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The Ethics of Search and Rescue at Sea**

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Abstract

Search-and-Rescue NGOs in the Mediterranean have been increasingly criminalized. This criminalization has chilled conversation about the real ethical dilemmas that the practice involves. What, if any, can be the adverse by-products of rescuing life at sea? In this article, we concentrate the dilemmas involved in SAR as seen from the perspective of rescuers. Our aim is twofold. The first is to map the dilemmas from a phenomenological perspective, as they are experienced by rescuers at sea. The paper sheds light on the complexity and nuance of the ethical landscape of maritime rescue, revealing an intricate web of interactions acknowledged by rescuers as posing ethical challenges. The second aim is to offer a conceptual framework for what it is that SAR NGOs are, in fact, doing. We contextualize their actions within the larger terrain of 'border externalization', in which states have moved enforcement activities to extraterritorial zones, where human rights law ostensibly does not apply. We thus argue that the set of norms underlying practices developed by SAR NGOs amounts to a strategy of counter-externalization. The idea here is that a window of opportunity can be created at sea, where human rights or international law protections more broadly apply, but enforcement powers of states are suspended. By utilizing these legal grey zones to the benefit of migrants, rescuers effectively turn extraterritorial zones from spaces of lawlessness into spaces of resistance. The rescue ship thus becomes a 'floating sanctuary'.

Keywords

Borders, Criminalization, Ethical Dilemmas, Externalization, Phenomenology, Search and Rescue, Mediterranean.

1. Introduction*

On March 4, 2021, an Italian prosecutor issued a long-awaited indictment against 21 individual members of search-and-rescue NGOs and 3 organizations for aiding and abetting illegal immigration. The charge was part of an ongoing campaign to criminalize acts of assistance and solidarity with asylum seekers and migrants, including acts intended to rescue lives at sea (Cusumano and Villa 2021). Indeed, in recent years scholars as well as UN actors and NGOs have responded with a counterattack, stressing unequivocal support with such rescuers, and countering the ‘smuggling’ narrative (Mann 2020; Mezzadra 2020).

While we believe such scholarship and advocacy is extremely important, the purpose of this essay is different. The criminal-law discourse surrounding search and rescue at sea has chilled honest conversation about the real ethical dilemmas that the practice involves. Focusing on the criminal law discourse can prevent us from asking an important question: What, if any, can be the adverse by-products of rescuing life at sea? This question, which, as will become apparent, rescuers have long asked themselves, draws upon a tradition of critical humanitarianism, in which critique goes hand in hand with action and its assessment in real-world rather than ideal terms (Brauman 2012; Kennedy 2005).

Many search and rescue (SAR) organizations such as Sea Watch, SOS Méditerranée, Médecins Sans Frontières, Refugee Rescue, and others, are staffed with critically minded people. Yet within the legally fraught environment that has emerged, they may seldom be able to articulate reflexive self-critique in public fora. For many, it has simply become too risky. But such a debate is crucial if the phenomenon of SAR is to be properly understood, and the principled political conflicts at stake properly analyzed (Mourão Permoser 2019). At issue are both questions about the conceivable ethical risks involved in possible collusion with smugglers, as well as complicity with abusive state policies. By interviewing members of SAR staff anonymously, we aim to offer a place for reflection on ethical dilemmas. One of our interviewees articulated the need for such an inquiry from his own situated perspective:

‘it is a big difficulty for the whole SAR community that we discuss a lot of things only “among ourselves”, have little open discussions with other actors, friends and comrades. Due to the constant criminalisation, but also the political pressure, we are often forced not to openly discuss important questions, which leads to them not even surfacing in a socio-political discussion. They remain in their own discussion spaces, are cut off and invisible.’
(private e-mail communication).

We thus concentrate on the dilemmas involved in SAR as seen *from the perspective of rescuers*. Our aim is twofold. The first is empirical and analytical. It involves a mapping exercise, serving as a phenomenology of ethical experience. Here, we seek to *identify* the key ethical dilemmas faced by rescuers at sea. The paper sheds light on the complexity and nuance of the ethical landscape of maritime rescue, revealing an intricate web of interactions acknowledged by rescuers as posing ethical challenges. We describe the emerging set of norms arising as SAR NGOs become more professionalized and develop internal policies, codes of conduct, and coping mechanisms to deal with some of these ethical challenges.

The second aim is to offer a conceptual framework for what it is that SAR NGOs are, in fact, doing. We contextualize their actions within the larger terrain of ‘border externalization’, in which states have moved enforcement activities to extraterritorial zones, where human rights

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law ostensibly does not apply (Benhabib 2020; Giuffré and Moreno-Lax 2019; Shachar and Niesen 2020). We thus argue that the set of norms underlying practices developed by SAR NGOs amounts to a strategy of counter-externalization. The idea here is that a window of opportunity can be created at sea, where human rights or international law protections more broadly apply, but enforcement powers of states are suspended (Mégret 2021). By utilizing these legal grey zones to the benefit of migrants, rescuers effectively turn extraterritorial zones from spaces of lawlessness into spaces of resistance. The rescue ship thus becomes a 'floating sanctuary'. Sanctuaries are understood here as safe spaces beyond the reach of law enforcement in which persons in need can receive protection regardless of the legality of their actions (Lippert and Rehaag 2014; Owen 2020).

