

Migrant Deaths at Sea: Addressing the Information Deficit

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Irregular migration by sea is not a new phenomenon. But in recent years the numbers have grown, border controls have tightened and routes have become more dangerous. This has resulted in a significant known loss of life, and unknown numbers of missing migrants and refugees. It is likely that most of the dead remain unidentified. Although routes may alter, in response to situations in countries of origin and departure, border controls, smuggling operations and weather, this continuing humanitarian tragedy is unlikely to end.

There is an acute lack of accurate – or often any – information about these deaths, and there is a pressing need to improve methods of recording, identification and tracing. This article reviews the context for these deaths, contrasts the responses to migratory deaths with responses to deaths in other humanitarian disasters, identifies current initiatives and suggests some ways forward.

Migrant deaths at sea

In the last two decades, a large but unknown number of migrants and refugees have set out on sea journeys to seek safety, security and better lives. An estimated 348,000 journeys were made in 2014.² Migrant journeys take place in the Mediterranean; in the Gulf of Aden; in the Caribbean; in Asia, in the Andaman Sea off Myanmar, the Bay of Bengal off Bangladesh, and the Indian Ocean between Thailand, Malaysia, Indonesia and Australia. Without legal options to enter or seek asylum, many turn to smugglers and are transported on unseaworthy boats on dangerous sea routes. In Europe, the result has been an “epidemic” of deaths;³ the dead and missing include asylum-seekers fleeing conflict and persecution – in the Syrian Arab Republic, Eritrea and Somalia – and migrants leaving situations of extreme insecurity and poverty, many from sub-Saharan Africa. Women, children and babies are among the dead.⁴

IOM's 2014 report, *Fatal Journeys: Tracking Lives Lost during Migration*, is the first comprehensive attempt to assess the number of deaths occurring globally.⁵ IOM estimates fatalities in 2014 exceeded 5,000, of which over 3,000 occurred in the Mediterranean. The report estimated at least 40,000 deaths globally since 2000. Anecdotal evidence suggests that the true number is likely to be very much higher. Over 400 deaths were reported in the Mediterranean in the first three months of 2015.⁶

Migratory deaths: Humanitarian tragedies

An important but unfortunate distinction has been made between loss of life in the course of irregular migrant journeys, and deaths in commercial shipping accidents or in humanitarian disasters. This has meant that data – which is routinely collected when a plane crashes, a ship is wrecked or an earthquake occurs – is not collected when migrant boats sink. Most of the information used in *Fatal Journeys* is from civil society organizations,⁷ often relying on media reports. This illustrates how little attention has been given by States to recording these deaths. States generally do not publish figures. Fatalities have tended to be regarded as the unintended consequences of State action to control borders, prevent irregular migration, combat smuggling and trafficking, and protect national security. Where irregular travel is seen as a form of criminality, this is used by authorities to justify withholding of information on security and operational grounds, and adds to the information vacuum.⁸ National statistics are generally not collected, nor – with very few exceptions – have systematic efforts been made to identify the dead. In Europe, Frontex, the European Union border control agency, publishes figures for illegal border crossings but not for border deaths. Action has yet to be taken in response to the Council of Europe Parliamentary Assembly's call to the European Union to set up “a proper system of data collection of the mortal remains of [migrant] lives lost in the Mediterranean and make it swiftly accessible to relatives.”⁹

Inaction by States¹⁰ is in striking contrast to their energetic and principled responses to large-scale deaths in domestic and international traffic accidents – shipwrecks or air crashes. Identification of bodies is here seen as an imperative, for burial and mourning, and for inheritance and other civil proceedings affecting the family,¹¹ “(t)he care with which our

dead are treated is a mark of how civilised a society we are.”¹² International protocols have been developed for recording the dead in humanitarian disasters, identifying their mortal remains and working with families. These build on well-established rules in time of war; they reflect the long humanitarian experience of the Red Cross and its work to trace missing persons; they also draw on field operations by international organizations.¹³ The work of the International Commission on Missing Persons has utilized developments in the fields of genetics, forensic science, and information technology to identify the dead and missing in conflict and in humanitarian disasters; online databases can be used by families.¹⁴

Central to these responses is recognition that families have a right to know the fate of missing relatives, whether their fathers, brothers, sisters, mothers or children have died, and if so where their remains are buried. This right is well established in international humanitarian law. Humanitarian practice respects a family’s right to know the fate of his/her missing relatives, including those missing on migratory journeys. Interpol recognizes that “for legal, religious, cultural and other reasons, human beings have the right not to lose their identities after death”.¹⁵ For families, the legal and human consequences of not knowing are profound: funeral and mourning ceremonies cannot take place; legal issues such as inheritance and land ownership remain unresolved; a wife cannot remarry.

