

Addressing Migrant Bodies on Europe's Southern Frontier

An agenda for research and practice

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The cover image shows the passport of a victim of a shipwreck in Lesbos in 2012.

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1. EXECUTIVE SUMMARY

In recent years thousands of undocumented migrants have died in shipwrecks at the coasts of Greece, Spain and Italy in their effort to enter the EU. This brief draws on field research on the Greek island of Lesbos, one of the key entry points of migrants to the EU that has seen repeated incidents of deadly shipwrecks. The note underlines the gaps and flaws in the policies pursued by local, national and EU authorities. Research shows that although several local agencies engage with the problem, none assumes responsibility. It reveals the absence of any provision for identification of victims or to inform families of deaths, and limited efforts to dignify the bodies with a decent burial. The needs of families of dead migrants are excluded from the official management of the issue.

Building on international experience in the management of the problem of missing persons in post-conflict settings, the brief offers concrete policy recommendations with regards to both ensuring that bodies are buried with dignity, and developing effective practices to enable identification of bodies. Ultimately, we seek to aid policymakers to find routes to informing families of the fate of missing migrants. Whilst the note is based on research findings from fieldwork in the Greek island of Lesbos, recommendations are likely to also be of relevance in Spain and Italy.

This briefing recommends:

- Measures to facilitate identification of migrant bodies, including through the collection of post-mortem data from bodies, and the creation of a database that links these to incidents of shipwreck;
- The training of coast guards and others engaged in the collection and management of migrant bodies in humanitarian protocols for dead body management;
- Steps to dignify the dead body through appropriate religious ritual, and the accommodating of families' needs, including through the introduction of a Humanitarian Visa to families of the dead, an EU grant to support burial or repatriation of the dead body, and a formalising of the role of immigrant communities in supporting the performance of religious rituals for the dead.

2. INTRODUCTION

This note aims to summarise the challenges to addressing the issue of unidentified migrant bodies in the European Union (EU). Driven by an epidemic of deaths at sea of would be migrants close to southern Europe's coastline, there is a humanitarian imperative and a moral and legal responsibility to attempt to identify the dead and inform relatives, and to treat the bodies of the dead with dignity and in a culturally appropriate way. This briefing uses initial research made in Lesbos, Greece, to plot a path to action on the issue, with the ultimate aim of driving a response from concerned agencies, local and national authorities and the European Union.

Incidents of migrants dying in their efforts to cross the Mediterranean and Aegean seas to enter the territory of the EU has become a tragic but constant element of EU border policy. In October 2013 for example a shipwreck of unprecedented magnitude near the Italian island of Lampedusa left approximately 364 immigrants dead.¹ Similarly deadly incidents have taken place elsewhere at the EU's southern sea borders, from the Spanish coastal enclaves of Ceuta and Melilla in the west to Lesbos, a Greek island off

¹ Shenker John (2013) 'Mediterranean migrant deaths: a litany of largely avoidable loss', Guardian, 3 October 2013, available at: <http://www.theguardian.com/world/2013/oct/03/mediterranean-migrant-deaths-avoidable-loss>

the Turkish coast, in the east. However, the lack of comprehensive data from member states and the EU demonstrates the lack of official attention paid to the issue. The Mediterranean sea kills would-be migrants independent of their legal status, not discriminating between refugees and economic migrants. Clearly the priority is to stop these deaths occurring, and an active civil society - particularly in those areas where coastal populations have to confront these deaths - is trying to counter governmental, EU and popular indifference to them. Here however, we are seeking to address a different issue. For every migrant death there is a family waiting for news from a beloved husband or son, from a father or a daughter, and a body often discarded in an unmarked grave. Current policies throughout the region are unable to either dignify the dead - reinforcing the idea of migrants as somehow deserving of less respect than EU citizens - or identify bodies and allow relatives to be informed. This note seeks to lay out the challenges to an approach that both dignifies and seeks to identify the dead. It is also hoped that making the dead grievable will increase efforts to prevent such deaths.

Sea borders remain the entry point of choice for the majority of 'irregular' immigrants to the EU², and the EU border is not constructed territorially, but by the sea itself as a potentially fatal barrier to entry. Hence, the specific nature of the (sea) border, coupled with the fact that irregular migrants follow illegal and non-conventional channels, increases the risk of deadly incidents. Most importantly, structural flaws in the design of border security partly account for the growing incidents of shipwrecks, with coast guard patrolling embedded within a securitization framework designed to deter illegal migrants from entering the sovereign territory of the state.³ The deterrence mandate of such agencies appears unable to permit them to effectively rescue migrants in danger.

States adopt radically divergent approaches to the crossing of the border by a dead migrant or a live one, as well as discriminating between a dead citizen and a dead migrant. As a result, the body of the dead migrant found within the territorial borders of the EU is denied any of the dignifying obligations that law demands for dead citizens. Such approaches from the authorities ensure - in Lesbos, as in other parts of the EU - that the bodies of migrants remain largely unidentified and disposed of with no consideration for either potential future identification or cultural preference of the community to which the migrant belonged. At the heart of the humanitarian approach taken here is that, despite efforts of the EU and its member states to externalise and delocalise the issue of migrant deaths at its borders, they remain within the legal and moral purview of Europeans. Addressing the migrant bodies at its borders remains the legal and moral responsibility of the EU and concerned member states.

