

# REGULATORY AND PROCEDURAL FRAMEWORK FOR MANAGING MARITIME CASUALTIES IN COASTAL WATERS:

*A Mechanism for Addressing Missing Migrants and Supporting Families within the Realm of International Migration Law*



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## I. INTRODUCTION

The Asia Pacific region is characterized by fast evolving and complex population movements, including the large-scale and often irregular movement of migrants and refugees. Throughout the region many take great risks to escape life-threatening situations, such as conflicts, violence, discrimination, or natural disasters, embarking on perilous journeys by land or sea, including through smuggling. Others, motivated in search of better opportunities, migrate to work in often dangerous, dirty and demeaning (3D) jobs, exposing them to risks such as exploitation and trafficking.

With migration policies becoming ever more restrictive and as safe and regular migration pathways remain out of reach for so many, including in the context of pandemics as it was during COVID-19, many people seeking family reunification, decent work, dignity, better opportunities or who are compelled to leave owing to disasters and precarious situations have few options other than irregular

migration along riskier routes and are often forced to rely on smugglers to facilitate the passage, including by sea.

Within and outside of South and Southeast Asia the inaccessibility of regular travel pathways drives the proliferation of a burgeoning people-smuggling network. This inaccessibility means that the irregularity of migration can occur in a myriad of ways: by purposefully crossing a national border without authorization, crossing without authorization unknowingly, and entering a country with authorization [ *Mixed Migration Centre (2023) Mixed Migration Update: Asia and the Pacific. Available at [https://mixedmigration.org/wp-content/uploads/2023/07/QMMU\\_Q2\\_2023\\_Asia.pdf](https://mixedmigration.org/wp-content/uploads/2023/07/QMMU_Q2_2023_Asia.pdf). Accessed on 18 September 2023 ]*

but becoming irregular afterwards (e.g., when a visa expires), including through sea routes.

Maritime migration has been a major feature of mobility patterns in the region whether regularly or

in the context of mixed movements of migrants and refugees. According to the United Nations High Commissioner for Refugees (UNHCR), in Southeast Asia 1 in every 69 people who embarked on a maritime migration journey lost their life or went missing at sea in 2018/19. Sea journeys in the Bay of Bengal undertaken in 2020 were over eight times deadlier than those undertaken in 2019, and the deadliest then on record. Since 2014, the Missing Migrants Project has recorded over 3,000 migrant deaths and disappearances of people during their migration journeys in Asia, with deaths at sea as the largest category recorded.

More than 1,500 have been recorded dead or missing in the Bay of Bengal and the Andaman Sea between 2014 and 2019, although the exact number of deaths is unknown. The primary causes of death included starvation, dehydration, sickness, drowning, or physical assault by smugglers or traffickers, or as a result of fights on board ships. Reflecting this, in 2020/21, 218 people who embarked on a maritime smuggling journey across the Bay of Bengal and the Andaman Sea died or went missing at sea. Significant numbers of Rohingya attempt to move to other countries in the region, predominantly Malaysia, from Bangladesh or within Myanmar. More than 630 Rohingya are estimated to have attempted sea crossings from January to May 2022. Those who manage to avoid being intercepted by naval patrols face a hazardous journey across the Bay of Bengal and the Andaman Sea to reach their destination, illustrated by the deaths of at least 17 Rohingya on 21 May after a boat embarking from Sittwe capsized off the coast of Myanmar.

[ Yamahata, C., Sudo, S., Matsugi, T. (2020) "Crossing borders in South and Southeast Asia: Assessing Existing Problems through a new lens". Yamahata, C. (ed) Nisshin,

Japan p.1-14

*International Organization for Migration (2023) Missing Migrants Project. Available at <https://missingmigrants.iom.int/region/asia> (25 September 2023)*

*International Organization for Migration (IOM) (2023) Missing Migrants Project. Available at <https://missingmigrants.iom.int/region/asia> (Accessed on 25 September 2023)*

*Janjua H, (2023) "At least 17 people dead after boat carrying Rohingya refugees capsizes off coast of Myanmar" The Guardian 10 August, Available at <https://www.theguardian.com/global-development/2023/aug/10/rohingya-dead-boat-capsizes-off-coast-of-myanmar> (Accessed on: 25 September 2023)*

The dangers that underpin this significant number of deaths are in large part due to the use of unseaworthy vessels, insufficient supplies, violence at the hands of smugglers, and lack of prompt and efficient search and rescue operations and safe disembarkation procedures by Coastal States.

