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Mediterranean Missing

Understanding the Needs of Families and the Obligations of States

www.mediterraneanmissing.eu

Missing Migrants: Management of Dead Bodies in Lesbos

Greece Country Report

August 2016

CITY UNIVERSITY LONDON

65 YEARS International Organization for Migration

IOM's Global Migration Data Analysis Centre GMDAC

THE UNIVERSITY of York
Centre for Applied Human Rights

The cover image shows a photo of a family left in a beach in Lesbos

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EXECUTIVE SUMMARY

In this report we seek to survey how the bodies of migrants who die or go missing in their effort to cross the Aegean Sea are managed in Greece, and what laws, policies and practices are in place to ensure that the dead are identified and families informed. Our research focuses on the Greek island of Lesbos, one of the key entry points to Europe for migrants and refugees during the recent crisis, and close to of which a number of deadly shipwrecks have occurred. Our aim is to both identify apparent deficiencies in current approaches to migrant fatalities in Greece, as well as noting where good practice exists that should be duplicated. We identify a policy vacuum around the problem, marked by a lack of cooperation among different state agencies and the absence of standard operating procedures. The impacts of this vacuum have been exacerbated by the extreme resource constraints in Lesbos, and the very large number of both living migrants and dead migrant bodies to be addressed. In managing bodies after deadly shipwrecks, we identified a number of flaws stemming from this policy vacuum, including the absence of effective investigation to identify the deceased; a failure to effectively collect and manage post-mortem data; limited efforts to assist families when they arrive on the island to search for their loved ones; until recently, the lack of a standardized process of numbering and burying the dead at local cemeteries; the lack of international cooperation; and the absence of a provision for outreach to collect ante-mortem data from families in third countries.

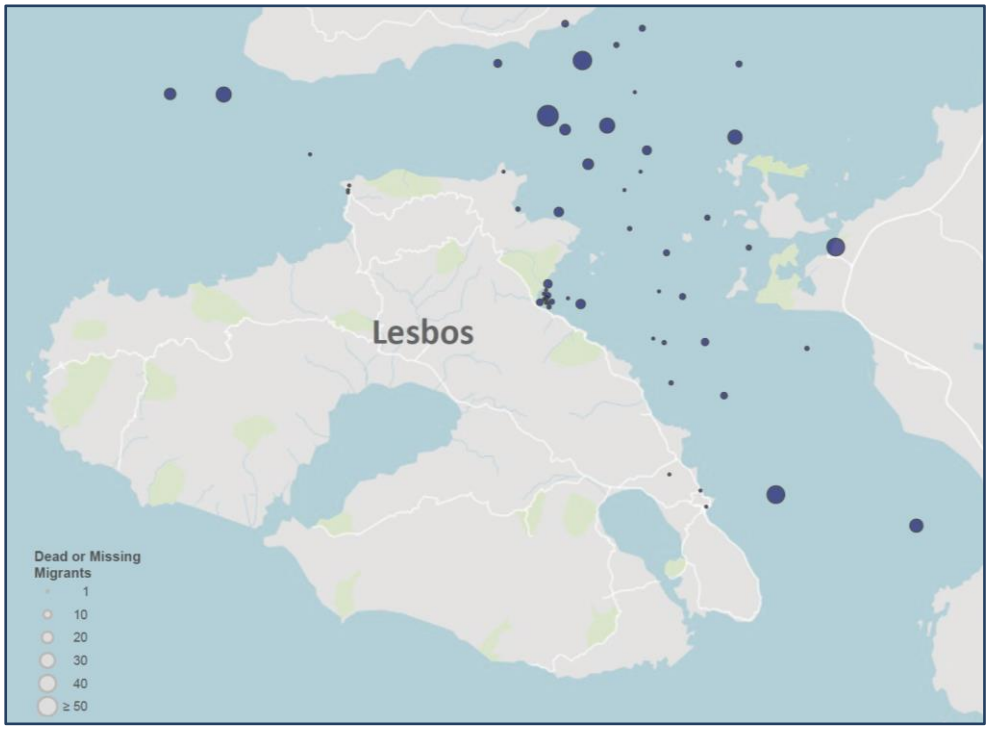
Such limitations, coupled with the complex nature of this humanitarian challenge, have led to most of the victims of deadly shipwrecks being buried unidentified with limited provision for future identification. This has an adverse psychological impact on the families: in the absence of certainty about the fate of their loved ones, relatives are trapped in a state of ambiguity condemning them to unresolved loss, and resulting stress and anxiety. To help local authorities effectively deal with this humanitarian problem and assist families in their quest for truth, we offer a number of policy recommendations. We recommend that the Greek authorities establish a 'humanitarian commission' mandated to oversee and coordinate efforts of national and local authorities, and to liaise with families of the dead and missing to collect data from them that could facilitate future identifications. Acknowledging the transnational nature of the problem, we argue that that the effective management of the problem of missing migrants is not merely the responsibility of the local or even Greek authorities; rather a demonstration that regional and pan-European solidarity is needed. To this end a 'global architecture' is required to collect and store both ante- and post-mortem data concerning missing migrants from a range of sources, including European states and families in migrants' countries of origin.

INTRODUCTION TO THE PROBLEM OF MISSING MIGRANTS[1]

Deadly shipwrecks and the bodies of migrants have become the most iconic images of the contemporary refugee crisis at the EU's periphery. In 2015 and the first half of 2016, more than 6,600 are known to have died crossing the Mediterranean, with an additional number of unrecorded deaths (IOM, 2016). Although the media and solidarity groups have shed light on the plight of living refugees, and highlighted the shocking reality of shipwrecks, relatively little is known about migrants whose fate is not known to their families. The remains of the majority of dead migrants are buried unidentified (see photo 1). As such, thousands of families in countries of migrant origin remain unaware of the fate of their loved ones.

[1] In this paper, it is acknowledged that 'migrants' and 'refugees' are two distinct legal categories. The nature of unidentified bodies however that their status prior to death is unclear, and that the legal obligations of states concerning those human remains are the same regardless of that legal status. As such, for the purposes of this briefing note we will use the terms interchangeably.

The sheer scale of the refugee crisis, the limited resources available to local authorities and the transnational nature of the problem curtailed the prospects of an effective solution to the problem. At the peak of the crisis local authorities had to accommodate on a daily basis approximately 3,000 refugees, restraining further the potential for effective investigation or identification of dead bodies after shipwrecks. The families of those missing are the real, yet invisible, victims of this humanitarian disaster. In the absence of a body to bury they are trapped in a state of ambiguity, not knowing where loved ones are, or if they are dead or alive.[2] Where a loved one is known to be dead, the location of the body is often unknown. Families suffer from ambiguous loss: a traumatic loss that gives rise to symptoms of depression, anxiety, and family conflict. Ambiguous loss is the most stressful type of loss precisely because it is unresolved. Existing policies fail to maximize the prospect of identification, and serve to inhibit any communication between authorities and families, guaranteeing that families continue to be trapped in ambiguity.



Map 1 Dead or Missing Migrants 2014 - 24th of July 2016
***Source*: IOM Missing Migrants Project. Data obtained from local authorities, IOM field offices and media reports.**

Impacts on Families of missing migrants

As a part of the Mediterranean Missing project, 84 families from Tunisia, Syria, Iraq, Palestine and Egypt, who are missing relatives in migration, have been interviewed to understand the impact on them. The most important conclusion is that most have no information as to the fate of loved ones and in the absence of certainty about the fate of loved ones are trapped in a state of ambiguity, between hope and despair. Ambiguous loss is the most stressful type of loss precisely because it is unresolved. Emotionally and psychologically, families are affected in ways which reduce their well-being through a generalised anxiety disorder, a sense of stasis in their lives, hypervigilance and sleep disturbance, while those worst affected see their functioning highly impacted, and had sought professional psychiatric help. Family conflict and self-isolation was prevalent among affected families, and women in particular were impacted by the dramatic change in role

[2] Please see the report on families' needs

required to head a household where a husband was missing. Those who had also been victims of shipwrecks in which relatives went missing are likely to be traumatised, potentially suffering from post-traumatic stress disorder.

The needs of families are clear: they seek an answer, a resolution of the lack of clarity over the fate of the missing – are they dead or alive? In either case, they also want to know where the missing are: if they are dead families want to retrieve the body and bring it home so that it can be honoured and buried in a space that returns a loved one to the family. Some family members have taken part in efforts to identify loved ones, including the often traumatic exercise of examining bodies in morgues or photos of the dead in search of family members. Many have shared DNA samples with authorities in Europe but very few have received any response.

THE POLICY AND OPERATIONAL GAPS AT THE EUROPEAN UNION LEVEL

The policy, legislative and operational gaps identified in this report, at local and national levels, are reflected at the level of the European Union (EU). This is a complex field of EU and Member States' policies and operations, with a strong security dimension and high level concerns about border controls and the aim of preventing irregular migration but lacking a specific response to deaths during migration. It is further complicated at the time of writing, by uncertainty over the future of the EU-Turkey agreement[3] which was designed to address refugee flows, resettlement across the EU and returns of irregular migrants and persons found not to be in need of international protection.

EU policy in the field of migration and asylum is determined within the framework of Justice and Home Affairs, a policy area which, since the coming into force of the Maastricht Treaty[4], has increasingly moved from inter-governmental decision-making toEU competence. In addition, since the adoption of the Schengen agreement[5] establishing an area of free movement within the European Union, a range of policies have been developed that affect the way in which migration-related issues are regulated. This development of common policies on asylum and migration has been successful to varying degrees in relation to legal and irregular migration and border controls. These policies both respond to and are often deemed to contribute in different ways to producing the current situation in the Mediterranean, given their main focus on the control of immigration, control of the external borders of the EU, security concerns, returning irregular migrants and persons found not to be in need of international protection from the Member States, humanitarian aid, and, to a lesser extent, legal migration and mobility channels. Over the course of the last twenty years, the Common European Asylum System has been developed. This sets out ways in which asylum should be managed within the EU, and establishes the responsibilities of Member States through Treaties, programmes and regulations, such as the Dublin Regulations.

EU policies have not been designed to address explicitly the question of deaths of migrants on arrival at, or en route to, the EU, nor the needs of their families. However, the EU does have a remit to ensure that the human rights of migrants are protected, as do the Member States, whose international obligations are outlined elsewhere in this report. Underpinning

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[3] Ayad, C., Jégo, M. (2016) Recep Tayyip Erdogan : « Western leaders preferred to leave Turkish people to themselves ». Le Monde Europe, 08.08.2016. Available at: http://www.lemonde.fr/europe/article/2016/08/08/recep-tayyip-erdogan-western-leaders-prefered-to-leave-turkish-people-to-themselves_4979866_3214.html. [Last accessed 09.08.2016].

