

## Do Medico-legal Truths Have More Power than War Lies? About the Conflicts in the Former Yugoslavia and in Kosovo

G LORIN DE LA GRANDMAISON, MD

Assistant

M DURIGON, MD PhD

Professor and Head of Department, Department of Pathology and Forensic Medicine, Raymond Poincaré Hospital, Paris-Ouest University, 104 Boulevard Raymond Poincaré, 92380 Garches, France

Correspondence to: Docteur Geoffroy Lorin de la Grandmaison, Service d'anatomie pathologique et de médecine légale, Hôpital Raymond Poincaré, 104 Boulevard Raymond Poincaré, F-92380 GARCHES

Tel: 00-33-1-47-10-76-84; Fax: 00-33-1-47-10-76-83 ; E-mail: glorin@club-internet.fr

### ABSTRACT

War crimes perpetrated during the conflicts in the former Yugoslavia and in Kosovo prompted medico-legal investigations of mass graves as required by the International Criminal Tribunal (ICT). In spite of natural and methodological boundaries, these investigations were able to help to identify the victims and to discover the clues and evidence that are likely to support objectively the indictments brought by the ICT. However, the medico-legal data cannot explain everything. They should be exploited very carefully in order to avoid any error of interpretation.

### INTRODUCTION

War crimes committed in the former Yugoslavia and in Kosovo since 1991 have been the subject of several international medico-legal missions within the framework of inquiries led by the Hague-based International Criminal Tribunal (ICT). At first glance, this judicial interference within the republics or provinces that were previously in armed conflict seems to be justified, for it is concerned with four types of indictment recognized by international law. We make a distinction between the serious violations of the 1949 Geneva Conventions, violations of the law or the customs of war, genocide and crimes against humanity. However, this judicial intervention takes place within a particular geopolitical context after a long period of war during which lies were deliberately cultivated. And lies thrived within

public opinion in countries directly implicated as well as within the international community. The experts sent there for the medico-legal analysis of mass graves have a serious task: to ascertain as far as possible, under difficult working conditions, the truth concerning criminal acts perpetrated months or even years ago. This job has to be done with total impartiality. Assistance to the many victims requires the intervention of multi-disciplinary medico-legal teams. The numbers and composition of those teams are similar to those used in air crashes or natural disasters during peace time. In contrast to those situations, besides the primary need to identify the victims, there is the gathering of evidence proving crime and torture.

### MEDICO-LEGAL ANALYSIS OF A MASS GRAVE

A mass grave is a complex crime scene the investigation of which has to be done methodically, for it can be done only once. It involves investigative techniques derived from archaeology. Consequently, it requires a great deal of time, all the more so since the number of the victims is high. An infrastructure needs to be adopted on the spot in order to make the coordinated work of the experts easier.

The quality of the data provided by the

medico-legal analysis of a mass grave is dependent on the implementation of a rigorous methodology.

#### **General methodology to study a mass grave**

A mass grave is any place where corpses are piled up. Skinner (1987) cites a minimum of six bodies to be able to speak of a mass grave. This threshold has been determined arbitrarily. This definition does not mean that the victims must have been buried. Only the experts on the spot can describe a mass grave as such.

The investigation of evidence as well as the collection of items necessary for the identification of the bodies are dependent on the implementation of rigorous methods because important material elements might be lost or altered. Once the mass grave has been discovered, most often as a result of testimony or visible clues (soil recently turned over, qualitative or quantitative modification of the vegetation), more rarely through the use of infrared cameras or methane detectors, the surrounding area must be absolutely secured so as to preserve as quickly as possible the integrity of the crime scene (Skinner, 1987). This avoids any alteration in the future, deliberate or not, of possible evidence. It also prevents any disturbance of the work of the expert team on the spot. This multi-disciplinary team should include forensic pathologists specialized in thanatology, dentists specialized in medico-legal odontology, radiologists and anthropologists as well as archaeologists (Snow et al., 1984). The analysis of a mass grave also requires the use of rigorous archaeological techniques (Skinner, 1987). The control of the area as well as the exact cartography of corpses including material elements in the three dimensions have a great importance (Skinner, 1987). Air photographs of the spot are also useful. The establishment of a 'country mortuary', including refrigerated vans and running water, makes the collecting of data and performance of autopsies easier (Skinner, 1987). Autopsies should be performed within local medical facilities provided they are still available and functional.

#### **Medico-legal objectives**

The medico-legal objectives of the analysis of a mass grave are twofold: To identify the victims and to expose evidence of criminal acts.

#### **Identification of the victims**

The identification of the victims found in a mass grave is more difficult than in the case of air crashes. In general, the bodies are found in a state of advanced decomposition or are already skeletons. And there are no data revealing their identity, such as a passengers' list. In the former Yugoslavia, dental identification was very limited because of a frequent lack of ante-mortem dental data, which made any comparison with the post-mortem data impossible (Brkic et al., 1997 and 2000). The ante-mortem data had been either destroyed during the bombing or military occupation, or they did not even exist as the victims had not been to the dentist recently. Post-mortem data could also be lacking in the case of skulls that had been badly damaged and were without upper maxilla or mandibles. In Brkic (1997), dental comparison enabled identification in only 16 per cent of the cases. The victims were mostly identified according to their anthropological features (sex and age estimate, fingerprints (Strinovic et al., 1994)), sometimes their medical features (old fractures, prosthesis, old scars), but also according to their clothes or personal belongings (jewellery, identity card). A video superimposition of skull X-rays and recent photographs of the victims could also be helpful for identification. Genetic fingerprints obtained from bone or dental tissue were used mainly in complex cases (Primorac et al., 1996).