Action to record fatalities and establish identities, where lives are lost in accidents and humanitarian emergencies, is both a matter of good policy and a central component of the human rights duty to respect the right to life. Similar approaches should be taken in the context of migrant deaths. But these deaths present particular challenges.

Challenges to identification

In November 2013, a conference was held under the auspices of the Red Cross and the University of Milan to review the management and identification of dead migrants in the Mediterranean.¹⁶ It identified a number of problems. They included: a failure to use shared standardized protocols and forms for recording and managing information at the national and regional levels; variable forensic capacity in urban and rural settings; lack of antemortem data to compare with the findings from dead bodies; “underdeveloped or inexistent” collection of information on all non-identified bodies, including migrants; existing databases were not accessible, “least of all by the victims themselves”.

These findings reflect general shortcomings in national forensic procedures, death management and death registration, both inside and outside Europe.

Last and Spikerboer’s research in southern European States found that in the absence of “specific laws dealing with the burial of unauthorized border crossers . . . bodies have been scattered among government, religious and specially designated cemeteries. . . . Depending on the practice of each individual cemetery, records may or may not specify location and cause of death . . .”. In Italy, unidentified bodies were brought to municipal morgues, hospitals, cemeteries and institutes of forensic pathology without a common record system.¹⁷

Robins and Kovras found that on the Greek island of Lesbos, a main migrant entry point for the Aegean, bodies were disposed of “with no consideration for . . . potential future identification”; the vast majority were buried in unmarked graves. Post-mortem data was not linked to the gravesite. They visited a cemetery on the island of Mytilene, and saw:

bodies lightly covered by earth, while the only mark on the grave is a broken stone on which is written the (purported) nationality of the migrant, a number and the date of death [e.g. Afghan, no. 3, 5/01/2013]. In the absence of any identity papers on the body, or a survivor to confirm the identity, the identities of the victims are rarely known . . . the claimed nationality is often based on a more or less informed guess on the part of the authorities.¹⁸

Similar problems are reported from the United States where “there is no centralized repository for all reports of missing persons last seen crossing the U.S.-Mexico border. A family can report a missing person to an office in one state, while the body is discovered in another. There is . . . no consistent way for these records to be connected”.¹⁹ In Mexico, the Inter-American Commission on Human Rights (IACHR) reported that:

lack of information concerning the chain of custody that the remains followed makes it difficult to track the remains . . . when there are no written records or photographs of the evidence being sent, who requested that the evidence be sent, when the request was made and where the evidence was to be sent; or when there is no record of who received the evidence, when and where the evidence was sent, and who has the evidence in safe keeping. . . .²⁰

Survivors are an important traditional source of information. But, anecdotally, it appears that they are often not

interviewed when they disembark, or not given an opportunity to report who was on a boat, and if they saw anyone drown. Globally, the circumstances of these deaths create particular challenges to identification because, inter alia, they are “open” disasters, deaths occur in a transnational context, illegality deters reporting by families, and consular notification may be ineffective or inappropriate.

“Open” disasters. After a commercial ship is wrecked or a plane crashes, numbers and identities are established using passenger lists. These are “closed” situations because the group at risk is known, and data from the bodies – post-mortem data – can be compared with information from families – antemortem data. But in an “open” disaster, the population at risk is defined only by who may have been present: which migrants happened to be on the boat when it sank, and with no passenger list this information is often very difficult to obtain. Another complicating factor is that many irregular migrants carry no form of identification; documents may have been taken by smugglers, or destroyed in order to avoid detection.

Transnational deaths. Antemortem data is unlikely to be available for comparison where deaths occur far from the individual’s home, often without any geographical link between the place of the shipwreck and the country of origin. The dead and missing may have passed through a number of countries on complex migration routes. Many families will not know that a relative was – or may have been – travelling in a boat which was lost, and few can travel to the place where the dead were brought, in order to search or identify, because of cost, distance or visa requirements.

Illegality and reporting. Where families are themselves irregular migrants they often fear that reporting a missing relative to the police will endanger their own immigration position. Unless a clear and visible distinction is made between recording and identifying deaths and enforcing border control, this fear will deter witnesses from giving information. Consular services. Where foreign nationals die abroad, information is typically transmitted to families through the consul of their state of nationality.

Consular services. Where foreign nationals die abroad, information is typically transmitted to families through the consul of their state of nationality.²¹ But consular notification may not be effective in the case of irregular migrant deaths if family addresses are not known or are remote from a capital. It may not be appropriate in the case of refugees who have left their countries illegally and whose families could be put at risk. In a civil war, administrative structures do not function.