Migrant flows into the Aegean have a long history, notably during the forced expulsion of orthodox populations from Turkey in the 1920s.⁴ Recent migration through the region has however been driven by the destabilisation of the Middle East and beyond, with massive waves of refugees and immigrants from Afghanistan, Iraq, Iran, and most recently Syria and Egypt entering the Aegean islands, which have become a principal entry point to the EU. Although precise data remain unavailable, it is estimated that by 2012 the number of arrested 'illegal' immigrants entering the Aegean was 29,000⁵ and the island of Lesbos their main entry point. This drives the selection of Lesbos as a context of research, and as an example to understand the problem in the EU as a whole. As in most affected states, there are no accurate data concerning the number of migrants who have died attempting to enter the EU at Lesbos, reflecting the lack of

2 Frontex (2012) 'FRAN Quarterly: Quarter 4, October -December', available at: http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q4_2012.pdf

3 Leonard Sarah (2010) EU Border Security and Migration into the European Union: FRONTEX and Securitization through Practices', *European Security*, 19:2 (2010), 231-254

4 Clark Bruce (2006) *Twice a Stranger: How Mass Expulsion Forged Modern Greece and Turkey*, London: Granta.

5 Troumpeta Sevasti (2012) *The Borders, the Island and the Refugees*, in *The refugee and migrant issue: readings and studies of borders*. [in Greek], Troumpeta Sevasti (ed), pp. 13-29, Athens: Papazisis

capacity – or potentially, willingness – of both the EU and the Greek state to comprehend or address the issue.

This note seeks to use the experience of Lesbos, and the large numbers of dead migrants that have confronted local communities, to understand how authorities understand and respond to these events. In particular we seek to understand how authorities could better ensure an approach that permits all possible efforts to be made to identify dead migrants. Deficits in policies and resourcing at national, local and EU levels demonstrate the need for a broad approach to the issue, focusing on how the traumatic experiences of coastal communities can create a space for advocacy and action to address humanitarian needs. We bring a perspective from significant work in contexts with families of those missing in conflict and political violence, where the distress of the families of those unaccounted for is extreme in the absence of a body or information about the missing person.⁶ In the context of missing migrants, the body of the missing person is present, while the affected family is remote and unknown. The challenge is to ensure that data are collected, from the body and from other sources, which maximise the possibility that families in states of origin can be informed and, potentially, bodies returned. Interviews revealed that even if repatriation is not possible, it is crucial for families' need for closure to be present at a funeral that follows relevant cultural and religious tradition. This will remain a substantial challenge for the institutions of the EU, its member states, and other agencies. This note is intended to be a first step to outlining an agenda for research, advocacy and practice that can begin to address that challenge.

3. MIGRANT BODIES IN THE EU

The humanitarian impulse that drives this effort to target the issue of unidentified migrant bodies within the territory of the EU is one that seeks to address the human suffering caused by the ambiguous loss of close relatives. Work in a range of contexts, but largely with families of those who have disappeared in conflict and political violence, demonstrates the huge impacts on families of those whose fate is unknown, and these are discussed below. It is clear however that missing migrants are a secondary issue: the primary problem is the fact of migrant deaths. That we choose to focus on identifying and dignifying migrant bodies does not seek to distract from the fact that stopping the deaths of migrants at sea must remain a priority. The discourse of securitisation of migration that leads to a delocalisation of the problem of migrant deaths at sea and the broader dehumanisation of migrants is responsible for both the deaths and official neglect of migrant bodies.

Missing migrants: Needs of those left behind

The definition used here of a missing person is borrowed from International Humanitarian Law:

[M]issing persons are those persons whose families are without news of them and/or are reported unaccounted for, on the basis of reliable information [...]. The term family and relatives must be understood in their broadest sense including family members and close friends and taking into account the cultural environment.⁷

⁶ Boss, Pauline (1999) *Ambiguous loss* Cambridge, MA: Harvard University Press; Robins, Simon (2013) *Families of the Missing: A test of Contemporary Approaches to Transitional Justice*. Routledge; Robins, Simon (2010) *Ambiguous loss in a non-Western context: Families of the disappeared in post-conflict Nepal*. *Family Relations*, 59: 253 – 268; Kovras Iosif (2014) *Truth Recovery and Transitional Justice: Deferring Human Rights Issues*, Routledge; Kovras Iosif (2012) *Delinkage Processes and Grassroots Movements in Transitional Justice*, *Cooperation and Conflict*, Vol. 47(1), pp.88-105

⁷ International Committee of the Red Cross (2003) *The Missing: Action to resolve the problem of persons unaccounted for as a result of armed conflict or internal violence and to assist their families*. (ICRC Doct/28). Geneva: ICRC.

Whilst in most jurisdictions national law will also seek to define who is missing, here a family centred approach is taken, acknowledging that without families to inform others, the missing will remain invisible. The fact that migrants are missing in the eyes of friends and relatives remains an aspect of migration in Europe that is barely acknowledged at an official level, by either states or the institutions of the EU. There appear to have been few rigorous efforts in any jurisdiction to count the dead to understand the scale of the phenomenon, or to acknowledge the human cost of such deaths.