In view of the foregoing, the phenomenon of increasing maritime casualties involving migrants has sparked the need for a Regional comprehensive regulatory and procedural and cooperation framework to address the challenges that arise in coastal waters in this region. This paper seeks to outline a comprehensive regulatory and procedural framework that not only addresses maritime casualties but also proposes a mechanism to effectively manage missing migrants and provide support to their families. The foundation of this framework is rooted in the principles of international migration law, ensuring that the rights and dignity of all individuals, regardless of their migratory status, are upheld.

## II. UNDERSTANDING THE SCOPE OF MARITIME CASUALTIES IN COASTAL WATERS

In considering the issue, the leave no one behind (LNOB) principle represents the unequivocal commitment of all United Nations Member States to eradicate poverty in all its forms, end discrimination and exclusion, and reduce the inequalities and vulnerabilities that leave people behind and undermine the potential of individuals and of humanity as a whole. In adopting the Global Compact for Safe, Orderly and Regular Migration (GCM) in 2018, States were called on through Objective 8 to “save lives and establish coordinated international efforts on missing migrants”. However, during the International Migration Review Forum (IMRF) that took place in May 2022, this objective remained scarcely implemented worldwide, including in South Asia, as it was highlighted in the latest UN Secretary-General report on the GCM as well as in a statement by the UN Migration Network . The IMRF adopted “Progress Declaration” included some very important points that States can make to move forward to improve efforts and achieve Objective 8:

See <https://migrationnetwork.un.org/statements/act-now-save-lives-and-prevent-migrants-going-missing-for-the-full-statement>

- Develop and implement procedures and agreements on search and rescue of migrants, uphold the prohibition of collective expulsion, guarantee due process and individual assessments;
- Develop and implement transparent, safe and predictable arrival procedures on land and at sea for all migrants, promote responsibility-sharing in providing a place of safety;

- Enhance reception and assistance capacities, and avoid criminalizing the provision of assistance of an exclusively humanitarian nature;

- Facilitate access to procedures for family reunification.

Moreover, under the Global Compact for Migration, specifically Objective 5 – to enhance availability and flexibility of pathways for regular migration, Objective 7 – Address and reduce vulnerabilities in migration, and Objective 23 – for better managing migration at local, national, regional and global levels were picked out to draw attention to the lack of engagement in providing lifesaving assistance, or conversely, in actively obstructing this practice.

According to the IOM Missing Migrants Project, worldwide since 2014, over 56,000 deaths of migrants have been officially recorded, of which over 35,000 due to drowning. Nevertheless, the data and evidence on migrants who go missing or die during migration journeys that needed to inform these efforts remain scarce, and data available are incomplete both in terms of quantity and quality. Limited policy implementation and data gaps are mutually reinforced. Slow policy and programming progress render it difficult to collect comprehensive data on missing migrants. In turn, a lack of comprehensive data and of adequate consideration of the available data contribute to hindering evidence-informed policies and programming that could reduce risks and save lives.

The IOM Missing Migrants Project records incidents in which people died at state borders or in the process of migrating to an international destination, regardless of their legal status. The Project hosts an open-access database of records of deaths during migration on the global level. While there is a range in how missing migrants

[International Organization for Migration (IOM), 2023. *Asia-Pacific Migration Data Report 2022. IOM Asia-Pacific Regional Data Hub, Bangkok.*]

are defined, the Project focuses only on migrants who die or disappear and are presumed to have died (such as the victims of shipwrecks). This approach was adopted because it provides evidence of the risks that migrants face on specific migration routes.

Furthermore, the Project gathers information from official sources, including from search and rescue, and mortality records, when available. Given the dearth of official records, other sources of information are used: NGOs reports, surveys data, migrants' and families' testimonies and traditional and social media reports. Whenever possible, reports of migrant deaths are verified by local IOM staff. Documenting migrant deaths is extremely challenging because data are generally lacking and when they exist, they are scattered, inaccessible, unharmonized and not disaggregated by migratory status. An estimated 36,852 migrant bodies have yet to be recovered, mostly at sea. In Asia and the Pacific, 5,455 missing migrants were recorded since the inception of the project under which more than half (or 2,918) of the reported fatalities are attributed to drowning or 'mixed and unknown' circumstances.

