The death of more than 350 refugees and migrants in a shipwreck off the Italian island of Lampedusa on 3 October was perhaps the largest recorded tragedy of its kind, and has re-ignited debate on how to prevent deaths on Europe's sea frontiers. It has also underscored the urgent need to identify – to the extent possible - those who die not only in the Mediterranean but also on other sea routes, including the Gulf of Aden, the Andaman Sea, the Bay of Bengal and the Indian Ocean, where closed borders cause migrants to risk their lives on dangerous sea journeys.

Over the last decade, thousands of migrants and refugees have died (quick link to list of publications) attempting to cross the Mediterranean to reach southern Europe. Though no exact numbers are available, UNHCR estimates that 1500 people drowned or went missing in 2011. Despite the frequency and magnitude of these tragedies, European states do not regard migrant death and loss in the same way as deaths in armed conflict and humanitarian disaster which require systematic identification, nor do they recognise that migrants’ families have a right to know the fate of missing relatives.

Between January and September 2013, an estimated 31,000 refugees and migrants crossed Mediterranean to Italy; the majority were Eritrean, Somali, and Syrian. In the absence of legal migration routes, they rely on smugglers to arrange journeys from North Africa to southern Europe, often in unseaworthy boats, with inexperienced crews. Shipwrecks and loss of life are a frequent consequence. The boat which sank on 3 October had sailed from Libya. Most of the more than 500 passengers were from Eritrea and Somalia. It was severely over loaded; when Italian divers reached the hold, they found bodies packed so tightly that they could not escape. The captain was identified by survivors as part of a Libyan criminal smuggling organisation; he has been charged by the Italian authorities with multiple murders, causing a shipwreck and aiding clandestine immigration. Some of the dead were identified by survivors; others were buried in un-named graves, with a photograph on top of each coffin, and a teddy bear on the children’s coffins. Survivors were not allowed to travel to Sicily to attend the funerals; among those refused permission was a man whose wife and three children had drowned. In the case of the Eritreans, an offer by the Italian Red Cross to carry out DNA identification tests on bodies was frustrated when Eritrean officials told surviving relatives – wrongly – that each test cost $150, which they could not pay.

The number of dead, the fact that they included many women and small children, and the frequency of migrant shipwrecks have raised questions about EU action to prevent further deaths; the responses have included a wide range of proposals: more legal migration routes; more effective action against migrant smuggling and
trafficking; increased EU funding for refugees in Italy; expanded Frontex sea patrols; an emphasis on saving lives rather than preventing arrivals; support for the new EUROSUR border surveillance programme; burden sharing between countries on the EU’s southern border and northern EU member states; and EUBAM’s new border control operation in Libya. But there has been no public discussion about identifying the dead and recording the missing.

UNHCR in Lampedusa has spoken of the telephone calls it received from families asking if their relatives had survived, confirming Red Cross experience that the primary need of families of missing persons is to know what happened to their relatives. International agreement on three issues is of particular importance: that the dead should be dealt with respectfully, that evidence of their identity should be preserved, and that it should be stored in such a way that families in distant countries can access it in the future.

It is a principle that those who perish or go missing in humanitarian disasters should be identified. This principle should also be applied to migration tragedies, though it is infrequently acted on by governments. The Council of Europe’s Commissioner for Human Rights was the first European official to call for action; in 2007 he described it as ‘imperative’ to ‘identify and account for’ the thousands of undocumented migrants who die or go missing on the journey and whose ‘identities are unknown’. This was echoed in the EU’s 2009 Stockholm Declaration, which stated that avoiding migrant tragedies at sea is an ‘important objective’, and made a commitment that when ‘tragic situations happen, ways should be explored to better record and ...identify migrants trying to reach the Union’.

In 2012, the Council of Europe’s Parliamentary Assembly investigated the deaths of 63 migrants and refugees as a result of systemic failures to rescue a boat - ‘the boat left to die’ – left adrift in a highly patrolled area of the Mediterranean; it recommended that member states

respect the families’ right to know the fate of those who lose their lives at sea by improving identity-data collection and sharing. This could include the setting-up of a DNA file of the remains of those retrieved from the Mediterranean Sea.

Even Malta and Italy, in whose waters many shipwrecks take place, have yet to act on the recommendation.

The Red Cross has a long experience in identifying the dead and missing on the basis of international humanitarian law. In a 2003 report, The Missing and Their Families, the International Committee of the Red Cross set out the general principles and practices to be followed where there is loss of life in situations of armed conflict and humanitarian crisis. Information should be systematically collected on human remains and on events leading up to death; all remains not returned to the families should be preserved; when a relative has died, families should be informed; personal effects and – wherever possible – bodies should be returned to families. Methods of identification include the taking of DNA samples; families should be involved in
identification processes. Respect must be shown for cultural identity, and for funeral and mourning rites.

The ICRC has now developed an Ante-Mortem/Post-Mortem Database for use in situations of irregular migration, as well as in natural disasters and internal violence. Its starting point is that '[w]hen people die during wars or disasters, or while migrating, their bodies must be handled respectfully and with dignity; and the remains of unknown individuals must be searched for, recovered and identified'. The Database is designed for use by investigators and institutions involved in the search for persons reported missing and in the forensic identification of human remains.

UNHCR is moving in the same direction. In 2011 it proposed Standard Operating Procedures for Shipmasters (SOPs) who are faced with distress at sea situations involving undocumented migrants, refugees and asylum-seekers; these procedures may include guidance on the proper management of bodies and the handling of data on deceased persons. But, surprisingly, UNHCR's response to recent Mediterranean shipwrecks did not mention identification.

More recently, the International Organisation for Migration reportedly agreed with the International Commission for Missing Persons to work on those missing as a result of migration and trafficking. Started in Bosnia to identify the missing from the Balkan wars of the 1990s, it has identified 70% of a total of 40,000 cases: families register their DNA and then log on to the ICMP website to see if it matches that of bodies which have been found; testing kits are cheap, quick and effective. This combination of an accessible online register with easy to use DNA testing kits is well suited to the search for missing migrants.

The basic principles underpinning these policies reflect not only international humanitarian law but also recent developments in international human rights law. In a 2013 decision, the European Court of Human Rights considered human rights issues arising from the state's refusal to allow close relatives to take part in the burial of a family member, to know the location of the grave, and visit the gravesite; the Court found there had been an interference with Article 8 rights. While this decision concerns a very different factual situation, the judgment gives support to the right of a migrant’s family to know information held by the state on the place of death and burial. The Court also reviews related decisions by the UN Human Rights Committee and the Inter American Court of Human Rights.

Few migrants’ families have yet organised themselves to request information about missing relatives. One exception is a group of some 400 Tunisian families whose sons, husbands and brothers left Tunisia by sea in 2010, 2011 and 2012, and are missing; some had been on a boat which sank in 2012. They asked the Tunisian and Italian governments to check if their relatives had arrived in Italy, by comparing fingerprints from Tunisia’s national identity card records with prints from Italy’s immigration records of irregular arrivals. Tunisia sent fingerprints, and Italy agreed to review its records, but few matches were found.
Inevitably, families in this situation will expect that records exist, which they can access. They will find it incomprehensible that European states which record so much data on irregular migrants during their lifetime - including through the Schengen Information System and the Visa Information System - do not feel it necessary to record and make public their deaths.

The families have a right to know. The principles and technology for identification exist. The need is for resources and political will.