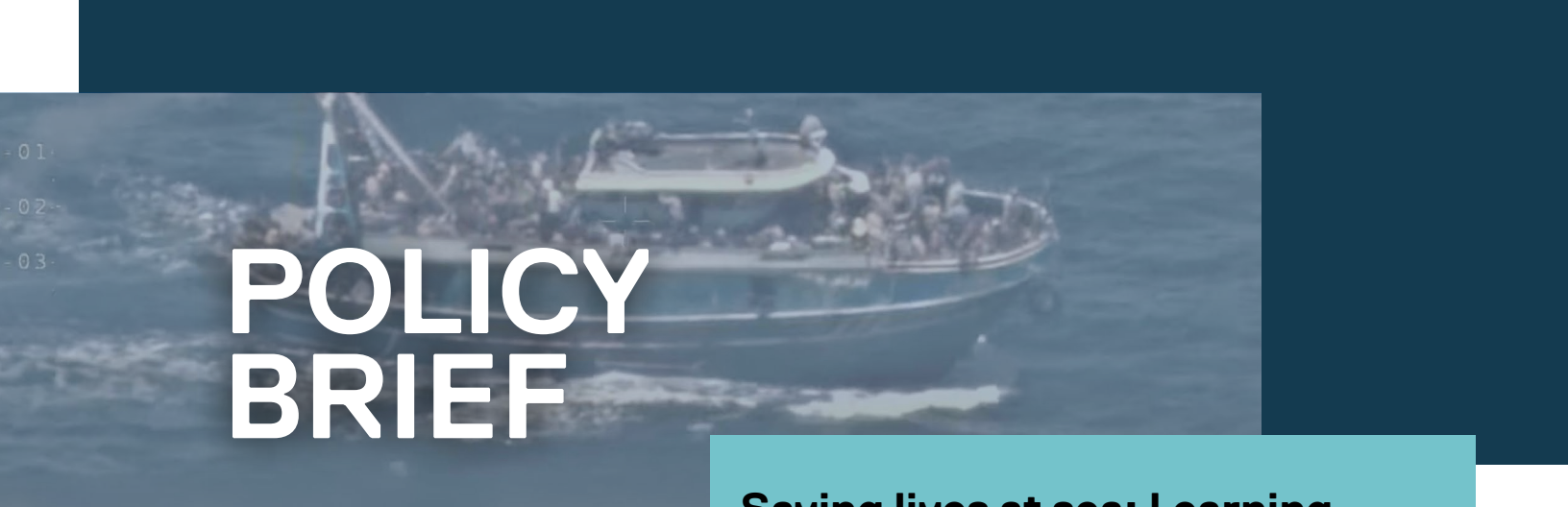




POLICY BRIEF

No. 16, August 2023
Danai Angeli, Vassilis Papadopoulos

Saving lives at sea: Learning through failure or failing to learn?

EXECUTIVE SUMMARY

Each year, hundreds of migrants die or go missing in their effort to cross the Mediterranean Sea in unseaworthy vessels. The duty to save lives is well established in international law. However, strained coastal states are often reluctant to save unwanted migrant vessels and assume the responsibility for the survivors. The latest shipwreck in Greece, epitomizes the consequences of this inaction. There is an urgent need to develop a common search and rescue policy scheme to prevent further tragedies and ultimately to manage borders in accordance with international law standards.

THE PYLOS SHIPWRECK

On June 14, 2023, at 02:04 (EET) in the dark of early morning, an overcrowded fishing vessel, carrying approximately 750 refugees and migrants sank in the Mediterranean Sea, 47 nautical miles southwest of the coast of Greece. The vessel had departed five days earlier from Tobruk in Eastern Libya and was heading towards Italy. On board were mostly young men from Egypt, Pakistan, Syria and Palestine, but also children and families. They had [reportedly](#) each paid between \$4,000 and \$6,000 USD to smugglers in their search for refuge and a chance for a better life in Europe. The overcrowded vessel, which measured roughly 66 by

98 ft (20 by 30 meters), did not hold any life-saving equipment or adequate food and water supplies for the entire journey.

This is not the first time a migrant shipwreck occurred in the Mediterranean Sea. What makes this case stand out, however, is that the Greek and European authorities were passively watching the vessel from afar for over 13 hours without intervention, despite several mayday calls. It was only after the vessel capsized, in calm waters, that an actual rescue operation took place. By then it was too late. Over 500 people are presumed to have drowned that night, among them 100 women and children.