### III. DEFINING MARITIME CASUALTIES

According to the United Nations Convention on the Law of the Sea (UNCLOS), "maritime causality" is defined as a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo. (Section 6, Article 221).

#### • **Highlighting the risks and challenges faced by migrants**

Sea routes are one of the main migration routes especially for migrants and refugees from Africa, the Middle East and Central Asia attempting to reach Europe. Migrants and refugees make their way via the Mediterranean, the Atlantic Ocean, the Indian Ocean and waters around the Balkan Peninsula. According to the Swiss State Secretariat for Migration, since 2014, hundreds of thousands of people migrated via the Mediterranean route, and the number even reached 1 million in 2015 .

Migrants can face multiple challenges and risks during their time at sea. The sea journey is long and perilous. Since 2017, thousands of Rohingya people have risked their lives every year by attempting to reach Southeast Asian countries such as Malaysia and Indonesia on vessels that are not seaworthy, which could often be adrift on the sea for weeks.

Meanwhile, criminals have been taking advantage of people's need to move and their limited choices for doing so, to generate enormous illicit profits by facilitating unsafe and irregular migration. Migrants were forced to take overcrowded and unseaworthy vessels, significantly increasing the risks of vessels capsizing and drowning. Smugglers may also transfer migrants from larger vessels onto smaller ones for the final stretch of the journey, deliberately placing lives in danger, and then launch a distress call to the rescue service of the concerned destination countries so as to trigger a rescue operation.

Another challenge is children that embarked on the sea journey with their parents might become unaccompanied and separated. In 2015, 8% all

refugees and migrants arriving in Italy were unaccompanied and separated children. Unaccompanied and separated children arriving by sea face significant challenges due to the lack of adequate reception arrangements. Due to poor conditions most quickly leave from official reception facilities.

- **The impact on families of missing migrants**

According to the IOM Missing Migrant Project, over the past eight years, more than 35,000 people have died along sea routes due to drowning. Many more deaths go unrecorded. This figure does not include the thousands of migrants who go missing each year because they are unable to establish contact with their families, whether

[<https://migration.swiss/en/migration-report-2022/asylum-and-protection-status-s/migration-routes-in-2022>

*International Organization for Migration (IOM), 2023. Asia-Pacific Migration Data Report 2022. IOM Asia-Pacific Regional Data Hub, Bangkok.]*

victims of enforced disappearance, detained or stranded, hiding for fear of arrest or deportation, unaccompanied and separated children or those who have been severely injured. When people go missing along migration routes, their families often face devastating socio-economic, psychological, administrative, and legal consequences. The disappearance of a relative is not only cause for anguish, but it may affect access to property, inheritance, parental or social welfare rights.

The impacts on families of having a missing relative are many. While a death can be mourned,

disappearance is something that cannot be understood in the light of everyday experience, trapping family members in a situation they struggle to make sense of. The families of missing migrants in the study that was conducted demonstrated a range of symptoms associated both with the impact of trauma as well as that of ambiguous loss, including sadness, sleep disturbances and dreams of the missing. They reported a sense of stasis which is defined as a feeling that life had stopped since the person went missing.

A minority of the respondents reported that they had mental health problems that they linked to the disappearance of their family member or members in some instances.

Having a missing relative was also reported to result in family conflict with individuals isolating themselves and neglecting relationships with family, and the pursuit of an obsessive interest in the missing person. In many families, there were divergent opinions as to what had happened to their missing relatives, potentially fueling family conflict and preventing the missing person from being discussed. Missing someone from the family was also seen to impact on family roles, with women having to take on greater responsibilities in the home where men, particularly husbands, are missing. Women also reported becoming a target for harassment a husband had gone missing, as well as seeing their identity challenged since their status as wives or widows had become ambiguous. Wives of the missing seemed to reject any possibility that they could remarry without definitive news of their husbands. Families also reported challenges with livelihood.