Steps forward

The 2013 Milan expert conference recommended, inter alia, that:

- every unidentified body should be adequately managed, analysed and tracked to ensure proper documentation, traceability and dignity;
- common forensic protocols and standards are implemented at the national and European levels;
- national and European capacities are built for identification;
- “(s)earchable and open databases” are developed at the national and European levels; and
- focal points are established for families, including “provisions for families to easily obtain and provide information on their missing loved ones, free of charge and threats”.

In November 2013, the International Commission on Missing Persons set out its Agenda for the Future. It noted the need to improve the availability and quality of data, and proposed an international mechanism to deal with all missing-person cases – from conflict, human rights abuses, organized violence and migration. But it also warned of the risk that forensic science had outstripped ethical standards, emphasized the need to apply human rights standards to the use of forensic genetics, and stressed that the interests and welfare of the individual must have priority over the rights and interests of society.²²

A major impediment to identification is the lack of mechanisms to link post-mortem data from countries where dead migrants are found with antemortem data from families in countries of origin. These four initiatives show how recording and identification can be done:

Partnership with non-governmental organizations (NGOs) and intergovernmental organizations. In Yemen, a local NGO working with UNHCR searches for and collects the bodies of those washed ashore from shipwrecks in the Gulf of Aden; personal details of the deceased are recorded and the bodies are buried in a special cemetery; prayers are said.²³ Mos-

of the dead are from Eritrea, Ethiopia and Somalia.

Collaboration between civil society, government, families and forensic scientists. Civil society organizations in Central America are working with relatives of migrants to create a regional system to centralize the exchange of information about missing migrants and unidentified remains.²⁴ Databanks have been created in El Salvador, Guatemala, Honduras, and in Chiapas, Mexico. The databanks contain information on the background to each case of disappearance [date of departure, date of most recent phone call, the route and other information], antemortem data [a physical description of the person when he/she was alive], and genetic samples and profiles of family members. DNA sequenced from families is compared with DNA from the unidentified dead. The IACHR describes the creation of national forensic databanks and the sharing of information with other forensic databanks as a “best practice” that States on the migration route between Central and North America should replicate.²⁵

National inquiry commission. The Italian Government has established a special commission to identify bodies from two shipwrecks off Lampedusa in October 2013, working through forensic experts from Laboratorio di Antropologia e Odontologia Forense (LABANOF, Forensic Anthropology and Odontology Laboratory).²⁶ The commission has asked family members to provide documentary and personal evidence.²⁷ This information, including DNA samples, will be compared with post-mortem data taken from the bodies. This is the first investigation of its kind by a European State: it is an important precedent.

Civil society work with families. The Colibrí Center for Human Rights in the United States assists families to search for relatives by taking forensically detailed missing person reports and working with partners, including forensic experts and consulates, to help identify the dead. The Center collects and tracks data on the missing and unidentified along the entire United States–Mexico border.²⁸

Practical steps

Improving information in this complex area requires action at different levels – international, national and local. The starting point is that the response to migrant deaths should be essentially similar to that for deaths in commercial air crashes, shipwrecks or humanitarian disasters, where immediate steps are taken to count the dead, record the missing, identify the victims, interview survivors and preserve evidence. Priorities include the following:

- Developing methodologies and definitions that make data comparable between regions, countries and within national administrations;
- Agreeing on common methods of recording information and of tracking bodies for use in all situations where a migrant body is found or a missing migrant is reported; these should build on Red Cross and international humanitarian experience in recording, identifying and tracing the dead and missing due to conflicts and humanitarian disasters;
- Use of these recording methods by all those involved in rescue or management of bodies, including national and international coast/border guards, commercial vessels, police, coroners and mortuary officials;
- Training for these officials;
- Maintaining a strict distinction between records for the purposes of border control and records for the identification of the dead and missing;
- The immediate collection of data and preservation of evidence;
- Systematic efforts to identify the dead and missing, recognizing the families’ right to know the fate of missing relatives, report the missing, identify the dead and access information;
- The collection and dissemination of best practices.

The need for data banks is clear. Decisions on appropriate governance structures should be made after consultation between States, civil society, and humanitarian agencies, with substantive input from migrant and refugee communities, and after building on experience from Central America. In countries where there is evidence of corruption or collusion between State authorities and smugglers and traffickers, a State-led process of recording and identification will not be appropriate. Data banks should:

- be overseen by a body that represents parties with a legitimate interest, such as national authorities responsible for death registration, national and intergovernmental organizations such as the Red Cross, civil society and families;
- ensure scientific, secure and independent data handling;
- protect the privacy and security of families; irregular migrants, refugees and victims of organized crime are especially vulnerable;
- have no direct links to border control; and
- be accessible to families.

