emergence of forensic human rights investigations. It then applies these norms to the Irish case in its analysis of the ICLVR. This project thus contributes original research in

two main areas: first, to the norms related to forced disappearances, and second, to the case of disappearances during the Troubles in Northern Ireland.

First, this dissertation makes a contribution to an understanding about forced disappearances by tracing the emergence of three norms related to forced disappearances. It also considers the intersection of these norms with other foundational principles of the international humanitarian regime, international human rights, and transitional justice. The literature surrounding investigations of forced disappearances is broad and interdisciplinary, making contributions in social geography to discussions on memory and place-making in post-conflict societies; in forensic science to methodology regarding forensic human rights investigations; in anthropology and psychology to understanding the impacts of protracted, ambiguous loss on individuals and societies writ-large, among others. However, since the literature surrounding forced disappearance is largely single case-focused, it does little to explore the impact of these norms in a comparative, international sense, and tends to focus on the micro level of analysis as opposed to considering the meso and macro levels.

The addition of the IR lenses of norms, and national, and international impacts is thus a contribution to the literature. This project is the first to trace the emergence of these norms at the international level in this way and to identify the norms as conceptual underpinnings of these mechanisms. Tracing these norms allows scholars and practitioners to consider why and how mechanisms to investigate forced disappearances have manifested themselves in the way that they have, and what influence this might have on future incarnations of these mechanisms.

Second, while there is a significant body of literature regarding transitional justice in Northern Ireland, the investigation of the Disappeared and of the ICLVR are particularly special aspects of the transitional justice process that could be better understood. As this dissertation is based on fieldwork in Northern Ireland and the Republic of Ireland, the elite interviews with political and societal leaders on both sides of the border contribute to the body of empirical literature surrounding the Northern Irish transition. The Irish case of disappearances and the ICLVR, in its relative success to-date, can contribute valuable lessons for other cases of forced disappearance around the world. These lessons are relevant

for policymakers to evaluate and understand the contexts of forced disappearances in different places, and to implement victim-centric, locally relevant policy solutions.

Chapter 2: Literature Review and Theoretical Framework

An examination of the existing relevant literature is important to begin answering the two research questions of this dissertation: first, do international norms exist regarding forced disappearances and if so, what is their specific content? Second, to what extent do each of these international norms related to forced disappearances contribute to success in dealing with forced disappearances. This chapter argues that there are two main gaps in the literature. First, neither the broad transitional justice literature, nor the limited literature related to forensic human rights investigations sufficiently considers how international norms influence domestic and local transitional justice mechanisms, or investigations of forced disappearances. Second, neither body of literature provides a thorough analytical framework for explaining the success of mechanisms designed to investigate forced disappearances.

To demonstrate these gaps in the literature, the first section of this chapter examines two bodies of literature, first, the transitional justice literature, and second, the literature related specifically to forensic human rights investigations. This discussion focuses on the foundational norms that underpin these bodies of literature, and how mechanisms are evaluated. The second section of the chapter unpacks the gaps in these bodies of literature that are relevant to this dissertation. Subsequently, the third section of the chapter outlines how the use of a constructivist theoretical framework addresses the gaps in the transitional justice and forensic human rights investigations literatures.

2.1 The literature

2.1.1 Transitional justice

The term transitional justice describes a practical set of tools and mechanisms that facilitate justice after conflict in various states around the world. Transitional justice has also developed into an academic subfield, initially conceptualized as existing in the interdisciplinary space between Legal Studies and Political Science. The subfield has since

expanded to include other disciplines such as Anthropology, Philosophy, Sociology, Theology, Women's Studies and others.¹

As a focus on international human rights proliferated throughout the latter half of the 20th century, proponents of human rights were confronted with the challenge of developing mechanisms that had the power to investigate human rights violations, and hold individuals and countries guilty of human rights violations accountable for their actions. Similarly, as transitions to democracy were taking place following the fall of communist regimes in Eastern Europe and authoritarian regimes in Latin America, states were left questioning how to deal with their historical legacies of repression and extensive human rights violations.² These included questions such as, how could a new regime establish its democratic legitimacy in the new government and the rule of law when members of the former regime still held positions of power in police forces, military services, or government positions (elected or in the bureaucracy)? And, how could states facilitate a break from the past when there was no legal justice for the atrocities their people had suffered, and when there had been no reparations, either financial or material, for past losses?

Between the late 1980s and today, in response to such questions, mechanisms of what we now call "transitional justice" developed to address the political, judicial, and practical issues of rebuilding after conflict and to manage the legacy of past human rights violations.³ Historically, scholars have classified the Nuremberg Trials as the first modern instrument of transitional justice. These trials were attempts to prosecute Nazi war

¹ See, for example, Christine Bell, "Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field'," *International Journal of Transitional Justice* 3, no. 1 (2009): 5-27, <https://doi.org/10.1093/ijtj/ijn044>.

² Juan E. Mendez, "In Defense of Transitional Justice," in *Transitional Justice and the Rule of Law in New Democracies* ed. A. James McAdams (Notre Dame: University of Notre Dame Press, 1997), 1. See also

³ For example, Jon Elster, *Closing the books: transitional justice in historical perspective*, (New York: Cambridge University Press, 2004) traces the concepts of transitional justice to Ancient Athens. While the phrase 'transitional justice' itself was coined in the early 1990s, the historical development of transitional justice has not been a linear process, and its chronology is not universally accepted. For discussion of the historical development of transitional justice, see Alexandra Barahona de Brito, "Introduction." *Human Rights and Democratization in Latin America: Uruguay and Chile*, (New York: Oxford University Press, 1997); Neil J. Kritz, "The Dilemmas of Transitional Justice," in *Transitional Justice, Vol. III*, ed. Neil J. Kritz, (Washington: United States Institute for Peace Press, 1995), Ruti G. Teitel, *Transitional Justice*, (Oxford: Oxford University Press, 2000), and Paige Arthur, "How 'Transitions' Reshaped Human Rights: A Conceptual History of Transitional Justice," *Human Rights Quarterly* 31, no. 2 (2009): 327-28.

criminals for individual crimes committed during World War II.⁴ This approach “advocate[d] the strictest form of accountability to address past atrocity: human rights trials,” due to “moral, political and legal imperatives as its basis for advocating prosecutions for perpetrators of past atrocity.”⁵ Legal justice and individual criminal accountability is frequently cited as the foundation of transitional justice.⁶

However, legal justice is not always possible or desirable during a political transition. Olsen, Payne and Reiter argued that “trials can lead to more, not less, violence and instability,”⁷ and cited a number of reasons for this. Individuals may act as spoilers, trying to disrupt the judicial process. Furthermore, since human rights violations may have been legal under domestic laws during a repressive or rights-violating regime, such violations are difficult to prosecute. In addition, the judiciary may be non-existent. And, if rights-violations were widespread under the old regime, resources may simply not exist to proceed with individual trials for even the guiltiest perpetrators.

Thus, the need began to emerge in many transitional countries for some type of transitional justice other than legal justice. Many individuals cited the need to establish an accurate historical record about past human rights violations in the absence of state ability or willingness to undertake full trials. For example, due to the presence of extensive physical records, some countries in Europe undertook a twofold strategy of purging the bureaucracy of collaborators with the old regime, such as informants and political affiliates (known as lustration), and granting individuals access to their own state security files.⁸ The latter process permitted individuals to know the truth about what had happened to themselves and their loved ones under the past regime. Nevertheless, these policies were unusual, and other states still required a more comprehensive strategy to establish a broader

⁴ Ruti G. Teitel, “Transitional Justice Genealogy,” *Harvard Human Rights Journal* 16 no. 1 (2003): 70.

⁵ Tricia D. Olsen, Leigh A. Payne and Andrew G. Reiter, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy*, (Washington: USIP Press, 2010), 17.

⁶ For further discussion of the preeminence of legal justice in transitional justice, see, Jon Elster (ed.), *Retribution and Reparation in the Transition to Democracy*, (New York: Cambridge University Press, 2006); Trudy Govier, *Forgiveness and Revenge*, (New York: Routledge, 2002); Martha Minow, *Between Vengeance and Forgiveness*, (Boston: Beacon Press, 1998); Mark Osiel, *Mass Atrocity, Collective Memory, and the Law*, (New Brunswick, NJ: Transaction Publishers, 2000).

⁷ Olsen, Payne, and Reiter, *Transitional Justice in Balance*, 19.

⁸ Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd edition, (London: Routledge, 2010), 9.

narrative of truth. In countries where state repression and large-scale violations of human rights had been the norm, calls for this type of collective truth were prevalent.

During this time, truth commissions emerged as a mechanism designed to investigate, document, and report this type of collective truth. Truth commissions are a temporary body established to investigate a pattern of human rights violations over a period of time.⁹ Typically, truth commissions were designed to produce a final report at the conclusion of their mandate. These reports have often contained a record of the commission's work, and provided an objective record of human rights violations that took place during the period under investigation.¹⁰ Since the first commonly cited truth commission in Argentina in 1983, there have been truth commissions in more than 40 countries from Canada to Kenya to Ukraine to Nepal to the Solomon Islands.¹¹

Similar to the tradition of Commissions of Inquiry in the UK that investigate deaths and events relevant to public interest,¹² truth commissions investigate human rights violations by speaking with victims about their experiences, exploring official state records, investigating what happened to people who disappeared, and even sometimes speaking to perpetrators.¹³ Each individual truth commission has had a slightly different mandate that accounts for its local context. For example, in South Africa, the Truth and Reconciliation Commission (SATRC) investigated crimes during apartheid in South Africa. The SATRC differs from the commission established to examine post-election violence in Kenya, or the commission that investigated the history of Indian Residential Schools in Canada. However, among these diverse truth commissions, the basic premise has been the same:

⁹ Hayner, *Unspeakable Truths*, 11. See also Tristan Anne Borer, *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies*, (Notre Dame: University of Notre Dame Press, 2005); Martha Minow, "The Hope for Healing: What can truth commissions do?" in *Truth v. Justice*, eds. Robert I. Rotberg and Dennis Thompson, (Princeton: Princeton University Press, 2000, 235-260); Robert I. Rotberg, "Truth Commissions and the Provision of Truth, Justice, and Reconciliation," in *Truth v. Justice*, eds. Robert I. Rotberg and Dennis Thompson, (Princeton: Princeton University Press, 2000), and; Eric Wiebelhaus-Brahm, *Truth Commissions and Transitional Societies: The Impact on Human Rights and Democracy*, (New York: Routledge, 2010).

¹⁰ Hayner, *Unspeakable Truths*, 11.

¹¹ *Ibid.*

¹² Raanan Sulitzenu-Kenan, "Reflection in the Shadow of Blame: When Do Politicians Appoint Commissions of Inquiry?" *British Journal of Political Science* 40, no. 3 (2010): 613-34.

¹³ Hayner, *Unspeakable Truths*, 121-45.

find out what happened, publish a record that captures the “truth”,¹⁴ and make recommendations to address the legacy of human rights violations resulting from the period in question. Stemming from the tradition of truth commissions is the question of whether there is a “right to truth” for victims of human rights violations and their loved ones.¹⁵

Throughout the 1990s, scholars took interest in these mechanisms, and transitional justice became a field of study. Arthur asserted, “[t]he field of transitional justice... came directly out of a set of interactions among human rights activists, lawyers and legal scholars, policymakers, journalists, financial donors, and comparative politics experts concerned with human rights and the dynamics of “transitions to democracy,” beginning in the late 1980s.”¹⁶ The emergence of transitional justice in this era shaped the concepts, institutions, processes and norms considered legitimate by the international community, and by scholars alike.¹⁷ I maintain that the literature describes four foundational principles of transitional justice. First, legal justice is an essential component of transition, and non-judicial mechanisms can only approximate legal justice. Second, conflict should be resolved through transitions from repressive regimes to liberal democracies. Third, transitional justice is exceptional justice during a limited timeframe. And, fourth, there are a standard set of mechanisms associated with transitional justice. These foundational norms are important to understand because they underpin transitional justice scholarship and practice.

¹⁴ Like most constructivist scholars, I do not believe in a singular objective “truth” but rather a plurality of truths based on individual experiences that are captured through the work of a truth commission. However, the ontological discussion of what truth is and how it is reflected in transitional justice is beyond the scope of this work. Please see: Susanne Buckley-Zistel, “Narrative truths: On the construction of the past in truth commissions,” in *Transitional Justice Theories*, ed. Susanne-Buckley-Zistel et al., (London: Routledge, 2013) and Hayner, *Unspeakable Truths*, 75-84.

¹⁵ See for example Simon Robins, “Constructing meaning from disappearance: Local memorialisation of missing in Nepal,” *International Journal of Conflict and Violence* 8, no. 1 (2014): 104-18, <https://doi.org/10.1093/ijtj/ijq027>.

¹⁶ Arthur, “How ‘Transitions’ Reshaped Human Rights,” 324.

¹⁷ Other scholars have referred to transitional justice as a global project throughout the subfield’s history, though their use of the term differs from mine. See Rosemary Nagy, “Transitional Justice as Global Project: Critical Reflections,” *Third World Quarterly* 29, no. 2 (2008): 275–289 <https://doi.org/10.1080/01436590701806848>, and Dustin Sharp, “Emancipating Transitional Justice from the Bonds of the Paradigmatic Transition,” *International Journal of Transitional Justice* 15, no. 1 (2015): 150-70, <https://doi.org/10.1093/ijtj/iju021>.

2.1.1.1 Foundational norms of transitional justice

Descriptions of transitional justice by early scholars define it as a paradigm that envisions Western-style legal justice liberal democracy as the solution to conflict.¹⁸ Arthur described early work in the field as debating the merits of two normative imperatives: “achieving [legal] justice for victims, and achieving a more just, democratic, order.”¹⁹ It is important to acknowledge the fact that, despite the legal justice norm dominating transitional justice scholarship and praxis, there are well-known exceptions to it, specifically the practice of granting amnesties to perpetrators for crimes committed during conflict. Amnesties are a tool used in conflict resolution, with nearly 50 percent of peace agreements implemented since 1990 containing provisions for some type of amnesty.²⁰

As Louise Mallinder explained,

Despite the frequency with which amnesties are used, since the late 1990s, an accountability norm has developed within international law and policy that seeks to prohibit amnesties for international crimes and serious human rights violations. However, this should not be interpreted as a complete rejection of amnesties... On the one hand, their legality is contested when they seek to cover international crimes and serious human rights violations. On the other hand, international actors such as the UN and many states around the world continue to enact and support at least certain forms of amnesties as part of conflict resolution.²¹

Furthermore, amnesties are also commonly used as part of transitional justice mechanisms such as truth commissions.²² Freeman also argued that “amnesty can also be a functional precondition for establishing conditions conducive to transitional justice – for example by catalyzing or facilitating a gradual transition away from terror and impunity and toward good governance and human rights.”²³ This is a known tension between transitional justice in theory and in practice. From the theoretical standpoint, the norm of legal justice is paramount. In practice, amnesties and trade-offs that sacrifice legal justice for healing, reconciliation, or reparation, are common.

¹⁸ See, for example Chandra Lekha Sriram, “Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice,” *Global Society* 21, no. 4 (2007): 579, <https://doi.org/10.1080/13600820701562843>.

¹⁹ Sriram, “Justice as Peace?” 357.

²⁰ Louise Mallinder, “Amnesties and Inclusive Political Settlements.” *PA-X Report: Transitional Justice Series* (Edinburgh: Political Settlements Research Programme (PSRP), 2018), 6.

²¹ *Ibid.*

²² See, for example, Mark Freeman, *Necessary Evils: Amnesties and the Search for Justice*, (Cambridge: Cambridge University Press, 2009).

²³ *Ibid.*, 19.

The link between liberal democracy and peace was first espoused in international relations (IR) theory through the democratic peace theory, which asserted that liberal democracies were considerably less likely to engage in inter-state conflict due to factors such as higher amounts of public wealth, public accountability for conflict, and an increased ability to find diplomatic solutions.²⁴ The international community has adopted this initial association between transitional justice and liberal democracy into practice by making democratization a stated desired goal of transitional justice mechanisms and processes.²⁵

However, IR scholars have heavily criticized the idea that establishing Western-style liberal democracy as the “right” way to resolve conflict. The causal link between liberal democracy and peace has been repeatedly called into question.²⁶ Moreover, liberal democratic states engage in violence that is problematic, despite falling short of all-out war. Liberal democracies arguably institutionalize conflict into the political system, but frequently fail to adequately represent marginalized groups. This is evidenced in this dissertation’s main case study of disappearances in Northern Ireland prior to the Troubles. Many other post-colonial, settler colonial, or former democratic states, including Australia, Canada, Chile, India, Spain, and the United States, to name a few, have violent histories including genocide, war, and oppression of marginalized groups that have left a longstanding legacy of trauma on portions of their population.²⁷ In many of these contexts, transitional justice mechanisms have been utilized in an attempt to overcome the legacy of mass violence.

The second foundational norm of transitional justice is the idea that it represents extraordinary justice during extraordinary periods of political change. Ruti Teitel described

²⁴ See Dan Reiter, “Democratic Peace Theory,” *Oxford Bibliographies* 25 October 2012, <https://www.oxfordbibliographies.com/view/document/obo-9780199756223/obo-9780199756223-0014.xml> (accessed 16 December 2019).

²⁵ It is beyond the scope of this section to unpack the contributing factors that led to the development of these norms. In brief, I argue that the development of these norms is path dependent due to the neo-liberal world in which we live.

²⁶ Sebastian Rosato, “The Flawed Logic of Democratic Peace Theory,” *American Political Science Review* 97, no. 4 (2003): 585-602, <https://doi.org/10.1017/S0003055403000893>.

²⁷ See, for example, Part II of Paige Arthur (ed.), *Identities in Transition*, (Cambridge, U.K: Cambridge University Press, 2011); Jennifer Balint, Julie Evans, and Nesam McMillan, “Rethinking Transitional Justice, Redressing Indigenous Harm: A New Conceptual Approach,” *International Journal of Transitional Justice* 8, no. 2 (2014): 194-216, <https://doi.org/10.1093/ijtj/iju004>; Jeff Corntassel and Cindy Holder, “Who’s Sorry Now? Government Apologies, Truth Commissions, and Indigenous Self-Determination in Australia, Canada, Guatemala, and Peru.” *Human Rights Review* 9, no. 4 (2008):465-489, <https://doi.org/10.1007/s12142-008-0065-3>.

transitional justice as “a concept of justice, intervening in a period of political change, characterized by a juridical answer to the wrongs of past repressive regimes.”²⁸ This sense of “extraordinary justice in extraordinary times” has been critiqued extensively, but remains prevalent today. For example, the International Center for Transitional Justice similarly describes transitional justice as “not a ‘special’ kind of justice, but an approach to achieving justice in times of transition from conflict and/or state repression.”²⁹

One of the major limitations of framing transitional justice as exceptional justice is determining how to measure when this ‘exceptional’ or ‘extraordinary’ period has ended and ‘ordinary justice’ can resume. Several potential explanations exist, for example, transitional justice ends when the last mechanism concludes its mandate; or, transitional justice ends when a liberal democratic state has been established, among others. However, rebuilding a society after mass violence can take generations. It seems disingenuous to frame transitional justice as having ended at an arbitrary, and very early, stage after conflict.

These artificial end dates to transitional justice also leave little space for the needs of the population to change. In the immediate aftermath of mass violence, survivors may simply be happy for the conflict to have ended and for their physical safety to be restored. There may be few calls for truth or justice, or reparations for harm suffered. In the years that follow, survivors may advocate for truth or justice, or financial or material resources to compensate for losses suffered during the conflict. Recognizing the changing needs of victims and survivors of conflict is essential to understanding transitional justice, as rebuilding after a conflict is not a linear process with one-step logically following the previous.

To manifest the foundational norms of transitional justice, a standard set of mechanisms have developed under the transitional justice umbrella that primarily take the form of Western institutions. In 2010, a guidance note to the United Nations Secretary General outlined transitional justice as consisting of “both judicial and non-judicial processes and mechanisms, including prosecution initiatives, facilitating initiatives in respect of the right to truth, delivering reparations, institutional reform and national consultations. Whatever combination is chosen must be in conformity with international

²⁸ Teitel, “Transitional Justice Genealogy,” 69.

²⁹ International Center for Transitional Justice, “What is Transitional Justice?” <https://www.ictj.org/about/transitional-justice> (accessed 16 December 2019).

legal standards and obligations.”³⁰ While this demonstrates that additional non-judicial mechanisms are theoretically accepted as part of transitional justice processes, the most standard set of mechanisms that have been used across the globe since the 1990s under the transitional justice umbrella are trials (national and international), truth commissions, reparations, amnesties and lustration.

This standard set of mechanisms emerged from the assumption discussed throughout this project—that legal justice is the best means of addressing human rights violations as there are “moral, political and legal imperatives as its basis for advocating prosecutions for perpetrators of past atrocity.”³¹ Many scholars today maintain that the central goal of transitional justice is to prosecute and punish perpetrators of human rights violations.³² While scholars recognize the utility of other transitional justice mechanisms, including truth commissions, reparations, and public apologies, for example, these other mechanisms are thus seen as an approximation of true ‘justice’, which is only achieved through the legal justice system’s emphasis on individual criminal accountability.³³ A 1986 volume on transitions from authoritarianism by O’Donnell and Schmitter highlighted this,³⁴ citing that societies face “a difficult tension between the desire to bury the past, in order to avoid provoking the ire of powerful wrongdoers, and the ethical and political demand to confront the crimes of the prior regime.”³⁵

This standard set of mechanisms creates a number of limitations for transitional justice. For example, due to the prevalence of the criminal justice model in transitional justice, the type of violence most often addressed by transitional justice mechanisms are violations of civil and political rights at the expense of violations of economic, social and cultural rights.³⁶ Acknowledging how these initial norms and mechanisms have defined

³⁰ United Nations Rule of Law, “Guidance Note to the Secretary General: United Nations Approach to Transitional Justice,” March, 2010, http://www.unrol.org/files/TJ_Guidance_Note_March_2010FINAL.pdf.

³¹ Olsen, Payne and Reiter, *Transitional Justice in Balance*, 17.

³² Christine Bell, “Dealing with the Past in Northern Ireland.” *Fordham International Law Journal* 26, no. 4 (2003): 1095-1147.

³³ Olsen, Payne and Reiter, *Transitional Justice in Balance*, 17.

³⁴ Guillermo O’Donnell, Phillippe C. Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies*, (Baltimore: Johns Hopkins University Press, 1986).

³⁵ Hayner, *Unspeakable Truths*, 7

³⁶ See Zinaida Miller, “Effects of Invisibility: In Search of the Economic in Transitional Justice,” *The International Journal of Transitional Justice* 2 no. 3 (2008): 275-76, <https://doi.org/10.1093/ijtj/ijn022>, and Shahrbanou Tadjbakhsh (ed.), *Rethinking the Liberal Peace: External Models and Local Alternatives* (New York: Routledge, 2011), 232-33.

transitional justice is particularly important and is something the transitional justice literature largely does not acknowledge. These defining norms establish universal standards for transitional justice practice that in turn run a very real risk of setting unrealistic expectations within post-conflict contexts. For example, if families of victims of forced disappearances are taught through the international normative framework that they will not have attained justice for their disappeared loved one if those responsible are not prosecuted and punished, the families of the victims will perceive anything that falls short of this normative standard as unacceptable. Families of victims are not the only actors subject to influence by the norm that espouses the dominance of legal justice; political actors, civil society leaders, the media, and the general population may be influenced by this same norm due to its prominence. In their study of international criminal tribunals, Nickson and Neikirk argued that transitional justice creates an “expectation gap,” which they define as “the gap between anticipated and likely outcomes” of transitional justice for stakeholders, where “stakeholder expectations are ignored, marginalized and co-opted by institutions.”³⁷ However, while some scholars do acknowledge the norms established by the transitional justice praxis and their impact on stakeholders, this acknowledgement is less common in the literature than acceptance and engagement with these norms.

As alluded to in the previous paragraph, it is important to note that transitional justice, both in theory and in practice, is not exclusively defined by these norms and does not only consist of the standard set of mechanisms. For example, Mani, Miller, Nagy, and other ‘critical’ scholars of transitional justice³⁸ have called for an expanded definition of ‘justice’ that accounts for “structural violence, gender inequality and foreign involvement.”³⁹ However, the subfield is still largely understood and influenced by the initial conceptualizations and definitions explored in this section. This is important to establish and understand as these definitions have influenced how ‘success’ of transitional justice mechanisms are evaluated, which the next subsection explores.

³⁷ Ray Nickson and Alice Neikirk, *Managing Transitional Justice: Expectations of International Criminal Trials*, (New York: Palgrave Macmillan, 2018), 24.

³⁸ Including Rama Mani, “Dilemmas of Expanding Transitional Justice, or Forging the Nexus between Transitional Justice and Development,” *International Journal of Transitional Justice* 2 no. 3 (2008): 254, <https://doi.org/10.1093/ijtj/ijn030>; and Miller, “Effects of Invisibility,” 266-91.

³⁹ Rosemary Nagy, “Transitional Justice as Global Project: critical reflections,” *Third World Quarterly* 29, no. 2 (2008): 287, <https://doi.org/10.1080/01436590701806848>.

Thus, the first main challenge identified in the transitional justice literature is the dominance of these international norms that have defined the subfield since its outset. I argue that these norms do not capture the reality of what transitional justice is, as it is more rooted in meeting a pre-defined set of normative ideals. The scope of transitional justice, as currently defined and diffused through the international realm, and explored in the literature, is inherently a political solution to conflict. One marker of successful transitional justice processes has been the creation of a break with the past by the new regime. This adds weight to the argument that transitional justice is in fact a political tool used by transitional governments to consolidate and legitimize their political power, and the state, by demonstrating to the public that they are dealing with past atrocity.

Now, the above is not to say that even as a political tool, transitional justice cannot simultaneously positively impact victims and survivors of violence. However, the impact on victims and survivors is secondary to the political aims of the transitional government. As a result, the global transitional justice project tends to have little impact on the broader social dynamics, relationships, and structural issues that lead to conflict or that maintain societal divisions. More importantly, transitional justice may have a detrimental effect on these broader social dynamics, relationships, and structural issues, if unrealistic expectations are set due to the prominence of these international norms.

Approaching transitional justice from a primarily political perspective fails to consider that conflict is not only a political issue. Some scholars acknowledge social, structural, relational, and power dynamics implicit in conflict that cannot be resolved by relegating it into a liberal democratic political system.⁴⁰ One of the broadest definitions comes from Katherine Verdery's work on post-socialist transformations. She argued, "[Rebuilding after conflict] is a problem of reorganization on a cosmic scale, and it involves the redefinition of virtually everything, including morality, social relations, and basic

⁴⁰ See, for example, Johan Galtung, "Violence, Peace and Peace Research," *Journal of Peace Research* 6, no. 3 (1969): 167-91, and; John Paul Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies*, (Washington, DC: United States Institute of Peace Press, 1997); Alexander Laban Hinton, "Introduction," in *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence*, ed. Alexander Laban Hinton, (Newark, NJ: Rutgers, 2011); Rupert Taylor, "Northern Ireland: Consociation or Social Transformation?" in *Northern Ireland and the Divided World*, ed. John McGarry, (Oxford: Oxford University Press, 2001); John Paul Lederach and Michelle Maiese, "Conflict Transformation." *The Little Book of Conflict Transformation*, (New York: Good Books, 2003) and Samar El-Masri, "Cases in Power Sharing and Social Transformation: Approaches to Ethnic Conflict Resolution in Lebanon, Cyprus and Switzerland," PhD diss., (University of Western Ontario, 2004), 4.

meanings. It means a reordering of people's entire meaningful worlds."⁴¹ This very obviously extends far beyond the confines of the political realm.

As a "political solution," transitional justice is not designed, equipped, or utilized to transform a conflicted society into a reconciled one, or to rebuild relationships between individuals, or individuals and the state. And yet, scholars and practitioners argue that it is. As a result of this normative conceptualization, transitional justice often fails to engage with the needs of local actors, especially victims and survivors of mass violence.⁴² For example, transitional justice scholar Simon Robins argued that

[t]ransitional justice processes and the mechanisms through which they work tend to be top-down. They are created by elites—often those involved in the conflict that preceded the transition—and supported by an international community remote from the context and from indigenous understandings of the conflict. In many cases processes of consultation with victims and communities are cursory. Some literature is now emerging to challenge this deficit, but there remains a dearth of praxis that interrogates the idea of transitional justice driven by the grassroots.⁴³

Similarly, transitional justice scholar Jamie Rowen cited the need for "more bottom-up inquiries into how [transitional justice] is given meaning in different political contexts."⁴⁴

Supporters of victim-centric approaches to transitional justice argue that victims and survivors should be the drivers of any transitional justice process in order to ensure that it remains sensitive to local dynamics and responsive to what the communities of victims and survivors need most. This is important to acknowledge, since, when state-level mechanisms, such as trials or truth commissions, are transplanted from one context to another, they may fail to take into account these dynamics and thus further alienate the

⁴¹ Katherine Verdery, *The Political Lives of Dead Bodies: Reburial and Postsocialist Change*, (New York: Columbia University Press, 1999), 35, *emphasis added*.

⁴² See, for example, Kieran McEvoy and Lorna McGregor, (eds.) "Transitional Justice From Below: An Agenda for Research, Policy and Praxis," in *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, (Portland, OR: Hart Publishing, 2008); Patricia Lundy and Mark McGovern, "Whose Justice? Rethinking Transitional Justice from the Bottom Up." *Journal of Law and Society* 35, no. 2 (2008): 265-292, <https://doi.org/10.1111/j.1467-6478.2008.00438.x>; Rosalind Shaw and Lars Waldorf, "Introduction: Localizing Transitional Justice," in *Localizing Transitional Justice: Interventions and Priorities after Mass Violence*, edited by Rosalind Shaw, Lars Waldorf, and Pierre Hazan, (Stanford, CA: Stanford UP, 2010); Patrick Vinck, and Phuong Pham, "Ownership and Participation in Transitional Justice Mechanisms: A Sustainable Human Development Perspective from Eastern DRC," *International Journal of Transitional Justice* 2, no. 3 (2008): 398-411, <https://doi.org/10.1093/ijtj/ijn033>.

⁴³ Robins, "Towards Victim-Centred Transitional Justice," 75-98.

⁴⁴ Jamie Rebecca Rowen, "'We Don't Believe in Transitional Justice: Peace and the Politics of Legal Ideas in Colombia,'" *Law & Social Inquiry* 42, no. 3 (2017): 647, <https://doi.org/10.1111/lasi.12262>.

survivor community.⁴⁵ Ultimately, I argue that re-centering the human instead of the political goals of specific actors, or the international norms that have dominated its inception and diffusion around the world, is a necessary first step to making transitional justice more just. However, while scholars who advocate for victim-centric transitional justice make similar arguments, the subfield remains largely defined and confined by the initial norms discussed throughout this section, related to legal justice, transitions to Western-style democracy, and exceptional justice, operationalized through the traditional set of transitional justice mechanisms. As argued above, these norms set expectations for actors as to how justice should be defined and should be pursued in ways that are at odds with the needs, values, and priorities of a local population. This is not to say that actors do not have the power to resist these ideas, but norms are powerful forces, especially when supported by international political, social, and academic leaders.

2.1.1.2 Evaluating the success of transitional justice mechanisms

Methodologically, the transitional justice literature has tended to be dominated by single case studies and paired comparisons, often focusing on a single mechanism, such as a trial or a truth commission.⁴⁶ This is due to the emphasis in transitional justice scholarship of the need to gather context-specific, descriptive knowledge. Examining cases in detail allows identification of “theoretical gaps and silences,”⁴⁷ development of causal hypotheses, and identification of new and relevant variables. Transitional justice scholars and practitioners consider these important for the understanding of transitional justice mechanisms and the broader transitional contexts in which they are located. However, for the same reason, case study research creates difficulties in cross-case comparisons. By emphasizing the collection of details of specific mechanisms or specific cases, broader patterns are frequently overlooked between mechanisms in one context, or between cases.⁴⁸

⁴⁵ Robins, “Towards Victim-Centred Transitional Justice,” 75-98.

⁴⁶ Oskar N.T. Thoms, James Ron and Roland Paris, “The Effects of Transitional Justice Mechanisms.” CIPS Working Paper, (Ottawa: Centre for International Policy Studies, April 2008), 12. See also R.C. DeFalco, “Accounting for Famine at the ECCC: The Crimes Against Humanity of Extermination, Inhumane Acts and Persecution,” *International Journal of Transitional Justice* 5, no. 1 (2011): 142-58, <https://doi.org/10.1093/ijtj/ijr001>.

⁴⁷ Michael Burawoy et al., *Ethnography Unbound: Power and Resistance in the Modern Metropolis*, (Berkeley: University of California Press, 1991), 10.

⁴⁸ Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences*, (Cambridge, MA: Harvard University Press, 2004), 28.

In addition, although measuring success or generally evaluating transitional justice mechanisms is common within the transitional justice literature, it tends to be fraught with challenges. What success means for transitional justice varies widely based on who is defining success, how they elect to define it, and how studies operationalize the definition at hand. These variations in definition and measurement make it challenging to evaluate the success of a transitional justice mechanism in ways that are realistic, in other words not holding a mechanism to an arbitrary standard, and context-specific, as well as considering the needs of the local population, especially families of the victims.

To provide a concrete example of these challenges, in a review of the evaluative literature on transitional justice processes in Sierra Leone, Ainley highlighted these challenges in defining success. She asserted that “[t]he variety of, and lack of attention to, value positions helps to explain why evaluations differ as widely as they do. Additionally, there is little systematic consideration in the scholarship of whether the ideals to which the Sierra Leonean case is held are realistic, and under what circumstances.”⁴⁹ What Ainley meant by the term ‘value positions’ is consistent throughout the transitional justice literature, not just limited to the case of Sierra Leone. It follows Dancy’s assertion that “evaluation [in transitional justice] is characterized by comparison to normative ideals.”⁵⁰ As is outlined in more detail in Section 2.1.1, “justice” can have a number of different meanings, and these different meanings considerably complicate attempts to evaluate the successes and failures of transitional justice mechanisms. To operationalize this assertion, Ainley divided the evaluative literature regarding Sierra Leone into six normative value positions “according to three conceptions of justice, reparative, restorative, and transformative. She also considered two conceptions of the value of justice, intrinsic versus instrumental, inherent within the scholarship.”⁵¹ From this starting point, Ainley proceeded to examine mechanisms in Sierra Leone to determine how they have been perceived based on the different value positions, concluding that the degree to which a mechanism is deemed to be successful varies widely depending on which value position is used.

⁴⁹ Kirsten Ainley, “Evaluating the Evaluators: Transitional Justice and the Contest of Values,” *International Journal of Transitional Justice* 11, no. 3 (2017): 440, <https://doi.org/10.1093/ijtj/ijx022>.

⁵⁰ Geoff Dancy, “Impact Assessment, Not Evaluation: Defining a Limited Role for Positivism in the Study of Transitional Justice,” *International Journal of Transitional Justice* 4, no. 3 (2010): 360, <https://doi.org/10.1093/ijtj/ijq016>.

⁵¹ *Ibid.*

A similar problem is visible in the limited number of large-N cross-national comparative analyses of transitional justice processes that exist. Some transitional justice scholars, most notably Olsen, Payne, and Reiter, and Kim and Sikkink have attempted to evaluate the relative success of different transitional justice mechanisms based on whether the use of these mechanisms leads to improvements in democracy and human rights in a state. As discussed in Section 2.1.1, this pro-democracy, pro-human rights, generally liberal value position is based on implicit assumptions in early transitional justice scholarship. Despite agreement at the foundation of these two studies of the value position to measure success, these two studies arrived at different conclusions. Kim and Sikkink concluded that criminal prosecutions do result in an improvement in human rights.⁵² By contrast, Olsen et al. concluded that there is no measurable impact of prosecutions improving human rights.⁵³ These contradictory conclusions demonstrate the inherent subjectivity in attempting to evaluate transitional justice mechanisms against a value position based on how even an agreed upon value position is defined, and how that definition is operationalized. Moreover, measuring the success of mechanisms of transitional justice in comparison to one another without considering the context of each unique case seems to be repeating the dated approach of practices in the fields of human rights and development of transplanting mechanisms between states and hoping they will be equally effective elsewhere.

These methodological issues are the second main challenge of the transitional justice literature. I argue that these two methodological designs create a dilemma for evaluating the success of transitional justice mechanisms. Single mechanism and single case studies provide rich descriptive and analytical material that facilitates an important understanding of the nuances of the mechanism or case at hand. This type of scholarship is essential for understanding the context in detail. This collection of in-depth material allows scholars and practitioners of transitional justice to speculate about how lessons learned from one mechanism or one case can be applied to other cases without substantively testing relationships across cases, or understanding how the norms and mechanisms relate to each other or influence each other. However, as Quinn argued about transitional justice praxis,

⁵² Hunjoon Kim and Kathryn Sikkink, "Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries," *International Studies Quarterly* 54, no. 1 (2010): 939-63, <https://doi.org/10.1111/j.1468-2478.2010.00621.x>.

⁵³ Olsen, Payne, and Reiter, *Transitional Justice in Balance*.

“[w]e keep creating, establishing, putting into action all kinds of mechanisms of transitional justice – and they fail... [we have been] studying why they fail for years. We make minor corrections here; we make minor corrections there.”⁵⁴ These minor corrections may well be rooted in the very valuable single and case study analyses that dominate the literature, but largely fail to interrogate what may be fundamental design flaws in the mechanisms themselves, or the principles that underpin them, as opposed to their application in different contexts.

By contrast, international level, cross-national studies compare outcomes across cases, which provide important points of comparison between mechanisms. However, these studies fail to adequately make use of the rich, context- and mechanism-specific data that exists. Both types of scholarship fail to consider the intersections between different levels of analysis, and are also trapped by the normative underpinnings of transitional justice being related to democracy and legal justice outlined in Section 2.1.1. Ultimately, scholarship that crosses levels of analysis and considers the relationships between them is necessary to resolve this gap in the literature and methodological dilemma.

In sum, this section has argued that the transitional justice literature largely fails to consider how its foundational norms of legal justice and promotion of democracy, its framing as exceptional justice for an exceptional era, and its use of a specific set of standard mechanisms influences domestic and local transitional justice contexts. This is particularly problematic because these norms and mechanisms set expectations of what justice should look like, and how it should be done that can conflict with local values and needs. In addition, the transitional justice literature tends to use these norms as standards against which to evaluate the success of transitional justice mechanisms, but does not account for the fact that these norms are embedded into its standard mechanisms, and are also subjective and may not explain success in a given context. The next section argues that the literature surrounding forensic human rights investigations has faced these same challenges.

⁵⁴ Joanna R. Quinn cited in Jason Winders, “Book eyes rethink of transitional justice,” February 5, 2020, <https://news.westernu.ca/2020/02/book-eyes-rethink-of-transitional-justice/>.

2.1.2 Forensic Human Rights Investigations

This section examines the second body of literature relevant to this dissertation: the literature surrounding forensic human rights investigations. It also examines how these investigations have been evaluated in the literature. Forensic science has been used in more than 30 post-conflict and/or transitional contexts to investigate forced disappearances and other human rights violations, including genocide, and crimes against humanity.⁵⁵ As is traced in more detail in Chapter 4, the first use of forensic methods to investigate human rights violations is attributed to the Nazis during the Second World War. In 1943, Nazi medical doctors exhumed mass graves in Poland to investigate “the massacre of some 15,000 Polish prisoners of war in the Katyn forest,” to “dispel rumours that would attribute these deaths to Nazi war crimes.”⁵⁶ As I outline in Chapter 4, these investigations were less than successful, however, they did employ scientific techniques from the era to locate and identify victims of the massacre.

Throughout the mid 1980s, American forensic anthropologist Clyde Snow trained “a team of medical and archaeology students... to document the whereabouts of over 10,000 persons who had disappeared during the previous seven years of military rule.”⁵⁷ Throughout the 20th century, Snow’s team, the Argentine Forensic Anthropology Team (EAAF), trained and employed the foremost experts in exhuming mass graves, and investigated many cases of disappearance and other gross violations of human rights around the world, in addition to training teams in Chile, Guatemala, and Peru.⁵⁸ Forensic experts have played an essential role by “contributing their skills in the search, recovery and identification of human remains, work that is often a result of civil war and international armed conflicts. These professionals deal with the results of the aftermath, with the ultimate goal being to help bring justice to the victims and enabling the surviving relatives to go

⁵⁵ See Adam Rosenblatt, *Digging for the Disappeared: Forensic Science After Atrocity*, (Stanford: Stanford University Press, 2015).

⁵⁶ Melanie J. Klinkner, “Towards Improved Understanding and Interaction Between Forensic Science and International Criminal Law in the Context of Transitional Justice,” PhD diss., (Bournemouth University: Bournemouth, UK., 2009), 22.

⁵⁷ Ibid.

⁵⁸ Eric Stover and Rachel Shigekane, “Exhumation of mass graves: balancing legal and humanitarian needs,” in *My neighbour, my enemy: justice and community in the aftermath of mass atrocity*, ed. Eric Stover and Harvey M. Weinstein, (Cambridge: Cambridge University Press, 2004), 87.

through the rites of passage of grieving and finally laying their loved ones to rest.”⁵⁹ Thus, through their work, forensic experts have become key actors in promoting and upholding human rights.

Forensic human rights investigations have been undertaken to provide evidence in domestic and international trials and tribunals of perpetrators of human rights violations around the world. Such investigations “focus on ascertaining the “categorical identification” of the dead, such as the victims’ ethnicity, religion, or race, and the cause and manner of death,”⁶⁰ to facilitate the prosecution of individual perpetrators for war crimes, genocide, or crimes against humanity. For example, the International Criminal Tribunal for the former Yugoslavia made significant use of forensic evidence in its proceedings against Serbian war criminals.⁶¹ However, similar attempts to use evidence gathered during exhumations in Rwanda for the International Criminal Tribunal for Rwanda were decidedly less successful, due to practical limitations in the exhumation process in Rwanda. These limitations included failure to follow accepted evidentiary standards for forensic evidence in trials, and the lack of sophisticated equipment and well-trained personnel.⁶²

In addition to their contributions to legal justice, forensic human rights investigations are also undertaken to fulfil humanitarian goals, and to provide evidence in truth commissions. “Families have a desperate need to recover the remains so that they may properly bury them and close – if only partially – the circle of uncertainty.”⁶³ Ending the cycle of uncertainty allows the community to fulfil ceremonial obligations to the dead as opposed to continuing to live in protracted uncertainty. In addition to fulfilling ceremonial and psychosocial roles, failure to repatriate remains to families also has practical consequences, as “the painful effects of their loved ones’ absence are often accentuated by the psychological, economic, social and legal problems with which [families] have to

⁵⁹ Roxana Ferllini, “The Development of Human Rights Investigations since 1945,” *Science and Justice* 43, no. 4 (2003): 223, [https://doi.org/10.1016/S1355-0306\(03\)71780-8](https://doi.org/10.1016/S1355-0306(03)71780-8).

⁶⁰ Stover and Shigekane, “Exhumation of mass graves,” 85.

⁶¹ Klinkner, “Towards Improved Understanding.”

⁶² See Erin Jessee, “Promoting Reconciliation through Exhuming and Identifying Victims in the 1994 Rwandan Genocide,” CIGI Africa Initiative Discussion Paper Series, no. 4, July 2012.

⁶³ Mimi Doretti and Luis Fondebrider, “Science and Human Rights – Truth, Justice, Reparation and Reconciliation: A Long Way in Third World Countries,” in *Archaeologies of the Contemporary Past*, ed. V, Buchli and L. Gavin. (London: Routledge, 2001), 138.

contend and which are frequently disregarded or denied. For instance, many of the missing persons are male, often the sole breadwinners and bank account or property holders.”⁶⁴ Thus, without positive identification of family members, deaths often go unconfirmed, leaving spouses and children unable to claim pensions or other benefits from the state, in addition to remaining in psychological limbo.

As a result, Stover and Shigekane argued that communities and families should be “actively involved in the consultative and decision-making processes of locating, exhuming, reburying and memorializing the dead,”⁶⁵ as these processes contribute to the overall social repair of the community. This literature highlights the range of other ‘humanitarian’ strategies that communities may elect to employ to deal with their mass graves and disappearances. These alternative strategies include exhumations and forensic human rights investigations for the purpose of repatriation of remains to families and communities (ultimately for reburial),⁶⁶ or for memorialization.⁶⁷

2.1.2.1 Foundational norms of forensic human rights investigations

The literature surrounding forensic human rights investigations is much smaller, and more focused than the transitional justice literature discussed in Section 2.1.1. Many forensic human rights investigations take place in post-conflict or transitional contexts. Moreover, as was highlighted above, these investigations have been used as part of transitional justice mechanisms such as trials and truth commissions. As a result, forensic human rights investigations can be considered a specific mechanism of transitional justice. However, these investigations did not develop as a specific transitional justice mechanism, and the literature also does not conceptualize them as such. In fact, much of the early literature surrounding forensic human rights investigations does not discuss transitional justice at all,

⁶⁴ Monique Crettol and Anne-Marie La Rosa, “The missing and transitional justice: the right to know and the fight against impunity,” *International Review of the Red Cross* 88, no. 862 (2006): 356, <https://doi.org/10.1017/S1816383106000567>.

⁶⁵ Stover and Shigekane, “Exhuming mass graves,” 98.

⁶⁶ As discussed in Guatemala by Victoria Sanford, *Buried Secrets: Truth and Human Rights in Guatemala*, (New York: Palgrave MacMillan, 2003), 23, and as discussed in Zimbabwe by Shari Eppel, “Healing the Dead: Exhumation and Reburial as Truth-Telling and Peace-Building Activities in Rural Zimbabwe,” in *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies*, ed. Tristan Anne Borer, (Notre Dame IN: University of Notre Dame Press, 2006), 264.

⁶⁷ As discussed in Cambodia by Klinkner, “Towards Improved Understanding,” and in Rwanda by Jessee, “Promoting Reconciliation.”

instead situating itself as a mechanism for the protection of human rights, or a type of forensic science.⁶⁸ In the early 2010s, literature surrounding forensic human rights investigations began to link these investigations to transitional justice, and to consider these investigations as contributing to transitional justice processes.⁶⁹ This shift is consistent with the diffusion and acceptance of transitional justice norms throughout the international community.

The foundational norm of this literature is also grounded in the assumption that legal justice is the “best” form of justice, and that forensic methods contribute to legal justice by providing evidence in trials. This is consistent with the main norm in the transitional justice canon. As noted in the introduction to this dissertation, various authors have identified competing legal and humanitarian goals of forensic human rights investigations.⁷⁰ Notably, Stover and Shigekane illustrate the two conflicting goals of forensic work in human rights processes, suggesting that “a growing tension has emerged between the humanitarian needs of families of the missing and the evidentiary needs and limitations of international war crimes tribunals in the aftermath of mass killings.”⁷¹ Despite identifying these inherently conflicting goals, as in the transitional justice canon, the literature related to forensic human rights investigations has tended to consider a positive correlation between the use of forensics and the fulfillment of legal justice. However, as with the transitional justice literature, this literature is largely unable to substantiate the assumption.

As discussed in Section 2.1.1.1 regarding transitional justice norms, this assumption stems from the international norm that legal justice is the gold standard for addressing human rights violations. How this norm developed related to forensic human rights investigations is traced in more detail in Chapter 4. However, I argue that the impact of this norm for forensic human rights investigations is the same as it is for transitional justice more broadly. The international norm sets universal expectations for actors in diverse contexts that legal justice is paramount, and if it is not achieved, any other outcome or type

⁶⁸ See, for example, Ferllini, “The Development of Human Rights Investigations.”

⁶⁹ See, for example Rosenblatt, *Digging for the Disappeared*.

⁷⁰ Margaret Cox, Ambika Flavel, and Ian Hanson, “Introduction and Context,” in *The Scientific Investigation of Mass Graves: Toward Protocols and Standards*, (Cambridge: Cambridge University Press, 2008), 98.

⁷¹ Stover and Shigekane, “Exhumation of mass graves,” 85.

of justice is a lesser form of justice. This is problematic because legal justice is not achievable, or desirable, in all contexts. By setting unrealistic or undesirable expectations and presenting them as universal, this creates challenges in allowing local and domestic actors to express and negotiate their own needs and wants in ways that are more consistent with the local environment.

2.1.2.2 Evaluating the success of forensic human rights investigations

There are a number of parallels between the scope and gaps of the transitional justice literature discussed in Section 2.1.1 and this narrower body of literature regarding forensic human rights investigations. As with the transitional justice literature, much of the literature related to forensic science is also reliant on single case study analyses. In addition to providing detail-rich deep analysis of each context, some of this literature approaches case studies from the perspective of improving the forensic techniques of forensic human rights investigations. Forensic human rights investigations differ from criminal forensic investigations for a number of reasons, including but not limited to the often large number of victims, the length of time that has passed between the death and the investigation, the poor conditions of remains, and the lack of information surrounding the death or identity of the individual.⁷² These contributions to the case study literature are important to acknowledge, although they are somewhat beyond the scope of this project, as they are essential to advancing the toolkits of forensic investigators and provide critical lessons for future investigations.

Again, similar to evaluations of transitional justice mechanisms discussed in Section 2.1.1.2, much of the literature surrounding forensic human rights investigations begins from the normative assumption that forensic human rights investigations contribute to legal justice, and that this is the desired goal. Many authors assume a positive outcome will follow when exhumations are conducted for judicial purposes. However, most of the literature fails to examine the nuances and limitations of exhumations for legal purposes, including the absence of sufficient resources to conduct proper exhumations,⁷³ the use of

⁷² See, for example, Mercedes Doretti, and Clyde C. Snow, "Forensic Anthropology and Human Rights: The Argentine Experience," in *Hard Evidence: Case Studies in Forensic Anthropology*, ed. Dawnie W. Steadman, (Upper Saddle River, NJ: Prentice Hall, 2002), 304.

⁷³ Jessee, "Promoting Reconciliation," 16.

forensic evidence to promote selective prosecutions,⁷⁴ or the inability of scientists to make positive identifications of exhumed remains.⁷⁵ These challenges highlight the fact that forensic exhumations for judicial purposes are not perfect, and are themselves part of a politicized transition.

For example, Melanie Klinkner's 2009 doctoral dissertation contrasted forensic work conducted for the International Criminal Tribunal for the Former Yugoslavia (ICTY) with the lack of forensic work in the Extraordinary Chambers in the Courts of Cambodia (ECCC).⁷⁶ Klinkner's project evaluated the relationship between international criminal law and forensic science to, "help integrate forensic findings and legal outcomes," and "to evaluate the use of such evidence during proceedings and its effect on judicial outcomes."⁷⁶ Her work concluded by making recommendations to improve the relationship between the law and forensics, but largely did not engage with questions about whether this relationship is positive, or in what principles or norms it is rooted.⁷⁷

Moreover, much of the literature identifies the tension between judicial and humanitarian goals of forensic human rights investigations, but does not interrogate this tension from multiple levels of analysis in particular contexts. This means that there is little understanding of how the overarching international norms influence domestic and local decisions regarding whether and how to undertake and structure forensic human rights investigations. Ultimately, this literature does not examine what happens prior to the initiation of a forensic human rights investigation, or how the decisions about how to address mass graves or forced disappearances are made. This decision-making process has had very real social and political consequences in various contexts, as was demonstrated in Iraq⁷⁸ and Libya,⁷⁹ where families were so desperate for answers about the fate of their loved ones that they began to exhume mass graves themselves, and had to be urged by international forensic experts to stop.

⁷⁴ Clea Koff, *The Bone Woman: A Forensic Anthropologist's Search for Truth in the Mass Graves of Rwanda, Bosnia, Croatia, and Kosovo*, (New York: Random House, 2004), 265.

⁷⁵ Jessee, "Promoting Reconciliation," 16.

⁷⁶ Klinkner, "Towards Improved Understanding," 26.

⁷⁷ *Ibid.*

⁷⁸ Stover, Haglund and Samuels, "Mass Graves in Iraq," 663-66.

⁷⁹ Human Rights Watch, "Libya: Halt Exhumations of Mass Graves: Forensic Experts Needed to Identify Remains, Secure Evidence," September 22, 2011, <https://www.hrw.org/news/2011/09/22/libya-halt-exhumations-mass-graves>.

In another notable work from the forensic human rights investigations literature, Sarah Wagner investigated the use of forensics following the Srebrenica massacre in Serbia. By contrast with Klinkner's work, cited above, Wagner grounded her work in the humanitarian contributions of forensic investigations. She asserted that "the humanitarian project of exhuming mass graves and returning remains to families was... intended by its international sponsors to facilitate socio-political repair."⁸⁰ However, even this humanitarian focus remained framed as a secondary process to the ICTY's judicial purpose. Wagner stated that "[m]emory, imagination, and supposition... do not exist on the opposite side of some vertical line drawn between their subjectivity and the objectivity of DNA science. Rather, these different kinds of knowledge gain significance within the process of identification in relation to one another."⁸¹ While Wagner's work grounded itself in the individual experiences of community members, and explored the potential for forensics to contribute to social repair, it still subscribed to the dominant paradigm of prioritizing legal justice above any humanitarian contributions of forensic investigations. As will become evident throughout the case study later in this dissertation, this is in direct contrast to the Northern Irish context.

The combination of the dominance of single case studies, and the assumption that legal justice is paramount leads to the same dilemma in the literature surrounding forensic human rights investigations that plagues the transitional justice literature, authors choose to evaluate mechanisms against a particular value position, largely the pursuit of legal justice, based on single case studies. As in the transitional justice literature, this leads to little consistency in the criteria used to evaluate mechanisms, little comparative research between cases beyond cursory lessons learned, and little examination of the impact of higher-level assumptions or the diffusion of the international normative framework in different cases. As forensic human rights investigations have become increasingly integrated into the transitional justice framework, in both practice and scholarly analyses, it seems unsurprising that similar methodological and theoretical challenges would also be shared between the two fields of study. However, these challenges demonstrate that both

⁸⁰ Sarah E. Wagner, *To Know Where He Lies: DNA Technology and the Search for Srebrenica's Missing*, (Los Angeles: University of California Press, 2008), 150.

⁸¹ *Ibid.*

fields would benefit from research methods, concepts and theoretical frameworks that address the gaps in the evaluative literature.

Ultimately, as both the discussion of the transitional justice literature in Section 2.1.1, and this section have argued regarding the scholarship surrounding forensic human rights investigations, the literature tends to base its evaluation of mechanisms on the norms that have developed and diffused through the international community. This creates a tension between theory and practice, or expectations and reality between the international ideas and local lived experiences.

2.1.3 Gaps in the literature

Thus far, this chapter has demonstrated similar methodological and theoretical challenges in the transitional justice literature and the literature related to forensic human rights investigations. The first is that the literatures largely fail to examine how their foundational norms set expectations of what justice should look like, and how it should be done that conflict with local values and needs. In addition, both bodies of literature have used these norms as the standards against which scholars and practitioners evaluate the success of mechanisms.

I argue that due to these gaps, neither literature provides a comprehensive framework for interrogating this dissertation's two research questions: first, do international norms exist regarding forced disappearances and if so, what is their specific content? Second, to what extent do each of these international norms related to forced disappearances contribute to success in dealing with forced disappearances. Moreover, as the next section will underscore, it leads to additional challenges for scholars designing this type of research.

2.2 Challenges for research design

Based on the review of the literature in the previous section, I argue that there are three main challenges created by these gaps in the literature for which this dissertation endeavours to account. The first is the lack of attention to different levels of analysis when evaluating mechanisms, as well as a lack of attention to differences between theory and practice. The second is a failure to unpack how the dominant standards against which mechanisms are evaluated, which stem from the international norms, influence actors,

structures, and decisions at these different levels of analysis. The third is the failure to consider the relative impact of different structures, ideas, and actors, on forensic human rights investigations. This section explicitly outlines the challenges created by the gaps in the literature regarding norm theory and methods to evaluate mechanisms. This lays the groundwork for the use of a constructivist IR theory lens in this dissertation, which provides concepts and tools that address these challenges. This is outlined further in Section 2.3.

2.2.1 Exploration of multiple levels of analysis

As illustrated in the previous section, the priorities of the international community and transitional justice scholars regarding both transitional justice, broadly, and forensic human rights investigations more specifically, are largely oriented towards the idea that forensic human rights investigations should aim to provide evidence in legal trials to promote accountability, and for the political purpose of clearly delineating the successor political regime from a previous one. However, while some scholars do criticize these assumptions, largely neither literature unpacks the roots of this concept. I argue that this is due to the fact that the roots of this idea are at an international and ideational level of analysis, while most scholarship is at a case-specific or domestic/local level of analysis.

The intersection of different levels of analysis and examination of the intersection between global, national and local priorities has been an important and emerging trend in some human rights, transitional justice, and anthropological literature.⁸² This is because the use of multiple levels of analysis allows consideration of different voices from the dominant political ones. Of specific importance to this project is the prioritization of the voices of victims, survivors and communities in the transitional justice processes that ultimately impact them. Moreover, while studies in Political Science have traditionally focused on the international and national levels of analysis, and studies in Anthropology have traditionally focused on the local levels, the intersection of these levels of analysis is

⁸² For example, see Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice*, (Chicago: University of Chicago Press, 2006); Armine Ishkanian, "Working at the local-global intersection: the challenges facing women in Armenia's NGO sector," in *Post-Soviet Women Encountering Transition: Nation-Building, Economic Survival, and Civic Activism*, eds. Kathleen Kuehnast and Carol Nechemias, (Baltimore: John's Hopkins University Press, 2004); Rosalind Shaw and Lars Waldorf (eds.), "Introduction," in *Localizing Transitional Justice: Interventions and Priorities after Mass Violence*, (Stanford: Stanford University Press, 2010); Anna Tsing, *Friction: An Ethnography of Global Connection*, (Princeton: Princeton University Press, 2005).

fruitful for both disciplines.⁸³ As Shaw and Waldorf suggested, “no location in the world exists in detachment from national and global processes,”⁸⁴ meaning that the local can no longer be considered in isolation from other levels of analysis. However, excluding local perspectives also provides an incomplete picture of the influential factors in transitional justice processes and investigations of forced disappearances.

Thus, the consideration of multiple levels of analysis is an essential component of this project. The overarching research questions are constructed to consider at least two levels of analysis. It references the norms that have developed at the international level surrounding forced disappearances, and the impact of these norms in the domestic incarnation of the mechanism that developed in the Irish case, the ICLVR. Based on the literature cited above, I maintain that these different levels of analysis are intimately intertwined with one another thus necessitating studies that consider multiple levels of analysis.

2.2.2 Impact of international normative standards

As argued in Sections 2.1.1.2 and 2.1.2.2, both the transitional justice literature, and the literature related to forensic human rights investigations tend to evaluate the success of mechanisms based on subjective normative standards such as legal justice and the promotion of democracy. I maintain that these normative standards are not selected at random by scholars and practitioners of transitional justice or forensic human rights investigations. Instead, they are related to ideas and standards that have been diffused through the international community, otherwise known as international norms. As is traced in Chapter 4, the norm of international criminal accountability is the international community’s definition of justice. In 2004, the UN Secretary General described transitional justice as “an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs,”⁸⁵ invoking language with a significant legal connotation and demonstrating the entrenchment of this norm into transitional justice practice.

⁸³ Shaw and Waldorf, “Introduction,” 6.

⁸⁴ Ibid.

⁸⁵ United Nations Security Council, “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General,” (S/2004/616), United Nations Security Council, 23 August 2004.

Understanding how these international norms have developed and diffused through the international community is essential to understanding how the normative standards against which scholars and practitioners evaluate forensic human rights investigations have developed. This is important for this project, which, as I outlined in Section 2.2.1, is designed around the concept that international norms set a standard that has diffused to different contexts around the world, and thus influences how mechanisms of transitional justice and forensic human rights investigations are designed and implemented. As Sections 2.1.1.1 and 2.1.2.1 highlighted, while these standards are commonly referenced in these two bodies of literature, the development of these standards and their impact is largely not accounted for by the literature.

2.2.3 Relationships between actors and ideas, social and political structures, and institutions

The third challenge that clearly emerges from the gaps in the transitional justice literature and the literature surrounding forensic human rights investigations is that these literatures do not clearly elaborate the influences of different actors, ideas, structures, and institutions, nor do they explicitly consider the relationships among these factors. For example, Section 2.1.2.1 highlighted how international norms are influential in shaping how investigations of forced disappearances are structured at the domestic and local levels to adhere to the international norm that legal justice is paramount. But, how much influence can be attributed to these norms? Similarly, how do these norms interact with different sets of actors, both at the international level, and domestically?

In the constructivist framework, which is explored further in Section 2.3, this relationship is described as the mutually constitutive nature of structure and agency. Barnett suggested, “[s]ocial theory is broadly concerned with how to conceptualize the relationship between agents and structures; for instance, how should we think about [the] relationship between states and the structure of [the] international system?”⁸⁶ As argued in Section 2.3.1, this type of question requires examination at multiple levels of analysis. However, it also is related to the influence of both structures and actors.

⁸⁶ Michael Barnett, “Social Constructivism,” in *The Globalization of World Politics: An introduction to international Relations*, 4th edition, eds. John Baylis, Steve Smith, Patricia Owens, (Oxford: Oxford University Press, 2008), 162.

This challenge, as with the two previous ones, is an essential issue to unpack for this research. The interplay between international norms regarding forced disappearances at the level of the concept, and at the level of interpretation and implementation relies heavily on the influences of different ideas, institutions, structures and actors. For the Independent Commission for the Location of Victims' Remains (ICLVR) in the Irish case, these different structures and actors exist in the international community, two different states, three different political jurisdictions, and a myriad of different ideological perspectives and identities. Again, the ability to determine how the global influences the local is contingent on a more thorough unpacking of these concepts than has been accomplished in much of the transitional justice canon, or literature regarding forensic human rights investigations.

Ultimately, this section has explored challenges in the literatures related to forced disappearances, linked to the two gaps in the literature that this dissertation endeavours to address. The first is the importance of using different levels of analysis in evaluation of mechanisms, in order to understand factors that influence the mechanisms at the international, domestic, and local levels. The second challenge is to the need to unpack how norms at the international level influence the domestic and local levels. The third challenge is the failure to consider the relative impact of different structures, ideas, and actors, on forensic human rights investigations. I argue that these three challenges in the existing literature lend themselves well to the use of constructivist international relations (IR) theory as the theoretical framework for this dissertation. The third section of this chapter outlines the use of a constructivist IR theory lens due to the core assumptions and perspectives it espouses. The next section of this chapter also outlines three key concepts relevant to constructivist IR thought that are significant to answering the research questions of this project and addressing the gaps and challenges in the literature.

2.3 Theoretical framework: constructivist IR theory

As has been demonstrated throughout the previous three sections of this chapter, ultimately, this is a project about how international norms influence the mechanisms that have developed to address forced disappearances. While, broadly, the literature related to forensic science, and the transitional justice literature espouse adherence to international

norms, these bodies of literature do not account for their influence. International norms are a central concept of constructivist IR theory, making it a logical choice for the theoretical framework for this dissertation. This section first considers the central tenets of constructivism in IR theory, then specifically discusses three aspects of note: international norms, cooperation between actors, and trust.

2.3.1 *Central tenets of constructivist IR theory*

IR theory developed to help explain the behaviour of states in the international realm. Constructivist IR theory emerged to address perceived weaknesses in the field's two dominant paradigms: realism and liberalism. The realist paradigm operates based on the belief that relations between states in the international community are best studied by understanding that states are self-interested, rational, utility-maximizing actors operating in an international system that is inherently anarchical. This means that states act in their own self-interest, and frequently act to maximize their own power and strength in comparison with other states.⁸⁷ State actions can thus be explained by understanding how they can increase their own international power. By contrast, liberalism is grounded in the idea that opening the black box of the state is essential to understand the domestic politics and interests of domestic actors, which influence how states act in the international realm. Liberalism is also a normative theory in that it advocates in favour of peaceful international relations by promoting the creation of domestic environments that are conducive to international cooperation.⁸⁸

Constructivists believe that neither realism nor liberalism adequately explains state behaviour. Constructivists argue that ideas matter in the international realm, and that without examining the power of ideas and how state and non-state actors promote particular

⁸⁷ See, for example Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, 7th edition. (New York: McGraw Hill, 2006); John Mearsheimer, *The Tragedy of Great Power Politics*, (New York: W.W. Norton, 2001); .E. H. Carr, *The Twenty Years Crisis: 1919-1939*, (Edinburgh, UK: R & R Clark Ltd., 1940); Kenneth N. Waltz, "Laws and Theories," in *Neorealism and its critics*, ed. Robert O. Keohane, (New York: Columbia University Press, 1986).

⁸⁸ See, for example, Andrew Moravcsik, "A Liberal Theory of International Politics," *International Organization* 51, no. 4 (1997): 513-52, <https://www.princeton.edu/~amoravcs/library/preferences.pdf>; Robert O. Keohane and Joseph S. Nye, *Power and Interdependence: Third Edition*, (New York: Longman, 2001); Stephen Chaudoin, Helen V. Milner and Dustin H. Tingley, "The Center Still Holds: Liberal Internationalism Survives," *International Security* 35, no. 1 (2010): 75-94, https://doi.org/10.1162/ISEC_a_00003.

ideas, scholars miss the bigger context of IR.⁸⁹ Drawing on concepts from Sociology and Anthropology, constructivists cite Émile Durkheim, who discussed “the role of ideational factors in social life, and how ideas, which can exist only in individuals’ heads, become socially causative.”⁹⁰ Moreover, Durkheim adopted the relational social realism of Ernest Wallwork, “in which social facts are constituted by the combination of individual facts through social interaction.”⁹¹ In other words, constructivists argue that the relationships and interactions between individuals and groups of actors impact behaviour. Related to this point, as I explored briefly in Section 2.2.3, the constructivist literature refers to the concept that structure and agency are both mutually constituted and mutually constitutive. This means that structures, for example, institutions and norms, are equally responsible as actors, for example individuals and groups, in shaping and constraining the behaviour of actors at the international level. Thus, actors can influence the structure of political systems, but are also influenced by it.⁹² This is an important concept for this project, as it highlights the importance of factors at different levels of analysis to understanding a mechanism like the Independent Commission for the Location of Victims’ Remains. These factors include international norms related to transitional justice and forensic human rights investigations, local and domestic political and social structures, and various actors across these levels of analysis.

Constructivists argue that their paradigm is important because it has broadened the scope of IR theory beyond state action. By exploring “issues of identity and interest bracketed by neoliberalism and neorealism, constructivists have demonstrated that their sociological approach leads to new and meaningful interpretations of international politics... to challenge mainstream analysts on their own ground.”⁹³ Constructivist principles are not necessarily incompatible with the lens of either the liberal or the realist

⁸⁹ Jeffrey Checkel, “The Constructivist Turn in International Relations Theory,” *World Politics* 50, no.2 (1998): 324-48; ; Stefano Guizzini, “A Reconstruction of Constructivism in International Relations,” *European Journal of International Relations* 6, no.2 (2000): 147-82, <https://doi.org/10.1177/1354066100006002001>; Ted Hopf, “The Promise of Constructivism in International Relations Theory,” *International Security* 23, no.1 (1998): 171-200; ; Alexander Wendt, “Constructing International Politics,” *International Security*, 20, no.1 (1995): 71-81; John Gerard Ruggie, “What Makes the World Hang Together: Neo utilitarianism and the social constructivism change,” *International Organization* 52, no.4 (1998): 855-85, <https://doi.org/10.1162/002081898550770>.

⁹⁰ Ruggie, “What Makes the World Hang Together,” 857.

⁹¹ *Ibdi.*, 858.

⁹² Colin Hay, *Political Analysis*, (New York: Palgrave, 2002), 209.

⁹³ Checkel, “The Constructivist Turn,” 325.

paradigms. Instead, constructivism widens the lens of other theoretical approaches by deconstructing why and how events occur in the international realm, and then evaluating their importance.⁹⁴ Due to the aspects of the paradigm outlined in this section, I argue that constructivist IR theory provides an important lens to answer the key research questions for this project, to fill the gaps in the literature outlined in Section 2.1.3, and to address the challenges to research design outlined in the Section 2.2. Three key concepts from IR theory, broadly, and constructivism, specifically, are especially relevant to this project, each of which will now be discussed in turn. The first and main concept is international norms. The second concept is cooperation between actors at different levels of analysis. The third concept is trust.

2.3.2 *What are international norms and why do they matter?*

One of constructivism's most important analytical concepts is that of international norms. I have already referred to international norms extensively throughout this chapter, but it is important here to take a step back and consider the definitions of international norms from IR theory. International norms and international norm theory are the most important concept of this dissertation, as unpacking how they develop and diffuse throughout the international community is essential to understanding the assumptions embedded at the international level and the impact they have on how mechanisms operate in practice. Norms are defined in IR as "aspects of social structure that emerge from the actions and beliefs of actors in specific communities; norms shape those actions and beliefs by constituting actors' identities and interests."⁹⁵ Norms are important because they are rules and standards created by interactions and relationships between individuals, institutions and systems in the international realm. Moreover, "[t]hese shared norms and rules set expectations about how the world works and what constitutes legitimate behaviour."⁹⁶

Checkel states that "[f]or constructivists... norms are collective standards that make behavioural claims on actors. Their effects reach deeper, they constitute actor identities and

⁹⁴ Checkel, "The Constructivist Turn," 325.

⁹⁵ Matthew J. Hoffmann, "Norms and Social Constructivism in International Relations," in *The International Studies Encyclopedia* ed. Robert Denemark et al, (Oxford: WileyBlackwell, 2010) <http://internationalstudies.oxfordre.com/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-60>,

⁹⁶ Paul R. Viotti and Mark V. Kauppi, *International Relations Theory 5th edition* (Toronto: Longman, 2012), 282.

interests and do not simply regulate behaviour.”⁹⁷ This is important to note, because it further unpacks the power of norms. Hoffmann echoes this idea. He states that “a paradox of social norms is their dual quality. As shared objects, they appear as external to any particular actor—actors experience norms, at least in part, as external rules. But the existence of a norm is dependent on continual enactment by communities of actors—actors thus also experience norms, at least in part, as internal rules.”⁹⁸ In other words, norms are important because they shape the behaviour of actors, but actors also perform the roles placed on them by norms, giving them power both as an idea independent of actors, but also as influencers of the behaviour of actors. This in turn reinforces the norm itself. However, if the actors are not performing the roles inscribed by the norms, this may in turn undermine the norms themselves.

An important example of an international norm is the concept of international human rights.⁹⁹ Prior to World War I, state sovereignty was the governing premise of international politics. However, in the modern world, states are permitted to undermine the sovereignty of other states by intervening, either through diplomacy, public shaming, or military intervention, when states commit major human rights violations in their own territory.¹⁰⁰ These actions are limited, and are not always well received, but are recognized as within the realm of acceptable behaviour for states within the international community. Moreover, international institutions such as the League of Nations and the United Nations were created in the interest of upholding international human rights standards by institutionalizing the principle of intervention in the affairs of other states. This shift was not based on the self-interest of states as realism might suggest, nor was it based on states’ domestic political interests, as would be explained by liberalism. Instead, it was based on the development of the *norm* of international human rights and its diffusion around the world to different states and individuals.¹⁰¹

⁹⁷ Checkel, “The Constructivist Turn,” 327.

⁹⁸ Hoffmann, “Norms and Social Constructivism.”

⁹⁹ For a more in-depth examination of the development of international human rights as an international norm, please see Jack Donnelly, *Universal Human Rights: In Theory and Practice*, 3rd ed., (Cornell: Cornell University Press, 2013).

¹⁰⁰ Carsten Stahn, “Responsibility to Protect: Political Rhetoric or Emerging Legal Norm,” *American Journal of International Law*, 101, no.1 (2007): 99-120, <https://doi.org/10.1017/S0002930000029559>.

¹⁰¹ I acknowledge that realism and liberalism criticize international human rights as a norm due to its lack of enforcement power, and both paradigms discount the power of norms and ideas largely for this reason. However, I do not believe that these criticisms undermine the power of the norm itself.

Since the inception of norms as a concept within IR, various scholars have developed models that explain how norms are diffused throughout the international community. These norm theories could provide a framework to explain how the international norms related to forensic human rights investigations, specifically, and transitional justice, broadly, have developed and diffused. This section outlines four models of norm theory that dominate constructivist IR scholarship. Krook and True suggest that constructivists accept a reasonably static view of norm creation and formation, and a dynamic view of how these norms diffuse through the international community. This is problematic, as it leaves little room to explore how the content of norms may shift in different domestic contexts or at different points in time.

The first model of norm theory outlined by Krook and True is the “world polity model”, wherein “international norms are universalistic world models that are exogenously created and not strongly anchored in local circumstances.”¹⁰² In other words, in this model norms are standards that come from outside human creation. This model theorizes that state compliance with established international norms is tied to the impact of non-compliance on the state’s international reputation. The model envisions norm development as an “essentially linear, one-way process of alignment to modern international standards.”¹⁰³ The world polity model is problematic, as it promotes the assumption that norms are independent of socially constructed, human creation. In other words, it suggests there is a universal moral standard from which norms stem. This is not the case, as some international norms, such as the norm of forced disappearances which is discussed in Chapter 4, are clearly not positive standards to which states should aim.

The second model is Finnemore and Sikkink’s norm cascade model, in which they argue that norms have a standard lifecycle of emergence and acceptance by a critical mass of states, and then diffusion across the international community “causing states to converge around a common set of principles.”¹⁰⁴ In this model, norms emerge when “[n]orm entrepreneurs attempt to convince a critical mass of states (norm leaders) to embrace new

¹⁰² Mona Lena Krook and Jacqui True, “Rethinking the life cycles of international norms: The United Nations and the global promotion of gender equality,” *European Journal of International Relations* 18, no. 1 (2012): 107.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

norms.”¹⁰⁵ Norm entrepreneurs can be state leaders, or other actors, including leaders of transnational advocacy groups.¹⁰⁶ When these norms reach a ‘tipping point,’ the norm cascade phase is,

characterized more by a dynamic of imitation as the norm leaders attempt to socialize other states to become norm followers. The exact motivation for this second stage where the norm ‘cascades’ through the rest of the population (in this case, of states) may vary, but ... a combination of pressure for conformity, desire to enhance international legitimation, and the desire of state leaders to enhance their self-esteem facilitate norm cascades.¹⁰⁷

Finnemore and Sikkink maintained that, “[a]t the far end of the norm cascade, norm internalization occurs; norms acquire a taken-for-granted quality and are no longer a matter of broad public debate.”¹⁰⁸ As is evidenced by this description, this model of norm diffusion, which is the most commonly cited throughout the IR literature, focuses primarily on the phases of how a norm gains international acceptance, and how it subsequently diffuses across the community. As Krook and True argue, consideration of how the norm itself develops is less relevant in this model, which is itself problematic because it ignores the differences and negotiations that can occur as a norm emerges. These differences and negotiations are especially relevant to this dissertation, which examines differences between the concept of a norm in theory, and its implementation in practice.

The third model of norm development is the boomerang model advocated by Keck and Sikkink, which emphasizes the role of Transnational Advocacy Networks as norm entrepreneurs. In the boomerang model, “domestic groups are increasingly able to connect to transnational allies, who use the power of principles, ideas and norms to lobby their own states or international organizations to put pressure on the recalcitrant state from the outside.”¹⁰⁹ In many ways, Keck and Sikkink’s model of norm diffusion builds upon Finnemore and Sikkink’s model. Norm entrepreneurs are largely an influential force once the general content of the norm is settled. The theory explains how norms need to be accepted and diffused by other states and non-state actors around the world. Since this

¹⁰⁵ Finnemore and Sikkink, “International Norm Dynamics,” 895.

¹⁰⁶ Such actors would not be recognized as holding power by realism, which again differentiates constructivism from the traditional IR theories.

¹⁰⁷ Finnemore and Sikkink, “International Norm Dynamics,” 895.

¹⁰⁸ *Ibid.*

¹⁰⁹ Krook & True, “Rethinking the lifecycle,” 107.

model builds upon Keck and Sikkink's model, it has the same problem of excluding consideration of how norms initially emerge and are then contested. While this dissertation largely refers to Donnelly's framework of concept, interpretation and implementation of a norm, discussed below, I argue that the diffusion of the three norms related to forced disappearances is largely consistent with Keck and Sikkink's model.

The fourth model of norm theory is the spiral model of eight, which considers various domestic processes of socialization of international norms. Risse, Ropp, and Sikkink asserted that a process of repression of the influence of the norm typically follows its introduction into public consciousness.¹¹⁰ During this repression, civil society groups become active in advocating for the rights to become codified.¹¹¹ The ultimate goal of this process is for state institutions to perceive themselves as the guardians of these norms.¹¹² As with the preceding three models, this theory examines what happens after a norm comes to fruition, not how the norm itself develops.

While not explicitly a model of norm diffusion, I prefer Jack Donnelly's three-level framework of concept, interpretation, and implementation regarding human rights norms, which can be easily applied to all types of norms. In his seminal work, *Universal Human Rights in Theory and in Practice*, Donnelly outlines the difference between the concept of a right, and how it is interpreted and implemented. He describes that

We can identify three levels of abstraction in the specification of internationally recognized human rights. Basic concepts...are largely universal. Particular conceptions or interpretations of those concepts have a significant but limited range of legitimate variation. The particulars of implementation, however, are legitimately matters of considerable local variability.¹¹³

Donnelly describes the conceptual level of rights, stating, “[t]he Universal Declaration [of Human Rights] generally formulates rights at the level of what I will call the *concept*, an abstract, general statement of orienting value. ... I am even tempted to say that conceptions of human nature or society that are incompatible with such rights are

¹¹⁰ Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (eds.) *The Power of Human Rights: International Norms and Domestic Change*, (Cambridge: Cambridge University Press, 1999), 22.

¹¹¹ *Ibid.*, 24.

¹¹² *Ibid.*, 26.

¹¹³ Jack Donnelly, *Universal Human Rights: In Theory and Practice* 3rd ed., (Cornell: Cornell University Press, 2013), 100.

almost by definition indefensible in contemporary international society.”¹¹⁴ In other words, Donnelly asserts that at the *conceptual* level, human rights are prevalent and constant. However, Donnelly also maintains that at the level of interpretation and implementation of those same rights, there is significantly less agreement. He states, “[t]he move to an implementation or enforcement regime requires a major qualitative increase in the commitment of states that rarely is forthcoming,”¹¹⁵ indicating that although agreement on the principles of international norms exists, these principles are rarely translated into practice.

At the level of interpretation of human rights, Donnelly states, “Universality at the level of the concept, however, should not obscure potentially important disagreements concerning definitions and implicit limitations.”¹¹⁶ He provides the example of the right for protection against torture, arguing that, “The real controversy comes over questions such as what counts as torture or whether particular practices are cruel and inhuman. For example, most European states consider the death penalty to be cruel and inhuman but the United States does not. The Bush administration claimed—with apparent sincerity but little persuasive power—that waterboarding was not torture.”¹¹⁷ As a result, there are some variations of human rights at the level of interpretation. However, they are confined to within the generally accepted realm of reason.

Third, Donnelly states, “Just as concepts need to be interpreted, interpretations need to be implemented.”¹¹⁸ He concludes,

I stress this three-level scheme to avoid a common misconception. My argument is for universality only at the level of the concept. The Universal Declaration insists that all states share a limited but important range of obligations. It is, in its own words, “a common standard of achievement for all peoples and all nations.” The ways in which these rights are interpreted and implemented, however, so long as they fall within the range of variation consistent with the overarching concept, are matters of legitimate variation.¹¹⁹

¹¹⁴ Donnelly, *Universal Human Rights*, 100.

¹¹⁵ *Ibid.*, 152.

¹¹⁶ *Ibid.*, 102.

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*, 103.

In other words, Donnelly suggests that human rights, and I believe, also other norms, can be implemented in different ways, despite general agreement on the concept or the general conceptualization of the norm.

Others might consider the disaggregation of the levels of the norm at the concept, interpretation, and implementation stages as simple discrepancies between theory and practice that can be explained simply by differences in domestic political or social structures that are thus unimportant to international relations. However, I argue that variations of interpretation and implementations of norms are essential components of a fulsome understanding of the power inherent in international norms, how they constitute actors of international politics, and the how norms regulate appropriate behaviour.¹²⁰

An analysis of how particular norms develop is important, because how a norm develops can influence how it is defined, and how it is then interpreted and implemented. Krook and True argue that norms should be viewed as processes, and advocate for “a discursive approach suggest[ing] that norms continue to develop over the course of their life cycle due to ongoing critique and/or shifts in the content of other norms-in-process.”¹²¹ In other words, they suggest that internal conflict within the norm itself, or conflict with other existing norms in the world shapes how the norm exists in the world.¹²² This is especially relevant to this project, as, while there tends to be agreement in how norms related to addressing forced disappearances exist at the level of the concept of the norm, there are major differences in how investigations into forced disappearances are interpreted and implemented in different contexts. I argue that these differences could result in reshaping of the norms themselves.