Our empirical data is composed of 15 semi-structured qualitative interviews conducted with 12 activists who had been involved in SAR operations at both the operational and planning levels. The interviews were sometimes complemented by personal e-mail communication and exchange of primary documents. Although all respondents answered to our questions in an individual capacity, it was important to include people from different organizations in our sample so as to ensure a plurality of experiences. In total, our interviewees had worked in more than 12 different organizations (some were from the same NGO, others had worked for more than one). The limitations of our sample are clear. It is not representative, nor does it reflect the whole range of perspectives and experiences of SAR activists. Nonetheless, the richness and vividness of the interviews have provided rare insight into an otherwise tightly controlled field.

In accordance with the aims of the paper, we adopted a phenomenological approach to interviewing. We asked participants to reconstruct and reflect on their lived experiences, and sought to understand the meaning they made of those experiences from the point of view of their own subjective understandings (Schutz 1967; Seidman 2019). We proceeded first through our own contacts, then by 'purposeful selection', actively seeking the perspectives of rescuers engaged in different organizations and functions in order to minimize potential validity threats (Maxwell 2013, 121-138; Seidman 2019, 56-61). Some respondents belonged to the more 'humanitarian' organizations, others to the more 'solidaristic' ones (Cuttitta 2018). This often-reiterated division highlights the level of willingness to directly challenge state power and to articulate a political vision beyond the humanitarian one, which are stronger in solidaristic organizations. The activism all of interviewees focuses on the mid-Mediterranean space between Libya, Sicily and Malta as well as the Aegean.

Given the backdrop of criminalization, the interviews were not easy to do. Respondents often expressed their concern of being incriminated. A question of research ethics became ever clearer: how do we protect our sources, and make sure that the conversation is kept from serving as ammunition against them? Apart from individual anonymization, we have decided to anonymize organizational affiliation as well. While this requires a level of generality we would not necessarily choose, we hope it also serves to divert attention to important common grounds between the different actors. All interviewees have consented to the data being used in this form.

The article proceeds in five parts. After this introduction, Part 2 provides an analytical framework for understanding the ethical dilemmas that rescue staff confront. At the heart of their dilemmas is a bifurcation between the urgency of the imperative to rescue those who are at risk of drowning, and a consequentialist analysis of rescue operations. This contrast may seem all-too familiar (Weber 2004; Halley, et al. 2018). But within the context of sea rescue it has an interesting temporal and spatial structure, which we lay bare. Part 3 moves to a close reading of the different components of this structure, informed and illustrated by our interview material. Part 4 explains the SAR organizations' practice of sanctuary. By way of conclusion, Part 5 offers general insights from our research for understanding the ethical dilemmas faced

by rescuers, which could help with countering misperceptions in public debates about their role.

2. The Chain and the Command

A common framing can be abstracted from the experiences of SAR activists: when confronted with a distress case at sea, members of rescue organizations tend to treat the rescue event as to some extent isolatable from the larger political contexts in which they occur.

The act of rescue, in the rescuers' imagination, constitutes an emergency response to an already occurring catastrophe. It is based on an ethical imperative to save people who are at an imminent risk of drowning. When directly confronted with the phenomenon of distress at sea, the rescuer often believes she may and perhaps even should separate the event of rescue from whatever it was that led to it; she similarly feels compelled to isolate it, to some extent, from whatever occurs afterwards. While SAR activism has grown increasingly organized, funded, and to some extent bureaucratized over recent years, rescue itself retains at its core a grain of 'good Samaritanism': one individual helping another simply because the latter is in distress. The ethical concern is thus concentrated on a moment when larger policy considerations are suspended. Confronted with the drowning person, so the narrative goes, there is no choice to make and there is no dilemma. One must simply lend a helping hand. The act is a response to *a command of the conscience*.

However, whether the activists like it or not, this compartmentalization is never entirely airtight and cannot be successful in every instance. The ethical question of rescue at sea involves a choice between allowing or disallowing the moment of rescue to overflow and be informed by its surrounding context of political and economic power relations. "There is always *a chain*", as one of the interviewees put it felicitously, "in which the moment of rescue is just one link" (Interview 1).