The net impact on families and individuals of having a missing relative will be the sum of the emotional, psychological, material, cultural and social effects, subject to the resources of individuals and communities to cope. Extensive studies of the families of those disappeared in conflict or political violence have been made.⁸ There remains however little published work on the impact on families of individuals missing as a consequence of migration. The International Committee of the Red Cross (ICRC) has made a study on the needs of families of missing migrants in Senegal that echoed many of the challenges seen in families of those missing in conflict or natural disaster.⁹ For most migrants to the EU, migration routes involve a long trip overland and often a perilous boat trip to Europe. Taking into consideration the length of coastline of Lesbos and the proximity from Turkish shores this specific part of the Aegean has become the central point of entrance for migrants and refugees, and has also set the stage for the establishment of a smuggling network across the border that is often responsible for the deaths at sea. In most cases those migrating are younger people who make the greatest contribution to family livelihood; indeed, migration is often motivated by a desire to counter general poverty. Almost half of all missing migrants in the ICRC study were married and many had children. Given the profile of those migrating, their loss is likely to have an economic impact on the family left behind. In the ICRC Senegal study, 92% of families said they had economic difficulties linked to the disappearance.

A range of studies indicate that situations of ambiguous loss predict symptoms of depression, anxiety and family conflict.¹⁰ The literature reveals the need of families of the disappeared for closure to end the ambiguity of loss, but in most contexts this is something denied families. Most family members who took part in the ICRC Senegal study experienced a range of symptoms they directly linked to the disappearance of their relative, including disturbing thoughts, sleeping difficulties, nightmares and an inability to concentrate. These have been linked in other contexts to a general anxiety that promotes sadness and self-isolation.

Perhaps the most urgent need of families of missing migrants is for news of the missing: they seek to know if loved ones are dead or alive. Many families of the missing believe they may still be alive, perhaps imprisoned in a transit state or in Europe. Where a migrant is presumed to be dead most families seek to know the place of burial and many seek that remains be returned. For the Senegalese families studied by the ICRC, when relatives go missing on the journey north, families are desperate to find information about their loved ones: 73% had consulted fortune tellers. In some cases, community members are living in destination or transit states and may be able to provide some information. In Greece, there are strong ethnically defined networks linking longer term residents and communities in states of origin, and these can often provide a conduit for information to flow between relatives of the dead and survivors of shipwrecks or others who are aware of boats that failed to reach Lesbos. Inevitably

8 Robins Simon 2013 *Families of the Missing: A test of Contemporary Approaches to Transitional Justice*. Routledge

9 <http://www.icrc.org/eng/assets/files/2013/familles-migrants-senegalais-disparus.pdf>

10 Boss, Pauline (2006) *Loss, trauma and resilience: Therapeutic work with ambiguous loss*. New York: Norton., Boss, Pauline (2004) *Ambiguous Loss Research, Theory, and Practice: Reflections After 9/11*. *Journal of Marriage and Family* 66: 551–566.

however, such sources are unreliable and often difficult for families in Africa and the Middle East to access. In most cases, the Senegalese families had received no news at all of the missing.

Addressing the need for information for most families will be hugely challenging. Of those migrants who die at sea it is likely that only a minority of bodies are retrievable: those whose remains never come ashore are unlikely to ever have their deaths confirmed, except by surviving witnesses. Where bodies are retrieved identification is only possible either where the concerned authorities (whether local, state or EU) have the commitment, expertise and resources to collect post-mortem data, or a survivor or witness can inform families. This is discussed below.

Data on deaths

There is no centralised collection of data on migrant deaths at sea in the EU, and only inefficient collection of data in member states. The closest to a comprehensive review of deaths is unofficial, from blog site Fortress Europe, and records 14,309 deaths trying to cross the Mediterranean sea and the Atlantic Ocean towards Europe between 1988 and 2013, where these data are taken from media reports.¹¹ This should be considered a lower limit on the true number of deaths in this period, with the probability that many deaths were not recorded in the media and many others were lost at sea and not witnessed. In turn, the number of these dead who are identified is unknown. Another campaign – United Against Racism – has collected data on migrant deaths at the EU border (but not restricted to deaths at sea) and has recorded 17,306 since 1993.¹² The United Nations High Commissioner for Refugees (UNHCR) estimated that 1,500 people died in the Mediterranean in 2011, while Fortress Europe puts the number at over 2,000. Despite the uncertainty over the numbers of deaths, recent events – such as the deaths of 364 migrants near Lampedusa in October 2013 – demonstrate that the carnage continues on a significant scale.

That states and the EU find such deaths of insufficient importance to collect and disseminate comprehensive data is a demonstration of the challenge facing those seeking to advocate both for the prevention of such deaths and the addressing of issues arising from dead migrants not being identified. That data do not exist, other than from civil society, adds to the official invisibility of irregular migrants in general and those who die at the EU's borders in particular. The list of dead prepared by United Against Racism shows that much data comes from the recovered bodies, which are almost always unidentified.¹³

For the scale of migrant deaths at sea to be known and acknowledged, the EU and its member states must take seriously the issue of collecting comprehensive data on the phenomenon. This demonstrates that there is a politics of measurement whenever such issues are discussed, and there is an alarming resonance between the environments in authoritarian states that prevented the number of those disappeared by the state from being known, and the refusal of state and EU authorities to discuss or enumerate migrant deaths at sea.¹⁴ The need for such data to give the issue visibility coincides with the need for all recovered human remains to be the subject of study and appropriate data collection to allow for the possibility of identification. In the construction of a database of remains recovered that can cross-reference a list of those known to be missing, coordination across the EU is a prerequisite.