Similarly, some postcolonial IR scholars have pointed out that mainstream constructivist accounts of norms have largely failed to grapple with the power dynamics and relationships inherent in the definition, advocacy, and diffusion of norms throughout the international realm.¹²³ Epstein asserts that constructivism has yet “to account for the

¹²⁰ Charlotte Epstein, “The Postcolonial Perspective: Why We Need to Decolonize Norms,” *E-International Relations*, Jan. 19, 2017, <https://www.e-ir.info/2017/01/19/the-postcolonial-perspective-why-we-need-to-decolonize-norms/>.

¹²¹ Krook & True, “Rethinking the lifecycle,” 117.

¹²² See also Maria Martin de Almagro, “Lost boomerangs, the rebound effect and transnational advocacy networks: a discursive approach to norm diffusion,” *Review of International Studies* 22, no.3 (2018): 4, <https://doi.org/10.1017/S0260210518000086>.

¹²³ Epstein, “The Postcolonial Perspective.”

particular form that a norm takes, and for how it authorizes certain forms of behaviour and not others.”¹²⁴ In order to do this, she asserts that scholars must unpack “(1) the power that inheres in international norms, (2) the extent to which they constitute the actors of international politics, and (3) the regulation of possibilities for acting ‘appropriately’.”¹²⁵ However, this unpacking tends to be rather rare in IR scholarship. Donnelly’s three-level framework helps to capture the development of norms across geographic and temporal contexts.

Thus, analysis of international norms, and norm theory broadly represents a theoretical launching point into the discussion of key norms related to the case study of the ICLVR, transitional justice norms, and norms regarding investigations into forced disappearances. This is the first major research contribution of this project. Little work has been done to understand where these norms came from, or what impact their origins have had on the interpretation and implementation of these norms in various states. Furthermore, Epstein’s three points discussed above largely remain unexamined in the literature surrounding forced disappearances. This project contributes to the literature by tracing the norms related to forced disappearances and examines their impact on the main case study of disappearances in Northern Ireland during the Troubles. As I argue throughout this dissertation, the impact of international norms related to forced disappearances and transitional justice are essential to understanding the success of the ICLVR.

While norm theory provides the main conceptual underpinning from IR theory for this project, there are additional concepts that emerged during the course of the research that make the use of constructivism as the theoretical framework particularly relevant. The first is cooperation between actors, and the second is trust. While other theoretical frameworks from Political Science, broadly, and IR, specifically, also speak to these two concepts, the constructivist accounting of them is particularly relevant as it maintains the importance of ideas and identities in facilitating cooperation and trust in ways that other theoretical paradigms do not.

¹²⁴ Epstein, “The Postcolonial Perspective.”

¹²⁵ Ibid.

2.3.3 *Cooperation between actors*

Cooperation between different actors, both within and between states, emerged during the interviews conducted for this project as a key explanatory factor for the success of the ICLVR. Cooperation between political and non-political actors within and between states, as well as political will from these actors are both important concepts in IR theory. This provides another justification for the use of constructivist IR theory as the theoretical framework for this project.

Historically, liberal and neoliberal perspectives in IR have been focused on “explaining the conditions under which international cooperation or collaboration becomes possible.”¹²⁶ Liberal and neoliberal scholars would not argue that cooperation between actors in the international realm is easy, but, unlike realist scholars, they do believe it is possible for reasons other than when state interests dictate it should occur. As constructivism focuses on the role of ideas in influencing behaviour, and on the relationships between structures and agents, the paradigm adds an important layer to liberal and neoliberal analyses of international cooperation.

A notable example of the addition of constructivist principles to an analysis of cooperation is by liberal scholar Andrew Moravscik. Moravscik stated, “state-society relations... have a fundamental impact on state behaviour in World Politics.”¹²⁷ He suggested this occurs because interactions between ideas, interests, and institutions shape individual and group preferences. These preferences in turn shape the interests of states, which matter more than capabilities do. Moravscik based his work on three assumptions. The first is the primacy of societal actors. Liberal scholars believe that individuals and private groups behave in a manner that is rational and risk averse, to maximize their own benefits. The second assumption is that states are representative of the dominant interests within society. The third assumption is that state interests and preferences determine the behaviour of the state in the international realm. Thus, the “form, substance and depth of cooperation depends directly on the nature of these patterns of preferences.”¹²⁸ However, Moravscik’s work also espouses a constructivist perspective, as it relies on the power of

¹²⁶ Viotti and Kauppi, *International Relations*, 129.

¹²⁷ Moravscik, “A Liberal Theory of International Politics,” 513.

¹²⁸ *Ibid.*, 521.

ideas to shape state preferences and interests. Understanding the preferences and priorities of different actors in the local and domestic context, all of which can be influenced by international norms, is an essential component to understand why actors cooperate, both domestically and internationally. This is particularly relevant to the case study in this dissertation of the ICLVR, as cooperation between actors at various levels was underscored in my interviews and analysis as a key contributing factor to the Commission's success. This is explored further in Chapters 9 and 10.

Moreover, domestic political will and cooperation between domestic and international actors to facilitate change are factors that are growing in importance for IR scholars. As outlined in Section 2.3.1, IR norm theorists broadly operate from the position that ideas and norms are important in explaining the behaviour of states in the international sphere. This expands the level of analysis considered by the traditional IR theories of realism and liberalism to explain state behaviour, thus espousing the importance of multiple levels of analysis to understand behaviour.

As explored throughout this section, cooperation between actors is a second key concept from constructivism that is relevant to this dissertation. While analyses of why and how states cooperate is most common to liberal and neoliberal IR scholarship, the lens of constructivism expands these analyses by including examination of shared values and ideas, and the mutually constitutive impact of structures and actors in shaping identities that may lead to cooperation between actors. In the context of understanding the ICLVR, a constructivist understanding of cooperation contributes to filling the gaps identified in Section 2.1.3, and the challenges for research design outlined in Section 2.2. Cooperation surrounding the ICLVR exists within and between different levels of analysis: internationally, between states, domestically, between different political and civil society actors. Cooperation also crosses levels of analysis, for example, between the ICLVR as an institution, and the family members of the Disappeared. As a result, constructivist IR theory provides an essential lens for this project. The next section of this chapter examines one final key concept relevant to this project – that of trust.

2.3.4 *Trust in individuals and institutions*

As with cooperation, the concept of trust arose during the interviews I conducted for this project as a key explanatory factor of the ICLVR's success. Trust in both individuals and institutions is a factor that is often lacking in transitional contexts due to the long history of repression, violence, or human rights violations between groups.¹²⁹ In addition, the involvement of state actors in violence also contributes to a lasting sense of mistrust in new institutions. Thus, the ability to build trust at various levels, specifically, interpersonal trust, and the trust between individuals and institutions, is an essential component to reconstruction.

Trust is also a central concept for IR scholars, although it has only recently begun to be studied in detail.¹³⁰ Hoffman began building a definition of trust based on the idea that “scholars agree that trust refers to an attitude involving a willingness to place the fate of one’s interests under the control of others. This willingness is based on a belief, for which there is some uncertainty, that potential trustees will avoid using their discretion to harm the interests of the first.”¹³¹ Realist IR scholars have largely operated on the premise that in an inherently anarchical international system, there can never be trust between states as states will always act to promote their own self-interest. For liberals, the domestic interests of states may hold some explanatory power as to why states (or indeed other actors) might trust one another. For constructivists who believe that ideas and meanings are socially constructed, shared values ideas could certainly lead to the building of trust between actors.

These three paradigms highlight, as did the discussion of cooperation in the previous section, that the concept of trust in IR can be considered at different levels of analysis, which is essential for this dissertation as it crosses different levels of analysis. As scholars Haukkala, van de Wetering, and Vuorelma discussed in the introduction to their 2018 volume on trust in IR, “when it comes to trust in international politics, there are different levels simultaneously at play: trust between leaders, trust within domestic

¹²⁹ For a discussion of trust and transitional justice, see, for example, Patricia Lundy and Mark McGovern, “A Trojan Horse? Unionism, Trust and Truth-telling in Northern Ireland,” *International Journal of Transitional Justice* 2 no. 2 (2008): 42-62, <https://doi.org/10.1093/ijtj/ijm029>.

¹³⁰ Torsten Michel, “Trust and International Relations,” *Oxford Bibliographies: International Relations*, <https://www.oxfordbibliographies.com/view/document/obo-9780199743292/obo-9780199743292-0192.xml#obo-9780199743292-0192-div1-0004> (accessed 13 December 2019).

¹³¹ Hoffman, “A Conceptualization of Trust in International Relations,” 377.

contexts, trust between institutions and state administrations as well as trust in the multilateral governance structure.”¹³² To account for these different levels of trust, a 2015 article by Ruzicka and Keating is particularly relevant, as it outlined three typologies of trust relevant to IR: first, a rational choice model, which considers how actors make rational choices about who to trust in the international realm; second, a constructivist model whereby trust is socially constructed by the identities of actors and shared meanings developed between them, and; third, a psychological model that outlines what actors trust and why. These typologies of trust in IR capture much of the modern IR scholarship related to trust in international politics, and could be applied to future norm theory analyses as well.

The models of norm theory outlined in Section 2.4.1, the world polity model, norm cascade and boomerang models, and the spiral model of eight, do not specifically account for trust as a key factor to norm development, coalescence, or diffusion. This is unsurprising, however, since the development of these models of norm theory largely preceded discussions of trust in IR scholarship. As Ruzicka and Keating’s second typology of trust as a social construct suggests, however, constructivism does provide analytical tools for examining the impact of trust at various levels of analysis.¹³³

In addition, the concept of norm entrepreneurs elucidated by Keck and Sikkink does link to the concept of trust. Norm entrepreneurs are key individuals in civil society who advance a norm. This necessitates a degree of trust from others in these individuals such that they are able to advance a norm, or their interpretation of it. An examination of the norm entrepreneurs involved with the ICLVR during the case study in Chapters 9 and 10 demonstrates that these individuals and groups garnered this degree of trust. The ability of norm entrepreneurs to facilitate trust-building, or to undermine trust in a mechanism like the ICLVR would also be a valuable exploration in future comparative research of mechanisms of forced disappearances.

As this section has highlighted, the concept of trust in individuals and institutions is a central one for transitional justice scholars and those studying forensic human rights

¹³² Hiski Haukkala, Carina van de Wetering, and Johanna Vuorelma (eds.) “Introduction: Approaching trust and mistrust in International Relations,” in *Trust in International Relations: Rationalist, Constructivist and Psychological Approaches* (New York: Routledge, 2018), 1.

¹³³ Ibid.

investigations, but is also an emerging key concept for constructivist IR theory. Like international norms and cooperation, constructivism provides a lens through which trust can be understood. This is relevant to this dissertation, as it facilitates an analysis that addresses the first of the three gaps outlined in Section 2.3. As with the concept of cooperation, trust in individuals and institutions occurs within and between levels of analysis. As this project considers the relationships between the global and the local, the international and the domestic, understanding of how trust occurs and can be developed at these different levels is essential to understanding what creates a successful mechanism to address forced disappearances.

2.4 Conclusions

In conclusion, this chapter reviewed literature related to the two central questions of this dissertation: first, do international norms exist regarding forced disappearances and if so, what is their specific content? Second, to what extent do each of these international norms related to forced disappearances contribute to success in dealing with forced disappearances. Through an exploration of the transitional justice literature, and literature specifically related to forensic human rights investigations, I demonstrated that these bodies of literature contain two main gaps. First, they largely fail to explore their foundational norms and how the foundational norm of legal justice influences domestic and local investigations into forced disappearances, such as the ICLVR. This is particularly problematic because these norms and mechanisms set expectations of what justice should look like, and how it should be conducted. These expectations can and do conflict with the values and needs of local actors including survivors of atrocity and their families. Second, the literature tends to use this norm as a standard against which to evaluate the success of these investigations, but, does not account for the fact that these norms are subjective and may not explain success in a given context.

This chapter also argued that the use of a constructivist IR theory framework in this dissertation provides concepts and tools to help address the three main gaps in these bodies of literature that limit the scope of their analyses, and create challenges for research design. These challenges are the lack of attention given to different levels of analysis, the over-reliance on international normative standards, and the failure to examine the relative

impacts of different structures, ideas, and actors, on the shaping of forensic human rights investigations. International norm theory is the primary concept of relevance due to the relationship between the definition of norms related to forensic human rights investigations at the international level, and their interpretation and implementation in different domestic and local contexts. Additionally, theories from IR scholarship regarding cooperation, and trust in individuals and institutions are also relevant to this project, as they are key factors that explain the success of the ICLVR.

Ultimately, this dissertation makes two unique contributions to the literature. First, it unpacks the development and impact of the international norms related to transitional justice and forensic human rights investigations. This has not been done in the literature previously, and is essential in order to understand how investigations of atrocity operate at the domestic and local levels. This is important so that scholars and practitioners are able to design and evaluate investigations that meet the needs and expectations of local communities, as opposed to setting false expectations rooted in these international norms. The second contribution is the in-depth case study of the ICLVR, evaluating the reasons for its success against the international norms related to forced disappearances. This is also a new contribution to the literature. Having established the relevant literature, and the use of a constructivist theoretical framework of this project in this chapter, the next chapter outlines the methodology and sources and methods of data collection used for this dissertation.

Chapter 3: Methodology

As outlined in the introduction to this dissertation, and unpacked in the literature review and theoretical framework in Chapter 2, the objectives of this project are twofold. The first objective is to garner an in-depth understanding of the international norms that exist surrounding forced disappearances and how they are investigated and addressed in different contexts internationally. The second objective is to acquire an in-depth understanding of forced disappearances in Northern Ireland during the Troubles, and their investigation through the Independent Commission for the Location of Victims' Remains (ICLVR).

This dissertation thus combines an analysis of the development of international norms related to forced disappearances with a detailed case study of the ICLVR to capture this interplay between the different levels of analysis; the international and the local, and between norms in theory and norms in practice. This requires the combination of complementary methodologies, process tracing with an in-depth case study that also uses process tracing. This chapter outlines this methodological framework and the data collection tools and sources that were employed for this dissertation.

3.1 Process tracing

Process tracing is the primary methodology used at both levels of analysis in this dissertation. Process tracing is a commonly utilized method of institutional analysis in the social sciences.¹ As Collier explained, process tracing “is an analytic tool for drawing descriptive and causal inferences from diagnostic pieces of evidence—often understood as part of a temporal sequence of events or phenomena. Given the close engagement with cases and the centrality of fine-grained case knowledge, process tracing can make decisive contributions to diverse research objectives.”² Relevant to the purposes of this dissertation, Collier described three research objectives that process tracing can facilitate: “(a) identifying novel political and social phenomena and systematically describing them; (b) evaluating prior explanatory hypotheses, discovering new hypotheses, and assessing these

¹ Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences*, (Cambridge, MA: Harvard University Press, 2004), 13.

² David Collier, “Understanding Process Tracing,” *Political Science and Politics* 44, no. 4 (2011): 824.

new causal claims (c) gaining insight into causal mechanisms.”³ Thus, in order to examine the relationship between international norms related to forced disappearances, and their interpretation and implementation in the Irish context, process tracing is an ideal methodology for this project. Process tracing relies on analysis of data gathered using a number of different tools, including historical records, elite interviews,⁴ and newspaper records.⁵ This dissertation makes use of all of these sources of data. In the interpretivist constructivist paradigm, the use of process tracing “can often break down events and discern steps at which an agent – for example, a norm entrepreneur – is contesting social structures, and steps at which a structure prevents agents from acting upon or even conceiving of courses of action that are taboo.”⁶ This description is particularly relevant to this project, which is situated in the interpretivist constructivist theoretical framework.

Chapter 4 uses process tracing to trace the development and diffusion of the norms related to forced disappearances. Chapters 6 and 7 then use process tracing to trace the investigations of the Disappeared of Northern Ireland for the case study of the ICLVR. The goal of the case study is to examine the development and diffusion of the norms surrounding forced disappearance in Northern Ireland.

In Chapter 4, process tracing is used to trace the development of the norms related to forced disappearance, based on the collection of primary and secondary historical records to account for the form these norms have taken. I am cognizant of the common criticism that process tracing attempts to re-create a particular linear historical narrative that has little basis in fact. I endeavour to avoid this issue by using multiple primary and secondary sources.⁷ In addition, I use process tracing to separately trace the development of the norms related to forced disappearances, and the development of the ICLVR. Although process tracing requires an in-depth investigation, and is a lengthy, time-consuming task that necessitates a significant commitment of resources,⁸ it is the most effective methodology to answer the research questions of this project.

³ Collier, “Understanding Process Tracing,” 824.

⁴ George and Bennett, *Case Studies and Theory Development*, 12.

⁵ Jeffrey T. Checkel, “Process Tracing,” in *Qualitative Methods in International Relations: A Pluralist Guide*, ed. Audrie Klotz and Deepa Prakash, (Hampshire, UK: Palgrave Macmillan, 2008), 116.

⁶ *Ibid.*, 15.

⁷ Sidney Tarrow, “The Strategy of Paired Comparison: Toward a Theory of Practice,” *Comparative Political Studies* 43, no.2 (2010): 239.

⁸ Checkel, “Process Tracing,” 122.

3.2 Case study

The in-depth case study of disappearances in Northern Ireland during the Troubles is designed to understand the nuances of the case using process tracing, which is discussed above. Creswell describes case study research as “a qualitative approach in which the investigator explores a bounded system (a case) or multiple bounded systems (cases) over time, through detailed, in-depth data collection, involving multiple sources of information (e.g. observations, interviews, audiovisual material, and documents and reports.”⁹ Babbie suggests that the purpose of case study research may be primarily descriptive, as case studies are often designed and undertaken to facilitate an in-depth understanding of the nuances of a particular case, culture or context.¹⁰ However, as Gerring notes, a case study can also be used “for the purpose of understanding a larger class of cases.”¹¹ The emphasis on context-specific, descriptive knowledge makes case study research especially valuable. Examining cases in detail allows identification of “theoretical gaps and silences,”¹² development of causal hypotheses, and identification of new and relevant variables.

3.2.1 Case selection

The Irish case was selected as a case that has tended to fly below the radar in the academic literature on investigations of forced disappearances. It was also selected because the ICLVR is interesting for a number of reasons. First, the establishment of the ICLVR required cooperation between various previously warring parties, both governmental and non-governmental, including significant cooperation from the paramilitary group the Irish Republican Army (IRA). This is particularly relevant in Northern Ireland, as Chapter 5 demonstrates, since the social divisions that led to the conflict largely prevail despite the two-decade long peace process.

Second, the ICLVR is one of a small number of formal commissions developed to focus solely on the task of investigating forced disappearance. While these investigations

⁹ John W. Creswell, *Qualitative Inquiry and Research Design: Choosing Among Five Approaches*, 2nd edition, (London: Sage, 2007), 73.

¹⁰ Earl Babbie, *The Practice of Social Research* 10th ed. (Toronto: Nelson, 2004), 293.

¹¹ John Gerring, “The Case Study: What It Is and What It Does,” in *The Oxford Handbook of Comparative Politics*, Carles Boix, and Susan Carol Stokes eds. (Oxford: Oxford University Press, 2009), 96.

¹² Michael Burawoy et al., *Ethnography Unbound: Power and Resistance in the Modern Metropolis*, (Berkeley: University of California Press, 1991), 10.

take many forms, from community-based exhumations to investigations by independent forensic teams, it is highly unusual to see a commission struck for this explicit purpose.¹³ In fact, the only other similar body to be convened was the sham Commission of Inquiry into the Disappearances of People in Uganda established by despot Idi Amin in 1974.¹⁴

Third, the ICLVR resolved the tension between judicial and humanitarian outcomes of investigations prior to beginning its work by removing the potential for prosecutions immediately. In the ICLVR's terms of reference, it is clearly outlined that any evidence gained through the ICLVR cannot be used in future legal cases. As I outlined in the introduction to this dissertation, this is especially interesting, not only for investigations of forced disappearance, which historically have tried to occupy a middle ground and achieve both goals, but also for transitional justice in Northern Ireland specifically, which continues to experience strong calls for legal justice from all sides.

Fourth, the ICLVR has faced little criticism since early in its operation. While some concerns were expressed during the legislative process of establishing the commission in both the British and Irish jurisdictions, the ICLVR has been nearly universally praised by stakeholders and in the media since then. This is unique both for a transitional justice institution generally, since transitional justice mechanisms are often highly controversial institutions, and for a transitional justice mechanism in Northern Ireland, where definitions of victimhood and perpetrator continue to make transitional justice a fraught process.

3.2.2 *Elite interviews*

One major source of my data for the case study of disappearances during the Troubles in Northern Ireland was elite interviews. Following approval from The University of Western Ontario's Non-Medical Research Ethics Board in 2014, I conducted five months of fieldwork in Ireland and Northern Ireland during three research trips, the first in May and June, 2015, the second in February, March, and April, 2017 and the third in October,

¹³ Truth commissions with a broader mandate sometimes consider forced disappearance as part of their work, as is argued by Bishnu Pathak, "World's Disappearance Commissions: An Inhumanous Quest for Truth," *World Journal of Social Science Research* 3, no. 3 (2016): 274-306, but few have specifically been established for this purpose.

¹⁴ The difficulties of the 1974 Ugandan Commission are discussed further in Chapter 2. Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd edition, (London: Routledge, 2010), 239.

2018.¹⁵ During these research trips, I was primarily based in Belfast and Dublin, but also travelled to other cities in Northern Ireland and the Republic of Ireland to conduct interviews including Derry/Londonderry and Dundalk. During these research trips, I conducted approximately 20 hours of semi-structured elite interviews with 12 political, social, and cultural leaders in Northern Ireland and in the Republic of Ireland, as well as individuals involved with the establishment and operations of the ICLVR.

Through elite interviews, “[r]esearchers can thus gather rich detail about key elites’ thoughts and attitudes on central issues,” which advances the research agenda.¹⁶ Interviews are designed to “coordinate a conversation aimed at obtaining desired information.”¹⁷ This information may be inaccessible without conducting interviews, as interviews add contextual information to documents, or provide information that was never documented.¹⁸ As Tansey described, one significant benefit of using elite interviews as part of process tracing is that “researchers can interview first-hand participants of the processes they are investigating and obtain accounts from direct witnesses to the events in question.”¹⁹ The goal of elite interviews is not to gain a random sample of the perspectives of the general population, but to elicit responses and document information from those with important first-hand knowledge of the process being traced.

I thus benefitted from recommendations by each person I interviewed as to who else I should interview. Asking for referrals to other potential interviewees is similar to the technique of “snowball” sampling which is “when the researcher accesses informants through contact information that is provided by other informants. This process is, by necessity, repetitive: informants refer the researcher to other informants, who are contacted by the researcher and then refer her or him to yet other informants, and so on.”²⁰ One of the limitations of snowball sampling is the fact that it relies on existing social networks and connections, which could potentially bias the research towards individuals who share

¹⁵ Western University Non-Medical Research Ethics Board approval CER 105700.

¹⁶ Oisín Tansey, “Process Tracing and Elite Interviewing: A Case for Non-probability Sampling,” *PS: Political Science and Politics* 40, no. 4 (2007): 766, <https://doi.org/10.1017/S1049096507071211>.

¹⁷ Jaber F. Gubrium & James A. Holstein, “From the Individual Interview to the Interview Society,” in *Handbook of Interview Research: Context and Method*, (London: Sage, 2001), 3.

¹⁸ David Richards, “Elite Interviews: Approaches and Pitfalls,” *Politics* 16, no. 3 (1996): 200 <https://doi.org/10.1111/j.1467-9256.1996.tb00039.x>.

¹⁹ Tansey, “Process Tracing and Elite Interviewing,” 767.

²⁰ Chaim Noy, “Sampling Knowledge: The Hermeneutics of Snowball Sampling in Qualitative Research,” *International Journal of Social Research Methodology*, 11 no. 4 (2008): 327-44.

similar opinions and exclude (either intentionally or unintentionally) alternative explanations and perspectives. However, in light of the Commission's small size, this research relied on a modified type of snowball sampling, and thus this limitation is less significant in this research than in other projects.²¹

The degree of structure in an interview varies depending on the purpose of the research. For example, interviews that are going to be analysed quantitatively (for example in survey research) are completely structured, as "people are asked to respond to as nearly identical a set of stimuli as possible."²² Conversely, informal and informational interviews are conducted to build relationships with community members, "and to uncover new topics of interest that might have been overlooked."²³ I made use of informational interviews during my 2015 and 2017 field research to make contacts and receive guidance from experts in the field without conducting a formal interview. My 12 formal interviews were semi-structured, thus falling in between these two extremes. In the semi-structured interviews, I plotted a clear course for the interview in advance, but asked open-ended questions to maximize the ability of the respondents to express themselves.²⁴ This method proved fruitful as it allowed respondents to consider the interview questions as part of a larger conversation.

During my research 2015 trip, I focused on interviewing civil society elites who could provide context regarding transitional justice in Northern Ireland. I started by contacting five leading scholars of transitional justice in Northern Ireland. I conducted informational interviews with two of these scholars, one from the School of Law at Queen's University Belfast, one from the Transitional Justice Institute at the University of Ulster.

I was based in Belfast for this trip, and it proved to be challenging to gain access to civil society organizations, likely due my status as an outsider (while I have Irish citizenship, I was born and educated in Canada and am a Canadian scholar as opposed to an Irish or Northern Irish one), and also due to the small population of Northern Ireland, and the large amount of research on the Troubles and its aftermath that has been conducted

²¹ See Noy (2008) for further discussion of limitations of snowball sampling.

²² H. Russell Bernard, *Research Methods in Anthropology: Qualitative And Quantitative Approaches*, (Oxford, Altamira Press, 2006), 205.

²³ *Ibid.*, 204.

²⁴ *Ibid.*

there since 1998. My sense is this has created a fatigue, or at very least a high degree of selectivity by those involved with transitional justice in what academic research they participate. I requested interviews with more than 25 civil society organizations that provide support and advocacy for victims of violence during Troubles and their families, but only managed formal interviews with representatives from three.

My first interview was with a Senior Staff Officer of Decorum Northern Ireland. Decorum Northern Ireland is a group that supports victims and survivors of the Troubles that served in the Northern Ireland defence forces. This means the organization supports members of the Ulster Defence Regiment (UDR) of the British army, the Royal Ulster Constabulary (the police force), prison officers who served in the Northern Ireland Prison Service, and others who fulfilled military and policing roles throughout the conflict.²⁵ While the organization labels itself as being “apolitical”, providing support to veterans of the military and police forces during the Troubles is inherently politically fraught in Northern Ireland.

My second interview was with the Manager of the Museum for Free Derry, a museum established to commemorate and preserve documents and other artifacts from the Derry/Londonderry area during the period of 1968 to 1972, “popularly known as ‘Free Derry’, and including the civil rights era, Battle of the Bogside, Internment, Bloody Sunday and Operation Motorman.”²⁶ As with Decorum Northern Ireland, the Museum of Free Derry represents itself as an apolitical organization designed to preserve the experiences of the residents of the Derry/Londonderry region during the civil rights era in Ireland. However, because of this, it is externally linked with an Irish nationalist narrative.

My third interview with a representative from a civil society organization was with a staff member from WAVE Trauma Centre. WAVE Trauma Centre provides support to the families of victims of Troubles-based violence. WAVE is an organization that is very important to this project, as it is a victims’ support and advocacy organization that has specific involvement with the Families of the Disappeared. I was also invited to a

²⁵ Decorum Northern Ireland, “About Us,” https://www.decorumni.co.uk/about_us.html (accessed 20 September 2019).

²⁶ The Museum of Free Derry, “The Museum,” <https://www.museumoffreederry.org/content/museum> (accessed 20 September 2019).

commemorative event for the Disappeared held at the civil society organization Healing Through Remembering, during which I conducted one anonymous informational interview.

During my 2015 research trip, I also formally interviewed three people involved with providing support from the government level to victims and survivors of violence during the Troubles. The first two people were from the Commission for Victims and Survivors (CVSNI), which is “a Non-departmental Public Body of The Executive Office.”²⁷ CVSNI delivers three services based on its mandate. It acts as the primary advisor to government on victims and survivors’ issues; it conducts strategic assessments of the needs of victims and survivors, and evaluates whether the correct structures are in place to meet these needs.²⁸ The third person was from the Victims and Survivors Service, which “deliver[s] funding and support to victims and survivors of the Conflict/Troubles, on behalf of The [Northern Ireland] Executive Office.”²⁹ The interviews provided the perspective of state-based victims’ services organizations.

In preparation for the 2015 trip, I had also planned to interview representatives from Northern Irish political parties for their perspectives on the transitional justice landscape in Northern Ireland. However, my trip coincided with general elections for the United Kingdom on 7 May 2015, which meant that political representatives were focused first on the campaign, and then the transition into and out of office. As a result, my requests for interviews with political representatives went unanswered.

During the 2017 research trip I was based in Dublin and focused on arranging interviews with political elites and individuals intimately involved with the ICLVR. Being based in Dublin provided better access to political elites, public servants, and those involved with the Commission. Fewer researchers on Northern Ireland are based in Dublin as the transitional justice industry is largely based in Northern Ireland as opposed to the Republic of Ireland, and I found there to be less fatigue with academic research on the topic in Dublin than in Belfast. The Commission’s unique cross-border structure enabled the selection of Dublin as my home base. During this trip I conducted informational interviews with a consultant who was involved with the reform of the Police Service of Northern

²⁷ CVSNI, “About Us,” <https://www.cvsni.org/about-us/> (accessed 2 February 2020).

²⁸ CVSNI, “What We Do,” <https://www.cvsni.org/what-we-do/> (accessed 2 February 2020).

²⁹ Victims and Survivors Service, “What We Do,” <https://victimsservice.org/about-us/what-we-do/> (accessed 2 February 2020).

Ireland, and a lecturer in the School of Law at Queen's University Belfast and an expert on the ICLVR.

I conducted three formal interviews with public servants and politicians involved with the Commission's establishment and operations, the first the representative from the Irish Joint Secretary for the ICLVR from the Irish Department of Justice and Equality. This same individual facilitated and participated in a second interview with the then-Irish Commissioner to the ICLVR. The third interview was with a *Teachta Dála* (TD – the Irish equivalent of a Member of Parliament) Brendan Smith from the centre-left political party *Fianna Fáil* who has represented the Cavan/Monaghan electoral district consistently since 1992. The remains of some of the Disappeared have been located in County Monaghan, which falls in Smith's electoral district, thus leading to his advocacy to find the Disappeared.

During the 2017 trip I also conducted three formal interviews with forensic experts intimately involved with the Commission's operations, the now mostly retired main coroner involved in investigations of cases of the Disappeared in the Republic of Ireland from the Dublin Coroner's Office, the then-State Pathologist for the Republic of Ireland, and the Commission's lead investigator, who is also a renowned retired investigator for the Manchester Police Force. My third research trip in 2018 was much shorter and focused solely on collecting reports from the Dublin Coroner's Office. This trip provided an opportunity to conduct a follow up interview with the main coroner involved with investigations into the Disappeared.

It is important to note that family members of the Disappeared were intentionally excluded from the list of interview subjects for this project. This was primarily due to the fact that the number of family members of victims of Troubles-related disappearance is small, and is also dwindling with time. In addition, with such a small number of victims, the perspectives of family members have been captured extensively in the media, in publications by WAVE, and in other studies. Due to my perception of the sensitivity of the research and the saturation of the small number of families involved, when I designed the project I did not feel it would be ethical pursue interviews with family members. As a result of this decision, I chose to ask the elites interviewed for this project about their perception of the perspectives of the family members, and then comparing that with media accounts

and other secondary sources of the perspectives of family members. While the decision not to pursue interviews with family members was made with the best of intentions, in hindsight, the central role played by families of the Disappeared that arose in the analysis and findings of this project suggests that I should in fact have interviewed family members. No one can reliably comment for families, only they can speak for themselves. Thus, I am cognizant of the need to obtain the perspectives of family members instead of trying to triangulate their opinions from other sources. The last thing I want to do with this research is to create further harm to families by making assumptions about their thoughts, feelings, and perspectives. In future iterations of this project, and in future research, I would endeavour to engage with family members in a sensitive, constructive manner.

I ideally would have conducted additional interviews for this project that I was not able to arrange during my fieldwork due to limitations in my ability to access these individuals and groups. First, I would have liked to interview Sandra Peake from WAVE Trauma Centre who has been the main liaison with and champion for the Families of the Disappeared since the 1990s and thus has a unique perspective on the Commission and its relationship with family members. I was able to gain some insight into Peake's perspectives from secondary sources, as Peake has granted a number of interviews with different media outlets over the course of her involvement with the Families of the Disappeared. Second, I would also have liked to interview the British Commissioner from the ICLVR, as a counterpoint to the interview with the Irish Commissioner, who provided insight from the perspective of the Irish government. Third, I would also have liked to engage with the republican community to have a sense of former perpetrators' perspectives on participation with the ICLVR, and the perspectives within the republican community writ-large on the process of locating and identifying the victims of Disappearances committed by the IRA. This would have provided an additional layer of complexity and reliability to my analysis. Lauren Dempster's work on Northern Ireland's disappearances and the ICLVR provides insight on this aspect, but explored different questions than I was interrogating.³⁰ Dempster's access to the republican community is among the many strengths of her work.

³⁰ See Lauren Dempster, *Transitional Justice and the Disappeared of Northern Ireland: Silence, Memory, and the Construction of the Past*, (New York: Routledge, 2019); Lauren Dempster, "The Republican Movement, 'Disappearing' and Framing the Past in Northern Ireland," *International Journal of Transitional Justice* 10, no. 2 (2016): 250-71.

The small number of interviews conducted for the project is also limitation of the research. However, despite the small number of interviews conducted for this project, the individuals I interviewed shared similar perspectives on the establishment, operations, and successes of the Commission. This provided me confidence that the information provided by the interviews reached saturation, which in a qualitative project occurs “when there is adequate data from a study to develop a robust and valid understanding of the study phenomenon.”³¹

3.2.3 *Archival research*

During these three stints of fieldwork in Dublin and Belfast I collected additional archival data for analysis. During my 2015 trip, I collected historical documents and records from the Northern Ireland Political Collection at the Linen Hall Library in Belfast. During my 2017 research trip, I collected over one thousand newspaper articles from British and Irish sources covering the ICLVR and the cases of the Disappeared from the National Library of Ireland in Dublin. During my 2018 research trip, I collected more than 500 pages of records from the Dublin Coroner’s Office for the cases of the Disappeared it investigated.

The combination of the interview and archival resources has facilitated the recounting of as complete a narrative as I could construct using process tracing regarding the establishment and operation of the ICLVR from a diverse set of perspectives. As Schaller and Tobin argued,

the telling of stories is the purpose of a case study and the narrative could be the case study’s most compelling attribute. Narrative is a method whereby a story is crafted from events and the experiences of the writer, and refers to discourse that attempts to create understanding by telling a story that answers the question “what is going on here?” In this way narrative can contribute to the creation of understanding and knowledge in a more inviting manner for the intended audience.³²

Ultimately, this project tells the story of how the international norms related to forced disappearances and transitional justice have influenced the successes of the ICLVR. As

³¹ Monique M. Hennink & Bonnie N. Kaiser, “Saturation in Qualitative Research,” *SAGE Research Methods*, 2019, <http://dx.doi.org/10.4135/9781526421036822322> (accessed 2 February 2020).

³² Quoted in Philip J. Dobson, “Approaches to Theory Use In Interpretive Case Studies – a Critical Realist Perspective,” Paper presented at the 10th Australian Conference on Information Systems, Wellington, New Zealand, 1-3 December 1999, 260.

underscored in the literature review in Chapter 2, this story is important because it facilitates an in-depth understanding of the influence of international and global ideas and processes on local mechanisms and contexts.

In conclusion, the methodological framework of this dissertation outlined in this chapter ensures that the story of the relationship between international norms and the ICLVR is as complete as possible. The use of process tracing of the international norms related to forced disappearances provides one level of analysis that contributes to this story. The case study of the ICLVR to address forced disappearances in Northern Ireland contributes to the story at a second level of analysis. The case study uses process tracing of the development and operations of the Commission based on interview, archival, and newspaper data, and an evaluation of the mechanism's success. Then, the final chapters of this dissertation consider the relationship between these different levels of analysis.

Chapter 4: Tracing the development of international norms about forced disappearance

This chapter addresses the first research question of this dissertation: Do international norms exist regarding forced disappearances and if so, what is their specific content? I argue that three international norms related to forced disappearances have developed and become entrenched. The first norm is that forced disappearances are a unique type of crime that must be addressed. The second norm is that forensic human rights investigations are the best method to deal with forced disappearances. The third norm is that these forensic human rights investigations should focus on locating, identifying, and repatriating the individual victims of disappearances, and thus emphasize a legal mandate based on collecting evidence for prosecution.

This chapter uses process tracing to trace the emergence of these three norms from the latter part of the nineteenth century to today. The chapter first traces the emergence of forced disappearance as a tactic. The chapter then traces the emergence of investigations into forced disappearances through three developments in the history of international humanitarianism: the repatriation of war dead; the advent of the international human rights regime, and; truth-telling and transitional justice. The final section of the chapter then describes how forensic human rights investigations represent the consolidation of the three norms. Ultimately, this chapter traces the development of investigations of forced disappearances as an international norm. It then examines the process of the norm's development and how the norm's intersection with other fledging norms have influenced the form this norm has taken today.

However, while it is possible to trace this clear path of the development of these norms, this dissertation is the first to try to understand where these norms come from and the story of how they emerged. This is important, as post-colonial international relations (IR) scholars tell us that tracing the origins of international norms tells us an important story about how the norms are conceptualized today. Moreover, despite agreement on these three high-level norms regarding forced disappearances, how these norms are applied in different contexts around the world requires extensive negotiation and re-negotiation each time they are applied. This unpacking of the development, diffusion, and power dynamics

of the norm of investigations of disappearances provides a model for future norm scholarship to understand the full picture of specific international norms.¹

4.1 Forced disappearances as a norm

The late 19th and early 20th centuries saw important developments in the international realm related to international humanitarian law and human rights, which, in turn, have constructed the existing norms about investigating forced disappearances. In this section, following a brief discussion of the emergence and normalization of forced disappearance as a tool for eliminating undesirable segments of, and instilling terror in, a population, I use process tracing to map the development of the norms related to forced disappearances through three major developments related to humanitarianism, first, the identification and repatriation of war dead; second, the international human rights regime, and; third, transitional justice and truth-telling.

First, it is important to briefly consider the normalization of forced disappearances as a practice. To return to the definition of international norms outlined in Chapter 2, norms are “aspects of social structure that emerge from the actions and beliefs of actors in specific communities; norms shape those actions and beliefs by constituting actors’ identities and interests,”² and, “these shared norms and rules set expectations about how the world works and what constitutes legitimate behaviour.”³ In early constructivist discussion of norms, there was an assumption that norms were primarily a positive force in the international realm. For example, in the world polity model of norm diffusion, norms were considered to be an “essentially linear, one-way process of alignment to modern international standards.”⁴ And, with the advent of some norms throughout the 20th and early 21st centuries that afford *more* rights and freedoms to individuals as opposed to less (e.g. human

¹ A preliminary version is posted in a different format on e-International Relations, <https://www.e-ir.info/2018/10/24/exhuming-norms-comparing-investigations-of-forced-disappearances/>.

² Matthew J. Hoffmann, “Norms and Social Constructivism in International Relations,” in *The International Studies Encyclopedia* ed. Robert Denemark et al, (Oxford: WileyBlackwell, 2010) <http://internationalstudies.oxfordre.com/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-60>.

³ Paul R. Viotti and Mark V. Kauppi, *International Relations Theory* 5th ed., (Toronto: Longman, 2012), 282.

⁴ Mona Lena Krook and Jacqui True, “Rethinking the life cycles of international norms: The United Nations and the global promotion of gender equality,” *European Journal of International Relations* 18, no. 1 (2012): 107;

rights norms, and the norm that genocide is unjust), this emphasis on “progress” and positive norms is understandable.

However, norms are not necessarily an objectively positive force in and of themselves.⁵ Based on the above definition of norms in IR, increasingly, forced disappearances have become an accepted, and thus acceptable (or legitimate), albeit morally reprehensible, tactic used during conflict. I make this argument, that forced disappearances have been legitimized as a legitimate tactic of war, despite the fact that the majority of this chapter will be spent demonstrating the development of norms to prevent and investigate forced disappearances. These are not contradictory developments. The fact that forced disappearances have become legitimized, in fact, reinforces the need to address them, and reinforces the first norm, forced disappearances are a unique type of crime that must be addressed.

Historically, forced disappearances have been used by states and paramilitary groups for two purposes: first, to eliminate undesirable individuals or groups from society, and; second, as a mechanism of social control of the general civilian population by creating fear and spreading misinformation. The Nazis committed some of the earliest documented forced disappearances of the twentieth century. The Nazi regime used both tactics of eliminating subversives and enacting terror and control over the population during what was termed *Nacht und Nebel* or “Night and Fog” in December 1941. Hitler ordered the deportation of thousands of people from occupied territories into Germany. The then-Chief of the German Armed Forces wrote,

After thoughtful consideration, it is the will of the *Führer* that the measures taken against those who are guilty of offences against the *Reich* or against the occupation forces in occupied areas should be altered. The *Führer* thinks that in the case of such offences, life imprisonment, even life imprisonment with hard labour, is regarded as a sign of weakness. An effective and lasting deterrent can be achieved only by the death penalty or by taking measures which will leave the family and the population uncertain of the fate of the offender. The deportation to Germany serves this purpose.⁶

⁵ Please note that I am specifically referring here to the *content* of norms not being necessarily positive, not the interpretation or implementation of norms.

⁶ “Trial of German Major War Criminals Before the International Military Tribunal Vol. III,” Nuremberg, 14 November 1945 - 1 October 1946, 214.

Thus, in order to punish what were perceived as crimes against the Nazis, individuals were kidnapped and killed, and their families were left in a state of perpetual fear and uncertainty about what had happened to their loved ones.

Legal scholars Scovazzi and Citroni divide the process of forced disappearance into several key phases: I) abduction, II) secret detention and interrogation, and; III) killing and disposal of remains.⁷ It is important to note that these phases of forced disappearances have manifested themselves in a variety of ways in different contexts.

During the first phase, the victim is captured, abducted, and/or arrested. In some cases, this occurs in secret. As Scovazzi and Citroni describe,

The abduction is carried out by a group of armed people who present themselves at the home or at the place where the victim works or studies, driving cars without number plates and with polarized windows. They often operate in civilian clothes or, in certain cases, they do not even bother to hide that they are members of the army or the police.⁸

Sometimes, the only available evidence that someone has disappeared is that they do not return home. For example, Charlie Armstrong, one of Northern Ireland's Disappeared left his home for mass and simply vanished.⁹ Despite being reported missing nearly immediately after his disappearance, little information was available to his wife and children until decades later. By contrast, in the case of Jean McConville, another of Northern Ireland's Disappeared whose story was introduced in Chapter 1, her children witnessed her abduction from their home by the paramilitary Irish Republican Army (IRA) in 1972.¹⁰ They knew she had been abducted, but, like Armstrong's family, received no information about her fate.

The second phase of forced disappearance is secret detention and interrogation. This phase tends to differ substantially by case, as some people who are disappeared are killed almost immediately, while others are held in secret detention for years before being murdered. Those who are detained are frequently subjected to torture. The torture is often

⁷ Tullio Scovazzi and Gabriella Citroni, *The Struggle against Enforced Disappearance and the 2007 United Nations Convention*, (Boston: Martinus Nijhoff Publishers, 2007), 8-10.

⁸ *Ibid.*, 8.

⁹ Republic of Ireland, Report of the Coroner, Charles Armstrong (Dublin, Ireland: Dublin District Coroner's Office, 2017), 23.

¹⁰ Conor Pope, "Body found on Louth beach was Jean McConville," *The Irish Times*, Oct. 20, 2003, <https://www.irishtimes.com/news/body-found-on-louth-beach-was-jean-mcconville-1.505509>.

designed to “to break any kind of resistance and to obtain information, turning the prisoner into a collaborator of the regime.”¹¹ In Yemen, for example, a 2018 Amnesty report describes the torture of individuals who were detained by security forces from Yemen and the United Arab Emirates and have subsequently been disappeared. The report states, “A number of the families of detainees who were interviewed, those who currently know the whereabouts of their relatives or others who had temporary access to them before they were disappeared, said their loved ones were subjected to torture.”¹² The majority of the disappeared in Yemen are still missing.

In other cases, however, individuals who disappeared are held and tortured. They are simply murdered secretly and buried without acknowledgement or record. Amongst the 40,000 people who remain missing after the war in the former Yugoslavia, one man recalls his village being invaded by men wearing balaclavas and witnessed his mother and siblings being shot and killed. He survived, but when he returned from a refugee camp in Germany, had no way of finding out where his family members were buried.¹³

The third phase of forced disappearance outlined by Scovazzi and Citroni is killing and disposal of remains.

When the people in control of the enforced disappearance finally take the decision to eliminate the victim, this is generally done by summary execution. To cover up evidence of the crime, the mortal remains are disposed of in different ways, either by throwing them into the ocean from airplanes or by burying them in common graves or by blowing up the corpses with dynamite or by tearing them into pieces.¹⁴

For example, in Central African Republic in March 2014, peacekeepers from the Republic of Congo allegedly killed 12 individuals they had previously arrested and detained.¹⁵ The grave of the 12 individuals was discovered and exhumed in 2016, and its discovery contradicted previous reports from the peacekeepers that the prisoners had escaped.¹⁶

¹¹ Scovazzi and Citroni, *Struggle Against Enforced Disappearance*, 9.

¹² Amnesty International, “God Only Knows if He’s Alive: Enforced Disappearance and Detention Violations in Southern Yemen,” (London: Amnesty International, 2018), 23, <https://www.amnesty.org/download/Documents/MDE3186822018ENGLISH.PDF>.

¹³ Ed Vulliamy, “The appalling reality of Bosnia’s missing dead,” *BBC Future* 12 December 2016, <http://www.bbc.com/future/story/20161212-the-appalling-reality-of-bosnias-missing-dead>.

¹⁴ Scovazzi and Citroni, *Struggle Against Enforced Disappearance*, 10.

¹⁵ Human Rights Watch, “Central African Republic: Murder by Peacekeepers,” June 7, 2016, <https://www.hrw.org/news/2016/06/07/central-african-republic-murder-peacekeepers>.

¹⁶ *Ibid.*

By contrast, Argentina is infamous for its practice of forced disappearances during the Dirty War in the 1980s. The Argentinian military used a series of practices to forcibly disappear “subversives”, the term used for individuals who were perceived by the regime as politically undesirable. People were abducted, detained, and tortured. Then they were either murdered by firing squad and buried, or subjected to a “death flight” on which they were “drugged, stripped naked and flung out of aircraft at 4,000m (13,000ft) into the freezing waters of the South Atlantic.”¹⁷ Moreover, pregnant women who were detained, had their babies taken from them and placed with families who were more “politically desirable”. The mothers were then killed.¹⁸ These examples, and many others across various states and time periods demonstrate not only Scovazzi and Citroni’s three phases (abduction, secret detention, and killing and disposal of remains) but also the two main goals of forced disappearance as a tactic: eliminating subversives, and enacting terror and social control.

Psychologists have argued that families who have lost loved ones under circumstances of mass murder or disappearance often live in a protracted state of uncertainty about their fate. Pauline Boss has theorized that this is similar to post-traumatic stress disorder but is a separate phenomenon that she refers to as “ambiguous loss.” Boss posits that the disappearance of loved ones without a trace, or under uncertain circumstances,

defies resolution and creates confused perceptions about who is in or out of a particular family. With a clear-cut loss, there is more clarity—a death certificate, mourning rituals, and the opportunity to honor and dispose of remains. With ambiguous loss, none of these markers exists. The clarity needed for boundary maintenance (in the sociological sense) or closure (in the psychological sense) is unattainable.¹⁹

¹⁷ Adam Lusher, “The Argentine mother who took on the Junta dictatorship over her ‘disappeared’ son,” *The Independent*, 5 November 2017, <https://www.independent.co.uk/news/world/argentina-mothers-of-the-disappeared-plaza-de-mayo-nora-cortinas-military-dictatorship-junta-a8036386.html>.

¹⁸ Ibid.

¹⁹ Pauline Boss, “Ambiguous Loss Research, Theory, and Practice: Reflections After 9/11,” *Journal of Marriage and Family* 66.3 (2004): 552.

As a result of this state of psychological limbo, “families... wish to know the fate of their missing relatives, and, if they have died, to receive their remains.”²⁰ Receiving remains, or at very least information about the location of remains allows families to “properly bury them and close – if only partially – the circle of uncertainty”²¹ about what happened. Familiar burial spaces and rituals also permit loved ones to have a dedicated place to mourn their lost family member, which is important to provide further closure.

The importance of acknowledging death and fulfilling traditions and rituals is common across different cultures and religions around the world, though the nature of these practices varies.²² In some contexts, the spirits of the dead are believed to cause very real harm for the living, which can in turn create psychological and physical crises.²³ Shari Eppel emphasized the importance of complex religious and cultural beliefs about death in many rural communities in Zimbabwe, as “the spirits of the dead play essential roles in the lives of every family.”²⁴ Thus, despite the absence of formal transitional justice processes in Zimbabwe, local NGOs have facilitated “exhumations as a necessary step toward decent funeral and appropriate cultural rituals.”²⁵ This literature highlights the range of other ‘humanitarian’ strategies that communities may employ to deal with remains after mass violence. These alternative strategies include exhumations for the purpose of repatriation

²⁰ Eric Stover and Rachel Shigekane, “Exhumation of mass graves: balancing legal and humanitarian needs,” in *My neighbour, my enemy: justice and community in the aftermath of mass atrocity*, ed. Eric Stover and Harvey M. Weinstein, (Cambridge: Cambridge University Press, 2004), 85.

²¹ Mimi Doretti and Luis Fondebrider, “Science and Human Rights – Truth, Justice, Reparation and Reconciliation: A Long Way in Third World Countries,” in *Archaeologies of the Contemporary Past*, ed. V, Buchli and L. Gavin. (London: Routledge, 2001), 138.

²² See, for example, Antonius C. G. M. Robben (ed.), *Death, Mourning and Burial: A Cross-Cultural Reader* (Oxford: Blackwell Publishing, 2010).

²³ International Center for Transitional Justice, “Gender Justice The Disappeared and Invisible: Revealing the Enduring Impact of Enforced Disappearance on Women,” March 2015, <https://www.ictj.org/sites/default/files/ICTJ-Global-Gender-Disappearances-2015.pdf>, 9.

²⁴ Shari Eppel, “Healing the Dead: Exhumation and Reburial as Truth-Telling and Peace-Building Activities in Rural Zimbabwe,” in *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies*, ed. Tristan Anne Borer, (Notre Dame IN: University of Notre Dame Press, 2006), 264.

²⁵ *Ibid.*

of remains to families and communities (ultimately for reburial);²⁶ memorialization;²⁷ or choosing to do nothing.²⁸

However, disappearances and mass killings not only impact the immediate family and social circle of the victim psychologically and spiritually. There are also significant material, financial and social impacts that can result from this type of loss. In a number of countries, disappearances can result in women losing access to family land and resources, as the ownership is in the name of their husband. With no body and no death certificate, the state is able to appropriate the land and leave the remainder of the family with nothing.²⁹ Other social and material losses, including the ability to remarry, access to passports or other citizenship documents, and custody of children can severely limit the ability of family members to move on with their lives.³⁰

Forced disappearances have continued with the same approach and mandate over the subsequent decades. While commonly associated with conflicts in Central and South America between military dictatorships and leftist groups during the 1970s and 1980s, in its 2019 session, the United Nations Working Group on Enforced or Involuntary Disappearances wrote that they have investigated more than 57,000 cases in 108 countries since the Working Group's inception in 1980. In addition, more than 1,000 new cases had been reported in the previous year. The 2017 report expressed concerns about 1) the uptick in abductions committed by non-state actors; 2) the proliferation of forced disappearances related to migration; and 3) the use of short-term forced disappearances as a tactic in a

²⁶ See, for example, Eppel, "Healing the Dead," 64; Victoria Sanford, *Buried Secrets: Truth and Human Rights in Guatemala*, (New York: Palgrave MacMillan, 2003), 23.

²⁷ See, for example, Erin Jessee, "Promoting Reconciliation through Exhuming and Identifying Victims in the 1994 Rwandan Genocide," CIGI Africa Initiative Discussion Paper Series, no. 4, July 2012; Melanie J. Klinkner, "Towards Improved Understanding and Interaction Between Forensic Science and International Criminal Law in the Context of Transitional Justice," PhD diss., (Bournemouth University, 2009).

²⁸ Francisco Ferrándiz, "The Return of Civil War Ghosts: An ethnography of exhumations in contemporary Spain," *Anthropology Today* 22.3 (2006): 7-12.

²⁹ International Center for Transitional Justice, "Gender Justice," 10.

³⁰ Report to the UN Human Rights Council, "Report of the Working Group on Enforced or Involuntary Disappearances*," A/HRC/42/40, 9-27 September 2019, 3, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/229/25/PDF/G1922925.pdf>

number of countries.³¹ This demonstrates that forced disappearances remain a common and prevalent technique employed by both states and non-state actors today.³²

Scholars Payne and Abouharb argue that the increase in numbers of forced disappearances can be explained because the technique “provides political leaders the same benefits as [killing] but at a much lower risk of political or criminal accountability for those involved.”³³ This is an important consideration to keep in mind during the discussion of the emergence of norms preventing and investigating forced disappearance in the remainder of this chapter. In some ways, the emergence of more robust human rights protections may in fact lead to more actors utilizing forced disappearance as a tactic because perpetrators are more aware of the technique and its benefits. Thus, the practice becomes normalized because it allows perpetrators to avoid being caught committing human rights violations.

As argued at the beginning of this section, the emergence and increased prevalence of forced disappearances reinforces the first norm that I argue exists, forced disappearances are indeed a unique type of crime that must be addressed. The next section traces this norm, along with the two other relevant international norms through three main advents in international humanitarianism and international human rights, first, the practice of identifying and repatriating war dead; second, the emergence of international human rights; third, transitional justice and establishing truth. The second norm is that forensic human rights investigations are the best method to deal with forced disappearances. The third norm is that these forensic human rights investigations should focus on locating, identifying, and repatriating the individual victims of disappearances, and thus emphasize a legal mandate based on collecting evidence for prosecution.³⁴

³¹ Report to the UN Human Rights Council, “Report of the Working Group on Enforced or Involuntary Disappearances*.” A/HRC/36/39. September 11-29, 2017. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/229/15/PDF/G1722915.pdf>, 24-25.

³² Ibid.

³³ Caroline L. Payne and M. Rodwan Abouhard, “The International Covenant on Civil and Political Rights and the strategic shift to forced disappearance,” *Journal of Human Rights* 15.2 (2015): 166.

³⁴ I acknowledge here that the tracing of precedents of these three norms is oriented towards the developments from and by Western states as international humanitarian and human rights regimes were largely promoted by developments in Western states. In future work, I would like to trace whether precedents to norms related to forensic human rights investigations and forced disappearances can also be traced outside of the West. This is, however, beyond the scope of this project.

4.2 Identifying and repatriating war dead

The concept that individual bodies should be identified and the death of that individual acknowledged and recorded in some way has emerged as a key principle of the norms related to forced disappearances. However, these principles are relatively new phenomena, and their emergence can be traced through international humanitarian developments in the late 19th and early 20th centuries by Western European states. This section examines these developments.

Throughout history, death was an everyday occurrence as opposed to an event of note. During the Middle Ages in Europe, bodies were collected off of the street and buried or destroyed. “In the early modern world, the only bodies that mattered were those of the most illustrious and politically important dead.”³⁵ In the 19th and 20th centuries, there was a shift in the conceptualization of death and burial in Western Europe from an emphasis on the collective to an emphasis on the individual.³⁶ Robben describes this advent, stating,

Death’s medicalization distanced the community from the dying and the deceased. Individualism ruled, nature was conquered, social solidarity waned, and not the afterworld but family ties mattered. Western society surrounded death with so much shame, discomfort, and repulsion that Gorer (1965) even spoke of a pornography of death. Death became concealed in hospitals, nursing homes, and trailer parks. Yet, the fear of death remained, a fear corresponding more to people’s social than biological death, as can be sensed each time the newspapers report about some lonely soul lying dead for months in a squalid rundown apartment.³⁷

One particularly notable way of demonstrating the shift from viewing death as a collective social and sanitation issue to an emphasis on the individual who died is through the lens of changes in the burials of war dead over time in the West, because war dead held a symbolic importance and thus policies to deal with war dead highlight these shifts. Historically, “at best, burial of the war dead was regarded as a problem of sanitation rather than a social requirement”³⁸ due to the large number of soldiers killed, and the spread of disease through remains that were not removed from the battlefield. Over time, these practices have

³⁵ Lorenzo Zambarnardi, “Excavating Soldier Deaths: A Study of Changing Burial Practices,” *International Political Sociology* 11, no. 3 (2017): 297.

³⁶ See Philippe Ariès, *Western Attitudes Toward Death from the Middle Ages to the Present*, (Baltimore: Johns Hopkins University Press, 1974).

³⁷ Antonius C. G. M. Robben (ed.), “Death and Anthropology: An Introduction,” in *Death, Mourning and Burial: A Cross-Cultural Reader* (Oxford: Blackwell Publishing, 2010), 4.

³⁸ Zambarnardi, “Excavating Soldier Deaths,” 296.

changed significantly. Throughout the late 18th and early 19th centuries, people began paying more attention to individuals being killed in battle. One of the first documented examples of the growing importance on locating and commemorating war dead by European states came in the Treaty of Frankfurt signed in 1871 to end the Franco-Prussian war, which called for mutual respect and maintenance of soldiers' graves.³⁹

The Geneva Convention of 1906 contained two articles related to the treatment of the dead. Article 3 reads,

After every engagement the belligerent who remains in possession of the field of battle shall take measures to search for the wounded and to protect the wounded and dead from robbery and ill treatment.

He will see that a careful examination is made of the bodies of the dead prior to their interment or incineration.⁴⁰

Similarly, Article 4 reads

As soon as possible each belligerent shall forward to the authorities of their country or army the marks or military papers of identification found upon the bodies of the dead, together with a list of names of the sick and wounded taken in charge by him.

Belligerents will keep each other mutually advised of internments and transfers, together with admissions to hospitals and deaths which occur among the sick and wounded in their hands. They will collect all objects of personal use, valuables, letters, etc., which are found upon the field of battle, or have been left by the sick or wounded who have died in sanitary formations or other establishments, for transmission to persons in interest through the authorities of their own country.⁴¹

The Geneva Convention's emphasis on identifying, protecting, and recording the fates of individuals highlights an increasing degree of care for the individual war dead.

4.2.1 World War I and the War Graves Commission

This growing emphasis on the individual rights of the dead in Western Europe continued through World War I. In 1915, a Graves Registration Commission was created with the aim of recording the names of those killed during the war and preserving their identities. Even

³⁹ Zambarnardi, "Excavating Soldier Deaths," 300.

⁴⁰ International Committee of the Red Cross, "Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field," Geneva, 6 July 1906, Article 3, <https://ihl-databases.icrc.org/ihl/INTRO/180?OpenDocument>.

⁴¹ *Ibid.*, Article 4.

those who could not be identified were given individual burials. “The First World War was the first in history in which systematic efforts were made to give permanent, marked graves to dead soldiers – however lowly and whether or not they could be identified.”⁴² The Graves Registration Commission was succeeded in Britain shortly thereafter by the Imperial War Graves Commission (now the Commonwealth War Graves Commission), created by Royal Charter in 1917. The creation of this Commission involved a comprehensive policy by the British about how to treat the war dead. Soldiers were to be buried in the country where they died, with no repatriation of remains back to England. All graves were to be marked with an identical white stone regardless of rank. This policy ensured that the sacrifice of each individual soldier was commemorated in an equal way.

Britain was not the only Western European country to create a new policy for the burial of soldiers during World War I that focused on preserving the individual identity of the soldier. In France, citizens became outraged by the practice of burying soldiers in mass graves. After considerable negotiation, French policy became to bury soldiers in single coffins after they had been identified.

Even unidentified soldiers were to be given individual graves. France invented the concept of the "Unknown Soldier". We have cemeteries full of unknown soldiers. In the biggest cemetery on the Somme battlefields (Serre Road No 2), 4,944 individual graves – almost 70 per cent – carry no name.⁴³

As this suggests, in most countries, mass graves were sometimes used on an emergency basis, but countries endeavored to list individuals buried in mass graves.

The Treaty of Versailles, signed at the end of the World War I, included two articles that described how the war dead were to be treated by all governments involved in the conflict. Article 225 reads

The Allied and Associated Governments and the German Government will cause to be respected and maintained the graves of the soldiers and sailors buried in their respective territories.

⁴² John Lichfield, “The birth of the War Graves Commission - and the furious controversy it sparked,” *The Independent*, 10 November 2013, <https://www.independent.co.uk/news/world/world-history/the-birth-of-the-war-graves-commission-and-the-furious-controversy-it-sparked-8928189.html>.

⁴³ Ibid.

They agree to recognise any Commission appointed by an Allied or Associated Government for the purpose of identifying, registering, caring for or erecting suitable memorials over the said graves and to facilitate the discharge of its duties.

Furthermore, they agree to afford, so far as the provisions of their laws and the requirements of public health allow, every facility for giving effect to requests that the bodies of their soldiers and sailors may be transferred to their own country.⁴⁴

And Article 226 states,

The graves of prisoners of war and interned civilians who are nationals of the different belligerent States and have died in captivity shall be properly maintained in accordance with Article 225 of the present Treaty.

The Allied and Associated Governments on the one part and the German Government on the other part reciprocally undertake also to furnish to each other:

(1) A complete list of those who have died, together with all information useful for identification;

(2) All information as to the number and position of the graves of all those who have been buried without identification.

The inclusion of these provisions in the peace agreement demonstrates that a significant importance was given to finding and identifying war dead from all parties in the conflict, providing that information back to the soldier's country of origin, and ensuring that the individuals were memorialized in appropriate ways, regardless of who they were and where they were buried.

Similar to the British, the French government also opposed the repatriation of soldiers' remains back to the possession of their families. However, "in 1920 – after a period of illegal exhumation – the government recognized families' right to claim the bodies of their loved ones at state expense. By 1923, 240,000 bodies had been returned."⁴⁵ This shift by the French from identification and burial *in situ* to repatriation of remains foreshadowed another policy shift to come in the treatment of war dead.

⁴⁴ "Treaty of Peace with Germany (Treaty of Versailles)," (Versailles: 28 June, 1919), 136, <https://www.loc.gov/law/help/us-treaties/bevans/m-ust000002-0043.pdf>.

⁴⁵ Zambarnardi, "Excavating Soldier Deaths," 300.

4.2.2 *The Geneva Convention of 1929*

The Geneva Convention of 1929 built upon the regulations established by the 1864 and 1907 conventions on the humane treatment of sick and wounded military personnel during conflict. In addition, the 1929 conference created a second document regarding the treatment of prisoners of war, which contained several provisions regarding procedures for prisoners of war who die during imprisonment. In particular, it highlights in Article 76 that,

The belligerents shall ensure that prisoners of war who have died in captivity are honourably buried, and that the graves bear the necessary indications and are treated with respect and suitably maintained.⁴⁶

This provides further codification in international law of the need to treat war dead honorably, and treat the sites where they are buried respectfully. This is important as it extends the protections from simply soldiers who are killed directly by conflict to all military personnel.

Article 77 discusses the requirement to provide information about prisoners of war to the Information Bureau of the soldier's country. It specifically outlines information that must be provided in case of the death of a prisoner such that that information can be officially recorded.

The Bureau shall note in this record, as far as possible, and subject to the provisions of Article 5, the regimental number, names and surnames, date and place of birth, rank and unit of the prisoner, the surname of the father and name of the mother, the address of the person to be notified in case of accident, wounds, dates and places of capture, of internment, of wounds, of death, together with all other important particulars.

Weekly lists containing all additional particulars capable of facilitating the identification of each prisoner shall be transmitted to the interested Powers.

The individual record of a prisoner of war shall be sent after the conclusion of peace to the Power in whose service he was.

The Information Bureau shall also be required to collect all personal effects, valuables, correspondence, pay-books, identity tokens, etc., which have been left

⁴⁶ International Committee of the Red Cross, "Convention relative to the Treatment of Prisoners of War. Geneva," 27 July 1929, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/305?OpenDocument>.

by prisoners of war who have been repatriated or released on parole, or who have escaped or died, and to transmit them to the countries concerned.⁴⁷

This last piece is of particular importance because it sets a precedent for the importance of accurate information regarding the circumstances under which a prisoner died. The provision of accurate information is a key aspect of the norms that exist today surrounding forced disappearances.

4.2.3 *World War II and the Fourth Geneva Convention*

In a discussion of American policies towards their war dead, Sarah Wagner argues that there is a social contract surrounding military deaths. She states,

A military death is cast as the ultimate sacrifice an individual can make on behalf of his or her country, and the social contract between the state and its subject derives from the promise to care for the individual killed in battle. Caring is multifold: having sent the individual to die doing its will, the state is responsible for locating, naming, and burying his or her remains, and with its scientific, legal, and military institutions the state levies its authority and resources to carry out that obligation of care.⁴⁸

Wagner goes on to argue that World War I made the social contract between Western governments and the families of the war dead explicit. As discussed above, France began to allow families to choose between burial of the individual near the site of death, or repatriation of their remains to be buried at a site selected by their families. By World War II, most countries were affording this choice to the families themselves, and more than 70 percent of families chose repatriation.⁴⁹ The United States, in particular, emphasized repatriation for all American war dead, and by the time of the Vietnam War (1955-1975) had adopted a policy of ‘leave nobody behind’.⁵⁰

This shift towards allowing families to direct what happens to the remains of their loved ones is particularly important as it created a new dimension of the shift towards the “individual” in the handling of war dead. This shift afforded power and agency to families of the dead that they did not have before, giving families a voice, perhaps a right, even, to

⁴⁷ International Committee of the Red Cross, “1929 Geneva Convention.”

⁴⁸ Sarah E. Wagner, “A Curious Trade: The Recovery and Repatriation of U.S. Missing In Action from the Vietnam War,” *Comparative Studies in Society and History* 57.1 (2015) 168-9.

⁴⁹ *Ibid.*, 168.

⁵⁰ Zambarnardi, “Excavating Soldier Deaths,” 304.

inquire about the fates of their loved ones, and to bring their loved ones home. This transfers directly into the norms that exist surrounding forced disappearances today. The policy of ‘leave nobody behind’ by the United States military has resulted in the fact that “[c]ompared to other states, the US government forensic scientific resources cultivated to recover, repatriate, and identify its missing war dead are unique.”⁵¹ This is important to note because it has created a team of specialists in the recovery and identification of the missing, and has advanced techniques such as DNA analysis.

The Geneva Conventions of 1949, and the additional protocols of 1977, further expanded the shifts discussed in this section thus far on the treatment of war dead. Of particular note was the addition of the fourth Geneva Convention during the 1949 conference, regarding specific protections of civilians during conflict. In particularly strong language, the Fourth Convention indicates that civilians are to be protected from any violence or murder during conflict.

Despite this overarching protection, the Fourth Convention also discusses how to treat civilian internees who die while being detained. Article 130 states,

The detaining authorities shall ensure that internees who die while interned are honourably buried, if possible, according to the rites of the religion to which they belonged and that their graves are respected, properly maintained, and marked in such a way that they can always be recognized.

Deceased internees shall be buried in individual graves unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his expressed wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased. The ashes shall be retained for safekeeping by the detaining authorities and shall be transferred as soon as possible to the next of kin on their request.

As soon as circumstances permit, and not later than the close of hostilities, the Detaining Power shall forward lists of graves of deceased internees to the Powers on whom the deceased internees depended, through the Information Bureau provided for in Article 136. Such lists shall include all particulars necessary for the

⁵¹ Wagner, “A Curious Trade,” 167.

identification of the deceased internees, as well as the exact location of their graves.⁵²

Thus, this Fourth Convention extends the protections for military personnel and prisoners of war to all civilians during conflict. Likewise, it extends all of the aspects of a respectful, decent burial that can be traced thus far to all individuals during times of war, including a respectful individual burial that is well documented, and the repatriation of remains and information to the individual's next of kin at the earliest possibility. This is an essential precedent for norms surrounding forced disappearance that exist today, as it focuses on the deceased individual, and on ensuring that a complete and accurate record of the circumstances surrounding their death is recorded and provided to their next of kin.

In sum, this examination of the evolution of how war dead were treated by Western governments over the course of the late 19th and early 20th century highlights principles that ground the three norms related to forced disappearances. Investigations into forced disappearances have developed to largely focus on locating, identifying, and repatriating the individual victims of disappearances. This is evidenced, first, due to the shift of focus from death and burial as a collective and practical issue to one focused on respectful individual burials was evident throughout this period. Second, identifying individuals prior to burying them became of particular importance during this time period. Identification of individuals became important to be able to assign a name to the grave, or to be able to repatriate the remains to the families of the dead. And, contextual information became essential throughout this time period in order to not only identify who the deceased individual was, but also what happened to them, and under what circumstances.

Third, over the course of the twentieth century, the practice of burial shifted from burial near the site of death, to a practice of repatriating remains whenever possible. This occurred as public pressure intensified surrounding the desire of families to have their loved one buried close to home. Fourth, families of the dead became particularly important in directing decisions around whether to repatriate the remains of their loved ones. This afforded families power and agency in making decisions about their loved ones. It also established a non-state actor to receive information about what had happened to the

⁵² International Committee of the Red Cross, "The Geneva Conventions of 1949 and their Additional Protocols," <https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>.

deceased individual. Fifth, as time went on the definition of who was important to identify shifted. Initially, identification and individual burial were reserved for individuals of particular political importance. This was initially expanded to all military dead who died in combat, then was expanded to include all military dead, including prisoners of war. Later, civilians became important actors in the context of conflict, and thus their individual deaths began to have meaning.

However, despite the overarching consensus by Western governments of the need to identify and repatriate remains, it is clear that the application of these practices was complex and diverse. And, the principles that led to the entrenchment of these practices varied based on the wishes of powerful actors (in these cases states) over time. These complexities will again be reflected in the next section, which discusses the precedents for norms related to forced disappearances emerging from the development of the international human rights regime.

4.3 The international human rights regime

Following World War II, the international community, led by Western powers, saw the need to develop protections for individuals to ensure that the atrocities suffered by the Jewish people of Europe and numerous other groups including gays and lesbians, the Roma and Sinti, and people with disabilities who were targeted by the Nazis during the Holocaust were never able to happen again. The resulting overarching international human rights (IHR) framework is comprised of theory and practice of institutions, declarations, laws, treaties, resolutions, and court decisions, by both international and domestic institutions. The tracing of norms related to forced disappearances through the international human rights regime is thus complex, and this section is not meant to capture every such development in international human rights law. However, this section provides an overview of the development of the human rights regime, and how norms regarding forced disappearance have intersected with it. The central principles of the norms related to forced disappearances, that individuals should be protected from being victims of forced disappearances, that individual victims should be identified, their remains repatriated, and their deaths investigated, can all be traced through the development of the IHR regime. Moreover, the development of the IHR regime as a largely judicial framework begins to

explain the prevalence of the judicial framework as part of the norms related to forced disappearances.

4.3.1 *The International Bill of Human Rights*

The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations in 1948. Due to its status as a declaration as opposed to a treaty, it was not legally binding, though has been described as “a legal standard codified by which [state] behaviour can be judged.”⁵³ However, two subsequent treaties – the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), were adopted in 1966 after ratification by a sufficient number of countries. Together, these three documents form the International Bill of Human Rights, and offer wide-ranging protections for all human beings against violations of their fundamental human rights.

Constructivists argue that these documents marked the beginning of the construction of norms of international justice to protect individuals against human rights violations, and punish individual perpetrators of such violations.⁵⁴ However, despite the longstanding construction of norms of international justice by the global community, for much of the last six decades, the implementation of protections of rights has gone unaddressed at both the domestic and the international levels. As a result, the human rights regime has been widely criticized for existing in theory, but not in practice.⁵⁵

As discussed above, the international human rights (IHR) regime focuses on protecting the basic rights that humans possess by virtue of their humanity. This means that human rights are individual rights. In addition, one of the central tenets of the IHR regime is the emphasis on equality of all humans. This is evidenced in the first article of the UDHR, which reads, “All human beings are born free and equal in dignity and rights.”⁵⁶ This emphasis on individual rights and the idea that every human being is equal are consistent

⁵³ Richard Carver, “Called to Account: How African Governments Investigate Human Rights Violations,” *African Affairs*, 89, no. 356 (1990): 391.

⁵⁴ Daniel Levy and Natan Sznaider, “Sovereignty Transformed: A Sociology of Human Rights,” *The British Journal of Sociology* 57 no. 4 (2006): 662.

⁵⁵ Jack Donnelly, *Universal Human Rights*, 97.

⁵⁶ United Nations, “Universal Declaration of Human Rights,” <http://www.un.org/en/universal-declaration-human-rights/>.

with the principles surrounding investigations of forced disappearances outlined in the previous section.

However, a report submitted to the UN Commission on Human Rights in 2002, stated,

Until today, no specific human right not to be subjected to enforced disappearance has been recognized, although this human rights violation has occurred systematically for almost 30 years. It is generally considered as a multiple human rights violation but there is no agreement on which human rights, apart from the right to personal liberty, are actually violated by an act of enforced disappearance. The various attempts at defining enforced disappearance in international human rights and criminal law have had differing outcomes.⁵⁷

As indicated in the 2002 report, there are no specific mentions of forced disappearances as a human rights violation in the central documents of the IHR regime. However, there are relevant principles that provide the foundation for both preventing and protecting individuals from forced disappearances, and to investigate and hold perpetrators accountable for committing them when they do occur.

While protection from forced disappearances is not explicitly referred to in the UDHR, the overarching principle of an individual's right to life is at the foundation of the IHR regime, demonstrated by Article 2 of the UDHR, which reads, "Everyone has the right to life, liberty and security of person." Articles 5 and 9 of the UDHR provide further context to the right to life. Article 5 reads, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment," and Article 9, "No one shall be subjected to arbitrary arrest, detention or exile." These two articles are germane to this discussion because they prohibit two key components of forced disappearances: arbitrary detention, which occurs when individuals are held against their will, and inhumane treatment, which is, of course, is inherent in the entire process of forced disappearances.

With respect to civil and political rights that are related to forced disappearances, the ICCPR reiterates and further outlines the three essential rights mentioned by the UDHR: the right to life, the right to not be subjected to torture or inhumane treatment, and the right to liberty and security of the person. The ICESCR, by contrast, introduces a new and

⁵⁷ Manfred Nowak, "Report to the UN Economic and Social Council Commission on Human Rights: Civil and Political Rights, Including Questions of: Disappearances and Summary Executions," Fifty-eighth session Item 11, E/CN.4/2002/71, 8 January 2002, 4, <http://www.refworld.org/docid/3d6ce3c50.html>.

relevant right. Article 10 reads, “The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society.” The existence of this right provides a grounding for the idea discussed in the previous section about families having rights to information about their missing loved ones, and potentially to repatriation of their remains. This is because forced disappearances are a crime, not only against an individual, but against the family. The commission of this type of crime against a family violates the protection of the family outlined in Article 10 of the ICESCR.

4.3.2 *Forced disappearances in regional human rights laws*

While the principles set out by core IHR documents lay the foundation for the IHR norms in effect around the world today, the interpretation and enforcement of human rights largely depends on individual states’ commitment to, and enforcement of, these standards. In a 1986 article, Donnelly characterized the IHR regime as,

a relatively strong promotional regime, composed of widely accepted substantive norms, largely internationalized standard-setting procedures, some general promotional activity, but very limited international implementation, which rarely goes beyond information exchange and voluntarily accepted international assistance for the national implementation of international norms. There is no international enforcement.⁵⁸

While the advent of international criminal justice for human rights violations has emerged with the lead up to and founding of the International Criminal Court (ICC) in 1998, and this can be argued to have improved international-level enforcement of IHR norms, it is important to note that, in large part, Donnelly’s characterization of the IHR regime remains true today. The IHR is in large part a declaratory regime that relies on domestic actors (primarily states themselves) to implement it. States codify human rights into their own national legal systems. There are also regional human rights courts, such as the European Court of Human Rights (ECHR, founded in 1959), and the Inter-American Court of Human Rights (IACHR, founded in 1979) that enforce their respective regional human rights conventions.

⁵⁸ Jack Donnelly, “International Human Rights: A Regime Analysis,” *International Organization* 40, no. 3 (1986): 613-14.

In terms of rights surrounding enforced disappearances, like the UDHR and subsidiary treaties, the regional conventions do not contain specific rights for protection from enforced disappearances. The European Convention on Human Rights (1953), the American Convention on Human Rights (1969), and the African (Banjul) Charter on Human and Peoples' Rights (1981), each contain similar provisions to those in the International Bill of Human Rights documents.⁵⁹ Each includes discussion of the right to life, the right to protection from torture and other inhumane treatment, and protections from arbitrary detention or arrest. And, like the ICESCR, all three conventions also contain specific reference to the right to protection of the family as a specific unit of importance, though the levels of detail for this right are more varied.⁶⁰

However, despite the fact that specific protections against forced disappearance do not exist in the regional human rights conventions, many of the precedents for this right have come from the regional human rights courts in the Americas and Europe. The fact that much of the jurisprudence and most of the legal precedents regarding forced disappearance come from the level of these regional human rights courts is important because it speaks to how strongly families and loved ones, along with advocacy organizations have advocated for resolution and addressing of forced disappearance and how much norms related to forced disappearances was already in progress before they fully emerged at the international level.

The Inter-American Court of Human Rights is described as “the international body which provided the most significant contribution towards the development of substantive and procedural rules on the matter of enforced disappearance.”⁶¹ As Scovazzi and Citroni explained,

its reparation orders in the last decade have become the most sweeping and fully restorative of any international court”. Moreover, the Court consistently broadened the concept of victim of an act of enforced disappearance, by including all those relatives who have a “special tie” with the material victim and by presuming the violation of their right not to be subjected to inhuman and degrading treatment.⁶²

⁵⁹ At the time of writing in 2020 there are no regional human rights charters for Asia or Oceania.

⁶⁰ Both the American Convention and the Banjul Charter refer to the family as the fundamental unit of society which thus requires special protection. By contrast, the European Convention only lists the right to respect for private and family life.

⁶¹ Scovazzi and Citroni, *Struggle Against Enforced Disappearance*, 132.

⁶² *Ibid.*

The court issued its first judgments regarding forced disappearances in 1988 and 1989, related to cases of disappearances in Honduras. The IACHR has since considered cases related to forced disappearances throughout Central and South America.

The European Court of Human Rights has a much shorter history of considering questions of forced disappearance, which has resulted in its judicial precedents being less developed than those from the Inter-American Court.⁶³ The ECHR has considered cases related to Chechnya, Turkey, and Cyprus, among others. The first main difference between the IACHR and the ECHR is that the ECHR has taken a single-right approach to decisions surrounding forced disappearance, meaning that disappearances are considered based on how they violate particular human rights, as opposed to a simultaneous violation of multiple rights, as the IACHR has tended to consider.⁶⁴ This has meant that instead of consideration of forced disappearance as a particularly egregious phenomenon due to its violation of multiple rights at the same time, it considers each human rights violation alone. This is critiqued by numerous legal scholars who have compared the two approaches, due to the fact that this fails to account for the compounding of human rights violations when they occur simultaneously.⁶⁵

The second main difference between the approach of the ECHR and the IACHR that receives some ire in the legal scholarship is regarding the issue of burden of proof. Claude asserts,

The Inter-American Court focuses on the existence of a pattern of disappearances and requires solely a link between the disappearances with that pattern to shift the burden of proof onto the State. Conversely, the European Court albeit making timid references to the phenomenon of disappearance in certain countries - continues to disregard patterns in its reasoning... With respect to the standard of proof, the European Court appears to be struggling with its unnecessarily high "beyond reasonable" standard and leans toward a reshaping of its content in line with the Inter-American Court's flexible standard.⁶⁶

⁶³ Gobind Singh Sethi, "The European Court of Human Rights' Jurisprudence on Issues of Forced Disappearance," *Human Rights Brief* 8, no. 3 (2001): 31.

⁶⁴ Marina Kumskova, "The Crime of Enforced Disappearance," *E-International Relations Students* Jan. 3, 2016, <https://www.e-ir.info/2016/01/03/the-crime-of-enforced-disappearance/>.