#### **IV. INTERNATIONAL LAW AS THE GUIDING PRINCIPLE**

The law of the sea sets the legal framework for search and rescue operations. Together with applicable international refugee law and human rights law, and transnational criminal law provisions, these branches of law govern search and rescue operations at sea and the treatment of migrants and refugees. All of these branches of international law are part of the overall international migration law framework, within which the IOM works.

It is particularly alarming to note the growing trend of criminalizing or obstructing efforts to provide life-saving humanitarian assistance, including search and rescue efforts and medical care to migrants in need, which runs contrary to international law, historic customs, as well as the commitment expressed in Objective 8 of the GCM. In interpreting and applying international law, States must strike a balance between their powers and interests on one hand, and their duties and responsibilities on the other.

It is in this regard that the UN Network on Migration that was established at the request of States produced a publication in 2018 that underscores the importance of cooperation among states, international organizations, and civil society to create an environment in which migrants' safety is a top priority. States are called to respect obligations under international law, including human rights law, upholding the right to life and right to health for all individuals, irrespective of nationality, ethnic or social origin, gender, migration status or other grounds, the right to family life, the best interests of children, and the absolute prohibition of enforced disappearance or arbitrary detention, amongst others.

- **Overview of international law and its relevance to maritime casualties**

Article 21 of UNCLOS also gives States prescriptive

jurisdiction in territorial seas to regulate passage, including through laws concerning immigration, fishing,

[ *International Organization for Migration (2022), IOM Joins Call to Save Lives at Sea, Available at:*

*<https://www.iom.int/news/iom-joins-call-save-lives-sea>, (Accessed: 25 September 2023)*

*United Nations General Assembly (UNGA). New York Declaration on Migrants and Refugees. 2018 UN Doc A/RES/71/1.]*

navigational safety, environmental safety and other issues in line with Article 19. A State's sovereignty includes the power to "enforce its laws, including migration laws, and to intercept and arrest those vessels and individuals on board."

The territorial waters of a State are considered its territory under Article 2 of UNCLOS. Thus, States may have obligations under international law to both individuals in their territorial waters and individuals on vessels flagged to them on the high seas.

The duty of States to rescue and render assistance to migrants in distress at sea is a well-established principle of customary law. That duty is not negated or diminished based on the irregular situation of persons who need to be rescued.

Article 98(1) of UNCLOS requires both State authority vessels and private ship to:

- (a) Render assistance to any person found at sea in danger of being lost;
- (b) Proceed with all possible speed to rescue persons in distress as far as one can reasonably expect;
- (c) After a collision, render assistance to the other ship, its crew and its passengers and, where possible, inform the other ship of the name of his own ship, its

port of registry, and the nearest port at which to call for protection of human rights at sea under international law.

Additionally, the duty to render assistance at sea is consistent with States' duty to respect and protect the right to life under international human rights law (Article 6 of the International Covenant on Civil and Political Rights). Omitting to act to the rescue while knowing about a distress situation at sea may amount to an internationally wrongful act of a State, a violation of the right to life, and a violation of the duty to rescue and provide assistance.

In line with these international law norms, other than the GCM Objective 8, there is also another non-binding guidance on this topic. On 1 March 2022, the non-governmental organization, Human Rights at Sea launched the Geneva Declaration

[ UN General Assembly, Convention on the Law of the Sea, 10 December 1982, available at: <https://www.refworld.org/docid/3dd8fd1b4.html> [accessed 25 September 2023]

on Human Rights at Sea to respond to an undoubted need to prevent human rights violations at sea and to provide redress to victims of such abuses. It is a legally focused non-binding soft law document giving practical guidance to States on how to ensure that human rights abuses at sea are detected, remedied and ultimately ended. It is guided by four fundamental principles as follows:

- a) Human rights are universal; they apply at sea, as they do on land.
- b) All persons at sea, without any distinction, are entitled to their human rights.
- c) There are no maritime specific reasons for denying human rights at sea.

d) All human rights established under both treaty and customary international law must be respected at sea.