[4] European Union, Treaty on European Union (Consolidated Version), Treaty of Maastricht , 7 February 1992, Official Journal of the European Communities C 325/5; 24 December 2002, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1992:191:FULL&from=EN. [Last accessed 09.08.2016].

[5] European Union, Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, Schengen Agreement, 14 June 1985, Official Journal L 239 , 22/09/2000 P. 0013 - 0018, 42000A0922(01), available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1470668430959&uri=CELEX:42000A0922(01). [Last accessed 09.08.2016].

the Treaty obligations is the European Convention on Human Rights (ECHR), which protects the right of every person to his or her life, imposing various positive obligations for the States, including a positive duty to prevent the loss of life, and a positive obligation to investigate suspicious deaths, as explained in the Article 2[6].In addition to the ECHR obligations, although there is no policy which explicitly addresses the issue of deaths at the EU's southern border (or identification work), several instruments and activities are relevant to the problem.

The following summary provides a brief overview of the relevant policies, instruments and actors engaged with the issue of deaths during migration and related investigations.

European Agenda on Migration

The overall policy framework for the EU's actions with regards to the response to migration in the Mediterranean is the European Agenda on Migration, which was communicated by the European Commission in May 2015.[7] With this Agenda, the EU explicitly aims to prevent further deaths at sea by providing additional funds to Frontex, resettlement and Regional Protection and Development programmes as well as to the most affected Member States. Central to achieving this aim, for the EU, is its focus on the identification of criminal networks active in the Mediterranean in the context of migration. Within this framework, the instruments of this policy are political: (negotiations with third countries through regional and bilateral fora with a strong focus on return, as evidenced by the Partnership Frameworks proposed by the EU in June 2016; financial, through various EU funding instruments such as, for instance, the EU Trust Fund for Africa); and operational, in the form of engagement through the Mare Nostrum, Triton and Sophia operations.

Humanitarian Aid and Civil Protection

The European Commission's (EC) Humanitarian Aid and Civil Protection Directorate General (ECHO) provides funding for 'needs-based emergency assistance'[8]. It is explicitly aimed at providing assistance to 'people in distress, irrespective of their nationality, religion, gender, ethnic origin or political affiliation'[9]. As such, it could be of direct relevance for the provision of resources for the investigations around migrant deaths that leave families without any knowledge about the fate of their loved ones.

Border security

In 2004, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) was established.[10] The agency's mandate includes the management and coordination of Joint Operations at the EU's borders, in which national security forces work together. Other main tasks of the agency include: the return of asylum seekers (from EU countries) whose applications have not been successful; training of staff in countries at the external borders; and risk analysis with regards to border security and technical and operational assistance at the external borders. Frontex cooperates in its activities with EUROPOL, the European Asylum Support Office (EASO), the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM). With its mandate and main tasks, the agency is a central actor involved in coordinating EU operations and national officials in the Mediterranean. This means it is confronted directly with the issue of deaths during

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[6] Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf. [Last accessed 09.08.2016].

[7] European Commission (2015) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European Agenda on Migration. 13/05/2015 COM(2015) 240. Accessed 07/09/2015, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/index_en.htm.

[8] European Commission, Humanitarian Aid and Civil Protection (2015) Humanitarian Aid. ECHO Factsheet. Available from: http://ec.europa.eu/echo/files/aid/countries/factsheets/thematic/humanitarian_aid_en.pdf. [Last accessed 09.08.2016].

[9] Ibid.

[10] See Council Regulation (EC) No 2007/2004 of 26 October 2004

migration to Italy and Greece. However, its mandate concerning search and rescue operations and its geographical remit are limited.

Operations in the Mediterranean

As a response to the shipwrecks of the 3rd and 11th of October 2013, in which at least 387 migrants lost their lives, the Italian government launched Mare Nostrum, an explicit search-and-rescue operation. The operation ran for one year and saved thousands of migrants' lives. In debates at the EU level, some Member States emphasised the operation as a pull factor and following this, it received no substantial support from the EU. The programme cost Italy 108 million euros and was ended to be replaced by the EU-led Triton operation.

Operation Triton, coordinated by Frontex, began in November 2014. It involves 'coordinated activities at the external sea borders of EU Member States in the Central Mediterranean region'[11], and is therefore of particular relevance to deaths en route to Italy. The operation includes humanitarian search-and-rescue elements, but is clearly focussed on border security. Its main objectives are to control irregular migration and to tackle cross-border crime, including human smuggling. The activities pursued under Triton include increased border surveillance (air and sea), gathering information, and debriefing and screening activities. With these objectives and methods, Triton aims to ensure better control and a more nuanced picture of migration across the Mediterranean. Its aims are understood to contribute to the prevention of shipwrecks and to support search-and-rescue efforts.

Another operation linked to migration across the Mediterranean is the European Naval Force – Mediterranean (EUNAVFOR Med) Operation Sophia. This operation is run by the Navies of some EU Member States. It aims to:

'undertake systematic efforts to identify, capture and dispose of vessels and enabling assets used or suspected of being used by migrant smugglers or traffickers, in order to contribute to wider EU efforts to disrupt the business model of human smuggling and trafficking networks in the Southern Central Mediterranean and prevent further loss of life at sea'[12].

As such, the operation is mainly concerned with the elements of smuggling and trafficking linked to migration movements in the region. These policies and operations mainly focus on border security and cross-border crime. They represent different elements of the EU response to migration in the Mediterranean region, but also show that there is no policy that explicitly addresses the issue of deaths during migration, identification and liaison with families of the dead. Issues linked to deaths during migration, such as the role of victims' families, are often invisible elements of these tragedies, and this invisibility is also reflected in the lack of a concerted policy response at the EU level, to the problem. The deaths occurring in the Central Mediterranean take place within a geographical space which reflects both a gap between the operational mandates of national agencies and Frontex, and a policy gap at the national, EU, and international levels.

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International Human Rights Law – The Obligations of States

International human rights law ['IHRL'] applies in situations of migrant death and loss; it places duties on states to identify the dead and respect the rights of the families of missing migrants.[13]

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[11] FRONTEX Archive of Operations. EPN Triton. Available at: http://frontex.europa.eu/operations/archive-of-operations/NkKUdU. [Last accessed 09.08.2016].

[12] European Union External Action (2016) European Union Naval Force – Mediterranean. Operation Sophia. Factsheet. Available at: https://eeas.europa.eu/csdp/missions-and-operations/eunavfor-med/pdf/factsheet_eunavfor_med_en.pdf. [Last accessed 09.08.2016].

[13] For a more detailed review of states' obligations under international human rights law, and relevant case law, see Report of the Mediterranean Missing on International human Rights Law.

IHRL gives rights to individuals; states have a duty to ensure and protect these rights. All states in the European region have obligations under IHRL in respect of dead and missing migrants and refugees. These legal obligations derive from international treaties which states have agreed to implement in their domestic law and practice, notably the European Convention on Human Rights ['ECHR'], the International Convention on Civil and Political Rights ['ICCPR'], and the Convention on the Rights of the Child ['CRC'].

Human rights responsibilities arise where, for example:[14]

- a person dies in a State's territorial seas and/or their body is washed ashore;
- a person is 'missing' within a State's territorial seas;
- a State retrieves bodies from the sea, including in international waters;
- a family member/relative of the missing and dead is within the jurisdiction of the State.

At a *minimum*, states have a duty to protect the right to life of 'everyone', without discrimination,[15] to respect the right to family life of relatives of the missing,[16] and to take special measures to protect children of missing migrants.[17] The duty applies to all branches, and at all levels, of government.

- The duty to treat 'everyone' equally requires, inter alia, that there should be no discrimination between citizens and non citizens in the steps which are taken to protect the right; and that religious or cultural beliefs should be respected without discrimination, including with regard to burial.
- The duty to protect the right to life of everyone requires preventing and investigating deaths. States should:
    - Take positive steps to prevent deaths where the authorities know or ought to have known of a real and immediate risk to lives; take exceptional measures to prevent the deaths of vulnerable persons, including asylum seekers, refugees, children and those whose lives are at particular risk.
    - Investigate all suspicious deaths, effectively, independently and promptly; investigation includes taking steps to establish the cause of death, identify the body, and secure evidence, including eyewitness testimony, and forensic evidence. Investigation should not be restricted to cases where criminal action is suspected. Effective investigation should include – inter alia – efforts to collect or retrieve the body, and to trace and inform

[14] These responsibilities arise equally at land borders.

[15] ECHR Art. 2(1): 'Everyone's right to life shall be protected by law'; and ECHR Art 14: 'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground…'. ICCPR Art. 6(1): 'Every human being has the inherent right to life. This right shall be protected by law'. ICCPR Art. 2(1) 'Each State … undertakes to respect and ensure to all individuals within its territory and jurisdiction the rights recognised…. in the Covenant, without distinction of any kind.

[16] ECHR, Art 8(1): 'Everyone has the right to respect for his private and family life…'.

[17] CRC, Art. 8(1): States should 'respect the right of the child to preserve his or her identity, including nationality, name and family relations…'.

families; issue of a death certificate confirming the death; collection and preservation of personal possessions, and their return to families.

- **The right to family life** includes – inter alia - participation by relatives in the investigation, and in the burial of a relative's body.
- **The Protection of children** whose parents are missing includes respecting their best interests at all times, and taking specific measures to preserve their identity, including nationality, name, and family relations.

KEY CHALLENGES IN LESBOS

Lesbos remained the main entry point for most migrants and refugees in the period 2012-2016. It should be noted that 'migrants' and 'refugees' are two distinct legal categories. The nature of unidentified bodies however that their status prior to death is unclear, and that the legal obligations of states concerning those human remains are the same regardless of that legal status. As such, for the purposes of this briefing note we will use the terms interchangeably.

According to the UNHCR approximately 590,000 refugees landed on Lesbos between 2012 and mid-2016, more than six time the total population of the island.[18] Since 2014 an estimated 9,969 – almost 11 per day -- have lost their life in deadly shipwrecks in the broader Mediterranean region.[19] Moreover, an unknown number of victims have died at sea but their deaths not recorded because their bodies were never recovered. This sets the scene for a transnational humanitarian challenge that affects not merely the authorities at the EU periphery tasked to deal with this problem, but also the lives of thousands of families in countries of origin.