⁶⁵ Ophelia Claude, "A Comparative Approach to Enforced Disappearances in the Inter-American Court of Human Rights and the European Court of Human Rights Jurisprudence," *Intercultural Human Rights Law Review* 5 (2009-10): 462

⁶⁶ *Ibid.*, 461.

A 2016 report prepared for the Council of Europe made a series of recommendations for strengthening the regional approach to prosecuting forced disappearance in Europe, primarily focused on the rights of families and loved ones of victims of forced disappearance, and the right to truth. The first recommendation outlines the need to “Place the families of missing persons and victims of enforced disappearance and their right to know the truth at the centre of all actions concerning these issues, especially by promoting a multidisciplinary assessment of their needs.”⁶⁷ Further recommendations in this section call for increasing supports to be developed for victims and their loved ones, the need to pay specific attention to the impacts of these crimes on women, and the need to return remains of the disappeared whenever possible.⁶⁸

Subsequent recommendations focus in depth on the right to truth. This includes the opening of state and military archives, as was the practice in East Germany after the fall of communism. Recommendation number 15 describes a need to

Guarantee that information on missing persons and victims of enforced disappearance is collected, protected and managed by specialised national authorities able to ensure that the victims’ identity, location, fate and circumstances of disappearance and, where applicable, death, are established. This information should be made available to interested persons.⁶⁹

These recommendations suggest that while the ECHR has set important precedents for dealing with forced disappearance in Europe, even today there is much to be done to address these crimes, especially in European states. The criticisms of the ECHR suggest that effective mechanisms of addressing forced disappearances have three specific characteristics. First, they consider the intersectional impact of forced disappearances on individuals and families. Second, effective mechanisms for addressing forced disappearances take a multi-human rights violation based approach that considers the multiple human rights that are violated by forced disappearances, Third, effective mechanisms must accept a lower burden of proof that is able to be met in most cases.

⁶⁷ Commissioner for Human Rights, “Missing persons and victims of enforced disappearance in Europe,” Issue Paper (Council of Europe: France, March 2016), 11, <https://rm.coe.int/missing-persons-and-victims-of-enforced-disappearance-in-europe-issue-/16806daa1c>.

⁶⁸ *Ibid.*, 11-12.

⁶⁹ *Ibid.*, 12.

4.3.3 *Forced disappearances in the international human rights mechanisms*

The first official UN text to explicitly refer to forced disappearances was in 1974 at the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Resolution 3320 (XXIX) was titled *Assistance and co-operation in the accounting for persons who are missing or dead in armed conflicts*. Article 2 of the resolution,

Calls upon parties to armed conflicts, regardless of their character or location, during and after the end of hostilities and in accordance with the Geneva Conventions of 1949, to take such action as may be within their power to help locate and mark the graves of the dead, to facilitate the disinterment and the return of remains, if requested by their families, and to provide information about those who are missing in action.⁷⁰

Resolution 3320 also indicated that this request built on a recent International Committee of the Red Cross/ Red Crescent (ICRC) Conference, and affirmed the work of the ICRC to locate and account for the missing and dead in armed conflict. This provision is important, as it demonstrates that the Geneva Conventions provide the foundation for the identification of the missing and the disappeared in IHR law. It also underlines the role of non-governmental organizations (NGOs) in ensuring that states follow the rules established by the Geneva Conventions.

The UN Commission on Human Rights expressed official concern about two specific cases of disappearances following the first UN General Assembly resolution in 1974. The first was regarding disappearances in Cyprus, calling “for specific efforts to trace persons unaccounted for”⁷¹ As the 2002 UN report explained, since the missing individuals in Cyprus resulted from armed conflict, they do not fit the narrow legal definition of disappearances,⁷² but instead fall under missing persons protected by the Geneva Convention.

The second context considered by the UN was missing persons in Chile. In 1977, the UN General Assembly expressed

⁷⁰ United Nations General Assembly resolution 3219, *Protection of human rights in Chile*, A/RES/3219 (6 November 1974) available from <https://docs.google.com/viewerng/viewer?url=http://uvallsc.s3.amazonaws.com/travaux/s3fs-public/A-RES-3220%2528XXIX%2529.pdf>.

⁷¹ Nowak, “Civil and Political Rights,” 9.

⁷² *Ibid.*

its particular concern and indignation at the continuing disappearance of persons, which is shown by the available evidence to be attributable to political reasons, and the refusal of the Chilean authorities to accept responsibility or to account for the large number of such persons, or even to undertake an adequate investigation of cases drawn to their attention.⁷³

This led to further awareness and concern regarding forced disappearances as a global phenomenon.

In 1978, the UN General Assembly Resolution 33/173 was specifically drafted in reference to disappeared persons. The resolution's preamble is important to discuss because it makes specific references to the fundamental rights related to forced disappearance found in the UDHR and the ICCPR discussed above. The resolution recalls provisions of the Universal Declaration of Human Rights, in particular Articles 3, 5, 9, 10 and 11 concerning, *inter alia*, the right to life, liberty and security of person, freedom from torture, freedom from arbitrary arrest and detention, and the right to a fair and public trial, and the provisions of articles 6, 7, 9 and 10 of the International Covenant on Civil and Political Rights, which define and establish safeguards for certain of these rights.⁷⁴

Resolution 33/173 went on to “call upon” state governments to fulfill certain obligations related to forced disappearance, including “to devote appropriate resources to searching for such persons and to undertake speedy and impartial investigations,”⁷⁵ to create laws and practices to hold law enforcement and security personnel accountable for any action leading to forced disappearances, and to cooperate with international agencies “in a common effort to search for, locate or account for such persons in the event of reports of enforced or involuntary disappearances.”⁷⁶ This resolution thus created a first set of soft obligations on states related specifically to forced disappearances. It also called upon the UN Commission on Human Rights to “consider the question of disappeared persons with a view to making appropriate recommendations,”⁷⁷ suggesting that this was far from the last word of the UN on this ongoing issue.

⁷³United Nations General Assembly resolution 32/118, *Protection of human rights in Chile*, A/RES/32/118 (16 December 1977) available from <http://www.un.org/documents/ga/res/32/ares32r118.pdf>.

⁷⁴ United Nations General Assembly resolution 33/173, *Disappeared persons*, A/RES/33/173 (20 December 1978), available from <http://www.un.org/documents/ga/res/33/ares33r173.pdf>.

⁷⁵Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

In 1980, the UN General Assembly had already received a report on disappearances in Chile, and recognized that the forced disappearances were becoming a severe human rights crisis in various locations around the world.⁷⁸ This was, in part, due to the advocacy of various NGOs including Amnesty International, the International Commission of Jurists, and the International League for Human Rights, as well as family members of disappeared persons, who were in the public gallery during the debates at the Commission for Human Rights.⁷⁹ The negotiations and resulting resolution established what was initially a one-year working group examining forced disappearances. In 1992, the Working Group was given the additional task of “monitoring the progress of States in fulfilling their obligations deriving from the Declaration and to provide to Governments assistance in its implementation.”⁸⁰ The Working Group was made permanent, and it remains at the forefront of investigating forced disappearance around the world today. Scholars Kramer and Weissbrodt evaluated the resulting resolution on disappearances that was passed by the Commission on Human Rights as successful, since, “[c]oncern for the effective protection of human rights predominated-if only for a moment-over political considerations. The Commission has taken the first important step toward finding an international approach to the difficult problem of disappearances.”⁸¹

Throughout the late 1970s and the 1980s, various international human rights bodies, as well as domestic courts, began considering individual cases of forced disappearances, setting important precedents in case law. This included the UN Human Rights Committee, and, as mentioned previously, the Inter-American Court of Human Rights, and the European Court of Human Rights. The case law that emerged during this period is important as it established the framework specifying how forced disappearance is a violation of particular human rights, and also established precedents for various types of remedy for these violations, including holding states accountable, and establishing a right to remedy for forced disappearances.

⁷⁸ David Kramer and David Weissbrodt, “The 1980 U.N. Commission on Human Rights and the Disappeared,” *Human Rights Quarterly* 18, no. 3 (1981): 18.

⁷⁹ *Ibid.*

⁸⁰ United Nations Human Rights, Office of the High Commissioner, “Mandate: Working Group on Enforced or Involuntary Disappearances,” available from <https://www.ohchr.org/en/Issues/Disappearances/Pages/DisappearancesIndex.aspx>.

⁸¹ Kramer and Weissbrodt, “The 1980 U.N. Commission,” 33.

In 1978, the UN Human Rights Committee was established, and shortly thereafter, considered its first individual case of forced disappearance, from Uruguay. Throughout the 1980s and 1990s, the Committee considered other cases for Uruguay, Colombia, Libya, the Dominican Republic, Zaire (now the Democratic Republic of Congo), Argentina, Peru, Chile, Sri Lanka, and Algeria. The HRC's first case, regarding forced disappearances in Uruguay, established forced disappearance as a violation of the right to life (ICCPR article 5), the right to be free from torture and inhumane treatment (ICCPR article 6), and the right to be treated with humanity while detained.⁸² The judgment also

urged Uruguay to take effective steps to establish what had happened to Mr. Bleier since October 1975, bring to justice any person found to be responsible for his death, disappearance or ill-treatment, pay compensation to him or his family and ensure that similar violations will not occur again in the future.⁸³

This view highlights four essential principles of handling forced disappearances: 1) discern the truth about what had happened to the victim, 2) bring to justice any perpetrators of the crime, 3) pay compensation (a remedy or reparation) to the family of the victim, and 4) prevent similar violations from occurring in the future. These same principles will be visible as the international norms regarding forced disappearance become more defined in the IHR regime. Subsequent decisions by the HRC set precedents including the establishment of detainment without contact as a form of torture, and forced disappearance as a violation of the right to family and private life.

4.3.4 International Instruments for Addressing Forced Disappearances

4.3.4.1 The 1992 UN Declaration on the Protection of All Persons Against Enforced Disappearance

In 1992, the UNGA adopted the first specific international instrument for addressing forced disappearances in its Declaration on the Protection of All Persons Against Enforced Disappearance (henceforth the 1992 Declaration). Members of the Sub-Committee on the Prevention of Discrimination and the Protection of Minorities drafted the declaration. The 1992 Declaration's preamble defined enforced disappearance as

⁸² Scovazzi and Citroni, *Struggle Against Enforced Disappearance*, 104.

⁸³ *Ibid.*

persons [who] are 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.⁸⁴

The 1992 Declaration's first article outlined the human rights violated by forced disappearance, which are those traced throughout this section: the right to life, the right to liberty and security of the person, the right not to be subjected to torture or cruel or inhumane treatment. The first article also recognized the impact of disappearances on the family of the victim. "Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families."⁸⁵

The articles of 1992 Declaration also traced the six principles outlined above from the precedents developed in regard to repatriation of military dead. It talked about both individuals and families as victims of forced disappearance. It prioritized ensuring that accurate information is maintained and provided to family members when forced disappearances have occurred and when individuals are being held in state custody. The 1992 Declaration further solidified this requirement for information and truth about what has happened to individuals by mandating that states maintain a register of all individuals being held in custody.

Importantly, the 1992 Declaration also suggested that there is "[t]he right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances."⁸⁶ While the ideas of a right to truth and a right to reparation for family members of forced disappearances stem from the case law and commentaries from the HRC discussed above, these concepts were somewhat radical in 1992.

⁸⁴ United Nations General Assembly resolution 47/133, *Declaration on the Protection of All Persons from Enforced Disappearance*, A/RES/47/133 (18 December 1992), available from <http://www.un.org/documents/ga/res/47/a47r133.htm>.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

Most radical, according to the 2002 UN report

is the obligation in Article 4 to make all acts of enforced disappearance criminal offences under domestic law with appropriate penalties which shall take into account their extreme seriousness. These acts shall be considered as continuing offences as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.⁸⁷

Criticisms of the 1992 Declaration have focused primarily on the fact that it was not legally binding, and required proactive signing and integration by individual states into their domestic laws to be relevant. Very few states who signed endeavoured to fulfill even their most basic obligations under the 1992 Declaration.⁸⁸

4.3.4.2 The Inter-American Convention on Forced Disappearance of Persons

The Organization of American States (OAS) began drafting its own convention regarding forced disappearance in 1987. Following the release of the 1992 Declaration, the OAS pushed forward the development of its document, and “[i]n June 1994, the OAS General Assembly finally adopted the Inter-American Convention on Forced Disappearance of Persons, the first legally binding instrument in this field.”⁸⁹ In light of the systematic use of forced disappearances throughout Central and South America in the 1970s and 1980s, as Scovazzi and Citroni assert, “[t]he fact that the first international legally binding instrument on enforced disappearances was promoted by Latin American countries has a strong symbolic value.”⁹⁰

Article II defines forced disappearance as,

the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.⁹¹

⁸⁷ Nowak, “Civil and Political Rights,” 22.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Scovazzi and Citroni, *Struggle Against Enforced Disappearance*, 253.

⁹¹ Organization of American States, “Inter-American Convention on Forced Disappearance of Persons,” 9 June 1994, Brazil, available from <http://www.oas.org/juridico/english/treaties/a-60.html>.

This definition is very similar to that used in the UN Declaration. It outlines that the crime occurs either by the state, or with the support or knowledge of the state, and that the withholding of information places that individual outside of the standard protections of the law.

Unlike the 1992 Declaration, the Inter-American Convention does not mention the rights of the family of the disappeared to information, or to any specific remedy. It also does not outline any protections against forced disappearance that signatory states must implement, instead it focuses on a limited number of means of addressing them. Once ratified, states commit,

- a. Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees;
- b. To punish within their jurisdictions, those persons who commit, or attempt to commit the crime of forced disappearance of persons and their accomplices or accessories
- c. To cooperate with one another in helping to prevent or punish, and eliminate the forced disappearance of another person
- d. To take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in this Convention.⁹²

The Inter-American Convention on Forced Disappearances is binding, meaning that violations of the convention can be brought to the Inter-American Commission on Human Rights for investigation. Thirteen OAS member states signed the convention within the first two years of its creation, and of those, 6 states also ratified the document prior to the end of 1996. As of 2020, the Declaration has been signed by sixteen states and ratified by fifteen.

4.3.4.3 International Courts and Criminal Statutes

Following a series of particularly abhorrent international crimes in the early 1990s, including war crimes, crimes against humanity and genocide, committed in the former Yugoslavia, and Rwanda, the international community began to standardize the transnational obligations created by human rights norms into legal justice standards. In the

⁹² Organization of American States, “Inter-American Convention on Forced Disappearance of Persons,” 9 June 1994, Brazil, available from <http://www.oas.org/juridico/english/treaties/a-60.html>.

wake of these human rights violations, the United Nations developed a number of procedures to internationalize the protection of human rights and the prosecution of perpetrators of human rights violations, with the hope of deterring future human rights violations from taking place.⁹³ International relations (IR) scholar Kathryn Sikkink maintains that these procedures and mechanisms have been contributing factors to the cascade of norms of international justice and criminal accountability in the wake of human rights violations.⁹⁴

Two *ad hoc* tribunals, the International Criminal Tribunals for the former Yugoslavia and for Rwanda (ICTY and ICTR) were created to prosecute perpetrators of war crimes, crimes against humanity and genocide that occurred during these two conflicts.⁹⁵ These *ad hoc* tribunals were followed by the creation of the International Criminal Court (ICC), established by the Rome Statute in 1998.⁹⁶ The ICC was significant as it was a permanent international court designed to prosecute four major crimes: war crimes, crimes against humanity, genocide, and the yet-to-be-defined crimes of aggression.

Neither the Statute of the ICTY nor that of the ICTR made specific reference to forced disappearances as a crime under their respective jurisdictions. However, both refer to killing, murder, other inhumane acts, unlawful deportation, and violations of the Geneva Conventions. These are categories under which forced disappearance might be considered. The Statutes for two other hybrid international/domestic hybrid tribunals established around the same time (The Special Court for Sierra Leone, 2002, and the Extraordinary Chambers in the Courts of Cambodia, 2004) contain similar language. The Rome Statute of the ICC does specify enforced disappearance as a crime against humanity, making it one of the human rights violations for which individuals can be tried at the international level.⁹⁷

⁹³ David P. Forsythe, *Human Rights in International Relations*, (Cambridge: Cambridge University Press, 2006), 106.

⁹⁴ Kathryn Sikkink, *The Justice Cascade*, (New York: W.W. Norton & Co, 2011), 5.

⁹⁵ *Ibid.*

⁹⁶ United Nations, *The Rome Statute of the International Criminal Court*, (The Hague, 1998).

⁹⁷ *Ibid.*

4.3.4.4 The International Convention for the Protection of All Persons from Enforced Disappearance

Scovazzi and Citroni assert that “it is a matter of fact that, in spite of various efforts by the Working Group on Enforced or Involuntary Disappearances to remind governments of their obligation to implement the provisions of the 1992 Declaration by taking appropriate legislative, administrative, judicial or other measures, very little progress has been made in practice.”⁹⁸ In fact, various state and international bodies expressed the need for a more robust international framework for forced disappearances. As a result, in 2007, the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED) was opened for signatures.

Like both the Declaration and the Inter-American Convention before it, the ICPED defines forced disappearance as, “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”⁹⁹ Notably, the ICPED defines forced disappearance as a crime against humanity, and explicitly states that all applicable international laws related to crimes against humanity are thus relevant in addressing forced disappearances. This is significant, as it provides teeth to the protection of forced disappearance through any international or domestic bodies that handle crimes against humanity including the Geneva Convention, and the Rome Statute of the International Criminal Court.

Unlike the 1992 Declaration, the 2007 ICPED, however, does not mention the right of family members of the victim to know what happened to them. The only mention of family in the text of the ICPED is to explain that states have the obligation to manage the legal situation of victims of enforced disappearances and their relatives. This alludes to the idea that the family members of victims have rights, but it does not codify those rights or make them explicit. Article 25 of the ICPED also discusses obligations of states regarding

⁹⁸ Scovazzi and Citroni, *Struggle Against Enforced Disappearance*, 260.

⁹⁹ United Nations General Assembly resolution 61/177, *International Convention for the Protection of All Persons from Enforced Disappearance*, A/RES/61/177 (20 December 2006), available from https://treaties.un.org/doc/source/docs/A_RES_61_177-E.pdf.

the disappearance of children, again alluding to the need to provide specific protection to the family unit, but again failing to indicate that forced disappearance is a human rights violation, not only of the victim, but also a rights violation of their family and loved ones.

Article 24.2 of the 2007 Convention does not specifically address the collective dimension of the right to truth. However, it does not deny it either. From the general wording used in the preambular paragraph dealing with the same issue, it can be inferred that a State which provides for public forms of disclosure of the truth, such as reports of Truth and Reconciliation Commissions, can only comply with the spirit of the 2007 Convention.¹⁰⁰

As of 2020, the ICPED has been signed by 98 countries, and ratified by 62 of those parties. This is a significant number of states, but is only a fraction of the 164 parties to the UN Convention Against Torture.¹⁰¹ Notably for the main case study of this project, Ireland signed the ICPED in 2007, but has yet to ratify it into Irish law. The UN Office of the High Commissioner for Human Rights reported in 2014 that in Ireland,

A number of legal and constitutional measures are already in place, which protect persons against unlawful detention. Article 40.4.1 of the Constitution provides that no citizen shall be deprived of their liberty save in accordance with law. Section 15 of the Non-Fatal Offences Against the Person Act 1997 provides for an offence of false imprisonment which addresses circumstances where a person is taken or detained, or whose personal liberty is restricted by another person without the consent of the person involved. A person guilty of false imprisonment is liable, on conviction on indictment, to imprisonment for up to life.¹⁰²

By contrast, and also relevant to the central case study of this project, the United Kingdom (UK) is not currently a signatory to ICPED, having taken the position that “Foreign Office ministers have reiterated that the UK has a policy of only signing a Convention if they have a commitment to ratify it within twelve months.”¹⁰³ In response to a question about the UK’s intention of signing and ratifying the Convention in June 2007,

¹⁰⁰ Scovazzi and Citroni, *Struggle Against Enforced Disappearance*, 359.

¹⁰¹ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, New York, 10 December 1984, United Nations Treaty Series, vol. 1465 pg. 85, available from https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en.

¹⁰² “Response of Ireland to request for information pertaining to implementation of UNGA resolution A/RES/68/166, International Convention for the Protection of All Persons from Enforced Disappearances,” available from <https://www.ohchr.org/Documents/HRBodies/CED/GAreportcontributions/2014/Ireland.pdf>.

¹⁰³ International Coalition Against Enforced Disappearances, United Kingdom: Country by Country Ratification Campaign,” available from <https://www.icaed.org/the-campaign/united-kingdom/>.

Lord Triesman, then the Parliamentary Under-Secretary, Foreign & Commonwealth Office, stated that

The UK was active throughout the negotiations to draft the UN International Convention for the Protection of All Persons from Enforced Disappearance and we supported its adoption last year at both the UN Human Rights Council and the UN General Assembly. The Government needs to conduct a detailed analysis of the provisions of the treaty and their implications for implementation in order to determine the UK's position towards ratification, including whether we would need to make any reservations.¹⁰⁴

As of 2012, the UK indicated support and intention of becoming a signatory to the ICPED,

We have carried out an initial assessment of the practical implications of implementing the Convention, and identified areas of domestic law and operational policy that would need change if the UK is to comply with Convention requirements. The UK is keen to move towards signature and ratification of the Convention but the size of this undertaking will require considerable resources and parliamentary time.¹⁰⁵

As of the mid-term review in 2014, the UK's position was the same. However, in 2016, the UK reversed course, indicating that it “considers that its current domestic framework already prevents arbitrary arrests, prohibits torture and degrading treatment, and holds [their Security and Intelligence Agencies] to account.”¹⁰⁶ In other words, the objections of the UK toward signing the ICPED were primarily surrounding detention of individuals by the police, military, and security forces, largely for intelligence purposes.

As this section has demonstrated, the second overarching development in the international realm that has significantly influenced the norms surrounding forced disappearance is the advent of the IHR regime, with its central principle that every human being possesses rights by virtue of their humanity. The significant number of institutions and instruments that developed as part of the IHR regime all stem from this overarching principle. And, as this chapter has demonstrated, so too does the principle of protecting

¹⁰⁴ United Kingdom House of Lords Debate Deb, 26 June 2007, Lord Triesman, col 130W, available from <https://publications.parliament.uk/pa/ld200607/ldhansrd/text/70626w0002.htm#07062672000112>.

¹⁰⁵ United Nations, General Assembly, *Report of the Working Group on the Universal Periodic Review: United Kingdom of Great Britain and Northern Ireland Annex E*, A/HRC/21/9 (6 July 2012), available from https://lib.ohchr.org/HRBodies/UPR/Documents/session13/GB/A_HRC_21_9_Add.1_UK_Annex_E.doc.

¹⁰⁶ United Kingdom, Ministry of Justice, *Universal Periodic Review: United Kingdom, British Overseas Territories and Crown Dependencies National Report*, (February 2017), pg. 5, available from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/600276/upr-national-report.pdf.

individuals from forced disappearances. However, as has been evident throughout this section, the development of IHR norms and laws is far from a linear process. Moreover, “protection from forced disappearances” has been interpreted differently by different IHR bodies and institutions, and varies based on the contexts and the interests of the powerful actors involved. The importance of interests of powerful actors, especially states, in influencing norms in IHR is consistent with their power of decision-making regarding the treatment of war dead discussed in section 4.2, and is reflected again in the next section regarding truth-telling and transitional justice.

In addition to its reinforcement of the norm that individuals should be protected from forced disappearances, and that individual victims of forced disappearances should be identified and their remains repatriated, the advent of the IHR regime sets a precedent for a legal approach commonly associated with investigations of forced disappearances. As was traced through this section, much of the codification of IHR principles has occurred through regional and domestic legal bodies. The primary way of enforcing human rights has been by investigating and holding accountable perpetrators of human rights violations in the legal system. Due to the codification of forced disappearance as a crime in various legal systems, it is not surprising that the norm of addressing forced disappearances emphasizes a legal mandate based on collecting evidence for prosecution.

4.4 Transitional justice and truth-telling

The third and final development of international humanitarianism through which principles related to forced disappearances can be traced is the advent of transitional justice and truth-telling. As outlined in Chapter 2, the term transitional justice was coined by scholars in the early 1990s to describe the processes and mechanisms used to facilitate transitions from authoritarianism to democracy in the Southern Cone of Latin America, and decommunization efforts in Eastern Europe.¹⁰⁷ It is important to note that the principles traced through sections 4.1, 4.2, and 4.3 are again evident through the development of transitional justice. Moreover, developments related to transitional justice demonstrate a clear influence on the shape of investigations into forced disappearances that occur today.

¹⁰⁷ Paige Arthur, “How ‘Transitions’ Reshaped Human Rights: A Conceptual History of Transitional Justice,” *Human Rights Quarterly* 31, no. 2 (2009): 327-28.

As the first norm outlines, transitional justice reinforces international human rights and international humanitarian principles, which outline the first norm, that forced disappearances are a unique type of crime that must be addressed. In addition, transitional justice reinforces the idea that individual victims should be prioritized, their remains repatriated to their families, and their deaths investigated. Finally, transitional justice espouses a judicial framework is the most appropriate way to carry out these individual investigations. While individual criminal accountability continued to be considered the most ‘just’ form of justice, the number of mechanisms and approaches used to facilitate democratic transitions proliferated during a second wave of transitional justice, and thus the second wave largely excluded both international and domestic trials. Common mechanisms of this second period included amnesties, truth commissions, “commissions of inquiry, prosecutions, lustration or purges, and restitution or reparations programs.”¹⁰⁸ Each of these mechanisms of transitional justice was designed within the overarching framework of facilitating a democratic transition and consolidating the new democratic order. However, these mechanisms themselves were also designed to facilitate other, perhaps intermediary goals considered important during a transitional period. For example, truth commissions were typically established with the aim of revealing the truth about human rights abuses, and establishing a narrative for all of society about what occurred.¹⁰⁹

4.4.1 *Truth-telling and forced disappearances*

Addressing forced disappearances intersects prominently with the development of truth commissions and the advent of a principle in the international sphere referred to as the right to truth. However, calls for truth about what happened to disappeared persons precede the first formal truth commissions established to investigate forced disappearances. This is consistent with the principles I traced in sections 4.2 and 4.3 through both the treatment of war dead, and the IHR regime, that there should be a clear record of what happened to the dead, and families have a right to know what happened to their loved ones. This section

¹⁰⁸ Arthur, “How ‘Transitions’ Reshaped Human Rights,” 331.

¹⁰⁹ Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd ed., (New York: Routledge, 2010), 27.

demonstrates how this principle was manifested in three sets of forensic human rights investigations: investigations into the *Katyn* massacre, the Commission of Inquiry into Disappearances in Uganda, and the National Commission on the Disappeared in Argentina (CONADEP). It concludes with a brief outline of forensic human rights investigations.

4.4.1.1 The *Katyn* Massacre

The Nazis conducted the first identified “forensic” investigation into forced disappearances. Between 1939 and 1940, 15,000 Polish military officers and intellectual elite disappeared. At first, many were held in camps in Poland. But in spring 1940, the camps were disbanded and the prisoners vanished without a trace. In 1943 upon discovery of what appeared to be mass graves in the nearby *Katyn* forest, “the German authorities conducted exhumations. The bodies were discovered packed tightly together, face down and in most cases resting in several layers, with the largest grave containing over 2,000 bodies.”¹¹⁰

German investigators identified artifacts that suggested the massacre had taken place in 1941, prior to German occupation of Poland. Due to the fact that the *Katyn* forest, where the graves were discovered was in Russia, the Germans concluded the Russians had been responsible for the massacre. Two years later, a Russian tribunal concluded that the evidence had been planted, and that the weaponry used was of German origin, and in fact the Nazis were responsible for the killings. The Allies accepted the findings of the Russian investigation, and blamed the Nazis for the atrocities. It was not until the 1990s, when an investigation by the office of the Prosecutors for the Soviet Union/Russian Federation confirmed that the Russians had indeed been responsible for the massacre.

While the investigations into the *Katyn* massacre were certainly far less scientifically rigorous than forensic investigations conducted today, due to advances in scientific techniques,¹¹¹ this early investigation into forced disappearances does highlight several themes that remain prevalent today. The first is the use of scientific standards of the time to identify the disappeared, and some of the challenges in doing so. In the era of the initial *Katyn* investigations, some of the main technological advancements that are used in

¹¹⁰ Roxana Ferllini, “The Development of Human Rights Investigations since 1945,” *Science and Justice* 43, no.4 (2003): 220-22.

¹¹¹ *Ibid.*

these types of investigations today had yet to be discovered. Second is the manipulation of facts by actors, despite the guise of “scientific standards.” The fact that the *Katyn* massacre was blamed on two different parties based on two separate “scientific” investigations demonstrates that even the most rigorous scientific standards of the time may not produce truth that stands up to political manipulation, or to the test of time.

4.4.1.2 Commission of Inquiry into Disappearances in Uganda

The first formal institution established to address forced disappearances following the *Katyn* investigation was in Uganda following Idi Amin’s military seizure of power from previous leader Milton Obote. In 1971, rumors began to swirl in Uganda regarding the mass murder of 200 soldiers who were ethnically similar to Obote.¹¹² Two Americans, Nicolas Stroh, a freelance journalist, and Robert Siedle a university lecturer living and working in Kampala, began investigating this alleged mass murder and subsequently vanished. In early 1972, as a result of pressure from the US Government for answers in the disappearance of their citizens, Amin convened an official judicial commission of inquiry to investigate the disappearances.¹¹³ The judicial commission “found that Stroh and Siedle had in fact been murdered by senior members of the armed forces on 9 July 1971. Although the government of Uganda eventually paid compensation to the men’s relatives in the United States, no one was ever charged with their murders.”¹¹⁴

Following the completion of the investigation into the death of the two Americans, Ugandans began to speak out about the disappearances of their own family members. To quell rising public pressure, Amin established the *Commission of Inquiry into the Disappearances of People in Uganda since 25 January 1971*, to investigate these alleged disappearances of Ugandans between January of 1971 and 1974.¹¹⁵ Amin appointed four Commissioners and assigned the Commission with the following mandate:

- a) to inquire into and establish the identity of the persons who are alleged missing;
- b) to establish whether such persons are dead or alive;

¹¹² Alicia C. Decker, “‘Sometimes you may leave your husband in Karuma Falls or in the forest there’: a gendered history of disappearance in Idi Amin’s Uganda, 1971-79,” *Journal of East African Studies* 7, no. 1 (2013): 127.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

- c) for these persons believed to be living outside Uganda, the reasons and circumstances that led to their quitting Uganda as far as such reasons and circumstances can be ascertained;
- d) for those proved dead, how, when, where and in what circumstances they met their deaths
- e) whether there are any individuals or organisations of persons whether within or outside Uganda who are criminally responsible for the disappearances or deaths of the missing persons and what should be done to the persons criminally responsible for such disappearances or deaths;
- f) what should be done to the affairs and families of the missing persons bearing in mind the provisions of decree No. 20 of 1973;
- g) what should the Government do to put an end to the criminal disappearances of people in Uganda.¹¹⁶

While on paper this mandate seems to lay the foundation for a thorough investigation and key recommendations to identify and locate the missing and prevent future disappearances, the outcome of the Commission was far less positive. The Commission's final report was submitted on 13 June 1975. During the course of its mandate, the Commissioners reviewed 308 cases of alleged forced disappearances in Uganda and found they were primarily committed by government forces; divisions of the police and the military. The Commission held public hearings and interviewed family members of the disappeared. Ultimately the commissioners recommended substantial reforms to the police and the military surrounding morale, arrest protocols, and human rights training.¹¹⁷ However, as Priscilla Hayner highlights, "the commission report had little impact on the practices of the Amin government. After the submission of the report, the four commissioners were targeted by the state in apparent reprisal for their work: the [head Commissioner] lost his employment with the government, another commissioner was framed with murder charges and sentenced to death, and a third fled the country to avoid arrest."¹¹⁸ The report itself was never published, meaning that in addition to its

¹¹⁶ United States Institute of Peace, "Commission of Inquiry into the Disappearances of People in Uganda since 25 January, 1971: Charter," Legal Notice, no. 2 of 1971, available from https://www.usip.org/sites/default/files/resources/collections/truth_commissions/Uganda74-Report/Uganda74-Charter.pdf.

¹¹⁷ The Republic of Uganda, Part I: Commission of Inquiry into the Missing Americans Messrs. Stroh and Siedle held at the Conference Room, Parliament House, Kampala, Part II: Government White Paper on the Report of the Commission of Inquiry (Government Printer: Entebbe, Uganda, March 19th 1972), 798-815.

¹¹⁸ Priscilla Hayner, "Fifteen Truth Commissions – 1974 to 1994: A Comparative Study," *Human Rights Quarterly* 16, no. 4 (1994): 612. In her analysis, Hayner extensively cites Richard Carver, "Called to Account: How African Governments Investigate Human Rights Violations," *African Affairs*, 89, no. 356 (1990): 391-415.

commissioners being targeted as enemies of the Amin regime, its findings never became public, and Amin reportedly continued the practice of forced disappearances of his enemies throughout his dictatorship.

However, despite the Commission's limited success in practice, the development of the Ugandan Commission does provide a model for investigations of forced disappearances that seems to have been commonly replicated around the world since then. Individual (often prominent or well-respected) actors from civil society begin to champion the investigation into suspicious forced disappearances. In the Ugandan case, the Americans Stroh and Siedle were vocal about their investigation into mass murders they believed to be committed by Amin's forces against allies of Milton Obote. Next, a more powerful actor (in this case the US government) places pressure on the state to formally devote resources to this type of investigation. It is important to note here that the disappearance of the two Americans was the inciting factor for US involvement. Had Ugandan forces not murdered Stroh and Siedle, involvement by the US government may never have occurred. Subsequently, more and more individuals begin to champion the cause, and, facing the coalescence of both international and domestic pressure, the state was forced to respond by launching an official investigation. But, as this case highlighted, an official investigation by a state does not guarantee action that will prevent future disappearances.

4.4.1.3 National Commission on the Disappeared in Argentina (CONADEP)

One of the first commonly cited truth commissions is the National Commission on the Disappeared in Argentina (CONADEP) in 1983. It was primarily created to address the disappearances of between 10,000 and 30,000 people at the hands of the military.¹¹⁹ As Hayner describes, despite the fact that the military *junta* had granted amnesty to itself from all crimes prior to surrendering power, CONADEP was a revolutionary body. The commission took over 7,000 statements over a nine-month period, documenting 8,960 persons who had disappeared. Exiles returned from abroad to testify, and statements were taken in Argentine embassies and consulates around the world. CONADEP worked with family members to try to locate persons who might still be alive, but it found none. Among

¹¹⁹ Hayner, *Unspeakable Truths*, 45.

those interviewed were over 1,500 people who had been detained but survived, who gave detailed descriptions of conditions and methods of torture used in the detention centers.¹²⁰

CONADEP thus set precedents for investigations of forced disappearance in three ways. First, it investigated investigating forced disappearances. Second, it worked with family members of victims and responding to their advocacy. Third, and finally, CONADEP documented and recorded an objective record of what happened to the disappeared. But, despite being the first commonly cited truth commission to investigate forced disappearances, it was by no means the first body to be established to investigate and establish the truth about the disappeared, as is evidenced in the previous two subsections.

As both the Nazi investigations into the *Katyn* Massacre and the Commission of Inquiry in Uganda demonstrate, the need to establish an objective historical record about disappearances and massacres precedes the advent of truth commissions in the 1980s. Both these investigations, the truth commissions that followed, and the actions of various families of the disappeared and advocacy groups throughout the 1980s, led to the common application of this norm that is taken today. This is the mechanism frequently referred to as forensic human rights investigations.

4.4.1.4 Forensic human rights investigations and the right to truth

As referenced in the introduction to Section 4.4, as transitional justice has proliferated around the globe, the idea of a right to truth has emerged in the international level, blending the principle of truth-telling from transitional justice with the normative power of the IHR regime. Notably, in investigating the idea of an overarching “right to truth”, the UN Office of the High Commissioner for Human Rights cites the roots of a right to truth in the principles that have been established of right of families to know the fate of their relative, and the obligations of parties of conflict to search for missing persons, including protections found in the 1949 Geneva Conventions.

The UN General Assembly’s first resolution regarding forced disappearance in 1974 began to establish a foundation for a “right to know” or a “right to truth”. The preamble reads, “Considering that the desire to know the fate of loved ones lost in armed

¹²⁰ Hayner, *Unspeakable Truths*, 46.

conflicts is a basic human need which should be satisfied to the greatest extent possible, and that provision of information on those who are missing or who have died in armed conflicts should not be delayed merely because other issues remain pending.”¹²¹ Similarly, the UN Human Rights Committee acknowledged a right to truth in its 1983 views on another cause from Uruguay, “[The HRC] understands the anguish and stress caused to the mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts. The author has the *right to know* what has happened to her daughter. In this respect, *she too is a victim of the violations of the Covenant suffered by her daughter*, in particular of Article 7.9.”¹²² More than simply identifying the right for the woman to know what happened to her daughter, the HRC went so far as to define the mother (the family of the victim) as also having been victimized by the forced disappearance.

Forensic scientists became involved in international investigations as a response to calls for truth about victims of massacres and forced disappearances. Prominent forensic anthropologists Clyde Snow and Mimi Dorretti asserted that “the search, recovery, and analysis of the remains of the disappeared and massacred people became a major humanitarian and legal issue.”¹²³ Snow was tasked with the work of establishing a team of forensic scientists (now the Argentine Forensic Anthropology Team or EAAF) to investigate the disappearances that were investigated for CONADEP. By the late 1990s, ninety-seven forensic scientists from twenty countries had traveled to the former Yugoslavia, Rwanda, and thirty other [transitional] countries to investigate the whereabouts of the missing and ... [to] unearth mass graves.”¹²⁴ Snow’s team, and many others that have developed since then, have been employed worldwide by various international tribunals and organizations.¹²⁵ This demonstrates the second norm related to forced disappearances,

¹²¹ United Nations General Assembly resolution 3219, *Protection of human rights in Chile*.

¹²² United Nations Human Rights Committee, Case *Quinteros v. Uruguay*, Communication, no. 107/1981, (21 July 1983) available from http://www.worldcourts.com/hrc/eng/decisions/1982.10.15_Almeida_de_Quinteros_v_Uruguay.htm. Emphasis added.

¹²³ Mimi Doretti and Luis Fondebrider, “Science and Human Rights – Truth, Justice, Reparation and Reconciliation: A Long Way in Third World Countries,” in *Archaeologies of the Contemporary Past*, ed. V. Buchli and L. Gavin. (London: Routledge, 2001), 138-39.

¹²⁴ Stover and Shigekane, “Exhumation of mass graves,” 88.

¹²⁵ Mercedes Doretti, and Clyde C. Snow, “Forensic Anthropology and Human Rights: The Argentine Experience,” in *Hard Evidence: Case Studies in Forensic Anthropology*, ed. Dawnie W. Steadman, (Upper Saddle River, NJ: Prentice Hall, 2002), 304.

forensic human rights investigations are the most appropriate method of addressing forced disappearances.

4.5 Forensic human rights investigations: The consolidation of three norms

Forensic science provides scientific, which is typically understood as meaning objective, evidence in investigations of human rights violations.

forensic anthropologists form an integral part, contributing their skills in the search, recovery and identification of human remains, work that is often a result of civil war and international armed conflicts. These professionals deal with the results of the aftermath, with the ultimate goal being to help bring justice to the victims and enabling the surviving relatives to go through the rites of passage of grieving and finally laying their loved ones to rest.”¹²⁶

Forensic anthropologists, alongside their colleagues in pathology, toxicology, DNA analysis, and others, are able to determine the identity of the victims, the timing of their death, and the cause of death.¹²⁷ Forensic anthropologists specifically can determine age, sex, race,¹²⁸ stature, and identify skeletal abnormalities.¹²⁹ This profile may eventually allow for the identification of the victim. The determinations are made using analysis of the skeletal remains, information from the historical record, and archaeological analysis of the context of the burial.¹³⁰ The context is especially relevant for cases of human rights abuses, which often involve unmarked, undocumented, haphazardly created graves.¹³¹

Positive identification of victims can occur in three ways: visually, requiring recognition of the remains by an individual familiar to the victim; circumstantially, involving the linking of contextual information from the burial with knowledge regarding the victim; or objectively, requiring confirmation using DNA, or medical records.¹³² A positive identification requires confirmation using one of the aforementioned methods, but whenever possible, multiple methods are employed to achieve certainty.¹³³ A report from

¹²⁶ Ferllini, “Development of Human Rights Investigations,” 223.

¹²⁷ Soren Blau, and Mark Skinner, “The use of forensic archaeology in the investigation of human rights abuse: Unearthing the past in East Timor,” *The International Journal of Human Rights* 9, no.4 (2005): 450.

¹²⁸ Karen Ramey Burns, *Forensic Anthropology Training Manual*, 3rd ed., (Routledge: London, 2015), 223.

¹²⁹ Doretti and Snow, “Forensic Anthropology,” 304.

¹³⁰ Blau and Skinner, “The use of forensic archaeology,” 450.

¹³¹ *Ibid.*

¹³² Stephen Cordner and Helen McKelvie, “Developing standards in international forensic work to identify missing persons,” *International Review of the Red Cross* 84, no.848 (2002): 880.

¹³³ *Ibid.*

the UN Office of the High Commissioner for Human Rights released in 2002 suggests that the increasing frequency of human rights violations “has provided more impetus to the need to resort to forensic and related experts to identify the victims.”¹³⁴

In some cases, when individual identification is not possible, forensic scientists can shift their focus to the “categorical identification” of remains, thus creating a profile of the typical victim based on ethnicity or race, and the manner of death.¹³⁵ If the majority of victims are of the same ethnicity, and were systematically eliminated with similar or identical causes of death, forensic anthropologists can provide scientific evidence that supports the intent of the perpetrators to eliminate this portion of the population. The profiles developed by forensic scientists can then be used in the judicial process to substantiate claims of genocide, or other systematic human rights violations, such as torture. The presence of physical proof of such crimes results in the ability of judicial mechanisms to convict perpetrators of their crimes, which facilitates accountability and prosecution of the guilty.

A number of international organizations have adopted the cause of advocating for victims of forced disappearance and the needs of their families. The International Committee of the Red Cross/Red Crescent (ICRC) has specialized teams working on forced disappearances around the world.¹³⁶ Similarly, the International Commission on Missing Persons (ICMP) was founded in 1996 as part of the Dayton Peace Agreement that ended the war in the former Yugoslavia.¹³⁷ However, following growth of the organization’s capacity throughout the early 2000s, ICMP became an international organization in 2014, and now works on files related to disappearances in more than 40 countries.¹³⁸ National and regional forensic teams such as the Argentinian Forensic Anthropology Foundation (EAAF) and the Peruvian Forensic Anthropology Team (EPAT) have also expanded their

¹³⁴ United Nations, Office of the High Commissioner on Human Rights, *Report on Human rights and forensic science*, E/CN.4/2002/67 (21 January 2002), available from http://repository.un.org/bitstream/handle/11176/238662/E_CN.4_2002_67-EN.pdf?sequence=3&isAllowed=y.

¹³⁵ Stover and Shigekane, “Exhumation of mass graves,” 85.

¹³⁶ International Committee of the Red Cross, “Missing persons,” <https://www.icrc.org/en/war-and-law/protected-persons/missing-persons>, (accessed 15 September 2019).

¹³⁷ International Commission on Missing Persons (ICMP), “History,” <https://www.icmp.int/about-us/history/> (accessed September 15, 2019).

¹³⁸ International Commission on Missing Persons (ICMP), “Where we work,” <https://www.icmp.int/where-we-work/> (accessed September 15, 2019).

work to an international scale, by conducting investigations in other countries, and offering training and capacity-building to local forensic teams around the world.

Thus, forensic human rights investigations have become the main method used to address disappearances. Whether there is a causal relationship between the development of stronger investigative bodies and powers to address forced disappearance, and the increase in the use of the practice is a task left to other scholars.¹³⁹ However, it is certainly clear that the use of forced disappearance has become a normalized, entrenched part of the toolkit of common human rights abuses throughout the latter half of the 20th century. It seems that the development of norms to prevent and investigate forced disappearance at very least appear to have legitimated the practice as an appropriate method for rights-violating actors (states or otherwise) to cover their tracks and endeavour to circumvent human rights protections.

Forensic human rights investigations build on the principle of being able to identify a disappeared individual, account for what happened to them, and repatriate their remains to their loved ones. This is consistent with principles emerging from international humanitarian laws that developed out of the evolution in military precedents of retrieving war dead in various Western states. In order to retrieve and repatriate soldiers and civilians killed during conflict, their remains must first be able to be individually identified. For example, in addition to the examples of truth commissions and court cases discussed above, it was through forensic methods that the US was able to verify whether remains provided by North Korea in late July 2018 were in fact deceased US soldiers from the Korean War.¹⁴⁰ The second precedent for this norm is from the advent of the international human rights regime, which focuses on human rights violations committed against individual victims. Whether prosecutions of human rights violators are possible in a given context or not, the evidence provided by forensic investigations has the potential to establish the identity of an individual, which is essential for families, and to establish truth.

¹³⁹ See for example, Caroline L. Payne and M. Rodwan Abouharb, "The International Covenant on Civil and Political Rights and the strategic shift to forced disappearance," *Journal of Human Rights* 15, no. 2 (2016): 1-26.

¹⁴⁰ CNBC, "Remains said to be US war dead repatriated from North Korea," 27 July 2018, <https://www.cnbc.com/2018/07/27/remains-said-to-be-us-war-dead-repatriated-from-north-korea.html>.

This second point has a number of implications in terms of defining what “acting appropriately” in this normative framework means. In early scholarly work describing forensic human rights investigations, the investigations were described as requiring scientific rigour in order to be admissible in courts of law.¹⁴¹ Legal justice is promoted, in both the human rights literature and the transitional justice literature as the ultimate way of upholding human rights standards, of deterring future similar crimes, and of achieving justice for victims.¹⁴² Thus, early on, legal justice for the individual was defined as best practice for forensic human rights investigations, and for addressing forced disappearance.

What is interesting, however, is that in parallel with the emphasis on the individual victim, in the case of forced disappearances, there has been an emphasis on the rights of the family to the truth about what happened to their loved ones, to reparations, and to return of the remains of the victim. This, too, emerged out of both the evolution of repatriation of war dead, and the international human rights regime in different ways, but additionally from the tradition of truth-telling and truth commissions from the transitional justice canon. There are very clear tensions between the rights of the individual and the rights of the family that manifest themselves in interesting ways in different cases of disappearance. This will become more evident in the next chapter regarding the interpretation and implementation of these norms on the ground. However, despite the emphasis on the rights of the family, the way the norms surrounding forced disappearance have developed as based on rights violations against an individual has, in large part, afforded power to this medicolegal approach to investigations, and to legal actors in the international sphere. Sometimes, this occurs at the expense of the rights of the family.

However, forensic investigations provide an objective, evidence-based record rooted in scientific practice about what happened to individual victims, or about patterns of rights violations that targeted a particular group. Truth is cited in almost every case of disappearance as very important to the loved ones of a victim. Additionally, a credible historical record is commonly cited as a deterrent to future human rights violations.¹⁴³ As

¹⁴¹ See, for example Stover and Shigekane, “Exhumation of mass graves”; Ferllini, “Development of Human Rights Investigations.”

¹⁴² See, for example Teitel, “Transitional Justice Genealogy.”

¹⁴³ United Nations, Commission on Human Rights, *Study on the Right to the truth: Report to the Office of the United Nations High Commissioner for Human Rights*, E/CN.4/2006/91 (8 February 2006), 6, available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/106/56/PDF/G0610656.pdf?OpenElement>.

truth commissions have become more prevalent around the world, and as the concept of “fake news” has increased calls for the need for non-politicized, evidence-based truth, this has afforded more legitimacy to the scientific investigations performed by forensic experts. This reality gives a very significant amount of power and legitimacy to a set of scientific experts, basically setting themselves up as the keepers of scientific, and therefore, objective truth. This is important to keep in mind, as despite the emphasis on evidence-based truths, even scientific evidence can be subject to political interest.

4.6 Conclusions

In conclusion, this chapter has traced the emergence of three main norms related to forced disappearances: first, forced disappearances are a unique type of crime that must be addressed; second, forensic human rights investigations are the best method to deal with forced disappearances, and; third, forensic human rights investigations should focus on locating, identifying, and repatriating the individual victims of disappearances, and thus emphasize a legal mandate based on collecting evidence for prosecution. The previous three sections have traced key moments in the development of these norms to demonstrate how they have come together. As a result, as this chapter has illustrated, forensic human rights investigations have become the most common method (the norm) for investigating forced disappearances today. As has become evident through this analysis, the norms of investigating forced disappearance have developed from the combination of practices at the local and state level (e.g. divergent approaches to repatriation of remains after war), and international legal and human rights standards.

As Section 4.2 stated, the purpose of using process tracing to map the development of these norms regarding forced disappearance has been to gain a better understanding of why the existing norms have developed in the way that they have into the norms that exist today. Moreover, I suggest that the path that the norms regarding forced disappearance have taken tells us the story of first, the power that inheres these norms, second, the extent to which these norms have constituted the actors of international politics, and third, the regulation of possibilities for acting ‘appropriately’, within this normative framework. And, it further substantiates the idea that norm development, diffusion, and implementation are complex processes.

In other words, as this chapter has demonstrated, the common principles that have emerged over the past century have become the international norms for dealing with forced disappearances. In order to begin examining how these norms translate into practice, the next chapter of this dissertation introduces the background to the case study of this dissertation. This lays the foundation for process tracing of the development and operations of the Independent Commission for the Location of Victims' Remains in subsequent chapters.

Chapter 5: Background to the Troubles in Northern Ireland

As outlined in Chapter 1, there are two overarching research questions for this project. First, do international norms exist regarding forced disappearances and if so, what is their specific content? Second, to what extent do each of these international norms related to forced disappearances contribute to success in dealing with forced disappearances? Chapter 4 examined the first question by establishing the development and diffusion of three norms related to addressing forced disappearances: the first norm is that forced disappearances are a unique type of crime that must be addressed. The second norm is that forensic human rights investigations are the best method to deal with forced disappearances. The third norm is that these forensic human rights investigations should focus on locating, identifying, and repatriating the individual victims of disappearances, and thus emphasize a legal mandate based on collecting evidence for prosecution. The second part of this dissertation, Chapters 6 through 9, uses process tracing to provide an in-depth contextual description and analysis of the case study of the Independent Commission for the Location of Victims' Remains (ICLVR). This chapter provides the background context needed to begin this in-depth analysis.

Between the late 1960s and the early 2000s, Northern Ireland was plagued by violence, referred to as “The Troubles,” due to conflict between British and Protestant unionists or loyalists and Irish and Catholic nationalists or republicans. While the violence was initially conceptualized as a sectarian conflict, from which one can infer that, at some level, there was a religious component to the conflict, most recent scholarship characterizes the conflict as an ethno-national conflict between British and Irish national identities.¹ In fact, while one might expect that religious institutions such as the Catholic and Anglican churches played a significant role during the Troubles, the opposite is the case. Much of the academic work on the Troubles over the past two decades, including this project, “ha[s]

¹ A note here on terminology: I use the terms Catholic and Protestant in order to capture what most understand as the “sides” of the conflict. Those who favoured a united United Kingdom that includes Northern Ireland are referred to as unionists. The more radical version of unionists are loyalists. Those who favoured a united Ireland are referred to as nationalists, the more radical version of nationalists are republicans. Margaret M. Scull, *The Catholic Church and the Northern Ireland Troubles, 1968-1998*, (Oxford: Oxford University Press, 2019), 12.

generally excluded the role of religious institutions.”² It largely seems that while individual religious leaders, especially Catholic priests, played the roles of mediators and negotiators during and after the conflict, the religions institutions such as the Catholic church were not significantly involved. The Troubles were a series of violent confrontations between British military and police forces, loyalist paramilitary groups (the Ulster Volunteer Force, UVF, and the Ulster Defence Association, UDA in particular), and republican paramilitary groups (primarily recognized as various factions of the Irish Republican Army (IRA), but including others). Violence was committed, in large part, through bombings and targeted killings, and resulted in more than 3,500 deaths and more than 40,000 injuries. Approximately 60 percent of casualties were caused by the republican paramilitary groups, 30 percent were caused by loyalist paramilitary groups, and 10 percent were caused by British security forces. Of the deaths resulting from the Troubles, more than half of the victims were civilians.³ Among the casualties of the Troubles, between sixteen and twenty cases of forced disappearances have been identified, for which two republican paramilitary groups, the Irish Republican Army (IRA) and the Irish National Liberation Army (INLA) have acknowledged responsibility.⁴

The origins of the Troubles date to the British colonisation of Ireland, which began in 1536. As with any longstanding conflict, each side has their own unique narrative to justify their beliefs and actions.⁵ Notably in Northern Ireland, despite a formal peace agreement signed in 1998 and cessation of the violence shortly thereafter, many of the divisions that led to the Troubles remain visible today. In order to understand the conflict and peace processes as context for analysis of how forced disappearance has been addressed, the first and second sections of this chapter briefly outline the Catholic nationalist and Protestant unionist narratives and how they contributed to the violence. The third section then examines the central tenets of the 1998 peace agreement and subsequent

² Scull, *The Catholic Church and the Northern Ireland Troubles*, 15.

³ Malcolm Sutton, “An Index of Deaths from the Conflict in Ireland,” <http://cain.ulst.ac.uk/sutton/> (accessed September 24, 2018).

⁴ See WAVE, *The Disappeared*, (WAVE Trauma Centre: Belfast, 2012). The number of victims of forced disappearances that fall under the mandate of the Independent Commission for the Location of Victims’ Remains is officially 16. WAVE cites 17. There are two other victims of alleged forced disappearances that are sometimes attributed to Troubled-related violence, depending on the source. These additional three victims, and their exclusion from the ICLVR, are beyond the scope of this dissertation.

⁵ Kyle Delbyck, “Competing Truths in Northern Ireland,” PhD diss., (Ireland School for International Training, 2007), 3.

transitional justice processes. The fourth section specifically outlines the background of forced disappearances that occurred during the Troubles.

5.1 Catholic nationalism

The Catholic nationalist narrative regarding the Troubles is rooted in the perpetuation of colonial victimization of Catholics by the British government, beginning during the colonisation of the island.

Inequality between Protestants and Catholics in Ireland originates from the policy of English and Scottish settlement carried through by the British Government in the sixteenth and seventeenth centur[ies]... The intention was to secure the loyalty of Ireland, and to promote its economic development by redistributing better land to Protestant settlers from England and Scotland, by driving out the 'mere Irish' to poorer upland or boggy areas, and by excluding them altogether from newly planned towns.⁶

In other words, the British government viewed Ireland as it viewed its other colonies such as Australia, Ghana, India, Canada, and Uganda, among others, seeking to dominate and control those who inhabited the region based on a strategy of oppression, and by prioritizing the social and economic interests of their own settlers over those of the existing population. Moreover, for the Irish, anyone who did not convert to the new state religion (Anglicanism) faced discrimination and violation of their civil rights. Throughout early colonial Ireland, Catholics were prevented from owning land or property, holding certain jobs, and practicing their religion.⁷

The Irish largely resisted domination throughout the colonial era through a series of wars, clashes, and attempted revolts against the British. Though Irish attempts at overthrowing the British failed repeatedly, the combination of Irish protests for Home Rule (1880-1887),⁸ and against conscription in World War I (1914), the failed Easter Rising and the assassination of its leaders after its failure (1916), and increasing violence by the Irish Republican Army (IRA) led to the Irish War of Independence between the British Army and the Irish Republican Army from 1919-1921.⁹ Following a truce in July of 1921, the

⁶ David J. Smith and Gerald Chambers, *Inequality in Northern Ireland*, (Oxford: Clarendon Press, 1991), 1.

⁷ Ibid.

⁸ See for example, James Anderson and Liam O'Dowd, "Imperialism and nationalism: The Home Rule struggle and border creation in Ireland, 1885-1925," *Political Geography* 26, no. 8 (2007): 934-50.

⁹ See for example, Tom Bowden, "The Irish Underground and the War of Independence 1919-21," *Journal of Contemporary History* 8, no. 2 (1973): 3-23.

Anglo-Irish Treaty was signed in December of the same year. This treaty ended British rule over most of Ireland, but partitioned the island into two parts: the primarily Catholic Irish Free State was established as a Dominion of the British Crown in the south; the six counties in the island's north, which contained a significant Protestant majority, voted against joining the Irish Free State and chose to remain under British governance as a territory of Britain. In 1937 the Irish Constitution was adopted and Ireland became an independent state, comprised of only the parts of the island that had joined the Irish Free State, again excluding Northern Ireland.¹⁰

The Irish government rejected the partition of the island on ideological grounds, believing the island should be unified under one, Irish, government. This idea of a unified Ireland under Irish rule was codified into the constitution upon its drafting and remains in the text today. Article 2 reads, "The national territory consists of the whole of Ireland, its islands and the territorial seas."¹¹ This claim suggests that the partition of the island was illegitimate, and claimed unity for the entirety of Ireland. Similarly, Article 3 states, "It is the firm will of the Irish Nation, in harmony and friendship, to unite all the people who share the territory of the island of Ireland, in all the diversity of their identities and traditions, recognising that a united Ireland shall be brought about only by peaceful means with the consent of a majority of the people, democratically expressed, in both jurisdictions in the island."¹²

In Northern Ireland, the historical inequalities and tensions between Protestants and Catholics were exacerbated by partition. These tensions were immediately evident in the city of Belfast. Prior to partition, nearly 100,000 Catholics lived in Belfast. In the weeks following the division, one fifth of this population was forcibly expelled from their homes, and another 10 percent had their employment terminated.¹³ Only homeowners, as opposed to all adults, were eligible to vote in elections, which disproportionately excluded Catholics from voting, as many were not property owners. Moreover, police and military forces were

¹⁰ See for example, Thomas Hennessey, *Dividing Ireland: World War One and Partition*, (Routledge: London, 1998).

¹¹ Constitution of Ireland - Bunreacht NA hÉireann, art 2.

¹² *Ibid.*, art 3.

¹³ Begoña Aretxaga, "Striking with Hunger: Cultural Meanings of Political Violence in Northern Ireland," in *The Violence Within, Cultural & Political Opposition in Divided Nations*, ed. Kay B. Warren (Oxford: Westview Press, 1993), 220.

dominated by British immigrants or Northern Irish people of British descent, leading to brutality and violence against even peaceful Catholic protesters.¹⁴ In essence, “Catholic history in Northern Ireland has often been couched in terms of victimhood. This narrative has been used to identify, locate and evaluate the community vis-à-vis Protestants through recent conflict.”¹⁵

During the mid to late 1960s, Catholic nationalists in Northern Ireland advocated for their civil rights in largely peaceful protests. However, even peaceful protests in the north elicited repression and violence on the part of the British military and police forces. Protesters were supported by the remnants of the IRA, which had split into multiple paramilitary groups who shared the common goal of uniting Ireland under Irish rule, but with diverse methods and levels of tolerance for violence as a strategy of achieving unity. Violence between the protesters, the IRA, British police and military forces, and loyalist paramilitary groups escalated throughout the late 1960s and early 1970s, leading to the bombings, killings, and other modes of violence that became characterized as the Troubles.

5.2 Protestant unionism

Unionism emerged within the settler population that occupied Ireland following colonisation of the island by the British.¹⁶ Unionism, both historically and in the modern era, is rooted in loyalty to the British crown and to the Protestant faith. Unionism is often described as a nationalist ideology rooted in “state patriotism,”¹⁷ affirming the identity of the unified, existing state of Great Britain and Northern Ireland.¹⁸ One of the hallmarks of unionist patriotism is its commemoration of the historical supremacy of the Protestant faith by celebrating the victory of Dutch Protestant King William of Orange over English Catholic King James II in July, 1690. In Northern Ireland, unionists have a tradition of

¹⁴ Aretxaga, “Striking with Hunger, 220.”

¹⁵ Claire Mitchell, “From victims to equals? Catholic responses to political change in Northern Ireland,” *Irish Political Studies* 18, no.1 (2003): 51.

¹⁶ Sammy Smooha, “The Tenability of Partition as a Mode of Conflict Regulation: Comparing Ireland with Palestine – Land of Israel,” in *Northern Ireland and the Divided World*, ed. John McGarry, (New York: Oxford University Press, 2001), 318.

¹⁷ Gerard Delanty, “Negotiating the Peace in Northern Ireland,” *Journal of Peace Research* 32, no. 3 (1995): 258.

¹⁸ *Ibid.*

parading to honour this victory, and their cultural heritage, over the course of several weeks every summer.¹⁹

In addition to their nationalist loyalty to the British crown, and their sense of overarching British identity, the Protestant majority of Northern Ireland has never perceived economic, political, or cultural benefit from unifying Ireland,²⁰ and has continued to view itself as faring better under British rule than as a part of the Irish Republic.²¹ Like Catholic nationalism, the Protestant unionist narrative is rooted in a combination of social, cultural, economic, and political terms. And, the conflict between the two narratives developed in each of these four areas. Loyalism is described as being less focused on maintaining strong ties with Britain as a force of national or cultural identity, and more focused on preserving the Northern Irish State from amalgamation with Ireland.²² “According to veteran loyalist Billy Mitchell, loyalists “didn't have a coherent ideology. Our political analysis was that Ulster was being sold out. ... We knew what we were against, but we didn't know what we were for.”²³ Regardless, more deaths during the conflict have been attributed to loyalist paramilitary groups than to the British security forces that the IRA specifically targeted.

As discussed in the previous section on Catholic nationalism, the institutions and policies of the British government codified discrimination against Catholics into the apparatus of the state. Prior to and during the Troubles, British unionists maintained “a monopoly on power at the level of the regional government... In the civil service, the police and other security forces, the representation of Catholics was very low, and Protestants maintained a substantial advantage over Catholics in terms of jobs and earnings.”²⁴ This suggests that inequality between Protestants and Catholics not only existed in quantitative

¹⁹ See for example “Parading,” The Orange Order <http://www.grandorangelodge.co.uk/parading#.W730SIUzZhE> and “Orange Order parades take place amid violence in Northern Ireland,” *The Guardian*, July 12, 2018, <https://www.theguardian.com/uk-news/2018/jul/12/northern-ireland-orange-order-parades-12-july-amid-violence-belfast-derry>.

²⁰ Antony Alcock, “From Conflict to Agreement in Northern Ireland: Lessons from Europe,” in *Northern Ireland and the Divided World*, ed. John McGarry. (New York: Oxford University Press, 2001), 160.

²¹ John McGarry and Brendan O’Leary, *Explaining Northern Ireland*, (Oxford: Blackwell Publishers, 1995), 121.

²² G. K. Peatling, Unionist Identity, External Perceptions of Northern Ireland, and the Problem of Unionist Legitimacy, *Eire-Ireland* 39, no. 215-216 (2004).

²³ Bill Rolston, “Dealing with the past: Pro-State Paramilitaries, Truth and Transition in Northern Ireland,” *Human Rights Quarterly* 28, no.3 (2006): 659.

²⁴ Smith and Chambers, *Inequality in Northern Ireland*, 10.

terms of unemployment figures and average salary, but also in qualitative terms of type of job and leadership opportunities in society. Poverty and unemployment were thus critical factors ²⁵ which “sustain[ed] support for Loyalist and Republican paramilitary organisations.”²⁶ Initially, unionists rejected the claims that Catholics were being discriminated against. However, as Catholic advocacy for civil rights became more vocal and prominent, unionists “began to frame the debate in terms of a crisis of law and order. As the stability of the state was undermined and it slowly lost control of law and order and was unable to guarantee the safety of its citizens, then the Unionist government came under pressure not only from the Civil Rights Movement but also from its own supporters and a growing number of Unionist challengers.”²⁷

As a result, as Catholic advocacy for civil rights increased over time in Ireland, so too did the defence of unionism. The increase of Catholic protests under the civil rights banner led unionists to feel threatened that nationalists were going to succeed at forcing Northern Ireland out of its union with the British and into a unified Ireland. Moreover, the low birthrate amongst Protestant families and high birthrate amongst Catholic families further heightened the existential threat perceived by unionists: eventually, Catholics would become the majority in Northern Ireland, which would almost certainly lead to reunification of Ireland with the North.

The British state had a desire to maintain the pro-unionist status quo in the governance of Northern Ireland in order to maintain power, influence, and their territory in Northern Ireland, and painted protests and advocacy by Catholic nationalists for their civil rights with the same brush as they did the IRA, which was characterized by the British government as a terrorist organization. The British government used a variety of counterterrorism and counterinsurgency strategies to manage violence committed by the IRA.²⁸ The IRA argued that violence was a necessary tactic to rid the country of the

²⁵ McGarry and O’Leary, *Explaining Northern Ireland*, 288.

²⁶ Sean Byrne, Olga Skarlato, Eyob Fissuh and Cynthia Irvin, “Building Trust and Goodwill in Northern Ireland and the Border Counties: The Impact of Economic Aid on the Peace Process,” *Irish Political Studies* 24, no.3 (2009): 341.

²⁷ Christopher Farrington, “Mobilisation, State Crisis and Counter-Mobilisation: Ulster Unionist Politics and the Outbreak of the Troubles,” *Irish Political Studies* 23, no. 4 (2008): 521.

²⁸ See, for example, Gary Lafree, Laura Dugan, and Raven Korte, “The Impact of British Counterterrorist Strategies on Political Violence in Northern Ireland: Comparing Deterrence and Backlash Models,” *American Society of Criminology* 47 no. 1 (2009): 17-45.

occupying British force, and framed themselves as freedom fighters as opposed to terrorists. As described by Soule, the IRA and other republican paramilitaries and the British government were trapped in a “ritualistic dance of death,”²⁹ whereby the counterterrorist policies implemented by the British state further escalated the violence, both by British forces against Catholic civilians, and by republican paramilitary groups against British forces and also civilians.³⁰ The violence between Protestants and Catholics in Northern Ireland also escalated further as loyalist paramilitary groups such as the Ulster Volunteer Force (UVF), and Ulster Defence Association (UDA) emerged to combat violence committed by republican paramilitary groups with violence of their own against republicans. The UVF and the UDA were known for committing killings and bombings against Catholic civilians as retaliation for similar attacks carried out by the IRA that resulted in deaths and injuries of civilians, either intentionally or as collateral damage.

5.3 Forced disappearances during the Troubles

During the Troubles, forced disappearance was used as a tool of social control, and of dealing with “undesirable” persons or traitors, specifically by the IRA. As in many other cases of forced disappearance, and as is traced in more detail in Chapter 6, advocacy by family members raised the stories of the Disappeared to public and official consciousness.³¹ In 1995, WAVE, one of the prominent victims’ advocacy organizations in Northern Ireland began meeting with the Families of the Disappeared, and concluded that

the issue of The Disappeared was, by and large, hidden and there were multiple levels of silence at all levels in the community. Silence sometimes within the family, silence within the neighbourhood, silence within the church, silence within the community, silence in the work environment, silence at a government level with this silence compounded by an underlying fear which stopped families from speaking out.³²

It is notable in this quote the scope of society and life that are specifically listed as sites of silence regarding disappearances. In essence, the disappearances were not discussed at any

²⁹ John Soule, “Problems in applying counter terrorism to prevent terrorism: Two decades of violence in Northern Ireland reconsidered,” *Studies in Conflict and Terrorism* 12 no. 31 (1989): 31.

³⁰ Lafree, Dugan, and Korte, “The Impact of British Counterterrorist Strategies,” 26.

³¹ Lauren Dempster, “The Republican Movement, ‘Disappearing’ and Framing the Past in Northern Ireland,” *International Journal of Transitional Justice* 10, no. 2 (2016): 5.

³² WAVE, *The Disappeared*, 1.

level of society, even within the family's own home. The silence of the Catholic church on disappearances is notable, in light of the fact that some priests were absolutely aware that the practice was occurring, as is discussed further in Chapter 7. Though it is beyond the scope of this project, it would be interesting in future work to explore the social, cultural, and political reasons for the silence of the Catholic church and its potential implications for families, such as experiences of shame or ostracism within their communities.

In order to bring the issue to the fore and provide support for the families, WAVE began “highlighting the Disappeared as a humanitarian issue and calling for information on the location of the bodies... [They] established a confidential phone line into WAVE [to collect information], undertook meetings with senior political figure[s] in the north and south, conducted media and press briefings, and held a public mass to remember the Disappeared.”³³ While WAVE is typically credited as the central organization advocating for the Disappeared, Alan McBride stated “WAVE started advocacy around the Disappeared, but I consider the Families of the Disappeared as their own group and WAVE is a secretariat to them.”³⁴

The advocacy undertaken by WAVE and several prominent family members of the Disappeared led to domestic and international pressure to locate them, determine the truth about what happened, and return their remains to their families. At first, families were not particularly active, but as their stories gained traction with political leaders, and as more families joined the group, they began to receive responses to their advocacy.³⁵ On Palm Sunday in 1999, a year after the signing of the peace agreement, which is discussed further in Section 5.4, one of factions of the IRA responded to the political pressure and released the names of 10 individuals and the reasons for their disappearance.³⁶ Following the release of these names, the Independent Commission for the Location of Victims' Remains (ICLVR) was established to facilitate the search for the remains of the Disappeared. The ICLVR was created by a treaty between Britain and the Republic of Ireland, with a mandate

³³ WAVE, *The Disappeared*, 1.

³⁴ Alan McBride, Centre Manager, WAVE Trauma Centre Belfast, interview by author, Belfast, June 18th, 2015.

³⁵ *Ibid.*

³⁶ WAVE, *The Disappeared*, 3.

to identify and locate the remains of sixteen individuals who had been disappeared by the Provisional IRA.³⁷

The creation of the ICLVR responded to the advocacy by WAVE and the families of the Disappeared for the need for the truth to be told about what happened to these individuals. By signing the treaty establishing the ICLVR, the governments of the Republic of Ireland and the United Kingdom both officially acknowledged one of the “silences” of the Troubles and committed resources to addressing it. This was precipitated by another official acknowledgement, the acknowledgement on behalf of branches of the IRA that they had been responsible for the circumstances surrounding the disappearances.³⁸

The institutionalisation of the search for the Disappeared through the creation of the ICLVR led to increased resources being devoted to the search on both sides of the border, resulting in the location and exhumation of the remains of 10 of the 16 disappeared persons who fall under the jurisdiction of the ICLVR.³⁹ In order to gain cooperation from and trust of members of the paramilitary organizations with intimate knowledge about the disappearances, one of the conditions of the ICLVR was that any information collected by the commission could not be used in any criminal investigation.⁴⁰ This trade-off is especially significant to note in a context where calls for prosecutions have largely dominated the transitional justice landscape.⁴¹

5.4 Peace but no reconciliation

During the early 1990s, representatives from both sides of the conflict initiated negotiations in search of peace. The general population seemed to have tired of the constant violence, but talks were repeatedly derailed by attacks by paramilitary groups.⁴² Although the IRA

³⁷ Dermot Woods, “Independent Commission for the Location of Victims’ Remains,” *Administration* 61, no.1 (2013): 102-3. A seventeenth individual is considered to be one of the official “disappeared”, and an eighteenth individual, who was disappeared in 2005 allegedly by a loyalist paramilitary group, is often included in media and NGO accounts of Troubles-related disappearances.

³⁸ However, as Dempster (2016) demonstrates, while the IRA and the INLA have taken responsibility for the disappearances of fourteen of the sixteen disappeared, they have also tried to justify the disappearances as understandable within the violent context of the Troubles and state terror committed by the British. As a result, this falls short of complete official acknowledgement of the atrocity.

³⁹ Independent Commission for the Location of Victims Remains, “The Disappeared,” <http://www.iclvr.ie/en/ICLVR/Pages/TheDisappeared> (accessed May 15, 2018).

⁴⁰ Woods, “ICLVR,” 105.

⁴¹ Christine Bell “Dealing with the Past in Northern Ireland,” *Fordham International Law Journal* 26, no. 4 (2003): 1097.

⁴² *Ibid.*, 1099.

and loyalist paramilitaries agreed to a ceasefire in 1994, it was not until four years later, on April 10th, 1998, that the British and Irish governments finally signed the Good Friday Agreement (also known as the Belfast Agreement), later ratified in referenda by both states. The Agreement was a sign of commitment by all state and non-state parties to “exclusively peaceful and democratic means”⁴³ of conflict resolution for Northern Ireland. Moreover, the Agreement committed Northern Ireland to a devolved system of government, which required the sharing of legislative powers between unionist and nationalist political parties.⁴⁴ This political powersharing component of the peace agreement was particularly important to ensure that both unionist and nationalist leaders were given sufficient representation over the governance of the north.

Since the signing of the Belfast/Good Friday Agreement in 1998, and as part of its terms, a variety of transitional justice processes in Northern Ireland have sought to change the dominant narrative of conflict and competing narratives and truths between Catholics and Protestants in Northern Ireland. These have ranged from truth and storytelling initiatives, to political apologies, to financial reparations and disability pensions for injuries and losses during the conflict, to mental health supports for victims and their families, to commemorative monuments and memorials and beyond.⁴⁵

A number of state and non-state organizations, including the governments in Belfast, Dublin, and London, the European Union (EU) and non-governmental organizations have emerged to provide funding and services to those affected by the Troubles. As of 2015, an estimated 4,000 people were actively receiving support from a central victim support organization Victim Support Services funded by the Northern Irish government’s Executive Office, and an additional 12,000 were receiving support from groups recommended by the Commission for Victims and Survivors.⁴⁶ In 2015 Stormont

⁴³ Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, “The Belfast Agreement,” April 10, 1998, 12.

⁴⁴ Ibid.

⁴⁵ Adrian McNamee and Martina McCann, Commission for Victims and Survivors Northern Ireland, interview by author, Belfast, June 4, 2015.

⁴⁶ Ibid.

had earmarked victim support and transitional justice endeavours to the tune of approximately £15 million.⁴⁷

Despite the large commitment of funds to justice, truth and reconciliation initiatives, poverty has been a significant challenge facing Northern Ireland throughout its history, and has acted as a mobilizing force for both parties of the conflict. Throughout the 20th century, and particularly over “the past fifty years, Northern Ireland has had a significantly higher rate of unemployment, from 2 to 5 times higher, than the rest of the United Kingdom.”⁴⁸ By the time the Good Friday Agreement was signed in 1998, marking the official end of the conflict, the demographics of Northern Ireland were nearly evenly split between Catholics and Protestants. According to the 2001 census, 40 percent of the population identified as Catholic, and 46 percent of the population identified as Protestant.⁴⁹ However, this even demographic split was not reflected in the unemployment numbers. With inequity theoretically decreasing following the signing of the Belfast Agreement, in 2001, the unemployment rate amongst Catholics was 11.2 per cent, versus 7.5 per cent amongst Protestants. Although these numbers may seem relatively low, a nearly four per cent difference in unemployment rates between groups is significant in a region as small as Northern Ireland, which as of 2001, had a population of 1.6 million.

As a result of the longstanding social and economic inequities in Northern Ireland, the Belfast/Good Friday Agreement was designed with the principle of equality at its core,⁵⁰ as “the clauses of the Good Friday Agreement connected to equality are clearly intended to adjust the relationship between Catholics and Protestants, nationalists and unionists.”⁵¹ The Belfast/Good Friday Agreement establishes provisions for equality in all facets of society. In the political sphere, the peace agreement outlines an extensive power-sharing system for

⁴⁷Adrian McNamee and Martina McCann, Commission for Victims and Survivors Northern Ireland, interview by author, Belfast, June 4, 2015. Stormont is the devolved legislature of Northern Ireland established by the Belfast/Good Friday Agreement of 1998. For further information, see Jayne McCormack, “Stormont: What is it and why did power-sharing collapse in Northern Ireland?” *BBC News*, January 10, 2020, <https://www.bbc.com/news/uk-northern-ireland-politics-50822912>.

⁴⁸ James Honaker, “Unemployment and Violence in Northern Ireland: a missing data model for ecological inference,” Technical report, Working Paper Presented to QuaSSI, Penn State, 2010, 2.

⁴⁹ Northern Ireland Statistics and Research Agency, “Census 2001: Population Report and Mid-Year Estimates,”

www.nisranew.nisra.gov.uk/census/Census2001Output/PopulationReport/populationreport1.html.

⁵⁰ Katy Hayward and Claire Mitchell, “Discourses of equality in post-Agreement Northern Ireland,” *Irish Political Studies* 9, no.3 (2003): 296.

⁵¹ *Ibid.*

equality in parliament.⁵² The Agreement's social and economic provisions are decidedly less thorough; however, the Agreement does suggest implementing "a range of measures aimed at combating unemployment and progressively eliminating the differential in unemployment rates between the two communities by targeting objective need."⁵³ However, while these provisions to address historical inequalities in access to jobs, education, and housing, all of which contributed to poverty in Catholic communities, have been celebrated by Catholics, they have been poorly received by Protestants. This reception by Protestants is not surprising, as in large part "perceptions of gain and loss tend to be relative and relational,"⁵⁴ meaning that access to more resources for Catholics creates a perception that there is less remaining for Protestants.

As a result, a new narrative of victimization has emerged, especially in low-income Protestant communities. Hayward and Mitchell illustrate this new narrative in their discussion about one interviewee's response to transitional justice processes of equality, describing the individual's response as highlighting "fear of ethnic cleansing is one reason he opposes [integration and equality processes]."⁵⁵ This type of response is not atypical among Protestants. Due to declining Protestant fertility and birth rates, increasing Protestant emigration, and a relative increase in the Catholic population, many Protestants continue to believe that they will soon become a minority in Northern Ireland and subject to the whims of the Catholic population.⁵⁶ Thus, "[f]or a large number, equality is perceived as a threat, economically and culturally."⁵⁷ These types of statements are creating a new narrative of victimization among the Irish Protestants, who see themselves as being threatened by an unfriendly emerging majority who are also being afforded privileges by the peace agreement.

This narrative also reinforces the existing division between the communities. This new narrative is particularly problematic from a socioeconomic standpoint as such divisions are disproportionately reflected in the most impoverished communities. Whereas in Northern Ireland today "middle-class people often live in integrated housing, and in a

⁵² Belfast/Good Friday Agreement, 7-14.

⁵³ *Ibid.*, 24.

⁵⁴ Hayward and Mitchell, "Discourses of equality," 303.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

variety of ways their ethnic tradition has probably come to assume much less importance for them than for working-class people,”⁵⁸ the most impoverished individuals remain the most segregated, and the most likely to engage in sectarian violence. Periods of increased poverty and unemployment in Northern Ireland are correlated with an increase in civilian murders during the same period in both Protestant and Catholic communities.⁵⁹ While Northern Ireland is largely peaceful today, riots in June of 2011 occurred in divided East Belfast, one of the poorest regions of the United Kingdom. Moreover, violence tends to recur during unionist parading season each June and July.

Protestants also tend to oppose the Catholic narrative, as it validates the historical narrative of Catholic victimization at the hands of Protestants. Conversely, the unionist narrative during the Troubles characterized Catholic nationalists not as a dominated minority fighting for civil rights, but instead as a terrorist group responsible for killing more innocent civilians, including women and children, than any other group during the conflict.⁶⁰ This characterization of the conflict is also founded in fact, as republican paramilitary groups such as the Irish Republican Army (IRA) were responsible for approximately 58 per cent of deaths in conflict between 1969 and 2001.⁶¹ Thus, for many Protestants, especially those who were injured, or who lost family or friends at the hands of republican paramilitary groups during the conflict, validation of the Catholic narrative of inequality is unacceptable. Moreover, it prioritizes the narrative and the suffering of one group over the suffering of the other, solidifying the divisions between groups.

However, despite the emergence of what has been referred to as an “industry of transitional justice”⁶² in Northern Ireland, bridging the diverse narratives between Catholics and Protestants has been a difficult endeavor that has been largely unsuccessful. While violence has ceased, there has been little progress on the front of creating a more robust, sustainable peace. As Sara Templer from Victim and Survivor Services described,

⁵⁸ Smith and Chambers, *Inequality in Northern Ireland*, 374.

⁵⁹ Honaker, “Unemployment and Violence,” 24.

⁶⁰ Claire Hackett and Bill Rolston, “The burden of memory: Victims, storytelling and resistance in Northern Ireland,” *Memory Studies* 2, no.3 (2009): 366.

⁶¹ Malcolm Sutton, “An Index of Deaths from the Conflict in Ireland,” <http://cain.ulst.ac.uk/sutton/> (accessed September 24, 2018).

⁶² Anonymous, interview by author, Belfast, June 21, 2015. This interview has been anonymized at the request of the interviewee.

