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## Missing People, Migrants, Identification and Human Rights

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### ABSTRACT

*The increasing volume and complexities of migratory flow has led to a range of problems such as human rights issues, public health, disease and border control, and also the regulatory processes. As result of war or internal conflicts missing person cases and management have to be regarded as a worldwide issue. On the other hand, even in peace, the issue of a missing person is still relevant. In 2007 the Italian Ministry of Interior nominated an extraordinary commissar in order to analyse and assess the total number of unidentified recovered bodies and verify the extent of the phenomena of missing persons, reported as 24,912 people in Italy (updated 31 December 2011). Of these 15,632 persons are of foreigner nationalities and are still missing. The census of the unidentified bodies revealed a total of 832 cases recovered in Italy since the year 1974. These bodies/human remains received a regular autopsy and were buried as 'corpse without name'. In Italy judicial autopsy is performed to establish cause of death and identity, but odontology and dental radiology is rarely employed in identification cases. Nevertheless, odontologists can substantiate the identification through the 'biological profile' providing further information that can narrow the search to a smaller number of missing individuals even when no ante mortem dental data are available. The forensic dental community should put greater emphasis on the role of the forensic odontology as a tool for humanitarian action of unidentified individuals and best practise in human identification.*

**KEYWORDS:** : Human identification; missing persons; human rights; forensic odontology; forensic sciences

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## INTRODUCTION

Over recent years hundreds of thousands of migrants and asylum-seekers have been admitted and given refuge in many parts of the world. In 2010 the estimated number of international migrants was 215.8 million (of which 16.3 million were refugees), an increase of 35 million since 2000 and 58 million since 1990.<sup>1</sup> The largest flow of migrants, 73 million, is from developing to developed countries, which include most of Europe, North America, Japan, and Australia and New Zealand. The top 10 destination countries are: United States, Russian Federation, Germany, Saudi Arabia, Canada, United Kingdom, Spain, France, Australia and India.<sup>2</sup> In addition to countries in Europe that have attracted immigrants for some time, such as France, Germany and the United Kingdom, former countries of emigration, such as Italy and Spain, have become preferred destinations for immigrants from other parts of Europe as well as from developing countries.<sup>1</sup> The increasing volume and complexities of migratory flows has, in the broader context of globalisation, led to a range of problems in areas such as human rights, public health, disease and border control, and also to the regulatory processes.<sup>3</sup> International migrants make up 8.7 per cent of Europe's

population.<sup>4</sup> The globalization process itself facilitates the movement of people across various countries increasing migration. This poses political challenges for policy makers in the management of migration. Also from a forensic point of view there is the need for a comprehensive approach with regards to personal identification.

This explosion of migration derives from conflicts and civil disturbances in South East Asia, North Africa, The Balkans, Central America, and the political, social and economical consequences of the collapse of certain tyrannical regimes (Iraq, Libya, and the former Soviet Union). The increase in migration has not been confined to regular (legal) immigration, but has also lead to a huge increase in illegal immigration, refugees, asylum seekers and human trafficking.<sup>5</sup> These irregular arrivals interact with national authorities for border security, customs or immigration. There are various terms used for these arrivals such as illegal immigrants, unauthorised migrants, unauthorised non-nationals, and in Italy they are termed 'foreigners in an irregular position' or 'irregular foreigners'.

In their efforts to exercise their legitimate and sovereign rights to control their borders, safeguard national security and ensure public safety, states need to identify and apprehend individuals who are travelling without the requisite documents. In an era of international terrorism, it is entirely understandable that politicians and public alike should place such concerns at the top of their agendas. The occupants of boats intercepted in the Mediterranean have generally been taken for processing to a European port where they have been given the opportunity to submit an asylum claim.<sup>7</sup>

This paper will focus on Italian forensic standards related to some specific aspects of migration. It will discuss the use and value of dental identification for bodies found without documents, who may be reported as missing persons, or who have died as irregular migrants travelling to Italy, and the identification of recovered bodies of unknown nationality. It is not the purpose of this paper to discuss more general issues related to displaced, stateless persons and refugees.