Notably, all stakeholders involved have denied any wrongdoing.

Figure 1. Approximate route of Pylos vessel and location of shipwreck



Source: [Associated Press](#) [last accessed June 26, 2023]

TIMELINE OF A DELAYED RESCUE

The vessel first came to the attention of the authorities in the morning hours of June 13, 2023. Some of the passengers contacted a human rights activist based in Italy, reporting problems with the vessel's engine. The latter alerted the search and rescue services in Malta, Italy, and Greece about 10:35 (EET). Two hours later (12:47 EET), a surveillance plane by [FRONTEX](#), Europe's Border and Surveillance Agency, also [detected the vessel within Greece's search and rescue area](#) (SAR area). FRONTEX informed the Greek authorities but [took no further action other than tracking the vessel](#) due to restrictions in its mandate. The Greek authorities established contact with the vessel at 14:00 EET but claimed that the people on board refused assistance. Soon after, a volunteer-run hotline received several calls for help by distressed passengers. Later in the afternoon of the same day, private vessels delivered water and food to the people on board, following a call by the Greek authorities.

It is heavily disputed what happened afterwards. [According to the Greek authorities](#), about 22:40 (EET) in the evening, a patrol boat approached the vessel. Having established it was still seaworthy, it followed but did not intercept the vessel, allegedly due to jurisdictional limitations on high seas. About 01:40 (EET) of the next day (14/06/2023), the vessel's engine broke down again. At 02:04 (EET) the vessel suddenly capsized and sank. This version of events has been disputed by [several sources](#), according to which the vessel had repeated engine failures, was occasionally drifting, and capsized after a failed towing operation towards an unknown direction, by the Greek coast guard.

What is undisputed is that it was only after 02:04 (EET), more than 13 hours after the vessel had been initially detected, that a large-scale rescue operation began. Eventually, only 104 men were saved. 84 dead bodies were collected from the sea. Hundreds remain missing.

MUTED RESPONSE TO A MAJOR TRAGEDY

The shipwreck is arguably one of the worst tragedies in the Mediterranean Sea. Yet none of the relevant stakeholders has apologized or assumed responsibility for the failed rescue operation.

At the national level, Greece has denied any wrongdoing, blaming the smugglers instead. Heavy criminal charges have already been pressed against nine survivors for: creating and participating in a criminal organization, facilitating unauthorized migration, endangering lives, causing a shipwreck, and other crimes. The procedure of laying charges is itself controversial, due to reported inadequacies in verifying the statements of some of the survivors who declared that they were the victims, rather than perpetrators, of migrant smuggling. At the time of writing, an independent investigation in line with international standards has yet to take place on the possible role of the authorities themselves in either causing or letting this tragedy happen.

At the regional level, FRONTEX has shifted all responsibility to the Greek authorities. A [serious incident procedure](#) has [reportedly](#) been opened to document possible violations of fundamental rights. However, it is unclear if and to what extent this procedure will independently scrutinize the actions, and possible failure to act, of its own staff.

At the international level, Pakistan, a country that is mourning hundreds of victims from the shipwreck, has asked for an international investigation and possible compensation from both Greece and the EU. In a meeting at the UN Human Rights Council, Pakistan and several African nations raised the need for changes in Greece's and Europe's migration management policies. In a [joint statement](#), UNHCR and the International Organization for Migration (IOM) reiterated the need for safe pathways for migration and for effective

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search and rescue mechanisms. The [UN Committee on Migrant Workers](#) also issued a call asking states to prevent deaths, save lives and make migration safe.

Yet calls for change and accountability have largely remained unanswered.

THE DEATH TOLL OF MIGRATION

The shipwreck on Pylos is not an isolated incident. On February 26, 2023, another vessel sank near Crotone, Italy, resulting in the death of 62 migrants. Similar to this case, the vessel had been detected early on by [FRONTEX](#) and was initially deemed seaworthy by the Italian authorities. Contrary to the Pylos case, a rescue operation was [reportedly](#) initiated when the first emergency call was made, but bad weather conditions prevented the coast guard from reaching the vessel on time. In the aftermath, Italian prosecutors opened two investigations: one against the smugglers, and one into possible failures of the rescue operations. The Italian authorities also [appealed](#) for more EU solidarity to manage migration. FRONTEX denied any responsibility.