Although we have followed a long bureaucratic process requesting official data on shipwrecks and deaths at sea from the Coast Guard in Lesbos, we received no reply,

11 <http://fortresseurope.blogspot.it/2006/01/fortress-europe.html>

12 <http://www.unitedagainstracism.org/campaigns/the-fatal-realities-of-fortress-europe/>

13 <http://www.unitedagainstracism.org/pdfs/listofdeaths.pdf>

14 Brysk, Alison (1994) The Politics of Measurement: The Contested Count of the Disappeared in Argentina, *Human Rights Quarterly* 16(4): 676-692.

revealing the secrecy that circumscribes the topic. The only available data we could trace was found on the official website of the Ministry of Mercantile Marine.¹⁵ The data refer only to arrested (live) migrants and its scope is limited up until 2008; it should be highlighted that the vast majority of shipwrecks have occurred in the period following 2008.

Human rights, law and the dead body

Whilst discussions about the rights of migrants who die trying to enter the EU continue, here we seek to understand the obligations of states (and the EU) when the body of a dead migrant is found on the territory of a member state. This will discuss both the general case, and the specific case of Lesbos and Greek law.

Whilst conventional wisdom suggests that the dead do not have rights, there are many legal obligations around the treatment of human remains. In most jurisdictions for example it is mandatory to inform the authorities, such as the police or a coroner of a death, as well as ensuring that remains are disposed of appropriately. Where the fact of death is not known to the family of the deceased, rights-based legal obligations arise in ensuring that efforts are made to inform them: this in turn demands that all efforts are made to identify the dead. The legal motivations for such an approach will be discussed here.

Beyond law are concepts of the ‘dignity of the dead’, social norms that seek to ensure that decedent’s wishes are respected because society has chosen, within limits, to adhere to the principle of autonomy.¹⁶ This suggests – but does not mandate – that where possible a body should be treated and disposed of in accordance with the religious or other cultural beliefs of the deceased. In Greece, where migrants died crossing the Evros river at the Turkish border, since it was reasonable to assume that most migrants were Muslim (from Afghanistan, or Arab states) the local Muslim community took responsibility for ensuring that the body was washed and buried according to Islamic practice in a specially established graveyard. It should be noted however that this presumes a desire by the state – or by local communities – to dignify the dead. The evidence from this study in Lesbos is that neither local nor national authorities in Greece have any commitment to treating dead migrants with dignity: the result is that unidentified migrants are hastily buried in unmarked graves (see below). Such a pattern is reproduced in many other coastal EU states where migrants’ bodies are found.

The first legal point to understand is the status of a dead migrant relative to a live one. A migrant entering an EU state through irregular channels is considered ‘illegal’ in that his status within the territory is not regularised. This is the logic that differentiates the migrant from the citizen, and it is precisely this status that drives the state’s desire to monitor and control the ‘illegal migrant’. However, a dead migrant poses no such challenge to the law and as such cannot be ‘illegal’: in practice such bodies are of little interest to the state and once a migrant is dead he or she is beyond the legal purview of the state as a threat to that state’s interests. It remains unclear however that there is any difference under the law between a dead citizen and a dead migrant. This difference has however been precisely symbolically revealed by the decision of the Italian government to give posthumous citizenship to the dead (Eritrean, Syrian and Somali, primarily) from the Lampedusa disaster of October 2013. This appears to suggest that politically and practically, even if not legally, there is a profound difference between a migrant body and that of a dead citizen. In extreme contrast to those who died, survivors were charged with illegal migration.¹⁷

¹⁵ <http://www.yen.gr/wide/home.html>

¹⁶ Smolensky, Kirsten Rabe (2006) Rights of the Dead, Arizona Legal Studies Discussion Paper No. 06-27.

¹⁷ <http://heindehaas.blogspot.com/2013/10/lampedusa-only-dead-can-stay.html>

EU and international legal frameworks

A range of legal instruments have steered norms relating to those missing in situations of armed conflict, from International Humanitarian Law and International Human Rights Law.¹⁸ These all emphasise that it remains the responsibility of the state to make all efforts to ensure that families are informed of the fate of missing loved ones. Whilst there is no comparable framework in international law relating to missing migrants, the norms established in law clearly mandate states to take all possible measures to identify the dead.

The European Convention on Human Rights (ECHR) enshrines a number of fundamental principles that are of relevance to the issue of migrant bodies. Perhaps most relevantly here is Article 3 concerning the prohibition of inhuman or degrading treatment. The European Court of Human Rights found that the silence of a government concerning the fate of the Missing “in the face of the real concerns of the relatives [of the missing] attained a level of severity which could only be categorised as inhuman treatment”.¹⁹ This is an explicit articulation of obligations on a state given the emotional suffering of the families of those unaccounted for. Whilst this concerned Cypriots ‘disappeared’ by the Turkish state, as long as information concerning the fate of the missing is withheld from family members, one can draw analogies between state obligations in the two cases. In the case of missing migrants, data concerning the identity of the dead has not been collected nor efforts made to communicate this to the families of the dead; as such a case can be made that the concerned governments are in breach of the spirit of Article 3 of the ECHR.