## **VICTIMS ON IMMIGRATION BOATS THROUGH THE MEDITERRANEAN SEA**

In the Mediterranean region, a growing number of people without approved migration documents are transiting through North Africa and the Balkans before seeking entry by boat to Italy, Spain and the European Union. The issue of interception and rescue at sea has arisen in response to this movement. The identification of deceased immigrants is a difficult task. The main obstacle is the lack of medical and dental data. Only in some major disasters, such as the sinking of the Kater I Radez boat coming from Albania on the 13<sup>th</sup> of March 1997 with 55 victims, was it possible to rely on interviews with victims' relatives, who were able to give additional information about the missing individual's features, and thus assist in identification.<sup>8</sup>

Immigrants from various countries find their way from North Africa, via the Suez Canal, Turkey and Albania to reach Italy by sea, usually disembarking in three Regions of southern Italy: Puglia, Calabria and Sicily. Puglia represented a major point of entry for people coming from Albania and The Balkans until 2002, because of its geographical position. Since 2003, due to political agreements between the Albanian and Italian governments, the number of migrants reaching the coast of Apulia has dramatically reduced.<sup>6</sup>

There are four hot spots in the Mediterranean Sea for irregular foreigners travelling by boat (Fig. 1): (a) across the Aegean Sea; (b) the Adriatic Sea; (c) through Morocco to Spain and Atlantic Ocean; and (d) the Sicilian Channel.<sup>9</sup> (a) People who emigrate from the Middle East cross the Aegean Sea from Turkey to Greece.<sup>10</sup> Between 2001 and 2005, 391 people died, and 181 went missing. The number of fatalities has fallen in recent years, in 2004 there were 90 deaths, and in 2003 there were 57.<sup>11</sup>

(b) Another hot spot is in the Adriatic Sea, with Albania and Montenegro on one side and Italy on the other. Between 1991 and 2005, 451 died here, 62 of which have never been found. The highest number of shipwrecks was recorded between 1997 and 1999. In the last few years arrivals by this route have been declined and no accidents were recorded in 2003 or in 2005, however in 2004, 31 people died.

(c) From Western Africa and from Maghreb people move through Morocco towards Spain, crossing to Gibraltar or in the direction of the Canary Islands in the Atlantic Ocean. Between 1988 and 2005, 859 people died including 197 who went missing presumed drowned in the waters off Morocco and Spain. The increasing

number of incidents in 2005 is cause for concern: 205 people died, 43% more than the 143 deaths recorded in 2004, and the number has been increasing since 2000.<sup>12</sup>

(d) In the Sicilian Channel, along the route from Libya and Tunisia towards Malta, Lampedusa and the coast of Sicily. Since the early 2000s, Libya has been a major departure point for migrants and asylum seekers hoping to reach Europe.<sup>13</sup> Smugglers' routes, both into the country through the desert and out of the country on rickety boats, have flourished. Fortress Europe, an internet blog that tracks deaths of those seeking to reach Europe, reveals the number of victims. Along these routes 6,166 immigrants died or were dispersed in the years between 1994 and 2011. In these years the number of deaths increased dramatically (236 in 2002; 387 in 2003; 203 in 2004; 437 in 2005; 303 in 2006; 556 in 2007; 1274 in 2008; 425 in 2009; 20 in 2010) .<sup>14</sup> The United Nations High Commissioner for Refugees (UNHCR) estimates in 2011 that 1,500 people died in the Mediterranean, making it the deadliest year on record.<sup>15</sup>

The death rates along the routes across the Aegean Sea and the Adriatic Sea are decreasing whilst the rates of death for those leaving Morocco or crossing the

Sicilian Channel are increasing. The Sicilian Channel accounts for twice the number of deaths of the other routes combined.