#### • **The role of states in upholding humanitarian principles**

States' role in humanitarian issues at sea are complex, as such it is necessary to understand the respective roles played by port states and coastal states. This is further compounded by the circumstances of the crisis and the maritime zone in which it occurs. The question of which State has protection obligations to an individual migrant is determined by jurisdiction and the flag State of the vessel, which concerns what a State may do (i.e., its rights), as well as what it is required to do (i.e., its duties) "under international law to regulate the conduct of natural and juridical persons." It determines all government activities – from its powers to make laws (prescriptive jurisdiction) to its power to take executive or judicial action to implement those laws (enforcement or adjudicative jurisdiction).

Jurisdiction is "territorial" and, in the maritime context, is largely determined by maritime zones; this means that a state can only prescribe, enforce, or adjudicate within its territorial waters. UNCLOS is the key treaty relevant to jurisdiction at sea. UNCLOS is silent on the protection of migrants beyond basic humanitarian rescue provisions but is rather concerned with the delineation of the sea into maritime zones and the areas of State responsibility within each. Maritime zones are measured from the State's baselines (i.e., the low-water line), those zones being where freedom of navigation and exclusive flag State jurisdiction apply: (i) high seas; (ii) exclusive economic zone (EEZ); (iii) contiguous zone; (b) where a State has exclusive territorial jurisdiction: (i)

territorial sea; (ii) internal waters.

Against this background, it becomes clear that contemporary mixed maritime movements of migrants and refugees has put the international legal framework under intense pressure and represents one of the most urgent and complex humanitarian challenges. We must interpret protection at sea issues under the light of the comprehensive umbrella of international migration law, which not only includes law of the sea, but also other bodies of law, such as international human rights law, international refugee law and transnational criminal law.

States are understandably often not clear on and may even dispute their obligations to protect lives in the contexts they encounter migrants at sea, especially on the high seas. Further challenges arise in terms of coordination in the different Search and Rescue Regions (SRRs or SAR regions). Nor are they equally equipped with the capacity and resources required to meet their obligations in areas of the ocean for which they are responsible. The allocation and assumption of responsibility in the maritime context is further complicated by the number of actors that may be involved. Two or more States are often involved, raising questions of positive or negative conflicts of jurisdiction and uncertainty regarding the applicable rights regime and who is responsible for protecting persons.

SSRs are established by agreement among the States concerned, and the national Maritime Rescue Coordination Centres (MRCCs) associated with these regions are responsible for coordinating the conduct of SAR operations within these regions (Chapter 2 of the SAR Convention).

SRRs are areas with defined dimensions in which a State has accepted primary responsibility for coordinating search and rescue responses and ensure

that assistance is rendered to people in distress, however, it is not a zone of maritime jurisdiction.

## **V. A Regulatory Framework for Addressing Maritime Casualties and Missing Migrants**

There is an urgent need to operationalize more effectively and efficiently the legal norms described above, as well as mainstream GCM Objective 8 in national and regional policies, laws, programmes and frameworks, and respect international obligations on the right to life, in line with the UN Migration Network's recommendations.

The scarce policy attention given to Objective 8 hinders adequate documentation of migrant deaths and disappearances. Within this region, there are currently no official sources that collate and publish data on migrant deaths or disappearances. The main sources of information available are the testimonies of people who witnessed the deaths of others they were travelling with; however, these are not systematically collected. At the national level, resource allocation and training of actors who encounter cases of missing migrants and who may be collecting relevant administrative data – such as medical examiners, coroners, border and coast guards, and migration, law enforcement and civil protection officers – are still inadequate to ensure a comprehensive documentation of deaths and disappearances during migration.

Limited transnational cooperation on aspects such as data sharing and harmonizing terminologies continues to hinder the resolution of missing migrant cases and the identification of the dead. Concrete initiatives are needed to prevent deaths and disappearances and to address the needs of families of missing migrants. States should prioritize search and rescue systems at sea (and on land) and establish

clear and predictable disembarkation mechanisms for rescued migrants to prevent people from going missing. Transnational and participatory coordination mechanisms need to be established, to support families searching for missing migrants and to identify and repatriate remains of those deceased. Structures coordinating efforts on Objective 8 are needed also at the national and local level. Finally, the capacities of state officers to deal with cases of missing and deceased migrants and to interact with their families need to be developed.