Greek law and dead bodies

In sharp contrast with the Greek state’s extensive regulations on immigration,²⁰ there are no legislative or regulatory provisions with regard to the identification and burial of migrants dying in their efforts to cross the Greek border. In the absence of a specific regulatory framework (*lex specialis*) the general Greek laws and regulations concerning the treatment of the dead apply, irrespective of whether the body is that of a citizen or a foreigner, and of whether the dead foreigner is ‘legal’ or ‘illegal’ according to the current classifications of the Greek migration regulation.

Under Greek Law, local municipalities are exclusively responsible for the establishment and proper functioning of cemeteries.²¹ Each local municipality council is responsible for the adoption of a specific regulation regarding the burying rights and the general functioning of cemeteries.²² Article 6 of Law 582/1968, is of particular importance in the case of dead migrants:

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.

18 e.g. Henckaerts, Jean-Marie (2005) Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict. Int. Rev. of the Red Cross, 87(857).

19 <http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-68489-68957#%22itemid%22:%22003-68489-68957%22>]

20 See the codification Law 3386/2005 and the Greek Citizenship Law 3284/2004, as amended by Law 3838/2010.

21 Law 582/1968, Article 1, Paras. 1 and 2.

22 Ibid, Article 4.

Dead bodies do not carry a legal status (i.e. as a ‘legal’ or ‘illegal’ migrant) and they are treated equally pursuant to Greek legislation, in accordance with the fundamental principle of the protection of human dignity, as envisaged in the Greek Constitution: ‘*Respect and protection of the value of the human being constitute the primary obligations of the State*’.²³

In practice, however, dead migrants are treated differently, without the appropriate identification and the dignifying religious customs and rituals. Apart from the significant problems and regulatory gaps in the way that Greek cemeteries function, as reported by the Greek Ombudsman in 2008,²⁴ there is no central government regulation regarding the treatment of dead migrants. Despite the law demanding equal treatment of the dead, local municipalities have not adopted specific rules in order to systematically deal with the growing incidents of shipwrecks and deaths at the Greek border.

Taking Lesbos as a case study, we notice that there is no reference to migrants in the Statute of the Internal Organisation of Lesbos Municipality,²⁵ which *inter alia* regulates local cemeteries. According to the statute, the Cemeteries Department belongs to the Directorate of Environment and Greenery and is responsible to ensure the proper functioning of local cemeteries, according to national legislation and the municipality’s specific regulation. This general provision does not however give specific guidance to local authorities when confronted with the issues around the identification and burial of dead migrants, where ‘customary’ burial procedures do not apply. This lack of an institutionalised and standardised procedure leads to ambiguity with respect to the legal obligations of the relevant local authorities. As a consequence, the vast majority of unidentified migrants are buried in unmarked graves, without the necessary dignifying obligations pursuant to the Greek Constitution and legislation. Taking all these into consideration, the establishment of a new regulatory framework concerning the specific obligations and responsibilities of each authority with respect to the management of dead bodies, irrespective of nationality, religion or legal status, is deemed necessary.

4. MIGRANT BODIES IN LESBOS

Whilst frameworks of national law in principle determine how national and local authorities respond to the discovery of the bodies of migrants, experience in Lesbos is seen to be very different. The fieldwork in Lesbos and interviews with local actors illustrate that the most significant problem in the management of migrant bodies is the absence of a specific official procedure. As media and political elites frame deaths at the Aegean coast as ‘tragic’ accidents, burial and identification of the dead bodies are perceived to be acts of benevolence, not acts of justice driven by a positive obligation on behalf of the authorities to act.

In an effort to understand the procedure following a shipwreck and the burial of the victims as well as to identify the state agencies tasked with managing this problem, we turned to the local authorities in Lesbos. It quickly became obvious that there is a legal and bureaucratic ambiguity circumscribing the problem, creating a gray zone where no authority assumed responsibility. The coast guard informed us that their duty is limited to giving the dead body to the hospital; then the responsibility is passed to the district attorney. In turn the district attorney, assuming that the death is not caused by criminal action, ceases to take responsibility and the body is left in the local hospital. The

23 Article 2, Para. 1 of the Constitution of Greece, as revised by the parliamentary resolution of May 27th 2008 of the VIIIth Revisionary Parliament.

24 Including, *inter alia*: lack (non-adoption) of the envisaged municipality regulations; interference of and management by the local Churches; imposition of unfair/disproportionate fees; and discriminating treatment according to religion, ideology or nationality. The 2008 Greek Ombudsman Report concluded that the re-examination and modernisation of the current legal framework was necessary.

25 Approved by Decision 20592/6524/7.1.2012, published on the Government Gazette No 395/21.2.2012.

forensic surgeon of the hospital in Lesbos informed us that his duty ends with the forensic examination of the corpse. To our question as to what happens next, he had no answer, explaining only that speedy burial was necessary as the hospital does not have the necessary infrastructure to preserve the bodies for more than a couple of days. We then turned to the director of social services of the hospital; she informed us that in general they take care of unidentified bodies, but there is no budget allocated for the burial of dead 'illegal' migrants, only for the short-term treatment of living migrants. She kindly suggested that we speak with the mayor, as due to the lack of funds the hospital usually asks the municipality to take responsibility for the burial. In the end, it became obvious not only that an institutionalized procedure to deal with the bodies of migrants is absent but most importantly that this grey zone serves to ensure that local authorities take no legal or moral responsibility. Those familiar with Greek bureaucracy would understand that this is a common tactic of 'blame avoidance'. This coupled with the economic crisis that has severely affected the Greek public sector – making local authorities reluctant to assume costly responsibilities, such as burials -- explains the absence of a concrete policy, which has dire effects on the management of migrant bodies and on their families.