In addition, since 1988 another 255 people have been found dead along European frontiers travelling as stowaways in trucks or hidden in the containers loaded onto cargo vessels.<sup>16</sup>

### **ITALIAN RESPONSE TO UNIDENTIFIED OR MISSING PERSONS**

In 2007 the Italian Ministry of the Interior, under pressure from the association of families of missing persons called 'Penelope', appointed a Special Commissioner (commissario straordinario del Governo per le persone scomparse) who was tasked with assessing the total number of unidentified recovered bodies in Italy, and analyzing the global phenomena of missing persons and by suggesting appropriate strategies and coordination among the various stakeholders. The number of missing persons in Italy since 1<sup>st</sup> January 1974 to 31<sup>st</sup> December 2011 was 24,912 (updated 31 December 2011).<sup>17</sup> Of these, 15,632 persons are of foreign nationalities and are still missing,<sup>17</sup> although these numbers may include people who have not reported to have

returned home, but don't include identified bodies.

The census of unidentified bodies held in all Italian medico legal institutes revealed a total of 832 bodies, representing all unidentified cadavers recovered since 1974.<sup>17</sup> These human remains, recovered in various degenerative states, received a regular autopsy and currently the majority of unidentified bodies are buried in Cemeteries of the Nameless.<sup>18</sup> Of the 832 bodies it appears that only 61 bodies received a dental assessment with a proper odontogram charting<sup>19</sup> and 158 were recovered from the sea.<sup>17</sup>

A further aim of the commissioner was to ensure the coordination of the efforts of all authorities to improve the management of missing person reports and the human identification process. This was achieved in 2010 and called Ri.Sc. ('Ricerca Scomparsi' i.e. missing person search). Software for data comparison and archiving was created and a permanent national database was established, the details of which were decided after consultation with the police, medical examiners and representatives of Penelope.<sup>20</sup> To date, in the author's knowledge, no representative of the forensic odontology community has been

appointed or approached for the purpose of improving or advising on human forensic identification procedures within the Office of the Special Commissioner of the Italian Government for missing persons.

## MISSING PERSON IDENTIFICATION

A missing person may be either alive or dead, but for families the uncertainty will continue until the body is recovered. This condition of uncertainty is considered to be equivalent to ‘torture’ and endless mourning.<sup>21-26</sup> Whether as result of war or internal conflicts or in peace time, missing person cases and their management is regarded as a global issue. Once the fate of a missing person has been determined to be death, all available means must be undertaken to ensure recovery of the body and any personal effects.

The identification of the deceased is the most problematic issue for forensic experts. All attempts at establishing a positive identification should be made.<sup>27</sup> the primary identifiers are fingerprints, DNA and dental data.<sup>28</sup>

Formal documentation of death requires positive identification and is essential to the collection of life insurance, probate, wrongful death lawsuits, re- marriages, and

(in some cases) federal intelligence issues. The lack of a death certificate, in most jurisdictions, results in extensive and protracted legal problems for surviving family members. In most jurisdictions, there are four legally admissible methods used to identify human remains: visual identification; fingerprints; dental identification and DNA evidence.

Many people still believe that all one needs to do is just pick up a wallet or purse and match whatever photographic identification is present to the nearest remains and you instantly have a positive ID.<sup>28</sup> This misconception is clearly demonstrated by Interpol’s guidelines on disaster victim identification (DVI). Primary identifiers remain fingerprints, DNA and dental data<sup>29</sup> and Interpol guidelines are principles used most frequently in human identification autopsies, although they should also be applied in DVI. The principle is the comparison of ante mortem with post mortem findings. Missing persons and mass disasters are two different scenarios, although after the DVI experience in the Thai tsunami victims identification in 2004/2005, the use of the Interpol charting has become an international standard, especially when recovered bodies have unknown nationality. Interpol’s forms can

be considered a good and ready made starting point to meet best practice and high forensic standards,<sup>30</sup> but missing persons issues go beyond the DVI experience and need a different handling. Software named 'Fast ID' which will hold a wide range of information on missing persons and unidentified individuals is currently under development<sup>31</sup> under the supervision of Interpol and forensic experts. However, in Italy a national database of reported missing persons has become effective, for the purpose of identification, only with the creation of a post mortem data database and the proposal of a unique form for both missing police report and post mortem police and forensic findings. The generic identification of the corpse will allow, even in the absence of ante mortem dental data, for the narrowing down of the investigative frame by defining sex, race, age, dental biography, socio-economic profile and geographical origin. These are, in brief, the elements that will allow the investigating authorities to narrow down the field of subjects to be included in the comparative process, which is also provided by the 'Ri.Sc.' database, and to direct and speed up the investigation through the possible gathering of data, which might not necessarily be dental.<sup>30</sup> Use of the Ri.Sc.