This chain connects the former domicile of migrants and asylum seekers (often in a region of Africa or the Middle East), one or more transit countries and transit experiences along the way, the maritime journey, and further transit and destination countries in Europe. Rescuers know that the conditions of possibility for the migrants' and asylum seekers' journeys depend on many other actors whose actions may be questionable on ethical or moral grounds. Migration networks often overlap or intertwine with criminal and trafficking networks (Campana 2018), as well as with abusive state practices, both territorial and extraterritorial (Dastyari and Hirsch 2019). And so, it is impossible to assess what happens during rescue without addressing how that event is chained to others along the way.

To rescuers, 'the chain' and 'the command' present different kinds of ethical choices. On the one hand, there is a large and potentially global infrastructure for movement, in which political and economic interests of all kinds play a major role. When thinking of the chain, ethical considerations appear as questions – *should we do x or should we do y?* On the other hand, an unseaworthy vessel at sea presents a command of conscience that is qualitatively different. Such a command rests on the individual value of every human life. Rather than presenting itself as a question, it presents itself as an imperative: *we must do x*. Here, rescue is experienced as inherently valuable – it is pursued for its own sake and not to achieve other longer-term political goals. The emerging set of norms that has gradually crystalized among diverse SAR organizations is largely about how to make these two very different registers of reflection and action sit together. Their relationships are often uneasy.

Whereas the moment of rescue is often at the center of focus for rescues, it is tied by two separate 'chains'. One leads back to the port of departure, and from there all the way to a migrant's home (before she chose to take to the journey). A second chain leads forward, to the

sought-after destination. Think of the migrant vessel as an object at sea, tied by the two chains to the two different coasts of the Mediterranean. In cases of mid-Mediterranean migration, the first is tied to Libya, and the second to Italy (or Malta). The first connects to a territory of danger, and the second to a territory of safety. Figure 1 helps illustrate this basic structure.

Figure 1

The ethical questions develop when the rescuers find themselves having to engage with either chain. An investment in Chain 1 opens the question of relationships with non-European authorities, Libyan or other, as well as with non-state actors, including smuggling and trafficking networks. An investment in Chain 2, on the other hand, raises dilemmas concerning relationships with European forces, and less frequently with criminal networks on the European side, European publics, and at times funders. The journey along the line, from left to right, is a temporal progression along the migration route. But the figure is also aimed to illustrate a spatial distribution of moral experience. By way of rough generalization, the form of *the question* is associated with land and airspace, whereas the form of *the imperative* is associated with the sea.

Which specific ethical questions are important to rescuers? The danger of becoming complicit in a criminal system of migrant exploitation by smugglers is one side of the coin. But rescuers are equally worried, if not more, by the potential of becoming complicit in abusive practices and unjust policies by European states. These two faces of the quandary take on very different shapes in rescuers' real-life encounters. At a more general level of abstraction, however, they are experienced in similar ways: as the fear of dirtying their own hands and becoming part of a vicious scheme. The viciousness of smugglers and traffickers is to exploit migrants for profit. The viciousness of European state authorities is to impose violence on asylum seekers and migrants, while exploiting the role of SAR NGOs to do so. This cooptation may occur e.g. as a way to save state funds on governmental rescue within their own SAR zones; or to establish a useful 'enemy' or scapegoat, whose presence at sea serves to grant credibility and legitimacy to right-wing discourses and policies of closing ports and denying rescue. As shown below, such cooptation may also include NGO's contributions to sending back asylum seekers to harm's way (*refoulement*).

The danger of becoming imbricated in the exploitation and violence associated with chains 1 and 2 is particularly acute for those activists operating from a distance. In recent years, SAR NGOs have started complementing their naval missions with airborne operations aimed at monitoring the Mediterranean. These airborne operations locate distress cases, identify the nearest rescue assets, communicate with different actors to help coordinate a rescue, and report on human rights violations happening at sea. Currently Sea-Watch operates two monitoring aircrafts together with the Swiss Humanitarian Pilot Initiative (HPI), the Moonbird

and the Seabird. In addition, other NGOs and organizations such as 'Alarm Phone' and the 'Civil MRCC' also operate from a distance. Like with airborne operations, their mission is not to rescue but to monitor, coordinate and bear witness.

These activists face a very peculiar situation: their ultimate aim is to save lives, but they have no rescuing capabilities. When they receive a distress call or spot a boat in distress, they cannot immediately start a rescue. Even if they would like to, they cannot directly respond to the moral imperative of the command. Instead, they must decide how to coordinate a rescue to increase its chances of success, while at the same time trying to minimize cooptation by both sides of the chain. For them, it is impossible to isolate the moment of rescue from the wider political context. Instead, they must make assessments, define thresholds, and ultimately make difficult ethical and legal choices about which information to share. Theirs is the disembodied power of knowledge, not the embodied power of immediate action. We call their perspective *the bird's-eye view*.