Figure 1 Photo of a grave of an unidentified migrant in the cemetery of Lesbos. The marker reads: 'Afghan, 3-10-07, No.1' (photo taken July 2013)

Probably the most visible aspect of this arbitrary and uncoordinated handling of the problem is the burial of the dead. A visit to the local cemetery in Mytilene revealed bodies lightly covered by earth, while the only mark on the graves is a broken stone on which is written the (purported) nationality of the migrant, a number and the date of death (e.g. Afghan n.3, 5/01/2013, see Figure 1). In the absence of any identity papers on the body, or a survivor to confirm identity, the identities of victims are rarely known. As such, the claimed nationality is often based on a more or less well informed guess on part of the authorities. Most importantly, the arbitrary and uncoordinated burial means that even the most fundamental religious and cultural rituals are not followed; instead the bodies are usually simply dumped in the grave. This can also be attributed to the fact that the local hospital does not have the necessary infrastructure (in terms of mortuary fridges) to preserve the body for more than a couple of days, therefore a speedy burial is necessary. This narrow time frame inhibits both an identification process and a decent burial.

One of the key issues that emerged during the fieldwork is the absence of a national or EU budget allocated for the burial of the bodies of the victims of the growing phenomenon of deaths at sea. In most cases the cost of burial is assumed by migrant communities in Athens or by local charities. It is worth noting that government authorities are absent throughout this process, revealing the political framing of the problem as an accident rather than a legal obligation on part of the state. Part and parcel of this policy is the absence of a standardized process of identification of dead bodies. We received contradictory information with regards to whether samples of the genetic material (DNA) of dead migrants are collected and stored for future identification: even well informed observers and local authorities could not provide a definitive answer. However, even were the police to take a DNA sample, this would not aid identification since such post-mortem data is not linked to a gravesite. The burial process is typically undertaken by the local municipality without coordination with the police, and so the police forensic record maintained in Athens is not matched to a specific grave in the cemetery of Mytilene. We recorded several incidents of families who tried to locate the remains of their relatives some years after their death, yet the absence of a systematic record of burial sites linked to forensic evidence made exhumation impossible.

Most importantly, families of the dead who take the decision to travel to the island of Lesbos in an effort to identify their relative often face insurmountable bureaucratic obstacles. For example, as they have to travel quickly to Lesbos, they often lack necessary documentation and incidents occurred where they had been detained or denied entrance to the country. Apart from being highly degrading, a critical window of opportunity for the identification of the dead is often lost.

A related problem is the absence of a clear policy for the repatriation of the dead. Interviews with migrants and local NGOs show that the legal and bureaucratic ambiguity circumscribing the process has forced families to pay exorbitant amounts of money to circumvent bureaucratic obstacles. Within a very short time, a family has to get the approval of a number of different agencies on issues ranging from hygienic status to legal paperwork for the dead body to be repatriated. In turn, these obstacles have set the stage for the emergence of a network of exploitation of human suffering that receive significant amounts of money to carry out these processes, usually with no concrete result. As a result, families are deprived of their right to repatriate the remains of their loved ones, and are frequently the victims of corruption and ruthless exploitation.

Against this backdrop of the failure of the state at all levels, a vibrant local civil society has made repeated calls to local authorities to establish a more concrete and formalised policy, but to no avail. The efforts of local people have largely focussed focusing on ad hoc advocacy in the aftermath of a shipwreck, such as putting pressure on local authorities to take DNA samples, meet religious rituals, and carry out a decent burial, while continuing to assist relatives on legal matters. In contrast to the performance of the state, local communities have responded with a humanitarian reflex that seeks to honour and humanise dead migrants. This echoes the humanitarian stance of the local community in Lampedusa, which significantly deviates from the securitization discourse. The most obvious example was the vocal critique of the mayor of Lampedusa for not offering a decent burial to the victims of shipwrecks.²⁶ Local migrant communities in Greece have been the most significant source of information both in informing families in states of origin about incidents of shipwreck, but also in supporting local authorities by providing valuable assistance in the burial process, as they often raise funds to allow a proper burial according to religious obligations, where the faith or nationality of the victim is known.

26 <http://www.theguardian.com/world/2013/oct/18/lampedusa-boat-disaster-victims-state-funeral>

5. TOWARDS EUROPEAN POLICIES TO ADDRESS THE ISSUE OF MISSING MIGRANTS

A human rights-based approach

Whilst the EU has almost since its inception chosen to define itself as an entity in which human rights are pre-eminent, the discourse around migrants has become largely disconnected from this. A political narrative predominates in which migrants are either largely themselves to blame for choosing to travel, or are the victims of tragic accidents: the role of policy in increasing migrant deaths is ignored. As such the rights of migrants, and even their status as potential refugees or asylum seekers, are rarely considered an element that could and should drive approaches to the issue of irregular migration.

For dead migrants, the issue of rights are less relevant (see above), but families have a range of fundamental rights that are potentially violated by a failure of European states to do all that is possible to identify the dead and inform their families. Taking a rights-based approach to the issue would ensure both that the lives of migrants are prioritised in policy making, and that the rights of family members are considered in the treatment of migrant bodies.