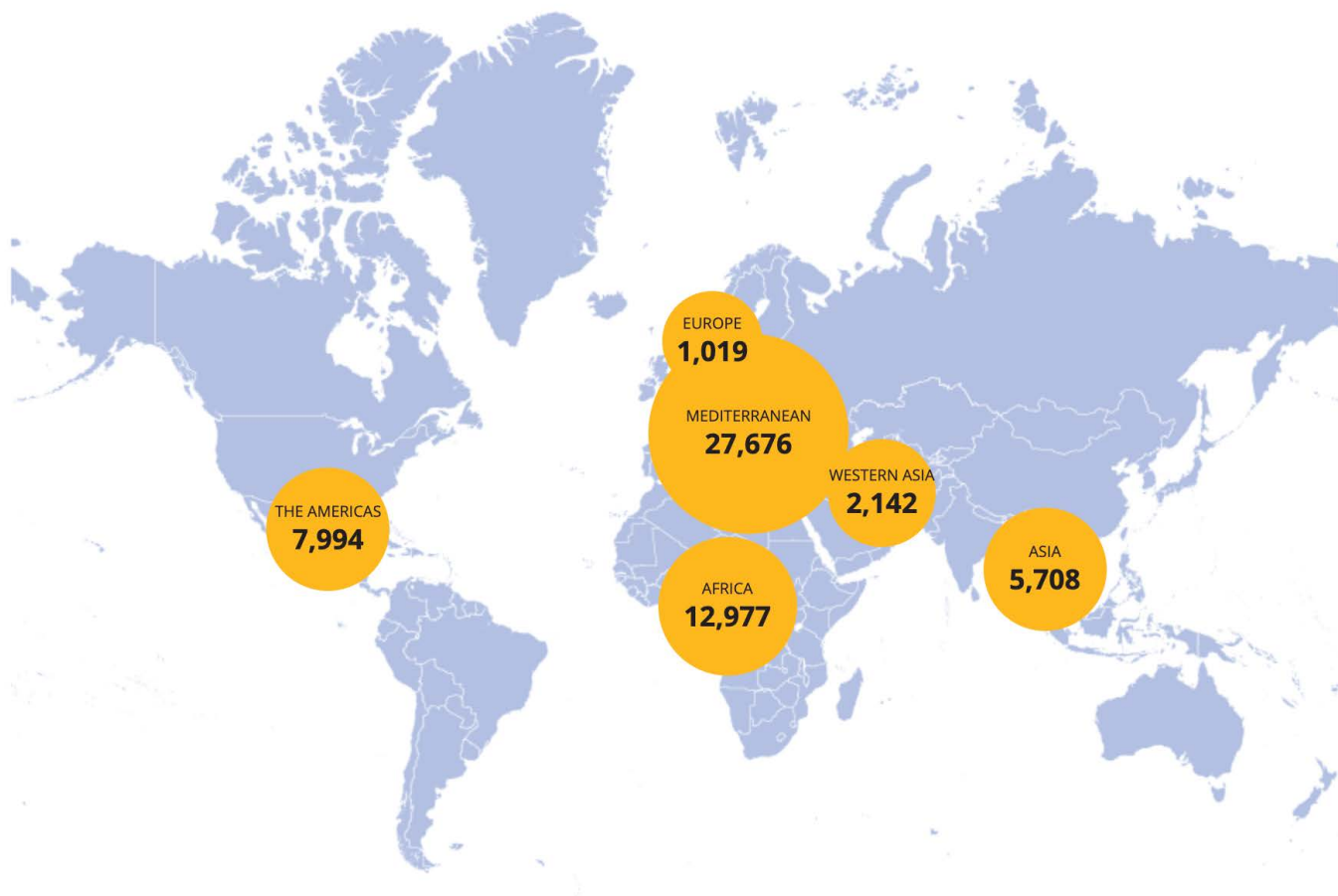
Globally, each year thousands of refugees and migrants die or go missing when attempting to cross international borders. Accurate global or regional statistics are largely missing.¹ Since 2014, a concentrated effort to collect data has been undertaken by the [Missing Migrants Project](#) of the International Organization for Migration. Figure 2 shows only minimum estimates; the real numbers are likely much higher.

Globally, the primary cause of migrant death is through drowning in the Mediterranean Sea. Since 2014, at least 27,629 migrants have lost their lives, most of them along the Central Mediterranean Sea route from Libya and Tunisia to Italy and Malta.