#### **Exposing evidence of criminal acts**

Besides identifying the victims, the experts have to gather evidence of criminal acts such as torture, to determine the cause of death and evaluate the post-mortem time interval. This investigation can be limited to a few corpses, according to Skinner (1987), which will be examined exhaustively. The high number of corpses, as well as the deadline to do this job, are a limit on the intensity of the medico-legal research. The injuries observed are carefully

described and photographed. They can either show summary executions (site of gunshot wounds in the back of the neck), or torture (foreign intrarectal objects, the after-effects of 'falanga', electrical or cigarette burns). In Kosovo, the bodies exhumed showed mainly gunshot wounds (Schafer, 2000). The observation can be limited to the state of the corpse, especially if the teguments and the soft tissues are too deteriorated because of putrefaction.

The experts also have the task of determining the civilian or military status of the victims. If they are tied at the wrists or at the ankles, this probably means that the victim was a prisoner.

#### LIMITS OF THE MEDICO-LEGAL APPRAISAL OF A MASS GRAVE

The limits on the potential data acquired through the analysis of a mass grave can be split into two: natural and methodological. The former are inevitably contrary to the latter.

##### Natural limits

Natural limits include the state of advanced decomposition or even the skeletal state of corpses, which diminish the possibility of identification and make the analysis of the wounds very difficult or quite impossible. The analysis of mass graves can only take place when the hostilities are over. The interval between the commission of the crime and the intervention of medico-legal teams can be several months or even years. The mass grave of Ovcara, situated near Vukovar in Croatia, was exhumed five years after the event (Blewitt, 1997). Other natural limits have also to be taken into account, such as the soil acidity of the mass grave. This acidity is known to promote the degradation of evidence (Webster, 1998). The natural degradation can also be accelerated by insects, worms or rodents (Webster, 1998).

Some types of torture cannot be ascertained even if the analysis of the mass grave is well conducted because, for example, one cannot see evidence of mental tortures. In the same way, the ethnic group of the victims cannot be established scientifically.

##### Methodological limits

The implementation of a bad methodology or even the total lack of methodology hinders the collection of evidence. Thus, if the site of the mass grave is badly secured, evidence can disappear because of the intervention of a third person (for example, journalists or people presumed to be responsible for the criminal acts). In the former Yugoslavia and in Kosovo, the mass graves examined were therefore guarded by the International Force of the United Nations Organization (UNO). An exhumation of the bodies in a mass grave without any archaeological technique can disrupt the identification (for instance, loss of the distance markers between a corpse and his/her personal belongings) and make the interpretation of the injuries very difficult (distinction of a perimortem wound with an artefactual injury secondary to the exhumation). The rigorous management of the medico-legal analysis of a mass grave, therefore, requires the intervention of multi-disciplinary teams with trained experts. Their number has to be sufficient and should include technicians, anthropologists, archaeologists, forensic pathologists and logistic personnel.

#### DISCUSSION

The lies circulated about the conflicts in the former Yugoslavia and in Kosovo were numerous. They were often exaggerated, for many people were implicated in the conflicts. Mass graves testify that the responsibility of collective violence can be shared at different levels, which makes the judicial investigations long and difficult (Yamin, 1996). The International Criminal Tribunal (ICT) for the former Yugoslavia was instituted in 1993 under Chapter VII of the Charter of the United Nations. In principle, the ICT is competent to exploit all the medico-legal data given by the international experts appointed by the Tribunal itself. But the experts appointed by the ICT can make errors of interpretation. A lack of knowledge of particular war situations can lead to the wrong or improper interpretation of accurate medico-legal findings, for example if the experts fail to take into account the possibility of a situation where victims and torturers have the same

nationality. This occurred both in the former Yugoslavia and in Kosovo, with the intention of wrongly accusing the opposition and to justify NATO intervention. In other words, if the experts are unintentionally misreading the findings, this mistake on their part could be used intentionally by others. It must be emphasized that a medico-legal analysis of a mass grave, even when perfectly conducted, cannot give an answer to all the questions, in particular those concerning the ethnic origin of the victims or the assertion of their civilian as opposed to military status. Indeed, the apparent civilian status of a victim discovered in a mass grave does not exclude his/her active participation in acts of war. The distinction between a true mass grave (only executed victims) and victims killed in combat then gathered together, is often very difficult.

A lack of neutrality on the part of international experts and judges appointed by the ICT could also induce errors of interpretation. Indeed, they can have the nationality of a country which is a member of NATO. NATO intervention was undertaken for the defence of Human Rights. NATO openly took the side of the Bosnian Muslims in 1995 and it took the side of the Kosovo Albanians against the Serbs in 1999. In this context, public opinion in their country could influence the medico-legal experts and upset their impartiality in the interpretation of their observations. Furthermore, there is a risk of biased exploitation of the medico-legal data. Ignorance of some war crimes by the people working for the ICT is able to affect the scope of investigation of the ICT and thus the medico-legal estimates. This lack of knowledge would entail a relative overestimate of the dead people considered as the victims and a relative underestimate of the dead people considered responsible for the war.

### CONCLUSION

The experts sent by the ICT to analyse a mass grave discovered in the former Yugoslavia or in Kosovo should have as their main task the identification of the victims. This should be completed by the investigation of evidence testifying to war crimes. However, the medico-legal data cannot explain everything. The

experts have to exercise extreme caution and must not hesitate to acknowledge their limitations concerning the ethnic origin of the victims or the assertion of their civilian status. Errors of interpretation must be avoided by the experts and by the ICT: if not, the power of war lies would then be given weight by that of medico-legal truths. In spite of these difficulties, the identification of the victims justifies the intervention of medico-legal teams able to compensate for the work of local teams that are short of means, personnel and structures destroyed or incapacitated because of the war.

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