A tracing approach

A practical approach to minimising the number of migrants who remain missing demands that:

- Bodies are retrieved whenever possible;
- Post-mortem data are collected from bodies;
- Ante-mortem data are collected from family members and friends of the deceased;
- Ante and post mortem data are correlated through the systematic sharing of such data as broadly as possible.

Currently there is no systematic effort to collect bodies of migrants. European agencies, notably Frontex, are tasked with enforcing policing of the border rather than ensuring that the bodies of dead migrants are retrieved. In some contexts, the law actively disincentivises civilian boats from rescuing migrants in distress due to a fear of prosecution for aiding illegal migration. Where bodies are found at sea fishermen often hesitate to collect them for fear of being hindered from their work in bureaucratic and legal demands when they return to land. Whilst it is likely that most of the bodies of migrants who die at sea will never be found, processes can be put in place to maximise the chance both that the living are rescued and that the dead are retrieved. This is likely to challenge the pre-eminence of an enforcement mandate.

When bodies are found, data must be collected from them systematically and according to international standards. Such data will include recording details of any documentation and distinguishing marks, as well as the clothes and any other possessions found with the body. Interpol, for example, has a standard form for the collection of such data.²⁷ Ideally, such data collection would include the collection of DNA data that could be compared with those of a relative as a means of unambiguous identification. It is unclear as to the extent that this is currently undertaken: the research in Lesbos was unable to establish definitively if and how often such samples were taken. To ensure both the quality and standardisation of such data, established protocols

²⁷ <http://www.interpol.int/INTERPOL-expertise/Forensics/DVI-Pages/Forms>

should be used:²⁸ this will then enable such data to be collected at a range of levels (i.e. regional and national) and shared throughout the EU. Such standardisation can also ensure that minimal protocols in management both of data and human remains are followed, to ensure that data and bodies can be consistently associated.²⁹ For such work to be done effectively demands a minimum level of forensic capacity, notably through the performance of autopsy:³⁰ whilst in urban centres such capacity does exist, in the peripheral coastal areas where bodies are found and processed, such capacity is often lacking, as seen in Lesbos.

Bodies can only be identified through the correlation of such post-mortem data with ante-mortem data collected from relatives or friends of the dead. In most cases those able to provide such information will be in the states of origin of migrants, although there will also be cases where survivors of shipwrecks and other migrants in EU states can provide such data. This process demands outreach both to communities of migrants in Europe and to communities of origin in Africa and the Middle East. Such an exercise will require the coordination by an agency or agencies that have a presence in such regions: an obvious candidate is the Red Cross / Red Crescent Movement, represented in all states and with a humanitarian mandate.

Ultimately a database must be created where post and ante-mortem data are associated. This demands the centralisation of all data, and the successful negotiation of potential constraints from EU data protection legislation. Such a database should be supranational, potentially hosted by an institution of the EU or other international body. Ideally, access to such a database should be to a range of relevant organisations at national and regional levels, transparently managed by a focal point on a centralised platform: mechanisms should exist to permit members of the public to access such data. It is also important to provide the necessary incentives (i.e. anonymity) to 'undocumented' migrants to access this database, and most importantly to immediately report an incident of a missing person. Outreach to affected families, particularly in states of migrant origin will be required.

28 ICRC (2014) 'The ante-mortem/post-mortem database An information management application for forensic data', January 22, 2014. Also available at: <https://shop.icrc.org/publications/the-ante-mortem-post-mortem-database-an-information-management-application-for-forensic-data.html>

29 ICRC (2009) Management of dead bodies after disasters: a field manual for first responders, Geneva: ICRC. <http://www.icrc.org/eng/assets/files/other/icrc-002-0880.pdf>

30 Council of Europe, Committee of Ministers (1999), Recommendation Np. R(99) 3 On the Harmonisation of Medico-Legal Autopsy Rules.

Good practice from the UK

The United Kingdom faces problems of migrant bodies on a scale incomparable with the EU's Mediterranean states. It has however confronted a number of cases that are analogous to those that confront Lesbos, and addresses these in way which can inform the larger problem in southern Europe.

Stowaways in the landing gear of aeroplanes landing at London's Heathrow airport rarely survive their journeys and bodies have been found in the landing gear and on streets in West London, having fallen from the skies as wheels have opened for landing. In one case a man found having fallen from a plane with Angolan currency in his pocket was identified through a SIM card that allowed calls to be made that confirmed him as a Mozambican, Jose Matada.¹ In another case a body was found in the landing gear of a plane that had arrived from Accra via Saudi Arabia. In the absence of any clues to identity or even country of origin, this case is now an entry in the UK Police Missing Persons database.¹ Such a database – accessible universally on the Internet – shows the power of both systematic collection of post-mortem data and of its central dissemination, permitting a range of identifying features, including tattoos, portraits, clothing and photographs, to be shared. DNA data of all those bodies in the database is stored, but for cases such as those of migrants no active search for ante-mortem data from families of the Missing is underway.

A more domestic tragedy was the death of 23 irregular Chinese migrants picking cockles in Morecambe Bay, who were swept away by rising tides and drowned. The British authorities devoted significant resources to identifying the 21 bodies that were found, including seeking information within the UK and travelling to China. The UK government also paid for the repatriation of the bodies to China.¹ This case demonstrates what can be done with the will and the resources to do so: it demonstrates the extent to which all possible avenues are not being explored to identify those whose bodies are found on the beaches of Lesbos.