These factors render data on the risks of dying or going missing during migration and migrant deaths within and from South Asia still insufficient. Between 2014 and 2022, IOM Missing Migrants Project recorded deaths of 58,394 people. The remains of 24,872 people who lost their lives during migration have not been recovered.

[ *International Organization for Migration (IOM). (2022) Missing Migrants, Missing Solutions? Reviewing Objective 8 of the Global Compact for Migration in West Africa, Geneva, International Organization for Migration*]

And the deadliest route is the Central Mediterranean route, where at least 22,315 people have died since 2014. Of the 5,887 deaths recorded worldwide for 2022, incidents in the Asia–Pacific region (1,000) account for 17 per cent of the global figure or 19 per cent by accounting all deaths (1,123) departing from the region.

According to the Regional Migration Data Report 2022, in the Asia Pacific Region in 2022 alone, the number of missing migrants' tallies to a total of 5,886 migrant deaths and disappearances worldwide, and 1,000 recorded within East Asia, South Asia and South-East Asia consisting of 859 deaths and 141

disappearances peaking at the beginning and end of the sailing seasons (November to April). Reported deaths and disappearances for the region have been on the rise since 2018 and continue to reach new levels in 2022. Throughout 2022, 722 migration specific incidents that involved the death or disappearance of a migrant in Asia–Pacific were recorded. This represents a 55 per cent increase of recorded incidents compared to 2021, when 487 incidents were documented. Most incidents remain isolated cases (one or several migrants), as was the case in 2021, with an average of two deaths or missing persons per incident.

Typically, they are documented in countries in South-East Asia (57%), South-West Asia (42%) and to a much lesser degree, East Asia (1%). Data for 2022, however, reverses this trend, with South-East Asia comprising 30 per cent of deaths and South-West Asia 70 per cent. Cumulatively, recorded migrant deaths have been primarily located in Myanmar (1,636), the Islamic Republic of Iran (1,323), Afghanistan (688), Bangladesh (540), Malaysia (527), Thailand (384), Indonesia (185), Pakistan and Cambodia (31 each). In 2022 and among the places with most migration-related deaths, Afghanistan with 48 per cent of the total (480 deaths), followed by the Islamic Republic of Iran (21% or 212), Myanmar (11% or 115), Indonesia (9% or 91), Thailand, Cambodia, Malaysia (3% each or 32, 31 and 28 respectively), Bangladesh (1% or 5) and others (1% or 7) including Pakistan, India, Viet Nam and Hong Kong SAR, China can be cited.

*Ibid*

*International Organization for Migration (IOM), 2023. Asia–Pacific Migration Data Report 2022. IOM Asia–Pacific Regional Data Hub, Bangkok.*

According to several news reports, distressed and stranded migrants in the Andaman Sea and in the Bay of Bengal are becoming increasingly common, particularly cases involving Rohingyas on the move with a marked increase in Rohingya people crossing the Andaman Sea with a threefold increase compared to 2021. Meanwhile, deaths in South-East Asia took place in intervals and see an influx in casualties according to the period of the year. For Myanmar, these were particularly high in November, December, and May, and for Indonesia, in December, January and March. Hence, while assessing migrant deaths at place of origin and incident is important, further investigation is warranted regarding groups that are at heightened risk within certain periods of the year. South Asia has registered the highest number of deaths within the Asia and the Pacific region since 2014, with a total of 2,303 lives lost wherein the majority, with 83% of all vehicle/hazardous-related accidents, 26% of all causes wherein the majority registered in South Asia). For South-East Asia, drowning constitutes the most common cause of death. Of the 702 deaths and disappearances recorded for this subregion since 2014, 313 lives were lost to drowning. From this figure, two thirds are presumed deaths and are still missing. These incidents have occurred in Myanmar (42% or comprising 87 deaths), Indonesia (32% or 65), Cambodia (31% or 15), Malaysia (10% or 21) and Thailand (1% or 2). In addition, 118 Rohingya deaths are associated with drowning and 59 Rohingya deaths are split between vehicle incidents, accidental deaths or by harsh environmental conditions at sea. The latest and rising accounts of deaths in Indonesia (91), are a prime example that though recorded deaths are split between drownings or as a consequence of harsh environmental conditions (lack

of water, food or shelter), these reasons equally present the hardships and distress of seafarers and highlight the importance of urgent action needed at sea.