“[the] violently bereaved still feel unjust because the injustice was never resolved.”⁶³ And the diverging Protestant and Catholic narratives regarding the history of Northern Ireland and the victimization of their respective communities perpetuate this feeling of injustice. Despite transitional justice initiatives on all sides of the conflict, spearheaded and funded by a range of actors, from paramilitary groups to the state to the European Union, reconciliation has not been achieved.

5.4.1 Twenty-two years after the peace agreement

As this section has demonstrated, transitional justice and peacebuilding processes in Northern Ireland, have been extensive since the signing of the formal peace agreement in 1998. These mechanisms and strategies have included victims’ services and formal apologies from government, affirmative action programs to rectify historical injustices, trials, and grassroots commemorative initiatives, among others. However, despite these extensive attempts at moving beyond the Troubles, and more than two decades of peace, Northern Ireland remains divided. Loyalists continue to march every summer to commemorate the defeat of the Catholic King James VII by Protestant King William III of Orange at the Battle of the Boyne in 1690. Although the season is perceived by Protestants as a celebration of unionism, it is perceived as threatening to the Catholic community. Marching season is often plagued with riots and attacks on police, and this continued during the last marching season in July 2019.⁶⁴ On the other side, in April 2019, freelance journalist Lyra McKee was killed by a member of the new IRA during riots in Derry on April 18, 2019 prior to a parade commemorating the 1916 Easter Rising.⁶⁵ While the violence is certainly subdued compared to levels seen during the Troubles, in some cases it continues.

⁶³ Sarah Templer, Victim and Survivor Service, interview by author, Belfast, Northern Ireland, June 16, 2015.

⁶⁴ Rory Carroll, “Belfast bonfire goes ahead after clashes between youths and police,” *The Guardian*, 9 Aug. 2019, <https://www.theguardian.com/uk-news/2019/aug/08/mob-attacks-belfast-riot-police-in-stand-off-over-republican-bonfire>, (accessed Sept. 15 2019).

⁶⁵ Laura McDaid, “Lyra McKee: Murdered Belfast journalist ‘committed to truth’,” *BBC News*, 19 April 2019, <https://www.bbc.com/news/uk-northern-ireland-47987807> (accessed 15 September 2019).

5.4 Conclusions

In conclusion, this chapter has outlined the diverging Catholic and Protestant narratives that can be traced from colonisation and led to the Troubles in modern Northern Ireland. It also provided a brief discussion of forced disappearances that resulted from the conflict. Finally, it discussed the peace process and the continuing prevalence of the two narratives throughout the post-conflict era, including the political apologies related to colonisation of Ireland and the Troubles, and where peace and reconciliation have arrived, twenty-two years after the signing of the Belfast/Good Friday Agreement. This chapter has provided essential context for the subsequent chapters, which analyze how the forced disappearances have been addressed within the broader landscape of transitional justice in Northern Ireland. Chapter 6 begins this analysis by using process tracing to examine the development of the Independent Commission for the Location of Victims' Remains.

Chapter 6: The Development of the ICLVR

This chapter continues the in-depth case study of the Irish case and the ICLVR to examine whether and how the international norms related to forced disappearances explain the success of the ICLVR. This chapter begins to answer this project's second research question: to what extent do each of these international norms related to forced disappearances contribute to success in dealing with forced disappearances? In this chapter and Chapter 7, I use process tracing to examine the development and operations of the Independent Commission for the Location of Victims' Remains (ICLVR), letting the data and analysis garnered through interviews and process tracing to speak for themselves.

In this chapter, process tracing is used to examine how the ICLVR emerged as the mechanism to investigate forced disappearances from the Troubles in Northern Ireland. As discussed in Chapter 3, process tracing uses "evidence from within a case to make inferences about causal explanations of that case."¹ The development of the ICLVR involved the interpretation and implementation of the international norms discussed in Chapter 4. However, as was argued in the literature review in Chapter 2, the interpretation and implementation of international norms regarding forced disappearance also depends heavily on the mutual constitution of structures and actors in each context. Process tracing is thus an ideal methodology to explore how these contextual structures and actors shape and reshape the norms for use in this case study.

There are four parts of the development of the ICLVR traced throughout this chapter. First, family members of the Disappeared began to speak about their experiences and their missing loved ones. Second, the plight of the families and the need to investigate the forced disappearances were taken up by key civil society and political actors, who helped the families to advocate for themselves and assisted in promoting the issues to key political actors (state and non-state) who were in the positions of power that allowed them to act. Third, the IRA acknowledged their role in forced disappearances, released the names of some of the victims, and apologized for the harms they caused. Fourth, following this acknowledgement of responsibility, politicians developed and passed legislation designed to address the needs of the families of the victims.

¹ Andrew Bennett and Jeffrey T. Checkel (eds.), "Introduction," in *Process Tracing: From Metaphor to Analytical Tool* (Cambridge, U.K.: Cambridge University Press, 2015), 4.

This chapter makes several arguments about the development of the ICLVR that will ultimately be linked to its success in analysis in subsequent chapters. First, two foundational principles were codified into the ICLVR's mandate: the focus on humanitarian principles of healing for the families, and; the upholding of the principle of non-prosecution of those who provided information leading to the identification and return of remains to the families. Second, these two foundational principles originated from the needs expressed by family members of the disappeared and can be traced through the Commission's development to the advocacy of family members, and of the other norm entrepreneurs who advocated for their cause. Third, these ideas remained intact as the legislation was passed through two state legislatures, due to the commitment of political actors to these key principles. This commitment was demonstrated by political action on all sides, including the British and Irish governments, and the IRA. Ultimately, without the actions and advocacy of all four sets of norm entrepreneurs, the ICLVR might never have been formed, and certainly would not have developed into the strong humanitarian institution that exists today. The process that ultimately created the unique institution of the ICLVR is revealed below.

6.1 Advocacy by family members of the Disappeared

Both prior to and following the signing of the Belfast/Good Friday Agreement, family members of the Disappeared, especially their mothers and widows, were the first to begin advocating for and discussing the continued lack of answers regarding their lost loved ones. According to Peter Jones, the Irish Government's representative to the ICLVR,

There were some very active families, as I understand it, at that time, who were raising the issue. Victims' issues were obviously a major strand of the talks of the negotiation of the Good Friday Agreement. There was a particular reference of that group of people who became known as the Disappeared. Individuals who were murdered in secret, buried in secret. The most well-known one at the time was Jean McConville.²

While Jean McConville, as the only woman acknowledged to have been disappeared by the IRA, may be the most recognized name, 15 other families lost loved ones who fall under

² Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 16, 2017.

the mandate of the ICLVR. As was recounted to the Irish Times, Margaret McKinney, whose son Brian was one of the Disappeared, approached Sandra Peake from the victims' support organization WAVE Trauma Centre in 1995.³ McKinney approached WAVE for assistance in advocating for information about the whereabouts of her missing son Brian, who disappeared in 1978 at age 22, along with his friend John McClory, who was 18 at the time of his disappearance.

Peake recounts,

When I met Mags [McKinney], I was struck by her tremendous courage given all that she had faced and also her sense of longing for the opportunity to bring Brian home for Christian burial... we started on a journey of working together to highlight her son's case. Over time I met with all of the other Families of the Disappeared and this started a process of solidarity and strength as they worked together in a very powerful way.⁴

From the next component of Peake's narrative, it is clear that, especially early on, work with the families occurred in a piecemeal way, and that family members, mothers especially, were extremely reluctant to reveal their experiences. As was discussed more generally regarding the tactics of forced disappearances in Chapters 4, this is due to the fact that fear was used to silence the families of the Disappeared.

WAVE's 2012 publication regarding the Disappeared described how "isolation was a major difficulty. The families were told through both veiled and overt threats, not to ask questions or seek information. This intimidation also extended to those in local communities who might have been inclined to help."⁵ It also emphasized its efforts to support the family members of the Disappeared, stating, "WAVE provided a sense of safety for families and this was crucial in relation to how we worked together."⁶

Subsequent to meeting McKinney, Peake met Kathleen Armstrong and Mary Evans, the mothers of Charlie Armstrong and Gary Evans, and the list of the Disappeared increased from two individuals to four, and eventually, to the 16 cases that were listed under the ICLVR's remit. Peake noted that initially, Kathleen and Mary were only comfortable

³ Claire Simpson, "'Inspirational' Disappeared campaigner Margaret McKinney dies at 85," *The Irish News*, February 2, 2017, <http://www.irishnews.com/news/2017/02/02/news/-inspirational-disappeared-campaigner-margaret-mckinney-dies-916491/>.

⁴ WAVE, *The Disappeared of Northern Ireland's Troubles*, (Belfast, WAVE Trauma Centre, 2012), 1.

⁵ *Ibid.*, 1-2.

⁶ *Ibid.*

discussing the disappearances when they attended Sunday mass, as their church was a place these women felt safe.⁷ This willingness to discuss their sons' disappearances only in church, which was their place of refuge, provides further credence to the sense of fear many families continued to feel regarding the disappearances of their loved ones. This fear stems from the fact, as discussed in Chapter 4, many family members of victims of disappearances, including those in Northern Ireland, have been threatened by perpetrators that they will be in danger if they speak about their missing loved ones.

In contrast to Peake's narrative that she and Margaret McKinney were the first to meet, and that this meeting led to the formal establishment of the Families of the Disappeared and the involvement of WAVE, a 1995 article from the Irish Times indicates that The Families of the Disappeared was actually established by Seamus McKendry, the son-in-law of Jean McConville. The article indicates that Mr. McKendry set up and was the first spokesperson for the Families of the Disappeared,⁸ "inspired by the continued grief of his wife Helen, whose mother Jean McConville, disappeared 23 years [prior]."⁹ This is important because it calls into question whether the standard narrative regarding the establishment of the Families of the Disappeared as a formal advocacy group, and the partnership between WAVE and the families from the beginning, is accurate. However, none of the literature or media coverage seems to dig any deeper into this discrepancy, and it was not something that the interviews conducted for this dissertation were able to clarify. The discrepancy may not be relevant and can arguably be attributed to the passage of time and faulty memories. However, as it was a discrepancy identified but not resolved through the process tracing, it is important to note.

In this article, which covered the first press conference for the Families of the Disappeared in 1995, McKendry and his wife were joined by Margaret McKinney and her husband William, and by Mary McClory, the mother of John McClory, who disappeared at the same time as Brian McKinney. WAVE was not mentioned in this article, which calls into question at what exact point their involvement with the Families of the Disappeared

⁷ WAVE, *The Disappeared of Northern Ireland's Troubles*, 2.

⁸ As in Chapter 4, the use of the 'Families of the Disappeared' indicates the name of the formalized group of families. The lower-case 'families of the disappeared' is used to describe families of victims of forced disappearance more generally.

⁹ Gerry Moriarty, "IRA victims campaign stepped up," *The Irish Times*, June 27, 1995, 5.

began. The group was said to have “urged the public to wear sky-blue ribbons on their lapels as a gesture of solidarity with the suffering families, and as a means of putting pressure on the republican movement to reveal where the bodies of missing are located.”¹⁰ Seamus McKendry is further quoted as saying that “even hardline republicans tell us we are doing the right thing in highlighting this issue. They realize that even if it causes the IRA embarrassment this issue must be resolved.”¹¹ In 1998, Helen McKendry was again quoted in the *Irish Times*, stating “the recovery of her mother's body and a civilised funeral would make an enormous difference’ to her. ‘My life has been on hold from that day to this,’ she said.”¹²

In total, at the time of the 1995 press conference, the Families of the Disappeared were calling for the return of nine individuals: McClory, McConville, McKinney, John McLlroy and Seamus Wright from East Belfast, who disappeared together in 1974; Columba McVeigh, who disappeared from Dungannon in 1977; Robert Nairac, an undercover British soldier who also disappeared in 1977 but from South Armagh; and Gerald Evans and Anthony Armstrong from Armagh who disappeared in 1979 and 1980, respectively. When the IRA eventually released a first list of individuals they had kidnapped and murdered, five of these nine names were on it, which demonstrates the power that the family members of the Disappeared had as norm entrepreneurs to rally support and lobby for their cause early on in the campaign. They compelled the IRA to add names to the list and acknowledge their crimes.

The advocacy by family members of the Disappeared was essential to elicit an official response to the issue of forced disappearances during the Troubles. These family members demonstrated considerable courage in their willingness to speak, when, by all accounts for decades they were misled by false information, told their loved ones were alive but had run away, and were threatened with violence if they broke their silence. However, despite the risks, they were willing to speak. While, as noted in Chapter 3, I did not speak directly to the families of the Disappeared for this project, it is possible to clearly trace the

¹⁰ Moriarty, “IRA victims campaign stepped up,” 1.

¹¹ *Ibid.*, 5.

¹² Maol Muire Tynan, “After 25 years, hoping to bury her mother at last,” *The Irish Times*, June 26, 1998, 9.

fact that this essential advocacy that drove the establishment of the ICLVR was initiated and led by the mothers and widows of the Disappeared.

It is important to acknowledge here that advocacy by families of victims of forced disappearance, and especially by mothers of the disappeared is not unique to the Irish context, as it has also been prevalent in other cases of disappearances around the world. In Argentina, for example, the Mothers of the Disappeared are globally recognized as the face of the human rights movement in Argentina. Beginning in the late 1970s, the mothers would gather, despite threats to their own safety by the still ruling military *junta* to advocate for answers about the whereabouts of their children.¹³ While the *Madres* in Argentina have since divided into two advocacy groups with different goals and tactics, some mothers remain active protestors and advocates at the time of writing in 2020. Similarly, in Sri Lanka, members of a group called the Mothers of the Disappeared have faced increased surveillance and intimidation from government forces for their continued participation in advocacy for answers about the disappearances of their children.¹⁴ These are but two of the many examples of successful advocacy conducted by families of the disappeared.

Feminist scholars and journalists have begun to interrogate the role of maternal activism in combatting injustice and in civil rights and human rights movements across the globe.¹⁵ In addition to advocacy to locate victims of disappearances, this has included but is by no means limited to the advocacy of black mothers as part of the Black Lives Matter movement, due to the high number of deaths of black people in encounters with law enforcement and armed citizens,¹⁶ and the Mothers of Srebrenica, who have advocated

¹³ See, for example, Jo Fisher, *Mothers of the Disappeared*, (Boston: South End Press, 1995) and Fernando J. Bosco, "Human rights politics and scaled performances of memory: conflicts among the *Madres de Plaza de Mayo* in Argentina," *Social and Cultural Geography* 3, no. 5 (2006): 390, <https://doi.org/10.1080/1464936042000252787>.

¹⁴ Human Rights Watch, "Sri Lanka: Families of 'Disappeared' Threatened," February 16, 2020, accessed Aug. 27, 2020, <https://www.hrw.org/news/2020/02/16/sri-lanka-families-disappeared-threatened>.

¹⁵ I am using "maternal activism" here more broadly than just mothers, but also widows, sisters, and other family members. For examples of advocacy specifically by mothers, see Julia Barajas, "From Portland to Buenos Aires, mothers unite in protests," *Los Angeles Times*, July 23, 2020, accessed Aug. 27, 2020, <https://www.latimes.com/world-nation/story/2020-07-23/worldwide-mothers-protests-against-sensed-injustice>.

¹⁶ Erica S. Lawson, "Bereaved Black Mothers and Maternal Activism in the Racial State," *Feminist Studies* 44 no. 3 (2018): 713-35.

against genocide denial in the Balkans.¹⁷ Exploring the role of women, broadly, and family members including widows, sisters, and mothers, specifically, in conducting this type of advocacy is essential to understanding its success. As I argue in Chapter 9, the ICLVR would not be nearly as successful a mechanism of addressing forced disappearances in the absence of the advocacy conducted by the families of the Disappeared, broadly, and by the mothers and widows of the disappeared, who seem, based on the account I traced above, to have been at the forefront of this advocacy.

6.2 Other norm entrepreneurs

As outlined in Chapter 2, in the international norms literature, norm entrepreneurs are defined as individuals and organizations that promote and advance the development and acceptance of a norm.¹⁸ The role of the norm entrepreneurs in the inception of the ICLVR has stood out as being particularly important. And, in the Irish context, in which the number of disappeared was quite small, and the area itself was quite small, particular names have stood out in the literature, in the media coverage, and in the interviews conducted for this project. As demonstrated in the previous section, family members of the Disappeared were the first norm entrepreneurs in the Irish case. In addition, and as this section outlines, there are three other relevant norm entrepreneurs to the cause of forced disappearances: WAVE Trauma Centre and specifically its CEO Sandra Peake, United States President Bill Clinton, and *Sinn Fein* leader Gerry Adams.

6.2.1 WAVE Trauma Centre and Sandra Peake

Each person interviewed for this project credited the ICLVR's inception to the aforementioned advocacy by family members of the Disappeared. At the same time, they also emphasized the importance of the symbiotic relationship between the families of the Disappeared and WAVE Trauma Centre (commonly referred to as WAVE), the civil

¹⁷ Jasmin Hasić, Dženeta Karabegović, Bisera Turković, "Locally Embedded Civil Society Organizations and Public Diplomacy: the Advocacy Roles of the "Mothers of Srebrenica" in Promoting a Culture of Remembrance," *Studies of Transition States and Societies*, 12 no. 2 (2020), <http://publications.tlu.ee/index.php/stss/article/view/907>.

¹⁸ See, for example, Mona Lena Krook and Jacqui True, "Rethinking the life cycles of international norms: The United Nations and the global promotion of gender equality," *European Journal of International Relations* 18, no. 1 (2012): 103-127; and Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics," *International Organization* 52, no. 4 (1998) 887-917.

society organization that provided support to the families and acted as a norm entrepreneur on their behalf. WAVE is a victim support organization founded by widows of Troubles victims that has operated in Northern Ireland since 1991. Its mandate is described on the organization's website as "a grass roots, cross community, voluntary organisation formed in 1991 to support people bereaved of a spouse as a result of violence in Northern Ireland. It was expanded later to incorporate the needs of children and young people and anyone injured or traumatised through 'the Troubles.'"¹⁹ WAVE, which has expanded from its initial single site to five locations throughout Northern Ireland,²⁰ has always been a key organization for victim support and reconciliation. It was established while the conflict was still active, and provided support to the bereaved across communities, a unique setup in a society heavily divided along sectarian lines. In addition to providing support to those traumatized by the conflict, WAVE also emphasizes reconciliation and promotes "creative ways of working through issues that have the potential to divide."²¹

As discussed in the previous section, there are somewhat contradictory narratives regarding the beginning of WAVE's involvement with the families of the Disappeared. Nevertheless, what is clear is that WAVE became involved with the families very early in the process, supporting and promoting family advocacy regarding their missing loved ones. The Disappeared are one of WAVE's main advocacy campaigns.²² Moreover, Sandra Peake, who was discussed in the previous section, is cited as the driving force behind the organization of the families of the Disappeared and their work with WAVE. As Irish ICLVR Commissioner Frank Murray described, "Sandra is what they call a walking saint. I couldn't speak too highly of her and for her commitment and dedication to the relatives and helping them as a collective organization. She's the CEO, the chief web everything. She runs a fabulous support group afforded to relatives. And she has a very humanitarian approach."²³ Sandra Peake and WAVE have continued to champion the Disappeared and

¹⁹ WAVE "About WAVE Trauma Centre," accessed June 16, 2019, <http://www.wavetraumacentre.org.uk/about-us>.

²⁰ Alan McBride, Centre Manager, WAVE Trauma Centre Belfast, interview by author, Belfast, June 18th, 2015.

²¹ Peace Insight, "WAVE Trauma Centre," last updated December 2018, accessed July 5, 2019.

²² Alan McBride, Centre Manager, WAVE Trauma Centre Belfast, interview by author, Belfast, June 18th, 2015.

²³ Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains, and Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 31, 2017.

their families. As is discussed further in the subsequent section on the ICLVR's operations, WAVE set up a confidential phone line to collect tips regarding the whereabouts of bodies of the Disappeared.²⁴ The phone line led to the first big breakthrough in locating remains of the Disappeared in 1998, when "a male caller gave the location [of the remains of John McClory and Brian McKinney] to the bereavement counseling group Wave."²⁵

WAVE was also commended during the debates in the House of Commons regarding the establishment of the ICLVR. Then-Parliamentary Under-Secretary of State for Northern Ireland, Mr. John McFall, began his commentary on the proposed legislation, stating,

I share in the moving tributes that have been paid to the families of "The Disappeared". Several hon. Members referred to some of the families who were in the House today. Members on both sides of the House met members of those families. Margaret McKinney, whose son Brian was killed, was in the House today, as was Anna Macshane, whose father, Charles Armstrong, was abducted from Crossmaglen. One group has not been mentioned today, but it deserves to be recorded – WAVE, or Widows Against Violence Empowered. Members of that group have played a positive and constructive role – they were represented here today by Sandra Peake, and I pay tribute to them.²⁶

WAVE's role evolved further, and the group is now described as acting as the liaison between the Commission and the families. WAVE continues to host quarterly meetings with the ICLVR for family members to receive the most up to date information, and be able to ask questions.²⁷ WAVE also organizes events to continue their advocacy on behalf of the families. Every year on Palm Sunday, WAVE organizes a public mass to "highlight those who are still missing, and to add a further plea for help to resolve the plight of the families concerned."²⁸ They also hold an annual memorial walk on All Souls Day

²⁴ WAVE, "The Disappeared", 3.

²⁵ Gerry Moriarty, "RUC to resume search at housing estate for bodies of two men killed by IRA," *The Irish Times*, December 21, 1998, 1.

²⁶ United Kingdom, *Hansard Parliamentary Debates*, HC vol. 331, c. 77 (10 May 1999). An additional note, upon its inception in the 1990s, WAVE was an acronym for Widows Against Violence Empowered, referring to the organization's founding by widows of Troubles violence. While WAVE's official name no longer references its original name, its inception as a feminist organization and an example of the organizing of women across communities during the Troubles remains significant to its work and mandate of supporting victims.

²⁷ Geoff Knupfer, Lead Investigator, Independent Commission for the Location of Victims' Remains, interview by author, Dundalk, Ireland, April 4, 2017.

²⁸ WAVE, "Families of the Disappeared," accessed Feb. 16, 2019, <http://www.wavetraumacentre.org.uk/campaigns/families-of-the-disappeared>.

(November 2nd) with the Families of the Disappeared at Stormont, the site of parliament in Northern Ireland. The walk is silent, to symbolise their ongoing plight of the families. “A black wreath [that] encompasses white lilies to symbolise those still missing,”²⁹ is laid in memory to the Disappeared.

Similar to comments regarding Sandra Peake, the depiction of WAVE in the media, and in the interviews with individuals involved with the Commission, are overwhelmingly positive. As was noted in the previous section, however, some family members of the Disappeared have disagreed with the general narrative regarding WAVE’s involvement with families of the Disappeared. As expert on the Commission Lauren Dempster described, “Although Seamus McKendry suggests he instigated the process of contacting families [in the 1990s], a point supported by John McClory’s sister, Eileen, others say that it was WAVE that began contacting the families. The reason for this disparity is unclear. What can be said is that the McKendrys and WAVE have each played a significant part in this process.”³⁰ It is unclear if the differences in perspectives regarding WAVE are simply due to faulty individual memories, individual opinions, or whether there is a more significant reason for the differences that would be significant to the process tracing related to the development of the ICLVR, such as infighting or major differences in perspective between the different families, or between WAVE and the families of the Disappeared. However, as indicated above, none of the background research, media analysis, or interviews, were able to provide any additional clarity on this subject. This is important to note because the role of these two groups as norm entrepreneurs is largely considered one and the same by the existing academic literature and media coverage of the Disappeared. It is not possible, based on this research, to disaggregate the extent to which the ideas of family members were taken up by WAVE, or by contrast, the extent to which WAVE shaped the perspectives of family members.

What is important to note is that differences in perspectives amongst family members of victims of forced disappearances are not unique to the Irish case. One key example of this involves the Mothers of the Disappeared in Argentina. In Argentina, mothers of victims of disappearances have been instrumental in other cases in conducting

²⁹ WAVE, “Families of the Disappeared.”

³⁰ Lauren Dempster, “The ‘Disappeared’ and the Past in Northern Ireland,” (Doctoral diss., Queen’s University Belfast, 2015), 150.

advocacy to locate the remains of their loved ones and encourage the truth about what happened to them to become public knowledge. In Argentina, the initially united social movement the *Madres de la Plaza de Mayo*, known in English as the Mothers of the Disappeared, eventually divided into two factions due to differences in how different mothers felt about the balance between remembering their missing children and advocating for changes in the government on behalf of their disappeared children. The mothers who spearheaded *Madres-Línea Fundadora*, the original group of Mothers of the Disappeared in Argentina, continue to advocate for the identification of individual victims who were disappeared by the state. They work to create sites of memory in the forms of monuments that list the names of disappeared individuals to memorialize those who were killed by the state.³¹ By contrast, the *Asociación Madres*, a more recent offshoot of the original group of the Mothers of the Disappeared, mourns their children by creating sites of memory where they can share their own experiences with subsequent generations. They “reject strategies for memory and commemoration that include representations of the disappeared as dead or as individuals. As a result, they no longer set up temporary memorials with pictures.”³² Instead of mourning individuals, this group memorializes the totality of experiences and all of the people who were lost during the Dirty War, as opposed to the stories of specific individuals.

As both the Irish and the Argentinian cases highlight, the families of victims of forced disappearances themselves are also norm entrepreneurs. Without their advocacy, forced disappearances in Northern Ireland likely would not have become an issue in the public consciousness, let alone to the extent of a Commission being developed to address it. Throughout the Troubles, as with family experiences in other cases, families of the Disappeared were socialized not to speak about the loss of their loved ones, through the double strategy of fear and social control that forced disappearances are used to achieve. What appears to be a simple act of speaking about disappearances is in fact a powerful step on behalf of family members.

³¹ Fernando J. Bosco, “Human rights politics and scaled performances of memory: conflicts among the *Madres de Plaza de Mayo* in Argentina,” *Social and Cultural Geography* 3, no. 5 (2006): 390, <https://doi.org/10.1080/1464936042000252787>.

³² Bosco, “Human rights politics,” 390.

The partnership between the families and WAVE is important, and one cannot be discussed without referring to the other, as they have become so interlinked over the past two decades. Among the families of the Disappeared, both those who were active members of the formal group through WAVE, and those who were not, a few names are consistently quoted in media coverage. Margaret McKinney, who was among the first to recover the remains of her son, remained involved with the families of the Disappeared until her death in February 2017, supporting other mothers who had lost their children. An obituary in the *Irish News* explained her extensive involvement with the group, quoting other norm entrepreneurs including Sandra Peake and Commissioner Kenneth Bloomfield. “In the coverage, Peake described McKinney as a “truly remarkable woman who was instrumental in bringing the issue of the Disappeared from the silent fringes into the peace process itself. Speaking out against the IRA was dangerous but Mags showed no concern for her personal safety and vowed never to give up until [her son] was returned to her.”³³

In the late 1990s, the advocacy from WAVE with, and on behalf of the families, began to gain traction, both within Northern Ireland, and beyond. Sandra Peake explained to the *Irish Times* in 2012, “Brian McKinney's mother, Margaret, came to me in 1995 and introduced me to some of the families and we started to organise things. The turning point was in 1998 when Margaret went to the White House and met the [P]resident Clinton. Within a year, she had met Gerry Adams and the commission was set up.”³⁴ This description highlights what was arguably the most significant moment of the advocacy to-date for the families, and for WAVE. In 1998, a small group of mothers of the Disappeared, accompanied and supported by WAVE, traveled to the United States, and were able to schedule a meeting with the then-President, Bill Clinton, who subsequently became another significant norm entrepreneur for the plight of the families of the Disappeared, and in the establishment of the ICLVR.

6.2.2 *United States President Bill Clinton*

President Clinton had already taken an active role in Northern Ireland throughout the latter half of the 1990s by promoting peace and encouraging the ceasefire between the IRA and

³³ Simpson, “McKinney dies at 85.”

³⁴ Susan McKay, “They might as well have taken my mother too. She was never right after that” *The Irish Times*, April 23, 2012, 7.

loyalists, to a fulsome peace process. Clinton's active interest and involvement in Northern Ireland was a departure from the historic approach of the United States (US) towards the Troubles since the 1960s. Previous American foreign policy towards Northern Ireland had been largely indifferent, with the sense that US Presidents had viewed the conflict in Northern Ireland as a problem internal to the United Kingdom.³⁵ The special relationship between the UK and the US during the Cold War further perpetuated the lack of intervention by the US into an internal affair with an important ally.³⁶ This is in spite of the fact that the Irish diaspora in the United States were powerful advocates for Irish nationalism, and key financial contributors to the conflict throughout the Troubles.³⁷ As MacGinty describes, "This is not to say that there were no US interventions in Northern Ireland before the Clinton administration. Previous interventions were never as sustained or effective, however."³⁸

Various scholars and analysts of US foreign policy have considered Clinton's motivations for an increased involvement in Northern Ireland. MacGinty presents a succinct summary of much of this work, stating, "Clinton did have a genuine interest in the issue, but that it could also be placed in the wider spectrum of his foreign policy goals."³⁹ Clinton's personal interest in Northern Ireland is cited as being inspired by his own civil rights convictions.⁴⁰ Clinton himself made this direct link between the fight for civil rights in the US and the Northern Irish Troubles in a speech during his historic visit to Belfast in November of 1995. Clinton recalled the American Civil War and made parallels between its aftermath, and the aftermath of the Troubles.

'We have all done wrong,' Clinton said, quoting a speech the earlier Arkansas governor gave to his constituents, who had been split between the two sides.

³⁵ Roger MacGinty, "American Influences on the Northern Ireland Peace Process," *Journal of Conflict Studies* 17, no. 2 (1997): 31.

³⁶ John Dumbrell, "The United States and the Northern Irish Conflict 1969–94: from Indifference to Intervention," *Irish Studies in International Affairs, Reflections on the Northern Ireland Conflict and Peace Process* vol 6 (1995): 125.

³⁷ For further discussion of the influence of the Irish diaspora on US foreign policy and of their contributions to republican and loyalist causes, see John Dumbrell, "The United States and the Northern Irish Conflict," 107-25.

³⁸ MacGinty, "American Influences on the Northern Ireland Peace Process," 31.

³⁹ *Ibid.*, 50.

⁴⁰ Graham Spencer, "Motivation and Intervention in the Northern Ireland Peace Process: An Interview with President Bill Clinton," *Negotiation Journal* 35, no. 2 (2019): 271. See also George T. Dempsey, *From the Embassy: A U.S. Foreign Policy Primer*, (Dublin: Open Republic Institute, 2004).

‘No one can say his heart is altogether clean, his hands altogether pure. Thus, as we wish to be forgiven, let us forgive those who have sinned against us and ours.’ Then Clinton drew the lesson: ‘That was the beginning of American reconciliation, and it must be the beginning of Northern Ireland’s reconciliation.’⁴¹

Some analysts suggest that this trip and this speech were key components of the Northern Irish peace process. During the trip, President Bill and First Lady Hillary Clinton visited Belfast, and Derry/Londonderry, and met with both Loyalist and Republican leaders.

In terms of his broader foreign policy goals, during his Presidency Clinton broadly “sought to extend U.S. influence through a process of democratic enlargement and use[d] economic development to help create diplomatic advantage. This new period of openness also gave Clinton the opportunity to act in ways that enabled more flexibility in international affairs and unsettled established relationships.”⁴² Each of these three foreign policy priorities are visible in Clinton’s involvement in the peace process in Northern Ireland.

Both Bill and Hillary Clinton are said to have facilitated peace and acted as inspirational figures and norm entrepreneurs in the contentious lead up to the Good Friday/Belfast Agreement. Against the wishes of the UK government of the time, President Clinton granted *Sinn Fein* leader Gerry Adams a visa to visit the United States in 1994,⁴³ a visit said to have launched the IRA ceasefire.⁴⁴ On her part, Hillary Clinton, as First Lady, made repeated trips to the North both with and without her husband. During the first trip in 1995, Hillary Clinton “famously dropped into the Lamplighter cafe on Belfast's Ormeau Road where she met a group of Catholic and Protestant women involved in cross-community work.”⁴⁵ As political leaders from the United States, where there is a substantial

⁴¹ Niall O’Dowd, “On This Day: Bill Clinton’s historic visit to Northern Ireland,” *Irish Central*, Nov. 30, 2015, accessed Jun 1, 2019, <https://www.irishcentral.com/opinion/niallodowd/the-peacemaker-bill-clintons-historic-visit-ireland>.

⁴² Spencer, “Motivation and Intervention in the Northern Ireland Peace Process,” 271. Here Spencer cites Douglas Brinkley, “Democratic Enlargement: The Clinton Doctrine,” *Foreign Policy* 106 (1997): 110-27; Alan MacLeod, *International Politics and the Northern Ireland Conflict: The USA, Diplomacy and the Troubles*, (London: I.B. Tauris, 2016) and J. O’Grady, “An Irish policy born in the U.S.A.,” *Foreign Affairs* 75 no. 3 (1996): 2-7.

⁴³ For more details about Clinton’s decision to grant See Clinton’s comments in his interview with Graham Spencer, in Spencer, “Motivation and Intervention in the Northern Ireland Peace Process,” 273-4, 276, 277-279.

⁴⁴ Mark Simpson, “Gerry Adams: New York in 1994 visit 'pivotal to peace',” BBC News Northern Ireland, February 1 2019, accessed July 7, 2019, <https://www.bbc.com/news/uk-northern-ireland-47072146>.”

⁴⁵ BBC News, “Hillary Clinton's connections to NI peace process,” November 9, 2019, accessed July 7, 2019, <https://www.bbc.com/news/uk-northern-ireland-47072146>.

Irish diaspora, the Clintons were both invested in promoting peace for Northern Ireland, but also sufficiently removed from the political aspects of the conflict to be able to act as leaders. In a 2019 interview, Clinton described his role in the Northern Ireland peace process. “If you are the outsider, you can’t do for somebody something they don’t want to do for themselves. All you can do is make it easier for them to deal with what they are otherwise inclined to do.”⁴⁶ As the negotiations moved closer and closer towards an official peace agreement in 1998, transcripts of phone calls between President Clinton and British Prime Minister Tony Blair reveal the substantial interest and influence of the American President on the British Prime Minister, and ultimately, in the Northern Irish peace process.

It was during this period that the influence of three different norm entrepreneurs intersected: President Clinton, WAVE, and the then-loosely organized group of family members of the Disappeared, led by mother Margaret McKinney. In a phone call with British Prime Minister Tony Blair following Clinton’s meeting with the Families of the Disappeared and WAVE, Clinton appeared to have been moved by his meeting. He commented,

Yesterday, I had a group in to see me that I think is called WAVE. It's a group of victims who lost children, brothers, and parents. They were mostly, but not entirely, Protestants. A group that really wants the IRA to decommission. They're a militant peace group. They want to deal with thousands of people in their inner and physical pain. I agree with you.

We've all taken our licks for Gerry, so if they want a role in the government, they have got to have some demonstration of good faith on this violence issue. These women gave me an idea yesterday. Your people could vet it for practicality. Maybe you and [Republic of Ireland Prime Minister Bertie Ahern] and I could ask for it. They say that there is a – some relatively small number of people, like 20 – people in the police or otherwise hated by the IRA, whose remains have never been recovered. They say if there's not immediate decommissioning, right after the vote, if you could work out the legalities so that people would not be prosecuted and the IRA could somehow direct people to the remains, so their families could give them a sanctified burial, that would have a huge psychological impact over there. I told them I'd try to help, but I'd talk to you about it. They don't want vengeance; they just want their people back.⁴⁷

⁴⁶ Spencer, “Motivation and Intervention in the Northern Ireland Peace Process,” 289.

⁴⁷ “Memorandum of Telephone Conversation,” Telephone conversation between Bill Clinton and Tony Blair, May 8, 1998, 1:50 - 2:12pm, William J. Clinton Presidential Library. I have not found any

Prime Minister Blair responded with a simple “Yeah, I think that would be good. I will.”⁴⁸ And, although the next comments in the transcripts are redacted, President Clinton and Prime Minister Blair seem to move on to discuss other aspects of the conflict and peace-making process.

It is interesting to note here Clinton’s emphasis on the idea that “people would not be prosecuted” for revealing the information that would lead to the discovery and return of the remains of the Disappeared. As Chapters 7 and 9 discuss in more detail, everyone interviewed for this project independently expressed that the mandate of non-prosecution has been a cornerstone of the success of the ICLVR. Since this point has seemingly been so key in the success of this process, it is interesting to be able to trace the idea straight back to Clinton’s initial pitch of the idea to Blair. Whether it was suggested by the Families of the Disappeared, or by Clinton himself is unclear. However, Clinton was a major norm entrepreneur regarding this issue.

The two leaders had a similar conversation again on May 23, 1998, the day after a referendum was held, in which more than 70 percent of the Northern Irish population voted in support of the proposed peace agreement. Again, President Clinton stated,

Yes, let me ask you something else. We had a group touring the United States and I met with them for 10-15 minutes. I am embarrassed that I can't remember their name – I think maybe it was Waves (*sic*). It was a group who had relatives killed. I think it would help if the IRA indicated where the remains are – without exposing them. Would that help? Is there some way to do that without exposing them to criminal liability?⁴⁹

As in the previous conversation on the subject, seemingly still amenable, Prime Minister Blair responded, “Sure.”⁵⁰ President Clinton then continued, “If by Wednesday somebody can call [presidential advisors Sandy Berger or James Steinberg] to let me know what kind of presentation I can make to them if they tell where remains are and that they would not

information to substantiate, or to contradict Clinton’s statement that WAVE was mostly Protestant, and it is listed as a cross-community organization. Of the total 3,532 Troubles-related deaths recorded between 1969 and 2002, 1,521 were Catholic, 1,289 were Protestant, and 722 were not from Northern Ireland.

⁴⁸ Ibid.

⁴⁹ “Memorandum of Telephone Conversation,” Telephone conversation between Bill Clinton and Tony Blair, May 23, 1998, 1:36-1:46 pm, William J. Clinton Presidential Library.

⁵⁰ Ibid.

be subject to criminal prosecution. That's a human touch that might have a *big* psychological impact – differentiate them from the IRA.”⁵¹

Following a redacted, likely related discussion, Clinton seemed to wrap up the discussion regarding the issue of the Disappeared, stating, “I'll hammer it hard. I thought if I can advance a specific agenda – I will work on getting a *Sinn Féin* person to work on decommissioning. You just let me know if I can say to him, ‘I want you to tell where those remains are and whoever tells won't be subject to criminal liability.’”⁵² To which, Prime Minister Blair responded, “Okay, I will get someone to come back to your guys in the next few days.”⁵³ Again, it is interesting to note Clinton’s emphasis on non-prosecution in this second phone call regarding the matter as a continued priority for Clinton. Tracing this idea back to Clinton is important, because it remains a key aspect of the Commission’s mandate, and one that, as Chapter 9 argues, was a major contributing factor to the Commission’s humanitarian mandate, and therefore its success.

Ultimately, Clinton’s uptake of the cause of the Disappeared was significant in advancing the advocacy of the family members and ultimately in the inception of the ICLVR. His motivations in doing so would be fascinating to explore further in future work. However, his norm entrepreneurship for the Disappeared seems in-keeping with his human- and relationship-centred approach to diplomacy and conflict resolution, and the Northern Ireland peace process more broadly.⁵⁴

6.2.3 *Sinn Féin leader Gerry Adams*

In one of these conversations between Clinton and Blair, Clinton referred to Irish politician Gerry Adams. Adams is another individual who can also be considered a norm entrepreneur and significant figure in the issue of the Disappeared in Northern Ireland. In 2014, Gerry Adams was arrested and questioned by the Police Service of Northern Ireland (PSNI) in conjunction with allegations that he had information regarding the disappearance of Jean

⁵¹ “Memorandum of Telephone Conversation,” Telephone conversation between Bill Clinton and Tony Blair, May 23, 1998, 1:36-1:46 pm, William J. Clinton Presidential Library.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ Spencer, “Motivation and Intervention in the Northern Ireland Peace Process,” 271.

McConville.⁵⁵ However, this was far from the public's first exposure to Adams, who became the leader of political party *Sinn Féin* in 1983.

Sinn Féin was, and remains at the time of writing in 2020, a left-wing nationalist political party that has consistently advocated for reunification of Northern Ireland with the Republic of Ireland. Due to its emphasis on reunification of the island of Ireland into one state and political jurisdiction, *Sinn Féin* is a cross-border party with one central party organization that operates in both the north and in the Republic. As of the 2018 election in Northern Ireland, *Sinn Féin* was tied with the Democratic Unionist Party for the largest number of seats in the Northern Ireland Assembly. In the Republic of Ireland, *Sinn Féin* has been cited as the farthest left party, and is the third largest political party in the Irish Parliament, the *Oireachtas*. The party has historically been linked with the IRA and has historically been referred to as the “propaganda” wing of the Irish republican movement.

As the leader of *Sinn Féin* from 1983 to 2018, Adams was an important figure in the peace process, representing and promoting the party's Irish nationalist views while also encouraging the IRA to lay down its weapons and promote peace. However, despite his key role in the peace process, Adams is also perceived as an antihero due to allegations that he was an active senior member of the IRA during the Troubles. As early as 1995, politicians from other political parties and civil society organizations were pressuring Adams to use his influence with the IRA to encourage the organization to reveal the locations of the bodies of the Disappeared. In June 1995, the *Irish Times* reported “[t]he Sinn Fein president, Mr. Gerry Adams, has met some of the affected Belfast families a number of times and promised to do what he can to have the bodies located.”⁵⁶ In August of the same year, Adams was under fire for comments he made at a rally in Belfast “accus[ing] the British government of strangling the peace process and warn[ing] that the IRA ‘hadn't gone away’.”⁵⁷ In response to these comments, Irish Labour Party politician and Social Welfare Minister Proinsias De Rossa spoke at an event organized by an NGO called Peace Train on behalf of the Families of the Disappeared. In those remarks he

⁵⁵ Gerry Moriarty, “‘Boston tapes’ the reason why Adams is being questioned over McConville murder,” *The Irish Times*, May 2, 2014, 2.

⁵⁶ Gerry Moriarty, “IRA victims campaign stepped up,” *The Irish Times*, June 27, 1995, 5.

⁵⁷ David McKittrick, “IRA has not gone away, Adams warns ministers IRA has not gone away,” *The Independent*, August 14, 1995, accessed June 1, 2019, <https://www.independent.co.uk/news/ira-has-not-gone-away-adams-warns-ministers-ira-has-not-gone-away-1596152.html>.

suggested that he “could make some amends for his statement that the IRA had ‘not gone away’ by calling on the IRA to tell 14 families where the bodies of undiscovered victims may be found.”⁵⁸ Adams responded that he had already called on anyone with information regarding the Disappeared to provide information.

However, in addition to being linked to the IRA due to his position as the leader of *Sinn Féin*, Adams has also long been suspected to have been an active senior member of the IRA. In 2002, author Ed Moloney published a book *A Secret History of the IRA*, which brought these allegations to a head, accusing that “Mr. Adams was instrumental in establishing a group within the IRA called the Unknowns, which abducted, killed, and secretly buried nine people.”⁵⁹ Adams responded, vehemently denying the allegations. He said, “I find some of the claims outrageous and think some people will be deeply upset by a mixture of innuendo, recycled claims, nodding and winking.” He repeated his familiar denial, “I have not been and am not a member of the IRA.”⁶⁰ The accusations continued to plague Adams throughout the subsequent decade, culminating in accusations that he was involved in or had knowledge of the disappearance of Jean McConville.

Former IRA members Brendan Hughes and Dolours Price admitted involvement in Jean McConville’s disappearance in interviews with academics at Boston College. Hughes alleged in the same interview, which was not made public until after his death, “that Mrs. McConville admitted being an informer and that Gerry Adams was involved in her disappearance.”⁶¹ Both of these statements remain disputed. Accusations against Adams culminated in his arrest by the PSNI in 2014 in relation to the Jean McConville case.⁶² He was questioned, but ultimately released without charge four days after the arrest. Many members of both the government, and the public still speculate that Adams had either involvement in, or knowledge of the disappearances, especially that of Jean McConville.

Due both to his position as the leader of *Sinn Féin*, and the accusations against him, Gerry Adams has become a norm entrepreneur for the issue of the Disappeared, albeit a

⁵⁸ Jim Dunne, “Adams called on to pressurise IRA over graves of ‘disappeared,” *The Irish Times*, August 16, 1995, 5.

⁵⁹ Dan Keenan, “Book author stands by claims about Adams, IRA,” *The Irish Times*, October 2, 2002, 4.

⁶⁰ Dan Keenan, “Adams dismisses IRA claims made in new book,” *The Irish Times*, October 1, 2002, 4.

⁶¹ Conor Lally, “Women past and present haunt the men of Sinn Féin,” *The Irish Times*, October 31 2014, 3.

⁶² Moriarty, “‘Boston tapes.’” 2.

largely unwilling one. Despite being a republican and allegedly a member of the IRA, as a key figure in the peace process, Adams was repeatedly put into a position to advocate for the families of the Disappeared. And, due to the speculation about Adams' knowledge of the disappearances, the issue of the Disappeared gained further recognition in Irish and Northern Irish society. Adams' name has become intrinsically linked with the issue of the Disappeared and the need for resolution.

As this section has detailed, there are four main sets of norm entrepreneurs that promoted and advocated for locating and repatriating the remains of the Disappeared. As this section has traced, without the actions and advocacy of these norm entrepreneurs, the ICLVR would never have developed, and certainly would not have developed into the strong institution focused on humanitarian principles that exists today. The main three norm entrepreneurs are, first, the family members of the Disappeared second, the civil society organization WAVE, and; third, Bill Clinton. The fourth norm entrepreneur, Gerry Adams, while being a less intentional and, I would argue, somewhat unwilling, promoter of the cause of the Disappeared, has also been influential in keeping the issue at the forefront of people's minds.

6.3 Political Response

6.3.1 Acknowledgement of responsibility for the Disappeared by the IRA

Following Clinton's second visit to Northern Ireland in the name of promoting the peace process, on 3 September 1998, two significant advances developed in the battle for recognition of the plight of the Disappeared. First, as mentioned above, WAVE set up a confidential phone number to collect anonymous tips regarding the Disappeared. Second, "An IRA spokesperson acknowledge[d] to the newspaper *An Phoblacht*/Republican News that the IRA secretly killed and buried "a small number of people" in the 1970s. The interview indicated that the IRA had set up a special unit to trace the bodies.⁶³

As early as 1996, public pressure from political leaders and the media began to attempt to convince the IRA to provide information regarding the fate of missing persons from the Troubles. In the 1996 Report of the International Body on Arms

⁶³ BBC News, "Timeline: The Disappeared," last modified June 4, 2019, accessed June 15 2019, <https://www.bbc.com/news/uk-northern-ireland-24812052>.

Decommissioning, a section on confidence-building indicated that a way of building trust with the IRA would be “the provision of information on the status of missing persons, and the return of those who have been forced to leave their communities under threat.”⁶⁴ This is noteworthy, since the words used in the report bear a striking resemblance to Gerry Adams’ statements regarding the Disappeared in 1995 discussed in the previous section.

In December 1998, an official statement from the IRA followed this acknowledgement.

In a statement released on Monday through the Irish Republican Publicity Bureau in Dublin, and signed by P. O’Neill, the IRA has declared that its efforts to find the bodies of people killed and buried by the IRA are continuing.

In their statement the IRA called on anyone with information which may help them find the graves of the missing to pass on the information to either the IRA or the families concerned.

The full text of the statement reads,

Óglaigh na hÉireann investigations into the whereabouts of the bodies of a small number of people killed and buried by the IRA over 20 years ago are continuing. ‘We urge anyone with information which may be of assistance in identifying the location of the grave of any of these people to pass this information to ourselves or to the family of the person concerned.’⁶⁵

On the 29th of March 1999, the Provisional IRA (PIRA) released a new statement. They said, “We believe we have established the whereabouts of the graves of nine people... information regarding the location of these graves is now being processed and will hopefully result in the speedy retrieval of the bodies.”⁶⁶ As part of this statement, the PIRA identified the nine people and took responsibility for their deaths. This was a significant moment, as the IRA had, prior to 1998, denied that they had any responsibility for these disappearances. Of the 16 people on the Commission’s final list of Northern Ireland’s Disappeared that fell under their mandate, the nine were: John McClory, Jean McConville,

⁶⁴ George J. Mitchell, John de Chastelain, Harri Holkeri, “Report of the International Body on Arms Decommissioning, 22 January 1996,” *CAIN Web Service*, last modified June 2, 2019, accessed June 10 2019, <https://cain.ulster.ac.uk/events/peace/docs/gm24196.htm>.

⁶⁵ An Phoblacht, “IRA continues search for missing bodies,” 10 December 1998, <https://www.anphoblacht.com/contents/4329>.

⁶⁶ Clare Murphy, “IRA says it has located burial places of nine of its victims,” March 30, 1999, <https://www.irishtimes.com/news/ira-says-it-has-located-burial-places-of-nine-of-its-victims-1.168392>, (accessed February 9, 2020).

Danny McIlhone, Kevin McKee, Brian McKinney, Columba McVeigh, Brendan Megraw, Eamonn Molloy, and Seamus Wright. As Peter Jones described,

In early 1999 after the Good Friday agreement had been signed, the IRA admitted to their involvement. But, as I understand it, I think they submitted a list of [nine] names of people who became known as the Disappeared. The INLA was involved in one case as well, that's Seamus Ruddy believed to be buried in France. Another name was subsequently added to the IRA list, I'm jumping around a bit here, much later on I think it was in 2009, Joe Lynskey. But he wasn't part of the original names.⁶⁷

Indeed, as of the time of writing in 2020, the Provisional IRA has accepted responsibility for disappearing four other men whose disappearances fell under the ICLVR's mandate: Joseph Lynskey, Peter Wilson, Charlie Armstrong, and Eugene Simons. The IRA also asserted that all of the victims were in fact members of the IRA—a fact which is vehemently disputed by many family members of the Disappeared. The INLA claimed responsibility in 1995 for the disappearance of Seamus Ruddy, a former INLA member from Rouen, France.⁶⁸ Neither group has acknowledged responsibility for two of the disappearances: those of Gerry Evans and of British army Captain Robert Nairac. Speculation has strongly suggested that both of these men were also disappeared by the PIRA.

While the literature certainly does not downplay the importance of the IRA's admission in analyses of the peace process and the establishment of the ICLVR, it cannot be sufficiently underscored how important this acknowledgement was. The IRA's public acknowledgement of their crimes, their willingness to accept responsibility for the disappearances and disclose details that could help locate their remains has been instrumental in the development of the ICLVR. While the IRA certainly had its own political motivations that made this a strategic choice for them, the impact on the families, and the olive branch extended only slightly by the IRA made the apology especially influential in smoothing the process implementing the Commission.

⁶⁷ Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 16, 2017.

⁶⁸ Eoin Brennan, "The Disappeared: The life and death of Seamus Ruddy," *Al Jazeera*, Jun. 22, 2018, accessed Jun 10 2019, <https://www.aljazeera.com/indepth/features/2017/05/disappeared-life-death-seamus-ruddy-170524080859203.html>.

6.3.2 *The Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland establishing the Independent Commission for the Location of Victims' Remains.*

On April 27, 1999, the British and Irish governments signed the Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland establishing the Independent Commission for the Location of Victims' Remains (ICLVR). This agreement references the Belfast/Good Friday Agreement signed on April 10th, 1998 in Belfast by the Governments of Northern Ireland, Ireland, and the United Kingdom. It also reaffirms the parties' "total commitment to the principle of non-violence and to a new beginning in relationships within Northern Ireland, within the island of Ireland and between the peoples of these islands;"⁶⁹ remembers "the victims of violence and the suffering of the families of those victims;"⁷⁰ and recognizes that "the location of the remains of the victims of violence is essential to reconciliation and a new beginning in relationships."⁷¹

The general guiding principles of the Agreement that established the ICLVR are in line with the principles of the international norms regarding investigations into forced disappearances outlined in Chapter 4, and transitional justice norms outlined in Chapter 2. However, even in this early incarnation, it is clearly more focused on the humanitarian issues promoted by the families of the Disappeared and the norm entrepreneurs (recovering, identifying, and returning remains to the families for burial) and not on potential prosecution of perpetrators. This is in keeping with the spirit of the conversations that Clinton emphasized with Blair in those early conversations outlined earlier in this chapter. How this focus on the humanitarian mandate shaped the Commission's operations is addressed in Chapter 7, and Chapter 9, unpacks how it has been a contributing factor to the ICLVR's success.

The Agreement, which is only four pages in length, outlines in broad strokes the general activities of the Commission: receiving and disclosing information to locate the remains of victims, report on its progress to the Governments annually, and defining the

⁶⁹ *Northern Ireland (Location of Victims' Remains) Act, 1999* (London: Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament, 1999).

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

scope of the victims it seeks to identify. However, it does not address specifics regarding the operations of the Commission. Although it does state that the Commission was to be funded by both governments, it only specifies “on a basis to be determined by them”⁷² Any additional details were to be established between the two governments based on legislation that needed to be developed in both jurisdictions.

6.3.3 *Development of the legislation to create the ICLVR in Dublin and Westminster*

6.3.3.1 Westminster

In 1999, the parliament at Westminster in the UK was dominated by a Labour majority government elected in 1997. Legislation to support the April 27, 1999 Agreement discussed above was tabled by the government and was scheduled for a reading and debate in the House of Commons on May 10, 1999. The legislation to create the ICLVR was introduced by the then-Minister of State from the Northern Ireland Office, Adam Ingram. He introduced the reading by referring to the plight of the families of the Disappeared in Northern Ireland.

It is right to begin by acknowledging the prolonged suffering that has been endured by the families of ‘The Disappeared’. The families and friends of ‘The Disappeared’, as they have become known, have suffered the loss of those they loved and have had to endure many years of agonising uncertainty of not knowing what happened to their loved ones and the pain of not being able to lay their bodies to rest. This is a basic human right.⁷³

Mr. Ingram’s reference to the suffering of the families of the Disappeared is significant, as he emphasized their inability to obtain closure by burying their loved ones, and his reference to their suffering as a violation of a basic human right. This is in line with the development of international norms and jurisprudence related to the “right to truth” outlined in Chapter 4, which began to take root in UN resolutions and reports as early as 1974, and has persisted through transitional justice norms and mechanisms.

However, despite the clarity in references to the international norms regarding forced disappearance, there was significant debate in Westminster regarding the substance of the legislation being tabled, and how it related to the broader post-conflict context. The

⁷² *Northern Ireland (Location of Victims’ Remains) Act, 1999.*

⁷³ United Kingdom, *Hansard Parliamentary Debates*, HC vol. 331, c. 38 (10 May 1999).

most controversial point, which was raised by more than one opposition party was the central tenet referred to above in the discussion of the initial Agreement: the legislation made clear that information and evidence collected as part of the Commission's work could not be used as part of criminal cases, police work, or future prosecutions. In fact, the final version of the legislation passed in both jurisdictions made clear that not only were the evidence and information gathered by the Commission inadmissible for criminal proceedings, but also placed significant limits on what forensic testing could be conducted by the Commission. In essence, per the legislation, the Commission is only allowed to carry out forensic testing that will lead to or assist with the identification of the identity of the victim. Any other forensic testing that would normally be conducted in the course of a criminal investigation (e.g. tests to identify the manner of death, potential locations of the victim before death, the identity of the perpetrator, and so on) are expressly prohibited by the legislation.⁷⁴

A Member of British Parliament from the Ulster Unionist Party (UUP), a party that is frequently described as the more moderate unionist party in Northern Ireland in comparison with the Democratic Unionist Party (DUP), indicated, in reference to the limits on forensic testing, and the inadmissibility of evidence gained by the Commission for prosecutions that “the Minister has just told us is that he is reacting emotionally to the demands of the IRA, and he has not thought out the consequences of what he is proposing.”⁷⁵ Additionally, there was speculation by a member of the Conservative party that “the announcement [by the PIRA] had precious little to do with the victims' families. It was a propaganda stunt that was aimed at boosting Sinn Féin[’s popularity] during the Hillsborough talks in the week before Easter, taking the pressure off the organisation over its refusal to decommission its illegally held arms and explosives.”⁷⁶ This led to a belief by some members of families of the Disappeared that they were being used as pawns in the broader on-going political struggle between nationalists and unionists. And, it also contributed to the overall skepticism expressed by some Members of Parliament during the debate.

⁷⁴ United Kingdom, *Hansard Parliamentary Debates*, HC vol. 331, c. 38 (10 May 1999).

⁷⁵ *Ibid.*, c. 39.

⁷⁶ *Ibid.*, c. 45.

It is important to keep in mind, however, how divided opinions between Republicans and supporters of the Crown still were in the era when the ICLVR was being established. In a second interview with me, Peter Jones, the Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains from the Department of Justice and Equality, provided his opinion on the political context in Westminster in 1999. He suggested that

it was just a year after the Good Friday Agreement, very soon after the cessation of hostilities in Ireland or the particular phase of hostilities covered by the Good Friday Agreement. And I think the feelings would have still been quite raw. And the Conservative party as well, because there is quite a heavy representation from military personnel in the Tory party. And certainly the DUP would have had very close associations with police officers, former police officers, service members. So again, it was probably just part of the process of acceptance for and acceptance of reconciliation generally.⁷⁷

A second conservative Member of Parliament raised the point that by limiting the potential to use the Commission's evidence for criminal prosecutions

is not the practical effect of that self-denial the granting of an amnesty for those crimes and those criminals? Would not it have been better, and more honest, to create a commission such as that presided over by Archbishop Desmond Tutu rather than to cloak the effect in such a way?"⁷⁸

Ingram's response to this query cited the Bloomfield report, which was the report of the Northern Ireland Victims Commissioner released in April of 1998. One of the report's recommendations was to explore the potential for a truth and reconciliation commission (TRC) as one of the methods to resolve the conflict in the North.

[A TRC] may never be established and, on that basis, the remains of the victims may never be recovered. That would be a matter of great regret. The Bill is the culmination of the commitments that we gave in response to the Provisional IRA statement. The Irish Government published their equivalent Bill at the end of April. Together, the two Governments have shown their willingness to respond quickly to achieve a resolution of this issue.⁷⁹

⁷⁷ Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, and Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains, interview by author, Dublin, March 31, 2017.

⁷⁸ United Kingdom, *Hansard Parliamentary Debates*, HC vol. 331, c. 40 (10 May 1999).

⁷⁹ *Ibid.*, c. 41.

Minister Ingram's response to the amnesty question concluded with a denial that the legislation granted an amnesty, *de facto* or *de jure*, for perpetrators of these crimes, and returned to the overall emphasis on needing to provide closure for the families.

I emphasise that the Bill does not grant immunity from prosecution. It is not an amnesty. These were vicious and cowardly crimes and, if evidence is obtained from other sources, it will be used to seek to bring those responsible to justice. However, just as it is absolutely right that the efforts to obtain justice should continue, it is equally important that we consider the needs of the families and do all that we can to alleviate their suffering.⁸⁰

Another UUP MP, Ken Maginnis, remained dissatisfied with the government's response to the matter of the *de facto* amnesty.

Those matters concern me when we propose to introduce a Bill that is tantamount to, if not technically, an amnesty for those who have committed murder. It is understandable that, in our sympathy for those who have suffered, we seek a solution, but we must do that not emotionally or in isolation, but while considering the interests of society as a whole.⁸¹

It is clear from these comments that the opposition parties of the time, the Conservatives, the DUP, and the UUP, were very concerned that the rule of law in Northern Ireland would be undermined by the establishment of the ICLVR, and that they were being duped by *Sinn Fein* in a way that would provide support, in the end, for republicans. However, these concerns were superseded by the perspective held by most other MPs, including the British government of the day, that the families of the Disappeared deserved answers, and that the fact that information from the Commission could not be used as evidence in criminal trials was an appropriate trade-off to provide peace for the families. This is in keeping with the vision for the Commission advanced by all of the norm entrepreneurs from the beginning, the families, WAVE, and President Clinton. Even Gerry Adams, whom I classified as a reluctant norm entrepreneur, while not explicitly commenting on the mandate of non-prosecution, repeatedly emphasized the Commission's humanitarian mandate and praised its work, at the time of its inception, and throughout its operations. For example, upon the discovery of Brendan Megraw's remains by the Commission in 2014, Adams stated, "I hope the identity of the remains can be quickly

⁸⁰ United Kingdom, *Hansard Parliamentary Debates*, HC vol. 331, c. 42 (10 May 1999).

⁸¹ *Ibid.*, c. 52.

verified and that this discovery will bring some closure to the family and loved ones of Brendan Megraw.”⁸²

Two other points that became crucial to the ICLVR’s operations were raised by MPs. A Social Labour Party (SLP) MP raised the point that the Commission should never be subjected to financial limits by the government. This eventually made its way into the ICLVR’s practice, and its investigations have therefore not been limited in resources by a lack of funding from the UK or Irish governments. The importance of this point will be discussed in more detail in the next chapter; however, it is important to note here as it was a key point in the first debate because MPs believed the issues of the Disappeared to be too important to be limited by partisan political issues such as the budget. In other words, the ICLVR was deemed to be essential to justice.

A second key point came from a Labour MP, who questioned how, in practice, the Commission would ensure the security of all who provided information to it. A third important point arose during the concluding statements of the first debate, Mr. John McFall, the Parliamentary Under-Secretary of State for Northern Ireland assured the MPs that

A full [post-]mortem and inquest will take place, as is usual with any murder. The findings will be made known in the usual way and the same amount of information will be made public. For example, the coroner might ask for evidence from a pathologist, and that will be given in public. As with any other inquest, the coroner will have full powers.⁸³

The reference here is to the coronial inquest system that is built into the process of the ICLVR. Ireland uses the British coronial system, due to the colonisation of Ireland by Britain, which resulted in the importing of significant British institutions to the Irish bureaucracy. Due to the structure of this system, according to Dr. Brian Farrell, the main coroner who investigated cases of the Disappeared in the Republic of Ireland, “inquest is mandatory here [in Ireland] in any unnatural death. So, all unnatural deaths must be the subject of an inquest.”⁸⁴ This means that a coroner’s inquest was held for each of the

⁸² “Gerry Adams: ‘I hope discovery of the body will bring some closure to the family and loved ones of Brendan Megraw’” *Irish Independent*, October 1, 2014, <https://www.independent.ie/irish-news/gerry-adams-i-hope-discovery-of-the-body-will-bring-some-closure-to-the-family-and-loved-ones-of-brendan-megraw-30629276.html>.

⁸³ United Kingdom, *Hansard Parliamentary Debates*, HC vol. 331, c. 80 (10 May 1999).

⁸⁴ Dr. Brian Farrell, Coroner, Dublin District Coroner’s Office, interview by author, Dublin, March 21, 2017.

Disappeared whose remains have been located. Reports from coroners' inquests are on the public record. The impact of the coronial system on the operations of the ICLVR will be covered in more detail in the next section on the Commission's operations.

John McFall, the Parliamentary Under-Secretary of State for Northern Ireland also re-iterated that the government's main goal was to ensure the families of the Disappeared the ability to bury their loved ones in a dignified way. His concluding remarks were "We welcome hon. Members' comments, but we remain focused on its humanitarian purpose. We hope that the passage of this Bill will bring some comfort to those who have waited for it for far too long."⁸⁵

Ultimately, the bill proceeded to a second reading, with 289 Members in favour and 10 opposed. The arguments opposed were similar to those expressed on the first reading, but ultimately did not prevent the bill from being passed. The second reading occurred on May 12, 1999, and considered each clause of the bill individually. The bill passed on its third reading in the House of Commons also on May 12th, 1999. It then went to Committee in the House of Lords, then the House of Lords itself, where it passed on its third reading on May 24th, 1999. While minor changes were made to language, the final draft of the bill retained the spirit of the Commission's two-fold humanitarian mandate: first, the focus on the return and repatriation of remains to families for burial, and; second, the principle of non-prosecution. The relative expediency with which the bill passed through Parliament demonstrates the sense of importance, and overall commitment to the legislation.

6.3.3.2 Dublin

The discussions of the legislation to create the ICLVR in the *Dáil*, the lower house of parliament in the Republic of Ireland, were far less contentious than those amongst the MPs in London. The *Dáil* at the time was led by a minority coalition elected in general elections in 1997, led by left-wing party *Fianna Fáil* and supported by the conservative-liberal Progressive Democrats.⁸⁶ The bill was introduced in Dublin on May 5th, 1999. In his introduction to the bill during its second reading, the Minister for Justice, Equality, and

⁸⁵ United Kingdom, *Hansard Parliamentary Debates*, HC vol. 331, c. 81 (10 May 1999).

⁸⁶ Gary Murphy, "The 1997 general election in the republic of Ireland," *Irish Political Studies* 13 no. 1 (2007): 133.

Law Reform, O'Donoghue, seemed to endeavor to get out in front of the criticisms that its sister bill faced in Westminster. He stated,

To those who harbour misgivings about the limited immunities which are provided for, I say that the road to peace and reconciliation is never an easy one, and every section of society must be prepared to compromise if we are to achieve our objectives of peace, harmony and mutual respect on this island. It would have been preferable if the need for this legislation had never arisen. However, government often involves making difficult decisions in the face of competing concerns. In this instance, without this legislation and the agreement, the location of the remains of the victims might never be revealed and the families of the victims would be faced with the additional pain and suffering of not knowing where the remains of their loved ones are. Humanity and compassion surely dictate that if there is an opportunity to lessen that pain and suffering, we must do all we can to seize that opportunity.⁸⁷

After passing through the *Dáil*, the bill made its way to the *Seanad*, the upper house of parliament in Ireland. The members of the *Seanad* largely indicated that they found the contents of the bill to be objectionable, but a necessary evil. Flanagan, a member of then-opposition party *Fine Gael*, commented, "This is not legislation which can be enthusiastically or warmly welcomed. It is only with the greatest reluctance that such legislation should ever be contemplated or enacted by a democratic Parliament."⁸⁸

The main criticism from all sides was the same as it was in Westminster, that the provision that evidence could not be used from the Commission's work in future prosecutions was tantamount to an amnesty, and that its passing was an injustice for the crime of murder. However, in contrast to the vocal minority of MPs in London, the members of the *Oireachtas* (Irish Parliament) seemed to be more accepting of the Commission's humanitarian mandate, and the debates in both the main house and the committees were confined to technicalities that did not change the substance of the bill. In the end, the bill was passed in Dublin on May 13th, 1999, eleven days before it was passed in London.

The fact that both parliaments passed the bills associated with the Act with relative expediency certainly demonstrates the commitment of both governments to the creation of the Commission. While the concerns were consistent between both jurisdictions, and there

⁸⁷ Republic of Ireland, *Dáil Deb.*, vol. 504, no. 2 c. 255-6 (5 May 1999).

⁸⁸ *Ibid.*, c. 256.

were ongoing questions regarding the sincerity of the IRA's commitment to revealing the whereabouts of the Disappeared and to acknowledging the role they played in the disappearances, ultimately there was very little political opposition to the establishment of the Commission. Many British Members of Parliament, and their Irish equivalent *Teachtaí Dála* cited that they saw the Commission as a necessary evil to address the injustice of the Troubles-related forced disappearances. Yet, the Commission was established to address forced disappearances, specifically, despite the many other injustices that occurred during the Troubles. This means that the issue of forced disappearances was seen as important enough to address immediately following the signing of the peace agreement. It also demonstrates that the Commission had broad support within the political system. Moreover, it suggests that the Commission's norm entrepreneurs were successful in establishing its mandate within the desired parameters. All of these factors are important to note as they laid the foundation for the Commission's success.

6.4 Conclusions

By tracing the development of the ICLVR, this chapter identified two foundational principles that grounded the ICLVR: first, the focus on identifying and returning remains of victims to their loved ones for burial and; second, the principle of non-prosecution to allow the Commission to collect information from informants without risk of being arrested for their involvement. These two principles can be traced from the initial advocacy conducted by the original norm entrepreneurs, the family members, especially the mothers and widows of the Disappeared, through the involvement of other important norm entrepreneurs including WAVE, Bill Clinton, and Gerry Adams. The chapter then demonstrated how these ideas remained intact during their codification into legislation through the political system in both jurisdictions, as the political actors were sufficiently convinced by their content to advocate for their adoption. The apology by the IRA was a particularly significant factor as part of this. Ultimately, without the actions and advocacy of the families, and the other three main norm entrepreneurs, the ICLVR might never have been formed, and certainly would not have developed into the strong and unique humanitarian institution that exists today.

The next chapter investigates the second of a three-part analysis of the ICLVR's work; its operation. It examines how the foundational principles advanced during the advocacy for and establishment of the ICLVR translated into practice. Chapters 8 and 9 then identify contributing factors to the Commission's success. This evaluation of the ICLVR's success leads to a better understanding of the Commission itself as an investigative mechanism into forced disappearances. Furthermore, it determines how the international norms regarding investigations into forced disappearances outlined in Chapters 4 influenced the Commission's success. This contributes to answering the second research question of this dissertation: To what extent do each of these international norms related to forced disappearances contribute to success in dealing with forced disappearances?

Chapter 7: The Operation of the ICLVR

Chapter 6, which used process tracing to outline the establishment of the Independent Commission for the Location of Victims' Remains (ICLVR) and its mandate, provided the necessary background for this chapter, which conducts a detailed analysis of the Commission's operations. This chapter examines how the two foundational principles that shaped the Commission's inception and development outlined in Chapter 6 have also been interpreted and implemented throughout the ICLVR's operation. These two principles are the humanitarian commitment to locating, identifying, and returning the remains of the Disappeared, and the commitment to non-prosecution. This chapter traces these two foundational principles through four aspects of the ICLVR's operations: first, the forensic human rights investigations; second, the receipt of information and tips from informants; third, the use of the coroner's inquest system, and; fourth, the relationship with family members of the Disappeared.

This chapter demonstrates that these two foundational principles have shaped every aspect of the Commission's work, and, have been highly influential in how the Commission has operated. These two points are essential to understand, as they demonstrate how the people involved with the ICLVR, both government officials and staff, have interpreted and implemented the priorities of the norm entrepreneurs. In essence, this chapter examines how these theoretical ideas that ground the Commission have worked in practice, and how these principles have intersected with other key operational features of the Commission such as the solicitation and receipt of information from informants, and the coroner's inquest system. This contributes to both aspects of this dissertation; the in-depth knowledge of the case study of the ICLVR, and the relationship between the international norms related to forced disappearances.

7.1 Forensic human rights investigations

7.1.1 Pre-ICLVR identifications

Technically, the remains of the first of the Disappeared who fell under the remit of the Commission were located long before the ICLVR was established. In May of 1984, the remains of Eugene Simons, who had disappeared three years earlier, were found in a bog

in Knockbridge, Dundalk, Co. Louth.¹ Simons, who like the other victims of forced disappearance had been accused of being an IRA informant, left a New Year's party on January 1st, 1981 "in Castlewellan, Co. Down [Northern Ireland] with a group of men... Three years later a man walking his dog found his body in a bog with a bullet hole in the temple."² As DNA identification was not yet commonly used in police investigations, Simons' father initially identified the remains, based on his recognition of what are often referred to as 'grave goods,' which are artifacts or items buried with the body. In this case, Simons' father recognized a crucifix that belonged to his son.³ Dental records later provided official confirmation of the preliminary identification.⁴

In a 2012 WAVE Trauma Centre publication regarding Ireland's Disappeared, Eugene Simons' father recounted his feelings about whether justice had been served for his son. As with virtually all other family members of the Disappeared, he cited the importance of the return of remains for a proper burial. He wrote, "We still have that cross. It is all we really have left of Eugene, so it has a place of pride in the living room. When all is said and done, I suppose we should be thankful that we were able to give Eugene a Christian burial. I know there are other [D]isappeared who are still waiting for their loved ones remains to be discovered and they have been denied a Christian burial. I think that is an appalling situation."⁵ Due to the circumstances surrounding his disappearance, and the dearth of answers regarding what had happened to him, Simons' classification as one of the Disappeared is undeniable. However, it is particularly interesting that Eugene Simons is listed on the ICLVR's website as one of the victims of forced disappearances who falls under the Commission's mandate, even though his remains were located and identified long before the Commission was created. Despite the different circumstances surrounding the location of his remains, Simons' family is still considered to be one of the Families of the Disappeared, and they participate in both WAVE and the Commission's work. This inclusion is a positive force for his family. In considering the Commission's successes,

¹ Independent Commission for the Location of Victims' Remains, "The Disappeared," accessed June 15, 2019, <http://www.iclvr.ie/en/iclvr/pages/thedisappeared>. Please see figure 1 for a map of the regions where each of the disappeared have been found.

² "The victims who know no resting place," *The Times*, Feb. 14, 1998, 18.

³ "Co. Down man believes body is his son's" *The Irish Times*, May 21 1984, 6.

⁴ WAVE, *The Disappeared of Northern Ireland's Troubles*, (Belfast, WAVE Trauma Centre, 2012), 76.

⁵ *Ibid.*

however, from the beginning, there was one fewer of the Disappeared who needed to be located.

Jean McConville's remains were not located by the Commission either. However, similarly to Simons, her name also remains on the list of victims on the website, and her disappearance is also considered to have fallen under the Commission's mandate. This provides the same community of families of victims to the McConville family. However, since McConville's remains were found after the beginning of the ICLVR's mandate, this inclusion in the community of families is less notable than the case of Eugene Simons. As discussed in more detail later in this chapter, the McConville children were already members of this community of the families of the Disappeared, and they too are dealing with the same aftermath of the discovery of their mother's remains.

Prior to the establishment of the Commission, the general public was aware of some of the other victims, such as Robert Nairac, who was a British army Captain posted in Northern Ireland whose disappearance was highly publicized due to his military role. However, following the location of Eugene Simons' body, no further remains were discovered until after the Commission began its operations.

7.1.2 *The first three bodies*

Once the legislation was passed in both the Republic of Ireland, and the United Kingdom, in 1999, the Commission officially began its operations. Based on confidential information provided by the Irish Republican Army (IRA) to the phone line established by WAVE, teams of investigators from the Irish police service (*An Garda Síochána*, more commonly known as the *gardai*) began digging in six different locations in the Republic of Ireland. In May of 1999, *gardai* investigators located the first set of remains, those of Eamonn Molloy, in a cemetery near Dundalk, Ireland. Since Dundalk is a major city just across the border from Northern Ireland in the Republic of Ireland, it was a location that was easily accessed by paramilitary groups from the North. The Irish Times reported that Molloy's body "was left in a coffin in a graveyard in Faughart, County Louth, on the morning the [C]ommission was set up."⁶ The location of the remains in this case is significant, as it suggests that

⁶ Fiona Garland, "Commission has recovered six bodies since it was established in 1999" *The Irish Times*, July 31, 2010, 8. See figure 1.

Molloy's body was moved so that it would be found by the Commission. However, under the principle of non-prosecution, any information gathered during the investigation regarding the identities of the individuals involved with the move of the body remain unknown.

Conditions were physically and emotionally difficult during the searches, both for investigators, and for family members of the Disappeared.

On all the sites, initial high confidence ebbed by the hour as shovels were replaced with small mechanical diggers which in turn were swapped for larger models and the trenches grew to the size of swimming pools. The introduction of sniffer dogs, metal detectors, and ground penetrating radar equipment heralded a certain desperation. 'Our instructions are to keep digging as long as it takes,' they repeated doggedly.

They repeated this mantra in the driving rain on Wednesday, as they shielded miserable little family groups who stood looking on as huge diggers scooped up slices of earth, any of which could reveal something of the humanity that was once a beloved brother, son, or mother.⁷

Despite the overwhelming difficulty, one month after the discovery of Molloy's body, investigators discovered the remains of two other victims of IRA disappearances, Brian McKinney and John McClory, in "a double grave after 30 days of searches at a bog in Colagh, County Monaghan," in the Republic of Ireland.⁸

The coroner's office in Dublin received Molloy's remains, and finally in July of 1999 the body was returned to his family. A formal funeral service was held immediately after the return of his remains. Similarly, the bodies of McClory and McKinney were returned in September 1999, and also buried following funeral services held immediately thereafter. McKinney's mother Margaret was quoted in the *Irish Times* as stating, "It will be a relief to bury him after 21 years of continuous searching. The searching will be over, but the heartache won't be because it should never have happened."⁹

Interviews with and statements made by family members of the Disappeared throughout the Commission's operation have been consistent in their appreciation for the

⁷ Kathy Sheridan, "Harrowing week of digging finds little to comfort families of the 'disappeared'," *The Irish Times*, June 5, 1999, 5.

⁸ BBC News, "Timeline: The Disappeared," last modified June 4, 2019, accessed June 15 2019, <https://www.bbc.com/news/uk-northern-ireland-24812052>. See again, figure 1.

⁹ Nuala Haughey, "Families Receive Bodies of Victims," *The Irish Times*, September 2, 1999, 6.

ability to finally give their loved ones a proper burial. In all of the quotes to the media from family members, this is nearly a universal theme, the number one desire families of the Disappeared is to provide their loved ones with a proper burial. The families have also been consistent in expressing sorrow that the crimes ever happened. This consistency in family statements is interesting, and is particularly important to note. It may be due to the fact that the families have been part of a centralized organization, and thus share similar feelings, or perhaps have been encouraged to express similar sentiments to the press. However, it also demonstrates that the families of the Disappeared have remained committed to the same goal that they expressed when they initially organized: the location, identification, and return of remains.

These early identifications seemed to suggest that the Commission had been set up for success. Both governments through legislation had formally established and supported the Commission. As a result, it also had access to any resources it needed. The fact that the Commission has access to important scientific and financial resources from two Western European states is one of the factors that differentiates the ICLVR from other institutions and groups searching for the Disappeared. This demonstrates that, while access to material, financial, and knowledge-based resources is important for the success of a search for victims of forced disappearances, it is not the only, or even the most important, factor leading to successful location of the Disappeared. In addition, a precedent had been established where IRA informants cooperated with the Commission, as demonstrated by the comparatively easy location of the first three victims.

Nevertheless, despite the early successes, and these seemingly positive factors, after the first three bodies were located and returned to the families, no further remains were found for a very long time. In essence, the trail to the bodies of the Disappeared went cold. The *gardaí*, the national police force of the Republic of Ireland, continued to investigate based on information they received throughout the early 2000s, but the investigations were extremely draining on *gardaí* resources, and ultimately unsuccessful. In 2000, when investigators were digging for the remains of Danny McIlhone in County Wicklow, “about 50 *gardaí* [were] taking part in the 12-hours-a-day searches” without success.¹⁰

¹⁰ Elaine Keogh, “Gardaí dig again for bodies of IRA victims,” *The Irish Times*, May 3 2000, 3.

Geoff Knupfer, Lead Investigator for the ICLVR, described the Commission's inertia following its early successes. In my interview with him, he said that, "by 2004, 2005, I think people were saying, 'Well, you know, what are we going to do with this? We've got a Commission here, where there's just nothing happening at all.'"¹¹ Knupfer attributes the Commission's stagnation to the fact that "it was established as a reactive organization. In other words, it sat there in its ivory tower and waited for people to knock on the door and say, 'I would like to tell you where a body is.' And, of course, it didn't happen very well."¹²

Peter Jones from the Irish Joint Secretariat to the ICLVR, indicated there may also have been a delay in the information being provided by the IRA and other informants, as these individuals may have been slow to trust that the Commission's commitment to confidentiality. This may have slowed down the Commission's work in the early years. "I think there's an element, as well, of the paramilitaries wanting to see how this worked out and maybe that's why it's taken so long."¹³ The importance of the IRA's trust in the ICLVR is something that arises again later in this chapter, and is also discussed in Chapter 9. What was clear to me from these interviews was that, by approximately 2004, the Commission had hit a wall in its operations. At this point, it was evident to both governments, and to then-Commissioners Sir Kenneth Bloomfield, the Commissioner from the United Kingdom, and John Wilson, the Commissioner from Ireland, that something needed to change to facilitate the ICLVR's work.

7.1.3 *A shift in investigative strategy*

The renewed involvement of the key norm entrepreneurs who were essential to the establishment of the ICLVR contributed to much-needed advancement of the Commission's operations. In 2004, Anne Morgan, the sister of Seamus Ruddy, and Charlie Armstrong's daughter Kathleen took "a series of meetings in Washington D.C.," to advocate for the use of a specialized forensic team as part of the Commission, instead of continuing to rely on the *gardaí*, whose resources were more limited.¹⁴ This demonstrates

¹¹ Geoff Knupfer, Lead Investigator, Independent Commission for the Location of Victims' Remains, interview by author, Dundalk, Ireland, April 4, 2017.

¹² Ibid.

¹³ Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 16, 2017.

¹⁴ WAVE, *The Disappeared*, 3.

that the Commission's work continued to be appreciated by and advocated for by family members of the Disappeared, even before the Commission's staff had perfected its operations and its investigative strategy.