('Ricerca Scomparsi' i.e. missing person search) database (Italian solution), inaugurated in 2010,<sup>20</sup> has already allowed the identification of several cases only by a simple comparison of the data already archived.

Nevertheless, as migration and travel increases, the use of international standards and language allowing appropriate interexchange of missing person data, should not be overlooked.

#### **FUNCTION OF ODONTOLOGY AND ANTHROPOLOGY IN IDENTIFICATION**

The dental identification process relies mainly on the comparison of post mortem and ante mortem dental records which, unfortunately, are rarely created, stored and retained according to international standards.<sup>32</sup> In Italy, a judicial autopsy is performed on deceased victims to establish the cause of death and identity, but odontology and anthropology were rarely employed in identification cases before 2010. Photos of the victim are taken to create a visual profile of certain individual characteristics where these are present. However, the routine employment of a forensic odontologist during autopsies of unidentified foreign individuals is, with a few exceptions, ignored. The main reason

for this is the lack of ante mortem dental records or the difficulties in obtaining such information from the country of origin. Nevertheless, odontologists could interview relatives of the victim and the immigration authorities to try to obtain additional information to substantiate the identification.<sup>33</sup> Skeletonised or decomposed human remains can be clinically and radiographically examined for dental features and dental information.<sup>34</sup> An odontologist who does not include a complete radiographic examination in the post mortem examination of a body in need of identification but limits the examination to a mere odontogram, could be considered negligent.<sup>30</sup>

Forensic anthropologists could also make an important contribution to the identification process especially in cases of badly preserved or heavily fragmented human skeletal remains<sup>35</sup> or those altered by sea fauna, and also provide information on the dynamic of the death, all of which might contribute to an eventual identification. By combining the skills of an odontologist and anthropologist basic biological information known as a 'biological profile' of the individual can be arrived at, even in the absence of ante mortem dental records thus providing

further information which can narrow the search to a smaller number of missing individuals and contribute in cases of homicide. This profile is reached by recording such data as age, ancestry, sex, alimentary habits, and dental anthropological traits. Systemic pathologies and other additional personal information of the individual such the geographical origin is also considered. The latter can be obtained through the analysis of minerals in the enamel<sup>36</sup> or dental material specimen.<sup>37,38</sup> This information can also be used to observe and evaluate common features or inconsistencies between ante mortem and post mortem records<sup>39</sup> thus narrowing the search for a possible identification by excluding incompatible individuals. A computer-assisted identification program could be employed to store information gained from the unidentified persons to create a national dental database holding dental and radiological data<sup>40</sup> and contribute to the process of identification when further information on the missing person may become available through human rights international organization, embassies or Interpol.

It is important to note that not all cadavers recovered from the sea or stranded on Italian coasts belong to missing migrants.



They may be persons visiting or in transit through Italy or even washed up by the sea from other countries with a proximate coastline.<sup>41</sup> In this regard mandibular morphology and craniometrics can represent powerful forensic tools to assist with race classification and the geographic origin of human remains.<sup>42,43</sup>

## DISCUSSION

Lack of (or incomplete) human identification procedures infringe upon a range of human rights embodied in the Universal Declaration of Human Rights and set out in the International Covenant on Civil and Political Rights (arts. 2, 6 and 7)<sup>44,45</sup> as well as regional instruments, including the European Convention on Human Rights. Unidentified bodies in Italy, as in other countries, may involve violations of various civil and cultural rights of the families waiting for news of their missing relatives. There are 15,071 foreigners reported as missing to the Italian Police (including 8,153 minors), 9,392 Italians missing (including 1,651 minors) and 832 unidentified bodies of unknown nationality.<sup>17</sup> To achieve and maximize effectiveness of the identification process, the implementation of an international database, not only for DNA and fingerprinting, but also for dental

(odontogram and periapical x-ray images) data is needed. The software named 'Fast ID', currently under development<sup>31</sup> under the supervision of Interpol, will hold a wide range of information on missing persons and unidentified individuals in an international setting.