The IOM 2016 report titled: Identification and Tracing of Dead and Missing Migrants provides a critical foundation for understanding the complexities surrounding

[ *Ibid*]

the identification and tracking of deceased and missing migrants in maritime contexts. The document emphasizes the necessity of establishing efficient mechanisms for accurate identification through forensic means. It highlights the importance of cross-border cooperation and data-sharing among states and relevant organizations to streamline the process. The paper also underscores the need for culturally sensitive approaches that consider the diverse backgrounds of migrants, ensuring their identities are respected in death as in life.

The insights provided by the IOM publications and others referenced in this paper lay the foundation for the development of a robust regulatory framework for managing maritime casualties in coastal waters. This framework should encompass mechanisms for swift and accurate identification of deceased migrants, with emphasis on forensic methodologies. It should also establish procedures for cross-border collaboration and data-sharing .

The regulatory framework should encompass procedural guidelines that align with the principles outlined in UNCLOS and studies of UN agencies, including IOM. These guidelines should ensure that migrants are treated with dignity and respect, even in the face of tragedy. This involves providing

immediate medical attention to survivors, respecting cultural and religious practices, and offering psychological support to affected individuals, these could be achieved by:

- Developing a coordinated response mechanism for maritime casualties;
- Establishing reporting and communication protocols;
- Cooperation between states, search and rescue agencies, international organizations, and NGOs.

## **VI. REGIONAL AND INTERNATIONAL COOPERATION AND PARTNERSHIPS**

The UNCLOS goes further and requires every coastal State party to "promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so

[ *International Organization for Migration (IOM). (2016) Fatal Journeys Volume 2: Identification and tracing of dead and missing migrants, Geneva, International Organization for Migration.*

*Ibid]*

require, by way of mutual regional arrangements, cooperate with neighbouring States for this purpose." Article 98(2).

- The role of regional and international organizations

As pointed out in several research works, unfortunately, the problem plaguing the Indian Ocean and the Southern Asian region is the absence of standardized guidance towards addressing maritime challenges. Previous efforts to combat these

problems have been mostly bilateral and, at best, trilateral arrangements. There is a near total absence of a multilateral approach to combat maritime disorder. Interstate and regional coordination on saving lives and missing migrants is also still very low. In line with the transnational nature of migration, more sub-regional, intraregional and international approaches are needed, and could include the establishment of dedicated transnational coordination mechanisms and the identification of shared procedures, strategies and guidelines. These approaches should address all actions recommended in Objective 8 and adopt a comprehensive focus in order to ensure prompt search and rescue operations and safe disembarkation of those rescued.

- Creating a platform for information exchange and coordination

Addressing these dynamics is the responsibility of all countries – of origin, transit and destination – and requires multi-stakeholder efforts, involving both local and national actors, and in which the voices of migrants and engagement of affected families remain central. Currently, local civil society organizations and international organizations are filling the gap left by states in the management of missing migrants' cases. In addition, while data on migrant deaths and disappearances are limited, there is a wealth of knowledge and capacities on the issue that should be used for evidence-based policy making and implementation. Joint action by state and non-state actors, including the families of missing migrants, can improve policy and programming efforts. Mapping out non-state actors that work with families of missing migrants, establishing informal coordination platforms and organizing regular meetings are examples of actions that can facilitate participatory approaches.

- Sharing best practices for humanitarian response and support

With very good reasons, the above-cited areas of potential cooperation may seem like a mammoth task sidestepping practical limitations imposed by the realities of divergent national perspectives on issues of sovereignty, etc. However, a fatalistic assessment of the situation is neither practical nor necessarily pragmatic given the stakes of maritime security. To begin with, coastal states in the region could possibly look toward regional power centers for assistance in maintaining maritime order and coping with natural disasters. Countries and regional bodies with enhanced maritime capabilities globally like the United States, EU, India, South Africa, and Australia can help by not only cooperating amongst themselves, but also by taking other coastal states on board as part of multilateral efforts towards maintenance of maritime order and saving lives.