Conclusion

Migrant deaths at sea are unlikely to end. It will never be possible to record and identify all who die or are missing. But steps can be taken to address the present situation in which information is recorded [if at all] carelessly, randomly, in incomplete national formats or in no format, with the result that data collected in one place cannot be compared with data collected in another country, or sometimes even another part of the same country. One forensic anthropologist who works to identify those who die at the United States–Mexican border put it this way: “If this were to happen to us, God forbid, we’d want every jurisdiction possible doing everything they could to try to identify the person.”



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2 See www.unhcr.org/5486e6b56.html.

3. S. Robins, I. Kovras and A. Valliantu, Addressing Migrant Bodies on Europe’s Southern Frontier: An Agenda for Practice and Research. Available from www.qub.ac.uk/research-centres/isctsj/Research/WP-05-14/.

4 See, generally, S. Grant, “Migration and frontier deaths: A right to identity?” In: Who Believes in the Rights of Migrants? (M. Dembour and T. Kelly, eds.) (London, Routledge, 2011).

5 T. Brian and F. Laczko (eds.), Fatal Journeys: Tracking Lives Lost during Migration (Geneva, International Organization for Migration, 2014).

6 See reports from IOM: www.iom.int/cms/en/sites/iom/home/news-and-views/press-briefing-notes/pbn-2015/pbnlisting/iom-fears-over-300-african-migra.html; and UNHCR: www.unhcr.org/54db82536.html; (accessed 19 March 2015).

7 T. Brian and F. Laczko (eds.), Fatal Journeys: Tracking Lives Lost during Migration (Geneva, International Organization for Migration, 2014), pp. 207–212.

8 See Pickering and Webber, op. cit., p. 196.

9 Council of Europe Parliamentary Assembly, Doc. 13532, 24 June 2014.

10 In contrast to Italy’s admirable Mare Nostrum Operation, some European States went so far as to refuse support for rescue operations in the Mediterranean. See: www.publications.parliament.uk/pa/ld201415/ldhansrd/text/141015w0001.htm.

11 For example, the response to loss of Malaysian Air MH380 in March 2014.

12 Public Inquiry into the Identification of Victims following Major Transport Accidents: Report of Lord Justice Clarke, Volume 1, Cm 5012 (London, Her Majesty’s Stationery Office, 2001), paragraph 2.3.

13 Inter-Agency Standing Committee, Protecting Persons Affected by Natural Disasters: IASC Operational Guidelines on Human Rights and Natural Disasters (Washington, D.C., Brookings–Berne Project on Internal Displacement, 2006); O. Morgan, M. Tidball-Binz, D. van Alphen (eds.), Management of Dead Bodies after Disasters: A Field Manual for First Responders (Washington, D.C., Pan American Health Organization, 2009), available from www.icrc.org/eng/assets/files/other/icrc-002-0880.pdf.

14 See www.ic-mp.org/the-missing/.

15 International Committee of the Red Cross (ICRC), Article 3, Guiding Principles/Model Law on the Missing (Geneva, ICRC, 2009); Interpol, Resolution No. AGN/65/RES/13. 16 “First conference on the management and identification of unidentified decedents, with an emphasis on dead migrants: The experience of European Mediterranean countries”, Milan, Italy, 30 October and 1 November 2013.

17 T. Brian and F. Laczko (eds.), *Fatal Journeys* (Geneva, IOM, 2014), p. 99. See also: C. Cattaneo et al., “Unidentified bodies and human remains: An Italian glimpse through a European problem, *Forensic Science International*, 195(1–3):167.e1–167.e6.

18 S. Robins, I. Kovras and A. Valliantu, *Addressing Migrant Bodies on Europe’s Southern Frontier*.

19 R. Reineke, “Lost in the system: Unidentified bodies on the border”. Available from <https://nacla.org/search/node/Lost%20in%20the%20System%3A%20Unidentified%20Bodies%20on%20the%20Border>.

20 IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II, Doc. 48/13 (Washington, D.C., 2013), paragraph 186.

22 “The missing: An agenda for the future”, *International Commission on Missing Persons Conference report*, 29 October–1 November 2013, p. 18.

23 See <http://shsyemen.org/en/?cat=4>.

24 IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico* (Washington, D.C., 2013), paragraphs 199, 203 and 409(27).

25 IACHR, *op. cit.*, paragraph 203.

26 Italian Government Special Committee for Missing Persons, LABANOF, Medico-Legal Institute, University of Milan.

27 For example, photo ID, video footage, medical documentation, X-rays, personal effects (e.g. combs, toothbrushes), information on characteristic marks (e.g. tattoos, scars), and details of surgical operations and illnesses.

28 See <http://colibricenter.org>.

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