The key challenges:

- The complex nature of this humanitarian problem
- The collapse of state institutions in countries of origin, constraining transnational cooperation
- The weakening of state institutions in Greece and limited resources (human & financial) available
- A policy vacuum: too many actors involved with limited coordination
- Families remain sidelined

First, it is the very complex nature of the problem that inhibits any effort to effectively manage the consequences of this humanitarian disaster. Clandestine trips organized by criminal mafias, coupled with the fact that the sea effectively constitutes the border, not only make the trip precarious but also inhibit efforts to retrieve dead bodies. As a result, any effective solution requires transnational cooperation. When a dead body is found on a beach in Lesbos, authorities need to initiate an investigation to identify victims that is likely to need to extend beyond Greek borders.

A number of identifications are being made visually, by relatives who largely have travelled with those who have died and in some cases, relatives – mostly based in Europe – have travelled to Greece to make identification. However, in many cases family members are located in the countries of origin and cannot travel, or be contacted, to make such a trip. Although, this is not an insurmountable obstacle (see 'Investigating and Data Collection' section), the prospect of identification increases if families are present in Lesbos to search

[18] UNHCR data: http://data.unhcr.org/mediterranean/country.php?id=83 [last accessed 9 July 2016]
[19] IOM 'Missing Migrants Project', http://missingmigrants.iom.int/ [last accessed 9 July 2016]

for their loved ones, particularly in the first critical days after a shipwreck. Timing is an overlapping challenge. As a result of the sheer volume of shipwrecks and the limited capacities of local hospitals to preserve the body for more than a few weeks, local authorities are under pressure to proceed to a speedy burial. In such cases creating the conditions for a speedy visual identification is critical.

In the long term, identification demands that data collected from and around the body, including possessions and witness statements from the shipwreck – post-mortem data – must be compared with ante-mortem data, details about the missing person, collected from families. This demands outreach to families in states of migrant origin, and while the collapse of state institutions in countries like Afghanistan or Iraq, and the civil war in Syria, rules out any effective cross-national collaboration in some cases, in many others no efforts are made to contact the authorities or families in states of migrant origin. The collection and management of such data can maximize the probability of future identification. These issues are discussed in greater detail below.

Despite their good intentions two significant obstacles inhibit authorities' ability to effectively address the problem: the weakening of state institutions as a result of the financial meltdown and most importantly the policy vacuum around the management of this problem. The sheer volume of deadly shipwrecks has put unprecedented pressure on the very limited capacities of local authorities to effectively address the problem. Being located on a small island of approximately 85,000 inhabitants, local authorities were unprepared to accommodate a complex humanitarian challenge that exceeded their capacities. What became known as the 'refugee crisis', although a European problem, disproportionately affected certain regions at the EU's periphery like Lesbos. Local authorities were tasked to devise and enforce policies that exceeded their capacities. Moreover, the sovereign debt crisis and the ensuing policies of austerity weakened the ability of the Greek state to provide resources to local authorities in Lesbos. Tasked to address the pressing needs of thousands of refugees arriving daily to island, modest and finite available resources were predominantly devoted to supporting the living, not the dead. For example, the local hospital never had to accommodate more than a couple of dead bodies historically, and as such it was unprepared to store and identify 70 dead victims of deadly shipwrecks; it was only after donations from civil society that a refrigerator was bought to address a very real problem.[20]

Despite the complex nature of the problem and the limited state capacities, the policy vacuum currently in place remains the key obstacle to the effective management of the problem. Although the large number of shipwrecks probably best explains the inability of local authorities to manage this problem in the most recent period (2014-2016), it does not account for the failure of local authorities to deal with it in the preceding period (2007-2013) when isolated accidents should have offered better prospects of an effective and appropriate response. In fact, as will be shown below, it is the victims of these 'early shipwrecks' that were often buried in the most undignified way, unidentified, and often in common graves with limited prospects of future identification (see photo 3). More recently, and despite (or perhaps as a result of) the growing number of deadly accidents, the situation has improved with the creation of a new cemetery.

As such, despite these external difficulties, the central role of national authorities is currently frustrated by the absence of a coordinated policy among the different agencies involved to address the problem. In effect, there is no standard operating procedure currently in place, one that would define the mandate and identify the responsibilities of different state authorities involved, including the coastguards, the local coroner, forensic labs in Athens, etc. Most importantly there is limited coordination among these actors and no follow up activities that would maximize the potential of future identification of victims. Instead, as evident in the analysis below, there are different agencies dealing with different

20 Δημητρα Φούρλα (2015) 'Μάθημα ανθρωπιάς στη Ρόδο-Δωρεά ψυγείου κοντέινερ στη Λέσβο για τους νεκρούς…', Dimokratiki, 3 November 2015, also available at: http://www.dimokratiki.gr/03-11-2015/mathima-anthropias-sti-rodo-dorea-psigiou-konteiner-sti-lesvo-gia-tous-nekrous/

aspects of the problem (retrieval, identification, burial of dead bodies, collection and management of data from bodies) with minimum coordination, which has extremely adverse impacts on families in search of their loved ones. It becomes impossible for families arriving on the island in an extremely fragile state to find out which authority is responsible for handling their case. This has led to an arbitrary process where families' treatment depends exclusively on the attitude of individual civil servants or NGO staff who may be available. That explains the dramatic variation in families' experience of encounters with local authorities. On the one hand there are families that were 'fortunate' enough to find helpful individuals while others portray their visit in grim terms, reflecting precisely the policy vacuum

> They did their best to help me. I met a priest in Greece who talked to the mayor, gave him all my details and my phone number. Then the mayor called me and invited me for a meeting at his office, even though I did not know him. […] The mayor sat with me and said he would help me and asked me if there was anything he could do. I told him that everyone was helpful, the coastguards, the UN and the Red Cross. To comfort me, he took me to meet his friend at the coastguard – of course no police was there. He asked me if I needed anything, so I requested to see the corpses once more because I was in a state of shock when I saw them first, and he granted me the permission. We went to the morgue and saw the extremely deformed corpses. So I saw them twice. (Interview No.7)
>
> you could never imagine the mistreatment and how merciless they were. Maybe it would have been better if those people drowned and no one touched them. They were inhumane, especially the coastguards, the Red Crescent and state authorities. (Interview No.1)

As a result of this policy vacuum a number of non-state actors, including both NGOs and individuals, have assumed central roles in the process even without having any official or well defined mandate. This amplifies the adverse impact of the policy vacuum as it dilutes the state's responsibilities and it is often unclear to the families who is in charge. Most importantly, the influx of international NGOs and other charitable non-state actors once Lesbos became the focal point of international attention inhibited further the effective management of the missing and the dead, and the data required to identify them. Although certain local activists and NGOs have assumed a very constructive role,[21] and have developed knowledge on how to deal with some of these issues, their role has been sidelined by the strong presence of international NGOs competing for visibility and resources.

> Nowadays that more and more NGOs are interested in the matter (i.e. missing migrants); organizations, researchers and universities, suddenly they kind of found out that something is there. They discovered this thing that was not so much on the news, it wasn't so much the topic of any NGO, at least here… I don't know about the universities but I don't think it was a topic of high interest, I mean relatively to the importance of the issue, the loss of lives. So I think that now we have more and more NGOs that are firstly trying to establish a kind of procedure and that also push each other for "who is going to be involved and who is going to be the best in this". This was very obvious in the last shipwreck where NGOs were arguing about who is the best, but the truth is that people stayed in a place that was not appropriate and no procedure was really followed. So the thing is not just to have NGOs involved, not to only establish procedures but to actually have the people that really can take over this procedure. (Interview No. 53)

[21] Village of All Together: http://lesvos.w2eu.net/tag/village-all-together/

One of the unintended consequences of the influx of international NGOs with a limited network of contacts with local authorities was that it became more difficult for families to contact actors who are responsible and able to assist their efforts to find their loved ones.

This is the other major challenge in the management of the problem, namely that families are not seen as legitimate actors who have both a stake in the process and voice, inhibiting further the outreach process. Although shipwrecks have attracted a large amount of global attention, the indirect victims of this humanitarian disaster, that is the families, have been sidelined. Given that they are often far away and from marginalized communities in their home countries, they have no political visibility anywhere. In contrast to those disappeared in conflict, there is no route to a mobilization that can enable the political voice of families, and this affects the prospects of identification. Families are the only sources of the ante-mortem data (i.e. photos, medical records, tissue samples for DNA matching, description of distinguishing features etc) that could potentially lead to identification of the dead. As such, outreach must be made to families to enable the sharing of information about those who are missing in migration. Since families remain politically invisible there is no route to collect and process ante-mortem data, representing the most significant gap in the policy vacuum. To further illustrate this vacuum, the next section describes the procedures followed after a shipwreck, and the actors involved. The approaches taken to policy and practice were investigated through more than 130 qualitative interviews with relevant actors, including authorities, local civil society, and affected families conducted in the period October 2015 – March 2016.[22] The interviews were taken in Greece, Italy, Tunisia and refugee camps in Turkey.[23]

MAPPING POLICY RESPONSES

Although it is only the first step when it comes to the management of the dead, retrieving bodies is a crucial element in the process and can impact significantly on the subsequent chances to identify a deceased person. Firstly, because identification is only possible where a body is retrieved and, secondly, retrieval is time critical: due to decomposition the wait until an investigation can start can be an impediment to identification of the body.

> Sometimes even their own relatives cannot identify the dead body from a picture, or people that were on the same boat, so imagine how difficult it is for us …and if they are found soon it is a little bit easier, but if they are found after several days…you understand…the body will be deformed, and it becomes much more difficult. (Interview No.48)

Organising a timely recovery of bodies is thus key to increasing the chances of identification. In Greece, and more specifically on Lesbos, the authority responsible for retrieving bodies and for dealing with the dead and missing are the port authorities, namely the Hellenic Coast Guard (HCG). The coast guards carry out patrols and retrieve bodies in cases of shipwrecks, and rescue survivors, and are also responsible for recovering bodies when washed ashore.

Apart from enforcing the border, the main objective of the coast guards is to locate survivors of shipwrecks or other accidents at sea. The clandestine nature of the trip often inhibits the timely rescue of survivors and the retrieval of bodies. The coast guards would "take part in the investigation and rescue, either with [their] vessels or on land with cars, or with a Super Puma helicopter for the rescue that lasts 72 hours, 3 days" (Interview No.48). The retrieval of bodies can thus occur only over a short time period while the coast guard search and rescue operation is ongoing. Also the high volume of boats makes both the rescue and the retrieval of bodies a challenging task. To locate boats or bodies coastguards often rely on reports from survivors who may have been on the same boat. Yet, this may

[22] It should be noted that the research focuses on that particular period. As a result of the recent implementation of the bilateral agreement between the EU and Turkey the number of refugees arriving on Lesbos has been reduced, as well as the deadly shipwrecks, while a number of NGOs has left from Lesbos.