Despite the risks involved, the Mediterranean Sea remains the main entry point into Europe.

In the first quarter of 2023, the Central Mediterranean route remained the [most widely used path](#), accounting for more than half of all irregular crossings into Europe. The reasons behind this include the operation of smuggling networks,² increasingly restrictive policies prioritizing enforcement and return,³ as well as [systematic pushbacks](#) along safer routes such as the Greek-Turkish sea borders, all of which redirect the flows to more dangerous pathways.

Figure 2. Global migrant deaths and disappearances 2014-2023 (June 27, 2023)



Source: [Missing Migrants Project, International Organization for Migration](#)

In recent years, a significant number of migrants have been rescued by [NGO-run vessels](#), and in the context of [FRONTEX-led patrol operations](#) in the Mediterranean Sea. **To date, however, there is no common EU framework covering search, rescue and disembarkation activities, except for FRONTEX-led joint operations. Any efforts to establish EU competence over SAR activities in the Mediterranean Sea have proved short lived.**

In 2013-2014, some positive results in minimizing deaths at sea were achieved by [Operation Mare Nostrum](#), a wide-scale search and rescue operation run by Italy in response to a deadly [shipwreck](#) near Lampedusa that resulted in more than 360 deaths

and a [conviction](#) by the European Court of Human Rights. The operation was [abruptly abandoned](#) in October 2014. The high cost (reportedly more than 11 million Euro a month) but also the political controversy it sparked about encouraging irregular migration eventually outweighed the 150,000 lives it had been credited for saving. Since then, Europe's border management in the Mediterranean has increasingly focused on stemming the flows before they can reach European waters. [Operation Triton](#), the successor of Mare Nostrum, conducted jointly with FRONTEX in the frame of burden sharing logic, had a much smaller scope and impact in saving lives.⁴ Subsequent [operations](#), such as Themis, Sofia and Irini, gradually

reduced their SAR activities. The focus shifted on early detection in the SAR zone of Libya, despite mounting criticism about exposing the returnees to the risk of detention under inhuman conditions or abandonment in desert areas in the south of Libya.

In 2018, the [Global Compact for Safe and Orderly Migration](#) affirmed states' political commitment to save lives and prevent deaths. Yet, to date, a global or regional rescue scheme is missing. The duty to save lives at sea lies with individual states, which often rely on legal ambiguities to evade responsibility.

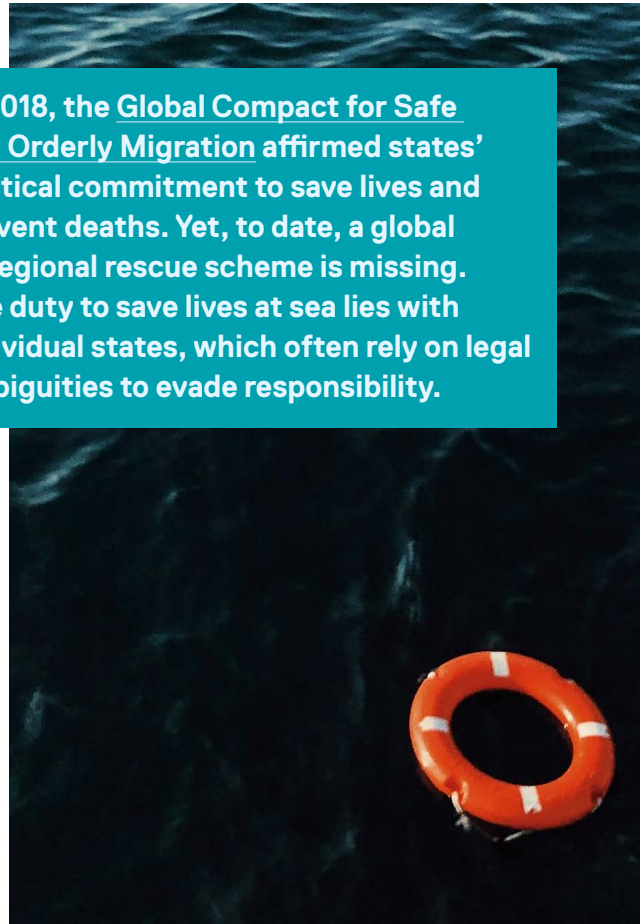
THE DISCRETIONARY DUTY TO PROTECT THE VICTIMS OF MIGRANT SMUGGLING

To justify their delayed intervention, the Greek authorities pointed to the fact that the tragic vessel was located on high seas where arguably all vessels enjoy freedom of navigation that no state should disrupt.