The family's advocacy at this point led to the involvement of Geoff Knupfer with the Commission. Knupfer, who is now the Commission's lead investigator, was a highly successful retired investigator of the Manchester Police Force. He was most renowned for his work in the 1980s in investigating and solving the 'Moors murders' of five children in the Manchester area by Ian Brady and Myra Hindley.¹⁵ In my interview with him, Knupfer described the beginning of his involvement with the Commission's work,

I was asked in 2004 to go to Dublin and talk to the Department of Justice [and Equality]. I did, some months went by, and then I got another call saying, 'Can you come back to talk some more?' I talked to both governments and then I was asked formally to undertake a review of the Commission as it stood, and make recommendations of how it could be taken forward. That was about three months' work and in the course of that, I started meeting intermediaries and people from the other side of the proverbial fence who were able to provide information on what happened, how it happened, and where to look.¹⁶

Following his review of the Commission, Knupfer was officially brought on board as the Commission's Senior Investigating Officer, a position that had not previously existed. Knupfer brought on board another senior investigator, Jon Hill, also a retired police investigator, and together, the two developed the Commission's investigative capacity.

As Dermot Woods, Assistant Principal Officer to the Irish Joint Secretary to the ICLVR, wrote in an academic article in 2014,

The commissioners are supported by an investigation team that seeks out and pursues information with regard to the Disappeared, and that organises and carries out searches and excavations where a possible burial site is identified. In doing so it deploys a range of technological and other forensic investigation techniques, including the use of forensic archaeologists, in order to ensure a focused and comprehensive treatment of any excavation.¹⁷

¹⁵ Jill Beattie, "The Disappeared: Former cop Geoff Knupfer reveals how working with Moors murderer Myra Hindley steered him for search," *Belfast Live*, Mar. 11, 2015, <https://www.belfastlive.co.uk/incoming/disappeared-former-cop-geoff-knupfer-8811064>.

¹⁶ Geoff Knupfer, Lead Investigator, Independent Commission for the Location of Victims' Remains, interview by author, Dundalk, Ireland, April 4, 2017.

¹⁷ Dermot Woods, "Independent Commission for the Location of Victims' Remains," *Administration* 61, no.1 (2013): 107.

As outlined in the literature review in Chapter 2, and again in Chapter 6, Finnemore and Sikkink define a norm entrepreneur as an individual or organization that attempts to raise the profile of a norm or set of norms to a critical mass, either domestically or internationally.¹⁸ Due to his extensive role in improving the Commission's work, and continued advocacy on behalf of the Commission, I argue that Geoff Knupfer is also a norm entrepreneur, albeit one who became involved in the Commission far later than its others. With his criminal investigation background, Knupfer was well-versed in the forensic world. As a result, he was a norm entrepreneur in the sense of bringing the objectivity and scientific rigour of forensic investigations to the Commission, to improve its work. However, for the Commission itself, Knupfer has become a norm entrepreneur for its mandate and operations. Chapter 9 expands on this argument.

7.1.4 Multi-disciplinary forensic human rights investigations

Knupfer and Hill's hard work in improving the Commission's operations, underscoring the practices associated with modern multi-disciplinary forensic human rights investigations, began to pay off. In 2008, the Irish Times reported that,

Commission investigators are employing specialist techniques at five more suspected burial sites in counties Monaghan, Meath and Louth. Mr. Knupfer, a former specialist detective with the Greater Manchester police, has put together a team of geophysicists and others who are expert in employing hi-tech search techniques and in handling so-called "cadaver dogs", trained in sniffing out human remains.¹⁹

In addition, the ICLVR continued to collect and proactively seek information from informants. With these improvements in how the Commission conducted its work, the remains of Danny McIlhone were discovered in November 2008, after two previously unsuccessful searches by the *gardai* in 1999 and 2000.²⁰ McIlhone's remains were found far from the border between the Republic of Ireland and Northern Ireland, in County Wicklow, which is located south of Dublin. The location of McIlhone's remains brought the total of the victims recovered to six.

¹⁸ Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (1998): 895.

¹⁹ Dan Keenan, "Body part to be compared with DNA from family of IRA victim," *The Irish Times*, November 13, 2008, 11.

²⁰ BBC News, "Timeline: The disappeared,"

As the Commission staff began to collect information and work more closely with individuals who were involved with the disappearances themselves, further challenges began to emerge. Notably, the erosion of people's memories over the sometimes 30-plus years following the burial of the victim, coupled with changes in the landscape over the same period made finding remains challenging. As Irish Commissioner Frank Murray described, "People's—not suggesting intention, but people's recollections, people's idea of how long, how big this room is, it's about forty feet by seventy and you know when it's only a third of that you know. People's estimates of how far thirty, forty yards in a field is... And unfortunately then you have to search the whole area."²¹ Geoff Knupfer made similar comments. He stated, "I think one of the other one of the other practicalities is when we take people that, 30, 40 years on is that they really that their estimations of distance have really gone to the dog. But you have to remember that they were doing this probably in the middle of the night. The last thing they ever want to do is say, 'oh I remember this.'"²²

Despite these challenges, the Commission was able to obtain good information that led to results. 2010 was a particularly successful year for the ICLVR, as the remains of three individuals were located in less than six months. This brought the total number of recovered victims to nine. Charlie Armstrong's remains were located in July, Gerry Evans' remains in October 2010, and Peter Wilson's remains in November 2010. Wilson's name had only been added to the Commission's list the previous year. Irish Commissioner Frank Murray commented on the relative speed with which Wilson's remains were located, stating, "We've only had that good fortune once."²³ Murray further elaborated the circumstances of this 'good fortune', "I was just arranging to go up to see the site because it was a bit unique, just along the coast, and water, County Antrim, and before we could

²¹ Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains and Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 31, 2017.

²² Geoff Knupfer, Lead Investigator, Independent Commission for the Location of Victims' Remains, interview by author, Dundalk, Ireland, April 4, 2017.

²³ Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains and Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 31, 2017.

make travel plans they found the remains they were looking for. But I'm afraid most of our other searches have been very, very long drawn out affairs.”²⁴

Throughout 2011, 2012, and 2013, the Commission undertook repeated searches based on information they had received on the location of the remains of Columba McVeigh. However, these searches were unsuccessful. The next remains to be discovered were those of Brendan Megraw in October of 2014, followed by the discovery of two bodies in a single grave during the search for Joe Lynskey in County Meath in June of 2015. Neither of the bodies were those of Lynskey, but instead two others, Kevin McKee and Seamus Wright, who had disappeared from Belfast in October of 1972.

Irish Commissioner Frank Murray described the process of the excavations at Coghalstown in County Meath that led to the recovery of McKee and Wright in great detail during the interview with him.

I think we excavated about 19 acres. And, see, 19 acres is a lot of ground to meticulously dig up... and scoping the area and having an archaeologist, a forensic archaeologist, a specialist archaeologist to look at every bucket full of dirt that you were lifting because the process has to be rigorous and there can be no shortcuts and you've got to cover every inch of the ground.

And the strangest thing about that dig was we were searching for the remains of one man by the name of Joe Lynskey and we didn't find him. Although we had what we believed to be good information from a source no longer with us that he was buried in that field. So we found the remains of two others that we had searched unsuccessfully for in an adjoining area, for about seven, eight acres or so. And because we have run out of ground in that place, had to abandon that search without success, and we found the success on the other adjoining field, with just a track between them and a rough fence and trees, entirely accidentally. But a success is a success and we were more than pleased to find the remains of two in one grave.²⁵

Murray's comments speak again to the importance of receiving accurate information in order to conduct successful excavations and recovery of remains. However, they also speak to the amount that the landscapes change over time, and how individuals' recollections, which seem so precise, can also be inaccurate. These limitations of memory are frequently cited in criminal justice and transitional justice literature as being a challenge, particularly

²⁴ Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains and Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 31, 2017.

²⁵ Ibid.

with regard to receiving accurate testimony after long periods of time have passed.²⁶ While good information is key, and has clearly contributed to some of the successful recoveries of remains by the ICLVR, there is also an element of luck involved. Sadly, the disappearance of Joe Lynskey is one of the three outstanding cases that need to be solved by the ICLVR.

In April of 2017, as I was conducting fieldwork in Ireland and interviewing key figures involved in the Commission's work, the ICLVR was gearing up for a search in France for the remains of Seamus Ruddy, who was disappeared by the Irish National Liberation Army (INLA) in 1985 while he was living in Rouen, France. This is the only known disappearance committed by a republican paramilitary group outside of the island of Ireland. This was not the first search in France for Ruddy's remains, but the members of the Commission interviewed with this project were confident that this search would lead to the location of his remains.

Irish Commissioner Frank Murray commented,

We still have four cases to crack and we hope to crack one of them in the month of May and that's the one in France where we believe we have for the third time lucky - good information this time, to where precisely we should look. And it's not a very big area to search, that will take about three weeks. There's a—you could be lucky and get what you're seeking the remains of one Seamus Ruddy within a couple of days.²⁷

Geoff Knupfer also referred to the Ruddy case and the pending dig in France. He indicated that the Commission was just awaiting final approvals from the French authorities to proceed with the physical investigation in France, but he also seemed optimistic about the prospect of success.²⁸

²⁶ See, for example, Jon Elster, "Memory and Transitional Justice," paper prepared for the "Memory of war" Workshop, (MIT: January 2003) http://web.mit.edu/rpeters/papers/elster_memory.pdf; Mark L. Howe and Lauren M. Knott, "The fallibility of memory in judicial processes: Lessons from the past and their modern consequences," *Memory* 23, no. 5 (2015): 633-56, <https://doi.org/10.1080/09658211.2015.1010709>; Elisabeth King, "Memory Controversies in Post-Genocide Rwanda: Implications for Peacebuilding," *Genocide Studies and Prevention* 5, no. 3 (2010): 293-309. .

²⁷ Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains and Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 31, 2017.

²⁸ Geoff Knupfer, Lead Investigator, Independent Commission for the Location of Victims' Remains, interview by author, Dundalk, Ireland, April 4, 2017.

Irish State Pathologist Marie Cassidy commented on some of the hypothetical challenges when obtaining permission to conduct excavations in a different state. She suggested that sometimes local authorities want to be involved in excavations and in the identification of remains, which could cause problems in terms of the overarching ICLVR Act. She said, “The way it's done here, the way we do it, any information goes straight to the coroner. It doesn't go anywhere else.”²⁹ This refers to the fact that no evidence provided to, or gathered by the Commission could be used in future prosecutions and thus cannot be provided to law enforcement. Applying her hypothetical scenario to the excavation in France, since only the UK and Ireland agreed to these provisions, authorities from a third party state, such as France, might not be willing to abide by the same restrictions as the British and Irish authorities and might wish to use the evidence for a criminal investigation. This would jeopardize the Commission’s work, and would be in complete contrast to the priorities of the norm entrepreneurs, and those involved with the Commission. While there was no confirmation in my interviews that this was the case on the part of the French authorities, this possibility is relevant to note.

Nevertheless, the optimism was warranted. Six days into the excavation, ICLVR investigators uncovered human remains, later identified to be those of Ruddy. Mervyn Jess from the BBC reported from near the site of the exhumation. His report emphasized the Commission’s mandate, and the importance of this discovery.

It is a miserable day in northern France. Mist clings to the treetops in a heavily-wooded area, just south of Rouen. Among the trees, a man-made clearing is populated by workmen in fluorescent vests. They make up the team from the Independent Commission for the Location of Victims Remains. For the past week, they've been clearing away trees, saplings and undergrowth in the search for Seamus Ruddy. Now it seems that search has reached a conclusion with the discovery of human remains. The 50 sq. km. of forest are home to an array of wildlife, with deer and wild boar roaming freely. During the hunting season, the usually quiet remoteness of this part of Normandy is shattered by the sound of gunfire. In May 1985, nobody heard the shot that killed Seamus Ruddy except those who murdered him. His body was buried in the flinty soil and left there. The Newry-born teacher, who had been working in Paris when he disappeared, was murdered by the INLA. He became one of a group known as the "Disappeared". For 32 years, his family has been trying to locate his body to bring him home for a Christian

²⁹ Professor Marie Cassidy, State Pathologist of Ireland, interview by author, Dublin, April 6, 2017.

burial. Today, under a rain-soaked tent, what could be his remains may mark the end of that sorrowful quest.³⁰

Since the location of Ruddy's remains, despite repeated search efforts, none of the remaining three of the Disappeared have been located.³¹ The three outstanding victims are Joe Lynskey, the man being searched for when the bodies of McKee and Wright were found, a former monk who disappeared from Belfast in 1972; Columba McVeigh, a 19 year old from County Tyrone who was killed in October of 1975, and; Captain Robert Nairac, a British military officer on a duty in Northern Ireland killed in May of 1977.³² In May of 2019, an anonymous donor provided almost £50,000 to Crime Stoppers to offer as a reward for new information regarding the three outstanding disappearances, \$20,000 USD towards the recovery of each of the three bodies.³³ In response to the reward, Knupfer was quoted by BBC Radio Ulster as saying,

his organisation was 'not really interested' in who the anonymous donor was but he believed the money 'might prove to be a game-changer.'

'We do understand the payment of money for information is a contentious issue at the best of times. But we have to make it clear that this is a humanitarian process. It's nothing to do with crime, it's simply about recovering the remains of the outstanding victims and returning them to their families - it's about closure.'³⁴

Knupfer's comments on the introduction of the financial reward demonstrate how powerful the foundational principle of humanitarianism, and the prioritization of the needs of the families, remains to this day on the Commission's staff, and on its operations.

Since its inception in 1999, the ICLVR has developed into a strong and well-respected institution for investigating forced disappearances. As Frank Murray explained, the Commission utilizes up-to-date forensic techniques to locate, identify, and return remains to family members. He also described how the Commission takes pride in seeking

³⁰ BBC News, "Seamus Ruddy: Human remains found in search of French forest, BBC News, 6 May 2017, accessed June 15 2019, <https://www.bbc.com/news/uk-northern-ireland-39828895>.

³¹ Rebecca Black, "Search for 1975 Disappeared teen Columba McVeigh resumes again," *The Belfast Telegraph*, June 4, 2019, accessed June 25, 2019, <https://www.belfasttelegraph.co.uk/news/northern-ireland/search-for-1975-disappeared-teen-columba-mcveigh-resumes-again-38175829.html>.

³² Independent Commission for the Location of Victims' Remains, "The Disappeared," accessed June 15, 2019, <http://www.iclvr.ie/en/iclvr/pages/thedisappeared>.

³³ "The Disappeared: Reward for information to find IRA victims," <https://www.bbc.com/news/uk-northern-ireland-48354342>.

³⁴ *Ibid.*

out cutting-edge tools and techniques to facilitate their work when their existing approaches prove insufficient.

We have a small team of dedicated professionals who organize the digs, who do the research, who do the inquiries. They're all-rounders. But we employ on a contract basis we don't have any full-time staff. [The staff are] professional archaeologists, contractor[s] who [are] familiar with the work and know what to do and how to do it. And we rely then on DNA for identification, and in fact in one of the cases found at Coghalstown, as I mentioned, we usually get the DNA sorted in the UK, but the UK weren't able to do because their skeletal remains found were so brittle that the British equipment wasn't sufficiently sophisticated to complete the identification process and guess where we went to get another test done? Canada.³⁵

As I argued in Chapter 4, forensic human rights investigations have become the norm for investigating forced disappearances globally. And as this chapter has demonstrated thus far, the ICLVR has implemented this international norm from its inception. However, the Commission has implemented the norm in a way that is entirely unique by maintaining the focus on the family, and returning the remains of their loved ones to them. The Commission blends scientific investigations with only the humanitarian goals, not the legal ones which were discussed in Chapter 2. In theory, the highly scientific standards of the Commission and of forensic human rights investigations could be relaxed, since the evidence collected cannot be used in judicial proceedings. That being said, by upholding these scientific standards, the accuracy of the identifications made, and of the information gathered through the ICLVR can be assured. The accuracy of this evidence contributes to the creation of a non-politicized, evidence-based truth regarding the forced disappearances in Northern Ireland during the Troubles. In relation to Northern Ireland in particular, where two distinct narratives about the conflict continue to prevail, and where truth is framed in response to association with these two narratives, the importance of objective, scientifically verifiable truth cannot be underscored enough. However, this truth is inherently limited by the scope of the legislation, which subsequent sections of this chapter discuss in more detail in subsequent sections of this chapter.

³⁵ Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains and Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 31, 2017.

7.2 Receiving information and tips

As Chapter 6 demonstrated, the ICLVR has relied heavily on information from the public to locate the remains of the Disappeared. This means that often those who were involved in some capacity in committing the disappearances have become the primary sources of information for the Commission.³⁶ However, the Commission's focus on non-prosecution and on returning remains to the families of the Disappeared was instrumental in shaping how the collection of this information was embedded into the Commission's operations. The ebb and flow of information over the two decades of the Commission's work is important to recognize and discuss as part of its operations.

The two foundational principles of non-prosecution and prioritizing of the needs of the family are enshrined in the confidentiality provisions found in the Location of Victims' Remains Act of 1999, the formal agreement between the UK and Ireland which established the Commission and was signed by both countries. The Act reads, "No relevant information provided to the Commission shall be disclosed to any person except for the purpose of facilitating the location of the remains to which the information relates."³⁷ However, immediately following this assertion is a secondary clause that reads,

- (2) Subsection (1) does not prohibit the disclosure to members of a victim's family of—
- (a) the fact that relevant information has been provided to the Commission; and
 - (b) the place where, according to the information, the victim's remains may be found.³⁸

This clause demonstrates the prioritization on providing information, albeit limited information, to the families of the victims. At the same time, protecting the identities of those who came forward and provided information to the Commission, and the information they provided, is also prioritized. In establishing the Commission, those involved

³⁶ Some truth commissions, such as the South African Truth and Reconciliation Commission, have facilitated the testimony of perpetrators of violence as opposed to only from victims. For an overview and discussion of challenges, see Kelebogile Zvobgo, "Designing truth: Facilitating perpetrator testimony at truth commissions," *Journal of Human Rights* 18, no. 1 (2019): 92-110, <https://doi.org/10.1080/14754835.2018.1543017>.

³⁷ *Northern Ireland Location of Victims' Remains Act, 1999* (London: Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament, 1999).

³⁸ *Ibid.*

recognized that they relied upon information from former perpetrators, and thus needed to include provisions to formally protect them.

The Act also cites that no information collected by the Commission can be provided to law enforcement or used in criminal proceedings. It also specifies that no forensic tests can be conducted on remains except those used to determine the identity of the victim. Specifically, it prohibits tests designed

- (a) to discover information about anything done to any person, or with or in relation to any item;
- (b) to discover who has been in contact with, or near to, any person or item;
- (c) to discover where any person or item was at any time (including the conditions under which he or it was kept);
- (d) to discover when any person or item was in contact with, or near to, a particular person or when he or it was in a particular place or kept under particular conditions;
- (e) to discover when or where any item was made; or
- (f) to discover the composition of any item.³⁹

In light of these restrictions outlined in the Act, some critics may question the value of the Commission as an investigatory body, especially one that conducts scientific investigations based on high standards for the collection of forensic evidence. In practice and by design, the Commission is prevented from collecting any information beyond the identity of the victim. However, the location and identification of the remains of the victim is the primary goal, due to the recognition of the needs of the families to have the remains of their loved ones returned to them.

7.2.1 Early collection of information

As discussed in Chapter 6, and in the previous section, prior to the establishment of the Commission, WAVE set up a confidential phone line to collect information regarding the disappearances and the location of remains.⁴⁰ The Commission was able to use this early information to facilitate the location of the initial bodies, those of Eamonn Molloy, Brian McKinney, and John McClory. As Geoff Knupfer, the Commission's Lead Investigator recalled in my interview with him, "a Catholic priest came along and told the Commission, okay if you send your people to a churchyard you will find a coffin and a body in it. And

³⁹ Northern Ireland Location of Victims' Remains Act, 1999.

⁴⁰ WAVE, *The Disappeared*, 2.

so that was one of them. They did declare to the Commission, the location, the general locations of some of the others but only two were found, a pair buried together called McClory and McKinney. And then it dried up.”⁴¹ It is believed that IRA intermediaries passed on the information about Eamonn Molloy’s body having been reburied in the cemetery to the priest, who then shared it with the ICLVR.⁴² It is important to note here that, while the relationship between republicans and the Catholic church was fraught throughout the Troubles,⁴³ the disclosure of the location of Molloy’s remains to a priest seems to be an example of clergy acting as a neutral party and facilitator of information. This is not unusual, as both Catholic and Protestant clergy acted as mediators, negotiators, and intermediaries between members of the IRA and others at key moments during the conflict.⁴⁴ Another Catholic priest later approached the Molloy family with information about their son’s last moment. The priest disclosed that in 1975, he had heard Molloy’s final confession immediately prior to his murder, while Molloy was being held captive by the IRA members who would subsequently kill him.⁴⁵ The involvement of the Catholic priests in Molloy’s disappearance and the location of his remains is consistent with the argument I made about the broader involvement of religious institutions in the Troubles; individual religious leaders were involved, but the religious institutions themselves had very little involvement.

Many families were also distinctly aware of the provision of information by members of the IRA in the early years. Jean McConville’s daughter, Helen McKendry, spoke to the Irish Times following the discovery of McKinney and McClory’s bodies, commenting on the fact that new information provided to the Commission was key in the discovery of the two bodies. She said, “[t]he people who buried the [D]isappeared must all

⁴¹ Geoff Knupfer, Lead Investigator, Independent Commission for the Location of Victims’ Remains, interview by author, Dundalk, Ireland, April 4, 2017.

⁴² BBC News, “UK ‘Disappeared’ victim identified,” *BBC News*, Jul. 20, 1999, accessed Aug. 27, 2020, http://news.bbc.co.uk/2/hi/uk_news/397097.stm.

⁴³ See, for example, Margaret M. Scull, *The Catholic Church and the Northern Ireland Troubles, 1968-1998*, (Oxford: Oxford University Press, 2019).

⁴⁴ See, for example, Maggie Scull, “How the Catholic Church impacted on the Troubles,” RTE, 24 Jul 2019, <https://www.rte.ie/brainstorm/2019/0721/1064368-how-the-catholic-church-impacted-on-the-troubles/>.

⁴⁵ BBC News, “A prayer before dying: IRA took priest to Disappeared victim before murder,” *BBC News*, Nov. 3, 2013, accessed Aug. 27, 2020, <https://www.bbc.com/news/uk-northern-ireland-24794617>. The knowledge of this priest about Molloy’s murder and its perpetrators certainly calls into question the definition of neutrality of religious figures during the Troubles, as is discussed in the BBC article cited here. However, this is beyond the scope of this project.

still be alive and all must know exactly where they buried them. I don't know whether they are playing a political game with us as the talks start... the first body turned up as something was happening."⁴⁶ However, as discussed in the previous section, both Irish Commissioner Frank Murray and Lead Investigator Geoff Knupfer indicated that even those who were committed to providing information to the Commission were not always able to provide helpful information. This was primarily due to individuals' difficulties in remembering precise information many years after an event, but also due to changes in geography that made pinpointing precise locations more difficult.

Like McKendry, over the course of the Commission's collection of information, other family members also expressed scepticism and frustration regarding the motives of individuals providing information to the Commission. In 2008, following a second unsuccessful search for the remains of Seamus Ruddy in Rouen, France, Ruddy's sister Anne Morgan was quoted in the *Irish Times* expressing similar feelings.

Morgan said she believed someone had led the commission 'down the garden path' by suggesting he knew where the body was buried. She said the information given to the commission was provided by the same individual who gave information for the 2000 search in the same area. Ms. Morgan accused this man of wasting the time of commission and causing added grief to the Ruddy family. 'We hope that the INLA will go back and talk to its members and find out if anyone else has been to that forest and if so to come back and give us the Information,' added Ms. Morgan.⁴⁷

Following the initial identifications, the flow of information to the Commission stagnated. As discussed in the previous section, both Lead Investigator Geoff Knupfer and Irish Joint Secretary Peter Jones provided insight into the causes of this stagnation. Knupfer suggested that the Commission was not sufficiently proactive in seeking information from informants.⁴⁸ Jones suggested that former paramilitary members with information may have been waiting to see whether the Commission and its personnel could be trusted to uphold the confidentiality it had laid out at its inception. However, as discussed in the previous section, as a result of the stagnation of the information coming forward, and in the

⁴⁶ Elaine Keogh, "Recovery of remains gives hope to the family of Jean McConville," *The Irish Times*, July 1, 1999, 12.

⁴⁷ Gerry Moriarty, "Search of remains of man killed in INLA dispute fails," *The Irish Times* July 23, 2008, 8.

⁴⁸ Geoff Knupfer, Lead Investigator, Independent Commission for the Location of Victims' Remains, interview by author, Dundalk, Ireland, April 4, 2017.

retrieval of remains, the Commission revisited its operations, and as part of this, revisited how it was seeking out information from the public and from informants.

7.2.2 *Appeals for information*

Throughout the course of the Commission’s operations, the Commissioners, investigators, families of the victims, and WAVE have consistently made appeals for anyone with information to come forward to the Commission and provide this information. These public appeals have been visible in most news coverage of the Commission and newspaper profiles of the Disappeared, documentaries, and in press statements from WAVE, especially during their semi-annual events (the Palm Sunday Service and the Walk for the Disappeared at Stormont every November). Sometimes these appeals have been broad. In a 2019 article in the Irish Times, lead investigator Geoff Knupfer “said if new information comes to light this would be “a hugely significant breakthrough”.⁴⁹ He also emphasised that any information that went to Crime Stoppers would be passed only to the ICLVR and to no one else and that all information would be treated in the strictest confidence.

We are entirely information-driven. We can give a cast-iron guarantee which has been borne out over the 20 years that the ICLVR has been in operation that any information received can only be used by the ICLVR to locate and recover the remains and it will never be shared with any other State body for any other purpose.⁵⁰

By contrast, in other cases, when the Commission has been looking for particular information, the person speaking on its behalf has released a limited amount of information that might jog someone’s memory, or encourage a particular individual with information to come forward. For example, while the search for Brendan Megraw was occurring in 2009, Irish Commissioner Frank Murray spoke to the Irish Times. He

issued an appeal to anyone with further information which would be of assistance to the commission to come forward, making particular reference to the site at Orristown.

‘It’s a huge bog area – we have no clear indication at all as to [the] part of that bog the remains of Brendan Megraw [are] buried [in] and it would be very helpful if we

⁴⁹ Amanda Ferguson, “Reward offered for location of final three Disappeared victims,” *The Irish Times* May 22, 2019, accessed June 29, 2019, <https://www.irishtimes.com/news/politics/reward-offered-for-location-of-final-three-disappeared-victims-1.3899889>.

⁵⁰ *Ibid.*

could get anything at all that would help,' said Mr. Murray. He said the information would be confidential. 'Any information we get – there's a Chinese wall around it for ourselves only and it's specifically for the purpose of trying to locate the remains.'⁵¹

What is clear in comparing these statements is that, no matter the context, or the vagueness or specificity of the information provided, Commission representatives have always ensured that it was clear that the information would remain confidential.

Peter Jones, Irish Joint Secretary, indicated in my interview with him that the ICLVR has continued to seek out new strategies for collecting information.

the Commission actively seeks information insofar as it can. I mean, it's public knowledge that the Commission interacts with the leadership of *Sinn Fein* to facilitate more information coming forward. They do that. That's for the four [now three] remaining cases. Then there are facilities as well for people to submit information. There is a confidential phone line. There's a confidential Post Office box as well. We might set up an email moving forward as well. And generally speaking there's very particular people that the Commission needs to get this information from. Doing a public troll isn't necessarily going to yield positive results. More than that, you need to put some sort of communication facilities in place for people to volunteer information.⁵²

Jones also indicated that the Commission is still receiving information that is useful towards locating the remaining victims of forced disappearances. In addition, as this discussion occurred several weeks before the location of Seamus Ruddy's remains in France, the proof of the value of the continued acquisition of new information is in the Commission's continuous results.

The continued flow of information to the Commission, alongside the use of state-of-the-art forensic investigative techniques, has been essential to the Commission's operations. And the commitment of the actors involved with the ICLVR to collecting only the information they are permitted to collect under the Commission's governing legislation, and to providing whatever information possible to the family members of the Disappeared, has demonstrated again the clear adoption of the foundational principles that established the Commission during its operation. This is particularly important to note, since, as

⁵¹ Georgina O'Halloran, "Searches under way for five victims," *The Irish Times*, October 16, 2009, 4.

⁵² Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 16, 2017. At the time of this interview, the remains of Seamus Ruddy had not yet been recovered

discussed in Chapter 2, the overarching transitional justice norms tend to advocate for maximizing the amount of truth provided through truth-recovery mechanisms, and using information available, where possible, to facilitate prosecutions through a judicial process.

Thus the ICLVR's approach to collecting information, and protecting this information and its sources, while simultaneously maximizing the information it can give to families, is a unique feature of the ICLVR. This has had a profound impact on its operations. A second unique feature, and one that has had a similar impact, has been the use of the coroner's inquest system as part of the ICLVR's investigative process. The next section of this chapter will briefly examine this feature.

7.3 Coroners' inquests and the ICLVR

The second, and equally unique feature to the ICLVR's work as the Commission's efforts in seeking and receiving information from potential perpetrators, has been the integration of the ICLVR with the public system of coroner's inquests that investigate suspicious and unnatural deaths in Ireland. As outlined in Section 5.1, the ICLVR is subject to the system of coroners' inquests used in Ireland. As is the case in many other former British colonies, inquests are triggered whenever an unnatural death occurs, as unnatural deaths must be investigated and recorded on the public record.

If a person dies and the death cannot be explained, an inquest may be held to establish the facts of the death, such as where and how the death occurred. An inquest is an official, public enquiry, led by the Coroner (and in some cases involving a jury) into the cause of a sudden, unexplained or violent death. An inquest is not usually held if a post-mortem examination of the body can explain the cause of death.⁵³

As part of a coroner's inquest, cause of death is identified alongside manner of death to provide a complete picture of what happened to the victim and how it occurred. "When the proceedings have been completed, a verdict is provided in relation to the identity of the deceased, and how, when and where the death occurred... The coroner or jury may also make a general recommendation, which is designed to prevent similar deaths occurring. After the inquest is completed, the Coroner will issue a certificate so that the death can be

⁵³ Citizens Information, "Inquests," last updated 19 June 2019, accessed June 24, 2019, https://www.citizensinformation.ie/en/death/sudden_or_unexplained_death/inquests.html.

properly registered.”⁵⁴ Cause of death refers to the medical processes that led to the death of the individual.⁵⁵ Manner of death, by contrast is a verdict regarding “how the death came about; a judgment based on circumstances surrounding the fatal event.”⁵⁶ In Coroners’ inquests in Ireland, the Coroner or jury can reach one of six possible verdicts regarding the manner of death: accidental death, misadventure, suicide, open verdict, natural causes, and unlawful killing. Due to the restrictions discussed in Section 6.2 regarding what information the Commission is permitted to both investigate and disclose publicly, full inquests cannot be held for the victims of forced disappearances. Providing a complete set of information regarding the cause and manner of death of victims, and especially the circumstances surrounding the deaths would violate these restrictions. And so, the deaths that the ICLVR investigated have all been classified as “unlawful killings”.⁵⁷

According to Dr. Brian Farrell, a now-retired senior coroner in Dublin who handled many of the cases regarding the Disappeared, the preparation for the coroner’s inquest would begin as soon as remains were located. It is also important to note that family members were also involved from this first moment.

Once the remains were found, most of them were skeletonized as far as I can remember, and we had to receive all of the excavated parts, plus any clothing and shoes and anything that was accompanying. And then the families were involved. Our first step was to receive the body parts. They came to the mortuary, the Dublin City mortuary. So we would have those transported from wherever they were found.... We would have received the remains and I would then have involved the forensic pathology department, what we call the State Pathologist’s Office, their forensic outfit. They don’t work for me; they work with me. We needed forensic analysis and examination of these remains. We also would have involved a forensic anthropologist. Obviously, there would be information coming in from third party sources, anonymous sources, so we would have some idea – I think the Commission would have had some idea who the remains were, who they were likely to be. And then the families would be brought in.⁵⁸

⁵⁴ Citizens Information, “Inquests,” last updated 19 June 2019, accessed June 24, 2019, https://www.citizensinformation.ie/en/death/sudden_or_unexplained_death/inquests.html.

⁵⁵ “Cause and Manner of Death,” Snohomish County, Washington, accessed June 15, 2019, <https://snohomishcountywa.gov/806/Cause-Manner-of-Death>.

⁵⁶ Lindsey Harle, “Cause, manner and mechanism of death,” last updated December 31st, 2018, accessed June 15th, 2019, <http://www.pathologyoutlines.com/topic/forensicscauses.html>.

⁵⁷ Dr. Brian Farrell, Coroner, Dublin District Coroner’s Office, interview by author, Dublin, March 21, 2017.

⁵⁸ *Ibid.*

This is important to note because, as Section 7.4 unpacks further, families were extensively involved in the process of the coroner's inquest, from the moment remains were discovered onwards, and much of this involvement was documented in the coroner's report for each case.

Dr. Farrell described the involvement of the families as part of the two parts of the inquest, the coroner's report, and the coroner's court proceedings.

The families would come down to Dublin from wherever they lived, they would be in touch with our office, sometimes through the Commission, sometimes directly, and we would have to brief them on what was going to happen, and many of them would want to give evidence. They wanted their say in many cases. You know, what was the background to their son or brother, and we would facilitate that. And then I would normally have asked the senior investigators for the Commission to give evidence in the witness box in regard to the finding of the bodies. Now that would not cover the confidential matters. They would say something like "on information received, we proceeded to excavate at some location. We have photographs of the excavation" or something like that. And usually we would get a preliminary statement from the investigators setting out the circumstances of the finding and what work was done to locate and identify the deceased. So there could be quite a lot of... we wouldn't be straying into the intelligence matters.⁵⁹

7.3.1 Coroners' Reports

The coroner's report, which provides a written record of an investigation and is part of the public record of the coroner's inquest into an unnatural death, in addition to providing details about family involvement, provides summaries of the forensic investigations conducted. These forensic investigations have the goal of positively identifying remains so that they can be returned to their families for proper burial. The report regarding Charlie Armstrong's disappearance has been selected as an example. The first part of the report contains a statement by Charlie Armstrong's wife, Kathleen Armstrong, which Section 7.4 discusses in greater detail. Kathleen Armstrong's statement was followed by one from a member of the *gardai*, the Irish state police, detailing initial investigations into Charlie Armstrong's disappearance.

In the Armstrong case, the *gardai's* statement indicated that the police force had been provided information in 1999 that Armstrong was buried at Coghalstown in County

⁵⁹ Dr. Brian Farrell, Coroner, Dublin District Coroner's Office, interview by author, Dublin, March 21, 2017.

Monaghan, but an investigation at the time was not successful in locating his remains. Under Geoff Knupfer's direction, further excavations began in 2007 at the site. However, it was not until 2010 that his remains were located by a subsequent investigation, having been "weighted down with stones which had been placed on top of the body."⁶⁰

The statement by the *gardai* investigator also detailed how the remains were handled and processed, and what artifacts were located with them. This statement was followed by a statement from Jonathan Hill, one of the Commission's senior investigators, who provided context regarding the location of the remains. This included the fact that in 1999, Kathleen Armstrong was notified by the *gardai* that Charlie's car "had gunshot residue on the front passenger seat and in the boot. Neither Mr. Armstrong, nor any other member of the family owned or used firearms."⁶¹ This information is significant, because it demonstrates how long families had to go without answers. 1999 was 18 years after Armstrong's disappearance, and it was only at that point that his wife was provided information from the *gardai* about the circumstances surrounding his disappearance.

The report also contained statements or records from various forensic experts detailing the scientific methods used to identify Armstrong, and to investigate the death. The first is a summary report of the identification from the State Pathologist, Professor Marie Cassidy. Cassidy's report includes a summary of the external examination of the remains and all artifacts found with the body, and the statement that no cause of death could be determined. This is possibly due to the fact that the skull was not recovered. Cassidy's report is followed by the DNA results confirming Armstrong's identity based on comparison of his DNA to DNA profiles of known relatives. This report was followed by a record of analysis by a forensic anthropologist, who indicated that the remains were in poor conditions due to acidic conditions in the bog in which they were found, which may also have contributed to the inability of forensic experts to determine the cause of Armstrong's death.⁶²

⁶⁰ Republic of Ireland, Report of the Coroner, Charles Armstrong (Dublin, Ireland: Dublin District Coroner's Office, 2017), 23.

⁶¹ Ibid.

⁶² See, for example, Don Brothwell and Heather Gill-Robinson, "Taphonomic and Forensic Aspects of Bog Bodies," in *Advanced in Forensic Taphonomy: Method, Theory, and Archaeological Perspectives*, William D. Haglund, Marcella H. Sorg eds., (New York: CRC Press, 2002), 119-132 and Niamh A. McCullagh, Geoffrey C. Knupfer, "Forensic archaeology and the independent commission for the location of victims'

In some other cases of the Disappeared, however, the remains were better preserved, and thus cause of death could be determined. In the disappearance of Eamonn Molloy, the report details cause of death being “Brain and spinal laceration due to a single bullet in the back of the neck.”⁶³ A second gunshot to the chest was listed as a contributory cause of death. The determination of cause of death is important for a number of reasons, both broadly in forensic science, but also specifically in the ICLVR’s work and the cases of the Disappeared.

As discussed at beginning of this section, during a coroner’s inquest, a verdict is provided regarding the manner of death of the victim. This is then recorded in the coroner’s report. In all of the cases of the Disappeared investigated to date, the manner of death was listed as ‘unlawful killing’. As Dr. Farrell recalled,

the information they had was that the deceased was killed by a third party. So we put the information together. Usually we were able, in all cases as far as I remember, we were able to say they were unlawfully killed. That means homicide. I can’t remember whether one or two were said to be shot while they were trying to escape. But they were unlawfully abducted and they came by their deaths in unlawful circumstances.⁶⁴

This verdict provides confirmation, on the public record through the coroner’s report, that an unnatural death occurred at the hands of another party. This is important, because it provides a formal recognition in the state judicial system, signalling that a criminal death occurred, but limiting the scope of the investigation to within the mandate of the ICLVR. This demonstrates both the commitment on the part of all parties to maintaining the boundaries of the Commission’s reach, but also of providing as much information as is possible to the families, and to establishing truth about crimes that were committed on the public record.

remains,” in *Forensic Archaeology: A Global Perspective*, W.J. Mike Groen, Nicholas Márquez-Grant, Robert C. Janaway eds., (West Sussex, U.K.: Wiley Blackwell, 2015), 407-14.

⁶³ Republic of Ireland, Report of the Coroner, Eamonn Molloy (Dublin, Ireland: Dublin District Coroner’s Office, 2017), 23.

⁶⁴ Dr. Brian Farrell, Coroner, Dublin District Coroner’s Office, interview by author, Dublin, March 21, 2017.

7.3.2 *Coroner's Court*

As Dr. Brian Farrell recounted, once all of the pieces of the identification were complete, the actual coroner's inquest was held, which took place at the coroner's court in Dublin.

The families had to be involved in these inquests, and wanted to be. They really wanted to be involved because they felt it was sort of important that they come and, even though the evidence we could present was limited under the Act, they still wanted to hear from us and be present at the hearing. The hearings had to be restricted in the sense that you weren't going into the background of the finding or the informants or anything like that.⁶⁵

This limited evidence is in direct contrast with other coroner's inquests, where background circumstances to the death would be presented and investigated. However, the Commission's legislation prevented this from occurring.

Dr. Farrell commented that in a normal inquest,

You would be going into all of that. And the police would be giving a report on what happened and how the person came by their death. You know that sort of thing, the investigation. We wouldn't be going into [that] necessarily. What we are doing is a medical-legal inquiry as opposed to a criminal investigation into a homicide, say. But, we work hand in hand with the police.

So first of all you have to investigate and ensure they're not criminal deaths. But most of the deaths are not criminal but they still have to be subject to an inquest. And many of these inquests would have issues with relation to deaths in the workplace, deaths on the public highway, lots of situations that might be issues that would provide evidence that would be helpful to the public and certainly to persons in similar situations. So a lot of public information comes out at the inquests. And I think that's what [some countries] have lost in not holding inquests. Because lots of the inquiries are done in the [Medical Examiner's] office. So you come into me and I give you the papers and I say I think this is a suicide and off you go, you know. Whereas we go into it and the families would be able to ask questions or be legally represented even. If it was a controversial case, say a death in hospital, or under medical care, or in the workplace or another controversial death, they can ask questions and be legally represented by lawyers. So that's the process. We were obliged to have inquests, [but] in this unusual situation we couldn't do full inquests.⁶⁶

However, despite the limits in the legislation, the inquests were still able to reveal a significant amount of information. In the inquest regarding Danny McIlhone's death, lead

⁶⁵ Dr. Brian Farrell, Coroner, Dublin District Coroner's Office, interview by author, Dublin, March 21, 2017.

⁶⁶ *Ibid.*

investigator Geoff Knupfer's comments reported in the Belfast Telegraph illustrated the extent of information the Commission might receive and be permitted to provide in Coroner's Court. Knupfer stated, "I'm absolutely satisfied from information we received from direct sources in the republican movement that he was shot."⁶⁷

The inquest heard that the young man was abducted around May 12, 1981, from Ballymun's now demolished Pearse Tower, where he was staying at the time.

Mr. Knupfer said that the IRA had admitted taking Mr. McIlhone to a 'premises' in Ballynultagh for questioning about 'certain matters' and that a Provo had shot him a number of times when a struggle broke out between them.

'We know there was more than one gunshot, but not how many,' he said.

Asked by a member of the jury, sitting at Dublin City Coroner's Court, whether the ICLVR knew who pulled the trigger, Mr. Knupfer said they had no information about the actual killer.⁶⁸

These statements actually provide a significant amount of information, both to the families, and on the public record, regarding the circumstances of McIlhone's death. This is despite the restrictions in the Commission's mandate regarding what information they could collect from forensic evidence, and what information they were permitted to make public. However, it is important to note here that much of the information above was provided not through forensic evidence, which is heavily restricted by the Commission, but from information from the IRA. This demonstrates the importance of the non-forensic investigative work.

The media coverage of the various inquest proceedings in Coroner's Court largely illustrated the same information in each case. The coverage indicated who the remains belonged to, where they were found, and which paramilitary organization was involved in the disappearance. They indicate how relieved the family members of the victim were to finally have some semblance of closure regarding the disappearance. In some cases, the coverage went further than others in allocating blame. In the case of the disappearance of Peter Wilson, whose remains were discovered in Northern Ireland in 2010, the following

⁶⁷ "28 years after the IRA buried Danny McIlhone, a jury returns a verdict of unlawful killing," *The Belfast Telegraph*, October 16, 2009.

⁶⁸ *Ibid.*

discussion during the Coroner's Court proceedings provides more context of the circumstances surrounding Wilson's death:

Deputy State Pathologist for Northern Ireland, Dr. Peter Ingram said the remains recovered at Waterfoot beach revealed the 21-year-old had been shot four times in the head, causing 'very rapid death.'

A fracture was also located in the victim's jaw, and the inquest heard that it could have been caused by a heavy punch.

Coroner John Leckey asked: 'This was really an execution?' Dr. Ingram answered: 'Yes.'

The coroner told the family, gathered in a single row of the courtroom, that he was glad to have the opportunity to hold the inquest and issue a death certificate to the relatives. He added: 'You have endured a lot over four decades.'⁶⁹

As in other inquests, the patience and grief of the family was addressed by the coroner. However, the information regarding the crimes was more detailed in this case.

Both Farrell and Knupfer indicated that it has sometimes been challenging to walk the fine line between what was permitted to discuss and disclose under the Commission's mandate, the needs of the investigations, and the needs of the families. As an expert in ballistics throughout his investigative career, Knupfer has been able to garner more information from what he referred to as a "visual inspection" of the remains and the surrounding artefacts than an average investigator. As a result, he stated,

I end up giving evidence [in Coroner's Court] on a lot of these, because the pathologist will say gunshot wound to the head and I recovered a projectile, a bullet, I will often say, and I have a ballistic background, and I have examined the head injury and I've examined the bullet, but visually only. In other words, I've not examined it I've just looked at it and I can say that the head wound or the head injury is broadly consistent with having been caused by a bullet of that caliber. And it's an area that I thought might cause some... I thought somebody might suggest that we were straying into giving forensic evidence in court. But that has never been raised at all. So that is to say over the years, we've never been challenged or anything, it's all worked like a dream, it's all worked very well.⁷⁰

⁶⁹ Steven McCaffrey, "Disappeared victim shot four times in head, inquest told," *The Belfast Telegraph*, March 12, 2011.

⁷⁰ Geoff Knupfer, Lead Investigator, Independent Commission for the Location of Victims' Remains, interview by author, Dundalk, Ireland, April 4, 2017.

Dr. Brian Farrell echoed Knupfer's comments from his own perspective, both regarding the challenges of not straying too far into matters that were *verboden* by the legislation, but also in the relative success of the coronial inquest model. He stated,

One had to be careful not to stray into anything. So there was quite a deal of preparation. And they were a bit, you know, they brought alive the times. Even though we lived through some of these times, they really brought them alive to hear how they were abducted and how much the family had grieved over the years. They wanted to hear what happened to them, where they were buried.⁷¹

Both these sets of comments provide context to the challenges of applying the model of coronial inquests and the coroner's court to the context of forced disappearances, where the information able to be provided is considerably more limited. However, both individuals' comments also speak to the broad perception of success that the Commission has experienced from all sides, which Chapters 8 and 9 address further. To me, Knupfer and Farrell's comments suggest that it is not only the influence of the sense of injustice related to forced disappearances, or the impact of the international norms regarding investigations of forced disappearances that have made the ICLVR successful. Instead, there is something particular about this institution and its context that make it successful. This will be the subject of analysis in Chapter 8.

All of the people interviewed for this project indicated that the most important stakeholders in the ICLVR, the family members, have generally had a positive response to the Commission's operations. The fourth section of this chapter examines the relationship that the Commission has had with family members, and the reception by family members of the Disappeared to the ICLVR's work. Determining the relationship between the Commission and the Families of the Disappeared was one of the most important questions to probe with interview subjects, especially considering the extent to which the families have been influential in shaping, and have remained the focus of policies and practices in, the ICLVR's work.

⁷¹ Dr. Brian Farrell, Coroner, Dublin District Coroner's Office, interview by author, Dublin, March 21, 2017.

7.4 The ICLVR and the Families of the Disappeared

As discussed throughout the previous sections on the investigations of the ICLVR and the use of coroner's inquests, family members of the Disappeared have remained key figures throughout the Commission's operations, and their interests have remained at the center of the Commission's design and work. Each interview subject for this project clearly indicated that the Commission prides itself on maintaining a positive relationship with the families of the Disappeared. This is of particular importance, as healing and establishing truth regarding what happened for the families was the central driving factor of the ICLVR from its inception. This section provides further insight into the role of the families, and the prioritization of the families' interests, through the Commission's operations.

7.4.1 Family participation in investigations

As alluded to throughout this chapter, family members of the Disappeared needed to be extensively involved with the Commission, both because their healing has been at the center of the ICLVR's mandate, but also because their participation has been necessary for identification of the remains once they have been located. As coroner Dr. Brian Farrell commented,

So we were looking for DNA. We would have sampled maybe the femur or whatever, whatever remains were there... The families would be then involved to give a sample. So they had to be in at this stage. And I can't remember which way it worked, did they give the samples first, and did they look at the clothing and other artifacts second, but whatever way it was, they were involved in all of these processes. They would have given buccal smears and maybe blood samples, and we would have profiled the families and then sent material to one of the forensic laboratories.⁷²

Farrell's comments demonstrate family members were actively involved in each stage of the process, from examining personal items, clothing, and artifacts buried with the remains, to providing DNA for sampling and comparison.

Families also provided statements about their loved ones to the Dublin coroner's office for inclusion in the coroner's inquest. As discussed in the previous section, Charlie

⁷² Dr. Brian Farrell, Coroner, Dublin District Coroner's Office, interview by author, Dublin, March 21, 2017.

Armstrong's wife Kathleen provided a statement for the report in his case, dated as the 21st of September 2011. It read as follows:

I am married to Charles Armstrong. We have five children Kathleen, Anna, Charles, James, and Terry. On Sunday the 16th of August 1981 my husband Charles left our home and travelled to mass at Crossmaglen. He was driving a silver Datsun. My husband never came home again. His motor car was found in Dundalk on the Monday the 17th of August 1981. He was reported missing immediately to the Police (*sic*). On the 18th of August 2010, I was asked to attend at Dundalk Garda Station by the Independent Commission for the Location of Victims' Remains and met with Detective Inspector Crowe. I was taken to a room where I was shown a number of items. I can positively identify these items. I have been shown a set of dentures. I recognize these as similar to my husband's. They are a small set of dentures and I used to wash them regularly for Charles. I have been shown a St. Bridget's medal. I either stitched this medal into Charles' suit pocket or I would have placed it there to keep him safe. I have been shown a green coloured waistcoat. My husband Charles was wearing this waistcoat when he left our house on Sunday the 16th August 1981 to go to mass. He wore this waistcoat each and every Sunday. I have been shown a pair of shoes. Brownish in colour. When Charles left our house to go to mass on the 16th of August, he was wearing these shoes (*sic*). I recognize them because of the colour, the fact that they are slip on and they are size 7, this was the size shoe Charles wore. I have also pointed out to Detective Inspector Crowe that the shoes have a big heel. Charles wore shoes with big heels as he was a small man in stature. I have also been shown a pair of brown/green stockings. These stockings are also Charles, and he was wearing them the last time I saw them.⁷³

This statement provides an example of some of the involvement of the family in providing context for the disappearances, and in identifying artifacts that were located at the burial site as belonging to their loved one. This must have been an incredibly difficult process, in light of the time that had passed. Family members tend to be particularly adept at identifying artifacts, and are often able to recount in precise detail exactly what their parent or spouse was wearing the last time they saw them. The fact that these details are etched in the minds of family members is clear from Kathleen Armstrong's statement.

In addition to their close involvement once remains have been located, the Commission staff has prioritized providing information to families throughout their work, and opportunities for involvement of family members whenever possible. Lead investigator Geoff Knapfer clarified how communications occur between families and the Commission,

⁷³ Republic of Ireland, Report of the Coroner, Charles Armstrong (Dublin, Ireland: Dublin District Coroner's Office, 2017), 23.

We have one member of our team whose role, amongst others, is family liaison. And they have single points of contact within each family. And that has worked pretty well on the whole. The remit of the role of the family contact is that they report back to family. And that bit of it, on occasion, has not worked as well as it might have done. Our bit's okay. Theirs is the bit that has crashed and burned a little bit on occasion. And we rely on WAVE in honesty to help us deal with families more generally. So we have quarterly meetings with WAVE and the families at WAVE or through WAVE we support them and they support us.⁷⁴

Knupfer's comments highlight the symbiotic relationship between the ICLVR, WAVE, and the families of the Disappeared. They rely on each other to communicate information, and to provide support and advocacy for the families, but also for the Commission itself. And by acting as that liaison, WAVE has made themselves an indispensable part of the process of the Commission's work.

Knupfer also discussed the importance of having good communication with the families, and indicated that sometimes they are present when exhumations are occurring.

Our policy with families is that, and this is a clear set out policy, one that I established right from the word go. Families will always be the first to hear about developments. In other words they will never hear about something from the newspaper or the television or the radio. In terms of family liaison they always know what we're about.⁷⁵

Dr. Farrell and Irish State Pathologist Professor Marie Cassidy both spoke about the involvement of families in coroners' inquests. Professor Cassidy indicated that families often have similar, or the same questions, both across cases in the Irish context, but also across international contexts where she has worked. She stated, "sometimes they're clarifying something what's in the report, most times, 'Did they suffer? What exactly happened?' That's what they want to know."⁷⁶ Cassidy expressed the sense that the information provided by the inquests, and by questions they are able to ask of the personnel through the system provides a forum to have their questions answered.

Similarly, Dr. Farrell also spoke to the questions that family members had, in his experience. He stated,

⁷⁴ Geoff Knupfer, Lead Investigator, Independent Commission for the Location of Victims' Remains, interview by author, Dundalk, Ireland, April 4, 2017.

⁷⁵ Ibid.

⁷⁶ Professor Marie Cassidy, State Pathologist of Ireland, interview by author, Dublin, April 6, 2017.

The Pathologist [such as Professor Cassidy] would do a summary of the report and give that. And the families sometimes asked questions. But we weren't giving out all the gruesome details. We tried to be sensitive. And then if the family did ask questions then we would try and answer. So this was a unique structure in which we work. It's totally unique, in my experience anyway.⁷⁷

While Dr. Farrell was speaking more broadly about the uniqueness of the ICLVR in this comment, and also about the integration of the public system of coroner's inquest with the ICLVR, this comment also summarizes the uniqueness of the participation of families in the ICLVR, and in the inquest process. This uniqueness stems from the fact that the ICLVR has been established, from the beginning, as a family-centric institution. This is due to the foundational humanitarian principle of the Commission, which has kept the needs of the families of the victims to have their loved ones remains returned for burial, at the centre of its operations.

7.4.2 How do the families of the Disappeared feel about the Commission?

As I explained in Chapter 3, family members of the Disappeared were excluded, very intentionally, from the list of interview subjects for this project. This was primarily due to the fact that the number of family members of victims of Troubles-related disappearance is small, and is also decreasing with the passage of time. In addition, with such a small number of family members, the perspectives of family members have been captured extensively in the media, in publications by WAVE, and in other studies. As a result, it was important to ask the elites interviewed for this project about their perception of the perspectives of the family members, and then comparing that with media accounts and other secondary sources of the perspectives of family members.

In response to a question regarding whether families of the victims have been satisfied with the Commission's work, the interview subjects were largely in agreement that this has been the case. Peter Jones, the Irish Joint Secretary to the Commission, described the relationship between the families and the Commission as being generally positive.

There are very good relationships between the Commission and families. Jon Hill [senior investigator] in particular does an awful lot of outreach with the families. If

⁷⁷ Dr. Brian Farrell, Coroner, Dublin District Coroner's Office, interview by author, Dublin, March 21, 2017.

there's an excavation, the families will always be kept informed about the progress towards commencing that excavation, and progress of the excavation as well. The Commission has a very good relationship as well with the WAVE Trauma Centre in Belfast. That would be, I think, the main liaison for the Commission with the families. And I've been to lots of meetings with the families in Belfast at WAVE's offices up there.

Generally the families are very supportive of the Commission and many family members of people who might have been discovered by the Commission attend those meetings as well as the other family members. I've met Eugene Simons' father there on numerous occasions as well just to name but a few. They're very very supportive of the remaining families and of the Commission as well. Generally speaking it's quite good. With the fundamental modus operandi of the Commission, it is there to find information secretly, and to use that information to discover the location of remains of people's loved ones. There's support for that fundamental principle. There might be some frustration about the time that it has taken, but under the circumstances...⁷⁸

Similarly, Dr. Farrell had the sense that family members are greatly appreciative of the ICLVR, and the process of coroner's inquests. He stated, "[families] found [the process] beneficial to their grieving process. And positive. We got positive vibes back in relation to the whole investigation, the whole process."⁷⁹

Frank Murray, the Commissioner from the Irish government to the Commission, also spoke to the relief and appreciation of family members regarding the Commission's work. He said, "Funerals we've attended of victims we have found have always been occasions of sorrow on the one hand, joy on the other. Like the relatives are so relieved the people from the relatives' group will come and thank you for what you've done and how relieved they are that this is now over, and we've found the person that they've been searching for so long."⁸⁰ Knupfer echoed the same sentiment. He stated, "I think the families have got to accept the compromise that it is, a halfway house, it's not perfect, it's a compromise deal. And most of them do. In fact, all of them do. And they, bizarrely, they end up being grateful for the help they've got, you know, at the funerals, ... they stand up

⁷⁸ Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 16, 2017.

⁷⁹ Dr. Brian Farrell, Coroner, Dublin District Coroner's Office, interview by author, Dublin, March 21, 2017.

⁸⁰ Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains and Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 31, 2017.

and thank the people, whoever they may be, who have given information to the Commission, which is quite something really”.⁸¹ And, Knupfer is correct in stating that it really is “quite something” to have the families of the victims come forward at the funeral services and thank those who came forward and provided information to the Commission, despite the fact that these same individuals were very likely involved in the disappearances of their loved ones. Family members largely do not seem to have forgiven those involved in the disappearances for their actions, but they do seem beyond grateful for the provision of knowledge. This speaks very strongly to the sense of closure and healing experienced by families once the remains of their loved ones have been returned.

The media coverage and commentary by family members is consistent with the sense of the ICLVR personnel interviewed for this dissertation. Following the recovery and return of Danny McIlhone’s remains, his family released a statement, stating, “[W]e as a family are now at peace and now have the opportunity to give our brother Danny a Christian burial and to lay him to rest with our beloved mother and father. The family thanked “most sincerely” the British and Irish governments and the members of the Independent Commission for the Location of Victims' Remains.”⁸² Similarly, Seamus Wright’s sister Briege expressed that she was “grateful to those who provided information that led to the location of his remains.”⁸³ The overwhelming sense from the media coverage confirms that the families are grateful to the ICLVR and to investigators, as well as informants, for bringing their loved ones home.

The one exception that seems to prevail regarding the unified perspective of family members of the Disappeared is the family of Jean McConville. While Jean McConville’s case fell under the Commission’s mandate, her disappearance was ultimately not investigated by the ICLVR and thus has been the subject of a criminal investigation in Northern Ireland, as opposed to going through the Commission’s investigative process. Despite this, her children have continued to be vocal regarding their mother’s disappearance, and their opinions regarding the various individuals and institutions

⁸¹ Geoff Knupfer, Lead Investigator, Independent Commission for the Location of Victims’ Remains, interview by author, Dundalk, Ireland, April 4, 2017.

⁸² Dan Keenan, “Human remains identified as missing man killed by IRA,” *The Irish Times*, December 20 2008, 10.

⁸³ Patsy McGarry, IRA victim’s funeral held 43 years after his death,” *The Irish Times*, September 16, 2015, 7.

involved in investigations. Two of McConville's children lodged a complaint regarding the investigation of their mother's disappearance, and received an acknowledgement from the then-Police Ombudsman for the Royal Ulster Constabulary that she and they had been "badly served" by the investigation.⁸⁴

The McConville relatives have walked a different path from the other families of the Disappeared, in that following the discovery of her remains, McConville's disappearance was investigated by the Police Service of Northern Ireland, and has resulted in criminal charges being laid against an alleged perpetrator named Ivor Bell. Bell was a known IRA member and former prisoner in the renowned *Long Kesh* prison, where many IRA prisoners, including hunger striker and Irish reunification advocate Bobby Sands, were held during the Troubles. In December of 2018, the trial for the abduction and murder of McConville against Bell, was stayed. A judge ruled that Bell was unfit to stand trial due to dementia, and instead ruled that a "trial of facts" would be held instead. In October 2019, Bell was cleared of all charges, on the basis that the evidence presented against him, namely the Boston Tapes, were not neutral.⁸⁵ Five of Jean McConville's children were in attendance at the trial. After its conclusion, the family made a statement indicating that "We may not have got justice but we have got some truth" and requesting a Public Inquiry into their mother's death.⁸⁶

Discussing the McConville family as the outliers in the seeming consensus of other family members of the Disappeared is important, as the McConville family's wishes and the criminal proceedings provide a natural counterfactual for the cases investigated by the ICLVR. The McConville family's ongoing fight for legal justice in their mother's case demonstrates that, even a seemingly well-established institution grounded in clearly defined principles does not mean that all families will ever be on board with its approach. Not everyone considers the return of remains, and the establishment of a certain amount of truth as an acceptable outcome, or as 'justice' for the disappearance and murder of their

⁸⁴ David Sharrock, "Murdered widow was 'failed by the RUC'" *The Times* 14 Aug 2006.

⁸⁵ Gerry Moriarty, "The Ivor Bell case: some key background questions answered," *The Irish Times*, Oct. 17, 2019, <https://www.irishtimes.com/news/ireland/irish-news/the-ivor-bell-case-some-key-background-questions-answered-1.4054303>.

⁸⁶ Rebecca Black, "Trial of veteran republican Ivor Bell over Jean McConville murder cost £109,000," *Belfast Telegraph* November 21, 2019, <https://www.belfasttelegraph.co.uk/news/northern-ireland/trial-of-veteran-republican-ivor-bell-over-jean-mcconville-murder-cost-109000-38714187.html>.

loved ones. It is hard to say how the McConville family would have responded, had the Commission located their mother's remains, or whether all members of the family feel the same way. That said, the likelihood of complete acceptance by all relatives, even of the outcome of a "perfect" institution of transitional justice, were such an institution to exist, is very small. This is important to keep in mind when evaluating the success of particular transitional justice mechanisms.

7.4.3 Families and family members as norm entrepreneurs for the Commission

As highlighted in Section 6.1, throughout its operations, family members of the Disappeared have continued to act as norm entrepreneurs for the Commission and advance its operations. As they had done regarding the addition of a specialized forensic unit to the Commission, Anne Morgan, Seamus Ruddy's sister, and Kathleen Armstrong, Charlie Armstrong's daughter conducted further advocacy in the United States and in Ireland since then, and were joined by Kieran Megraw, who was the brother of Brendan Megraw. This advocacy is important to note, because the norm entrepreneurs discussed in the previous chapter, especially the family members of the Disappeared, continue to do essential work to support the Commission and advance its mission. And, family members' willingness to continue this advocacy also highlights an appreciation of the Commission's efforts to establish a positive relationship and positive communications with family members.

As discussed in Chapter 2 there is a need, when investigating the dissemination of norms, to examine the priorities of different norm entrepreneurs, and potentially competing priorities are negotiated within particular mechanisms. This is, in particular, due to the argument made by Rosenblatt, which I cited in Chapter 2, "the discrepancy, is often quite large, between what [stakeholders] hope and expect from forensic investigations, on the one hand, and the results that forensic teams are able to produce, on the other. This gap emerges in part because so much of the human rights community's optimistic post-conflict vocabulary, terms such as "reconciliation" and "closure", sets hopelessly unrealistic goalposts."⁸⁷ However, in the case of the ICLVR, the priorities of the families of the

⁸⁷ Adam Rosenblatt, *Digging for the Disappeared: Forensic Science After Atrocity*, (Stanford: Stanford University Press, 2015), 43.

Disappeared have become the priorities of the Commission. The two stakeholders have worked together to advance a shared goal.

As Woods asserted, “[i]n many ways the families of the missing persons have been partners in the process over the course of the ICLVR’s work. They have acted as public advocates, not just for the case of each individual missing person but also for their collective case as a group of victims with a shared experience. In doing so, they have helped to keep the work of the ICLVR to the forefront in a very public sense.”⁸⁸ And, this statement seems absolutely correct. The Commission has adopted the priorities of the families, and the families have advocated for and advanced the work of the Commission. It has been very much a symbiotic relationship, which is another unique factor amongst transitional justice mechanisms, which, often endeavour to be victim-centric, but tend to fall short of this goal. This idea will be discussed further in Chapter 9.

7.5 Conclusions

This chapter has traced the operations of the ICLVR, from the time of its inception to today. Throughout this chapter, it has been evident how influential the two foundational principles that shaped the founding of the Commission, first, the commitment to non-prosecution of individuals involved with the disappearances, especially informants, and second, the commitment to the humanitarian principle of simply returning remains to families for burial of their loved ones, have remained throughout the Commission’s operations. These principles have remained prevalent through the development of strong, multi-disciplinary human rights investigations. They have also prevailed in two unique aspects of the Commission’s operations: the processes for receiving information, and the integration with the public system of coroner’s inquests. And, nowhere are these foundational principles more evident than in examining the relationship between the ICLVR and family members of the Disappeared.

Based on the interviews and media analyses for this project, it is clear that the Commission’s personnel and advocates have been entirely committed to upholding these principles, demonstrating how they have shaped every decision related to the Commission’s operations. And, as this chapter has demonstrated, this commitment has not

⁸⁸ Woods, “Independent Commission for the Location of Victims’ Remains,” 107.

been easy, and has required negotiation, and trade-offs to be made. Families do not necessarily receive complete information. This information is also incomplete when it is recorded in the public record through the inquest system. However, these trade-offs seem to have largely been accepted by the Commission's staff, the families, and the media. It is the commitment to these principles that has been the main contributing factor to the perceived success of the Commission. The next chapter further unpacks the influence of the foundational principles to the Commission's success.

As of the time of writing in early 2020, the Commission is still in operation, and by all accounts will continue to operate until its mandate is complete. Both the British and Irish governments have committed to funding the ICLVR until the remains of all of the victims are recovered.⁸⁹ The goal of all parties; of both governments, the Commissioners, and its staff, is to end the work of the Commission, having located all of the victims' remains and having returned them to their families. In my interview with Peter Jones, the Irish Joint Secretary to the ICLVR, and Irish Commissioner and retired career-public servant Frank Murray, Jones half-joked, "Frank constantly tells us his ambition is to retire the Commission."⁹⁰ It makes me profoundly sad to know that Murray was not able to see this goal realized. Frank Murray died suddenly at the age of 76 on March 31, 2018, exactly one year to the day after my conversation with him. At his funeral "[t]he first of the Prayers of the Faithful, read by Murray children and grandchildren read, 'we pray for all of the Disappeared especially Joe Lynskey, Columba McVeigh and Robert Nairac. May they be found and given the Christian burial that they deserved.'"⁹¹ And, during a statement at the end of the Mass, Murray's son Paul commented, "[i]n retirement [my father's] work with the ICLVR 'was always uppermost in his mind. He was completely committed to locating the remains of the 16 Disappeared so that they too could be returned to their families. Locating 13 of the bodies gave him enormous personal fulfilment. Let us hope and pray that the remaining three are found soon. I'm pretty sure he is working on that now.'"⁹²

⁸⁹ Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains and Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 31, 2017.

⁹⁰ Ibid.

⁹¹ Patsy McGarry, "Frank Murray 'the consummate professional', funeral hears," *The Irish Times* 6 April 2018, accessed 24 June 2019, <https://www.irishtimes.com/news/social-affairs/frank-murray-the-consummate-professional-funeral-hears-1.3453260>.

⁹² Ibid.

Chapter 8: Evaluating the Success of the ICLVR Part 1: Non-contributing factors to the Commission's Success

Frank Murray, Irish Commissioner to the Independent Commission for the Location of Victims' Remains (ICLVR), highlighted the successes of the Commission in my interview with him. He said, "one of the things we would like to emphasize is that as a North-South experiment, a spin off from the Good Friday/Belfast Agreement, whatever you want to call it yourself, our little organization has worked very well."¹ Similarly, Geoff Knupfer, the ICLVR's lead investigator, commented, "The very fact that it's worked. You know, Sometimes I have to pinch myself and think, we've gotten away with this, really."² These comments note some degree of surprise in how effective the Commission has been. However, they demonstrate the general perception that the ICLVR has been a successful institution to recover, identify, and repatriate the remains of the Disappeared in Ireland. The Commission has been nearly universally perceived as successful by the key stakeholders, including those who work with the Commission, the family members of the Disappeared, and the media.

As explored in Chapter 1, this perception of success is one of the factors that makes the ICLVR unique amongst transitional justice mechanisms, as well as forensic human rights investigations and led to the Commission's selection as a unique case warranting further study. Murray and Knupfer's comments highlight that evaluating the ICLVR's success is important because it leads to a better understanding of the Commission itself as an investigative mechanism into forced disappearances. In addition, evaluating the ICLVR's success is important as it leads to the analysis in Chapter 10 that brings together the two sections of this project, and the two research questions.

The first section of this chapter builds on the discussion that emerged in the review of the literature in Chapter 2 to determine how to best evaluate the success of the ICLVR. To avoid the trap of evaluating the ICLVR against a particular normative standard, I have elected to evaluate success based on two main factors: first, the perceptions of elites

¹ Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains and Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 31, 2017.

² Geoff Knupfer, Lead Investigator, Independent Commission for the Location of Victims' Remains, interview by author, Dundalk, Ireland, April 4, 2017.

involved with the Commission, and second, an internal comparison of the ICLVR to other transitional justice processes in Northern Ireland. Following the definition of these criteria of success, the remainder of this chapter considers five of nine factors that may have contributed to the Commission's success that surfaced during process tracing of the development and operations of the ICLVR in Chapters 6 and 7. I argue that these five factors have not contributed as significantly to the success of the Commission as the four that are discussed in Chapter 9. First, the chapter discusses the idea that forced disappearances are a special type of human rights violation. The second factor considered is that funerals and rituals surrounding death are particularly important in Ireland. The third factor is the differences between the profile of forced disappearances, in comparison to other violent crimes during the Troubles. The fourth factor is that the ICLVR's unique structure as a formal institution has contributed to its success. The fifth factor is the small scale of disappearances. Ultimately, I argue that the first two factors have not contributed to the ICLVR's success. The third and fourth factors may have contributed, but if they did the contribution was likely minor. The fifth factor is likely a contributing factor to the ICLVR's success, but the degree to which it may have contributed remains in question. I argue it has contributed less to the Commission's success than the four factors outlined in Chapter 9.

8.1 Evaluating "Success"

As a result of the overwhelmingly positive reception of the ICLVR by the public and the media discussed above, one of the goals of this project was to evaluate whether the Commission could be considered a successful mechanism for addressing forced disappearances. As was evident from the literature review in Chapter 2, much of the transitional justice literature, as well as the literature related to forensic human rights investigations falls into the trap of evaluating mechanisms against normative standards such as the ability of the mechanism to facilitate legal justice, and democratization. This is problematic for a number of reasons outlined in Chapter 2, but, in the Irish case specifically, these normative standards are neither relevant, nor desirable. The ICLVR would score poorly against both of these cross-national metrics of success, first, because the Commission's mandate precludes it from contributing to legal justice, and second, because

Northern Ireland is already a democratic political environment. Thus, this type of evaluation would gloss over the uniqueness and the contributions of this institution. In addition, by failing to consider multiple levels of analysis, these evaluations miss the influence of other factors on the success of a mechanism, such as international norms, which are particularly relevant in this case. Moreover, the evaluative literature also often fails to consider the relationships between types of contributing factors, for example, political, cultural, and social structures, individual actors, and norms.

While acknowledging that what constitutes a successful or unsuccessful transitional justice mechanism is inherently subjective, for this dissertation, it became important to avoid the traps in how the literature evaluates mechanisms. I wanted to step away from considering the ICLVR against any particular set of normative ideals that dominate the transitional justice literature and impose a particular definition of justice or transition to use as a metric for success. In addition, it was important to provide evidence that considered multiple levels of analysis, and that also considered the influence of structures, ideas, and actors in facilitating the Commission's success.

In order to avoid these traps, I have elected to define 'success' in a comparative manner, based on two characteristics, which are unpacked in more detail below. The first factor is the satisfaction in the Commission expressed by key stakeholders. The second factor is an internal comparison to other transitional justice mechanisms in Northern Ireland. I consider and analyze the contribution to the ICLVR's success of each factor based on these two metrics. This allow a holistic examination of the different aspects of the Commission, different levels of analysis, and different types of contributing factors. As outlined in Chapter 2, capturing the interplay between the micro, mezzo, and macro levels of analysis is an essential component of this project.

1) Satisfaction in the Commission expressed by key stakeholders

The satisfaction of key stakeholders with the ICLVR's work is a central component of evaluating its success. In order to garner a sense of how satisfied key stakeholders are with the Commission, I considered the perspectives of the elites close to the Commission interviewed for this project, family members of the Disappeared, and the media. As discussed in Chapter 3, I used semi-structured interviews to allow respondents to consider questions as part of a broader conversation. Two of the open-ended interview questions I

posed provide insight into how the stakeholders I interviewed perceived the ICLVR. The first was “Has the Commission been successful?” and the second was “What factors have contributed to the Commission’s success?” These open-ended questions allowed the interviewees to respond based on their own perspectives regarding the Commission, and provide insight that avoid evaluating the ICLVR solely based on a pre-established normative ideal not relevant to the Irish context. In addition to the responses provided by interview subjects, media analysis sought similar information.

While elites, such as the Commission’s personnel, and key supporters such as WAVE and family members of the Disappeared, can be biased about a mechanism’s successes or failures, they are also in a position to have knowledge about the inner workings of a mechanism that outside observers may not be cognizant of. In addition, the stakeholders who work for and with the ICLVR are not from one of the sides of the conflict. These individuals are largely experienced forensic and investigative professionals with prior involvement in other high profile and high stakes investigations. This contributes to their ability to approach their work with scientific objectivity. Thus, in this case, these key insiders provide invaluable feedback on the inner workings of the ICLVR.

2) Internal comparison to other transitional justice mechanisms in Northern Ireland

As highlighted in Chapter 5, despite the fact that the transitional justice process in Northern Ireland has largely been de-centralized and *ad hoc* as opposed to formalized and state-led, there have been a wide range of transitional justice mechanisms and processes that have developed in response to the Troubles. Due to the scope of its mandate, I consider the ICLVR to be one such mechanism. As a result, the second metric used to provide insight into the contribution of each factor to the success, or lack thereof, of the ICLVR, is a brief comparison with other transitional justice mechanisms and processes that emerged in response to the Troubles. This allows me to consider how perceptions of and responses to the Commission compare to perceptions of and responses to other transitional justice mechanisms.

This metric is important to consider because it allows me to evaluate the successes and failures of the Commission based on context-specific details from outside of the direct realm of the ICLVR that might not be applicable in or from other cases. This addresses the concerns related to other evaluations of transitional justice processes that they fail to

account for or isolate context-specific social, political, and societal dynamics that may influence a transitional justice mechanism's potential success. In other words, this metric for success allows me to examine what is unique about this particular mechanism within this specific context.

8.2 Disappearances are a “special” type of human rights violation

The first factor that could have contributed significantly to the ICLVR's success, is the idea that forced disappearances are nearly universally recognized as a particularly egregious type of human rights violation. Some of the Commission's insiders suggested that this recognition gives forced disappearances a special status that compels states to respond when they occur. By the same logic, the universal condemnation of forced disappearances creates public pressure that these are crimes that should be addressed and atoned for. This special status could have paved the way for the ICLVR's success.

There is some evidence to suggest that the special status of forced disappearances amongst human rights violations has influenced the success of the ICLVR. Media coverage of Troubles-related disappearances and of the Commission has echoed the sentiment that disappearances have a unique status amongst human rights violations. Forced disappearances are repeatedly described as being particularly egregious due to the double victimization that occurs, the impact on the individual at the time of their disappearance, and the continued trauma imposed upon the families of the Disappeared, for decades in many cases. From the earliest articles to continued coverage at the time of writing, media outlets continue to report on the egregious nature of disappearances.

The idea that the Commission has been successful due to the special status of forced disappearances amongst human rights violations also arose during some of the interviews. Peter Jones from the Irish Joint Secretariat to the Commission raised this idea that the special status of forced disappearances internationally may have contributed to the ICLVR's success. He mentioned this twice, both in conversation with him alone and in the interview with Jones and Frank Murray, the Commissioner appointed to the ICLVR by the Republic of Ireland. In our first conversation, Jones stated,

Because the Commission is focused on a very particular objective and something on which there was broad, I think almost universal, agreement that people who have been disappeared should be returned to their families, a basic human right that

people should enjoy, it has worked very well in that respect more so than the other legacy bodies [to address the Troubles]. There is ongoing debate, even with the agreed legacy institutions as to what their actual output would be.³

Jones echoed his initial comments in the joint interview,

Whether the attitude towards the Commission might be somewhat different because we're dealing with a particular type of [atrocity] and as it relates to return [of remains] to the families. With many of the people who died during the conflict... the body could be brought, returned to the families. Whether that unique circumstance had an influence on the work of the commission is an open question.⁴

Jones' comments are important, as they confirm two central tenets outlined above: first, that disappearances are a special type of crime, which means that states are compelled by a combination of international normative and domestic public pressure to address them, and, second, that this special status could also influence public opinion to believe that as long as the Commission is returning remains of the Disappeared to their families, it is rectifying the human rights violation and is thus successful. Jones' assertions are convincing, even though he was clear he did not have enough knowledge to provide an objective assessment of the impact of this factor. The same argument did not arise with other interviewees, despite the fact that others concurred that forced disappearances are particularly egregious human rights violations.

In comparison with other transitional justice mechanisms in Northern Ireland, it is possible that the special status of forced disappearances has made the ICLVR more likely to be successful than efforts designed to address other violence and human rights violations. That having been said, however, it is not possible, based on the research for this project to disaggregate whether the special status of forced disappearances contributed to the ICLVR's success specifically, or whether the very specific mandate of the ICLVR of addressing forced disappearances is in fact the more significant contributing factor, not the forced disappearances themselves. As Chapter 9 argues, the focused humanitarian mandate of the ICLVR is a necessary aspect of its success. However, it is difficult to determine whether this mandate is specific to forced disappearances, or would be similar for investigations of other human rights violations. These two arguments become blurred, and

³ Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 16, 2017.

⁴ Ibid.

if the special status of forced disappearance needs to be included anywhere in the causal chain, it can be considered as one of the reasons the ICLVR developed. In that case, though, it cannot be simultaneously used to explain the Commission's success.

8.3 Funerary culture in Ireland

Rituals surrounding death and dying are particularly important in Irish culture.⁵ This is in part, due to the importance of burial rituals in Catholicism, and in part, due to how these have been interpreted in Ireland specifically. Robben stated “Catholic mortuary rituals served to harness [the] unpredictable natural phenomenon through highly ordered procedures and provide the deceased with a peaceful repose till Judgment Day. In addition, these rituals repaired broken ties, and reaffirmed the continuity and solidarity of the community. Thus, death was ritualized and tamed.”⁶ Frank Murray raised the importance of rituals surrounding death in Ireland as a potential explanation for the Commission's success in the interview with him. He stated, “There's a question of culture here as well. A lot of importance is attached to funerals and we take funerals seriously. Paying respects to the deceased is a part of that culture.”⁷ Murray's argument here is important to note as he is arguing that the return of remains to families is imperative in the Irish context to fulfill the necessary funerary rituals. This is consistent with statements by family members of the Disappeared that I have referenced throughout this project, in which they have repeatedly cited their desire to give their loved ones a Christian burial, and to fulfill the obligations and rituals of a Catholic funeral as their primary motivation for seeking the return of remains of the victims.

As a result, the second factor that could explain the ICLVR's success is that, due to the importance of funerary rituals and formal mourning as part of Irish culture and the Catholic faith, by facilitating the return of remains to families to fulfill these rituals, the ICLVR was essentially pre-destined to be successful, because it addresses a crime that

⁵ A fulsome exploration of Irish funerary culture and its public and private implications is beyond the scope of this project. See, for example, Nina Witoszek and Pat Sheeran, *Talking to the Dead: A Study of Irish Funerary Traditions*, (Amsterdam: Rodopi, 1998).

⁶ Antonius C. G. M. Robben (ed.), “Death and Anthropology: An Introduction,” in *Death, Mourning and Burial: A Cross-Cultural Reader* (Oxford: Blackwell Publishing, 2010), 3.

⁷ Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains and Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 31, 2017.

disrupts these rites and rituals that are essential to Irish society. This is a similar argument to the first potential factor explored in this chapter, that disappearances are a “special” classification of human rights violation that makes addressing it more important than addressing other types of Troubles-related trauma. However, instead of focusing on the nature of the crime itself, this factor results from this particular cultural facet of Irish society and culture.

In terms of the comparison with other transitional justice mechanisms and processes to address Troubles-based violence, again, this argument does hold some weight. During the Troubles, more than 3,500 people were killed and an additional 47,541 were injured.⁸ As a result, Troubles-related trauma involving the injury or killing of civilians did not typically disrupt the culturally and religiously important funerary rites and rituals stemming from the deaths of these individuals, either at the time of the violence, or later deaths resulting from their injuries. Many survivors and families of victims of the Troubles have struggled to accept the premature deaths of their loved ones, and have also sought answers to understand why their family member was killed at the time they were. These are unanswerable questions, and their grief is understandable and sometimes as protracted as it has been for the families of the Disappeared. As was evidenced by some of the mothers of the Disappeared, some have turned to their faith to bring them comfort.⁹ In addition, organizations such as WAVE have developed to support survivors and family members, who could find solace in the fact that they had an opportunity to say goodbye to their loved ones and participate in a formal grieving process. Thus, it is a logical assumption that the importance of funerary culture in Ireland and the need to right these disrupted culturally and religiously significant funerary rites and rituals is a contributing factor to the ICLVR’s success.

Anthropologists highlight that “[m]ortuary rituals are a true cultural universal that shows people’s resistance to accepting biological death as a self-contained event, and their desire to prolong the departure from the death through a process of phased transitions.”¹⁰ In other words, the importance of funerary rituals and other practices surrounding death

⁸ “Fact Sheet on the conflict in and about Northern Ireland,”

https://cain.ulster.ac.uk/victims/docs/group/htr/day_of_reflection/htr_0607c.pdf

⁹ See WAVE, *The Disappeared of Northern Ireland’s Troubles*, (Belfast, WAVE Trauma Centre, 2012), 3.