[23] Most families of Syrian refugees were interviewed over skype.

prove more complicated in cases where there is no survivor to report someone missing, or in cases where there are no certified interpreters to facilitate communication with coastguards. It is not uncommon for the coastguards to rely on volunteers or civil society actors that might be able to fill these gaps on an ad hoc basis. There is no official provision for such services and as such it is based on whether persons with appropriate skills – most often from NGOs -- are available on site.

The above analysis sheds light on two overlapping gaps. First, there is a disjuncture between the mandate (or the training) of the coast guard and the problem they are tasked to address. The mandate of the coast guard is geared towards protecting 'public security', namely policing the border or preventing criminal activities. As such, despite good intentions, it becomes extremely difficult for such an agency to effectively 'switch' between a security and a humanitarian operation. This tension is evident in all activities carried out by the coast guard. For example, after a shipwreck coast guards may be collecting testimonies from survivors of shipwrecks in an effort both to identify and prosecute 'smugglers' while at the same time find 'missing' in the sea. This coupled with the lack of resources often proves to be an insurmountable obstacle. Probably the starkest illustration of these tensions is the 'security' branch of the coast guard, which is responsible for security issues, drug-related investigations and more recently addressing the humanitarian issue of identifying missing migrants. The security branch is housed at the second floor of the port authority in Mytilene and it is a 15-square feet room which hosts 13 staff members. In the same room that criminal gangs are interrogated, families of missing are invited to identify their loved ones.

Once a body has been retrieved it would then need to be transported. Moving the dead body to the hospital in a timely fashion is important for future identification. Bodies need to be stored in body bags during transportation. Boats transporting bodies back to the mainland should ideally be equipped with facilities to prevent decomposition during transport, and thereby maximize prospects of future identification. Maintaining bodies in a good condition is also important in reducing families' distress, as they are invited to visually identify the dead body and most importantly this is the last time they will see their loved ones.

It remains unclear as to who pays for the transportation of the dead bodies. While the state authorities will usually cover the cost of transportation from the port or the beach where the body was found to the coroner's office, this is not necessarily the case for the transport from the morgue to the cemetery. Often NGOs and civil society had to donate money to cover this cost for unidentified victims whose families were not present to organize the funeral (Interview No.50).

Investigation and data collection

Both the international and national legal frameworks impose a duty on national authorities to investigate 'non-natural deaths', such as deadly shipwrecks in the Aegean.[24] Under Greek law and the code of criminal procedure the state has the duty to collect all necessary evidence, and authorities in charge to make all possible efforts to find the truth, including but not limited to taking testimonies from witnesses, preparing forensic reports and autopsies.[25] Article 2 of the European Convention of Human Rights (ECHR) -- protecting the right to life -- introduces a procedural obligation for state authorities to investigate unlawful or suspicious deaths, including the right of the family to be informed on the progress of an investigation.[26]

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[24] The European Court of Human Rights and the UN Human Rights Committee have set out the steps which the state must take when a non-natural death occurs: protection of the right to life entails both a substantive duty to prevent deaths and a procedural duty to investigate deaths.

[25] Article 239 of Code of Criminal Procedure

26 Varnava and others v Turkey (Applications nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90, and 16073/90), case Papapetrou and Others v. Greece (application no 17380/09)

Yet, in practice there is limited systematic effort to collect data and investigate these deaths, shedding light on one of the key gaps in the policy currently in place, namely the absence of an active investigation on behalf of the authorities. The local authorities have not set up clear procedures for someone to declare their loved one missing, provide incentives to survivors to share information about anyone missing or to encourage families to offer leads that could benefit the investigation (such as provision of ante-mortem data). According to available evidence there is no active search for personal belongings (SIM cards, notebooks, credit cards) often left on the beach (see photo 2) and as a result these are not stored as part of the investigation. This is important as it limits the prospects for identification. Detailed testimonies and collection of evidence are taken predominantly in cases where the coast guard is investigating criminal activities, such as in the effort to prosecute a smuggler, but not for purely humanitarian purposes (Interview No.49). Most importantly there is no standardized way of collecting testimony (such as a questionnaire or other protocol). There are standard forms for collecting post-mortem data. The most commonly used system for mass disasters is the INTERPOL Disaster Victim Identification (DVI) system.[27] In many cases, it is clear that coast guards simply do not have the resources to interview all survivors of a shipwreck in the detail required, while often certified interpreters are not in place, which further inhibits communication and systematic collection of testimonies from survivors and eyewitnesses. As a member of a civil society with significant experience in the management of the problem described it:

> There is no standard operating procedure, we know the general guidelines of this procedure but we don't have specific standards. Frequently, because a member of the coastguard for example might be unavailable, they postpone [testimonies] for the next day or three days later or occasionally they want to do it on the spot. They put them in the hardboard or in a house or a shelter or PIKPA[28] there are is no standardized procedure. You will see a lot of variation depending on several things. On weekends for example they have fewer personnel so they do different things than they would do on Monday morning when everybody is available. So the situation is chaotic. (Interview No.53)

This illustrates the absence of an active investigation with the goal of collecting relevant (non-genetic) post-mortem data by the authorities; in practice investigation takes places predominantly when families visit the island within the first few days of a shipwreck. It is worth noting that the District Attorney does not carry out any investigation, unless there is suspected criminal activity involved.

Still there is a tension between legal duties and the realities of a complex humanitarian challenge. At the peak of the refugee crisis it was practically impossible for the under-staffed coastguard to carry out such an investigative operation. In the last half of 2015 the daily arrivals of refugees ranged between 2,000-3,000,[29] and therefore it would be unreasonable to expect from an under-resourced state agency at a remote Greek island mandated to collect and register thousands of living migrants, to search for and rescue the missing, to deal with the dead bodies, and at the same time to carry out a systematic and time-consuming investigation to collect and store post-mortem data from shipwrecks. Yet, according to all available information lack of provision for collecting post-mortem data was prevalent even in the previous years (2013-2014) at a time when the few shipwrecks made the collection and storage of this data more feasible. As such this should be seen both as the objective challenges of a complex humanitarian challenge and a continuation of a bad practice.

Photo 2 Belongings and documents found on the shores of Lesbos

27 INTERPOL DVI Form set, also Available at: http://www.interpol.int/Public/DisasterVictim/Forms/Default.asp [last accessed 9 July 2016]

28 PIKPA is an open refugee camp in Lesbos, run by volunteers.

29 Patrick Strikland (2015) 'Refugee boats to Greece persist despite winter's chill' Al Jazeera, available at http://www.aljazeera.com/news/2015/12/refugee-boats-greece-persist-winters-chill-151202175107235.html

TREATMENT OF BODIES AND DATA

Identification

There is a duty to collect DNA samples from victims of accidents at sea; in this case the responsibility lies with the coast guard and the coroner.[30] Despite the general duties, mentioned above, as a result of the policy vacuum the response of the local authorities is far from standardized. The actual steps taken by the local authorities often vary from shipwreck to shipwreck, depending on the total number of victims, whether families are present to identify their loved one, or not, if a member of a local NGO is available to help a family, or even who is on duty on a particular day.

Mindful of these limitations, below we try to reconstruct as best as we can a typical process of identification followed after a deadly shipwreck based on information we have collected from interviews with key actors. There are three key steps in the identification process.

1st Step: Visual Identification

The coast guard is the responsible authority for leading the investigation for the identification. Most families we interviewed found it challenging to contact the appropriate authorities often spending days visiting different agencies. Local NGOs have been crucial in several cases to assist families contact the authorities, fill out the necessary forms and talk to the right people.

As a first step, families are invited to visit the headquarters for a visual identification of the victims. Relatives are asked to provide information concerning the deceased that could narrow down the search, including the presumed date of the shipwreck, the date the person

Missing Persons Procedure in Greece [1]

Once a report of a missing person has been filed with the police, all police departments must start the investigation to find the missing person.[1] For this purpose, the police a) requests any information from the person(s) submitting the report; b) checks whether the missing person has looked for accommodation in a hotel; c) requests information from cemeteries, hospitals, travel agencies, passport control authorities, post offices, acquaintances of the missing person, and from any other useful source; and d) regularly contacts the person(s) submitting the report in order to update them about the investigation and to receive any additional information. There is a duty for various police authorities in different locations throughout Greece to cooperate. If the missing person cannot be found, a declaration of a missing person is submitted to the police 'Sub-directory for Criminology Investigations', along with a report of any data and photos of the missing person.

The above provisions apply both to Greeks and foreigners, including migrants irrespective of their legal status. Importantly, this declaration of a missing person is used purely for the purpose of police investigations and should not be confused with the "recognition of absence" laid down in Article 8 of ICRC's Model Law on the Missing, that is inter alia designed for attributing a legal status to a missing person.[1] Although Greek law provides for a judicial recognition of absence following lengthy administrative and judicial proceedings (Articles 40-50 of the Civil Code), these provisions apply only to Greek nationals and foreigners that, prior to their "disappearance", had been living or owned property in Greece (Article 6 of the Civil Code). Consequently, migrants who go missing while trying to cross the Greek borders do not fall within the aforementioned regulatory framework.

[30] Law 3772/20090. Interestingly this legislation seems to trace its origins at the misidentification of two individuals who died in the wildfires in the summer of 2007 and instigated the need for setting up a procedure of genetic identification of all victims of accidents and natural disasters.

went missing, gender, age, tattoos or other distinctive marks etc. Families are then shown photographs of the victims who appear to fit these criteria. The process is very stressful for the families and that is why coast guards do not initiate the process unless a medical doctor and an interpreter are present to facilitate the process; in the past relatives had fainted at the sight of their dead loved ones (Interview No.48). Due to the lack of resources, the coast guards often do not have interpreters or doctors to attend. At this stage the role of non-state actors becomes more central as they step in to provide this support during and after the identification process (Interview No.52 &53). Visual identification, particularly when using photographs, has its pitfalls, as it is not uncommon for traumatized family members to misidentify their loved ones.[31] It is worth noting that only close relatives of the missing are eligible to identify victims, neglecting the extended family that is the social building block of the societies many migrants come from. Although at this stage the role of the families is central, the process is not designed to meet the needs of the families.

If the family visually identifies their loved one in one of the photos shown to them, this is the end of the process that leads either to burial in a cemetery in Lesbos or the repatriation of the body (see next section). It is only after they identify the victim then they are allowed to visit the coroner's office and (if needed) see the dead body. The relatives and interpreters sign the testimony confirming identification, and the coast guards order the coroner to carry out an autopsy while the coroner sends a death certificate to the local registry office; the death certificate is needed for the burial process.