Under international law, the high seas are open to vessels of all states, contrary to other maritime zones, where coastal states can lay down the rules of passage. However, freedom of navigation on high seas is not unlimited. States retain the power to visit foreign vessels on high seas, if they have reasonable grounds to suspect that a vessel is engaged in unlawful conduct. The precise conditions under which such operations can take place are narrowly prescribed under the [UN Convention on the Law of the Sea](#) but include the possibility to visit vessels that do not carry a flag, as is often the case with migrant vessels.

Furthermore, when there is suspicion that a vessel is engaged in migrant smuggling, in other words is transferring migrants unlawfully for financial or other material benefit, the [UN Smuggling Protocol](#) also grants states the right to board and search the vessel on high seas. If their suspicions are confirmed, states are expected to take the appropriate measures, which include protecting the victims.

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In this specific case, the Greek authorities had the power, legally speaking, to intercept the vessel on high seas, and assist the passengers, but were not necessarily obliged to do so. It appears that they chose the second option.

This flexible framework, leaving it up to states' discretion to intercept smuggling boats, seeks to strike a balance between two conflicting objectives: the need to combat criminal activity on the one hand, and the requirement to respect the right to asylum and protect the victims on the other.⁵ However, it has also given the leeway to states to turn a blind eye to migrant smuggling on high seas, especially in demanding situations, such as if the vessel is overcrowded and the protection needs are presumably high.

THE INCOMPLETE REGIME OF RESCUING VESSELS IN DISTRESS

The Pylos fishing vessel was not only overcrowded, but was also unsafe, as is the case of many migrant vessels. According to the Greek authorities, no effort was made to rescue the vessel for over 13 hours because the passengers [rejected their help](#). This would have made any rescue operation risky, and most likely accelerated the sinking of the doomed vessel.

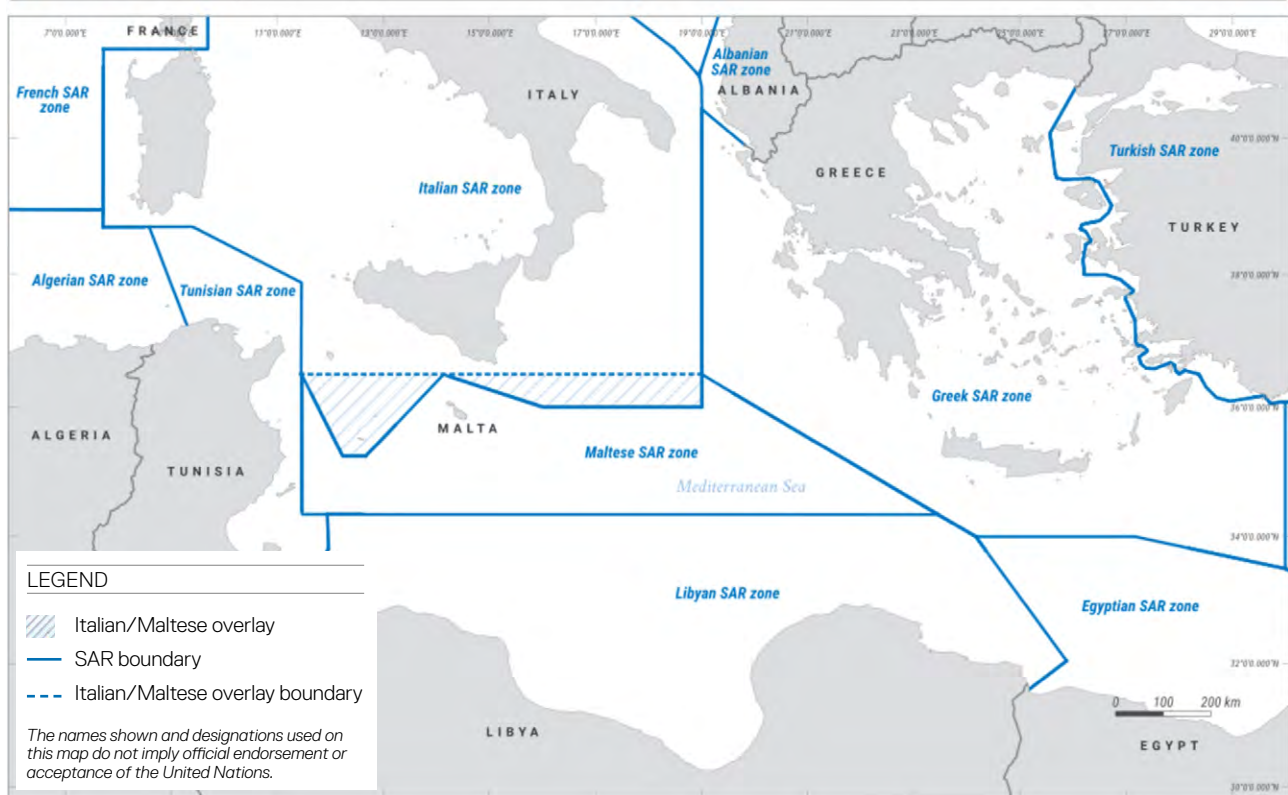
The duty to rescue a vessel in distress is one of the oldest rules of the law of the sea. The shipmaster is expected to proceed with all possible speed to the rescue of the persons, regardless of nationality or status. For this purpose, much of the sea worldwide has been [divided into search and research areas \(SAR area\)](#), for which different coastal states have assumed a coordinating role.