Potential legislative avenues

There are several steps that can be taken by the EU and the Greek authorities both to decrease the level of human suffering related to this novel form of humanitarian disaster and to meet their obligations to the victims and their families. A straightforward step would be the introduction of an *emergency visa* that would enable family members of dead migrants to visit the country for a limited time. This is a low cost yet highly impacting policy, that will facilitate the identification process, help relatives to reach closure by being able to mourn their loved ones, allow the addressing of bureaucratic problems, and for the repatriation of the body, where desired.

In the absence of funds from national governments to address the issue of migrant bodies, *EU funding for the burial and identification* of the bodies of migrants is essential. Such funding could also be used to support the repatriation of the body, in cases where families desire it. As the deaths of migrants in shipwrecks at the periphery of the EU have become an epidemic, a specific fund dedicated to the decent burial of the dead is a morally appropriate response for an institution founded on principles of humanitarianism and human rights. Most significantly, the cost of providing a decent burial for the dead is negligible when compared to the budget allocated to implement EU border policy. This funding can also support fundamental infrastructural needs of local hospitals, such as for equipment necessary for the preservation of the dead body for the few days required to increase the potential of identification.

Funding should also be provided to support the collection of ante-mortem data from countries of migrant origin, a critical link absent in the current identification process. Such data, where coupled with the unimpeded flow of information between relevant actors, permits the correlation of post and ante-mortem data which offers the only systematic route to the identification of dead migrants.

A major structural problem of current EU border policy is that its primary objective is the deterrence of immigrants from entering the EU. Whilst it is beyond the remit of this

briefing to suggest that an enforcement mission is ill-equipped to rescue migrants, this point has been made elsewhere.³¹ Of great relevance to the management of the remains of dead migrants however is the capacity of coast guards and others who may come into contact with migrant bodies. It is appropriate that coast guards and all officials involved in enforcement of the EU's sea borders undergo training in dealing with the problem of the missing, and the challenges of identification of bodies. This would serve to familiarise them with the protocols of post-mortem data collection, as well as the collection of other evidence from the sea after shipwrecks. It is also recommended that an agency or agencies be mandated as responsible for the retrieval of human remains at sea and on coasts, ideally decoupled from a border enforcement mandate, such that bodies are systematically retrieved.

The Role of Communities at the Frontier

The role of migrant communities in Greece has been crucial in aiding identification of missing migrants in Lesbos, and they should be further empowered. Their network of contacts with countries of migrant origin has been the primary source of information about shipwrecks and the identification of the dead. Therefore, their role should be formalised as transmitters of information to and from states of origin, while supporting them to assume a key role in the reception of families and aiding them in their encounters with the local bureaucracy on issues related to burial, identification and repatriation of bodies. Such networks can also contribute to the ensuring of appropriate burial process, following cultural and religious rituals with which they are familiar..

Grassroots civil society actors have been effective in addressing some of these problems. Their rich knowledge and their local networks of contacts can serve to guide national and EU policy. Their experience in supporting relatives and survivors of shipwrecks is invaluable and should be incorporated into any policy.

Beyond formal agencies and civil society, important, steps can be taken to both prevent deaths at sea and ensure that bodies are collected, by providing training to local fishermen. Emphasising the steps required to rescue migrants in distress and to collect the bodies of the dead can have a humanitarian impact.

6. AN AGENDA FOR FUTURE RESEARCH

This note seeks to serve as the first step in shaping a comprehensive research agenda to explore this novel and complex humanitarian phenomenon. Hence, although we draw primarily on the local experience of Lesbos, the international nature of the phenomenon demands a comparative and multidisciplinary research agenda. To this end, and additional to the need to establish the scale of the problem by effectively counting the dead (see above), we identify three main gaps that need to be addressed by future research.

Comparative Research

As deadly accidents at sea constitute a growing phenomenon in the Mediterranean, it is important to compare experiences in Greece, Spain, and Italy. Comparative analysis is expected to shed light on similarities and differences in the policy responses, local reactions and potential paths of coordination. Similarly, the international experience can provide useful lessons to the effective management of the problem at the EU level. Additionally, understanding the lessons that can be learned from the effective work

³¹ Papadopoulos Dimitris, Stephenson Niamh and Tsianos Vasilis (2008) *Escape Routes Control and Subversion in the Twenty-first Century*, London: Pluto Press: 184.

with migrant bodies at the US-Mexican border would potentially enrich the toolkit with which to address the problem in the EU.

Understanding the legal framework

Another uncharted field of inquiry is that of the legal obligations of EU member states to missing and dead migrants, as well as to their relatives. As this note illustrates, the regulatory framework concerning dead migrants remains vague. Hence, a key objective should be to establish what legal duties are owed to dead bodies: do the dead have rights? Similarly, it is of paramount importance to determine the gaps in the legal framework established by the legislation of EU member states and the European Convention of Human Rights, among other international instruments.

Multi-sited ethnographic work

To fully comprehend the phenomenon of the missing migrant, multi-sited ethnographic research is required that can understand the human scale of the phenomenon both in the EU, where bodies are found, and in states of origin, where families await news of loved ones. At this stage, academic and media attention has been focused on the EU's borders. However, an attempt to understand the needs of families, and the experience of migration, requires intensive ethnographic work both in countries of migrant origin, and with survivors of shipwrecks in Europe. It is equally important to understand the role of migrant communities in Europe in the aftermath of shipwrecks

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