2nd Step: The coroner

However, if the family is present but they cannot identify their relatives in one of the photos – or there is no relative in search of a particular victim -- the next stage in the process takes place in the morgue. Families often visit the coroner's office in order to make sure that they have exhausted the potential of visual identification.

If there is a dead body that is not claimed, usually stays up to 40 days in the freezer of the morgue. Yet, as a result of the poor infrastructures, the local coroner often pushes for a speedy burial to create some space in the morgue. If no one claims a body, the coroner prepares the 'death registrar act' required for the burial of unidentified bodies and sends the documents to the local registry office and the coast guard. It is worth noting that there are two crucial protocol numbers that are assigned to each unidentified dead body: (a) the protocol number of the death certificate assigned by the coroner and (b) the number given by the coast guards (usually the date of the shipwreck and the number of the victim, e.g. 13/10/2013, n.6). As is discussed below, it remains unclear as to whether or how these numbers are referenced at the grave of each of the victims, and thus what the implications are for linking data from the coroner with a particular body in the ground. According to the local coroner these numbers are written on a tag with the dead body, but it remains unclear as to whether this is externally visible in the graveyard (Interview No.57).

These are minor yet important details, which can impact the prospect of future identification. These flaws partly reflect the weak institutions of the Greek state. For example, until recently there was only one coroner in Lesbos who is responsible for three islands (Lesbos, Samos, Limnos and occasionally Chios), with limited administrative support (Interview No.57). He informed us that he has an archive with photos of dead bodies—including shoes, clothes and other useful evidence — but these data are collected in his personal archive and stored on his private laptop and thus not officially shared with other authorities (Interview No.57). Similarly, he is working on a renewable fixed-term contract and if he is transferred to another region or is removed from office, it is questionable if this valuable source of data will be available to the next coroner; this curtails further the identification process. With the burial of the unidentified bodies we turn to the third stage in the identification process.

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31 ICRC (2009) 'Missing People, DNA Analysis And Identification Of Human Remains', p.10 , also available at: https://www.icrc.org/eng/assets/files/other/icrc_002_4010.pdf [last accessed 09 July 2016]

3rd Step: Forensic data

The coroner collects a DNA sample from all unidentified dead bodies and he sends this to a forensic laboratory in Athens. There are two forensic centers in Athens. The Athens Forensic Office (AFO) operates under the aegis of the Ministry of Justice[32] and has a genetics lab, which carries out automatic matching with existing samples in their database. The analysis of the DNA of victims has unveiled tragic human stories. In some cases victims were genetically related, revealing that a whole family had died in a shipwreck. A second laboratory, the Forensic Science Division (FSD) operates under the auspices of the Ministry of Interior and is a branch of the Greek police.[33] The FSD is responsible for storing all genetic samples as well as the results while it is also tasked to carry out any identification in the future (Interview No.58). The coroner of Lesbos sends the DNA samples to the AFO first, yet coroners from other regions in Greece, like Evros, send them directly to FSD; the reason for this variation in practice remains unclear. Families of the missing can send genetic samples for identification to the FSD at any stage, even months or years after a shipwreck. The only requirement is that such samples should be submitted through an official agency, either Greek (e.g. coast guards or a hospital) or through the Athens embassy of their country of origin. Although in theory this means that relatives can send samples from their countries of origins this is often impossible in countries where there is distrust or fear of state authorities, as in the case of most Syrian refugees or Eritrean migrants for example. This bureaucratic process often complicates the process for the families.

There is also no outreach to families, such that families in countries of migrant origin are unaware of the possibility to share tissue samples for DNA analysis. As importantly, there is no specific provision as to how the results are communicated to families, another major gap in the process. In effect the burden falls on families to follow up the procedure, which is often quite difficult given their precarious and transitory status.

As opposed to the lack of systematic collection and storage of non-genetic post-mortem data immediately after a shipwreck, an admirable job is done in storing and analyzing DNA post-mortem data by the two forensic laboratories in Athens. Yet, this valuable source of information cannot be of much use unless it is compared with ante-mortem data (i.e. predominantly genetic samples from families but also personal, physical, medical and dental information, as well as information on the circumstances of their disappearance). This requires effective investigation and creating channels of communication with third countries where families are based. Currently this is almost entirely absent.

Traditionally the Red Cross plays a central role in connecting families of missing and national authorities in the aftermath of humanitarian disasters or civil wars. Being the leading international humanitarian relief agency with the expertise and capacities to lead this process, the ICRC has set up initiatives to help families. For example, it has set up the 'trace the face' website, where families and individuals are invited to upload photos and thereby facilitate family reunification.[34] This is a useful resource as it can create a record of missing migrants. Similarly, the ICRC has sponsored a capacity-building program to help local authorities improve the forensic and other parts of the investigation in an effort to maximize the potential for identification and restoration of family links.[35] Yet, this is directed towards the authorities and is of limited direct help to the families actively searching for their loved ones. Most importantly, the Greek branch of the Red Cross is in dire economic straits and therefore has been a marginal actor in Lesbos which has often

[32] Law 3772/2009

[33] Article 27, law 4249/2014

[34] http://familylinks.icrc.org/europe/en/Pages/Home.aspx

[35] ibid

inhibited the efforts of families to find their loved ones.[36] Two relatives we interviewed were clear:

> It is unbelievable that I e-mailed the information of my missing son to the Red Crescent and Red Cross, and they did not reply at all!! It is very wrong!! I can wait for 24 hours or a couple of days for them to confirm to me that they don't have him, or he is in the camp, or still on his way, and not among those who drowned. It would calm me… (Interview No.6)
>
> The Red Cross requested a sample of my husband's DNA, but I could not provide it because his family lives in Syria and I was not blood-related to him. Recently, my brother-in-law sent me a hair sample which I sent to the Red Cross in Sweden but, they refused to give me any information before they contact their office in Greece first… so they gave me the numbers of my files in both Sweden and Greece and told me that if I needed to contact them later, I should give them my file's number for any updates… nonetheless, I constantly call and send e-mails, but they do not reply. (Interview No.16)

Burial & Repatriation

Article 8 of the European Convention of Human Rights -- reinforcing the right to respect for 'private and family life' -- acknowledges the right of families to bury their relatives. Stemming from this provision there is the duty to return the body to relatives – in cases where families are in Greece -- to organize and attend a funeral but also to take genetic samples from the dead body (post-mortem data) to advance investigations.[37] Although there is no specific law, a circular issued by the Greek Ministry of Interior adds burials to the list of priorities for urgent funding to cover the needs of third country nationals and specifies that municipal authorities are responsible for organizing and sponsoring burials of unidentified victims.[38] The municipal authorities are free to assign the burial to different private funeral offices on a rotational basis.

The local authorities, having direct experience of the problem of management of dead and missing, acknowledge not only their responsibility but also that this is the most pressing issue of the broader 'refugee crisis'. Still, they believe that in times of austerity and budget cuts it is unfair that the both the EU and the central government pass the economic cost on to the already badly affected municipal authorities. The mayor of Lesbos noted that:

> It is our top humanitarian duty to address this problem. I do not want to link our duty to help human in danger with the resources I would receive….(yet) it is unfair to leave the management of the whole burden on such a complex issue such as the refugee crisis to local communities… (Interview No.43)

Due to the lack of resources the municipal authorities reached a point where they could not even reimburse funeral offices for past burials they has organized. As a result the funeral homes took their case to the court and remain reluctant to contribute to future burials (Interview No.41 & 42).

However, organizing a decent funeral that would respect the cultural and religious rituals of the deceased is of paramount importance for the families. Not only does it bring an end to the ambiguous nature of their loss, but most importantly helps the living relatives to move on with their lives knowing they have done their duty to the dead, particularly for Muslim families where burial is an important element of ritual. As a brother of a dead explained:

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[36] It is worth noting that the former director of the Greek Red Cross was recently prosecuted on charges related to money laundering, and other corruption-related charges: http://left.gr/news/o-eranos-toy-erythroy-stayroy-gia-tin-alexia-mpakogianni

[37] ECHR case Girard v. France (application no 22590/04)

[38] See article 19, paragraph 9 law 4332/2015, and circular 5522/16 of the Ministry of Interior issues on 2 February 2016

> He has the right to be buried…from a certain religious perspective 'burying the dead honours them' may be just a phrase, but I am almost certain that he was buried. (Interview No.18)

Reflecting the broader policy vacuum, the burial process is also complicated. To organize a burial a death certificate is required, which as noted above, is issued by the coroner and a copy sent to the local registry office. Unidentified dead bodies are registered either in the locations where they were found or where they are buried. In the case of Lesbos the vast majority of the victims are registered in Mytilene, the administrative capital of the island. The local registry officer informed us that although in the past, when deaths from shipwrecks were infrequent, she had the time to provide more details in the description of the deceased. She explained that:

> In older death certificates I would write, for example, "a man's body was found, he was wearing blue shorts and a black life jacket", so that people could perhaps be identified. Now, with this wave of migrants Coastguards don't provide me with this information. I take information directly from the coroner's report that he includes in the autopsy investigation.[…] I would ask for the information because something might have helped. But now, because things are continuously piling up, the coast guard could not send me the information via fax. I haven't included some of this information in the records as a result. (Interview No. 40)

Photo 3: Image from the Old cemetery

Being the last official document produced by the authorities to confirm that a person existed the death certificate is an important act of the state. Despite this overarching bureaucratic procedure, a parallel humane touch was added which did not only provide the factual details of the death (day, time, gender etc.) but also more personal notes, such as what was found on the body etc. Still as a result of the sheer volume of shipwrecks in 2014 and 2015 the local registrar does not have the time to do that anymore (Interview No.40).

Currently there are two cemeteries on the island where victims of shipwrecks are being buried. The first one is a Christian Orthodox cemetery of Aghios Panteleimon, located in the town of Mytilene where the bodies of the vast majority of the victims of shipwrecks in the period up to late 2015 are buried. The second, exclusively Muslim cemetery was recently created, in October 2015, in the village of Kato Tritos which is approximately 20 km away from Mytilene. Probably the image of the two cemeteries best illustrates the policy vacuum: different procedures are being followed and different actors are involved. To shed light on these details, the discussion below describes the two cemeteries in turn.

The old cemetery of Aghios Panteleimon

In this cemetery there are unidentified bodies buried from shipwrecks preceding the latest 'refugee crisis', including Iraqis fleeing the country in the 1990s. As evident in photo 3 since the mid-2000s and particularly in the early-2010s when the Aegean in general and Lesbos in particular became the key entry point for refugees, the number of deadly shipwrecks increased and the vast majority of identified and unidentified victims were buried in this cemetery. Their bodies are lightly covered by earth with only a piece of broken marble on the grave, which indicates a date (of the shipwreck or burial) and a number (for victims of a particular shipwreck). Until recently these markers were often removed, which complicated future identification.