The rules [regulating](#) rescue at sea⁶ allocate to the coastal state in charge of each SAR area the primary responsibility for assessing the situation and for coordinating the rescue mission accordingly. Where needed, neighbouring states are expected to cooperate.

The Pylos shipwreck highlights the pitfalls of leaving it up to individual states to rescue migrant vessels. UNHCR has convincingly [recommended](#) that boats like Pylos should always be assumed to be in distress and must be assisted immediately. Any other interpretation, such as the one advanced by Greece, does not only risk rendering the duty to rescue ineffective, but also raises the legitimate question of who, other than the smugglers in charge of the boat, is authorized to provide consent and represent the people on board migrant boats?

What makes the case stand out is that even after Greece assumed responsibility for SAR activities, no

Figure 3. Search and rescue areas in the Eastern Mediterranean Sea



Source: [OHCHR](#) January 2021.

action was actually taken to rescue the people. It was only after the boat capsized that the Greek authorities took steps to collect the people and bring them to land, by which time it was too late for many.

International law is unequivocal that the rescue operations for vessels in distress must start immediately and require collecting the people and disembarking them at a safe place.

Controversially, the international rules on search and rescue do not explicitly require states to accept the survivors on their territory. This legal ambiguity has allowed states to avoid sharing responsibility for rescuing migrants at sea, shifting the burden entirely to the coastal state in charge of the SAR area. Once the migrants have been collected from the sea, the options for the rescuing state are very limited. In practice, it will disembark the survivors on its territory, unless any other state has agreed or offers to receive some or all of them. As a result, all too often, coastal states opt to monitor from afar, in the hopes that the vessel will drift into the SAR area of another state. There are even [reports](#) of migrant vessels being provided with fuel so they can continue their journey.

This scheme of allocating all responsibility to one individual state is prone to fail when the responsible state cannot or does not effectively control the assigned SAR area. On March 27, 2011, a dinghy carrying 72 migrants ran out of fuel and water and food supplies in the Libyan SAR area. Libya, in conflict at the time, did not assume responsibility. Although the Italian and Maltese authorities, as well as NATO, which was operating in the area, were alerted, no one initiated a rescue operation for the next two weeks, effectively leaving 63 of the people aboard to die of hunger and thirst. In the aftermath, all involved actors denied [responsibility](#). In response to this and other shipwrecks, Italy temporarily undertook operational measures to save lives at sea. However, there were [no structural changes](#) in SAR policies at the EU level to prevent similar incidents.

Succeeding initiatives to enhance solidarity upon disembarkation, such as the [2019 Malta Declaration](#) foreseeing the need for relocation of the survivors to other EU states on a voluntary basis within four weeks of disembarkation, were of a temporary nature and were abandoned in the course of time. In 2020, in its proposal for a [new Pact on Asylum and Migration](#), the European Commission suggested a new solidary scheme of mandatory contributions either in the

form of relocation or provision of direct assistance to the state of disembarkation. Eventually, this proposal was left out of the [political agreement](#) and [ongoing negotiating work](#) among EU states about the new Asylum and Migration Pact. Notably, even under this scheme, the primary responsibility would remain with the state of disembarkation. In the aftermath of the Pylos shipwreck, the European Parliament adopted a [resolution](#) calling, amongst others, for 'proactive SAR operations' along migratory routes to effectively save lives, as well as 'the establishment of a comprehensive EU SAR mission' implemented by both EU states and FRONTEX. It remains to be seen whether the recommendations will materialize.