## **VII. CONCLUSION: FOSTERING A COMPASSIONATE AND JUST APPROACH**

The complexities of maritime casualties involving migrants require a multifaceted approach that combines regulatory measures and procedural guidelines under various branches of international law, and soft law framework such as the GCM. IOM's publications from 2016 and 2018 offer invaluable insights into the identification, tracing, and protection of migrants at sea. By leveraging these insights, governments and international bodies can collaboratively establish a regulatory and procedural framework focusing on stronger cooperation and coordination a regional level, in order to ensure the dignity and rights of migrants are upheld while effectively managing maritime casualties in coastal waters.

Almost five years after the GCM adoption, the implementation of Objective 8 remains very poor. Policymakers should mainstream measures on saving lives and missing migrants in all relevant future policies and develop additional strategies and guidelines to complement existing ones, including all actions recommended in Objective 8. States should address the specific recommendations in the UN Migration Network statement on Objective 8, which center around preventing migrants from dying or going missing, searching and identifying those who have died or gone missing, and providing support and redress to affected families. In addition, States should respect international human rights law on the rights to life, to liberty and to security of the person. Migrants and their families should be guaranteed access to justice and accountability in case of violations of these rights.

Finally, the paper underlines the following as key areas of strengthening:

- Reiterating the importance of a comprehensive regulatory and procedural framework anchored in better cooperation and coordination, especially at the regional and sub-regional level;
- Emphasizing the need for states to act collectively in the face of maritime casualties;
- As an intermediate recommendation strengthen data collection systems including on official or national data collection on missing migrants, with the potential of complementing existing data and expanding availability of sources to strengthen the evidence base to address Objectives 5, 7 and 23.
- Enhance international data harmonization and information exchange between countries to take root and bridge many of the gaps and challenges of

migration data and management;

- Consider the recommendations by members of the United Nations Network on Migration to better orient national and international actors in achieving the SDGs and Global Compact for Migration objectives by:

- o Prioritizing and cooperating in search and rescue operations to render assistance to migrants regardless of their migration status, including through clear and predictable disembarkation mechanisms that ensure that survivors are delivered to a place of safety and that all children and persons in situations of vulnerability receive adequate non-custodial care and reception;

- Supporting the efforts of humanitarian organizations and crews of commercial vessels, where appropriate, to provide lifesaving assistance, healthcare and protection to migrants at land and at sea, and refraining from criminalizing, obstructing or otherwise deterring the efforts of those who provide such assistance;

- Assessing the impact of migration-related laws, policies and practices on a regular basis and revising those, as necessary, to ensure that they are in line with international legal obligations and do not create or exacerbate the risk of migrants dying or going missing;

- Enabling migrants and their families to establish, restore, or maintain contact along migratory routes and at destination;

- Creating and strengthening possibilities for safe and regular migration in a manner that upholds the right to family life and responds to the needs of migrants in a situation of vulnerability, as well as practices for admission and stay based on compassionate, humanitarian or other considerations for migrants compelled to leave their

countries of origin.

Search and identify those who have died or gone missing by:

- Setting up transnational mechanisms to allow for information exchange and coordinated efforts across countries of origin, transit and destination to search for and identify those who have died or gone missing, in cooperation with relevant stakeholders, including the families of the missing, while respecting the right to safety, privacy and data-protection standards;

- Regularly collecting and making data on migrant deaths and missing migrants publicly available in accordance with the right to privacy and data protection.

Provide support and redress to the families of those who have died or gone missing by:

- Providing avenues through which families can register cases of missing persons and obtain information on search efforts, while respecting the right to privacy and protecting personal data;

- Ensuring that families of missing migrants in countries of origin, transit and destination are able to exercise their rights and access services and other support to meet their specific needs;

- Ensuring access to justice, accountability and redress for migrants and their families by carrying out independent, impartial and thorough investigations into all allegations where migrants' lives or safety were endangered in the course of their journey and where they were subjected to violations of their rights, whether by State or non-State actors, including as a result of aggravated smuggling or trafficking;

- Establishing procedures for the dignified recovery, identification, transfer and burial of the remains of deceased migrants, and appropriately

notifying and assisting their families in this regard;

- Striving for a world where the dignity and rights of all individuals are respected, regardless of their migration status.

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