¹⁰ Robben (ed.), “Death and Anthropology, 9.

and dying is certainly not limited to the Irish context, nor is it necessarily more important in the Irish context than it is elsewhere. Thus, contrary to Murray's assertion that the importance of funerary culture is specific to Ireland, this factor applies universally across cases that vary widely in their successes in addressing forced disappearances. There is no argument that the rituals and beliefs surrounding death and funerary culture are extremely important in Ireland. However, in spite of this importance, the fact that they are equally important across time, space, religion, and culture negates this explanation of its power to the success of the ICLVR, in comparison with other mechanisms designed to investigate forced disappearances. Like the previous explanation, this would suggest that any and all mechanisms designed to address forced disappearances are pre-destined to success, which is not the case. That is not to say that the ICLVR's ability to facilitate the fulfillment of disrupted Irish funerary customs and Catholic rights and rituals regarding death and burial is not significant to its success. In fact, it would be interesting to explore the ICLVR's success from this lens. The main argument here is that the importance of funerary rituals in Irish society and in Catholicism does not provide an explanation as to why the ICLVR is a successful example of investigations into forced disappearances, because funerary practices are important in different ways in all religious and cultural traditions.

8.4 Nature of the violence

The third potential factor that arose during my interviews is that some of the ICLVR's success can be attributed to the nature of the violence on two specific fronts: first, the violence was not committed by state forces, and; second, the violence was intra-group as opposed to inter-group. No state actors were involved in the disappearances, it was a paramilitary group who committed the crimes, and that group has apologized. This means that there has been no need for either the Irish or the British governments to officially distance themselves from the crimes committed, or to deny complicity in the crimes, as was the case in other aspects of the conflict. It is in both states' interest to condemn the murders. And, while the disappearances took place in the broader context of the conflict between British and Irish nationalisms, and the IRA justified the murders through allegations that the victims were informants for the British government, state involvement was minimal.

Second, the victims were, largely, with the exception of Robert Nairac, members of the Catholic community in Northern Ireland. The paramilitary groups alleged that the Disappeared had been involved with their organizations, though this has not been proven in any of the cases, and many families of the victims deny these allegations. However, it is clear that most of the Disappeared were victims of violence from within their own community as opposed to from outside of it.

Both of these factors, the lack of state involvement with the violence, and the intra-group nature of the violence are relatively unique amongst other violence during the Troubles, and thus unique for other transitional justice processes in Northern Ireland. By and large the transitional justice framework has been put in place in order to deal with violence between communities, as 57 percent of murders were committed by the opposing community. 83 percent of murders were committed by British security forces, 72 percent of murders were committed by loyalist paramilitary forces, and 48 percent of murders by Republican paramilitary forces targeted the opposing community.¹¹ These statistics are important to note because it means that some of the complexities that link the narratives of the conflict with the narratives that continue to be present in Northern Ireland today do not apply in the case of the Disappeared, making it a unique set of crimes.

As was outlined during interviews during the first fieldwork I conducted in Northern Ireland in 2015, the narratives of victimization in Northern Ireland remain polarized. Victims and families impacted by IRA bombings struggle with accepting the fact that former IRA members and their families are able to avail themselves of re-integration supports, and in many cases served minimal prison terms for their crimes.¹² Similarly, victims of violence by the British army, the Northern Ireland police force, and unionist paramilitary groups struggle to accept the lack of accountability and acknowledgement the British government has accepted in perpetuating the conflict and committing violence. This resentment has led to perpetual distrust in state institutions that historically were at best oppressive, and at worst, committed outright violence, against the Catholic population. For

¹¹ CAIN Web Service. "Fact Sheet on the conflict in and about Northern Ireland," accessed June 20, 2019, https://cain.ulster.ac.uk/victims/docs/group/htr/day_of_reflection/htr_0607c.pdf.

¹² Neil Ferguson, Mark Burgess, Ian Hollywood, "Who are the Victims? Victimhood Experiences in Postagreement Northern Ireland," *Political Psychology* 31, no. 6 (2010): 860-865, <https://doi.org/10.1111/j.1467-9221.2010.00791.x>.

some, due to the legacy of violent colonialism, justice will never be served until Northern Ireland ceases to exist as a British territory and Ireland is united. Thus, the narrative prevails that the deaths caused by the IRA were simply collateral damage in a struggle for emancipation from an occupying force.

Following with the IRAs acknowledgement of the pain caused by the disappearances for the families of the victims, no “side” in Northern Ireland could deny the Disappeared as victims of the Troubles, nor could anyone deny the catastrophic loss and suffering of their families. There is no denial that the families of the victims are not really “victims. The official support of the searches by both the Irish and British governments further lends credence to the sense that justice has been served for families of victims of forced disappearance. This leads to the argument that a contributing factor to the ICLVR’s success is the fact that the violence is intra-group as opposed to between communities, unlike most of the other violence that occurred during the Troubles.

Ultimately, further research is required to determine whether the ICLVR’s success has been influenced by the fact that forced disappearances were committed within group (Republican against the Catholic community) as opposed to between groups. Similarly, further research is also required to determine whether the ICLVR’s success could be linked to the fact that the disappearances were committed by a paramilitary group as opposed to the state. However, it does warrant further exploration.

8.5 A formal commission begets success

The fourth factor that was suggested as contributing to the ICLVR’s success is the fact that the Commission was established as a formal institution. A formal institution refers to the fact that the British and Irish governments set up the ICLVR as an official Commission and it was formalized by legislation in both countries. This is in comparison with other transitional justice mechanisms that are less formal. Grassroots transitional justice mechanisms can be established by civil society organizations and do not necessarily require involvement or support from the state.

As was outlined throughout the process tracing of the establishment and operations of the Commission in Chapters 6 and 7, the Commission was very carefully set up as a formal institution. As the elites interviewed for this project indicated, this formal structure

afforded the ICLVR particular benefits. One significant such benefit is the continuous funding of the Commission by the British and Irish governments. As Peter Jones from the Irish Joint Secretariat to the Commission stated, “[t]here’s an agreement between Ireland and the United Kingdom regarding division of costs. Basically, wherever the excavation takes place, whichever jurisdiction it takes place, that jurisdiction covers the cost of the excavation.”¹³ This willingness to fund the ICLVR has continued, despite changes in the composition of governments in both the UK and Ireland, since the Commission’s inception in 1999. In addition, the formal structure of the ICLVR resulted in a clear establishment of its mandate, and a clear understanding of this mandate by its stakeholders. Thus, the formal structure of the Commission could be seen as a reason for its success.

However, this explanation runs counter to much of the transitional justice literature, which argues that mechanisms that are developed from the bottom-up tend to have more buy-in from communities. Grassroots mechanisms allow victims, survivors, and community members to participate and create mechanisms of justice and conflict resolution that meet their needs and beliefs, rather than being imposed on them from the top-down. This participation can eventually develop into civic engagement, which is capable of re-establishing and building civil society in a transitional situation, and in some cases is the first step towards societal reconstruction.¹⁴ As was evidenced in the tracing of its development in Chapter 6, the ICLVR is an interesting case as it followed a path of advocacy from the bottom-up by families of the victims and civil society organizations, and then developed into a formal state institution.

As discussed throughout this chapter, Northern Ireland has established other formal transitional justice mechanisms (typically framed as “dealing with the past”) such as the Commission for Victims and Survivors. However, these other formal mechanisms have frequently been criticized for their broad definition of who is a victim, and for accepting narratives of historical truth that are also too broad. Thus, in terms of the within-case comparison, it does not seem that the formal structure of the ICLVR would be a contributing factor to the Commission’s success.

¹³ Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims’ Remains, Department of Justice and Equality, interview by author, Dublin, March 16, 2017.

¹⁴ Joanna R. Quinn, “The impact of internal conflict on customary institutions and law: the case of Uganda,” *Journal of African Law*, 58 no. 1 (March 2015): 220-236, 10.1017/S0021855315000042.

Thus, teasing out whether the Commission's formal and official status had an impact on its success is not possible based on the data collected for this project. On one hand, as discussed in Chapter 5 and in the previous section, other formal mechanisms of transitional justice for Northern Ireland have not had the same degree of success as the ICLVR and have been plagued by complaints about who is considered a victim, and whose historical narratives are considered legitimate. Thus, from the internal comparison, it does not seem that the Commission's formal structure is a contributing factor to its success. On the other hand, the formal structure of the ICLVR did provide benefits to the Commission by establishing and communicating clear regulations and boundaries that the Commission would adhere to, and providing a continuous source of funding from the two governments. These benefits seem to suggest that the formal structure of the ICLVR may have had some impact on the Commission's success.

8.6 Small scale of disappearances in Northern Ireland

The fifth factor was an explanation that arose early on in the research for this dissertation and thus was important to explore throughout the interviews – did the small number of disappearances in Northern Ireland lead to the Commission's success? Peter Jones from the Irish Joint Secretariat to the Commission stated,

I suppose the relatively small caseload makes the allocation of resources that much easier on us as well. It makes it easier to make that decision, we can fund this, it isn't particularly expensive in the great scheme of things. And, you know, the Commission I won't say is run on a shoestring, but it is run quite informally. It doesn't have – it doesn't need offices or anything like that because the scale of the caseload is comparatively small, doesn't necessarily need full-time staff.¹⁵

Jones' point here is impossible to ignore, both in comparing the number of victims to those killed in other ways during the Troubles, and also in comparing the number of victims of forced disappearance in Northern Ireland to those from the other cases discussed throughout this project. The number of victims of shootings and bombings in Northern Ireland is far larger than the 16 disappearances that fall under the Commission's scope.¹⁶

¹⁵ Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains and Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 31, 2017.

¹⁶ CAIN Web Service, "Sutton Index of Deaths," <https://cain.ulster.ac.uk/sutton/index.html>, (accessed 20 September 2019).

16 cases also pales in comparison to other cases, for example, an estimated 45,000 disappearances reported during the civil war in Guatemala,¹⁷ or thousands of alleged forced disappearances in Yemen.¹⁸ What is important to note is that the scale of exhumations in the Irish example is a fraction of those that could be completed in any of the other cases.

So, then, has the small scale of the ICLVR been a contributing factor to its success? It seems very clear that the answer to this question must be yes. The ICLVR may not have been set up in the way that it was if there had been hundreds or thousands of victims of forced disappearances during the Troubles. And, the Irish and British governments would be considerably less likely to be committed to funding and supporting the Commission until the conclusion of its work the location and return of every set of remains to their loved ones.

That having been said, the small scale of disappearances under the Commission's remit is neither a necessary, nor a sufficient condition that explains the success of the ICLVR. Undoubtedly the entire design and operation of the ICLVR are based on the small number of disappearances. However, there is no reason that the overarching principles that led to its success could not be scaled up and used as guiding points for contexts with larger scale.

8.7 Conclusions

In conclusion, this chapter has demonstrated that none of the five factors it outlined have conclusively contributed to the ICLVR's success: the special status of forced disappearances; the importance of funerary culture; the intra-group nature of the violence; the formal design of the Commission, or; the small scale of disappearances that occurred during the Troubles. Ultimately, none of these five very reasonable factors, prove necessary to the ICLVR's success. However, the consideration of alternate explanations in this chapter is important as it is an essential component of methodologically sound process tracing. Considering alternative explanations allows me to rule out "competing

¹⁷ Patrick Smith, "Memory without History: Who Owns Guatemala's Past?" *The Washington Quarterly* 24, no.2 (2001): 62.

¹⁸ Amnesty International, "God Only Knows if He's Alive: Enforced Disappearance and Detention Violations in Southern Yemen," (London: Amnesty International, 2018), <https://www.amnesty.org/download/Documents/MDE3186822018ENGLISH.PDF>.

[explanations] incompatible with the evidence.”¹⁹ Based on the consideration of alternative factors, the necessary conditions that explain the ICLVR’s success, which are outlined in Chapter 9, can then be considered doubly decisive factors.²⁰

This leads to the next chapter, which continues the evaluation of the factors that led to the ICLVR’s success. These four contributing factors to the Commission’s success: the humanitarian mandate of the Commission, successful forensic investigations, cooperation and political will between relevant actors, and trust in the institution and the individuals involved in its operations. Ultimately, Chapter 9 argues that none of these factors is sufficient, on its own, to explain the success of the ICLVR. Rather, these combination and interplay between these four factors must be considered in a holistic manner to understand the Commission’s success.

¹⁹ Centre for Development Impact, “Practice paper: Straws in the wind, Hoops, and Smoking Guns: What can Process Tracing Offer to Impact Evaluation,” Number 10, April 2015, 4.

²⁰ David Collier, “Understanding Process Tracing,” *Political Science and Politics* 44, no. 4 (2011): 823-30, <https://doi.org/10.1017/S1049096511001429>.

Chapter 9: Evaluating the Success of the ICLVR Part 2—Contributing factors to the Commission’s Success

As outlined at the end of the last chapter, this chapter and Chapter 8, viewed together, continue to evaluate the success of the Independent Commission for the Location of Victims’ Remains (ICLVR). Of the nine factors identified as possible contributing factors to the Commission’s success through process tracing, five were examined in Chapter 8 and determined to be less significant. As explained in Chapter 8, in order to avoid the common traps of evaluating mechanisms rampant in the transitional justice literature, and also in the literature related to forced disappearances, outlined in Chapter 2, the contribution of each factor to the ICLVR’s success is considered based on the satisfaction of the stakeholders of the Commission, and against other transitional justice processes in Northern Ireland. These metrics of success are important, as they rely on multiple levels of analysis and sources of data, the in-depth knowledge of the local level context developed through process tracing of the ICLVR, and domestic and international-level comparisons with other aspects of the Irish case. Moreover, these factors pass tests of causal inference in process tracing including these four factors can then be considered doubly decisive factors 9.¹

This chapter’s four sections outline in detail the four main factors that contributed to the Commission’s success, based on interview data and media analyses. The first and I argue most important contributing factor to the ICLVR’s success is the Commission’s humanitarian mandate, advancing the principles of non-prosecution and focusing on the needs of the families. The other three factors stem from this first one. The second factor is the success of the Commission’s forensic investigations. The third factor is the cooperation between political actors, the three governments, and the cooperation of the paramilitary groups, specifically the IRA. The fourth factor is an overarching sense of trust in the institution and the individuals leading it, which in turn has contributed to its success. Each of these factors is evaluated in turn, demonstrating how they have contributed to the Commission’s success; however, none of these factors provides a sufficient explanation of the Commission’s success on its own.

¹ David Collier, “Understanding Process Tracing,” *Political Science and Politics* 44, no. 4 (2011): 823-30.

9.1 The ICLVR's humanitarian mandate

Chapters 6 and 7 demonstrated, in tracing the development and operations of the ICLVR, that there were two foundational principles that shaped the Commission: first, the emphasis on the return of remains to the families of the Disappeared, and; second, the non-prosecution of perpetrators based on information brought to the Commission. As maintained in Chapters 6 and 7, these two norms emerged through the priorities of the family members of the Disappeared, and were reflected by norm entrepreneurs throughout the establishment and operation of the Commission. Based on interviews, and on tracing the impact of these norms in the earlier chapters of this dissertation, I refer to these two norms as being two prongs of the Commission's "humanitarian mandate."

Throughout the interviews for this project, the elites involved with the Commission cited both aspects of the ICLVR's humanitarian mandate as essential to the Commission's success. This is important to unpack, as the Commission's humanitarian mandate is also one of the central ways that it has challenged the main international norm regarding forced disappearances traced in Chapter 4. Ultimately, I argue that the Commission's humanitarian mandate is the key to the ICLVR's success.

9.1.1 *The humanitarian mandate*

In Chapters 6 and 7 and described above, I refer to the Commission's "humanitarian mandate". This is in keeping with the language used by the elites I interviewed for this project. Their definition of the humanitarian mandate is twofold. First, its goal was clearly outlined, from the outset, as the location and return of remains of the Disappeared to their families and loved ones. Second, the mandate emphasizes non-prosecution and non-disclosure to law enforcement of information acquired through the exhumations, or the identities of perpetrators and informants who are identified throughout the Commission's work, who provide information to the Commission, or who facilitate the location of remains. In essence, the ICLVR is completely disconnected from criminal justice processes in the UK, in Ireland, and in Northern Ireland.

The experts associated with the Commission who were interviewed for this project consistently emphasized the importance of the Commission's humanitarian mandate on its

success. In the interview with Commissioner Frank Murray and representative from the Irish Joint Secretariat to the Commission Peter Jones, Jones stated,

I think the focus of the humanitarian aspect of the ICLVR has been the key to its success, really. And the very fact that the two governments have followed up on that humanitarian commitment by ensuring that the ICLVR is focused essentially on determining the remains that were found, there is no other objective to it. It's not part of a criminal justice perspective. It's not even part of the truth and reconciliation process in the sense that the stories of the Disappeared where the deliverables have to be made public. It's very much focused on the particular objective of returning the remains of the Disappeared to their loved ones.²

In this statement, Jones reinforces the foundational principles that shaped the Commission's development and operations traced in Chapter 6, and refers to them as the Commission's "humanitarian mandate". In particular, he reinforces the notion that the return of remains of the Disappeared to their loved ones has been the ICLVR's primary focus, and a primary contributor to its success. He also clearly unlinks the broader repercussions of the Commission's impact on the public, or on transitional justice processes related to the Troubles from the humanitarian mandate itself by stating that it "is not even part of the truth of reconciliation process."³ This is important to note, because it suggests that any broader cultural contributions to truth and reconciliation provided by the Commission are a by-product of its success, not its goal, which remains focused on the families.

Similarly, for Frank Murray, Irish Commissioner, there was no question about the importance of the humanitarian mandate of the Commission. He said, "we see our purpose as humanitarian. Our mission is simply to return the victims remains when we find them to the relatives, so that they may have a dignified Christian burial. Funerals we've attended of victims we have found have always been occasions of sorrow on the one hand, joy on the other."⁴

² Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Irish Department of Justice and Equality, and Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains, interview by author, Dublin, March 31, 2017.

³ Ibid.

⁴ Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains and Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 31, 2017.

In the interview with Jones alone, he reiterated Murray's sentiment that the ICLVR's humanitarian focus has operated in direct contrast with a focus on criminal justice.

[The investigations are] approached from a humanitarian perspective, not a criminal justice perspective. And the agreement between the two governments puts very specific protections for the information that is given to the ICLVR, that it can only be used for the location of victims' remains. It cannot be used in criminal investigations or prosecutions. So there was a commitment on the part of the two governments at the time, to focus on recovering these people as opposed to pursuing the criminal justice side. The humanitarian objective I think was quite clear.⁵

Jones' reference to the central focus of the commission being on return of remains, not criminal prosecutions is repeated in interviews with Frank Murray, Geoff Knupfer, Brian Farrell and Marie Cassidy as being the most important feature of the Commission. Geoff Knupfer explained how, like the reservations expressed by some of the MPs during the debates at Westminster, this aspect is still contentious, especially within the law enforcement community.

I think that when we talked to cops, some of them don't quite get that. I could always remember giving a presentation to a team of investigators on one occasion and this guy stood up after I finished the presentation and he said, 'Can I just ask you a hypothetical question.' He said, 'If you were excavating a grave and you came across a driver's license that had clearly been dropped by the guy who dug the grave, what would you do with it?' And I said, 'I'd destroy it.' And he said, 'That's outrageous!' And I said, 'well you might think it's outrageous but actually that's what our legislation says we've got to do.'⁶

Knupfer also commented on the real and potential conflicts between the humanitarian mandate of the Commission, and the use of the partial judicial framework through the forensic investigations of remains.

In a nutshell [the legislation] says [the Commission] will recover and repatriate [remains], no questions asked. But actually again you've got two processes running in tandem when you get a body back because you've got the coroner and the pathologist tasked with establishing the cause of death and you know how/when/where and why etc. the usual coronial sort of issues. And they too kind of conflict with what we do. And we sort of rub along together and we get by. But

⁵ Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 16, 2017.

⁶ Geoff Knupfer, Lead Investigator, Independent Commission for the Location of Victims' Remains, interview by author, Dundalk, Ireland, April 4, 2017.

you know, we do find ourselves giving evidence in Coroner's Court saying, 'well hmmm should be doing this?'⁷

These intricacies of the structure and operations of the ICLVR are important to note, because, despite the pre-eminence of the humanitarian mandate, the Commission was still structured around principles from the medico-legal state framework. These principles do inherently conflict with the limitations placed upon the Commission by the mandate. Dr. Brian Farrell from the Dublin Coroner's office highlighted this, stating "Even though there wasn't going to be a formal criminal process, for our own purposes we had to follow the usual legal procedures."⁸ These tensions have been highlighted in the literature regarding forensic human rights investigations as early as 2002, and it is particularly interesting to note that they still prevail, even in a Commission that has largely been successful.

The experts interviewed for this dissertation credit the ICLVR's success in large part to the humanitarian mandate, and I have spent a considerable amount of time analyzing their comments, and considering what aspects of this humanitarian mandate they believe have made the Commission successful. Several factors stand out from this interview data. First, the Commission's humanitarian mandate set clear expectations for all members of society about what the Commission's role and mandate were going to be, and what rules would govern it. Clear expectations are important, as they communicate to all stakeholders and observers what the Commission will and will not do, can and cannot accomplish, as well as how it will operate. This avoids raising the expectations of families of victims too high, which set a mechanism up to fail at the outset. Setting clear expectations can also confine criticisms to discussions and debates surrounding the mechanism's establishment. If terms have been agreed upon by all actors, it becomes less effective to criticize the scope of these terms.

Second, the humanitarian mandate addressed the direct need of the families in a way that was attainable, as long as information was collected and forensic investigations were successful. As Chapter 6 outlined, when the families of the Disappeared began advocating for their cause, they simply wanted to find out for certain what had happened

⁷ Geoff Knupfer, Lead Investigator, Independent Commission for the Location of Victims' Remains, interview by author, Dundalk, Ireland, April 4, 2017.

⁸ Dr. Brian Farrell, Coroner, Dublin District Coroner's Office, interview by author, Dublin, March 21, 2017.

to their loved ones, have their deaths acknowledged instead of continuing to live in the limbo of the unknown, and receive their remains to facilitate a proper burial according to their funerary traditions. While, as discussed previously, there was not universal agreement among families for this goal, by and large this was the main intention of the advocacy.

As noted in Chapter 2, legal justice is widely considered to be the gold standard of justice in transitional justice contexts, but it is not without its pitfalls. In this case, the families of the Disappeared do not have to wait for a court to hand down a verdict in an adversarial court system that prioritizes proving guilt beyond a reasonable doubt over answers and information to families. As Peter Jones from the Irish Joint Secretariat to the Commission stated,

I can understand the desire on the part of some for justice in the normal sense, but we're not in that business at all, and will never be and wouldn't want to be. Ours as I've said on more than one occasion is a non-judgmental approach, like we deal with anybody no matter what their background is, what organization they belong, or belonged to, if they can assist us in getting the remains of the loved one of the family seeking those remains returned for burial.⁹

As Jones asserted, the satisfaction of the families due to the realization of the Commission's humanitarian goal is a second factor that all of the experts interviewed for this dissertation stated was essential to the ICLVR's success.

The third argument that was made by the insiders to the Commission during interviews was that the Commission's humanitarian mandate built trust within the perpetrator and informant community that was essential to the location of remains. Current and former IRA members were the ones who had information regarding the location of where the remains of the Disappeared were left. Without their active participation in providing information to the ICLVR, the victims would never be found, and without the Commission's humanitarian mandate, the likelihood of their cooperation would have been much smaller. Since the trust-building aspect of the ICLVR is discussed in detail in its own right in Section 9.4, I will not belabour this point in this section. However, it is important to acknowledge this point in this section on the Commission's humanitarian mandate, as these two aspects of the ICLVR's success are interrelated.

⁹ Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 16, 2017.

While Chapters 6 and 7 clearly traced the ICLVR's humanitarian mandate throughout its development and operations, the fact that the humanitarian mandate seems to have contributed to its success remains somewhat of a puzzle. How, in a domestic environment that prioritizes legal justice, and in an international normative framework that does the same, has this humanitarian mandate not only prevailed, but also led to the mechanism's success? I argue that the success of the ICLVR's humanitarian mandate is rooted in four aspects that contribute to successful transitional justice mechanisms.

The first argument is that the humanitarian mandate has led to the ICLVR's success because it is a mechanism that developed from the bottom-up, is rooted in the needs of the survivors. As Chapters 6 and 7 traced, the two aspects of the ICLVR's humanitarian mandate emerged because it reflected what the families of the Disappeared wanted. They wanted, beyond anything else, to know what had happened to their loved ones, and to have their remains returned to them for proper burial. Regardless of whether these goals were universally agreed upon amongst the families, or whether some families changed their goals later in the process, this goal was the central one from the beginning. And, in establishing the Commission, the goal was literally no more complicated than this.

The second argument is related to the first. The Commission's humanitarian mandate has led to its success because the humanitarian mandate has remained at the centre of the ICLVR's operations. The ICLVR has re-centered the human; the victim; the families in its work, and has remained focused on them, instead of on other goals that are less relevant. Without the humanitarian mandate embedded in its founding and operations, and with a different cast of supporters in charge, the ICLVR could easily have become disconnected from the needs of those it was designed to serve. One simply has to look at other transitional justice mechanisms in Northern Ireland to see what could have occurred if the ICLVR had ceased to focus on the families of the Disappeared.

Because the Commission has kept the humanitarian mandate at the centre of its operations, to-date it has been relatively easy to secure commitment on the parts of the relevant governments (the governments of the UK and Ireland most notably) to see the Commission through until the work has been completed. The third argument is thus that this reinforces the argument made above that transitional justice should not be conceptualized as exceptional justice for a very short and specific time period. Instead, the

Commission is an exceptional mechanism of justice, yes, but it has no temporal limit. The ICLVR's staff, and governmental supporters, have expressed commitment to maintaining support for the Commission until the job is done; until all Disappeared have been located, identified, and returned to their families for proper burial.

It is easy to imagine a counterfactual in this case. If the Commission's mandate strayed from the humanitarian focus, if it was less clear, or less politically palpable, the support for it would wane. If the ICLVR was providing information to police, or to courts to secure prosecutions under a legal framework, it is very likely that sources of information from those involved with disappearances would have dried up long ago, and far fewer of the Disappeared would have been located and returned to their families. This in turn would create less support from the families of the Disappeared and less support from the broader society. The Commission's humanitarian mandate is quite literally the key to its success. And, the fact that it is an exceptional type of justice, but one that is not forced to fulfill a broad mandate related to lofty normative goals of legal justice or democratization is directly related to the humanitarian mandate.

This leads to the fourth argument as to why the humanitarian mandate of the ICLVR has been so crucial to its success. Chapter 2 argues that the inherently political nature of many transitional justice mechanisms are part of a fundamentally political agenda to consolidate the power and legitimacy of a new regime. Now, I acknowledge that all transitional justice mechanisms are inherently political, to some extent. It is practically impossible to imagine an institution or another mechanism, especially in a transitional context, that does not provide some degree of benefit to political actors. Having said this, the potential political returns of the ICLVR are less recognizable than in other cases, or than other transitional justice mechanisms, due to the nature of the victims, crimes, and families than in other cases.

By funding and supporting the ICLVR, the three governments certainly can be seen as doing *something* to address Troubles-related violence and to support victims and the surviving loved ones of Troubles violence. However, as the disappearances were crimes committed within one single community, as opposed to by one side of the conflict against the other, in some ways prioritizing support for the families of the Disappeared is almost tantamount, for the governments, of picking low hanging fruit. Even Bill Clinton, during

his conversations with Tony Blair, thought that resolving disappearances might build good will within communities.¹⁰ But, the political benefits of this support have come and gone, and yet the governments all continue to support the ICLVR. In that sense, the ICLVR might be about as apolitical of a mechanism as can be expected in a transitional context.

In addition, all of the experts involved with the Commission interviewed for this dissertation were quick to indicate that they endeavor to be as non-biased and non-judgmental as possible in executing the Commission's work. This is not entirely surprising, as many of these individuals, for example, Marie Cassidy, the former Irish State Pathologist, Brian Farrell, now retired from the Dublin Coroner's Office, and Geoff Knupfer, a retired Manchester police detective, all come from a forensic science background. The forensic sciences value objectivity in order to allow scientific evidence to speak for itself. This is particularly important to note, as developments in scientific techniques have allowed better investigations. This counters known and well-documented biases in historical police work that led to the wrong individuals being accused and sometimes convicted based on incorrect assumptions by law enforcement, with no scientific evidence to refute it.

However, in direct contrast with the actors involved, and mandates of other transitional justice mechanisms, those involved with the ICLVR have not been looking to prove any particular narrative. Instead, they have just wanted to do their jobs to the best of their abilities to allow the science to speak for itself. That said, they have still been incredibly supportive of the humanitarian mandate, whereas these professionals would normally work within a legal/judicial framework. In essence, the acceptance of the Commission's humanitarian mandate by its staff demonstrates its power and its importance. Without their support, it would have taken an entirely different form.

9.1.2 The humanitarian mandate and other transitional justice mechanisms in Northern Ireland

Then-Irish State Pathologist Marie Cassidy pointed out the strong supports for victims in the Irish context. She said, "In this country we have a very strong role in dealing with the families of victims. And they do have a lot of organizations in this country to support

¹⁰ "Memorandum of Telephone Conversation," Telephone conversation between Bill Clinton and Tony Blair, May 8, 1998, 1:50 - 2:12pm, William J. Clinton Presidential Library.

victims.”¹¹ The ICLVR’s humanitarian focus thus fits well into the landscape of victims’ supports in the Irish context.

As outlined in Chapter 5, there have been many mechanisms that have developed in the wake of the 1998 Belfast/Good Friday Agreement with goals similar to the goals of transitional justice, such as providing services to victims, establishing a record of truth about what occurred during the Troubles, and promoting reconciliation between nationalist/republican and unionist/loyalist communities. Some scholars argue that Northern Ireland has not had transitional justice, as the mechanisms and processes that have emerged have not addressed the entire experience of the Troubles, but instead, have been piecemeal mechanisms and institutions that address individual events (such as Bloody Sunday), or individual experiences.

Aiken explains that this piecemeal approach is a result of the continuing divisions within Northern Irish society. In his 2015 analysis of the legacy of the Bloody Sunday Inquiry, he asserted,

In this environment, dealing with the legacies of past violence remains a highly politicized issue that continues to divide nationalist and unionist communities. Attempts to address Troubles-era abuses more comprehensively in the country have therefore been impeded by concerns that such efforts might potentially be appropriated to privilege the narrative of one community over the other. Many nationalists have expressed fears that truth-telling might create a “hierarchy of victims” in which victims from the republican or nationalist communities would be considered less deserving of recognition and support than would unionists or members of the security forces. Conversely, from some unionists, there is continued resistance to treating republican victims of violence as equivalent to those from the unionist community or government security forces who were killed during the Troubles by IRA “terrorists”¹²

As Aiken explains, the continued divisions between communities in Northern Ireland has made for a more holistic approach to truth and reconciliation in Northern Ireland challenging, which is important to acknowledge in considering comparisons between the ICLVR and other processes and mechanisms that have developed. Like the ICLVR, the Bloody Sunday Inquiry was established to investigate the crimes that took place on Bloody

¹¹ Professor Marie Cassidy, State Pathologist of Ireland, interview by author, Dublin, April 6, 2017.

¹² Nevin T. Aiken, “The Bloody Sunday Inquiry: Transitional Justice and Postconflict Reconciliation in Northern Ireland,” *Journal of Human Rights* 14 no 1 (2015): 118, <https://doi.org/10.1080/14754835.2014.987740>.

Sunday in Derry/Londonderry when 28 unarmed civilians were shot by British Soldiers, fourteen of whom were killed.

Also like the ICLVR, the Bloody Sunday Inquiry developed based on advocacy by families of the victims, leading to the establishment of a formal commission of inquiry. However, the Bloody Sunday Inquiry did not have the same type of humanitarian mandate at the forefront of its operations as that of the ICLVR. Whereas the ICLVR focused on the needs of the families, the Bloody Sunday Inquiry was mandated to determine the truth about the events of Bloody Sunday. While the families of the victims were pleased with the Inquiry's outcome, had the truth been less palpable to the families, it would still have been the Bloody Sunday Inquiry's mandate to establish and share that truth.

Arguably the institution most comparable to the ICLVR in terms of its humanitarian focus on the families of the victims combined with an investigative focus is the Historical Enquiries Team (HET). The HET was established as a division of the Police Service of Northern Ireland (PSNI) in 2005 to investigate more than 3,200 murders committed during the Troubles that had never been properly investigated or had not been solved. As with the ICLVR, the HET developed in response to concerns from families of the victims who were looking for information about the circumstances surrounding the deaths of their loved ones.

While the HET was an interesting and innovative mechanism of investigating historical deaths, with a humanitarian mandate at its core, the implementation of the team was challenging. Despite extensive police reforms in Northern Ireland prior to the establishment of the HET, academic Anabelle De Heus described,

One of the core issues that the HET was largely unable to deal with, was its perceived biased position towards certain parts of the community, leading certain major victim support groups, like, for example, Relatives for Justice, to not engage with the HET at all up until 2011, or solely in a critical fashion since.¹³

¹³ Annabelle De Heus, "Meeting the needs of victims: Policing the past in Northern Ireland through the work of the historical enquiries team," in *Victims and Perpetrators of Terrorism: Exploring Identities, Roles and Narratives*, eds. Orla Lynch, Javier Argomaniz, (London: Routledge, 2017), 107.

As scholar Patricia Lundy argues, the HET allegedly failed to investigate allegations of involvement or collusion by police and military forces in murders during the Troubles.¹⁴ In fact, a

damning report published by Her Majesty's Inspectorate of Constabulary (HMIC) in 2013 stated that murders conducted by members of the security forces were in fact investigated less thoroughly than those where the prime suspects were members of paramilitary organisations. The report was indeed very critical of how historical cases were handled that could have incriminating effects on the position of the PSNI (HMIC, 2013: 27).¹⁵

This caused the investigations to lose significant credibility with victims' advocacy groups such as WAVE and Relatives for Justice, and with the Families of the Disappeared.

The HET concluded its work in 2014, after structural changes within the PSNI allocated their responsibilities elsewhere. Prior to the conclusion of the team's work, academic Mark McGovern argued that "Critical engagement with the HET has provided a great deal of new information in a number of cases, the importance of which should not be underestimated."¹⁶ Moreover, it is important to acknowledge that, despite any operational failings, the HET's mandate involved the herculean task of re-investigating more than 3,200 historical murders. However, these substantial failings of the HET, a mechanism with, like the ICLVR, a humanitarian mandate, highlight how the ICLVR used its humanitarian mandate to facilitate its own successes.

While the HET failed to follow its own stated intention to "approach each case similarly, as it [sought] to equalise all victims and perpetrators in an attempt to portray equal treatment to everyone,"¹⁷ the interviewees highlighted how objectivity and equal treatment were hallmarks of the ICLVR's operations. And certainly in the media coverage of the ICLVR there has been no suggestion of bias or failure to follow up on particular investigations. Now, as was the case with the Bloody Sunday Inquiry, the HET was tasked with investigating cross-community crimes, whereas the ICLVR was only focused on

¹⁴ See, for example, Patricia Lundy, "Exploring Home-Grown Transitional Justice and Its Dilemmas: A Case Study of the Historical Enquiries Team Northern Ireland," *International Journal of Transitional Justice* 3 no. 1 (2009): 321-340.

¹⁵ De Heus, "Meeting the needs of victims," 107.

¹⁶ Mark McGovern, "Inquiring into Collusion? Collusion, the state and the management of truth recovery in Northern Ireland," *State Crime* 2, no. 1 (2013): 18,

¹⁷ De Heus, "Meeting the needs of victims," 106.

within-community violence. And, the ICLVR and its personnel do not have a stake in the crimes they are investigating, as they were committed by a paramilitary group. The PSNI's instinct in failing to do their due diligence in investigating crimes committed by military and police forces could have been to protect the reputation of these organizations, of which they, as fellow law enforcement officials, are part. As problematic as this hypothetical instinct is, this is not a challenge that faces the ICLVR to the same degree.

However, the experts interviewed for this dissertation repeatedly linked their sense of objectivity and the need to complete thorough and scientifically solid investigations to the needs of the families to know the truth about what happened to their loved ones. Thus, as this chapter argued previously, the ICLVR's humanitarian mandate permeated every aspect of its operations and the values of its personnel. This was clearly not the case for the HET. I argue that this demonstrates the importance of the power of the Commission's humanitarian mandate in comparison to other transitional justice mechanisms.

The ICLVR's humanitarian mandate has thus been a critical factor in the Commission's success. And this humanitarian mandate has both resisted, and simultaneously reinforced the dominant international norm regarding investigations of forced disappearances. The Commission's humanitarian mandate has been a conscious choice that has been reaffirmed at every step, by all actors involved. Thus, the Commission's humanitarian mandate is a necessary condition to the success of the ICLVR. More than that, I argue that, had the Commission been structured differently, it would not have been nearly as successful. The ICLVR's humanitarian mandate is thus the key factor to its success. However, as the remainder of this chapter will discuss, there are three other necessary factors that also contributed significantly to its success.

9.2 Successful forensic investigations

The second key factor that has contributed to the perceived success of the ICLVR has been the successful forensic investigations that have occurred since the beginning of the ICLVR's mandate. Since the Commission began its operations in 1999, it has recovered and identified 11 of the 16 individuals who were disappeared during the Troubles through its forensic investigations. As outlined in Chapter 7, an additional two of the Disappeared were recovered and identified outside of the Commission's work: Eugene Simons, whose

remains were located by a civilian and recovered by the *gardai* in 1981, and Jean McConville, whose remains were located by a civilian and recovered by the Police Service of Northern Ireland (PSNI) in 2003.

9.2.1 Locating and repatriating the disappeared

As Chapter 8 explained, forensic teams associated with the Commission have used state-of-the-art forensic techniques to locate, recover, identify and repatriate the remains of 11 of the Disappeared to their families for burial. With the two previously located, this leaves but three victims to be recovered and identified. The remaining Disappeared are Columba McVeigh, Joe Lynskey, and Robert Nairac. As the ultimate goal of the Commission's mandate has been to identify and repatriate the remains of victims of forced disappearance to their families, the Commission's record of identifications is impressive, despite the fact that it has taken nearly two decades to reach this number of identifications. The feedback from grateful family members speaks for itself in demonstrating the sense of success the commission has enjoyed.

Every individual interviewed for this project commented that stakeholders have generally perceived the ICLVR as successful, and that the success in recovering the remains of the Disappeared is a major contributing factor to this success. In the discussion with Peter Jones from the Irish Secretariat to the Commission, and Frank Murray, Irish Commissioner to the ICLVR, both related the perception of success in the Commission to its success in locating the Disappeared through forensic investigations, and repatriating the remains to the families. Jones stated,

I think in terms of the success of the Commission – it has very good approval with the victims, the relationship with the victims' families is very good, that's what I've noticed... [Regarding] the success of the investigations they may take some time but ultimately there's a good success rate there already and there's four [now three] cases to go.¹⁸

This was consistent with Jones' assessment of the ICLVR's success in the earlier interview with him. Murray expressed that he believed the Commission to be broadly successful. He said, "We're a bit of a rarefied institution all right, I'm aware of that. A strange concept, but

¹⁸ Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Irish Department of Justice and Equality, and Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains, interview by author, Dublin, March 31, 2017.

it's one that works very well. And we have found it to be quite successful.”¹⁹ Murray also spoke at length about the ICLVR's investigative process, results of particular investigations, and the importance of advances in forensic methods, such as DNA, in assisting the ICLVR in locating and identifying the Disappeared. It was clear from our conversation that he took great pride in the Commission's investigative work.

As a former police detective for the Manchester Police, Lead Investigator Geoff Knupfer also spoke broadly to the successful forensic investigations that have occurred. During much of our conversation, he spoke to the factors that contributed to the success of the forensic investigations. But, there was no denying that he attributes the ICLVR's successes to the success of these investigations. He said, “Of course the more successful you are the more you're accepted... Our track record speaks for itself.”²⁰

Coroner Brian Farrell commented on how the Commission has worked well to satisfy the needs of the families of the victims who have been identified due to the use of forensic techniques. When asked if he believed the ICLVR had contributed to the peace process following the Troubles, he said, “specifically from our point of view it was to be of assistance to the families of the victims, I'm sure that it has contributed to the wellbeing of the [next-of-kin] of the victims.”²¹

Like Farrell and the others, Irish State Pathologist Marie Cassidy commented on the importance of good forensic procedures to the Commission's success. She talked about the evolution of how the different forensic experts worked together from the earlier investigations to the later one, stating, “I think at the beginning when we got together it's just a case of we're not sure. But I think [the investigations have] worked out really well.”²²

It may seem self-evident that the Commission's success in facilitating the identification and repatriation of remains is a contributing factor to its overall success, considering that this is its fundamental purpose. However, this success is incredibly important to acknowledge. The ICLVR was created with a very clear and specific mandate,

¹⁹ Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains and Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 31, 2017.

²⁰ Geoff Knupfer, Lead Investigator, Independent Commission for the Location of Victims' Remains, interview by author, Dundalk, Ireland, April 4, 2017.

²¹ Dr. Brian Farrell, Coroner, Dublin District Coroner's Office, interview by author, Dublin, March 21, 2017.

²² Professor Marie Cassidy, State Pathologist of Ireland, interview by author, Dublin, April 6, 2017.

to locate, identify and repatriate the remains of the 16 Disappeared. The fact that, more than thirty years after the disappearances occurred, 13 victims have been returned to their families is an incredibly positive record and demonstrates the ICLVR's effective operations.

9.2.2 The Commission's record compared to other transitional justice mechanisms in Northern Ireland

As the ICLVR is the only mechanism that has a goal of investigating and recovering victims of Troubles-related forced disappearances, there is no easy, direct comparison with other transitional justice mechanisms in Northern Ireland in terms of its success. No other body is investigating Troubles-era forced disappearances, beyond the PSNI. However, there are still some comparisons that can be made with other mechanisms.

In a similar developmental path to the ICLVR, the Bloody Sunday Inquiry (also referred to as the Saville Inquiry after its chairperson), was launched in 1998 by the British House of Commons, based on advocacy by the families of the victims. Family members were advocating for an official inquiry to correct the original 1972 Widgery report that investigated the massacre. The Widgery report was believed by many to be a whitewash of the truth of what had happened on Bloody Sunday. Although the Bloody Sunday Inquiry began its work in 1998 and finished collecting evidence in 2004, the report was not completed until 2010. As with the ICLVR, the Bloody Sunday Inquiry took its time in trying to understand the cases and establish truth that was accepted by both communities. And, similar to the ICLVR, this work was criticized for how long it took, and how expensive it was, with a price tag of approximately 190 million pounds.²³ In this sense, the work of the Bloody Sunday Inquiry has been more challenging than that of the ICLVR, since, unlike the narratives surrounding forced disappearances which are largely accepted, distinct narratives about Bloody Sunday had continued to prevail in each community since 1972.

However, despite its lengthy operations and its cost, the Saville report was largely lauded as a success for the families of the victims, and in establishing a cross-community narrative of truth. Aiken argued that “as a mechanism of truth recovery, perhaps one of the

²³ Aiken, “The Bloody Sunday Inquiry,” 108-14.

greatest strengths of the BSI was its ability to establish a new—and less divisive—“shared truth” surrounding the controversial events of Bloody Sunday, a truth that has now largely been accepted among both nationalist and unionist communities in Northern Ireland.”²⁴ This is important to note because, as with the ICLVR, the Bloody Sunday Inquiry left the families of the victims of Bloody Sunday feeling vindicated, and as though their voices had been heard. The shared truth between communities is also extremely important to note, as this is something the ICLVR has not been required to accomplish, since the forced disappearances were primarily an issue in the nationalist community, thus not inflicting cross-community trauma.

The similarities between the ICLVR and the Bloody Sunday Inquiry highlight the shared successes of the two institutions. Both institutions were established by official legislative bodies; while the Bloody Sunday Inquiry was established only by one government (the British House of Commons), the ICLVR was established by the agreement between both governments. Both institutions investigated similar numbers of deaths and both institutions have taken a long time to complete their mandates, however, their successes have been worth the wait. Both the Bloody Sunday Inquiry and the ICLVR have been highly successful in completing their mandates, and both are examples of successful transitional justice for Northern Ireland, albeit with different scopes.

Thus, successful forensic investigations that identify the remains of the victims of forced disappearance represent a necessary factor to the perception that the ICLVR has been a successful institution. Without their investigative successes, the ICLVR would not be perceived as nearly as successful an institution as it has been. However, it is important to acknowledge that the Commission’s humanitarian mandate has shaped the success of these investigations. As this section, and Section 9.1 demonstrated, the investigations would look very different if they had not been framed with the humanitarian approach. It is also a distinct possibility that these investigations would have been far less successful, as informants may have been less willing to participate if they were putting themselves at risk of potential prosecution by doing so.

As will become evident in the subsequent two sections of this chapter, while successful forensic investigations are also a necessary factor of the ICLVR’s success, they

²⁴ Aiken, “The Bloody Sunday Inquiry,” 108.

alone, or viewed through the lens of the Commission's humanitarian mandate, are not sufficient to explain the ICLVR's perceived success as a tool for addressing forced disappearances. The dedication of the ICLVR team in identifying and repatriating every single person who was a victim of forced disappearance cannot be sufficiently underscored. And, the political will of the governments to continue supporting the Commission to its conclusion, no matter how long this might take, is also important to note, as a contributing factor to the success of its forensic investigations.

9.3 Cooperation and political will in three political jurisdictions: UK, Ireland, and Northern Ireland

As was evidenced in Chapters 6 and 7, the ICLVR has enjoyed fulsome political and financial support from both states involved in its inception, as well as from the government of Northern Ireland. The third key factor that has contributed to the success of the ICLVR is the political will towards the Commission, specifically, but also towards addressing forced disappearances that has prevailed in the three political jurisdictions involved in this case, the United Kingdom (UK), the Republic of Ireland, and Northern Ireland. This section examines how this is a necessary, but again, insufficient condition, to explain the success of the ICLVR.

9.3.1 The ICLVR and cooperation Cross-border cooperation between governments

While the interviews conducted for this dissertation preceded Brexit and the resulting tensions between Ireland and the UK, both Frank Murray, the Irish Commissioner to the Commission, and Peter Jones, the Irish Joint Secretary to the ICLVR were certain that both governments were committed in their willingness to support the Commission until the conclusion of its work. In our first conversation, Jones stated,

I started my career in the department of finance where we said no to anything. I have to say I am very struck that there is a willingness to put resources behind the Commission and to get this... there's never any problem with a shortage of resources around there's a willingness on the part of both governments. Which I think was outlined in the international agreement between the two governments and

turned into legislation in both jurisdictions. There's a commitment there to return the Disappeared to their families. And cost is not the issue.²⁵

Later, in a joint interview with Frank Murray, the Irish Commissioner, Jones reiterated his above point. He said, "There is a firm commitment on the part of both governments to work with the Commission until its completion. We just would just like to do it sooner rather than later."²⁶ The cooperation and political will between the three governments highlighted during these interviews surrounding the ICLVR's work is notable in comparison with other mechanisms in Northern Ireland, regarding the Troubles.

Dr. Brian Farrell, the coroner in Dublin who worked on the cases of the Disappeared, also highlighted the excellent cooperation of the Commission with various types of actors. He stated,

On the ground there was very good cooperation between the Coroner's Office and the Commission. Now, as the Irish and British authorities, that would be a step back and really it was the Commission dealing with the Irish and British parties. But from our point of view, the cooperation was very good. In fact it was excellent. They were really proactive in keeping us informed, in keeping the families informed.²⁷

In this comment, Farrell was speaking as a partner to the Commission as opposed to a participant in it. However, his comments highlight the sense that the various actors (Commission staff, partners in the Coroner's office and other forensic experts, such as forensic anthropologists, the office of the state pathologist), and the families made a highly effective team and worked well together. This is important to note, as it demonstrates a general level of effectiveness in the Commission's operations that is not necessarily enjoyed in every mechanism, either to investigate forced disappearances, or in the general transitional justice framework.

In response to a question about whether and how the various actors have cooperated throughout the Commission's mandate, Geoff Knupfer, the ICLVR's lead investigator

²⁵ Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 16, 2017.

²⁶ Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains and Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 31, 2017.

²⁷ Dr. Brian Farrell, Coroner, Dublin District Coroner's Office, interview by author, Dublin, March 21, 2017.

stated, “It’s all worked remarkably well.”²⁸ He followed this comment up with the reiteration that,

No it's worked remarkably well. I think some would, well... I'll be careful how I phrase this... Some would claim that they are being more helpful than they really are. We get frustrated sometimes because we ask certain organizations or individuals questions, and we don't get answers but when they talk to the press they all say oh well, we're helping 100 percent and I think well, yeah I wish that were the case.²⁹

With this comment, Knupfer expressed a degree of frustration with certain groups that were taking public credit for providing more assistance than they were actually giving. However, despite this, he echoed Dr. Farrell’s statements that cooperation among the various actors involved with the Commission largely was very effective. This sense of cooperation is important to note, as it suggests that it was not only actors who were committed to the same ideological goal who were cooperative, but overarchingly, the various actors involved with the ICLVR cooperated with the institution, despite some hiccups in the process.

9.3.1.1 IRA acknowledgement and apology

As explored in the previous section, the cooperation of the IRA contributed significantly to the ICLVR’s success. One aspect that highlighted the beginning of the cooperation at the ICLVR’s outset, as discussed Chapter 6, is that paramilitary groups have acknowledged their responsibility for the murder and disappearances of 14 of the 16 individuals that fall under the Commission’s mandate. While the literature certainly does not downplay the importance of the IRAs admission in analyses of the peace process and the establishment of the ICLVR, it certainly cannot be sufficiently underscored how important this acknowledgement was. The IRA’s public acknowledgement of their crimes, their willingness to accept responsibility for the disappearances and disclose details that could help locate their remains has been essential to the success of the ICLVR.

In 1998, the IRA officially apologized for the disappearance of nine of the now sixteen disappeared individuals that fall under the ICLVR’s mandate. The text of the IRA’s statement acknowledging the original nine disappeared is notable.

²⁸ Geoff Knupfer, Lead Investigator, Independent Commission for the Location of Victims’ Remains, interview by author, Dundalk, Ireland, April 4, 2017.

²⁹ Ibid.

We believe we have established the whereabouts of the graves of nine people, some of whom were members of *Óglaigh na hÉireann* who were executed for activities which put other *Óglaigh na hÉireann* personnel at risk or jeopardised the struggle. Information regarding the location of these graves is now being processed and will hopefully result in the speedy retrieval of the bodies.

As we have previously stated, we are not responsible for all those previously listed in the media as having gone missing over the last 30 years. We are responsible for those we have acknowledged today and their families have all been notified.

In initiating this investigation, our intention has been to do all within our power to rectify any injustice, for which we accept full responsibility, and to alleviate the suffering of the families. We are sorry that this has taken so long to resolve and for the prolonged anguish caused to the families.³⁰

Kieran McEvoy outlined eight criteria for an effective apology. He argued that an effective apology “is carefully crafted, names the wrongs in question, acknowledges the hurt, accepts responsibility, expresses regret, promises non-repetition, is not demanding of forgiveness, and is delivered with suitable dignity.”³¹ By this metric, the IRA’s statement is rather impressive. It certainly appears as if it has been carefully crafted. It names the wrongs in question, acknowledges the hurt, accepts responsibility, expresses regret, and is not demanding of forgiveness. This meets six of the eight overall criteria for an effective apology. And, as the statement led to the provision of information that assisted to locate the remains of the victims, there is also an additional physical reparative component, outlined as important to apologies by Rhoda Howard-Hassmann.³² This is especially notable, considering that 1998 was early in the peace process, and the Good Friday/Belfast Agreement had only just been signed.

There are a number of aspects of this statement that are particularly notable. First, in the statement, the IRA claims the nine individuals as its own members. This is a fact that is vehemently disputed by a number of the families of these nine individuals. No family has more vehemently denied this statement than the family of Jean McConville,

³⁰ Clare Murphy, “IRA says it has located burial places of nine of its victims,” *The Irish Times*, 30 Mar 1999, <https://www.irishtimes.com/news/ira-says-it-has-located-burial-places-of-nine-of-its-victims-1.168392>, (accessed June 20, 2019).

³¹ Kieran McEvoy, “Acknowledgement, Apologies and Dealing with the Past in Northern Ireland,” Dealing with the Past 2014 Conference, February 1, 2014, <https://www.cvsni.org/media/1503/acknowledgement-apologies-and-dealing-with-the-past-in-northern-ireland-presentation-by-kieran-mcevoy.pdf>.

³² Rhoda Howard-Hassmann, quoted in Jessica Murphy, “Does Justin Trudeau apologise too much,” *BBC News*, 28 March 2018, <https://www.bbc.com/news/world-us-canada-43560817> (accessed 17 June 2019).

the mother of 10 who was abducted in front of her children in Belfast one evening.

According to a 2006 *Irish Times* report, Michael and Jim McConville, two of Jean's 10 children,

lodged a complaint with the Police Ombudsman's office [in 2004], concerning the police investigation into her disappearance. [Ombudsperson Nuala O'Loan] indicated that her inquiries had gone back over police, army and MIS records, before reaching the conclusion that Mrs. McConville was not an agent. 'We have looked very extensively at all the intelligence available at the time;' she said 'There is no evidence that Mrs. McConville gave information to the police, the military or the security service. She was not an informant.'³³

Most families have disputed the allegation that their loved ones were members of the IRA or informants. This discrepancy has simply remained since the IRAs claims were made. This is one of the conflicting truths that are so prevalent in the Irish case. There are two (or more) sides to every story. There are two truths. And, bringing these two truths together into one is not only outside of the scope of the truth possible by the ICLVR, but is also not possible. These two truths must continue to exist in parallel. And the families of the victims and then the broader society at large must accept this in order to maintain peace.

A second interesting part of this statement is the apology in the last paragraph. The IRA not only accepts responsibility for any injustice they have caused but also use the words "we are sorry" in the context of how long the issue has taken to resolve, and the suffering of the families.³⁴ However, as outlined in the discussion of political apologies as part of transitional justice in Chapter 2, there is a significant difference in apologies between an expression of regret for actions, and an explicit apology. While the IRA was certainly gaining political points, and responding to pressure by other actors by making this statement, the apology was crafted in a way that underscored sincerity.

A third interesting point is beyond the scope of the apology itself, but regarding the response to it. During the debates in Westminster House of Commons regarding the legislation to create the ICLVR, the conservative Member of Parliament, Mr. Malcolm Moss, criticized the sincerity of the apology issued by the PIRA.

³³ Deaglan De Breadun, "O'Loan censures police on Mcconville murder inquiry" *The Irish Times*, 8 July 2006, <https://www.irishtimes.com/news/o-loan-censures-police-on-mcconville-murder-inquiry-1.1027638>, 1 (accessed June 20, 2019).

³⁴ Minow, *Between Vengeance and Forgiveness*, 92.

Nothing illustrated the sickening nature of the IRA more graphically than the announcement of the results of its so-called 18-month investigation of the whereabouts of ‘The Disappeared’, for which we were all supposed to be grateful. On 29 March, the IRA said that it had been able to locate nine people's graves – as if they are not aware of the fate of the others – stating:

‘We are sorry that this has taken so long to resolve and for the prolonged anguish caused to the families’

Having made its announcement and raised the hopes of the families, the IRA then prolonged the anguish by demanding that the British and Irish Governments pass legislation granting immunity from prosecution before it would reveal any further information. Helen McKendry, the daughter of Jean McConville, said: ‘I am really, really angry with the IRA. I thought when they made their statement a fortnight ago, all our suffering was over. They raised our hopes, knowing full well they had no immediate intention of delivering the bodies.’³⁵

Later in the debate, he continued his criticism of the IRA and their apology,

What organisation could seek to gain credit and gratitude for finally disclosing the whereabouts of people whom it has murdered other than the Provisional IRA? That is a disgraceful state of affairs, but one, sadly, with which we are going to have to live. That rather sums up our attitude to the Bill: it is a necessary evil. There should be no need for such a Bill. If we were dealing with reasonable people who were truly committed to peaceful and democratic means, there would not be such a need – but then, that is not the IRA's way.³⁶

Moss expresses compelling sentiments on behalf of families of victims. However, in the aftermath of a conflict, and a new peace agreement, it does not seem particularly reasonable to expect one party to provide information without anticipating something in return.

Ultimately, it is clear that there were diplomatic and political motives behind the IRA's decision to release the apology, and to provide information regarding the location of the remains of the Disappeared. That said, in light of the importance of apologies in transitional justice, and specifically in the Irish context, and the necessity of having the IRA's cooperation in order to locate the Disappeared, and to be able to give the families information about the context of the disappearance, the IRA's apology was essential to the success of the ICLVR. Without it, the Commission would have had an uphill battle in

³⁵ United Kingdom, *Hansard Parliamentary Debates*, HC vol. 331, c. 45 (10 May 1999).

³⁶ *Ibid.*, c. 46.

locating any of the Disappeared, and certainly would have been perceived as far less effective.

Eugene Simon's father Walter expressed the importance of the IRA and those in power needing to provide information regarding the location of the remains of the Disappeared who were still missing. In a 2012 publication on the Disappeared by WAVE, he stated,

These days the architects of our 'Troubles', those who came up with these slogans and sayings, are now high flying politicians with fancy suits and big salaries. They are enjoying the trappings of power whilst my wife and I survive on just over 200 pounds a week. That can't be right, but it's the price of progress, I guess. Still, it would be a lot easier to stomach if they would just do what is right with regards to the past.³⁷

However, not all families consider that the IRA's apology fits the bill. As a concluding note to this section, Jean McConville's family made a statement to the Irish Times shortly after the confirmation that the remains discovered on Shelling Hill beach in County Louth, Northern Ireland, were indeed hers. Her son-in-law Stephen McKendry stated, "There are still questions to be answered. Will there ever be closure? Will there ever be a public apology?"³⁸ As noted earlier in this section, the McConville family was particularly frustrated by the IRA's statement of apology, and also rejected the idea that she was in any way an informant for the British as the IRA had accused. The McConville family's desire for a further public apology demonstrates the importance of having an apology at all.

The IRA's cooperation with the Commission has been evidenced throughout its operations. As referenced in Chapter 8, despite some frustration with the publicly stated description of their cooperation by some former IRA members in comparison with their actual degree of helpfulness, ultimately, the ICLVR could not have accomplished what it did without the assistance of former paramilitary members. The apology and continued involvement of the IRA with the ICLVR demonstrates another level of cooperation and political will that has been a necessary condition of the Commission's success.

³⁷ WAVE, *The Disappeared of Northern Ireland's Troubles*, (Belfast, WAVE Trauma Centre, 2012), 76.

³⁸ Carol Coulter, "DNA test confirms Shelling Hill beach remains to be those of Jean McConville," *The Irish Times*, 21 Oct. 2003, <https://www.irishtimes.com/news/dna-test-confirms-shelling-hill-beach-remains-to-be-those-of-jean-mcconville-1.385304>, (accessed June 20, 2019).

9.3.2 *Cooperation and transitional justice in Northern Ireland*

A second factor that underscores the uniqueness of cooperation between actors in Northern Ireland surrounding the ICLVR and the Disappeared is the fraught transitional justice landscape in Northern Ireland. As Chapter 5 outlined, and was discussed again above, divisions between communities in Northern Ireland continue to prevail as part of the transitional justice mechanisms and processes that have been implemented in the region.

A 2019 documentary, produced by Netflix, highlighted these continuing issues. The documentary told the story of the Miami Showband Massacre, which occurred when three members of the band were killed and two more were injured at what appeared to be a British military checkpoint near the border between Northern Ireland and the Republic of Ireland on July 31, 1975. In reality, the checkpoint was created by the loyalist paramilitary the Ulster Volunteer Force (UVF). However, two members were both British Military Police and members of the Ulster Defence Regiment (UDR) as well as being members of the UVF. The documentary raises broader questions about the extent to which British forces colluded with loyalist paramilitaries, and the British government used the UVF to advance their goal of defeating the IRA and maintaining British rule in the North.

In the documentary, surviving Miami Showband member-turned-activist Stephen Travers, who remains traumatized by the massacre and loss of his bandmates, summarized how many feel about transitional justice in Northern Ireland. He stated, “One of those impediments to healing and to reconciliation is the fact that responsibility is not accepted [by the paramilitaries and the state].”³⁹ Despite the fact that arrests were made and two individuals were convicted and sentenced for the massacre, survivors and families of the victims still feel that the cooperation and taking of responsibility has been completely lacking, both on a group and an individual basis, due to the lack of accountability from the British government for the massacre.

The continued calls for justice and accountability for the Miami Showband massacre demonstrates how transitional justice continues to be fraught in Northern Ireland, due to ongoing divisions. These divisions led to the conflict, but also perpetuate the conflict narratives, despite the fact that the conflict has ended. During a 2015 trip to Northern

³⁹ “ReMastered: The Miami Showband Massacre.” *Netflix*, 22 Mar. 2019 (accessed 7 April 2019).

Ireland, I interviewed groups on both sides of the societal divisions that are doing work to support victims and survivors within their respective groups. However, these supports largely fail to cross communities.

As I outlined in Chapter 3, Decorum Northern Ireland is a group that supports victims and survivors of the Troubles that served in the Northern Ireland defence forces. This means the organization supports members of the Ulster Defence Regiment (UDR) of the British army, the Royal Ulster Constabulary (the police force), prison officers who served in the Northern Ireland Prison Service, and others who fulfilled military and policing roles throughout the conflict.⁴⁰ While the organization labels itself as being “apolitical”, providing support to veterans of the military and police forces during the Troubles is inherently politically fraught in Northern Ireland.

Due to the colonial history of the relationship between Britain and Ireland, wherein the British have colonised the island, and thus view the Irish as people under their rule in need of control, military and police forces are placed in the role of oppressors, especially considering some of the policies that were put into place and enforced by British forces. Mitch Bresland, who facilitated a tour I took of the Decorum Northern Ireland museum in 2015, asserted that members of the security forces who had experienced trauma during the Troubles were largely excluded from the narratives about victims and survivors. Bresland indicated that members of security forces felt “isolated and left behind” following the peace agreement, and were initially excluded from funding received from the European Union to support Peace and victims services in the aftermath of the Troubles.⁴¹

On the other side of the community divide, Adrian Kerr gave me a tour of the Museum of Free Derry during the same 2015 visit. The Museum of Free Derry was created to commemorate events in the city of Derry/Londonderry during “the period 1968 – 1972, popularly known as ‘Free Derry’, and including the civil rights era, Battle of the Bogside, Internment, Bloody Sunday and Operation Motorman.”⁴² Kerr indicated that the Saville report was a watershed moment for the victims and survivors of the Bloody Sunday

⁴⁰ Decorum Northern Ireland, “About Us,” https://www.decorumni.co.uk/about_us.html (accessed 20 September 2019).

⁴¹ Mitch Bresland, Senior Staff Officer, Decorum Northern Ireland, interview by author, Bangor, Northern Ireland, June 15, 2015.

⁴² The Museum of Free Derry, “The Museum,” <https://www.museumoffreederry.org/content/museum> (accessed 20 September 2019).

massacre during which British soldiers killed 14 civil rights protestors in Derry on January 30, 1972. For decades following the massacre, and despite conducting two official investigations of their own, the British government failed to take responsibility for the massacre, asserting that the protestors were armed and dangerous. It was not until the release of the Saville report in 2010, which called the massacre “unjustified and unjustifiable,”⁴³ that they finally took responsibility due to the fact that all of the victims were unarmed. Kerr explained that, from his perspective, “the British perspective has dominated the official narrative historically,”⁴⁴ as the state narrative is typically the one that is accepted.

Kerr explained how, prior to the release of the Saville report, as late as 2010, school textbooks in Northern Ireland discussed Bloody Sunday without mentioning that British soldiers had killed anyone. The goal of the Museum of Free Derry, and of Kerr, was to ensure that the state narrative continued to be challenged, and that the stories of those in the Bogside were told and preserved as part of the historical record. Kerr indicated that part of the challenge for Northern Ireland is that “the big thing in other [transitional justice] contexts is regime change, but that hasn’t happened here.”⁴⁵ Like Travers regarding the Miami Showband massacre, Kerr too expressed concern about the overarching lack of accountability by the British government for collusion with paramilitary (predominantly UVF) operations during the Troubles, and the trauma that this collusion has caused.

The stories told by Adrian Kerr at the Museum of Free Derry, Mitch Bresland from Decorum Northern Ireland, and Stephen Travers in the Miami Showband documentary, are snapshots into three groups of victims, who have three separate victim identities and relationships to the Troubles: an advocate for the Catholic community, an advocate for British forces, and a “foreigner” as an Irish person who had no stake in either side of the conflict prior to the murder of his bandmates. Their three perspectives are all valid and

⁴³ The Rt Hon The Lord Saville of Newdigate, The Hon William Hoyt, and The Hon John Toohey, *Principal Conclusions and Overall Assessment of the Bloody Sunday Inquiry*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/279167/030.pdf, 48.

⁴⁴ Adrian Kerr, Manager, The Museum of Free Derry, interview by author, Derry, Northern Ireland, June 17th, 2015.

⁴⁵ *Ibid.*

valuable, and their concerns and narratives about their victimhood impact how they might perceive the others' claims to victimhood and narratives.

These diverse and divergent interests all highlight the continually fractured nature of transitional justice processes and narratives for Northern Ireland. These examples also demonstrate the uniqueness of the ICLVR in this context, as an institution able to facilitate cooperation between communities, and between various sets of actors. One significant aspect of this is the Commission's ability to achieve cooperation from the IRA, and the fact that the IRA has actually apologized for their role in committing forced disappearances.

As this section has demonstrated, the ICLVR is unique in the cooperation of actors that it has facilitated, and the political will it has engendered. The IRA's apology ahead of the Commission's establishment provided a solid foundation for the Commission to begin its work. Despite some challenges with the information provided by informants throughout the Commission's operations, former IRA members, and the paramilitary groups at large have generally cooperated extremely well with the Commission. This type of cooperation by perpetrators would likely be very rare in other investigative mechanisms of forced disappearances in future research. In terms of political will, the results are substantially the same. The fractured nature of transitional justice processes in Northern Ireland make the ICLVR unique in the support that it has received from all sides of the political spectrum, and all three governments (of Ireland, Northern Ireland, and the United Kingdom). Thus, cooperation and political will by a variety of actors across political jurisdictions has emerged as a necessary condition to the ICLVR's success.

It is also important to recognize that this cooperation and political will are both intrinsically linked to the Commission's humanitarian mandate. As this section has demonstrated, the Commission's ability to facilitate cooperation with the IRA and with former perpetrators is linked to its mandate of non-prosecution, and, in turn, to the trust in the institution and the individuals leading it that is discussed in the next section. Moreover, the Commission's focus on the families has made it an easy sell for government support. It is difficult to imagine that, in the absence of its humanitarian mandate, the ICLVR would have been able to facilitate the same levels of communication and political will.

9.4 Trust in the institution and the individuals leading it

As mentioned in Section 9.2.1 in discussing the Commission’s humanitarian mandate, the ICLVR has been highly effective at facilitating trust in itself as an institution, and in the individuals who work for and with it. This degree of trust is most evident in the fact that it has managed to collect accurate information from former combatants to facilitate the location of the remains of the Disappeared, over many years. However, the families of the Disappeared, the staff involved with the Commission, and society at-large all seem to have a high degree of trust in the institution, which, as discussed in the literature review in Chapter 2, is unusual for a transitional justice mechanism. It is also highly unusual for institutions related to Northern Ireland, which has a long history of distrust in institutions such as governments at all levels, and the police.⁴⁶

9.4.1 *How the ICLVR facilitated trust*

Trust was highlighted repeatedly through the interviews conducted for this dissertation as a factor that contributed significantly to the Commission’s success. The first, and arguably most important, trust built by the ICLVR is the trust of former combatants. This factor is connected to two other crucial components of the ICLVR’s success: first, the Commission’s humanitarian mandate, and; second, the Commission’s successful forensic investigations. In addition to the trust of former combatants to participate and provide information to the Commission, the ICLVR also facilitated trust of the families of the Disappeared.

During all of the interviews for this project, the participants highlighted the importance of receiving information, and good information at that, from former members of paramilitary groups, who perhaps were involved with the disappearances, in order to facilitate the forensic investigations. Irish Commissioner Frank Murray said, “I wouldn’t think we would have been as successful as we have been to-date. And I’m conscious we haven’t 100 percent success to report just yet—if we didn’t have that guarantee of protection

⁴⁶ See, for example, “Relationships between police and community in west Belfast have ‘deteriorated’” *Belfast Telegraph*, 30 December 2018, <https://www.belfasttelegraph.co.uk/news/northern-ireland/relationships-between-police-and-community-in-west-belfast-have-deteriorated-37667148.html>, (accessed October 13, 2019).

for people who give evidence.”⁴⁷ ICLVR lead investigator Geoff Knupfer echoed this sentiment, in his description of how the Commission built trust on its past reputation echoed this sentiment. He said, “You know, our track record speaks for itself. Nobody’s ever been arrested, nobody’s been interviewed by the police, nobody’s been prosecuted, or convicted, as a result of information that was passed to the Commission.”⁴⁸

Lauren Dempster, a lecturer at Queen’s University Belfast who has conducted extensive research on the Commission, reiterated the link between the Commission’s humanitarian mandate and the trust it received within the ex-combatant community. I spoke with Dempster early on in this research, but did not conduct a formal interview with her. However, as she outlined in a 2018 Knowledge Exchange Seminar for the Northern Ireland Assembly, the ICLVR is a mechanism that has demonstrated to former combatants that it can be trusted, and thus, they can feel comfortable participating in it.

As she stated regarding her own research,

one senior Republican ex-combatant interviewed for this research elucidated this: ‘we in the political ex-prisoner community did...a series of meetings and talks with people...about...how they would feel about becoming involved in a process of truth recovery...what we had in mind was some sort of a process whereby people on a collective basis could be requested to give information to a group of very trusted and confidential comrades...And the example that we used was the process of the recovery of the remains. And in the main, most guys would have been comfortable with that.’⁴⁹

Dempster’s interview participant raises two aspects of how the Commission has been able to develop trust. First, former combatants were comfortable with the idea that the information would only be revealed to a select number of individuals. Second, they also appreciated information they revealed would only be used to facilitate the recovery of remains of victims, meaning they were not putting themselves at risk of prosecution, or their families at risk of retribution by providing information to the Commission.

⁴⁷ Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims’ Remains and Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims’ Remains, Department of Justice and Equality, interview by author, Dublin, March 31, 2017.

⁴⁸ Geoff Knupfer, Lead Investigator, Independent Commission for the Location of Victims’ Remains, interview by author, Dundalk, Ireland, April 4, 2017.

⁴⁹ Lauren Dempster, “The ‘Disappeared,’ the ICLVR, and ‘Dealing with the Past’ in Northern Ireland,” *Knowledge Exchange Seminar Series*,

http://www.niassembly.gov.uk/globalassets/documents/raise/knowledge_exchange/briefing_papers/series7/dempster180418.pdf.

Knupfer also raised the idea that trust that information and identities would not be released beyond the confines of the institution is essential to facilitate the comfort of former combatants in disclosing information. He said,

One of the problems [for former combatants] I suspect is that people who were involved in paramilitary activity, in say the 1970s have moved on from the organization they were probably young lads, they've probably moved on, they've left, say the IRA, whatever bit they were in, they've married, they have families, their kids their wives know nothing about this. And they are now pillars of society somewhere... The last thing they want to do is say, oh, by the way.⁵⁰

This point highlights the need for the building of trust by these types of institutions in order to facilitate their success in locating, recovering, and repatriating remains.

Dublin coroner Brian Farrell demonstrated how restricted the release of information that had been given to the Commission truly was during our interview. He indicated, "We wouldn't have been privy to all of the information. I didn't really, as the coroner, I don't think I was entitled to it. But I didn't really want to know it anyway."⁵¹ This is important to note, as it highlights how seriously the experts involved with the Commission subscribed to the preservation of information gathered by the Commission, as well as the Commission's humanitarian mandate.

Commissioner Murray, and representative from the Irish Joint Secretariat to the Commission, Peter Jones, emphasized the Commission's role in building and facilitating this trust and linked it to the Commission's humanitarian mandate. Jones commented, "I think that cooperation on our side of the bargain [is important] as well. The Commission only works with cooperation. Our side of the bargain is that we protect the information [we receive], we guarantee confidentiality. And the guarantee is for primarily humanitarian reasons."⁵² Here, Jones linked the Commission's maintenance of the privacy of information to the humanitarian mandate. If the ICLVR did not follow the stipulations in the mandate,

⁵⁰ Geoff Knupfer, Lead Investigator, Independent Commission for the Location of Victims' Remains, interview by author, Dundalk, Ireland, April 4, 2017.

⁵¹ Dr. Brian Farrell, Coroner, Dublin District Coroner's Office, interview by author, Dublin, March 21, 2017.

⁵² Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Irish Department of Justice and Equality, and Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains, interview by author, Dublin, March 31, 2017.

it would not have been possible to collect the information needed to locate, recover, and identify, the remains of the Disappeared, and repatriate the remains to their families.

In addition to the trust of former combatants who provided information to the Commission that facilitated its work, other key actors have also maintained trust in the Commission. Then-Irish State Pathologist Marie Cassidy commented that the families of the Disappeared trusted them to do its work it was set out to do, and to do it well. Cassidy indicated, “If ever there's information that either you don't know or that you can't provide because of the legislation, the families tend to be accepting of that.”⁵³ Knupfer and Farrell both reiterated this sentiment from the families, that they appreciated the Commission’s work, and trusted its staff to a degree that they understood when there was information that they were not permitted to disclose, such as where the information came from, or specific knowledge of ballistics, for example.⁵⁴ Regarding the Coroner’s inquests that were held in the cases of the Disappeared, Brian Farrell stated, “the hearings had to be restricted in the sense that you weren’t going into the background of the finding or the informants or anything like that, [whereas in a normal Coroner’s Inquest] you would be going into *all* of that. And the police would be giving a report on what happened and how the person came by their death.”⁵⁵ Farrell’s comments are important to note, because gaining the trust of the families in a transitional context that has historically distrusted official institutions, is remarkable. Despite the absence of full information being known, or disclosed, by all participants, the families trusted the ICLVR and those who were working for it. According to Murray, this trust extended so far as to helping build bridges between some family members and former combatant Martin McGuinness.

Martin McGuinness was a former IRA member-turned-*Sinn Fein* politician in Northern Ireland. He was front of mind during the interviews I conducted for this dissertation, as he died on March 21, 2017 while the interviews were taking place. He had resigned from his final political role as Northern Ireland’s deputy first minister in January of the same year. McGuinness rose through the ranks of the IRA in his hometown of Derry,

⁵³ Professor Marie Cassidy, State Pathologist of Ireland, interview by author, Dublin, April 6, 2017.

⁵⁴ Geoff Knupfer, Lead Investigator, Independent Commission for the Location of Victims’ Remains, interview by author, Dundalk, Ireland, April 4, 2017, and Dr. Brian Farrell, Coroner, Dublin District Coroner’s Office, interview by author, Dublin, March 21, 2017.

⁵⁵ Dr. Brian Farrell, Coroner, Dublin District Coroner’s Office, interview by author, Dublin, March 21, 2017.

and by the time he was 21 had become the deputy leader of the local IRA organization. As a former IRA leader who ordered deaths and destruction during his time with the organization, McGuinness was a controversial figure in Northern Irish politics.⁵⁶

However, according to Frank Murray, McGuinness was an ardent supporter of the ICLVR. During one of the many searches for Columba McVeigh, one of the Disappeared yet to be found, the McVeigh family extended an invitation to McGuinness to come and witness the dig. By Murray's account, "something like that was an exceptional gesture. Now, he didn't have the answer. Some people say, 'Oh, he knows where he is.' But he didn't. But he came to the area. And he walked around. And then that way would have got a fuller understanding of the frustration of the family."⁵⁷ This type of direct outreach with families of the victims of Troubles violence would have undoubtedly been very awkward for a former IRA leader. However, the ICLVR created the trust and opened the social space for that type of interaction to occur.

One last aspect of the trust that the Commission facilitated that was consistent across the experts interviewed for this dissertation, was the importance of the Commission's staff in working well together, and in creating an environment where this type of trust was well-placed and would flourish. All of the interview subjects attributed the ability of the Commission to build trust not only to the structure and mandate of the Commission, but also to the efforts of individuals who have worked for and consulted for the ICLVR throughout its existence. Frank Murray described the Commission's personnel,

We're a very small organization, we could hardly be much smaller really. There's just two commissioners who are somewhat akin to I suppose directors of a small company. But we have a small team of dedicated professionals who organize the digs, who do the research, who do the inquiries. They're all-rounders. But we employ on a contract basis we don't have any full-time staff. For example, professional archaeologists, a contractor who is familiar with the work and knows what to do and how to do it and we rely then on DNA for identification.⁵⁸

⁵⁶ Órla Ryan, "An IRA leader turned peacemaker': How Martin McGuinness is being remembered internationally," *TheJournal.ie*, Mar 22, 2017, <https://www.thejournal.ie/martin-mcguinness-3-3299811-Mar2017/> (accessed 15 September 2019).

⁵⁷ Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains and Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 31, 2017.

⁵⁸ *Ibid.*

On a similar note, Irish State Pathologist Marie Cassidy spoke of the “good coordination and cooperation between all the different bodies,”⁵⁹ involved with the ICLVR, from the various forensic specialists (the pathologists and forensic archaeologists, anthropologists, and the coroners, to name but a few). Dublin coroner Brian Farrell echoed these comments. He said, “All I could tell you is that there was very good on the ground cooperation between all the parties involved. Now, I’m talking about the medico-legal investigation. Pathologists, the Commission, the Coroner, the family, and any other party. That was always good. It was always good. It was particularly good, actually. I don’t want to say excellent, but it was particularly good cooperation.”⁶⁰

The reason the small number of personnel operating within the Commission, and the good cooperation between them are important to note is twofold. First, the sense of respect, camaraderie, and trust among the individuals working for the ICLVR is of particular importance when the number of staff is small, and when the group of staff remains reasonably consistent throughout the Commission’s tenure. It is certainly easy to imagine, that if the Commission’s personnel were less devoted to its mandate, worked less well together, or did not trust each other, the Commission’s outcome could have been much different. That sense of trust that developed within the Commission itself, between the Commission’s experts over time translates into trust in it by external actors. In other words, the importance of having good people who are trusted by each other and by external observers and participants in facilitating the success of a transitional justice mechanism cannot be emphasized enough.

Second, this sense of trust amongst the personnel of the Commission was communicated very clearly throughout the interviews. The respect for the Commission, its mandate, and the skills of colleagues rang true, in no small part due to the perceived objectivity of all participants. As discussed previously in this chapter, this is in large part due to the scientific training and background of many of the Commission’s personnel, who were educated and trained to let the evidence speak for itself. This perceived objectivity can allow the families and ex-combatants alike to trust in the independence of the Commission. There do not appear to have been concerns raised by any parties that the

⁵⁹ Professor Marie Cassidy, State Pathologist of Ireland, interview by author, Dublin, April 6, 2017.

⁶⁰ Dr. Brian Farrell, Coroner, Dublin District Coroner’s Office, interview by author, Dublin, March 21, 2017.

Commission might try to conceal information, or obfuscate the truth about what happened to an individual. Or political actors in the UK, Ireland, or Northern Ireland could manipulate that the truth produced by the ICLVR investigations. This is especially remarkable due to the fact that the Commission is funded and supported through government. This overarching sense of trust in the independence of the institution can also be attributed, in large part, to the trustworthiness and the competence of the ICLVR's personnel.

9.4.2 Trust in other Troubles-related transitional justice mechanisms

Chapter 5 and the previous three sections of this chapter have argued that cross-community trust in Northern Ireland remains at a premium. While there has officially been peace in Northern Ireland since 1998 and an entire generation has grown up without the daily threat of violence, the media consistently characterizes the existential fear that the peace will not last. Because of the continued divisions, the trust in transitional justice institutions is also largely dependent on what is being investigated, and who is doing the investigating. As discussed in Section 2 of this chapter, the Widgery report, the original report that investigated Bloody Sunday, was a whitewash of the event. The Widgery report put blame for the deaths of the 14 civilians squarely on the organizers of the protest, arguing that they created a dangerous situation that resulted in the deaths and injuries. This narrative perpetuated for four decades prior to the release of the Saville report. For this reason, skepticism of the Bloody Sunday Inquiry would have been almost inevitable. It must have been very challenging for the families of the victims to believe that the new report would do better, until it did.