The prospects are worse when migrants are collected by private vessels. Globally, there have been all too many instances where NGO vessels that have rescued refugees and migrants at sea are denied disembarkation, even by their own states, at the threat of criminal prosecution or license withdrawal. In certain cases, it took weeks before a state agreed to take the survivors to land.

The devastating shipwreck in Greece showcases the dangers of this state of inaction, which must be urgently addressed. **It should be noted that this is not a case of an unfolding rescue operation, which went wrong, or had to be aborted due to technical difficulties. There was no operation to begin with. Had Greece indeed needed operational assistance, it could have asked for it as it was entitled to do.**

Doing nothing, cannot be the frontline policy tool regarding how to respond to migrant vessels in distress.

ENSURING ACCOUNTABILITY AND AVOIDING REPETITION

When states implement rescue operations at sea, they are bound not only by the law of the sea, but also by human rights law. The right to life, which all persons enjoy, requires states to take positive measures to protect human life against known, imminent and foreseeable risks. This includes the duty to conduct [rescue operations at sea](#).⁷ According to the UN Human Rights Committee (HRC), the duty to save lives also applies on high seas, when a state formally assumes

responsibility for coordinating a rescue operation within its SAR area⁸, or is factually involved in a rescue operation, even if the incident takes place outside its SAR area⁹.

The European Court of Human Rights has already ruled that the right to life imposes on states, not only the negative obligation to refrain from the unlawful taking of life, but also the positive obligation to take all appropriate steps to protect human life.¹⁰ States' positive obligations include a duty to carry out life-saving operations at sea when they are informed of persons or vessels in distress within their jurisdiction. In a similar case of a failed rescue operation near Farmakonisi island in Greece in 2014, the Court found that, despite having been aware of the vessel's critical situation, the Greek authorities failed to ask for additional life-saving equipment and assistance, did not prepare for the event that the persons in distress might panic, and, most crucially, did not transmit a mayday relay before the vessel in distress sank.¹¹

In the Pylos case, Greece bore primary responsibility for protecting the lives of the more than 700 migrants on board. The vessel was located within its SAR area, and the Greek coast guard was coordinating the rescue operation. It is also evident that the vessel was in a critical situation, and that most of the above legal operational standards were not met.

The right to life also requires states to conduct an effective investigation for ascertaining the cause of death. This is particularly the case where the events at issue lie wholly, or in large part, within the exclusive knowledge of the authorities.¹² According to the Human Rights Committee, this normally requires a criminal investigation, which should be independent, thorough, effective and transparent, in accordance with the [Minnesota Protocol on the Investigation of Potentially Unlawful Death](#). The investigation must be aimed at ensuring that those responsible are brought to justice, and at drawing the necessary lessons for revising policies and practices to avoid repeated violations.

An investigation as the one envisioned by human rights laws has yet to take place at either the national or the European level for the Pylos shipwreck.

EUROPE'S SHARED RESPONSIBILITY

In the hours leading to the shipwreck, Greece was not acting alone. FRONTEX, the European Border and Coast Guard Agency was also present, tracking the vessel.

The European Union, as an international organization, bears [responsibility](#) if one of its organs, in this case FRONTEX, engages in unlawful conduct, either by act or omission. International responsibility can also arise if its organ knowingly aids or assists a state which engages in conduct that would have been unlawful had the organization itself engaged in this conduct. This responsibility can be concurrent to the responsibility of the states.

FRONTEX is mandated to assist European states to manage their external borders. Controversially, FRONTEX's otherwise [broad mandate](#) on border control and surveillance does not include the ability to independently implement search and rescue operations. FRONTEX can, however, track vessels in distress, transmit the relevant information to the competent national authorities, and provide operational assistance upon request. In addition, in a spirit of shared responsibility for European border management, FRONTEX is mandated to ensure effective monitoring, including on the actions of member states, and on compliance with fundamental rights in all its activities.

In the Pylos incident, FRONTEX [apart from tracking the vessel](#), did not continue monitoring the maritime area, as it was entitled to do. Instead, it abandoned the rescue area, and only returned well after the vessel had capsized. Had Frontex exercised its duties more diligently, the tragedy might have been averted. It remains unclear to what extent FRONTEX will independently review its own responsibilities for this shipwreck.