Due to the lack of a specific policy or an authority to lead the process, each burial tells a different story and largely reflects the struggle between the families, local NGOs the willingness of local authorities to assist, and the availability of funding. The role of local NGOs is pivotal. Particularly in the preceding years when the burial of these bodies was a non-issue both in the local community and in the global media, without local NGOs the situation would have been much worse. Driven by humanitarian instincts, they have been helping families to identify and bury their loved ones since at least 2012. According to the leader of one of the most proactive groups on the island on this issue, the 'Village of All

Together' she got involved out of respect for the 'human dignity' of these people (Interview No.53). In fact they have convinced several funeral homes to offer their services for free for specific cases, like the burial of children (Interview No.42).[39] As the budget for burials is limited, NGO volunteers often had to dig graves themselves (Interview No.50). Most importantly, local NGOs had invited Muslim religious leaders from the local migrant community to ensure certain fundamental religious rituals were followed. Burying the deceased without following the funeral rituals is considered to be an sin in Muslim families. Nevertheless, victims as identified Christians were treated far better and the local church made sure that a proper burial was offered.

By far the most important problem with the procedure (or lack of it) followed in the old cemetery is the minimal prospect of future identification. First, it is doubtful whether the unique protocol numbers assigned by the coroner and the coast guards are put in a visible place on the grave. According to the coroner he adds a tag to the body, but this is not externally visible, so any identification would require exhumation of the body (and potentially many candidate bodies) and DNA confirmation.[40] Second, some numbers are added on gravestones, but these are pieces of broken marble, which can be easily removed. It is also doubtful whether coastguards attend the funeral to ensure that numbers are added to the grave marker, while the coroner admitted that he has never been to the cemetery to confirm this (Interview No.57). It should be noted that it is the local authority that takes responsibility for tags and matching with bodies and graves – not the coroner; yet until recently this was delegated to funeral homes and therefore it remains unclear whether there was any provision for this. So, if markers are removed and no protocol is followed this means that even if a family makes a DNA match at the forensic lab in Athens, it does not necessarily mean that they will be able to find the particular grave of their loved one, unless there is an exhumation. In essence, the way burials are made constrains any prospect of identification. Finally, there is no map of the cemetery which complicates even further future identification. This clearly illustrates the lack of coordination and the policy vacuum: different agencies are tasked to deal with different parts of the problem (i.e. retrieval, data collection and management, identification, burial) with limited or no coordination. [41]

Recently the growing number of shipwrecks as well as the limited space in the graveyard available for local inhabitants created a tension between the Church – which owns the cemetery – and the municipal authorities tasked with burying migrant bodies (Interview No.59). The deadly shipwreck of 28 October 2015 was a turning point largely because it forced local authorities to find new space.

The new cemetery in Kato Tritos

The new cemetery came as a result of a pressing need of local authorities to bury the 70 dead of the shipwreck of 28 October 2015 – an unprecedented disaster. Reflecting the urgent nature of the decision, under the state of emergency municipal authorities turned a field into a cemetery. The new cemetery is located in the village of Kato Tritos, 20 km away from Mytilene, and dedicated to the Muslim dead.[42] Overall the new cemetery is a step forward, not least because it provided a long–term solution to the ongoing problem of finding space for burials, which required a lot of negotiations among local stakeholders in the past. Also as evident in photo 4, both protocol numbers (assigned by coast-guards and

[39] At the same time, there is fierce competition among different funeral offices and lack of transparency as to who gets the job from the municipal authorities.

[40] This adds an extra challenge, as exhumations are prohibited in the Muslim tradition.

41 As a recent report of the Interamerican Commission on Human Rights (IACHR) with regards to Mexico, establishing a clear chain of custody is pivotal as would minimize the prospect of inconsistent numbering of graves and failure to maintain graves. See IACHR (2013)'Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico' OEA/Ser.L/V/II.Doc. 48/13, 30 December 2013, also available at: http://www.oas.org/en/iachr/migrants/docs/pdf/Report-Migrants-Mexico-2013.pdf

[42] Although it remains unclear as to whether some of the unidentified victims buried there were non Muslims.

from the death certificate) are engraved on the gravestones of all unidentified victims, which increases the prospects of future identification.

The new cemetery is managed by an Egyptian volunteer who has studied at an Islamic school and therefore who is able to ensure that cultural and religious rituals are respected. For example, he has created a specific place in the cemetery to wash bodies and prepare them for burial. The volunteer has worked in the past as an interpreter and he had contributed to a number of funerals in the past, before assuming the informal role of managing the cemetery. The graves are tidy and he has created a map of the cemetery (Interview No.50). He also mobilized local and international immigrant and Muslim groups as well as charity organizations to support the burial of the victims. Since the creation of the new cemetery he is responsible for effectively managing the cemetery and organizing all the burials. This has provided some comfort to the families.

> Yes, I needed to know where my sister lies…. I can find her on Google Maps now and can re-visit her occasionally. (Interview No.18)

However, the new cemetery is only an improvisation which stems from the existing policy vacuum and is not without its pitfalls. Despite the positive impact on families, the municipal authorities have delegated their legal responsibilities to an individual with no official status. For example, it is worth noting that The volunteer has no contractual relationship with the Municipality. Whilst, this has created a sense of ownership over the cemetery, not only is he the one holding the keys of the cemetery but he also controls who can enter the place. This could affect the identification process. For example, the map of the cemetery remains in the hands of an individual with no official affiliation to the authorities that lead the identification processes. Similarly, there is limited transparency over who supports burial costs. Despite being a positive step, this is still another improvisation within the existing policy vacuum. From a legal perspective, it is necessary only that the state ensures that its obligations - to the dead and their families – are met, and this can be done though a third party. However, this arrangement introduces yet another actor into the situation and complicates access of families and others to data and bodies that would traditionally be the responsibility of the state.

Photo 4: Image from the new cemetery

Repatriation is another complex issue predominantly because of the pressure of time. Interviews with local actors illustrated that the only realistic window of opportunity for relatives to repatriate their loved ones is in the first few days after the shipwreck. As explained above if a body is not identified in the first few days there is usually pressure by local hospital to proceed to speedy burial in an effort to free space at the morgue. A key obstacle is that once burial has taken place, repatriation becomes almost impossible. Apart from the obvious cultural tradition that precludes exhumations in most Muslim countries,[43] the only authority that can order an exhumation is the local District Attorney. However, according to local actors most often the DA is extremely reluctant because of concerns about public health (Interview No.41), despite the consensus that dead bodies are of no threat to public health. Practice remains largely arbitrary. For example, although a request on behalf of an Afghan family was denied we have managed to identify a case where the DA enabled repatriation after burial, but this came after pressure from the Iraqi consulate. Also repatriation is not an easy or inexpensive process. First, it requires a number of certificates to be collected, predominantly a certificate of embalmment, which can be issued only by the coroner. As most families are not familiar with the procedure, funeral services promise to assist but the cost is often exorbitant. According to all available information we have collected a repatriation can cost anywhere between €3,200 and €6,000 (Interview No. 41 & 42).

[43] Although data collected from family members of missing migrants suggest they prioritize exhumation and return over leaving the dead in a foreign graveyard.

GOOD PRACTICE: THE CASE OF ALEXANDROUPOLI

Alexandroupoli is a town located in the North-Eastern part of Greece. Alexandroupoli is part of the broader region of Evros which became the main entry point for thousands of migrants entering the EU from Turkey in the period between the mid-2000s and 2012, when a wall was built that diverted migrant flows to the Aegean islands. For migrants to cross the border they had to cross the Evros river and many died there. While examining the experience of Alexandroupolis, we came across the good practice steered by the local coroner.

First, over the past 15 years the local coroner has been collecting tissue samples from the dead on a systematic basis, irrespective of if the body is identified or not. Similarly, he has collected and stored other post-mortem data (i.e. personal items, clothes, photos of identifying marks such as tattoos. evidence of distinctive injuries etc) in order for relatives to be able to identify victims in the future (Interview No.60). Secondly, he assigns only one protocol number to each body and this enables him to keep track of all bodies at all stages of the process (i.e. from DNA samples, to the specific grave and the box with personal material of each victim). Most importantly he is in close collaboration with the local Imam who carries out the funerals to ensure that this number is added on the tombstone. It is worth noting that in the region there is a significant Turkish minority and as such following Muslim funeral rituals is easier. Also, when families in search of their loved ones arrive in Alexandroupoli, it is him – rather than the police -- who shows them all photos and personal material to identify their relatives. Being a forensic expert facilitates the identification process. Moreover, he stores dead bodies for 90 days – rather than the 40 days which is the case – in principle - in Lesbos – and as such widens the window of opportunity for families to show up and identify their loved ones. Also if a family wants to exhume a dead body, he sends a request to the local DA and, as a result, it seems that a number of exhumations have taken place over the past years (Interview No.60). In effect, there is a standardized procedure spearheaded by a single authority, which takes the lead and maximizes the potential for identification.

POLICY RECOMMENDATIONS TO ITALIAN AUTHORITIES

Despite the complex nature of the humanitarian challenge there are both immediate steps that the Greek authorities should make, as well as long-term steps that require transnational and pan-European cooperation.

Recommendations to the Greek Authorities

1. Creation of an independent Humanitarian Commission

The key obstacle to effective management of issues surrounding missing migrants remains the absence of standard operating procedures for dealing with the bodies and their identification: a number of different agencies are involved in the process, with very limited coordination. We therefore recommend the creation of an independent commission, with an exclusively humanitarian mandate comprised of technical and empirical expertise in managing such cases – including forensic experts, local and national authorities, members of NGOs, legal experts, migrant communities, and families of missing migrants.