The Historical Enquiries Team (HET), was also established to provide a renewed investigation of Troubles-era deaths. However, many people in Northern Ireland report having low-levels of trust in the police, and so, despite police reforms, the HET also faced an uphill battle in developing trust amongst family members of the victims, and civil society organizations.⁶¹ Once it emerged that the HETs investigations into collusion and participation in crimes by British police and military forces, trust in the team would have been virtually impossible.

⁶¹ De Heus, "Meeting the needs of victims," 107.

The continued emergence of small, local, and community-based organizations to memorialize the Troubles and record narratives and the truths of each side demonstrates that these local, community-based mechanisms remain the most trusted approaches to transitional justice and moving beyond the conflict for Northern Ireland. This demonstrates how remarkable the ICLVR really is. While it only addresses within-group conflict, it remains a state-based institution that, as a result, could be regarded with similar skepticism to other state law enforcement organizations. The fact that the ICLVR gained the trust of both families of victims, as well as former members of the IRA, is remarkable in this still-divided context.

Thus, the fourth key contributing factor to the ICLVR's success has been the trust that has developed in the institution itself and the individuals involved in leading it. This trust by ex-combatants, government officials, and society at-large is demonstrably unique in comparison with other transitional justice mechanisms for Northern Ireland. Without this level of trust and confidence that the Commission and its staff are unbiased, non-partisan, and would not disclose information that it received to law enforcement agencies, the ICLVR's ability to fulfill its mandate would be much more limited. Again, as is the case with the previous two factors (successful forensic investigations, and cooperation and political will), the level of trust in the institution and individuals leading it is inextricably linked to the Commission's humanitarian mandate. As Section 9.1 argued, the two prongs of the humanitarian mandate, the focus on the families of the disappeared, and the guarantee of non-prosecution, influenced and shaped every aspect of the Commission and the individuals involved with it. These aspects of the Commission's humanitarian mandate led to the trust it has been able to facilitate.

9.5 Conclusions

In conclusion, this chapter has argued that the ICLVR's success is linked to four main factors. First, and most importantly, the ICLVR's humanitarian mandate has shaped all parts of the Commission's development and operations. The twofold humanitarian mandate responded to the advocacy and needs of the families of the victims, but also created space for healing that did not depend on the ruling of a court of law. In essence, the humanitarian mandate is the main contributing factor to the Commission's success. Without the

humanitarian mandate, I argue, the other factors would be far less relevant and the ICLVR far less successful. Second, despite the small number of victims of forced disappearance, the Commission's record at locating and repatriating the remains of more than 80 percent disappeared is significant. Third, the cooperation and political will of a variety of actors, from the three governments, and former paramilitary actors have provided essential resources, from financial support to key information. Fourth, the institution and the individuals involved in it have garnered high levels of trust from all parts of society that are unique in the still divided context of Northern Ireland.

As I have reiterated throughout this project, evaluating the ICLVR's success is important because it leads to a better understanding of the Commission itself as an investigative mechanism into forced disappearances. However, evaluating the ICLVR's success leads to the analysis in the next chapter of the second research question of this project: to what extent do each of the international norms related to forced disappearances, outlined in Chapter 4, contribute to success in dealing with forced disappearances? This next chapter brings together the discussion of the international norms related to forced disappearances, and the case study of the ICLVR.

Chapter 10: Lessons learned from the Independent Commission for the Location of Victims' Remains

This penultimate chapter brings together the examination of international norms related to forced disappearances, and the in-depth case study of forced disappearances in Northern Ireland and the Independent Commission for the Location of Victims' Remains (ICLVR). Bringing together these two parts of the research seeks to provide insight into both of this project's research questions: Do international norms exist regarding forced disappearances and if so, what is their specific content? And, to what extent do each of these international norms related to forced disappearances contribute to success in dealing with forced disappearances? The literature review in Chapter 2 argued that scholars largely fail to interrogate how foundational norms, for example the norm of legal justice, influence domestic and local investigations into forced disappearances, such as the ICLVR. Since these norms and mechanisms set expectations of what justice should look like, and how it should be done, this is particularly problematic because it can and does conflict with the values and needs of local actors.

The first section of this chapter considers whether the three dominant international norms regarding forced disappearances outlined in Chapter 4 explain the Commission's success. These norms are first, that forced disappearances are a unique type of crime that must be addressed; second, forensic human rights investigations are the best method to deal with forced disappearances, and third, these forensic human rights investigations should focus on locating, identifying, and repatriating the individual victims of disappearances, and thus emphasize a legal mandate based on collecting evidence for prosecution. The chapter then considers the overarching paradigm of constructivism and international norm theory related to the ICLVR based on the transitional justice norms outlined in Chapter 2, and the international norms outlined in Chapter 4.

The chapter's second section provides a discussion about lessons learned from the ICLVR, taking into account the perspective of the elites interviewed for this project. Ultimately, while there are many important takeaways from the ICLVR's development and operations, the ICLVR's humanitarian mandate and focus on the families of the Disappeared are the key lessons learned from the ICLVR. Moreover, while the international norms outlined in Chapter 4 regarding forced disappearances are able to explain some of

the factors that contributed to the ICLVR's success, it is also important to consider the influence of transitional justice norms on the Commission as equally essential to understanding the institution and its impact.

10.1 Do international norms explain the success of the ICLVR?

10.1.1 Three norms related to forced disappearances

The ICLVR certainly is consistent with the first two international norms traced through Chapter 4 related to forced disappearances: the first being that forced disappearances must be addressed, and the second being that forensic human rights investigations are the best method to address them. The third norm was that forensic human rights investigations should focus on locating, identifying, and repatriating the individual victims of disappearances, and thus emphasize a legal mandate based on collecting evidence for prosecution. While the ICLVR performs the first component of this norm (focus on locating, identifying, and repatriating individual victims of disappearances), its humanitarian mandate is the opposite, and in fact actively resists a legal mandate or focus on legal justice. The most significant lesson the Commission can contribute to other contexts of forced disappearances is the potential for success of the humanitarian approach to addressing forced disappearances. This also has the potential to reshape the norm that forced disappearances should be addressed through the legal justice system.

As was outlined in Chapters 2 and 4, legal justice plays a significant role in transitional justice, and the international human rights and humanitarian regimes. As a result, it has also had a substantial effect upon how the norms regarding investigating disappearances were shaped. Legal justice tends to be considered the standard for investigations of forced disappearances. Forensic human rights investigations developed as a method of investigating forced disappearances in order to preserve and utilize forensic evidence in legal proceedings. And, as discussed in Chapters 2 and 4, many of the precedents for the norms regarding forced disappearances emerged out of legal proceedings in domestic, regional, and international judicial bodies.

As was outlined in Chapter 6, it was evident that those involved with the ICLVR's development very intentionally elected *not* to subscribe to this dominant norm of legal justice. The legal justice norm was discussed in great detail during the debates in the *Dáil*

and Westminster regarding the establishment of the Commission, and some criticized the Commission's creation as representing a *de facto* amnesty. The members of parliament in both jurisdictions raised concerns about how the ICLVR's humanitarian mandate precluded prosecutions based on information collected by the ICLVR. This was a crucial aspect of the ICLVR's design, as it allowed the Commission to assure informants that the information they provided to facilitate the location and identification of the Disappeared would not be used to prosecute them, or their former associates. By prioritizing the families and choosing a humanitarian approach to justice, the ICLVR resists the dominant norm of a legal framework and the pursuit of prosecutions in the judicial system as the standard mechanism for addressing forced disappearances.

Moreover, by challenging or resisting the dominant norm of prioritizing legal justice, the ICLVR also reinforces this dominant norm. The elites interviewed for this dissertation all focused on the uniqueness of the ICLVR's humanitarian mandate, contrasting it with the typical judicial approach, both for investigating violent crimes, as well as for the general context of transitional justice in Northern Ireland. The criticisms of the ICLVR that arose from debates in the two parliaments regarding its establishment also contrast the Commission's humanitarian approach with the "normal" approach of legal justice. This commentary reinforces that prosecutions and legal investigations are the norm, and the ICLVR is the exception. The norms traced in Chapters 4 thus do maintain explanatory power in the success of the humanitarian mandate. During the development of the ICLVR, those involved with the institution considered the norm, and rejected it due to the particulars of the local situation. While this resistance has the possibility of reshaping the dominant norm in the future, at present it reinforces the dominant normative framework.

It is important to acknowledge as part of this discussion of the primacy of the legal justice norm, and that by choosing a humanitarian mandate the ICLVR resists this norm, that amnesties remain a common, and valid part of transitional justice practice, as discussed in Chapter 2. This is important to note, because the ICLVR is by no means the first, nor will it be the last, institution grounded in the premise of non-prosecution of perpetrators. And there is certainly the possibility that framing this as a "humanitarian mandate" rather than as an amnesty is a strategic choice on the part of those involved with the establishment of the Commission to sidestep the debate regarding the legitimacy of amnesties for crimes

related to forced disappearances. Alternatively, a *de facto* amnesty may well have been a necessary compromise between the ICLVR and the IRA to obtain the information needed to locate the Disappeared. That said, whether the Commission's humanitarian mandate can be considered an amnesty or not is less relevant than the choice to prioritize the wants and needs of the families over the stated expectation and norm that legal justice would be pursued. The prevalence of amnesties does not discount the importance of this choice.

As noted in Section 10.1.1, the ICLVR's approach of conducting forensic human rights investigations is consistent with the international norm that forensic human rights investigations are the best method of addressing forced disappearances. The fact that the Commission's success in locating and identifying and repatriating the remains of the Disappeared to their families contributes to the perception that it has been successful is not a surprise, considering the international norms related to forced disappearances. The success of the ICLVR's forensic investigations is consistent with the dissemination of the three international norms related to forced disappearances. That successful forensic investigations have represented a contributing factor to the ICLVR's success is important to note, as it means that the dominant norm of addressing forced disappearances was disseminated to the Irish context. This provides some credence to the explanatory power of constructivist norm theory in determining how forced disappearances are addressed in diverse contexts.

While none of the interview subjects cited other international cases where forced disappearances have been investigated as influential to the ICLVR's development without prompting, they made clear that there was never any question as to what type of investigative tools would be used to investigate the disappearances – the use of forensic human rights investigations was simply a given. Thus, the use of forensic human rights investigations as a tool for the ICLVR is a clear translation of the norm to the domestic context. The fact that this norm has contributed to the Commission's perceived success is also important to recognize, as it confirms that this aspect of the norm has been translated into practice.

Chapter 9 argued that cooperation and political will from a variety of political and non-governmental actors are necessary conditions of the success of the ICLVR. The ICLVR is a unique institution in engendering cooperation and support from actors across

the political and social spectra, from the Irish Republican Army (IRA), to political parties in Northern Ireland, the Republic of Ireland, and the United Kingdom (UK). Other transitional justice processes related to Northern Ireland continue to be plagued by tensions and disagreements between actors and sectarian divides, which makes the ICLVR all the more remarkable in this context, as the Irish investigations have also been well-supported by governments, both financially and ideologically.

While cooperation and political will clearly emerged as key factors to the ICLVR's success, these are not explicitly accounted for by the three international norms related to forced disappearances. However, their importance does suggest that some actors in the Irish context have accepted the first aspect of the norm, that forced disappearances are a unique type of human rights violation that needs to be addressed. If these actors had not accepted the importance of investigating forced disappearances, they would have been less likely to participate in the ICLVR. I argue that this is related to the advocacy conducted by family members of the Disappeared and WAVE early on in the process. This advocacy socialized key state and non-state actors into accepting this need to address forced disappearances. This demonstrates the power of this norm. Moreover, through the process of becoming involved with the ICLVR and its investigations, as demonstrated in the section on norm entrepreneurs in Chapter 6, various actors have themselves become advocates for this norm. In addition, cooperation and political will are important in the transitional justice norms that also shaped the Commission. This will be discussed briefly in Section 10.1.2.

The final factor to the ICLVR's success considered in Chapter 9 was the concept of trust in the institution, and in the individuals who comprise it. Chapter 9 argued that without the trust that developed, the ICLVR would not have been able to achieve its mandate and would not have been considered nearly as successful as it has been. As was the case with cooperation and political will, trust is not a factor that is specifically accounted for by the international norms related to forced disappearances traced throughout this project. However, as argued the latter part of this chapter in Section 10.2.4, trust is a factor that underpins these norms. In addition, as will again be discussed briefly in Section 10.1.2, trust is a key component of transitional justice norms and processes.

10.1.2 Transitional justice norms and the ICLVR

This section concludes by zooming out to a broader discussion of the relationship between transitional justice norms and the ICLVR. It is interesting and important to note that all four of the necessary conditions to the Commission's success are consistent with norms that are prevalent in the transitional justice canon. The need to develop an objective, verifiable narrative to explain what has happened during a conflict, as is accomplished by the ICLVR related to forced disappearances, is a hallmark of transitional justice processes such as truth commissions.¹ Similarly, as discussed throughout this project, the ICLVR's humanitarian mandate is consistent with analyses of transitional justice processes elsewhere that praise victim- and survivor-centric transitional justice.² Finally, political will, cooperation, and trust in the mechanism from state and non-state actors are also key and interlinked concepts in the transitional justice literature. The relevance of the necessary conditions of the ICLVR's success in the transitional justice canon is important to note, as it demonstrates the pervasiveness of transitional justice norms.

How, then, have transitional justice norms influenced the ICLVR overall? As argued in Chapter 2, based on the dominant literature in the field, and examining transitional justice practice from a high level, the international norms associated with transitional justice have been so prevalent, and adopted so fully that they have come to constrain everything associated with recovery from atrocity across the globe. The norms frame what crimes are investigated, what mechanisms are used, what time-period is considered, and whose voices are prioritized as part of transitional justice processes, especially for states reliant on international funding and support to facilitate their recovery from violence.

Among the central defining norms of transitional justice is the emphasis on legal justice as the norm, discussed above. As Chapter 4 demonstrated by tracing the norms related to forced disappearance and how they have shaped the prevalent modern norm of

¹ See, for example, Molly Andrews, "Grand national narratives and the project of truth commissions: a comparative analysis," *Media, Culture & Society* 25 no. 1 (2003): 45–65, <https://doi.org/10.1177%2F0163443703025001633>; Nnemoa V. Nwogy, "When and Why It Started: Deconstructing Victim-Centered Truth Commissions in the Context of Ethnicity-Based Conflict," *International Journal of Transitional Justice* 4, no. 2 (2010): 275-89, <https://doi.org/10.1093/ijtj/ijq010>.

² See, for example, Simon Robins, "Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal," *International Journal of Transitional Justice* 5.1 (2011): 75-98.

forensic human rights investigations, the evolution of investigations into forced disappearances have largely been rooted in notions regarding the prevalence of legal justice as the ideal form of justice.

As early as 2002, scholars Eric Stover and Rachel Shigekane discussed the difficulty balancing the legal, and humanitarian demands on forensic anthropologists arguing that often, forensic anthropology teams must select one approach or the other, to maintain standards of evidence. However, the authors are ultimately unable to reconcile these two conflicting needs.³ Similarly, scholars Cox et al. suggested that “it has been rare indeed for an investigation to provide evidence in a way, and to standards, that satisfy the needs of both judicial process and human rights,” and that this conflict “further disempowers both the deceased and survivors.”⁴

The ICLVR, however, was unique in its ability to meet both objectives. The ICLVR conducts scientifically rigorous investigations that meet judicial evidentiary standards, while simultaneously choosing to forgo judicial processes and focusing on humanitarian goals. The Commission has demonstrated a good deal of success through this choice. What this has meant in practical terms is that the Commission has remained responsive to its key stakeholders, family members of the Disappeared, and has re-centered the human instead of the political, which is unusual for a mechanism of transitional justice. The ICLVR has been successful not only in spite of, but *because of* the choice to resist the dominant norm.

As transitional justice scholar Jamie Rowen argued, “In the end, promoting transitional justice may do little more than provide a new discursive tool to promote competing and contradictory goals and strategies, both by governments and their adversaries.”⁵ However, to address forced disappearances in Northern Ireland, there was no need to overcomplicate the ICLVR’s mandate with transitional justice norms or language, or aspirations for political aims like legal justice or democratization. The wishes of families of the Disappeared were simple in the context of the ICLVR. Listening to survivors and to the loved ones of victims by preserving their original goals, and fulfilling

³ Eric Stover and Rachel Shigekane, “Exhumation of mass graves: balancing legal and humanitarian needs,” in *My neighbour, my enemy: justice and community in the aftermath of mass atrocity*, ed. Eric Stover and Harvey M. Weinstein, (Cambridge: Cambridge University Press, 2004), 85

⁴ Margaret Cox et al., *The scientific investigation of mass graves: towards protocols and standard operating procedures*, (Cambridge M.A.: Cambridge University Press, 2008), 98.

⁵ Rowen, ““We Don’t Believe in Transitional Justice,” 647.

them, has been the key to its success. The empirical evidence from this dissertation has demonstrated that this is essential to creating mechanisms that are more responsive to the needs of victims.

10.2 Lessons learned from the ICLVR

This section considers key lessons learned from the ICLVR. There are lessons learned related to each factor that contributed to the Commission's success. Lessons learned from each of these four factors, the humanitarian mandate, successful forensic investigations, cooperation and political will, and trust in the institution and its personnel, are discussed in turn. The section then concludes with a discussion of overall lessons learned.

10.2.1 Prioritize humanitarian goals over judicial ones

It is clear that the first lesson learned from the ICLVR is that a legal approach is not necessarily the best approach for forensic human rights investigations, and a humanitarian focus should always be considered instead to better meet the needs of families, and to facilitate the gathering of information related to investigations. Irish Commissioner to the ICLVR, Frank Murray, stated, "Our model could well be adapted to suit investigations or inquiries, but you'd have to put the humanitarian dimension and the protection of evidence of information given very high in your priorities."⁶ In the context of the ICLVR, protection of evidence was the only way to gain the cooperation from former members of the IRA to provide evidence, making it an essential component of the facilitation of wishes and needs of the families of the Disappeared. As has been argued throughout this dissertation, the needs of the families of the Disappeared was, in the case of the ICLVR, and ought to be in other cases, the first priority in developing forensic human rights investigations.

The prioritization of the needs of the families is the second key lesson to be learned from the ICLVR's humanitarian mandate. As Section 10.1.3 discusses further, the standard norms and approaches to transitional justice largely fail to adequately address or respond to the needs of victims and survivors of conflict. In the case of the ICLVR, the developmental path of the Commission demonstrated a clear focus on the wishes and needs

⁶ Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains and Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 31, 2017.

of the families. Those involved in the development and operations of the Commission have been clear that this has been, and remains, its top priority. It is important to note that there is a considerable amount of literature in the transitional justice canon espousing the importance of victim-centric transitional justice discussed throughout this project. However, there is a dearth of empirical literature comparing the successes and failure of victim-centric transitional justice approaches and institutions to non-victim-centric ones. The ICLVR is an excellent case study for this type of empirical comparison. It provides credence to the assumptions in the literature that victim-centric approaches to transitional justice are more successful than those that fail to adequately prioritize victims and survivors.

The third lesson learned related to its humanitarian mandate that the ICLVR provides to other contexts of forced disappearance is the need to avoid overcompensating for community and cultural factors. If the individuals responsible for designing the Commission had focused primarily on the dominant demand from communities involved in the Troubles, the ICLVR would have been set up with legal justice as its desired outcome, based on the post-conflict culture of Northern Ireland which is focused on prosecutions. However, since the ICLVR was established to respond to the needs of the particular community of victims, not the overall victim and survivor community, it was able to resist the demands of the political context related to transitional justice. This has, in turn, led to its success.

10.2.2 Conduct successful forensic investigations according to scientific standards

The lessons learned from the ICLVR, based on the concept of successful forensic investigations, are reasonably straightforward. Forensic human rights investigations are the most appropriate method of addressing forced disappearances because they build on the principle of being able to scientifically identify a disappeared individual, account for what happened to them, and repatriate their remains to their loved ones. The ICLVR itself has been able to identify and repatriate the remains of 11 individuals, and a total of 13 of the 16 Disappeared have been identified and their remains have been repatriated. With only three of the Disappeared still to be located and identified, the Commission's record is unrivaled by other mechanisms designed to locate and identify the Disappeared. Thus, the

first lesson learned from this is that successful forensic investigations are an essential component of the success of a mechanism to investigate forced disappearances. This may seem like it should go without saying, however, the ability of an institution to perform its mandate to a high degree of success cannot be taken for granted. The success of the ICLVR also reinforces the norm, that forensic human rights investigations are the best way to address forced disappearances because they provide the answers needed to families, in addition to the ability of families to fulfill important mourning rituals such as a funeral.

Building on the first point is the second significant lesson to be learned from the Commission related to forensic investigations, it is essential to prioritize the needs and wants of the families. The families of the Disappeared have been key stakeholders in the Commission since its inception. Their interests have been adopted as the interests of the Commission. Their involvement with the ICLVR has advanced its work, and family members have successfully advocated for increased resources to the Commission. The families of the Disappeared in Northern Ireland have been highly appreciative of the Commission's ability to identify, locate, and repatriate the remains of the Disappeared, as it has met their expectations for the Commission. The ICLVR's successful forensic investigations have, in turn, allowed it to be successful in obtaining additional resources, which has allowed it to continue to prioritize the needs of the families. Throughout this dissertation, I have maintained that one of the problems with dominant international norms is that they can set unrealistic and unreasonable expectations on the part of family members as to what a mechanism is able to accomplish. In the case of the ICLVR, which has been able to fulfil its promise of finding the disappeared, this has not been a problem.

A third lesson learned from the ICLVR related to forensic human rights investigations is that the successful investigations highlight the possibility of locating and identifying remains even when a significant amount of time has passed between the forced disappearance and the establishment of the mechanism. Despite nearly 30 years passing between the disappearances and the ICLVR's inception, more than 80 percent of the victims of forced disappearances in Northern Ireland have been identified. As identifications become more difficult with the passage of time, the thirty-year time period that has passed in these cases is significant. However, advancements in forensic techniques make it possible to correctly identify remains that in past years or decades may have gone

unidentified. The lesson from the ICLVR is that it *is* in fact possible to conduct successful human rights forensic investigations, despite a lengthy period of time having passed.

10.2.3 Engender cooperation and political will

The first major lesson learned from the ICLVR related to cooperation is how essential cooperation from as many relevant actors and institutions as possible is to a mechanism's success in investigating forced disappearances. When asked whether the experience of the ICLVR could demonstrate any lessons learned to other similar institutions, Peter Jones, representative from the Irish Joint Secretariat to the ICLVR, highlighted this point. He stated that "in the international context, you would need cooperation from the people responsible. It depends on the dynamics of the particular situation as to whether that is achievable or not. And it has been here. I think that is down to the reputation of the Commission over the years as well."⁷ Jones' point that the dynamics of the particular situation dictate whether this type of cooperation is possible or not, is well taken. However, especially in light of challenges with gaining cooperation with other transitional justice mechanisms, at first glance the Irish case would not necessarily instill confidence that this cooperation would be possible. And yet, it has been. Thus, attempting to facilitate this type of cooperation between different actors and different jurisdictions is essential, even in the most politically complex cases. As the Irish case highlights, cooperation is important to strengthen relationships and institutions.

A second lesson regarding political will and cooperation is the influence of strong and effective norm entrepreneurs in facilitating the ICLVR's success. The advocacy spearheaded by the families of the Disappeared and WAVE demonstrated early cooperation between different actors to advance a common goal. The fact that this advocacy was then taken up by a powerful norm entrepreneur in Bill Clinton, who had political capital and the ear of the British Prime Minister was significant in garnering the political will that led to the ICLVR's inception.

A third and more pragmatic lesson learned from the ICLVR regarding cooperation and political will is the importance of securing a reliable source of funding to complete

⁷ Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains and Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 31, 2017.

investigations into forced disappearances, as investigations are much more likely to be successful when funding is secure and predictable. Personnel are thus able to focus on the work as opposed to negotiating funds or fundraising. Mechanisms can be successful without guaranteed support or funding, but it is much easier if they have it.

A fourth lesson learned from the Commission related to political will and cooperation is the importance of apologies in fostering political will and cooperation amongst actors. The apology from the IRA was essential in creating cooperation from the paramilitary organization with the ICLVR, which in turn facilitated receipt of information from informants, and the cooperation of other actors. Despite the frustration of some families of victims with the apology, and expressions of doubt in the sincerity of the apology from some family members and some politicians, the apology was an essential precursor to the political will and cooperation that was so important to the Commission.

10.2.4 Trust matters

The ICLVR's ability to generate and maintain the trust of actors, such as informants, highlights a few invaluable lessons for other mechanisms that investigate forced disappearances, and transitional justice mechanisms broadly. As Chapter 7 discussed, the ICLVR's ability to engender trust of different actors can largely be attributed to the two components of its humanitarian mandate, specifically the fact that former combatants were comfortable with the idea that the information would not be revealed beyond the confines of the Commission, and the fact that early investigations were successful.

The first important lesson that emerges from the trust in the ICLVR is that, given the right parameters, it is possible to receive information from former combatants without providing a full amnesty. As Chapter 6, which traced the development of the ICLVR, outlined, while some politicians believed that the commitment to not releasing information provided to the ICLVR to law enforcement represented a *de facto* amnesty, in the end, no official amnesty was in place. As was evidenced during the development of the ICLVR, amnesties are controversial and leave many with the sense that justice has not been served. However, the fact that an institution of transitional justice was able to garner sufficient trust that it was able to receive the necessary information without an amnesty is a significant lesson learned that warrants further study. Moreover, the historical sense of mistrust from

the Irish population in state institutions such as the police and judicial systems, for example, would suggest that as a formal institution, the ICLVR should not have succeeded at developing societal trust. And yet, it did. This demonstrates that trust should represent a key element of future analyses.

A second essential lesson regarding the trust engendered by the ICLVR is that the people who make up an institution matter. Due to the small size of the ICLVR, in the interviews it was clear that everyone knew everyone. Family members have had regular personal contact with the Commission staff and expert consultants. The forensic experts, including the coroner, lead investigators, and state pathologist, all have known each other and have worked together on other cases. This is important, despite the ICLVR being a separate institution, because it means that there is pre-existing trust between these individuals. The interviews I conducted demonstrated a visible component of personal and professional respect between these individuals. More than this, the individuals interviewed, and the many others I did not have a chance to speak to, clearly cared very deeply about finding the Disappeared. More than a job, it has been a personal mission for many of them. All of these factors contribute to this sense of trust and the effectiveness of the institution. While this is not a factor that is necessarily replicable elsewhere, it is important to note how the dynamics of the individuals within an institution shape the institution itself.

The third lesson learned regarding trust in the ICLVR links back to the first and second sections of this chapter about the Commission's effective investigations and humanitarian mandate. The Commission's task of building trust from outsiders, amongst its staff, and from the families of the Disappeared was made all the easier by its effective forensic work, and its humanitarian mandate. It is much easier to trust an institution that is responsive to the needs of the families of victims, and is performing its work effectively. This certainly is not the only contributing factor to trust, but it goes a long way to facilitating it. Ultimately, there are a number of analytical avenues within the constructivist paradigm that could help to elucidate the contributions of trust to norms at various levels of analysis. Therefore, this would be an area in which further analysis of the ICLVR could contribute to development of norm theory.

10.2.5 Overall lessons learned from the Irish case

In addition to the lessons learned from the ICLVR for each of the factors identified as essential to the Commission's success discussed in the previous four sub-sections, each interview that I conducted included a question about what lessons the interviewees thought the ICLVR might have for other contexts with unsolved forced disappearances, or other transitional justice mechanisms. To maximize the scope of responses from those involved with the Commission, this was phrased as an entirely open-ended question. The responses to this question and the subsequent conversation were diverse and interesting.

Both Irish Commissioner Frank Murray and former Irish State Pathologist Marie Cassidy, who spent time in the Balkans immediately after the war in Kosovo, made comparisons between their experiences with the ICLVR and their experiences during the investigations in Kosovo. Frank Murray recalled a series of differences between the large mission in Kosovo to locate the remains of those killed a few months previously, and the comparatively small and historically-focused ICLVR. He recalled "visiting the Irish army who was serving at that time in a place called Pristina, which was the headquarters of the United Nations organization."⁸ Murray remarked on the general sense of trauma amongst the population in Kosovo, which was considerably more recent than the Irish case. He also commented on the fact that it was easier to "find parties with high tech gear," but noted that "bodies were just buried within the last year or so. Which is different, entirely, too. But [in Ireland] we're faced with people who were buried thirty years ago or more."⁹

This echoes the point from the previous section that the ICLVR has demonstrated that it is possible, with adequate information, to recover the remains of individuals disappeared many years ago. This is in stark contrast to the Kosovar context, which, as Murray pointed out, investigated very recent disappearances. Ultimately, these differences are important to note, both for understanding the successes of the Commission, but also in considering its comparability and applicability in other contexts. The ICLVR's ability to find and identify the Disappeared despite a significant passage of time is an important lesson learned from the Irish experience.

⁸ Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains and Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 31, 2017.

⁹ Ibid.

Drawing also from her experiences in Kosovo, former Irish State Pathologist Marie Cassidy also spoke of the differences between the ICLVR and the Kosovar investigations, during which international forensic experts from around the world were billeted in communities with families who had missing loved ones. She described the gratitude of the families, and the fact that, despite some difficulty in being able to converse due to the lack of shared language, it was an intense environment to stay in during the investigations.¹⁰ Cassidy's comments demonstrate how the ICLVR's relationship with victims is completely different from the relationship with families of the victims in other contexts but that there was a similarity in the gratitude of the family members. However, despite the different circumstances, the importance of keeping the families of the Disappeared significantly involved in the Commission's work is another key lesson learned from the ICLVR, as highlighted throughout this project.

Several of the individuals interviewed for this dissertation described the ICLVR as a model for investigations of forced disappearances in other contexts, or for other Commissions related to Northern Ireland. It is important to note that they raised this idea, without prompting, but this reinforced my perception of how successful the Commission has been and how well-regarded it is. In the interview with Irish Commissioner Frank Murray and Irish Joint Secretary Peter Jones, Jones commented on how the model of the ICLVR had already been considered for other commissions in Northern Ireland. He stated,

[The Commission is] a model that has been applied quite widely as well in terms of independent cross border function between the different cultures. We're currently setting up, we're calling it an independent reporting commission, which is based closely on the ICLVR. It has a different reach obviously, but it is essentially reporting on implementation for planned paramilitary activity. It will also be used as a model for the Independent Commission for Information Retrieval to be set up hopefully pending success at the latest round of talks. But the ICLVR is recognized by both governments as being a very successful model, one that's used as a base for other Commissions as well.¹¹

In March 2019, the Northern Ireland Victims' Commissioner indicated that the Independent Commission for Information Retrieval had been developed to seek

¹⁰ Professor Marie Cassidy, State Pathologist of Ireland, interview by author, Dublin, April 6, 2017.

¹¹ Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, and Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains interview by author, Dublin, March 31, 2017.

information about specific cases of Troubles-related violence when specifically requested to do so by the families.¹² Although a website for the Independent Commission for Information Retrieval has been created, at the time of writing in 2020 there is little additional information available to compare its structure, development and operations to those of the ICLVR. However, as Peter Jones indicated, the existence of the Independent Commission for Information Retrieval does demonstrate that the ICLVR has been recognized as a model for other investigative bodies into Northern Ireland's past. It will also be interesting to see how Brexit could impact these types of mechanisms in the future, as the relationship between Northern Ireland and the UK has become more fraught due to the fact that Northern Ireland as a region voted against Brexit.

Moreover, in the interview with Jones alone, he spoke of interest from other international parties in the ICLVR model, specifically Chileans who visited Ireland to discuss the Commission in detail.

There have been some interactions with the Chilean authorities who've been interested in this, but obviously the scale of their disappeared is far more considerable and very different. They were also quite interested in the technical aspects as well, which is dealing more with Geoff [Knupfer]'s expertise...but on the last day they were interested as well in the rationale for the ICLVR, why it was set up. It seems to be something that has, over time, delivered results and it seems to be a focus that, well, has delivered and has achieved many of its objectives.¹³

Similarly, Frank Murray spoke about the interest of the Chileans, but also of the Cypriots in the ICLVR's model. He said,

I remember meeting the Cypriot ambassador, in the office down the street briefing that legislation... they have problems, like the Chilean problems, of much bigger scale... I haven't ever been to Chile but I've been to Cyprus, I've seen the green line there that divides north from the south. And our model could well be adapted to suit investigations or inquiries, but you'd have to put the humanitarian dimension and the protection of evidence of information given very high in your priorities.¹⁴

¹² "Victims commissioner: Amnesties should be off the table," BBC News, 11 March 2019, <https://www.bbc.com/news/uk-northern-ireland-47518887> (accessed 10 December 2019).

¹³ Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 16, 2017.

¹⁴ Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains and Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 31, 2017.

As Chapter 8 and previous sections of this chapter highlighted, the humanitarian focus of the ICLVR is consistently cited as the cornerstone to its success, and the key lesson learned from its mandate and operations, which Murray repeated here. The fact that other parties has shown interest in the Commission highlights that there is widespread recognition of the mechanism's success, even outside of Northern Ireland.

Geoff Knupfer, the Commission's lead investigator, also emphasized the fact idea that the ICLVR's model is applicable elsewhere. He expressed surprise that the Commission's model had not been used elsewhere to-date. He said,

I think it's a model. I am amazed that the model hasn't been exported elsewhere. I'm absolutely amazed. Because, quite simply, it works. And it could be exported in some description. And this sort of thing really could happen. There was talk early on of Cyprus, and the UN is doing that now, but there was talk between Cyprus and the Irish government at one time about how you do it. And we sort of half expected that they would... but they didn't and the UN took it over. So far as I'm aware there are no other places that have taken this model on. But it's a fabulous model. It really is.¹⁵

In subsequent correspondence in May 2020, Knupfer further clarified that the mechanism that has developed in Cyprus bears some similarity to the ICLVR, despite operating in an environment with a much larger number of disappearances.¹⁶ He stated "I have met the Cyprus team and had a chance to look at how they are managing the process there. They are doing a remarkable job and their fundamental structure is not dissimilar to ours."¹⁷ While there would be many challenges to applying the ICLVR's model in different contexts with different political challenges, as Knupfer pointed out, the case of Cyprus presents as a potentially interesting comparator to the ICLVR in future research.

Irish *Teachta Dála* (TD – the Irish equivalent of a Member of Parliament) Brendan Smith, who has represented the Cavan/Monaghan electoral district consistently since 1992 for the centre-left political party *Fianna Fáil*, is a long-time advocate for the location and return of the remains for the Disappeared. He has highlighted the importance of continuing to raise awareness of the cause of locating and repatriating the remains of the

¹⁵ Geoff Knupfer, Lead Investigator, Independent Commission for the Location of Victims' Remains, interview by author, Dundalk, Ireland, April 4, 2017

¹⁶ According to the Committee on Missing Persons in Cyprus, approximately 2,002 persons are considered missing in Cyprus. Committee on Missing Persons in Cyprus, "Facts and Figures," <http://www.cmp-cyprus.org/content/facts-and-figures>, (accessed May 16, 2020).

¹⁷ Geoff Knupfer, email message to author, May 10, 2020.

Disappeared.¹⁸ This is another lesson stemming from the Commission. The Commission has excelled at maintaining the media presence of forced disappearances. Whenever the Commission has worked through existing evidence, they have solicited additional information from informants or the community. In March of 2019 a nearly £50,000 reward was donated anonymously to Crime Stoppers for information regarding the Disappeared. While this was not directly created by the Commission, the ICLVR's success has certainly been instrumental in facilitating this continued interest and publicity.

Dr. Brian Farrell, the lead coroner from Dublin responsible for many of the investigations of the Disappeared once they had been exhumed, echoed the other experts interviewed for this dissertation by highlighting the fundamental lesson of the ICLVR as the relationship between all parties involved with the Commission and the families of the Disappeared. Farrell stated,

The Commission were very good in liaising between us and the families, therefore the families were well prepared. They didn't normally come down looking for background information. They may have known some of this unofficially, I don't know. And they may have known stuff themselves. But they knew the restrictions under which we were operating. And they were well briefed on that before they ever came here – for the inquests or even contacted our office. Because the commission was particularly proactive with liaising with them and informing them, keeping them up to date.¹⁹

Dr. Farrell's emphasis on this as a key lesson from the ICLVR for other cases is important because it again highlights the need to prioritize the families of the victims when exporting the model of the ICLVR for other contexts.

Despite all of the individuals interviewed expressing the exportability of the Commission's model and emphasizing the importance of its humanitarian features, they were also quite modest in extolling the ICLVR's virtues. Frank Murray, Irish Commissioner, summarized the sense I had from all of those involved with the Commission very succinctly, stating, "Well we work on our own. We don't seek to influence the activities of other organizations. If we're a lighthouse to anybody else well that's a bonus

¹⁸ Brendan Smith, Fianna Fáil TD for Cavan-Monaghan, interview by author, Dublin, March 23, 2017.

¹⁹ Dr. Brian Farrell, Coroner, Dublin District Coroner's Office, interview by author, Dublin, March 21, 2017.

but I wouldn't be making any claims."²⁰ This modesty is interesting to note in light of the interest of other parties, both domestically and internationally, in the model, and the general appreciation and respect for the Commission.

Ultimately, as has been evidenced throughout this section, the ICLVR demonstrates a series of pivotal lessons learned for other contexts of transitional justice, and especially for other countries investigating forced disappearances. While the Commission's humanitarian mandate, focus on the needs of the families, and commitment to preserving the integrity and confidentiality of information were consistently cited as the most important lessons, it remains to be seen what other aspects of the Commission's mandate and operations may be applied by a future mechanism elsewhere, either to shape forensic human rights investigations in another contexts of mass violence or forced disappearances, or another type of transitional justice mechanism altogether. Moreover, it is my hope that future scholarship will seek to investigate whether the ICLVR may have impacted the international norms regarding forced disappearances.

10.3 Conclusions

In conclusion, this chapter has provided a discussion of the ICLVR's relationship with norm theory, both in the context of the three international norms related to forced disappearances, and norms related to transitional justice. In addition, it outlined crucial lessons learned from the ICLVR. The four factors that explain the ICLVR's success (its humanitarian mandate, successful forensic investigations, cooperation and political will, and trust in the institution and the individuals leading it) highlight key lessons learned. What is clear is the way that the ICLVR is relevant to the transitional justice norms that prevail in theory as well as in the academic scholarship, and in practice. Ultimately, the ICLVR demonstrates both a successful interpretation of the norms of investigating forced disappearances, as well as a successful negotiation of the dominant norms related to forced disappearances, and transitional justice norms with domestic needs. This is important to note as it helps to clarify not only the explanatory framework for the ICLVR, but the

²⁰ Frank Murray, Irish Commissioner for the Independent Commission for the Location of Victims' Remains and Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality, interview by author, Dublin, March 31, 2017.

explanatory framework for other such mechanisms of investigating forced disappearances that perpetuate around the world.

As argued in the literature review in Chapter 2, the broader transitional justice literature largely fails to explore how the foundational norm of legal justice influences domestic and local investigations into forced disappearances, such as the ICLVR. Since these norms and mechanisms set expectations of what justice should look like, and how it should be done can and do conflict with the values and needs of local actors, considering the impact of these international norms is essential. Thus, this dissertation broadly, and this chapter specifically have considered whether and how the international norms related to forced disappearances and transitional justice have influenced the development and operations of the ICLVR.

Chapter 11: Conclusions

Forced disappearances have proliferated across the world since its use as a weapon of war by the Nazis during World War II. This dissertation has considered forced disappearances in two parts: first, from an international perspective by interrogating the norms related to forced disappearances that have developed and diffused through the international community; second, from a case study perspective by examining forced disappearances that occurred during the Troubles in Northern Ireland and the Independent Commission for the Location of Victims' Remains (ICLVR) – the Commission designed to investigate them.

Through process tracing, it has become evident that there are three strong international norms related to forced disappearances that largely emerged in conjunction with the developments of norms related to the international humanitarian regime, in human rights laws, and in transitional justice. The first norm is that forced disappearances are a unique type of crime that must be addressed. The second norm is that forensic human rights investigations are the best method to deal with forced disappearances. The third norm is that these forensic human rights investigations should focus on locating, identifying, and repatriating the individual victims of disappearances, and thus emphasize a legal mandate based on collecting evidence for prosecution.

These norms compel state and non-state actors alike to respond to forced disappearances, and emphasize in particular the importance of criminal prosecutions to hold perpetrators of forced disappearances accountable for their crimes. These norms were largely interpreted and implemented as expected in the Irish context, with one notable exception: the ICLVR prioritized a humanitarian mandate as opposed to a judicial one. An examination of the success of the Commission is important in order to understand how forced disappearances were addressed. This is especially relevant as the Commission called into question whether the approach diffused by the international norms is actually the most important or the most effective.

11.1 Findings

The objectives of this project were twofold. The first was to garner an in-depth understanding of the international norms surrounding forced disappearances, how these norms have developed, and how forced disappearances have been investigated and addressed throughout history. The second was to acquire an in-depth understanding of forced disappearances in Northern Ireland during the Troubles, and their investigation through the ICLVR. This dissertation has brought together these two parts to consider the influence of the international norms related to forced disappearances on the success of the ICLVR.

To fulfill these two objectives, this project interrogated two central research questions: 1) Do international norms regarding forced disappearances exist and if so, what is their specific content? 2) To what extent do each of these international norms related to forced disappearances contribute to success in dealing with forced disappearances? The second question was examined through the lens of the Irish case, specifically focusing on the ICLVR. This section first considers findings regarding international norms, followed by findings regarding the Commission's success, and concludes by discussing findings related to the influence of the international norms on the ICLVR's success.

11.1.1 International norms regarding forced disappearances

Using process tracing, this dissertation identified three norms related to forced disappearance that have developed and been disseminated at the international level. The first norm is that forced disappearances are a unique type of human rights violation that must be addressed. The second norm is that forensic human rights investigations are the most appropriate mechanism for addressing this human rights violation. The third norm outlines the shape of these investigations – they should be focused on locating, identifying, and repatriating the individual victims of disappearances, and emphasize a legal mandate based on collecting evidence for prosecutions of perpetrators.

Early incarnations of these norms emerged from practices of locating and later identifying war dead, then through the developments related to locating and identifying civilians taken prisoner or killed during conflict. By the mid-twentieth century at the end of World War II, Western states were universally committed to locating, identifying and

repatriating the remains of individual war dead. This represented a shift from initial approaches of burying war dead *in situ* instead of repatriating remains to the soldier's country of origin. Especially relevant to later developments in the norm was the justification for this shift that the families of war dead deserved to have answers about what had happened to their loved ones, and deserved to be able to bury and grieve the deceased in conjunction with their own beliefs and traditions. These principles are hallmarks of the later norms regarding addressing forced disappearances.

Following the advances in international humanitarian law and practice regarding the repatriation of war dead, the advent of international human rights in theory and in practice significantly influenced the norms of addressing forced disappearances. Consequently, I traced how the international human rights regime led to principles such as the right to life that helped to ground forced disappearances as violations specific human rights. The international human rights regime also created international bodies to adjudicate human rights violations, such as the Inter American Court of Human Rights which in turn created legal precedents regarding forced disappearances. These international bodies further codified forced disappearances as a violation of specific human rights. This jurisprudence, as well as the continued investigations by international courts and international human rights systems into forced disappearances led to the drafting of the International Convention for the Protection of All Persons from Enforced Disappearance in 2007, which specifically addresses a human right of protection from forced disappearances.

The third advent that advanced the development of the three norms related to forced disappearances is from the transitional justice canon. Early incarnations of truth commissions were established to investigate forced disappearances in Uganda and Argentina. This substantiated the concept of a "right to truth" that emerged in both international humanitarian law, and in the principle of the rights of families to know what happened to war dead, and international human rights law, in early definitions of this same right. Moreover, truth commissions and international criminal tribunals grappled with the challenge of how to investigate forced disappearances in a way that preserved evidentiary standards. This led to the emergence of forensic human rights investigations, which is the main iteration of the existing international norms of addressing forced disappearances.

Forensic human rights investigations prioritize the scientific identification of a disappeared individual, an accounting of what caused the death, and the repatriation of the remains to their loved ones. This is the predominant method used to address forced disappearances today, and thus, this is the second norm that has been disseminated from the international level.

It is important to note, however, that while the practice of forensic human rights investigations has become the dominant international norm for addressing forced disappearances, assumptions and principles from international humanitarian law, international human rights, and transitional justice have been embedded into these norms and influence their interpretation and implementation in different contexts. Part of the goal of this research was to elucidate the power dynamics and assumptions that have become implicit in forensic human rights investigations, and how these power dynamics and assumptions influence its application. The norms and assumptions from transitional justice and human rights, for example, that legal justice is the preferable type of justice whenever possible, are applicable in forensic human rights investigations. However, as demonstrated through the case study of the ICLVR, these implicit assumptions embedded in the norms are potentially detrimental to successful mechanisms of addressing forced disappearances, as they can set unrealistic or inappropriate expectations within a specific local context. Nevertheless, it is crucial to note that these assumptions continue to remain tied to the existing norm of forensic human rights investigations.

11.1.2 The success of the ICLVR

The in-depth case study of the ICLVR has provided insight into the factors that influenced the success of the ICLVR, as well as interpretation and implementation of norms related to forced disappearances in the Irish case. Chapters 6 and 7 used process tracing to examine the development and operations of the ICLVR. This analysis used primary and secondary documents, as well as interviews conducted during three stints of fieldwork in Ireland. Chapter 6 examined the inception of the ICLVR, resulting from advocacy by the Families of the Disappeared, supported significantly by the civil society organization WAVE, the primary norm entrepreneurs advancing the cause of investigations into the Disappeared. This advocacy was very persuasive and led to the adoption of the cause by other norm

entrepreneurs, including United States President Bill Clinton, and then-leader of cross-border Irish nationalist political party *Sinn Fein* Gerry Adams.

Political actors drove the process forward through state legislatures in Ireland, and the United Kingdom to see the ICLVR established as a formal Commission with cross-national support. Essentially, the families of the victims, the media, and society at-large have, unanimously, considered the ICLVR to be a success in addressing forced disappearances. As highlighted in Chapter 1, this absence of criticism makes the ICLVR a unique institution amongst transitional justice mechanisms, and among mechanisms designed to address forced disappearances.

Chapters 8 and 9 then considered what has made the ICLVR successful. The key to the ICLVR's success has been the humanitarian focus of the institution, which has permeated its entire fabric, specifically its mandate and its staff. The Commission's humanitarian mandate involves two components: first, information provided to the Commission cannot be shared with law enforcement, nor can prosecutions utilize information gathered by the Commission; second, the needs of the families of the victims are the primary focus, meaning the return of remains to the families is the Commission's number one priority. These two aspects of the Commission's establishment and operations are what have made it successful since it focuses on the most important stakeholders in a post-conflict environment. In addition, due to the all-reaching nature of the Commission's humanitarian mandate, this factor has led to the subsequent three contributing factors to the ICLVR's success.

The second contributing factor to the ICLVR's success has been its identification, using scientifically rigorous forensic processes, of 11 individuals who disappeared during the Troubles, with two others identified outside of the Commission's processes. This is important because the location, identification, and return of remains to the families of the victims has been the central component of the Commission's mandate, and the ICLVR is well on its way to achieving 100 percent success in fulfilling this mandate. This also highlights one of the international norms related to forced disappearances, forensic human rights investigations are the most appropriate mechanism to respond to forced disappearances. Through its success, the ICLVR reinforces this norm.

The third factor leading to the ICLVR's success has been the cooperation with the Commission, and political will to support it from various actors including governments in Ireland, Northern Ireland and the United Kingdom, former paramilitary group members, and civil society actors. This recognition of cooperation and political will is important, as it is not always easy to acquire in transitional justice settings. The effectiveness of the ICLVR highlights how smoothly a post-conflict institution can operate when cooperation and political will are present.

The fourth contributing factor to the ICLVR's success is the sense of trust in the institution and in the staff and individuals involved in it. It is important to note that the coalescence of the previous three contributing factors to the ICLVR's success (the humanitarian mandate, the overarching support of other actors, and the successful forensic investigations) have reinforced this fourth factor. It is much easier for a well-established, well-functioning Commission with a clear mandate and staff devoted to upholding that mandate to garner trust from wider society.

In order to ensure that the necessary conditions to the ICLVR's success had indeed been correctly identified, five potential contributing factors to the ICLVR's success that arose through process tracing were considered in Chapter 8. These factors include, first, the "special" status of forced disappearances as a human rights violation, which is consistent with the norm compelling that it should be addressed; second, the importance of funerary culture in Ireland; third, the within-group nature of the violence (Irish nationalist paramilitary groups against Catholic nationalists); fourth, the fact that the Commission was established as formal mechanism, and; fifth, the small scale of disappearances in Ireland overall. While the impact of some of these factors on the ICLVR's success could be further unpacked through future research, their contributions were nowhere near as significant as the four main factors.

Ultimately, the ICLVR represents a highly successful mechanism for addressing forced disappearances. The widespread and cross-community support of the Commission, even while the overarching post-Troubles transitional justice landscape has remained politically contentious, demonstrates the ICLVR's power as a mechanism for addressing forced disappearances. Throughout the evaluation of the ICLVR's success, comparisons to the general transitional justice landscape for Northern Ireland strengthened the analysis.

This comparison further highlighted the Commission's success considering the local complexities in Northern Ireland following the Troubles.

Moreover, due to its general acceptance by the families of the victims, the former paramilitary perpetrators, ICLVR staff, civil society, academia, and the media as a successful mechanism for addressing forced disappearances, the ICLVR has demonstrated a number of lessons learned for other cases. While the model of the Commission has not been intentionally replicated elsewhere, the principles that have led to its success could certainly be applied successfully elsewhere. These principles can also be generalized, to some degree, to other types of Commissions in transitional justice contexts. Based on process tracing and analysis throughout the latter half of this dissertation, the most important lesson learned from the ICLVR, as cited by the elites interviewed for this project, is the importance of its humanitarian mandate, both in contributing to the Commission's success, but also as an example for other cases.

11.1.3 The relationship between international norms related to forced disappearances and the ICLVR

This research applied norm theory to investigate how the international norms related to forced disappearances have operated in the context of Northern Ireland. I argue that the ICLVR represents the codification of the dominant international norm of forensic human rights investigations into a formal commission, thus demonstrating the diffusion of the norm to the Irish context. That said, however, the intentional rejection of some aspects of the norm by norm entrepreneurs in Ireland during the Commission's development, specifically the rejection of a judicial mandate and selection of a humanitarian mandate, highlights the importance of intentionality in interpretation and implementation of international norms.

As discussed above, the ICLVR's humanitarian mandate has been twofold. First, it has focused on the needs and expectations of the families of the Disappeared. Second, the humanitarian mandate has guaranteed confidentiality of information provided to the Commission, the non-prosecution of informants based on this information, and no provision of evidence or information to law enforcement. While early criticisms during the ICLVR's establishment considered these principles to be a *de facto* amnesty for perpetrators, the Commission remained steadfast in its commitment to these principles, and

has remained so throughout its lifespan. As discussed in Chapters 9 and 10, this mandate is a thorough and intentional rejection of the transitional justice norm of legal justice, and of the judicial focus of typical strategies to address forced disappearances. It is also important to note that it is also a rejection of calls for legal justice for Troubles-related crimes in Northern Ireland. By rejecting these ideas, it appeared that the Commission was setting itself up for failure.

And yet, as this dissertation has found, the humanitarian mandate has been the most important contributing factor to the ICLVR's success. Moreover, the Commission's humanitarian mandate has not been compromised by the use of state-of-the-art forensic investigative techniques, nor from being embedded in the coronial inquest system, two aspects that would typically be reserved for the investigations aspect of the judicial system. In essence, investigations through the Commission have operated as judicial investigations would, while maintaining their humanitarian spirit and commitment to the families of the Disappeared. Among the lessons learned discussed in Chapter 10, the ICLVR's humanitarian mandate is thus the factor that arguably should be adopted by other mechanisms designed to address forced disappearances. The Commission's ability to balance an objective, judicial investigation, with the collection of information from perpetrators needed to complete such an investigation, and the commitment to return remains and provide the truth about what happened to the victims to their loved ones has been essential.

It is also important to note that assumptions deeply embedded into international norms, such as the dominance of legal justice, can have a profound impact on forensic human rights investigations. As the ICLVR's purely humanitarian mandate, which explicitly and intentionally rejected the legal justice norm from transitional justice, demonstrated, sometimes the norm itself is not the best approach. In addition to the local and contextual contestation that occurs during the interpretation and implementation of a norm, the fact that rejecting the dominant norm can lead to success, as it seems to have in the case of the ICLVR, is an important finding for future scholars looking to investigate the norms related to forced disappearances. Norm scholarship has largely focused, I argue to its detriment, on the diffusion of what are assumed to be "good" norms, such as promotion and protection of human rights. The assumption that the diffusion of norms is positive for

society and leads to the “advancement” of the world ultimately conflicts with the idea that even for “good” norms, not all components of the norm are necessarily positive is important to note.

11.2 Research contributions

This dissertation cites and speaks to several different bodies of literature that are relevant for both theoretical and practical knowledge, including norm theory and international relations (IR) more broadly, transitional justice, human rights, and specifically investigations of forced disappearances across the globe. While creating a complex conceptual framework for the project, this broad relevance across disciplines creates fruitful contributions at the theoretical level, and in practice. This dissertation makes two main contributions, which are each outlined in turn in this section.

The first contribution is the tracing of the three norms related to forced disappearances, and their intersection with other foundational norms related to the international humanitarian regime, international human rights, and transitional justice. While there is considerable literature that examines forensic human rights investigations, no other work traces their emergence at the international level in this way and identifies the conceptual underpinnings of these mechanisms. The tracing of these norms is important from a pragmatic perspective, because it allows scholars and practitioners to understand why and how mechanisms to investigate forced disappearances have manifested themselves in the way that they have, and what influence this might have on future incarnations of these mechanisms.

In addition, much of the scholarship related to forced disappearances has historically focused on the convergence of literature from forensic science and forensic anthropology fields related to criminal justice with human rights principles in order to improve methods for investigations.¹ Over time, this literature has expanded to include case studies of broader aspects of forensic human rights investigations.² The combination of an

¹ See, for example, Doretto and Fondebrider (2001); Corder and McKelvie (2002); Stover, Haglund and Samuels (2003); Keough, Simmons and Samuels (2004); Stover and Shigekane (2004); Crettol and La Rosa (2006); Juhl and Olsen (2006); Ferlini and Croft (2009); Muñoz.

² See, for example, Jonah S. Rubin, “Transitional Justice Against the State: Lessons From Spanish Civil Society-Led Forensic Exhumations,” *International Journal of Transitional Justice* 8, no.1 (February 18,

analysis of the norms at the international level with an in-depth case study, adds both breadth and depth to the existing literature.

Examining the intersection of the norms related to forced disappearances, and the ICLVR, with transitional justice norms is also an important contribution to the transitional justice canon, as it will allow future practitioners to explicitly consider how they wish to interpret and implement transitional justice in their own contexts. Furthermore, it can highlight trade-offs between different aspects of transitional justice norms (for example justice and truth, or justice and healing) that may be more relevant in some cases or aspects of a case than others. Although this project is by no means the first in this area, it does contribute to this ‘critical’ body of scholarship.³ It is unrealistic to expect practitioners to shift away from transitional justice altogether, as a transitional justice industry has certainly developed around the world.⁴ That said, as post-colonial IR scholar Charlotte Epstein argued about norms more broadly, revealing the power dynamics implicit in transitional justice norms is an essential component to understanding their impact.

The second contribution of this dissertation is through the case study of the ICLVR. The case study contributes empirical data to the literature, based on interviews with experts on the Irish case and the ICLVR across multiple relevant fields. This research contributes to the depth and breadth of the forensic human rights investigations literature and practice through an evaluation of the practices of the Commission that could be applicable elsewhere.

This contribution is also important because of the prevalence of forced disappearances as a weapon during conflict, and because of the development of forensic human rights investigations in many contexts following disappearances, genocide, and

2014): 99-120; Melanie J. Klinkner, “Towards Improved Understanding and Interaction Between Forensic Science and International Criminal Law in the Context of Transitional Justice,” doctoral dissertation. (Bournemouth University: Bournemouth, UK., 2009).

³ See, for example, Rama Mani, “Dilemmas of Expanding Transitional Justice, or Forging the Nexus between Transitional Justice and Development,” *International Journal of Transitional Justice* 2, no. 3 (2008): 253-65, <https://doi.org/10.1093/ijtj/ijn030>; Zinaida Miller, “Effects of Invisibility: In Search of the Economic in Transitional Justice,” *The International Journal of Transitional Justice* 2, no. 3 (2008): 266-91, <https://doi.org/10.1093/ijtj/ijn022>; Rosemary Nagy, “Transitional Justice as Global Project: critical reflections,” *Third World Quarterly* 29, no. 2 (2008): 275-89, <https://doi.org/10.1080/01436590701806848>.

⁴ The development of a “transitional justice industry” in Northern Ireland was described to me in an informal conversation with an NGO worker during my 2015 fieldwork, but is also discussed in Jamie Rebecca Rowen, “‘We Don’t Believe in Transitional Justice:’ Peace and the Politics of Legal Ideas in Colombia,” *Law & Social Inquiry* 42, no. 3 (2017): 625, <https://doi.org/10.1111/lsi.12262>.

crimes against humanity as part of transitional justice mechanisms such as trials and truth commissions. Since these types of violence and forensic human rights investigations seem destined to continue, further research into these areas will contribute to a better understanding of them for scholars and practitioners.

11.3 Future research

The analysis used in this dissertation advances our understanding of the ICLVR, specifically, and of forensic human rights investigations more broadly. It also raises a series of avenues for future research that would further advance our understanding of various ideas, concepts, and practices related to forced disappearances. I focus on four areas of future research here: first, who perpetrates forced disappearances; second, development and implications of institutional trust and cooperation in and for transitional justice mechanisms; third, the role of maternal and family activism in the success of the ICLVR specifically, and transitional justice mechanisms, broadly and, fourth, and I argue most significantly, cross-national comparisons of forensic human rights investigations.

The first avenue for additional research was discussed in Chapter 9. One open question from the research and analysis for this dissertation was the implications of the fact that the forced disappearances in Northern Ireland were a within-group crime. There are two aspects of significance related to this. First, the forced disappearances were committed by a paramilitary group, the IRA. Moreover, instead of being committed against the opposing group, the disappearances were committed against Catholic nationalists who were suspected of being informants to the British authorities, or otherwise having betrayed the IRA's cause. This was a nuance that I was unable to resolve through the in-depth case study.

These nuances of the case lead to a number of questions that would warrant further comparative research. Does the fact that a non-state actor perpetrated the disappearances have any bearing on the options for investigating the disappearances? Are there other cases where disappearances were committed by a paramilitary group against their own community? If yes, how have disappearances been handled in these contexts, and can they be compared with the Irish case?

The second avenue for future research stems from two of the factors to the ICLVR's success that warrant further investigation, both for forensic human rights investigations specifically, and for transitional justice mechanisms and institutions, more broadly. The ICLVR benefitted substantially from the cooperation between actors to facilitate its development and operations. It also benefitted substantially from the sense of trust it developed, in the Commission itself, and in the personnel involved with it. Cooperation and trust are two factors that are often lacking in post-conflict environments, and thus their development surrounding the ICLVR is notable and unique.

Further research into this area, both for the ICLVR specifically, and in a cross-national comparison, would help to answer important questions about trust and cooperation after conflict. How do forensic human rights investigations across cases engender trust and cooperation? How can an institution develop trust in a post-conflict environment? How can cooperation and trust in a transitional justice mechanism develop in the absence of regime change, or in the absence of state involvement? These are all important questions to further understand the successes of the ICLVR, and also to improve forensic human rights investigations in other contexts.

The third avenue for future research is alluded to in Chapter 6 in the discussion of the importance of the advocacy of family members of the Disappeared, and specifically of the mothers of the Disappeared in facilitating the development of the ICLVR. Throughout this research, it has become clear that the ICLVR would not be as successful an institution had family members not been intimately involved in its inception and operations. This is consistent with acknowledgements by the transitional justice literature more broadly of the extreme importance of a feminist approach to transitional justice. Catherine O'Rourke argued,

Women typically experience different patterns of harm and bear the disproportionate burden for caring for young and elderly dependent family members. Where women are excluded from decision-making in transitional justice, the quotidian material concerns that emerge from these socioeconomic deprivations and heavy caring responsibilities, are unlikely to be priorities in the transitional justice process, or adequately understood by those formulating institutional responses. The argument is therefore that the greater participation of women in transitional justice would give rise to a different agenda and ultimately lead to more durable and sustainable transitional justice solutions. There is now broad scholarly

and official recognition (at the UN level, at least) that gender is one of the most significant determining factors in one's experience of conflict.⁵

Despite this consistency between the importance of family and maternal activism of the ICLVR, and the importance of considering gender in peacebuilding and transitional justice processes, these questions have not been emphasized in this project.

In light of the importance of the activism of family members, and specifically mothers of the Disappeared, in the ICLVR, future work should unpack this activism in more detail and from a feminist perspective. This type of work should explore whether the families of the Disappeared were in fact led by maternal activism, as it would seem from the process traced in Chapter 6, what this activism looked like, and how it influenced other actors and processes during the development and operations of the ICLVR. Comparisons with advocacy by families and mothers of victims of forced disappearances in other contexts would also lead to fruitful generalizations about the scope of maternal activism across cultures and the role of mothers as norm entrepreneurs.

The fourth avenue for future research is the need for further cross-national comparisons of forensic human rights investigations. While some large-scale cross-national analyses of truth commissions, trials, reparations and other transitional justice mechanisms have been completed, similar work has not compared forensic human rights investigations. Some edited volumes of single case studies of forensic human rights investigations exist and have been crucial in identifying patterns, similarities, differences, thematic areas of importance, and key ideas relevant across cases.⁶ However, further cross-national comparisons are needed to augment this information and further advance the understanding of forensic human rights investigations. Furthermore, it would facilitate a more nuanced understanding of the development and the consolidation of the three international norms I have identified related to forced disappearances and, in particular, whether and how these norms apply outside of the West.

⁵ Catherine O'Rourke, "Transitional Justice and Gender," *Research Handbook on Transitional Justice*, eds. Cheryl Lawther, Luke Moffett and Dovi Jacobs, (Belfast: Edward Elgar Publishing, 2019).

⁶ See, for example, Adam Rosenblatt, *Digging for the Disappeared: Forensic Science After Atrocity*, (Stanford: Stanford University Press, 2015); Francisco Ferrándiz and Antonius C. G. M. Robben (eds.), *Necropolitics: Mass Graves and Exhumations in the Age of Human Rights*, (Philadelphia: University of Pennsylvania Press, 2015);

In particular, the importance of the ICLVR's humanitarian mandate highlights it as a key variable to isolate in future cross-national comparative studies of forensic human rights investigations. Selecting cases where forensic human rights investigations have been conducted based on whether they have used a humanitarian, judicial, or hybrid mandate would allow research into whether a humanitarian mandate is more often linked to success than a judicial one, and whether the international norm should, or is likely to, change. While a wealth of potential cases exist, the next section provides a preliminary discussion of three particular cases, which highlight scope and breadth in future research possibilities regarding the importance of a humanitarian mandate. The three cases are Guatemala, which has prioritized a hybrid approach, conducting investigations and collecting evidence for prosecution, and the needs of families of the disappeared, Rwanda, which conducted forensic human rights investigations initially primarily to collect evidence for the International Criminal Tribunal for Rwanda, and Zimbabwe, which due to the absence of regime change has been precluded from any judicial options, thus only conducting forensic human rights investigations for humanitarian purposes; to provide closure to families.

11.3.1 Unpacking Hybrid, Judicial and Humanitarian mandates: Guatemala, Rwanda, and Zimbabwe

Guatemala

Between 1962 and 1996, Guatemala suffered a brutal civil conflict between the state and guerrilla forces. When a peace agreement was finally signed in 1996, more than 200,000 people had been massacred, 45,000 more were victims of forced disappearance, and more than a million others were displaced, internally or as refugees.⁷ The Guatemalan truth commission found that the crimes committed in Guatemala were genocide by the state against the country's indigenous Maya population. Despite a peace agreement, many politicians who were in power during the conflict remained in power afterwards, thus blocking many legislative opportunities for justice or reconciliation.⁸

⁷ Patrick Smith, "Memory without History: Who Owns Guatemala's Past?" *The Washington Quarterly* 24, no.2 (2001): 62.

⁸ Michael K. Steinberg and Matthew J. Taylor, "Public Memory and Political Power in Guatemala's Postconflict Landscape," *Geographical Review* 93, no.4 (2003): 450.

The Guatemalan Forensic Anthropology Foundation (FAFG) began its work searching for and exhuming mass graves in 1992, four years before the peace agreement was officially signed, and that work has continued as of the time of writing in 2020. Since 1992, the FAFG has exhumed hundreds of mass graves and identified more than 2,000 victims of genocide and forced disappearance.⁹ The FAFG's stated goals are: first, to restore dignity for victims and their families and promote healing (a humanitarian mandate); second, to provide scientific evidence for justice processes, and; third, to create impartial historical documentation of the conflict.¹⁰

Exhumations in Guatemala have led to humanitarian initiatives, such as reburial ceremonies, where the remains have been repatriated to the victim's relatives. Notably, in cases where a definitive identification of the remains was not possible, members of the community have claimed unidentified bodies to ensure that the victims receive a proper burial. Families of victims have been significantly involved in the exhumation and reburial processes. The rituals surrounding the exhumation of remains from the mass graves, and their eventual reburial, follow traditional Maya ethnic and religious rituals.¹¹ The process of exhumations and reburials has also been characterized as a significant aspect of "place-making" for Guatemalan society, allowing survivors to fulfill their obligations to the dead, and to mourn.¹²

However, in addition to these humanitarian initiatives, the FAFG has also provided forensic evidence in a number of court proceedings related to the conflict, including the Rios Montt trial.¹³ The FAFG has provided more than 1,400 expert reports in Guatemalan courts, and has also presented evidence before the Inter American Human Rights Court,

⁹ Steinberg and Taylor, "Public Memory and Political Power," 450.

¹⁰ La Fundación de Antropología Forense de Guatemala (FAFG), <http://fafg.org/bd/index.php> (last modified 2018).

¹¹ Victoria Sanford, *Buried Secrets*, (New York: Palgrave Macmillan US, 2003) 41.

¹² Erica Henderson, Catherine Nolin, and Fredy Peccerelli, "Dignifying a Bare Life and Making Place Through Exhumation: Cobán CREOMPAZ Former Military Garrison, Guatemala," *Journal of Latin American Geography* 13, no.2 (2014): 112.

¹³ The Ixil Genocide case investigated former Guatemalan dictator Efraín Rós Montt for genocide committed in the Ixil region of Guatemala. Montt was convicted of genocide and crimes against humanity. The conviction was overturned less than two weeks later by the Constitutional Court due to a legal technicality. The re-trial was re-convened in October 2017, and Mott died in April 2018. BBC News, "Efraín Rios Montt: Guatemala ex-leader tried for genocide dies," *BBC News*, 1 April 2018, <https://www.bbc.com/news/world-latin-america-43611867>.

making them highly successful at both judicial and humanitarian efforts.¹⁴ Based on a preliminary analysis, the Guatemalan efforts appear to be a successful approach to forensic human rights investigations that uses a hybrid approach, combining humanitarian goals with judicial ones. Further analysis of this case would investigate the nuances of what has led to this success, and the importance of the FAFG's humanitarian efforts.

Rwanda

Following the 1994 Rwandan genocide, the scale of death in the country, which was estimated at between 800,000 and 1,000,000 victims, led to a variety of strategies for dealing with human remains. As the genocide continued to rage, perpetrators and survivors alike buried the bodies of victims in mass graves to prevent the spread of disease. Later, "efforts were often collaborative, with survivors working together to determine who had died in a given location" and who was buried there.¹⁵ However, due to the scale of death, exhumations of these hastily dug graves were rarely successful.

In 1995, the International Criminal Tribunal for Rwanda (ICTR) commissioned the non-governmental organization Physicians for Human Rights (PHR) to "collect evidence for a series of indictments issued by the ICTR,"¹⁶ in several locations in Kibuye and Kigali.¹⁷ PHR exhumed remains of approximately 493 individuals and were able to identify approximately 16 individuals with relative certainty. These exhumations were met with significant resistance from community members and survivors' organizations who were not consulted prior to the exhumations, and did not understand why they were occurring.¹⁸ The PHR exhumations were also unsuccessful in providing forensic evidence for the ICTR. Due

¹⁴ FAFG, "Access to Justice," <http://fafg.org/en/acceso-a-la-justicia/> (last modified 2018).

¹⁵ Erin Jessee, "Promoting Reconciliation through Exhuming and Identifying Victims in the 1994 Rwandan Genocide," *CIGI Africa Initiative Discussion Paper Series, no. 4*, (Waterloo, Canada: CIGI, July 2012), 9-10.

¹⁶ *Ibid.*, 11.

¹⁷ See, for example International Criminal Tribunal for Rwanda, "Forensic Investigations of Human Remains at Kibuye Roman Catholic Church and Home St. Jean Complex," 27 November, 1997. <http://jrad.unmict.org/webdrawer/webdrawer.dll/webdrawer/rec/194881/view/Kayishema%20-%20Summery%20notes%20Forensic%20inves-tion%20of%20Human%20Remains%20at%20Kibuye%20Roman%20Catholic%20Church%20and%20Home%20St.%20Jean%20Complex.PDF> and ICTR, "Forensic Investigation at the Amgar Garage and Nearby Vicinity," 1 July 1997. <http://jrad.unmict.org/webdrawer/webdrawer.dll/webdrawer/rec/195203/view/Rutaganda%20-%20Expert%20report%20of%20Dr.%20Haglund%20ack%20and%20white%20copy%20%20Rapport%20d%20expertise%20du%20Dr.%20Haglund%20,%20copie%20en%20noir%20et%20blanc.PDF>.

¹⁸ Jessee, "Promoting Reconciliation," 12.

to questions about the accuracy and legitimacy of the forensic methodology, the ICTR ultimately dismissed the evidence gathered from the exhumations.¹⁹ In light of the uproar from the grassroots level about the exhumations, and the lack of legitimacy in the forensic evidence, these exhumations are considered to have failed across the board.

Exhumations have also been undertaken by the Rwandan government, where “the surviving family, together with representatives of the [government], would search for the human remains. If located, the bones would be cleaned, wrapped in white cloth and then stored at the local genocide memorial until the start of Memorial Week.”²⁰ Since Rwanda’s primary goal has been to preserve evidence of the genocide and promote a particular narrative of events,²¹ the government passed a law in 2008 that all re-burials must occur at state genocide memorials.²² According to interviews by scholar Erin Jessee, the majority of survivors wish that if their loved ones were located, that their remains be reburied in keeping with Rwandan traditions.²³ Moreover, “[m]any survivors argued that they simply had no way of knowing if the remains of their missing family members had been incorporated into the memorials, and that either way, they should have the right to choose how these remains were handled.”²⁴ This seems to be the opposite of a humanitarian motivation for exhumations. In this context, it can be argued that exhumations did more harm than good from both a justice perspective, and a healing one. Further interrogation of the Rwandan case could elucidate lessons about how to facilitate investigations that are do not further traumatize survivors.

Zimbabwe

In 1999 and 2001, forensic exhumations in Zimbabwe led to the reburial of victims of a massacre in the Matabeleland region. Spearheaded by the Amani Trust, a victims’ services NGO, the Argentine Forensic Anthropology Team (EAAF), worked with locals to exhume

¹⁹ ICTR, “The Prosecutor versus Georges Anderson Nderumbumwe Rutaganda: Judgment and Sentence,” 6 December 1999 <http://unictr.unmict.org/sites/unictr.org/files/case-documents/ictr-96-3/trial-judgements/en/991206.pdf>, 98.

²⁰ Jessee, “Promoting Reconciliation,” 14.

²¹ René Lemarchand and Maurice Niwese, “Mass Murder, the Politics of Memory and Post-Genocide Reconstruction: the Cases of Rwanda and Burundi,” in B. Pouligny et al. (eds), *After mass crime: rebuilding states and communities*, (Tokyo; New York: United Nations University Press, 2007), 180.

²² Jessee, “Promoting Reconciliation,” 14.

²³ *Ibid.*, 17.

²⁴ *Ibid.*, 18.

20 individuals and to train a local forensic anthropology team to work in East Africa.²⁵ Based upon recommendations from another non-governmental organization, the Catholic Commission for Justice and Peace in Zimbabwe (CCJP), the Amani Trust championed exhumations “to address the consequences for families of the *Gukurahundi* massacres as part of ‘building true peace’ in a context where perpetrators remained in power.”²⁶

Exhumations were especially important for the community in Matabeleland, due to the significance of improper death and burial in local culture, as “[p]eople in mass graves are also culturally regarded as having aggrieved spirits, or as being in an unhappy state of ‘limbo.’ It takes the tears of the living, shed properly through a decent period of mourning, to release the soul and allow it to be at rest.”²⁷ Despite difficulty in obtaining permission from the government to work in the country, the EAAF managed to make several trips during which exhumations were conducted and massacre victims were identified.²⁸ Following the exhumations, reburial ceremonies took place, fulfilling the necessary ceremonial and religious obligations surrounding death and burial in Ndebele culture.²⁹

These community-based transitional justice processes were designed to promote civil society growth and development in the absence of official or national level transitional justice strategies. However, due to the increasingly adversarial nature of the Zimbabwean government, the Amani Trust was banned in 2003, and these types of community-level exhumations ceased.³⁰ Despite the absence of exhumations, calls for the need to deal with the dead continued in Zimbabwe through the early 2000s, further confirming the need to “pay close attention to the transforming materials and materialities of dead people, and the

²⁵ EAAF, *Annual Report 1999: Zimbabwe*, <http://eaaf.typepad.com/pdf/2000/11Zimbabwe1999.pdf> (accessed May 23, 2016); EAAF, *Annual Report 2000: Zimbabwe*, <http://eaaf.typepad.com/pdf/2000/16ZIMBABWEall.PDF>; EAAF, *Annual Report 2001: Zimbabwe*, <http://eaaf.typepad.com/pdf/2001/16ZIMBABWEall.PDF>.

²⁶ Shari Eppel, “‘Bones in the Forest’ in Matabeleland, Zimbabwe: Exhumations as a Tool for Transformation,” *International Journal for Transitional Justice* 8 (2014): 408, <https://doi.org/10.1093/ijtj/iju016>.

²⁷ Catholic Commission for Justice and Peace (CCJP) (2007) *Gukurahundi in Zimbabwe: A Report on the Disturbances in Matabeleland and the Midlands 1980–1988*. (London: Hurst).

²⁸ EAAF, *Annual Report 1999: Zimbabwe*, <http://eaaf.typepad.com/pdf/2000/11Zimbabwe1999.pdf> (accessed May 23, 2016); EAAF, *Annual Report 2000: Zimbabwe*, <http://eaaf.typepad.com/pdf/2000/16ZIMBABWEall.PDF>; EAAF, *Annual Report 2001: Zimbabwe*, <http://eaaf.typepad.com/pdf/2001/16ZIMBABWEall.PDF>.

²⁹ Eppel, “Bones in the Forest,” 405.

³⁰ Joost Fontein, “Between tortured bodies and resurfacing bones: the politics of the dead in Zimbabwe,” *Journal of Material Culture* 15, no.4 (2010): 429.

complex ritual and material processes through which bodies and persons, bones and ancestors are (re)constituted and transformed.”³¹

In this case, due to the lack of regime change, legal justice was off the table from the outset.³² When those in charge have committed a massacre, any legal options will not be successful. Further research into the Zimbabwean context could provide further evidence to support the resistance of the judicial focus of the international norms related to forced disappearances that emerged from the Irish case. As with both the Guatemalan and Irish cases, the Zimbabwean example also relies heavily on advocacy conducted by non-governmental organizations. This is another aspect of these cases that warrants further study.

Future research: the humanitarian mandate

These three cases demonstrate three different goals of forensic human rights investigations: humanitarian, judicial, and a hybrid model. Overall, there is little discussion in the literature about the expectations of families, survivors, and communities as part of forensic human rights investigations. While the Guatemalan and Zimbabwean cases demonstrate substantial involvement of the families of victims in the exhumation and reburial processes, little consideration has been given to the sort of expectations set by pursuing these processes, or by the presence of international forensic teams. As cited in the Introduction, Rosenblatt also identified this concern about the broader literature, suggesting,

the discrepancy, [is] often quite large, between what [stakeholders] hope and expect from forensic investigations, on the one hand, and the results that forensic teams are able to produce, on the other. This gap emerges in part because so much of the human rights community’s optimistic post-conflict vocabulary, terms such as ‘reconciliation’ and ‘closure’, sets hopelessly unrealistic goalposts.³³

Thus, understanding the expectations of individuals, families, and communities is an essential piece of this type of work. And it is clear from the work on the ICLVR for this dissertation that the Commission’s humanitarian mandate prevailed from the outset, which is clearly not the case universally. Moreover, as was evidenced throughout Chapters 6 and 7, in the Irish case, families have been kept at the forefront of the Commission’s mandate,

³¹ Fontein, “Between tortured bodies and resurfacing bones,” 440.

³² Eppel, “‘Bones in the Forest’” 408.

³³ Adam Rosenblatt, *Digging for the Disappeared: Forensic Science After Atrocity*, (Stanford: Stanford University Press, 2015), 43.

making this gap in expectations far less pronounced. However, it does provide guidance as to which set of goals ought to be prioritized, should conflict between a humanitarian approach and a judicial approach arise.

As this brief discussion has demonstrated, further investigation into these three cases, and other more recent incarnations of forensic human rights investigations of forced disappearances and massacres (for example, in the Central African Republic, the Democratic Republic of Congo, and in Northern Uganda, among others) would provide fruitful comparisons of diverse cases. In particular, future case studies and cross-national comparisons should focus on the interrogation of family and community expectations regarding forensic human rights investigations, the conflict between humanitarian and judicial approaches, and the integration of international norms and local priorities.

11.4 Conclusions

In conclusion, this dissertation fulfilled three main goals. The first, broad, goal was to examine the intersection of different levels of analysis in order to better understand forced disappearances and how they are investigated in different contexts. The second goal was to understand the international norms that exist surrounding forced disappearances and how they are investigated and addressed in different contexts internationally. The third goal, in consideration of the broader knowledge garnered through investigation of international norms related to forced disappearances, was to complete an in-depth case study of forced disappearances in Northern Ireland during the Troubles, and their investigation through the ICLVR that has taken place after almost 30 years.

The three norms related to addressing forced disappearances using forensic human rights investigations has developed and diffused throughout the international community. Forensic human rights investigations occur in many different contexts, demonstrating the strength of this norm at the conceptual level. However, these investigations appear different in every context, highlighting that further study is needed to understand how these differences develop.

The ICLVR itself has demonstrated a highly successful incarnation of a forensic human rights investigation. This can be attributed primarily to the Commission's humanitarian mandate, as well as its successful forensic investigations, and the cooperation

and trust it has engendered. In many ways, considering its high degree of success, the Commission has bottled lightning. Other forensic human rights investigations and other transitional justice mechanisms more broadly would benefit from examining the ICLVR's successes and lessons learned as they can provide guidance for stronger investigations, mechanisms, and institutions elsewhere.

Bibliography

- “28 years after the IRA buried Danny McIlhone, a jury returns a verdict of unlawful killing,” *The Belfast Telegraph*, October 16, 2009.
- Aiken, Nevin T. “The Bloody Sunday Inquiry: Transitional Justice and Postconflict Reconciliation in Northern Ireland.” *Journal of Human Rights* 14, no 1 (2015): 101-23, <https://doi.org/10.1080/14754835.2014.987740>.
- Ainley, Kirsten. “Evaluating the Evaluators: Transitional Justice and the Contest of Values.” *International Journal of Transitional Justice* 11, no. 3 (2017): 421-42, <https://doi.org/10.1093/ijtj/ijx022>.
- Alcock, Antony. “From Conflict to Agreement in Northern Ireland: Lessons from Europe.” In *Northern Ireland and the Divided World*, edited by John McGarry. New York: Oxford University Press, 2001.
- Amnesty International. “Enforced Disappearances.” Accessed January 18, 2020. <https://www.amnesty.org/en/what-we-do/disappearances/>.
- Amnesty International. “God Only Knows if He’s Alive: Enforced Disappearance and Detention Violations in Southern Yemen.” London: Amnesty International, 2018. <https://www.amnesty.org/download/Documents/MDE3186822018ENGLISH.PDF>
- Amnesty International UK. “Press Release: Zimbabwe: Mass grave bodies must be exhumed by forensic experts,” *Amnesty International*. April 6, 2011. Accessed September 20, 2019. <https://www.amnesty.org.uk/press-releases/zimbabwe-mass-grave-bodies-must-be-exhumed-forensic-experts>.
- Anderson, James and Liam O’Dowd. “Imperialism and nationalism: The Home Rule struggle and border creation in Ireland, 1885-1925.” *Political Geography* 26, no. 8 (2007): 934-50.
- Andrews, Molly. “Grand national narratives and the project of truth commissions: a comparative analysis.” *Media, Culture & Society* 25, no. 1 (2003): 45–65, <https://doi.org/10.1177%2F0163443703025001633>.
- An Phoblacht, “IRA continues search for missing bodies,” 10 December 1998, <https://www.anphoblacht.com/contents/4329>.
- Arditti, Rita. *Searching for Life: The Grandmothers of the Plaza de Mayo and the Disappeared Children of Argentina*. Berkeley: University of California Press, 1999.
- Ariès, Philippe. *Western Attitudes Toward Death from the Middle Ages to the Present*. Baltimore: Johns Hopkins University Press, 1974.