Europe's muted response to the tragedy raises the wider question of how search and rescue operations should be managed. Should these operations on high seas continue to lie within the hands of individual member states, especially overburdened coastal states? Should there not be an effective regional back-up plan when the responsible state is unwilling or unable to save lives on high seas?

RECOMMENDATIONS

The Pylos shipwreck has highlighted the need for urgent changes in border policies, and search and rescue arrangements in the Mediterranean Sea. Border death is foreseeable and preventable. Doing nothing to save lives is unacceptable.

The following recommendations should therefore be implemented as quickly as possible:

1. Establish a common search and rescue mechanism at high seas

Search and rescue efforts especially on high seas should not be the responsibility of individual states. There is a need for a comprehensive, regional coordination scheme, such as the one [proposed by UNHCR and IOM](#) in the Mediterranean Sea. FRONTEX could assume a coordinating role regarding national search and rescue services. In addition, specific provisions should be put in place regarding rescues by private and commercial vessels, including predictable disembarkation procedures.

2. Ensure proper implementation of the Smuggling Protocol

Combatting migrant smuggling goes hand in hand with protecting the victims. States should ensure proper implementation of the UN smuggling protocol, including prosecuting the actual perpetrators, and offering support and protection to the victims. This requires training of law enforcement and judicial authorities, so as not to penalize the victims. The protection of the victims should be incorporated in existing solidarity schemes.

3. Establish effective accountability mechanisms

Survivors of shipwrecks and their surviving family members must have the opportunity to participate in the investigation to seek justice and accountability. Investigations of shipwrecks should be conducted by independent bodies, be initiated automatically, at both the national and international levels, and follow the standards of the [Minnesota Protocol on the Investigation of Potentially Unlawful Death](#). International organizations involved in border

management, like FRONTEX, should also have an independent mechanism in place to investigate their own responsibilities in the case of a shipwreck, without requiring the submission of a complaint by survivors or their relatives.

4. Support the surviving families searching for dead or missing migrants

Establishing the identities of migrants that died or went missing during a shipwreck is particularly challenging. States must [support](#) families searching for their dead or missing relatives, by recovering to the extent possible the bodies, establishing communication procedures, collecting and storing forensic data, issuing death or presumed death certificates, and facilitating entry for funeral or identification purposes if needed.¹³

In the longer term:

5. Provide refugees and migrants with safe pathways to reach Europe

Restrictive border policies and illegal pushback practices do not stem the flows but redirect them to alternative, more dangerous pathways. This in turn increases the need for costly rescue operations. States must invest in safe-entry channels into Europe, especially during a crisis. Refugee resettlement programs, humanitarian visas and safe passages can address urgent, temporary needs without forcing people into deadly journeys.

CONCLUSION

States have the sovereign right to manage their borders. However, border control cannot come at the cost of human life. The deadly shipwreck in Pylos (Greece), just four months after a similar one in Crotone (Italy), illustrates the failure of the EU's border management policies and individual states' SAR mechanisms, to adequately prevent foreseeable loss of life at sea. Saving lives at sea requires international cooperation, especially inside the European Union, where solidarity between participating states is provided for in its statutory provisions. It is up to states and the international community to respond to this challenge by not debasing human life and by joining hands to this cause.

About the Authors

Danai Angeli is a human rights lawyer (Athens Bar, Greece). She counts over 10 years of professional experience in the field of asylum and migration. Since 2017, she has been training lawyers on asylum and human rights under the Human Rights Education for Legal Professionals Program of the Council of Europe and teaching international law at Bilkent University (Turkey).

Vassilis Papadopoulos is a lawyer, working in the field of migration and refugee law for more than 25 years. He is President of the Board of the Greek Council for Refugees (GCR), following his position as Coordinator of the GCR's Legal Services. Between 2015-2016 he served as Secretary General of Migration Policy of the Greek Government.

Endnotes

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- 9 Human Rights Committee, A.S. and others v. Italy, CCPR/C/130/DR/3042/2017.
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- 11 European Court of Human Rights, Safi and others v. Greece, no.5418/15, paras. 159–165.
- 12 European Court of Human Rights, Makaratzis v. Greece, no. 50385/99, paras. 74–75.
- 13 2018 [Mytilini Declaration](#) for the Dignified Treatment of all Missing and Deceased Persons and their Families.