The mandate of such a commission would be geared towards

- Coordinating the actors involved at all stages in the process
- Ensuring that standard procedures are developed, affirmed by authorities and enforced nationally
- Liaising with families, other relevant persons and authorities of third countries (eg. embassies & consulates)
- Ensuring human rights compliance

The most important gap at this stage is that there is no outreach activity to collect ante-mortem data from families located in third countries. A significant sample of post-mortem data (i.e. tissue samples, yielding DNA data) has been collected in Greek forensic laboratories, and obviously this is an extremely useful source of information for future identifications. Yet, in the absence of ante-mortem data to match it to this remains largely useless. In order to achieve this positive outcome and increase identification rates, there is a need to build channels of communication with families and relatives. As mentioned above the transnational nature of the problem and the weak institutional capacities in states of origin clearly constrain such an effort but this is not an insurmountable obstacle. This commission would need to design an outreach strategy that would facilitate communication with families who should be encouraged to share the valuable information they possess. It is also pivotal for such a committee to find ways to overcome the inherent difficulties created by the collapse of state institutions in countries of origin. For example, social media have already been used (unofficially) by families demanding truth for their loved ones, but currently the Greek state is not using such approaches. An interesting example comes from Italy where in the aftermath of a shipwreck authorities set up a Facebook page and designed a form to be completed by relatives which made possible for 22 out of 24 victims to be identified.44 Local migrant communities and NGOs have a valuable network of contacts that would greatly benefit this outreach strategy and maximize future identifications, as well as embassies and consulates of some of the states of migrant origin.

2. Improving existing practices and upholding legal duties

It is essential that the agency responsible for leading the investigation collect and appropriately store all post-mortem data in the aftermath of shipwrecks, including personal belongings (e.g. notebooks, credit or SIM cards, jewelry etc.). Similarly, testimonies from witnesses should be systematically collected with the aim of gathering information to be used for identification of the victims. Currently, a superficial interview is conducted, or – in cases where a criminal investigation is under way – survivors are often primarily questioned about smugglers. Mindful of the tension created by the dual mandate of the coastguards, it is important that all post-mortem data be managed and stored according to international standards. Similarly, the state should assume responsibility for managing the cemeteries where unidentified victims of shipwrecks have been buried, being the leading authority for investigations into the identification and the management of post-mortem data. Similarly, the state should assume responsibility for managing the cemeteries where unidentified victims of shipwrecks are buried. An example of a Dead Bodies Identification Form for early data collection – and relatively fast to complete - can be found in the ICRC Field Manual for managing dead bodies after disasters,[45] while in the long term the use of Interpol's DVI form should be targeted.[46]

Being the responsible authority to lead investigations into the identification and the management of post-mortem data, the state should also control and manage the cemeteries. The new cemetery in *Kato Tritos* is a point of departure from past practice still it is largely run by non-state agents.

3. Respecting Families' Needs

There is a need to ensure the inclusion of the families at all stages of the process. One important step in that direction is to grant families of missing migrants a short-term 'humanitarian visa', which would enable them to visit Greece for a short period of time to contribute to the search and identification processes, as well as participate in the burial. This is not only a humanitarian imperative. Families are probably the only ones who posses

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[44] See report on Italian Authorities (add full ref once available).

[45] ICRC (2009) Management of Dead Bodies after Disasters: A Field Manual for First Responders. Geneva; ICRC.: Annex 1.

[46] http://www.interpol.int/INTERPOL-expertise/Forensics/DVI-Pages/Forms

information that can maximize the identification prospect. This coupled with the extremely tight timeframe within which identification is most possible, usually the first 2-3 days after shipwreck, suggest that encouraging families to identify their loved ones is the most obvious and safe way to increase identification rates.

4. Additional resources from the EU

As this is a complex humanitarian challenge that exceeds the current capacities of the Greek state, let alone of the local authorities, it is imperative that the Greek authorities utilize existing funding opportunities, such as financial support from the EU, to address the humanitarian needs of families and increase the capacities of local agencies.[47] For example, interpretation services or psychological support to families participating in identification process are currently offered by NGOs, but funding should be made available to ensure such critical services will continue to be available in the future. Healthcare and sanitation are included in the priority list of the emergency support financing decision of the DG of Humanitarian Aid of the European Commission for 2016.[48] Local authorities have also been exposed to traumatic experiences, such as for example coastguards having to recover dead bodies of children and babies has had an adverse emotional impact; currently there is no provision for their systematic psychological support so we recommend that similar services to provide psychological support should be offered to local authorities, particularly coastguards.

Building a transnational architecture to manage data around missing migrants

In other contexts, such as that of Mexico and the Central American region, efforts to ensure the sharing of data around missing migrants have been led by civil society and largely between states.[49] However, in the Mediterranean case the fact that ante-mortem data concerning missing migrants must come from many states in several continents complicates the problem. As such, there is a need both for European states holding post-mortem data to have national structures that can centralize such data, and for them to have access to ante-mortem data from a large range of other sources, including potentially states of migrant origin, other European states, and directly from families.

- Post-mortem data in European states to be centralized nationally, stored securely, and to be managed by an agency independent of concerned states that can win the trust of families, and that ensures a role for civil society organizations, including those representing families of missing migrants, and independent organisations with forensic expertise[50];
- Families of missing migrants to be given the required support and information to follow the process of data collection, management and identification, and any subsequent exhumation and repatriation of bodies, in ways that put them at the centre of that process;
- All data collection, management and storage to be subject to both relevant data protection standards and to an explicit separation of data used for humanitarian identification purposes and that for border control and law enforcement.

A transnational architecture is required that would enable the collection and storage of both ante- and post-mortem data concerning missing migrants from a range of sources, including state authorities and families. Matching of ante- and post-mortem data can then be made either at national level or through some transnational structure. We recommend

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[47] See for example, the operation priorities of ECHO http://ec.europa.eu/echo/sites/echo-site/files/esop.pdf

[48] For further information http://ec.europa.eu/echo/sites/echo-site/files/esop.pdf and http://ec.europa.eu/echo/funding-evaluations/funding-emergency-support_en [last accessed 25 July 2016]

[49] Reineke, Robin (2016) Missing persons and unidentified remains at the United States–Mexico border, in Brian, T. and Laczko, F. (Eds), Fatal Journeys Volume 2, Identification and Tracing of Dead and Missing Migrants. Geneva: IOM.

[50] Such as ICRC and ICMP.

that efforts begin to find ways in which states can cooperate and collaborate on data sharing. This could begin with the agreement of a set of principles, based on international human rights law, that could provide the foundation for such cooperation. These principles could take as their point of departure, the guiding principles developed by the ICRC, around the treatment of persons missing in conflict and political violence.[51] On the basis of such agreed principles and with a commitment to a human rights-based approach, a set of protocols can be developed, in collaboration with technical experts such as the ICRC and the International Commission for Missing Persons, that describe how data is collected, managed and shared, between states, families and other actors, in a way that maximises both the identification of missing migrants and the involvement of families in that process.

[51] ICRC Guiding Principles

Appendix I LIST OF INTERVIEWS

Interview No	Participant's status	Date & Place
1	Cousin of missing person from Syria	3 December 2015, Skype interview
2	Daughter of a missing mother from Iraq	14 December 2015, Skype interview
3	Sister of two missing persons from Syria	16 December 2015, Skype interview
4	Sister of a missing person from Syria	21 December 2015, Skype interview
5	Father and uncle of missing persons from Syria	22 December 2015, Skype interview
6	Father of a missing kid from Syria	23 December 2015, Skype interview
7	Cousin of a missing person from Syria	25 December 2015, Skype interview
8	Aunt of missing person from Syria	31 December 2015, Skype interview
9	Mother and sister of missing persons from Syria	6 January 2016, Skype interview
10	Wife of a missing person from Syria	7 January 2016, Skype interview
11	Palestinian wife and mother of missing persons	7 January 2016, Skype interview
12	Palestinian cousin of missing persons	8 January 2016, Skype interview
13	Son and uncle of missing persons from Iraq	11 January 2016, Skype interview
14	Palestinian mother and wife of missing persons	12 January 2016, Skype interview
15	Father of two missing kids from Iraq	12 January 2016, Skype interview
16	Wife of a missing husband from Syria	14 January 2016, Skype interview
17	Mother of a missing kid from Syria	15 January 2016, Antakya, Turkey
18	Syrian brother of a dead	16 January 2016, Antakya, Turkey
19	Syrian brother of a dead	17 January 2016, Antakya, Turkey
20	Iraqi brother and uncle of missing persons	21 January 2016, Skype interview
21	Wife of a missing husband from Syria	25 january 2016, Skype interview
22	Sister of a missing person from Iraq	25 January 2016, Skype interview
23	Father of a missing kid from Syria	27 January 2016, Skype interview
24	Father of a missing kid from Syria	29 January 2016, Skype interview
25	Brother of a missing person from Egypt	30 January 2016, Skype interview
26	Palestinian cousin and bother in law of missing persons	8 February 2016, Skype interview
27	Wife of a missing husband from Syria	9 February 2016, Skype interview
28	Palestinian brother of missing person	9 February 2016, Skype interview
29	Mother of a missing kid from Syria	11 February 2016, Skype interview
30	Father and husband of missing persons	16 February 2016, Skype interview

	from Syria	
31	Father of a missing son from Syria	19 February 2016, Antakya ,Turkey
32	Father and husband of missing persons from Syria	20 February 2016, Antakya, Turkey
33	Brother of a missing person from Syria	1 March 2016, Skype interview
34	Father and husband of missing persons from Syria	1 March 2016, Skype interview
35	Brother of missing person from Iraq	15 March 2016, Skype interview
36	Grandfather of a missing person from Syria	16 March 2016, Skype interview
37	Mother of a missing son from Syria	18 March 2016, Skype interview
38	Father of a missing son from Syria	18 March 2016, Skype interview
39	Representative of the Afghan consulate in Athens	22 November 2015, Athens, Greece
40	Registrar, civil registry office of Mytilene	1 December 2015, Mytilene, Greece
41	Owner of funeral home in Mytilene	30 November 2015, Mytilene, Greece
42	Owner of funeral home in Mytilene	8 December 2015, Mytilene, Greece
43	Mayor of Lesbos	9 December 2016, Mytilene, Greece
44	Press officer of the municipal council	9 December 2016, Mytilene, Greece
45	Deputy Mayor of Lesbos	7 December 2016, Mytilene, Greece
46	Local MP	16 January 2016, Mytilene, Greece
47	Representative of the forensic office of Athens	29 December 2015, Athens, Greece
48	Representative of the coastguard in Lesbos	22 December 2015, Mytilene, Greece
49	UNHCR lawyer in Lesbos	11 January 2016, Mytilene, Greece
50	Individual responsible for the new cemetery in Kato Tritos	23 December 2016, Mytilene, Greece
51	Representative of Pro-Asyl NGO	19 December 2016, Mytilene, Greece
52	Representative of Pro-Asyl NGO	19 December 2016, Mytilene, Greece
53	Representative of Pro-Asyl NGO	19 December 2016, Mytilene, Greece
54	Afghan father of a missing person	14 January 2016, Mytilene, Greece
55	Afghan relative of a missing person	15 January 2016, Mytilene, Greece
56	Afghan relative of a missing person	16 January 2016, Mytilene, Greece
57	Coroner in Lesbos	9 February 2016, Mytilene, Greece
58	Director of the forensic science division of the Greek police	13 March 2016, Athens, Greece
59	Gravedigger at the cemetery of Aghios Panteleimon in Mytilene	14 March 2016, Mytilene, Greece
60	Coroner in Alexandroupoli	20 March 2016, Alexandroupoli, Greece
61	Registrar of the civil registry office in Alexandroupoli	20 March 2016, Alexandroupoli, Greece

62	Mufti of Alexandroupoli	21 March 2016, Alexandroupoli, Greece

Appendix II LEGAL MEMO

The summary below is prepared by Anna Vallianatou, based on a legal memo written by Vasilis Kerasiotis and Maria Spiliotakara. Several prompts address points that require further research or analysis.