- Aretxaga, Begoña. "Striking with Hunger: Cultural Meanings of Political Violence in Northern Ireland." In *The Violence Within, Cultural & Political Opposition in Divided Nations*, edited by Kay B. Warren. Oxford: Westview Press, 1993.
- Argentine Forensic Anthropology Team (EAAF). *Annual Report 2001: Zimbabwe*. Accessed September 20, 2019. <http://eaaf.typepad.com/pdf/2000/11Zimbabwe2001.pdf>.
- . *Annual Report 2000: Zimbabwe*. Accessed September 20, 2019. <http://eaaf.typepad.com/pdf/2000/11Zimbabwe2000.pdf>.
- . *Annual Report 1999: Zimbabwe*. Accessed September 20, 2019.
- Arthur, Paige, ed. *Identities in Transition*. Cambridge, U.K: Cambridge University Press, 2011.
- . "How 'Transitions' Reshaped Human Rights: A Conceptual History of Transitional Justice." *Human Rights Quarterly* 31, no. 2 (2009): 321-67.
- Ayoub, Philip M. *When States Come Out: Europe's Sexual Minorities and the Politics of Visibility*. New York and Cambridge: Cambridge University Press, 2016.
- BBC News. "Efrain Rios Montt: Guatemala ex-leader tried for genocide dies." *BBC News*, 1 April 2018. <https://www.bbc.com/news/world-latin-america-43611867>.
- . "Hillary Clinton's connections to NI peace process." *BBC News*, November 9, 2019. <https://www.bbc.com/news/uk-northern-ireland-47072146>.
- . "Timeline: The Disappeared," *BBC News*, June 4, 2019, <https://www.bbc.com/news/uk-northern-ireland-24812052>.
- . "Seamus Ruddy: Human remains found in search of French forest." *BBC News*, May 6, 2017, <https://www.bbc.com/news/uk-northern-ireland-39828895>.
- . "A prayer before dying: IRA took priest to Disappeared victim before murder." *BBC News*, Nov. 3, 2013. <https://www.bbc.com/news/uk-northern-ireland-24794617>.
- . "UK 'Disappeared' victim identified." *BBC News*, Jul. 20, 1999. http://news.bbc.co.uk/2/hi/uk_news/397097.stm.
- Babbie, Earl. *The Practice of Social Research*. 10th edition. Toronto: Nelson, 2004.
- Balint, Jennifer, Julie Evans, and Nesam McMillan. "Rethinking Transitional Justice, Redressing Indigenous Harm: A New Conceptual Approach." *International Journal of Transitional Justice* 8, no. 2 (2014): 194-216, <https://doi.org/10.1093/ijtj/iju004>.

- Barajas, Julia. "From Portland to Buenos Aires, mothers unite in protests." *Los Angeles Times*. July 23, 2020. Accessed August 27, 2020. <https://www.latimes.com/world-nation/story/2020-07-23/worldwide-mothers-protests-against-sensed-injustice>.
- Barnett, Michael. "Social Constructivism." In *The Globalization of World Politics: An introduction to international Relations*, 4th edition, edited by John Baylis, Steve Smith, Patricia Owens. Oxford: Oxford University Press, 2008.
- Beattie, Jill. "The Disappeared: Former cop Geoff Knupfer reveals how working with Moors murderer Myra Hindley steered him for search." *Belfast Live*, Mar. 11, 2015, <https://www.belfastlive.co.uk/incoming/disappeared-former-cop-geoff-knupfer-8811064>.
- Bell, Christine. "Dealing with the Past in Northern Ireland." *Fordham International Law Journal* 26, no. 4 (2003): 1095-1147.
- Bennett, Andrew and Jeffrey T. Checkel eds. "Introduction." In *Process Tracing: From Metaphor to Analytical Tool*. Cambridge, U.K.: Cambridge University Press, 2015.
- Bernard, H. Russell. *Research Methods in Anthropology: Qualitative And Quantitative Approaches*. Oxford: Altamira Press, 2006.
- Black, Rebecca. "Trial of veteran republican Ivor Bell over Jean McConville murder cost £109,000," *Belfast Telegraph* November 21, 2019, <https://www.belfasttelegraph.co.uk/news/northern-ireland/trial-of-veteran-republican-ivor-bell-over-jean-mcconville-murder-cost-109000-38714187.html>.
- . "Search for 1975 Disappeared teen Columba McVeigh resumes again." *The Belfast Telegraph*, June 4, 2019, <https://www.belfasttelegraph.co.uk/news/northern-ireland/search-for-1975-disappeared-teen-columba-mcveigh-resumes-again-38175829.html>.
- Blau, Soren and Mark Skinner. "The use of forensic archaeology in the investigation of human rights abuse: Unearthing the past in East Timor." *The International Journal of Human Rights* 9, no.4 (2005): 449-63, <https://doi.org/10.1080/13642980500349857>.
- Borer, Tristan Anne. *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies*. Notre Dame: University of Notre Dame Press, 2005.
- Bosco, Fernando J. "Human rights politics and scaled performances of memory: conflicts among the Madres de Plaza de Mayo in Argentina." *Social and Cultural Geography* 3, no. 5 (2006): 382-402, <https://doi.org/10.1080/1464936042000252787>.

- Boss, Pauline. "Ambiguous Loss Research, Theory, and Practice: Reflections After 9/11." *Journal of Marriage and Family* 66 no. 3 (2004): 551-66, <https://doi.org/10.1111/j.0022-2445.2004.00037.x>.
- Bowden, Tom. "The Irish Underground and the War of Independence 1919-21." *Journal of Contemporary History* 8, no. 2 (1973): 3-23.
- Brennan, Eoin. "The Disappeared: The life and death of Seamus Ruddy." *Al Jazeera*. Jun. 22, 2018, <https://www.aljazeera.com/indepth/features/2017/05/disappeared-life-death-seamus-ruddy-170524080859203.html>.
- Brinkley, Douglas. "Democratic Enlargement: The Clinton Doctrine." *Foreign Policy* 106 (1997): 110-27.
- Brito, Renata and Joseph Wilson. "Mass graves from Franco era become Spanish election issue." *Associated Press*, April 18, 2019, <https://www.apnews.com/b4f47ef349f24ebeat16fcabaeaae11db>.
- Brothwell, Don and Heather Gill-Robinson. "Taphonomic and Forensic Aspects of Bog Bodies." In *Advanced in Forensic Taphonomy: Method, Theory, and Archaeological Perspectives*, edited by William D. Haglund, Marcella H. Sorg. New York: CRC Press, 2002.
- Buckley-Zistel, Susanne. "Narrative truths: On the construction of the past in truth commissions." In *Transitional Justice Theories*, edited by Susanne Buckley-Zistel, Teresa Koloma Beck, Christian Braun and Friederike Mieth 184-200. London: Routledge, 2013.
- Burawoy Michael et al., *Ethnography Unbound: Power and Resistance in the Modern Metropolis*. Berkeley: University of California Press, 1991.
- Burns, Karen Ramey. *Forensic Anthropology Training Manual*. 3rd edition. Routledge: London, 2015.
- Byrne, Sean, Olga Skarlato, Eyob Fissuh and Cynthia Irvin. "Building Trust and Goodwill in Northern Ireland and the Border Counties: The Impact of Economic Aid on the Peace Process." *Irish Political Studies* 24, no.3 (2009): 337-63, <https://doi.org/10.1080/07907180903075801>.
- CNBC. "Remains said to be US war dead repatriated from North Korea." 27 July 2018, <https://www.cnn.com/2018/07/27/remains-said-to-be-us-war-dead-repatriated-from-north-korea.html>.
- CAIN Web Service. "Fact Sheet on the conflict in and about Northern Ireland." Accessed June 20, 2019. https://cain.ulster.ac.uk/victims/docs/group/htr/day_of_reflection/htr_0607c.pdf.

- . "Irish Republican Army (IRA) Statement of Apology." 16 July 2002. Accessed June 20, 2019. <https://cain.ulster.ac.uk/events/peace/docs/ira160702.htm>.
- . "Sutton Index of Deaths." Accessed September 20, 2019. <https://cain.ulster.ac.uk/sutton/index.html>.
- Carr, E. H. *The Twenty Years Crisis: 1919-1939*. Edinburgh, UK: R & R Clark Ltd., 1940.
- Carroll, Rory. "Belfast bonfire goes ahead after clashes between youths and police." *The Guardian*, Aug. 9, 2019, <https://www.theguardian.com/uk-news/2019/aug/08/mob-attacks-belfast-riot-police-in-stand-off-over-republican-bonfire>.
- Catholic Commission for Justice and Peace (CCJP). *Gukurahundi in Zimbabwe: A Report on the Disturbances in Matabeleland and the Midlands 1980–1988*. London: Hurst, 2007.
- Carver, Richard. "Called to Account: How African Governments Investigate Human Rights Violations." *African Affairs* 89 no. 356 (1990): 391-415.
- Centre for Development Impact. "Straws in the Wind, Hoops, and Smoking Guns: What can Process Tracing Offer to Impact Evaluation." Practice Paper Number 10. April 2015.
- Chaudoin, Stephen, Helen V. Milner and Dustin H. Tingley. "The Center Still Holds: Liberal Internationalism Survives." *International Security* 35, no. 1 (2010): 75-94, https://doi.org/10.1162/ISEC_a_00003.
- Checkel, Jeffrey T. "Process Tracing." In *Qualitative Methods in International Relations: A Pluralist Guide*, edited by Audrie Klotz and Deepa Prakash, 114-30. Hampshire, UK: Palgrave Macmillan, 2008.
- . "The Constructivist Turn in International Relations Theory." *World Politics* 50 no.2 (1998): 324-48.
- Citizens Information, Republic of Ireland. "Inquests." Last updated 19 June 2019. Accessed June 24, 2019. https://www.citizensinformation.ie/en/death/sudden_or_unexplained_death/inquests.html.
- Claude, Ophelia. "A Comparative Approach to Enforced Disappearances in the Inter-American Court of Human Rights and the European Court of Human Rights Jurisprudence." *Intercultural Human Rights Law Review* 5 (2009): 407-62, <https://www.stu.edu/law/wp-content/uploads/sites/5/2019/04/5-4Claude.pdf>.

- “Co. Down man believes body is his son’s.” *The Irish Times*, May 21 1984.
- Collier, David. “Understanding Process Tracing.” *Political Science and Politics* 44 no. 4 (2011): 823-30, <https://doi.org/10.1017/S1049096511001429>.
- Commission for Victims and Survivors Northern Ireland. “About Us.” Accessed 2 February 2020. <https://www.cvsni.org/about-us/>.
- Cordner, Stephen and Helen McKelvie. “Developing standards in international forensic work to identify missing persons.” *International Review of the Red Cross* 84, no.848 (2002): 867-84, <https://www.aafs.org/wp-content/uploads/Cordner-McKelvie-2002-stds-for-ID-intl-forensic-missing-persons-Int-Rev-Red-Cross.pdf>.
- Corntassel, Jeff and Cindy Holder. “Who’s Sorry Now? Government Apologies, Truth Commissions, and Indigenous Self-Determination in Australia, Canada, Guatemala, and Peru.” *Human Rights Review* 9, no. 4 (2008):465-489, <https://doi.org/10.1007/s12142-008-0065-3>.
- Cook, Susan E. “The Politics of Preservation in Rwanda.” *MacMillan Center Genocide Studies* 27 (2004): 293-311.
- Council of Europe Commissioner for Human Rights. “Missing persons and victims of enforced disappearance in Europe.” Issue Paper. Council of Europe: France, March 2016. <https://rm.coe.int/missing-persons-and-victims-of-enforced-disappearance-in-europe-issue-/16806daa1c>.
- Coulter, Carol. “DNA test confirms Shelling Hill beach remains to be those of Jean McConville.” *The Irish Times*, Oct. 21, 2003, <https://www.irishtimes.com/news/dna-test-confirms-shelling-hill-beach-remains-to-be-those-of-jean-mcconville-1.385304>.
- Cox, Margaret, Ambika Flavel, and Ian Hanson. “Introduction and Context.” In *The Scientific Investigation of Mass Graves: Toward Protocols and Standards*, edited by Margaret Cox et. al. 1-38. Cambridge: Cambridge University Press, 2008.
- Creswell, John W. *Qualitative Inquiry and Research Design: Choosing Among Five Approaches*, 2nd edition, London: Sage, 2007.
- Crettol, Monique, and Anne-Marie La Rosa. “The missing and transitional justice: the right to know and the fight against impunity.” *International Review of the Red Cross* 88, no. 862 (2006): 355-62. <https://doi.org/10.1017/S1816383106000567>.
- Crossland, Zoe. “Buried lives: Forensic Archaeology and the disappeared in Argentina.” *Archaeological Dialogues* 7, no. 2 (2000): 146-159, <https://doi.org/10.1017/S1380203800001707>.

- Dancy, Geoff. "Impact Assessment, Not Evaluation: Defining a Limited Role for Positivism in the Study of Transitional Justice." *International Journal of Transitional Justice* 4, no. 3 (2010): 355-76, <https://doi.org/10.1093/ijtj/ijq016>.
- de Almagro, Maria Martin. "Lost boomerangs, the rebound effect and transnational advocacy networks: a discursive approach to norm diffusion." *Review of International Studies* 22, no.3 (2018): 672-93, <https://doi.org/10.1017/S0260210518000086>.
- de Brito, Alexandra Barahona. "Introduction." *Human Rights and Democratization in Latin America: Uruguay and Chile*. New York: Oxford University Press, 1997.
- De Breadun, Deaglan. "O'Loan censures police on Mcconville murder inquiry." *The Irish Times*. July 8, 2006, <https://www.irishtimes.com/news/o-loan-censures-police-on-mcconville-murder-inquiry-1.1027638>.
- DeFalco, R.C. "Accounting for Famine at the ECCC: The Crimes Against Humanity of Extermination, Inhumane Acts and Persecution." *International Journal of Transitional Justice* 5, no. 1 (2011): 142-58, <https://doi.org/10.1093/ijtj/ijr001>.
- De Heus, Annabelle. "Meeting the needs of victims: Policing the past in Northern Ireland through the work of the historical enquiries team." In *Victims and Perpetrators of Terrorism: Exploring Identities, Roles and Narratives*, edited by Orla Lynch, Javier Argomaniz. London: Routledge, 2017.
- Decker, Alicia C. "'Sometime you may leave your husband in Karuma Falls or in the forest there': a gendered history of disappearance in Idi Amin's Uganda, 1971-79." *Journal of East African Studies* 7, no. 1 (2013): 125-42 <https://doi.org/10.1080/17531055.2012.755306>.
- Decorum Northern Ireland. "About Us." Accessed 20 September 2019. https://www.decorumni.co.uk/about_us.html.
- Delanty, Gerard. "Negotiating the Peace in Northern Ireland." *Journal of Peace Research* 32, no. 3 (1995): 257-64.
- Delbyck, Kyle. "Competing Truths in Northern Ireland." Ireland School for International Training, 2007. https://digitalcollections.sit.edu/isp_collection/154/.
- Dempsey, George T. *From the Embassy: A U.S. Foreign Policy Primer*. Dublin: Open Republic Institute, 2004.
- Dempster, Lauren. "The 'Disappeared,' the ICLVR, and 'Dealing with the Past' in Northern Ireland." Knowledge Exchange Seminar Series, Northern Ireland Assembly. April 18, 2018. http://www.niassembly.gov.uk/globalassets/documents/raise/knowledge_exchange/briefing_papers/series7/dempster180418.pdf.

- . "The Republican Movement, 'Disappearing' and Framing the Past in Northern Ireland." *International Journal of Transitional Justice* 10, no. 2 (2016): 250-71, <https://doi.org/10.1093/ijtj/ijw002>.
- . "The 'Disappeared' and the Past in Northern Ireland." PhD diss., Queen's University Belfast, Belfast, Northern Ireland, 2015. ProQuest Dissertations & Theses Global.
- "The Disappeared – Adams can help bring closure." *Irish Examiner*, November 6, 2013. <https://www.irishexaminer.com/viewpoints/ourview/the-disappeared--adams-can-help-bring-closure-248596.html>.
- "The Disappeared: Reward for information to find IRA victims." <https://www.bbc.com/news/uk-northern-ireland-48354342>.
- Dobson, Philip J. "Approaches to Theory Use In Interpretive Case Studies – a Critical Realist Perspective." Paper presented at the 10th Australian Conference on Information Systems, Wellington, New Zealand, 1-3 December 1999.
- Donnelly, Jack. *Universal Human Rights: In Theory and Practice* 3rd Edition. Cornell: Cornell University Press, 2013.
- . "International Human Rights: A Regime Analysis." *International Organization* 40, no.3 (1986): 599-642, <https://doi.org/10.1017/S0020818300027296>.
- Doretti, Mimi and Luis Fondebrider. "Science and Human Rights – Truth, Justice, Reparation and Reconciliation: A Long Way in Third World Countries." In *Archaeologies of the Contemporary Past*, edited by V. Buchli and L. Gavin. London: Routledge, 2001.
- Doretti, Mercedes and Clyde C. Snow. "Forensic Anthropology and Human Rights: The Argentine Experience." In *Hard Evidence: Case Studies in Forensic Anthropology*, edited by Dawnie W. Steadman. Upper Saddle River, NJ: Prentice Hall, 2002.
- Dumbrell, John. "The United States and the Northern Irish Conflict 1969–94: from Indifference to Intervention." *Irish Studies in International Affairs, Reflections on the Northern Ireland Conflict and Peace Process*, vol 6 (1995): 107-25.
- Dunne, Jim. "Adams called on to pressurise IRA over graves of 'disappeared.'" *The Irish Times*, August 16, 1995.
- El-Masri, Samar. "Cases in Power Sharing and Social Transformation: Approaches to Ethnic Conflict Resolution in Lebanon, Cyprus and Switzerland." PhD diss., University of Western Ontario, 2004.

- Elster, Jon, ed. *Retribution and Reparation in the Transition to Democracy*. New York: Cambridge University Press, 2006.
- . *Closing the books: transitional justice in historical perspective*. New York: Cambridge University Press, 2004.
- . "Memory and Transitional Justice." Paper prepared for the Memory of War Workshop. MIT: January 2003.
http://web.mit.edu/rpeters/papers/elster_memory.pdf.
- Eppel, Shari. "'Bones in the Forest' in Matabeleland, Zimbabwe: Exhumations as a Tool for Transformation." *International Journal for Transitional Justice* 8, no. 3 (2014): 404-25, <https://doi.org/10.1093/ijtj/iju016>.
- . "Healing the Dead: Exhumation and Reburial as Truth-Telling and Peace-Building Activities in Rural Zimbabwe." In *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies*, edited by Tristan Anne Borer. Notre Dame IN: University of Notre Dame Press, 2006.
- Epstein, Charlotte. "The Postcolonial Perspective: Why We Need to Decolonize Norms." *E-International Relations*, Jan. 19, 2017, <https://www.e-ir.info/2017/01/19/the-postcolonial-perspective-why-we-need-to-decolonize-norms/>.
- Ferguson, Amanda. "Reward offered for location of final three Disappeared victims." *The Irish Times*. May 22, 2019, <https://www.irishtimes.com/news/politics/reward-offered-for-location-of-final-three-disappeared-victims-1.3899889>.
- Ferguson, Neil, Mark Burgess, Ian Hollywood. "Who are the Victims? Victimhood Experiences in Postagreement Northern Ireland." *Political Psychology* 31, no. 6 (2010): 860-865, <https://doi.org/10.1111/j.1467-9221.2010.00791.x>.
- Ferllini, Roxana. "The Development of Human Rights Investigations since 1945." *Science and Justice* 43, no. 4 (2003): 219-24, [https://doi.org/10.1016/S1355-0306\(03\)71780-8](https://doi.org/10.1016/S1355-0306(03)71780-8).
- Ferllini, Roxana and Alexandra Croft. "The Case of an Armenian Mass Grave." *Journal of Human Rights*, 8 no. 3 (2009): 229-44.
- Ferrándiz, Francisco and Antonius C. G. M. Robben eds. *Necropolitics: Mass Graves and Exhumations in the Age of Human Rights*. Philadelphia: University of Pennsylvania Press, 2015.
- Ferrándiz, Francisco. "Exhuming the Defeated: Civil War mass graves in 21st-century Spain." *American Ethnologist* 40, no. 1 (2013): 38-54, <https://doi.org/10.1111/amet.12004>.

- . "The Return of Civil War Ghosts: An ethnography of exhumations in contemporary Spain." *Anthropology Today* 22 no. 3 (2006): 7-12, <https://doi.org/10.1111/j.1467-8322.2006.00437.x>.
- Finnemore, Martha and Kathryn Sikkink. "International Norm Dynamics and Political Change." *International Organization* 52 no. 4 (1998) 887-917, <https://doi.org/10.1162/002081898550789>.
- Fisher, Jo. *Mothers of the Disappeared*. Boston: South End Press, 1995.
- Fontein, Joost. "Between tortured bodies and resurfacing bones: the politics of the dead in Zimbabwe." *Journal of Material Culture* 15, no.4 (2010): 423-48, <https://doi.org/10.1177%2F1359183510383105>.
- Forsythe, David P. *Human Rights in International Relations*. Cambridge: Cambridge University Press, 2006.
- Freeman, Mark. *Necessary Evils: Amnesties and the Search for Justice*. Cambridge: Cambridge University Press, 2009.
- Galtung, Johan. "Violence, Peace and Peace Research." *Journal of Peace Research* 6, no. 3 (1969): 167-91.
- Garland, Fiona. "Commission has recovered six bodies since it was established in 1999." *The Irish Times*, July 31, 2010.
- George, Alexander L. and Andrew Bennett. *Case Studies and Theory Development in the Social Sciences*. Cambridge, MA: Harvard University Press, 2004.
- Gerring, John. "The Case Study: What It Is and What It Does." In *The Oxford Handbook of Comparative Politics*, edited by Carles Boix, and Susan Carol Stokes 90-122. Oxford: Oxford University Press, 2009.
- Gerring, John and Lee Cojocar. "Selecting Cases for Intensive Analysis: A Diversity of Goals and Methods." *Sociological Methods and Research* 45 no. 3 (2016): 392-423, <https://doi.org/10.1177%2F0049124116631692>.
- "Gerry Adams: 'I hope discovery of the body will bring some closure to the family and loved ones of Brendan Megraw.'" *Irish Independent*, October 1, 2014. <https://www.independent.ie/irish-news/gerry-adams-i-hope-discovery-of-the-body-will-bring-some-closure-to-the-family-and-loved-ones-of-brendan-megraw-30629276.html>.
- Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland. "The Belfast Agreement." April 10, 1998.
- Govier, Trudy. *Forgiveness and Reveng*. New York: Routledge, 2002.

- “Guatemala's Fuego volcano disaster: Latest updates.” *AlJazeera*, 8 Jun 2018, <https://www.aljazeera.com/news/2018/06/guatemala-fuego-volcano-disaster-latest-updates-180604140743477.html>.
- Guatemalan Commission for Historical Clarification (CEH). *Guatemala Memory of Silence: Report of the Commission for Historical Clarification*. CEH: Guatemala City, 1999.
- Guatemalan Forensic Anthropology Foundation (FAFG). “Access to Justice.” Last modified 2018. <http://fafg.org/en/acceso-a-la-justicia/>.
- Gubrium, Jaber F. and James A. Holstein eds. “From the Individual Interview to the Interview Society.” In *Handbook of Interview Research: Context and Method* 3-32. London: Sage, 2001.
- Guizzini, Stefano. “A Reconstruction of Constructivism in International Relations.” *European Journal of International Relations* 6, no.2 (2000): 147-82, <https://doi.org/10.1177/1354066100006002001>.
- Hackett, Claire and Bill Rolston. “The burden of memory: Victims, storytelling and resistance in Northern Ireland.” *Memory Studies* 2, no.3 (2009): 355-76, <https://doi.org/10.1177/1750698008337560>.
- Harle, Lindsey. “Cause, manner and mechanism of death.” Last modified December 31, 2018. Accessed June 15th, 2019. <http://www.pathologyoutlines.com/topic/forensicscauses.html>.
- Harding, Thomas. “Beach body ‘is mother killed by IRA 30 years ago’.” *The Telegraph*, August 28, 2003. <https://www.telegraph.co.uk/news/uknews/1439905/Beach-body-is-mother-killed-by-IRA-30-years-ago.html>.
- Hasić, Jasmin, Dženeta Karabegović, Bisera Turković. “Locally Embedded Civil Society Organizations and Public Diplomacy: the Advocacy Roles of the “Mothers of Srebrenica” in Promoting a Culture of Remembrance.” *Studies of Transition States and Societies*, 12 no. 2 (2020). <http://publications.tlu.ee/index.php/stss/article/view/907>.
- Haughey, Nuala. “Families Receive Bodies of Victims.” *The Irish Times*, September 2, 1999.
- Haukkala, Hiski. Carina van de Wetering, and Johanna Vuorelma (eds.) “Introduction: Approaching trust and mistrust in International Relations.” In *Trust in International Relations: Rationalist, Constructivist and Psychological Approaches*. New York: Routledge, 2018.
- Hay, Colin. *Political Analysis*. New York: Palgrave, 2002.

- Hayner, Priscilla. *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*. 2nd edition. London: Routledge, 2010.
- . "Fifteen Truth Commissions--1974 to 1994: A Comparative Study." *Human Rights Quarterly* 16, no. 4 (1994): 597-655.
- Hayward, Katy, and Claire Mitchell. "Discourses of equality in post-Agreement Northern Ireland." *Irish Political Studies* 9, no.3 (2003): 293-312, <https://doi.org/10.1080/1356977032000146060>.
- Henderson, Erica, Catherine Nolin, and Fredy Peccerelli. "Dignifying a Bare Life and Making Place Through Exhumation: Cobán CREOMPAZ Former Military Garrison, Guatemala." *Journal of Latin American Geography* 13, no.2 (2014): 97-116, <https://doi.org/10.1353/lag.2014.0027>.
- Hennessey, Thomas. *Dividing Ireland: World War One and Partition*. Routledge: London, 1998.
- Hennink, Monique M. and Bonnie N. Kaiser, "Saturation in Qualitative Research." *SAGE Research Methods*, 2019. Accessed 2 February 2020. <http://dx.doi.org/10.4135/9781526421036822322>.
- Hinton, Alexander Laban. "Introduction." In *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence*, edited by Alexander Laban Hinton. Newark, NJ: Rutgers, 2011.
- Hoffman, Aaron M. "A Conceptualization of Trust in International Relations." *European Journal of International Relations* 8, no. 3 (2002): 375-401, <https://doi.org/10.1177%2F1354066102008003003>.
- Hoffmann, Matthew J. "Norms and Social Constructivism in International Relations." In *The International Studies Encyclopedia*, edited by Robert Denemark and Renée Marlin-Bennett. Oxford: WileyBlackwell, 2010. <http://internationalstudies.oxfordre.com/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-60>.
- Honaker, James. "Unemployment and Violence in Northern Ireland: a missing data model for ecological inference." Technical report, Working Paper Presented to QuaSSI, Penn State, 2010. <https://www.semanticscholar.org/paper/Unemployment-and-Violence-in-Northern-Ireland%3A-a-1-Honaker/24b4e4b93ba907b8129c19137e1fe604c7cd2f22>.
- Hopf, Ted. "The Promise of Constructivism in International Relations Theory." *International Security* 23, no.1 (1998): 171-200.

- Howe, Mark L. and Lauren M. Knott. "The fallibility of memory in judicial processes: Lessons from the past and their modern consequences." *Memory* 23, no. 5 (2015): 633-56, <https://doi.org/10.1080/09658211.2015.1010709>.
- Hughes, Ib Rachel. "Memory and Sovereignty in Post-1979 Cambodia: Choeung-Ek and Local Genocide Memorials." In *Genocide in Cambodia and Rwanda: New Perspectives*, edited by Susan E. Cook. New Brunswick, N.J.: Transaction Publishers, 2005.
- Human Rights Watch. "Sri Lanka: Families of 'Disappeared' Threatened," February 16, 2020. Accessed August 27, 2020. <https://www.hrw.org/news/2020/02/16/sri-lanka-families-disappeared-threatened>.
- . "Central African Republic: Murder by Peacekeepers." June 7, 2016. <https://www.hrw.org/news/2016/06/07/central-african-republic-murder-peacekeepers>.
- . "Libya: Halt Exhumations of Mass Graves: Forensic Experts Needed to Identify Remains, Secure Evidence." September 22, 2011. Accessed June 7, 2019. <https://www.hrw.org/news/2011/09/22/libya-halt-exhumations-mass-graves>.
- Ibreck, Rachel. "The politics of mourning: Survivor contributions to memorials in post-genocide Rwanda." *Memory Studies* 3.4 (2010): 330-43, <https://doi.org/10.1177%2F1750698010374921>.
- Independent Commission for the Location of Victims Remains. "The Disappeared." Accessed June 15, 2019. <http://www.iclvr.ie/en/ICLVR/Pages/TheDisappeared>.
- International Center for Transitional Justice. "Gender Justice The Disappeared and Invisible: Revealing the Enduring Impact of Enforced Disappearance on Women." March 2015. <https://www.ictj.org/sites/default/files/ICTJ-Global-Gender-Disappearances-2015.pdf>.
- . "What is Transitional Justice?" Accessed December 16, 2019. <https://www.ictj.org/about/transitional-justice>.
- International Coalition Against Enforced Disappearances. United Kingdom: Country by Country Ratification Campaign." Accessed June 16, 2019. <https://www.icaed.org/the-campaign/united-kingdom/>.
- International Committee of the Red Cross. "The Geneva Conventions of 1949 and their Additional Protocols." Accessed June 16, 2019. <https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>.
- International Committee of the Red Cross. "Convention relative to the Treatment of Prisoners of War. Geneva." 27 July 1929. Accessed June 16, 2019. <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/305?OpenDocument>.

International Committee of the Red Cross. "Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field." Geneva, 6 July 1906. Accessed June 16, 2019. <https://ihl-databases.icrc.org/ihl/INTRO/180?OpenDocument>.

International Committee of the Red Cross. "Missing persons." Accessed September 15, 2019. <https://www.icrc.org/en/war-and-law/protected-persons/missing-persons>.

International Commission on Missing Persons (ICMP). "History." Accessed September 15, 2019. <https://www.icmp.int/about-us/history/>.

International Commission on Missing Persons (ICMP). "Where we work." Accessed September 15, 2019. <https://www.icmp.int/where-we-work/>.

International Criminal Tribunal for Rwanda. "Forensic Investigations of Human Remains at Kibuye Roman Catholic Church and Home St. Jean Complex." November 27, 1997. <http://jrad.unmict.org/webdrawer/webdrawer.dll/webdrawer/rec/194881/view/Kayishema%20-%20Summery%20notes%20Forensic%20investigation%20of%20Human%20Remains%20at%20Kibuye%20Roman%20Catholic%20Church%20and%20Home%20St.%20Jean%20Complex.PDF> and ICTR, "Forensic Investigation at the Amgar Garage and Nearby Vicinity," 1 July 1997. <http://jrad.unmict.org/webdrawer/webdrawer.dll/webdrawer/rec/195203/view/Rutaganda%20-%20Expert%20report%20of%20Dr.%20Haglund%20ack%20and%20white%20copy%20%20Rapport%20d%20expertise%20du%20Dr.%20Haglund%20,%20copie%20en%20noir%20et%20blanc.PDF>.

International Criminal Tribunal for Rwanda, "The Prosecutor versus Georges Anderson Nderumbumwe Rutaganda: Judgment and Sentence." December 6, 1999. <http://unictr.unmict.org/sites/unictr.org/files/case-documents/ictr-96-3/trial-judgements/en/991206.pdf>.

Ireland. Bunreacht Na Héireann = Constitution of Ireland. Dublin: Oifig an tSoláthair, 1945.

Ishkanian, Armine. "Working at the local-global intersection: the challenges facing women in Armenia's NGO sector." In *Post-Soviet Women Encountering Transition: Nation-Building, Economic Survival, and Civic Activism*, edited by Kathleen Kuehnast and Carol Nechemias. Baltimore: John's Hopkins University Press, 2004

Iturriaga, Nicole. "At the Foot of the Grave: Challenging Collective Memories of Violence in Post-Franco Spain." *Socius: Sociological Research for a Dynamic World* 5 (2019): 1-16, <https://doi.org/10.1177%2F2378023119832135>.

- “Jamal Khashoggi death: Saudi Arabia says journalist was murdered.” *BBC News*, October 22, 2018. <https://www.bbc.com/news/world-middle-east-45935823>.
- Jessee, Erin. “Promoting Reconciliation through Exhuming and Identifying Victims in the 1994 Rwandan Genocide.” CIGI Africa Initiative Discussion Paper Series No. 4, July 2012.
- Juhl, Kirsten and Odd Einar Olsen. “Societal safety, archaeology and the investigation of contemporary mass graves.” *Journal of Genocide Research*, 8 no. 4 (2006): 411-35.
- Keenan, Dan. “Human remains identified as missing man killed by IRA.” *The Irish Times*, December 20 2008.
- . “Body part to be compared with DNA from family of IRA victim.” *The Irish Times*, November 13, 2008.
- . “Book author stands by claims about Adams, IRA.” *The Irish Times*, October 2, 2002.
- . “Adams dismisses IRA claims made in new book.” *The Irish Times*, October 1, 2002.
- Keohane, Robert O. and Joseph S. Nye, *Power and Interdependence: Third Edition*. New York: Longman, 2001.
- Keogh, Elaine. “Gardaí dig again for bodies of IRA victims.” *The Irish Times*, May 3, 2000.
- . “Recovery of remains gives hope to the family of Jean McConville,” *The Irish Times*, July 1, 1999.
- Keough, Mary Ellen, Tal Simmons and Margaret Samuels. “Missing persons in post-conflict settings: best practices for integrating psychosocial and scientific approaches.” *The Journal of the Royal Society for the Promotion of Health*, 124 no. 6 (2004): 271-75.
- Kim, Hunjoon, and Kathryn Sikkink. “Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries.” *International Studies Quarterly* 54, no. 1 (2010): 939-63, <https://doi.org/10.1111/j.1468-2478.2010.00621.x>.
- King, Elisabeth. “Memory Controversies in Post-Genocide Rwanda: Implications for Peacebuilding.” *Genocide Studies and Prevention* 5, no. 3 (2010): 293-309.
- Kirschner, Robert H. and Kari E. Hannibal. “The application of forensic sciences to human rights investigations,” *Medicine Science and Law*, 13, no.5-6 (1994): 451-60.

- Klinkner, Melanie J. "Towards Improved Understanding and Interaction Between Forensic Science and International Criminal Law in the Context of Transitional Justice," PhD diss.. Bournemouth University: Bournemouth, UK., 2009. ProQuest Dissertations & Theses Global.
- Koff, Clea. *The Bone Woman: A Forensic Anthropologist's Search for Truth in the Mass Graves of Rwanda, Bosnia, Croatia, and Kosovo*. New York: Random House, 2004.
- Kramer, David and David Weissbrodt. "The 1980 U.N. Commission on Human Rights and the Disappeared." *Human Rights Quarterly* 18, no. 3 (1981): 18-33.
- Kritz, Neil J. "The Dilemmas of Transitional Justice." In *Transitional Justice, III*, edited by Neil J. Kritz, Washington: United States Institute for Peace Press. 1995.
- Krook, Mona Lena and Jacqui True. "Rethinking the life cycles of international norms: The United Nations and the global promotion of gender equality." *European Journal of International Relations* 18 no. 1 (2012): 103-127, <https://doi.org/10.1177/1354066110380963>.
- Kumskova, Marina. "The Crime of Enforced Disappearance," *E-International Relations Students*. Jan. 3, 2016, <https://www.e-ir.info/2016/01/03/the-crime-of-enforced-disappearance/>.
- La Moncloa. "Forensic report commissioned by Ministry of Justice officially petitions State to head up exhumation of remains of 25,000 victims of Spanish Civil War and Dictatorship." February 25, 2019. Accessed September 15, 2019. <https://www.lamoncloa.gob.es/lang/en/gobierno/news/Paginas/2019/20190225forensicreport-.aspx>.
- Lafree, Gary, Laura Dugan, and Raven Korte. "The Impact of British Counterterrorist Strategies on Political Violence in Northern Ireland: Comparing Deterrence and Backlash Models." *American Society of Criminology* 47 no. 1 (2009): 17-45.
- Lahiri, Karan. "Rwanda's 'Gacaca' Courts A Possible Model for Local Justice in International Crime?" *International Criminal Law Review* 9, no. 2 (2009): 321-332, <https://doi.org/10.1163/157181209X418544>.
- Lally, Conor. "Women past and present haunt the men of Sinn Fein." *The Irish Times*, October 31 2014.
- Lawson, Erica S. "Bereaved Black Mothers and Maternal Activism in the Racial State." *Feminist Studies* 44 no. 3 (2018): 713-35.
- Lederach, John Paul. *Building Peace: Sustainable Reconciliation in Divided Societies*. Washington, DC: United States Institute of Peace Press, 1997.

- Lederach, John Paul and Michelle Maiese. "Conflict Transformation." *The Little Book of Conflict Transformation*. New York: Good Books, 2003.
- Lemarchand, René and Maurice Niwese. "Mass Murder, the Politics of Memory and Post-Genocide Reconstruction: the Cases of Rwanda and Burundi." In B. Pouligny et al. (eds), *After mass crime: rebuilding states and communities*. Tokyo; New York: United Nations University Press, 2007.
- Levy, Daniel and Natan Sznaider. "Sovereignty Transformed: A Sociology of Human Rights." *The British Journal of Sociology* 57 no. 4 (2006): 657-76, 10.1111/j.1468-4446.2006.00130.x.
- Lichfield, John. "The birth of the War Graves Commission - and the furious controversy it sparked." *The Independent*, 10 November 2013, <https://www.independent.co.uk/news/world/world-history/the-birth-of-the-war-graves-commission-and-the-furious-controversy-it-sparked-8928189.html>.
- Lorch, Donatella. "Thousands of Rwanda Dead Wash Down to Lake Victoria." *New York Times*. May 21, 1994, <https://www.nytimes.com/1994/05/21/world/thousands-of-rwanda-dead-wash-down-to-lake-victoria.html>.
- Lundy, Patricia and Mark McGovern. "A Trojan Horse? Unionism, Trust and Truth-telling in Northern Ireland." *International Journal of Transitional Justice* 2 no. 2 (2008): 42-62, <https://doi.org/10.1093/ijtj/ijm029>.
- . "Whose Justice? Rethinking Transitional Justice from the Bottom Up." *Journal of Law and Society* 35, no. 2 (2008): 265-292, <https://doi.org/10.1111/j.1467-6478.2008.00438.x>.
- Lusher, Adam. "The Argentine mother who took on the Junta dictatorship over her 'disappeared' son," *The Independent*, 5 November 2017, <https://www.independent.co.uk/news/world/argentina-mothers-of-the-disappeared-plaza-de-mayo-nora-cortinas-military-dictatorship-junta-a8036386.html>.
- MacGinty, Roger. "American Influences on the Northern Ireland Peace Process." *Journal of Conflict Studies* 17, no. 2 (1997) <https://journals.lib.unb.ca/index.php/JCS/article/view/11750>.
- MacLeod, Alan. *International Politics and the Northern Ireland Conflict: The USA, Diplomacy and the Troubles*. London: I.B. Tauris, 2016.
- Mallinder, Louise. "Amnesties and Inclusive Political Settlements." *PA-X Report: Transitional Justice Series*. Edinburgh: Political Settlements Research Programme (PSRP), 2018.

- Mani, Rama. "Dilemmas of Expanding Transitional Justice, or Forging the Nexus between Transitional Justice and Development." *International Journal of Transitional Justice* 2, no.3 (2008): 253-65, <https://doi.org/10.1093/ijtj/ijn030>.
- Mbonyinshuti, Jean d'Amour. "Rwanda: Genocide - Over 18,000 Victims Exhumed in Kigali Mass Graves." *The New Times*, September 18, 2018, <https://allafrica.com/stories/201809190167.html>.
- McCaffrey, Steven. "Disappeared victim shot four times in head, inquest told." *The Belfast Telegraph*, March 12, 2011.
- McCormack, Jayne. "Stormont: What is it and why did power-sharing collapse in Northern Ireland?" *BBC News*, January 10, 2020, <https://www.bbc.com/news/uk-northern-ireland-politics-50822912>.
- McCullagh, Niamh A. Geoffrey C. Knupfer. "Forensic archaeology and the independent commission for the location of victims' remains." In *Forensic Archaeology: A Global Perspective*, edited by W.J. Mike Groen, Nicholas Márquez-Grant, Robert C. Janaway. West Sussex, U.K.: Wiley Blackwell, 2015.
- McDaid, Laura. "Lyra McKee: Murdered Belfast journalist 'committed to truth'." *BBC News*, 19 April 2019. <https://www.bbc.com/news/uk-northern-ireland-47987807>.
- McEvoy, Kieran. "Acknowledgement, Apologies and Dealing with the Past in Northern Ireland." Dealing with the Past 2014 Conference. February 1, 2014. <https://www.cvsni.org/media/1503/acknowledgement-apologies-and-dealing-with-the-past-in-northern-ireland-presentation-by-kieran-mcevoy.pdf>.
- McEvoy, Kieran and Lorna McGregor, eds. "Transitional Justice From Below: An Agenda for Research, Policy and Praxis." In *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*. Portland, OR: Hart Publishing, 2008.
- McGarry, John, and Brendan O'Leary. *Explaining Northern Ireland*. Oxford: Blackwell Publishers, 1995.
- McGarry, Patsy. "Frank Murray 'the consummate professional', funeral hears." *The Irish Times*, April 6, 2018. <https://www.irishtimes.com/news/social-affairs/frank-murray-the-consummate-professional-funeral-hears-1.3453260>.
- McGarry, Patsy. "IRA victim's funeral held 43 years after his death." *The Irish Times*, September 16, 2015.
- McGovern, Mark. "Inquiring into Collusion? Collusion, the state and the management of truth recovery in Northern Ireland." *State Crime* 2, no. 1 (2013): 4-29.

- McKay, Susan. "They might as well have taken my mother too. She was never right after that." *The Irish Times*, April 23, 2012.
- McKittrick, David. "IRA has not gone away, Adams warns ministers IRA has not gone away." *The Independent*, August 14, 1995.
<https://www.independent.co.uk/news/ira-has-not-gone-away-adams-warns-ministers-ira-has-not-gone-away-1596152.html>.
- Mearsheimer, John. *The Tragedy of Great Power Politics*. New York: W.W. Norton, 2001.
- Meckstroth, Theodore W. "'Most Different Systems' and 'Most Similar Systems': A Study in the Logic of Comparative Inquiry," *Comparative Political Studies* 8 no. 2 (1975): 132-157, <https://doi.org/10.1177/001041407500800202>.
- Megwalu, Amaka and Neophytos Loizides. "Dilemmas of Justice and Reconciliation: Rwandans and the Gacaca Courts." *African Journal of International and Comparative Law* 18, no. 1 (2010): 1-23,
<https://doi.org/10.3366/E0954889009000486>.
- Mejia, Robin. "Digging Guatemala: Anthropologists Look for Clues to Past Political Killings." *Scientific American*, March 23, 2009. Accessed September 10 2019.
<https://www.scientificamerican.com/article/anthropologists-study-political-killings/>.
- "Memorandum of Telephone Conversation." Telephone conversation between President Bill Clinton and Prime Minister Tony Blair. May 8, 1998, 1:50-2:12pm. William J. Clinton Presidential Library.
- "Memorandum of Telephone Conversation." Telephone conversation between President Bill Clinton and Prime Minister Tony Blair. May 23, 1998, 1:36-1:46 pm. William J. Clinton Presidential Library.
- Mendez, Juan E. "In Defense of Transitional Justice." In *Transitional Justice and the Rule of Law in New Democracies*, edited by A. James McAdams. Notre Dame: University of Notre Dame Press, 1997.
- Merry, Sally Engle. *Human Rights and Gender Violence: Translating International Law into Local Justice*. Chicago: University of Chicago Press, 2006.
- Michel, Torsten. "Trust and International Relations." *Oxford Bibliographies: International Relations*. Accessed December 13, 2019.
<https://www.oxfordbibliographies.com/view/document/obo-9780199743292/obo-9780199743292-0192.xml#obo-9780199743292-0192-div1-0004>.

- Mitchell, Claire. "From victims to equals? Catholic responses to political change in Northern Ireland." *Irish Political Studies* 18, no.1 (2003): 51-71, <https://doi.org/10.1080/07907180312331293229>.
- Mitchell, George J., John de Chastelain, and Harri Holkeri. "Report of the International Body on Arms Decommissioning, 22 January 1996." *CAIN Web Service*. Last modified June 2, 2019. Accessed June 10, 2019. <https://cain.ulster.ac.uk/events/peace/docs/gm24196.htm>.
- Miller, Zinaida. "Effects of Invisibility: In Search of the Economic in Transitional Justice." *The International Journal of Transitional Justice* 2, no. 3 (2008): 266-91, <https://doi.org/10.1093/ijtj/ijn022>.
- Minow, Martha. "The Hope for Healing: What can truth commissions do?" In *Truth v. Justice*, edited by Robert I. Rotberg and Dennis Thompson. Princeton: Princeton University Press, 2000.
- . *Between Vengeance and Forgiveness*. Boston: Beacon Press, 1998.
- Moravcsik, Andrew. "A Liberal Theory of International Politics." *International Organization* 51, no. 4 (1997): 513-52, <https://www.princeton.edu/~amoravcs/library/preferences.pdf>.
- Morgenthau, Hans J. *Politics Among Nations: The Struggle for Power and Peace*. 7th edition. New York: McGraw Hill, 2006.
- Moriarty, Gerry. "The Ivor Bell case: some key background questions answered." *The Irish Times*, Oct. 17, 2019.
- . "'Boston tapes' the reason why Adams is being questioned over Mcconville murder." *The Irish Times*, May 2, 2014.
- . "Search of remains of man killed in INLA dispute fails." *The Irish Times* July 23, 2008.
- . "RUC to resume search at housing estate for bodies of two men killed by IRA." *The Irish Times*, December 21, 1998.
- . "IRA victims campaign stepped up." *The Irish Times*, June 27, 1995.
- Moses, Jeremy. *Sovereignty and Responsibility: Power, Norms and Intervention in International Relations*. Basingstoke: Palgrave Macmillan, 2014.
- Muñoz, Adriana. "Vanished-people; identities in a limbo: The relationship between Archaeology and Human Rights." *Projektunderjorden*.

- Murphy, Clare. "IRA says it has located burial places of nine of its victims." *The Irish Times*, March 30 1999, <https://www.irishtimes.com/news/ira-says-it-has-located-burial-places-of-nine-of-its-victims-1.168392>.
- Murphy, Gary. "The 1997 general election in the republic of Ireland." *Irish Political Studies* 13 no. 1 (2007): 127-34.
- Murphy, Jessica. "Does Justin Trudeau apologise too much." *BBC News*, 28 March 2018. <https://www.bbc.com/news/world-us-canada-43560817>.
- The Museum of Free Derry. "The Museum." Accessed 20 September 2019. <https://www.museumoffreederry.org/content/museum>.
- Nagy, Rosemary. "Transitional Justice as Global Project: critical reflections." *Third World Quarterly* 29, no. 2 (2008): 275-89, <https://doi.org/10.1080/01436590701806848>.
- Nickson, Ray and Alice Neikirk. *Managing Transitional Justice: Expectations of International Criminal Trials*. New York: Palgrave Macmillan, 2018.
- Nolen, Stephanie. "The Unforgotten," *The Globe and Mail*, April 16, 2016.
- Northern Ireland Statistics and Research Agency. "Census 2001: Population Report and Mid-Year Estimates." Accessed June 16, 2019. www.nisranew.nisra.gov.uk/census/Census2001Output/PopulationReport/populationreport1.html.
- Northern Ireland Location of Victims' Remains Act, 1999*. London: Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament, 1999.
- Nowak, Manfred. "Report to the UN Economic and Social Council Commission on Human Rights: Civil and Political Rights, Including Questions of: Disappearances and Summary Executions." Fifty-eighth session Item 11, E/CN.4/2002/71. 8 January 2002. <http://www.refworld.org/docid/3d6ce3c50.html>.
- Noy, Chaim. "Sampling Knowledge: The Hermeneutics of Snowball Sampling in Qualitative Research," *International Journal of Social Research Methodology*, 11 no. 4 (2008): 327-44.
- Nwogy, Nnemoa V. "When and Why It Started: Deconstructing Victim-Centered Truth Commissions in the Context of Ethnicity-Based Conflict." *International Journal of Transitional Justice* 4, no. 2 (2010): 275-89, <https://doi.org/10.1093/ijtj/ijq010>.
- Peatling, G. K. "Unionist Identity, External Perceptions of Northern Ireland, and the Problem of Unionist Legitimacy," *Eire-Ireland* 39, no. 215-216 (2004).

- O'Connor, Ane-Marie. "The Emerging Secrets of Guatemala's Disappeared." *The Washington Post*, April 11, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/04/10/AR2009041003530.html>.
- O'Donnell, Guillermo, Phillippe C. Schmitter. *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies*. Baltimore: Johns Hopkins University Press, 1986.
- O'Dowd, Niall. "On This Day: Bill Clinton's historic visit to Northern Ireland." *Irish Central*, Nov. 30, 2015, <https://www.irishcentral.com/opinion/niallodowd/the-peacemaker-bill-clintons-historic-visit-ireland>.
- O'Grady, J. "An Irish policy born in the U.S.A." *Foreign Affairs* 75 no. 3 (1996): 2-7.
- O'Halloran, Georgina. "Searches under way for five victims." *The Irish Times*, October 16, 2009.
- O'Rourke, Catherine. "Transitional Justice and Gender." *Research Handbook on Transitional Justice*, edited by Cheryl Lawther, Luke Moffett and Dovi Jacobs. Belfast: Edward Elgar Publishing, 2019.
- Olsen, Tricia D., Leigh A. Payne and Andrew G. Reiter, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy*. Washington: USIP Press, 2010.
- "Orange Order parades take place amid violence in Northern Ireland." *The Guardian*, July 12, 2018. <https://www.theguardian.com/uk-news/2018/jul/12/northern-ireland-orange-order-parades-12-july-amid-violence-belfast-derry>.
- The Orange Order. "Parading." Accessed July 12, 2018. <http://www.grandorangelodge.co.uk/parading#.W730S1UzZhE>.
- Organization of American States. "Inter-American Convention on Forced Disappearance of Persons." June 9, 1994. Accessed June 2, 2019. <http://www.oas.org/juridico/english/treaties/a-60.html>.
- Osiel, Mark. *Mass Atrocity, Collective Memory, and the Law*. New Brunswick, NJ: Transaction Publishers, 2000.
- Pathak, Bishnu. "World's Disappearance Commissions: An Inhumanous Quest for Truth," *World Journal of Social Science Research* 3, no. 3 (2016): 274-306, <https://doi.org/10.22158/wjssr.v3n3p274>.
- Payne, Caroline L. and M. Rodwan Abouhard. "The International Covenant on Civil and Political Rights and the strategic shift to forced disappearance." *Journal of Human Rights* 15.2 (2015): 163-88, <https://doi.org/10.1080/14754835.2015.1103158>.

- Peace Insight. "WAVE Trauma Centre." Last modified December 2018, Accessed July 5, 2019. <https://www.peaceinsight.org/conflicts/northern-ireland/peacebuilding-organisations/wave-trauma-centre/>.
- Peake, Sandra and Orla Lynch. "Victims of Irish Republican Paramilitary Violence—The Case of "The Disappeared." *Terrorism and Political Violence* 28, no. 3 (2016): 452-72, <https://doi.org/10.1080/09546553.2016.1155931>.
- Peatling, G. K. "Unionist Identity, External Perceptions of Northern Ireland, and the Problem of Unionist Legitimacy," *Eire-Ireland* 39, no. 1&2 (2004): 215-36, <https://doi.org/10.1353/eir.2004.0011>.
- Pope, Conor. "Body found on Louth beach was Jean McConville." *The Irish Times*, Oct. 20, 2003, <https://www.irishtimes.com/news/body-found-on-louth-beach-was-jean-mcconville-1.505509>.
- Quinn, Joanna R. cited in Jason Winders. "Book eyes rethink of transitional justice." February 5, 2020. Accessed February 6, 2020. <https://news.westernu.ca/2020/02/book-eyes-rethink-of-transitional-justice/>.
- . "Here, Not There." Conference paper presented at International Studies Association, New York, NY: February 15, 2009. https://politicalscience.uwo.ca/research/docs/joanna_quinn/herenotthere.pdf.
- Raino, Juha, Kaisa Lalu and Antti Sajantila. "International Forensic Investigations: Legal Framework, Organisation, and Performance." In *Forensic Archaeology and Human Rights Violations*, edited by Roxana Ferllini 55-75. Springfield, Il: Charles C. Thomas, 2007.
- Rainio, Juha, Kaisa Lalu, Antti Penttila. "Independent forensic autopsies in an armed conflict: investigation of the victims from Racak, Kosovo." *Forensic Science International* 116, no. 2-3 (2001): 171-185, [https://doi.org/10.1016/s0379-0738\(00\)00392-3](https://doi.org/10.1016/s0379-0738(00)00392-3).
- Reiter, Dan. "Democratic Peace Theory." *Oxford Bibliographies*. 25 October 2012. Accessed December 16, 2019. <https://www.oxfordbibliographies.com/view/document/obo-9780199756223/obo-9780199756223-0014.xml>.
- "Relationships between police and community in west Belfast have 'deteriorated.'" *Belfast Telegraph*, December 30, 2018, <https://www.belfasttelegraph.co.uk/news/northern-ireland/relationships-between-police-and-community-in-west-belfast-have-deteriorated-37667148.html>.
- "ReMastered: The Miami Showband Massacre." *Netflix*, 2019.

- Republic of Ireland. Report of the Coroner, Charles Armstrong. Dublin: Dublin District Coroner's Office, 2017.
- Republic of Ireland. *Dáil Debates*. 504, no. 2 c. 255-6. May 5, 1999.
- The Republic of Uganda. Part I: Commission of Inquiry into the Missing Americans Messrs. Stroh and Siedle held at the Conference Room, Parliament House, Kampala. Part II: Government White Paper on the Report of the Commission of Inquiry. Government Printer: Entebbe, Uganda, March 19, 1972.
- Richards, David. "Elite Interviews: Approaches and Pitfalls." *Politics* 16, no.3 (1996): 199-204, <https://doi.org/10.1111%2Fj.1467-9256.1996.tb00039.x>.
- Risse, Thomas, Stephen C. Ropp and Kathryn Sikkink, eds. *The Power of Human Rights: International Norms and Domestic Change*. Cambridge: Cambridge University Press, 1999.
- Robben, Antonius C. G. M. (ed.), *Death, Mourning and Burial: A Cross-Cultural Reader* (Oxford: Blackwell Publishing, 2010).
- . "Death and Anthropology: An Introduction." In *Death, Mourning and Burial: A Cross-Cultural Reader*. Oxford: Blackwell Publishing, 2010.
- Robins, Simon. "Constructing meaning from disappearance: Local memorialisation of missing in Nepal." *International Journal of Conflict and Violence* 8, no. 1 (2014): 104-18, <https://doi.org/10.4119/ijcv-3048>.
- . "Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal." *International Journal of Transitional Justice* 5.1 (2011): 75-98, <https://doi.org/10.1093/ijtj/ijq027>.
- Rolston, Bill. "Dealing with the past: Pro-State Paramilitaries, Truth and Transition in Northern Ireland." *Human Rights Quarterly* 28, no.3 (2006): 652-75.
- Rosato, Sebastian. "The Flawed Logic of Democratic Peace Theory." *American Political Science Review* 97, no. 4 (2003): 585-602, <https://doi.org/10.1017/S0003055403000893>.
- Rosenblatt, Adam. *Digging for the Disappeared: Forensic Science After Atrocity*. Stanford: Stanford University Press, 2015.
- Rotberg, Robert I. "Truth Commissions and the Provision of Truth, Justice, and Reconciliation." In *Truth v. Justice*, edited by Robert I. Rotberg and Dennis Thompson. Princeton: Princeton University Press, 2000.

- Rowen, Jamie Rebecca. ““We Don’t Believe in Transitional Justice:” Peace and the Politics of Legal Ideas in Colombia.” *Law & Social Inquiry* 42, no. 3 (2017): 622-47, <https://doi.org/10.1111/lsi.12262>.
- Rozema, Ralph. “Forced Disappearance in an Era of Globalization: Biopolitics, Shadow Networks, and Imagined Worlds.” *American Anthropologist* 113, no. 4 (2011): 582-93, [10.1111/j.1548-1433.2011.01371.x](https://doi.org/10.1111/j.1548-1433.2011.01371.x).
- Rubin, Jonah S. “Transitional Justice Against the State: Lessons From Spanish Civil Society-Led Forensic Exhumations,” *International Journal of Transitional Justice* 8, no.1 (February 18, 2014): 99-120, <https://doi.org/10.1093/ijtj/ijt033>.
- Ruggie, John Gerard. “What Makes the World Hang Together: Neo utilitarianism and the social constructivism change.” *International Organization* 52, no.4 (1998): 855-85. <https://doi.org/10.1162/002081898550770>.
- Ryan, Órla. “‘An IRA leader turned peacemaker’: How Martin McGuinness is being remembered internationally.” *TheJournal.ie*, Mar 22, 2017. <https://www.thejournal.ie/martin-mcguinness-3-3299811-Mar2017/>.
- Sanford, Victoria. *Buried Secrets*. New York: Palgrave Macmillan US, 2003.
- Sarkin-Hughes, Jeremy. *Carrots and Sticks: The TRC and the South African Amnesty Process*. Oxford: Intersentia, 2004.
- Scovazzi, Tullio and Gabriella Citroni. *The Struggle against Enforced Disappearance and the 2007 United Nations Convention*. Boston: Martinus Nijhoff Publishers, 2007.
- Scull, Margaret M. *The Catholic Church and the Northern Ireland Troubles, 1968-1998*. Oxford: Oxford University Press, 2019.
- (as Maggie Scull). “How the Catholic Church impacted on the Troubles.” *RTE*, July 24, 2019. <https://www.rte.ie/brainstorm/2019/0721/1064368-how-the-catholic-church-impacted-on-the-troubles/>.
- Sethi, Gobind Singh. “The European Court of Human Rights’ Jurisprudence on Issues of Forced Disappearance.” *Human Rights Brief* 8, no. 3 (2001): 29-31.
- Sharp, Dustin. “Emancipating Transitional Justice from the Bonds of the Paradigmatic Transition.” *International Journal of Transitional Justice* 15, no. 1 (2015): 150-70, <https://doi.org/10.1093/ijtj/iju021>.
- Sharrock, David. “Murdered widow was ‘failed by the RUC.’” *The Times*, Aug 14, 2006.

- Shaw, Rosalind and Lars Waldorf (eds.) "Introduction." In *Localizing Transitional Justice: Interventions and Priorities after Mass Violence*. Stanford: Stanford University Press, 2010.
- Sheridan, Kathy. "Harrowing week of digging finds little to comfort families of the 'disappeared'." *The Irish Times*, June 5, 1999.
- Sikkink, Kathryn. *The Justice Cascade*. New York: W.W. Norton & Co, 2011.
- Simpson, Claire. "'Inspirational' Disappeared campaigner Margaret McKinney dies at 85." *The Irish News*, February 2, 2017.
<http://www.irishnews.com/news/2017/02/02/news/-inspirational-disappeared-campaigner-margaret-mckinney-dies-916491/>.
- Simpson, Mark. "Gerry Adams: New York in 1994 visit 'pivotal to peace'." *BBC News Northern Ireland*. February 1 2019, <https://www.bbc.com/news/uk-northern-ireland-47072146>.
- Smith, David J. and Gerald Chambers. *Inequality in Northern Ireland*. Oxford: Clarendon Press, 1991.
- Smith, Patrick. "Memory without History: Who Owns Guatemala's Past?" *The Washington Quarterly* 24, no.2 (2001): 59-72,
<https://doi.org/10.1162/016366001300093002>.
- Smootha, Sammy. "The Tenability of Partition as a Mode of Conflict Regulation: Comparing Ireland with Palestine – Land of Israel," In *Northern Ireland and the Divided World*, edited by John McGarry. New York: Oxford University Press, 2001.
- Snohomish County, Washington, "Cause and Manner of Death." Accessed June 15, 2019.
<https://snohomishcountywa.gov/806/Cause-Manner-of-Death>.
- Spencer, Graham. "Motivation and Intervention in the Northern Ireland Peace Process: An Interview with President Bill Clinton." *Negotiation Journal* 35, no. 2 (2019): 269-95.
- Soule, John. "Problems in applying counter terrorism to prevent terrorism: Two decades of violence in Northern Ireland reconsidered." *Studies in Conflict and Terrorism* 12 no. 31 (1989): 31-46.
- Sriram, Chandra Lekha. "Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice." *Global Society* 21, no. 4 (2007): 579-91,
<https://doi.org/10.1080/13600820701562843>.

- Stahn, Carsten. "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm." *American Journal of International Law*, 101, no.1 (2007): 99-120, <https://doi.org/10.1017/S0002930000029559>.
- Steinberg, Michael K. and Matthew J. Taylor. "Public Memory and Political Power in Guatemala's Postconflict Landscape." *Geographical Review* 93, no.4 (2003): 449-68.
- Stover, Eric, William D. Haglund and Margaret Samuels, "Exhumation of Mass Graves in Iraq: Considerations for Forensic Investigations, Humanitarian Needs, and the Demands of Justice," *JAMA* 290, no. 5 (2003): 663-66, <https://doi.org/10.1001/jama.290.5.663>.
- Stover, Eric and Rachel Shigekane. "Exhumation of mass graves: balancing legal and humanitarian needs." In *My neighbour, my enemy: justice and community in the aftermath of mass atrocity*, edited by Eric Stover and Harvey M. Weinstein 85-103. Cambridge: Cambridge University Press, 2004.
- Strange, Hannah., "Spanish family win six-year battle to exhume bodies of relatives killed by France." *The Telegraph*, April 19, 2018. <https://www.telegraph.co.uk/news/2018/04/19/spanish-family-win-six-year-battle-exhume-bodies-relatives-killed/>.
- Sulitzenu-Kenan, Raanan. "Reflection in the Shadow of Blame: When Do Politicians Appoint Commissions of Inquiry?" *British Journal of Political Science* 40, no. 3 (2010): 613-34, <https://doi.org/10.1017/S0007123410000049>.
- Sutton, Malcolm. "An Index of Deaths from the Conflict in Ireland." Accessed September 24, 2018. <http://cain.ulst.ac.uk/sutton/>.
- Tadjbakhsh, Shahrbanou, ed., *Rethinking the Liberal Peace: External Models and Local Alternatives*. New York: Routledge, 2011.
- Tansey, Oisín. "Process Tracing and Elite Interviewing: A Case for Non-probability Sampling," *PS: Political Science and Politics* 40 no. 4 (2007): 765-772, <https://doi.org/10.1017/S1049096507071211>.
- Tarrow, Sidney. "The Strategy of Paired Comparison: Toward a Theory of Practice." *Comparative Political Studies* 43, no. 2 (2010): 230-59, <https://doi.org/10.1177%2F0010414009350044>.
- Taylor, Rupert. "Northern Ireland: Consociation or Social Transformation?" In *Northern Ireland and the Divided World*, edited by John McGarry. Oxford: Oxford University Press, 2001.
- Teitel, Ruti G. "Transitional Justice Genealogy." *Harvard Human Rights Journal* 16, no.1 (2003): 69-94.

---. *Transitional Justice*. Oxford: Oxford University Press, 2000.

Thoms, Oskar N.T. James Ron and Roland Paris. "State-Level Effects of Transitional Justice: What Do We Know?" *International Journal of Transitional Justice* 4.3 (2010): 329-54, <https://doi.org/10.1093/ijtj/ijq012>.

"Treaty of Peace with Germany (Treaty of Versailles)." Versailles: June, 28 1919. <https://www.loc.gov/law/help/us-treaties/bevans/m-ust000002-0043.pdf>.

"Trial of German Major War Criminals Before the International Military Tribunal Vol. III." Nuremberg: November 14 1945 – October 1, 1946.

Tsing, Anna. *Friction: An Ethnography of Global Connection*. Princeton: Princeton University Press, 2005.

Tynan, Maol Muire. "After 25 years, hoping to bury her mother at last." *The Irish Times*, June 26, 1998.

Tyner, James A., Gabriela Brindis Alvarez and Alex R. Colucci. "Memory and the everyday landscape of violence in post-genocide Cambodia." *Social & Cultural Geography* 13, no. 8 (2012): 853-71, <https://doi.org/10.1080/14649365.2012.734847>.

United Kingdom. *Hansard Parliamentary Debates*. HC vol. 331, c. 77. May 10 1999.

---. *Hansard Parliamentary Debates*. HC vol. 331, c. 38. May 10 1999.

---. *Hansard Parliamentary Debates*. HC vol. 331, c. 40. May 10 1999.

---. *Hansard Parliamentary Debates*. HC vol. 331, c. 40. May 10 1999.

---. *Hansard Parliamentary Debates*. HC vol. 331, c. 42. May 10 1999.

---. *Hansard Parliamentary Debates*. HC vol. 331, c. 45. May 10 1999.

---. *Hansard Parliamentary Debates*. HC vol. 331, c. 80. May 10 1999.

---. *Hansard Parliamentary Debates*. HC vol. 331, c. 81. May 10 1999.

---. *House of Lords Debate*. June 26 2007. Lord Triesman, col 130W. Accessed June 20, 2019. <https://publications.parliament.uk/pa/ld200607/ldhansrd/text/70626w0002.htm#07062672000112>.

United Kingdom, Ministry of Justice. *Universal Periodic Review: United Kingdom, British Overseas Territories and Crown Dependencies National Report*. February

2017. Accessed March 20, 2019.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/600276/upr-national-report.pdf.

United Nations. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. United Nations Treaty Series, vol. 1465. New York, December 10, 1984.

https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en.

United Nations. *The Rome Statute of the International Criminal Court*. The Hague, 1998.

United Nations. *Universal Declaration of Human Rights*. A/RES/217A/III. December 10, 1948. <http://www.un.org/en/universal-declaration-human-rights/>.

United Nations Commission on Human Rights. *Study on the Right to the truth: Report to the Office of the United Nations High Commissioner for Human Rights*.

E/CN.4/2006/91. February 8, 2006. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/106/56/PDF/G0610656.pdf?OpenElement>.

United Nations General Assembly. *Report of the Working Group on the Universal Periodic Review: United Kingdom of Great Britain and Northern Ireland Annex E*, A/HRC/21/9. July 6 2012.

https://lib.ohchr.org/HRBodies/UPR/Documents/session13/GB/A_HRC_21_9_Ad.d.1_UK_Annex_E.doc.

---. *Declaration on the Protection of All Persons from Enforced Disappearance*. A/RES/47/133. December 18, 1992.

<http://www.un.org/documents/ga/res/47/a47r133.htm>.

---. *Disappeared persons*. A/RES/33/173. December 20, 1978.

<http://www.un.org/documents/ga/res/33/ares33r173.pdf>.

---. "International Convention for the Protection of All Persons from Enforced Disappearance." 82nd plenary meeting. January 12, 2007, A/RES/61/177, <https://undocs.org/A/RES/61/177>.

---. *International Convention for the Protection of All Persons from Enforced Disappearance*. A/RES/61/177. December 20, 2006.

https://treaties.un.org/doc/source/docs/A_RES_61_177-E.pdf.

---. *Protection of human rights in Chile*. A/RES/32/118 December 16, 1977.

<http://www.un.org/documents/ga/res/32/ares32r118.pdf>.

---. *Protection of human rights in Chile*. A/RES/3219. November 6, 1974.

<https://docs.google.com/viewerng/viewer?url=http://uvalsc.s3.amazonaws.com/travaux/s3fs-public/A-RES-3220%2528XXIX%2529.pdf>.

United Nations Human Rights Committee. Case *Quinteros v. Uruguay*. Communication No. 107/1981. July 21, 1983.
http://www.worldcourts.com/hrc/eng/decisions/1982.10.15_Almeida_de_Quinteros_v_Uruguay.htm.

United Nations Human Rights Council. *Report of the Working Group on Enforced or Involuntary Disappearances*. A/HRC/39/46. September 10-28, 2018.
http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/46.

---. Report to the UN Human Rights Council “Report of the Working Group on Enforced or Involuntary Disappearances*,” A/HRC/42/40, 9-27 September 2019.
<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/229/25/PDF/G1922925.pdf>.

---. “Report of the Working Group on Enforced or Involuntary Disappearances*.” A/HRC/36/39. September 11-29, 2017. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/229/15/PDF/G1722915.pdf>.

United Nations Office of the High Commissioner on Human Rights. “Working Group on enforced or involuntary disappearances concludes review of 532 cases from 25 countries.” Accessed 24 May 2020.
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25897&LangID=E>.

---. “Mandate: Working Group on Enforced or Involuntary Disappearances.” Accessed June 20, 2019.
<https://www.ohchr.org/en/Issues/Disappearances/Pages/DisappearancesIndex.aspx>.

---. *Report on Human rights and forensic science*. E/CN.4/2002/67. January 21, 2002.
http://repository.un.org/bitstream/handle/11176/238662/E_CN.4_2002_67-EN.pdf?sequence=3&isAllowed=y.

United Nations Rule of Law, “Guidance Note to the Secretary General: United Nations Approach to Transitional Justice.” March, 2010.
http://www.unrol.org/files/TJ_Guidance_Note_March_2010FINAL.pdf.

United Nations Security Council. “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General.” (S/2004/616), United Nations Security Council, 23 August 2004.

United States Institute of Peace. “Commission of Inquiry into the Disappearances of People in Uganda since 25 January, 1971: Charter.” Legal Notice No. 2 of 1971.
https://www.usip.org/sites/default/files/resources/collections/truth_commissions/Uganda74-Report/Uganda74-Charter.pdf.

- Verdery, Katherine. *The Political Lives of Dead Bodies: Reburial and Postsocialist Change*. New York: Columbia University Press, 1999.
- “The victims who know no resting place.” *The Times*, Feb. 14, 1998.
- Viotti, Paul R. and Mark V. Kauppi, *International Relations Theory*. 5th edition. Toronto: Longman, 2012.
- “Victim’s commissioner: Amnesties should be off the table.” BBC News, March 11, 2019, <https://www.bbc.com/news/uk-northern-ireland-47518887>.
- Victims and Survivors Service. “What We Do.” Accessed 2 February 2020. <https://victimsservice.org/about-us/what-we-do/>.
- Vinck, Patrick and Phuong Pham. “Ownership and Participation in Transitional Justice Mechanisms: A Sustainable Human Development Perspective from Eastern DRC.” *International Journal of Transitional Justice* 2, no. (2008): 398-411, <https://doi.org/10.1093/ijtj/ijn033>.
- Vulliamy, Ed. “The appalling reality of Bosnia’s missing dead.” *BBC Future* 12 December 2016, <http://www.bbc.com/future/story/20161212-the-appalling-reality-of-bosnias-missing-dead>.
- Wagner, Sarah E. “A Curious Trade: The Recovery and Repatriation of U.S. Missing In Action from the Vietnam War.” *Comparative Studies in Society and History* 57.1 (2015) 161-90, <https://doi.org/10.1017/S0010417514000632>.
- . *To Know Where He Lies: DNA Technology and the Search for Srebrenica’s Missing*. Berkeley: University of California Press, 2008.
- Waltz, Kenneth N. “Laws and Theories.” In *Neorealism and its critics*, edited by Robert O. Keohane. New York: Columbia University Press, 1986.
- Warren, Kay B, ed. “Interpreting *La Violencia* in Guatemala: Shapes of Mayan Silence and Resistance.” In *The Violence Within: Cultural and political opposition in divided nations*. Boulder: Westview Press, 1993.
- WAVE. *The Disappeared of Northern Ireland’s Troubles*. WAVE Trauma Centre: Belfast, 2012.
- . “About WAVE Trauma Centre.” Accessed June 16, 2019. <http://www.wavetraumacentre.org.uk/about-us>.
- . “Families of the Disappeared.” Accessed Feb. 16, 2019. <http://www.wavetraumacentre.org.uk/campaigns/families-of-the-disappeared>.

Wendt, Alexander. "Constructing International Politics." *International Security*, 20, no.1 (1995): 71-81.

Wiebelhaus-Brahm, Eric. *Truth Commissions and Transitional Societies: The Impact on Human Rights and Democracy*. New York: Routledge, 2010.

Witoszek, Nina, and Pat Sheeran. *Talking to the Dead: A Study of Irish Funerary Traditions*. Amsterdam: Rodopi, 1998.

Woods, Dermot. "Independent Commission for the Location of Victims' Remains." *Administration* 61, no.1 (2013): 99-109, <http://iclvr.ie/en/ICLVR/Article%20in%20Administration.pdf/Files/Article%20in%20Administration.pdf>.

Zambernardi, Lorenzo. "Excavating Soldier Deaths: A Study of Changing Burial Practices." *International Political Sociology* 11, no. 3 (2017): 292-307, <https://doi.org/10.1093/ips/olx012>.

"Zimbabwe begins exhuming victims of Gukurahundi massacre." *Mail & Guardian*, April 30, 2019. <https://mg.co.za/article/2019-04-30-zimbabwe-begins-exhuming-victims-of-gukurahundi-massacre>, accessed September 20, 2019.

Zvobgo, Kelebogile. "Designing truth: Facilitating perpetrator testimony at truth commissions." *Journal of Human Rights* 18, no. 1 (2019): 92-110, <https://doi.org/10.1080/14754835.2018.1543017>.

Interviews Conducted by Author

Anonymous. Interview by author. Belfast, June 20, 2015.

Bresland, Mitch. Senior Staff Officer, Decorum Northern Ireland. Interview by author. Bangor, Northern Ireland, June 15, 2015.

Cassidy, Marie. State Pathologist of Ireland. Interview by author. Dublin, April 6, 2017.

Farrell, Brian. Coroner, Dublin District Coroner's Office. Interview by author. Dublin, March 21, 2017.

Jones, Peter. Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality. Interview by author. Dublin, March 16, 2017.

Kerr, Adrian. Manager, The Museum of Free Derry. Interview by author. Derry, Northern Ireland, June 17th, 2015.

Knupfer, Geoff. Lead Investigator Independent Commission for the Location of Victims' Remains. Interview by author. Dundalk, Ireland, April 4, 2017.

McBride, Alan. Centre Manager, WAVE Trauma Centre. Interview by author. Belfast, Northern Ireland, June 18th, 2015.

McNamee, Adrian and Martina McCann. Commission for Victims and Survivors Northern Ireland. Interview by author. Belfast, Northern Ireland. June 4, 2015.

Murray, Frank. Irish Commissioner for the Independent Commission for the Location of Victims' Remains. Peter Jones, Irish Joint Secretary for the Independent Commission for the Location of Victims' Remains, Department of Justice and Equality. Interview by author. Dublin, March 31, 2017.

Smith, Brendan. Fianna Fáil TD for Cavan-Monaghan. Interview by author. Dublin, March 23, 2017.

Templer, Sarah. Victim and Survivor Service. Interview by author. Belfast, Northern Ireland, June 16, 2015.

Curriculum Vitae

Tamara Hinan

Education

- PhD, Political Science, Western University** 2011-2020
Comprehensive Examinations: International Relations, International Law, Comparative Politics, Transitional Justice
Dissertation: Exhuming norms: Examining the influence of international norms on the Independent Commission for the Location of Victims' Remains in Northern Ireland
- Master of Arts, Political Science, Wilfrid Laurier University** 2010-2011
Major Research Paper: Truth in Transition: Transitional justice, identity and democratization in Morocco
- Bachelor of Arts, Honours Specialization Political Science, Western University** 2009-2010
Honours Thesis: Customary Mechanisms of Transitional Justice and the Gacaca Courts
- Bachelor of Arts, Honours Double Major, Bioarchaeological Anthropology, French, Western University** 2005-2009

Scholarships

- Ireland-Canada University Foundation James M. Flaherty Research Scholarship 2016-2017
- Social Science and Humanities Research Council Doctoral Fellowship 2013-2015
- Ontario Graduate Scholarship (declined) 2013-2014
- Western University Graduate Research Scholarship 2012-2013
- Ontario Graduate Scholarship 2011-2012
- Western University Graduate Research Scholarship 2011-2012
- Western University Dean's Scholarship (declined) 2011-2012
- Wilfrid Laurier University Graduate Research Scholarship 2010-2011

Teaching Experience

- Faculty, SHAD Summer Enrichment Program, Western University 2017
- Faculty, SHAD Summer Enrichment Program, Université Laval 2014-2015
- 2010-2011

Teaching Assistantships**Western University, Political Science**

Political Science 3366E, *International Conflict Management* 2014-2015
 Political Science 3388E, *International Human Rights* 2011-2014

Wilfrid Laurier University, Political Science

Political Science 333, *International Law* 2011
 Political Science 110/111, *Introduction to Modern Politics* 2010-2011

Teaching Seminars and Certificates

Wilfrid Laurier University Certificate in University Teaching 2011
 Fundamentals for Masters' Students

Conference Presentations and Publications

“Exhuming the disappeared: Memory advocacy and transitional justice,” Canadian Political Science Association Annual Conference, Calgary, AB: May 30th - June 2nd, 2016.

“Reconciliation, Party of One: Memory, Healing and the Canadian Truth and Reconciliation Commission,” Evaluating the Impact of the Truth and Reconciliation Commission of Canada, The Centre for Transitional Justice and Post-Conflict Reconstruction, London, ON: May 8, 2014.

Tamara K. Hinan and Joanna R. Quinn, “The Elasticity Question: Just How Far Can Transitional Justice Be Safely Stretched?” Law and Society Association Annual Meeting, Boston, MA: May 30-June 2, 2013.

“Equity or Reconciliation Examining gender and transitional justice in Morocco,” Western University Conference on Gender and Transitional Justice, London, ON: April 25, 2012.

“Truth in Transition: Evaluating the successes and failures of Morocco’s *Instance Équité et Réconciliation*,” Dalhousie University Political Science Graduate Symposium on Conflict and Security, Halifax, NS: March 11, 2011.

“Speaking for the Voiceless: Linking Forensic Anthropology and Transitional Justice.” *Undergraduate Transitional Justice Review* 1.1 (2010): 29-56.

“To Remember or to Forget: Collective memory and reconciliation in Guatemala and Rwanda.” *Totem, The University of Western Ontario Journal of Anthropology*, 18.1 (2010): 13-22.

Research Experience

The Student Success Centre, Western University Graduate Student 2017
 Research Assistant for the “Own Your Future” Programme

- The Guatemalan Forensic Anthropology Foundation Multidisciplinary Field School. "Forensic Investigation: The Internal Armed Conflict and Post-Conflict in Guatemala" July 2013
location: Guatemala
- Research Assistant, Customary Justice in Uganda, Dr. Joanna R. Quinn May 2012
location: Kampala, Uganda
- Transitional Justice Institute Summer School Participant: Gender, Conflict and Transition, The University of Ulster May 2011
location: Londonderry, Northern Ireland
- Forensic Anthropology Internship, Miami-Dade Medical Examiner's Office, Saint Mary's University May 2009
location: Miami, United States of America
- Archaeological Excavation of the Early Roman Ossaia-LaTufa site in Cortona, Italy, The University of Alberta May-June 2008
location: Cortona, Italy

Leadership and Service

- Graduate Student Senator, Western University 2017-2018
- President, Society of Graduate Students, Western University 2015-2017
- Vice President Student Services, Society of Graduate Students, Western University 2014-2015