This suggests the importance of promoting international co-operation between organisations involved in human identification, and quality control among forensic experts and police agencies. It should be clear to all those involved in the process of human identification that an incomplete post mortem assessment - which may lead to a delayed identification - represents a violation of human rights and international humanitarian law because "once the fate of a missing person has been determined to be death, all available means must be undertaken to ensure recovery of the body and any personal effect".<sup>21</sup> It is imperative that human remains be properly handled in order to protect data for potential identification as there is a forensic component in every missing person file.

In 2003 The International Committee of the Red Cross founded a forensic department with the aim of offering guidelines and training for experts<sup>46</sup>.

Therefore, forensic science also becomes a tool for humanitarian action, to help ensure that unidentified bodies receive appropriate burial rites or to avoid them being given inappropriate ones. The sorrow and psychological suffering of the next of kin increases over time and also with any delay in arriving at a positive identification.<sup>21-26</sup>

The families of missing persons have the right to know the fate of their loved ones and a autopsy on recovered unidentified bodies should be performed including both DNA sampling and a complete dental assessment. However, a complete dental autopsy appears to be performed only in a limited number of cases, much less than DNA sampling. This may later require an exhumation in order to complete the post mortem data recording with anthropological and dental assessments. This may increase the sorrow for the family of an already processed cadaver and incur further costs such as the forensic assessment and new burial. From the author's experience dental autopsies must be performed by an experienced forensic odontologist and should consider X-ray imaging of the teeth.<sup>46,47</sup> With the exception of 61 cases out of the 832 unidentified bodies, it can be concluded that prior to the Ri.Sc. System and associated forms, there was little attention

given to identification by dental means, the emphasis being given to DNA testing and excluded both the relevant generic biological profile obtainable by a wider dental biography<sup>48,49</sup> and all possible retrievable data from a complete anthropological assessment.<sup>35,43</sup>

Forensic human identification must be performed through a multi disciplinary approach using all possible identification methods available and applying international standards and codes such as those recommended by Interpol. This issue will have to be confronted by the Italian Ministry of the Interior when it considers all possible solutions towards an effective human identification process and promotes an interaction with other countries where human identification is scientifically determined applying primary methods. As migration and travel increases, the use of international standards, codes and language allowing appropriate exchange of missing person data should not be overlooked.

With regard to identification procedures both for disasters and missing persons, the involvement of forensic experts and DVI specialists should not be limited to the post mortem assessment and recording of data, but their technical consultation should continue in the data reconciliation

procedures and in the ante mortem dental data search along with police technical staff. In the author's opinion, a medico-legal autopsy, which is usually requested to determine the cause of death, should not be confused with identification autopsy, which ends with the reconciliation of the post mortem findings with the ante mortem data retrieved by police investigators. To this end the work of Disaster Victim Identification teams could prove to be of excellent educational value providing teaching opportunities<sup>51</sup> and less experienced colleagues should be encouraged to participate as international observers.

## CONCLUSIONS

The proper documentation and identification of living and deceased migrants is important to safeguard national security and ensure public safety against terrorism. It is also a fundamental principle of human rights, human dignity and international humanitarian law.

The need to strengthen identification procedures as a protective measure has

been increasingly globally recognized and forensic sciences can also be considered a tool for humanitarian action. Odontological registration and dental radiology are fundamental resources for age estimation and identification of living and deceased victims even when ante mortem dental data is not available. Greater emphasis needs to be placed on the role of the forensic odontologists and on their collaboration during autopsies of unidentified individuals, regardless of the circumstances, in the data reconciliation procedures and in the ante mortem dental data search along with police technical staff.

The failure to employ odontologists routinely in investigations of missing persons may result in reduction of additional findings that, together with other circumstantial evidence, could lead to a delay in a positive identification. Where a deceased's nationality is unknown, personal identification should also apply DVI procedures, Interpol forms and at least a primary combined with a secondary identifier.

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