Migrants That Go Missing In Their Effort To Cross the Aegean Sea

Greek Constitution and European Convention of Human Rights ("ECHR")

According to Article 2 (1) of the Greek Constitution and Article 2 of the ECHR, the Greek State has a positive obligation to protect and respect the life of individuals in its territory (including its territorial waters). This obligation applies irrespective of the individual's nationality or legal status, thus it also imposes a duty to prevent the loss of migrants' lives at sea. According to the European Court of Human Rights, this positive obligation "*entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life*".[52]

General international law principles on the protection of human rights and refugees

The safe and humane treatment of all persons rescued at sea, regardless of their legal status, stems from numerous principles of international human rights law, such as the protection of the right to life, freedom from cruel, inhuman or degrading treatment, and respect for family unity by not separating those rescued. These general principles are *inter alia* included in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, ratified by Greece with Law 2462/1997. Separately, the 1951 Geneva Convention Relating to the Status of Refugees, to which Greece is a party since 5 April 1960, establishes key principles such as non-penalisation for illegal entry and non-refoulment. Although determination of the refugee status is crucial in order to grant protection under international refugee law, Greece is responsible to admit all persons rescued at sea, and provide for access to asylum procedures in order to determine their status and protection needs.

International Maritime Law, transposed into Greek laws

There is a long-standing legal obligation of both States and shipmasters to provide assistance to any person in distress at sea. This obligation is unaffected by the status of the persons in question, their mode of travel, or the numbers involved. It is included in numerous international conventions which are transposed into Greek laws.53 In addition, the same international instruments impose an obligation on States to develop adequate research and rescue services. These general search and rescue principles also apply to migrants that go missing in their effort to cross the Aegean Sea.54

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52 *Öneryıldız v. Turkey*, European Court of Human Rights judgment of 30 November 2004, para. 89.

53 *See*, in particular, United Nations Convention on the Law of the Sea, 1982, promulgated with Law 2321/1995; International Convention for the Safety of Life at Sea, 1974, as amended, promulgated with Law 1045/1980, as amended with Presidential Decree 199/2005; International Convention on Maritime Search and Rescue, 1979, as amended, promulgated with Law 1844/1989, as amended with Presidential Decree 201/2000; and International Convention on Salvage, 1989, promulgated with Law 2391/1996.

54 According to the internal guidelines of the Greek coastguard, the State authority responsible for searching and rescuing people at sea, the search and rescue operation should last three days following a shipwreck or a distress signal by a ship.

Treatment Of Dead Migrants in Greece

Dead bodies do not carry a legal status (*i.e.*, as a "legal" or "illegal" migrant) and they should be treated equally, in accordance with the fundamental principle of human dignity envisaged in the Greek Constitution.[55] The general provisions for identification and burial apply also to dead migrants, although certain specific rules were recently developed in an effort to tackle the challenges inherent in the management of dead migrants in the aftermath of shipwrecks in the Aegean Sea.

Identification and management of forensic data

According to established jurisprudence of the European Court of Human Rights, Article 2 of the ECHR (protection of human life) imposes a duty on national authorities to investigate "non-natural" deaths, including those from shipwrecks in the Aegean Sea.[56] The coastguard is the authority responsible for retrieving bodies from the sea, and it leads the investigation for identification. As there is no specific Greek law regarding the identification of migrants that die at sea, the general regulatory framework applies.[57] In detail, when the coastguard retrieve the body of a migrant at sea (or washed ashore) they are obliged by law to collect all evidence necessary for the dead person's identification and investigation of the circumstances of his/her death.[58] Said evidence *inter alia* includes witnesses' testimonies, autopsies, and forensic reports. Identification is usually made visually by family members or friends of the dead. The coastguard has the duty to collect blood (or other body part) sample from the dead migrants' remains and send it to the Central Forensic Service in Athens. The latter conducts the DNA analysis, and then stores and indexes the genetic information on both identified and unidentified dead migrants in its genetics laboratory. This DNA information is then sent to the Forensic Science Division of the Directorate of Criminal Investigations, which is responsible for keeping and updating the national archives for DNA and fingertips, and guarantee the exchange of data in cross-border cooperation in combating criminality and terrorism. A separate department in the Forensic Science Division is in charge of keeping the genetic material of unidentified bodies, and compare DNA samples in order to assist in any future identification.

Two protocol numbers are assigned to each unidentified body: (i) the protocol number of the death certificate issued by the coroner; and (ii) the number given by the coastguard (usually the date of the shipwreck and a number assigned to the victim). These numbers are engraved on the tombs of unidentified migrants, thereby increasing the prospects of future identification.

Death Registration

The procedure for death registration is the same for anyone deceasing in Greece, irrespective of the dead's nationality or legal status. Death certificates are issued following a report by the doctor who treated the deceased or the forensic coroner or – in the absence of such doctor or coroner – the relevant police authority.[59] Death certificates are issued for both identified and unidentified bodies, as well as when a dead body is not found but death is deemed certain or judicially declared.[60]

These provisions also apply to migrants dying in their effort to cross the Aegean Sea, irrespective of whether their bodies are identified or not. According to a Greek coastguard,

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[55] Article 2 (1) of the Greek Constitution: "Respect and protection of the value of the human being constitute the primary obligations of the State".

[56] See a thorough analysis at http://ejil.oxfordjournals.org/content/21/3/701.full#xref-fn-35-1.]

[57] The Code of Criminal Procedure, alongside with Laws 3772/2009 on Forensic Service, Article 27 of Law 4249/2014 establishing the Directorate of Criminal Investigations, and Presidential Decree 342/1977, as amended with Presidential Decrees 14/2001, 223/2003, and 9/2012, setting out the operational rules of the Directorate of Criminal Investigations including its Forensic Science Division.

[58] Article 239 of the Code of Criminal Procedure According to Articles 31(2) and 241 of the Code of Criminal Procedure, the coastguard must conduct any interrogation in writing.

[59] Article 32 of Law 344/1976, as amended.

[60] Articles 38 and 39 of Law 344/1976, as amended. In addition, articles 39-50 of the Greek Civil Code lay out the procedure for the judicial declaration of presumed death.

however, in case a migrant's body is not found, his/her death is not automatically considered "certain" but "highly probable" Therefore, the deceased's family can obtain the death certificate only after receiving a judicial declaration of presumed death.

Burial

Article 8 of the ECHR (respect of private and family life) recognizes the families' right to bury their relatives. Stemming from this provision there is a duty to return the body to the relatives, as well as to organize and attend a funeral.[61] Pursuant to the fundamental principle of human dignity envisaged in Article 2(1) of the Greek Constitution, all dead bodies should be treated equally, including a burial with the appropriate religious customs and dignifying rituals.

In Greece, local municipalities are exclusively responsible for the establishment and proper functioning of cemeteries. The law recognizes equal burying rights to both Greek nationals and foreigners, irrespective of religion.[62] However, there is no central government regulation ensuring that cultural and religious burying rituals are respected. Each local municipality council is responsible for the adoption of a specific regulation regarding the burying rights and the general functioning of cemeteries. As regards the burial cost, a recent circular issued by the General Secretariat for Migration Policy provides for emergency funding in the context of the refugee crisis.[63]

Procedural aspects: burial and death certificate

In principle, the burial takes place only after a death certificate has been issued and provided to the cemetery.[64] In exceptional circumstances, however, the deceased can be buried without a death certificate, following a reasoned permission by the respective mayor (*i.e.*, the mayor of the place which is responsible for registering the death).[65] In case a body is buried without a death certificate, the latter can be issued only with the public prosecutor's permission within thirty days following the death. After that time limit, the death certificate can only be issued following a judicial declaration of death.[66]

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61 *Girard v France*, European Court of Human Rights judgment of 30 September 2011.

62 Article 6 of Law 582/1968 ("*Cemeteries are destined for the burial of all the dead, irrespective of religion or nationality. Municipalities and communities are obliged to grant to the cemeteries in their jurisdiction space for the burial of every dead person, parishioner or not, and of every other person having died in their prefecture, irrespective of whether the dead was a Greek national or a foreigner, Christian or not. For the burial of non-Orthodox or people of other religions, they [the municipalities] are obliged to determine, following the consent of the local Holy Bishopric, a specific space within the municipality's or community's cemetery.*").

63 Circular 5522/2016 of the Ministry of Interior, General Secretariat for Migration Policy, issued on 2 February 2016.

64 Article 35 of Law 344/1976, as amended.

65 Article 36 of Law 344/1976, as amended.

66 *Ibid.*

Mediterranean Missing

Understanding Needs of Families and Obligations of States

THE MEDITERRANEAN MISSING PROJECT

The Mediterranean Missing Project is a one year research project running until September 2016, funded by the Economic and Social Research Council of the United Kingdom. Resulting from collaboration between the University of York, City University London, and the International Organization for Migration, the project is one of the first efforts to systematically collect data and comparatively explore current responses to migrant bodies in the Mediterranean, and the impacts of a missing person on families left behind. In 2015, over 3,770 refugees and migrants are known to have died at sea while trying to reach Europe. The majority of these people are not identified, and in many cases bodies are never found. In each case, a family is left in a state of ambiguous loss, unable to fully grieve for their loved one. Despite the magnitude of unidentified deaths and the suffering of families, states have done little to address this humanitarian imperative. This project aims to shed light on the policy vacuum at EU and national levels, through investigating the policies and practices in Italy and Greece regarding the investigation, identification, burial and repatriation of migrant bodies. Research with families of missing migrants from a range of contexts aims to better understand the impacts of missing persons on families, both psychologically as well as economically and socially.

Research findings include the following publications:

- Italy and Greece country reports, including summary versions.
- A report of a study on the impact on families of having a relative missing in migration.
- A legal briefing summarising the obligations under International Human Rights Law of states concerning the migrant bodies and the missing.
- Studies of the legal frameworks relevant to missing migrants and the management of the bodies of migrants in Italy and Greece.

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