3. Situated Perspectives

a. Chain 1: connecting to a dangerous coast

One of the most criminalized aspects of search and rescue is the issue of communication with 'the other side': non-European individuals and groups that may belong to criminal networks, including suspected smugglers and traffickers (Antonopoulos, et al. 2020). Communication with such groups may be undesirable for reasons of protecting oneself from criminal sanctions. But rescue staff are generally much more skeptical if communication is ill-advised also for *moral* reasons. This skepticism is common to members of seemingly more 'humanitarian' and more 'solidaristic' organizations, although they may differ on the intensity or patterns of communication. Generally, the categories of smuggler and trafficker are not taken to present a moral reality, but in themselves are perceived to be constructions aimed to serve morally questionable ends of destination states (Aloyo and Cusumano 2021; Maher 2018; Sharma 2003). More importantly, these categories are difficult to assess for the rescuers, who are often not able to tell what exactly the functions of the persons 'on the other side' are within an opaque system. As one interviewee explains: 'we have only very limited knowledge of how things work in Libya, and things change very quickly. How should I know if a person is himself part of a criminal network, or just somebody who is being paid or forced to do something by somebody else who is part of a criminal network? The power hierarchies are very difficult to tell.' (Interview 7).

If there is any communication between rescuers and smugglers before the situation of distress, state authorities in Europe see this as an indication of collusion. In addition, the idea of transfers happening at sea has been used to delegitimize the work of rescuers, who are accused of functioning like 'taxis' for smugglers (Allsopp, et al. 2021). Communication with such individuals, or even with would-be migrants and asylum seekers without preexisting criminal backgrounds, may constitute an important part of chain 1. Once such communication is established, the situation of distress at sea may seem more planned and organized, and not already occurring independently of SAR operations. And if that is the case, it may be difficult to cabin SAR as an urgent imperative with no questions asked. The appropriateness of SAR may look to some viewers more like an immigration policy question.

One type of response to questions on communication can be described as a willful or even constructed ignorance about when and where such communication occurs. For example, this rescuer chose to ignore anything that happens prior to the moment of rescue, and was indeed very reflective about her choice:

I do not know anything besides that there was an alert by somebody – whether it be Alarm Phone, or airborne operations, or the authorities, or another ship, or even Frontex – that there is a boat in distress. As somebody who is on the boat, *I don't want to know more. And this is a conscious choice.* That's all I knew and that is by design. To protect me and to protect people on the boat. Otherwise you can do harm to yourself and to the people you are rescuing. [emphases added]. (Interview 1).

One way to see this is as a legal technology to protect rescuers from prosecution – and rescue activity from falling apart when governments attempt to stop it. When one member is arrested and investigated, she will not be able to incriminate others; and without the necessary *mens rea*, it will be impossible to convict them of all crimes. Similarly, certain divisions within the organization may prefer to remain oblivious of what others are doing. In case of a data breach the whole enterprise does not go down the drain. The rescuer thus chooses not to know when and how her rescue ship communicates with migrants and their facilitators. This specifically means she does not want to know how Alarm Phone works, or precisely what happens with airborne rescue surveillance.

However, this blindness does not simply appear to be a 'legal technology' of the kind described above. The rescuer also explained her choice as an *ethical* one. It is an 'ethical technology', aimed to fashion a certain image of the self (Foucault 1988). Apparently, by *not knowing* the details of communication she may better focus on what she believes is her major role, that is, to rescue. She is relieved of distractions that may make her over-think certain rescue operations, in a way that can hinder saving lives as well as serving the larger emancipatory aims she envisions.

The second response is to question the assumption that rescue is only legitimate if it is accidental. As the same respondent told us: 'It's not called "find and rescue", it is "search and rescue". Why are we only legitimate when we happen to be floating around?' In other humanitarian emergency situations, she said, states would be patrolling the border *hoping* to find people in need of assistance. In the Mediterranean this is different because 'the situation in the Mediterranean is not acknowledged, not desired and not legitimized as an emergency' (Interview 1).

This second type of response seeks to deconstruct the notion that communication implies collusion. In particular, the often-vilified idea of an organized 'transfer at sea' is based on the premise that a migrant boat whose location is known is no longer in distress. But rescuers often argue that all migrant boats in the Mediterranean are in distress because they are all unseaworthy and can sink at any time, even in the middle of a rescue (Interviews 1, 4). The goal is to show that the accusations levied against rescuers are based on unrealistic premises about the real-life circumstances faced by maritime rescuers.

The notion of cooperation with smugglers is idealized and romanticized. Even if we get informed that 'there will be a boat leaving from, say, Tripoli, tonight at 1AM', it is still possible that we never find this boat. Or that we find it seconds too late and half the people have died. It also can be that this boat doesn't leave at all... People have a totally wrong idea of how these things work based on lack of knowledge and understanding for how rescue really works. Even when we receive distress calls, we sometimes do not find the boats. And each time we do not find a boat or arrive too late, these are hundreds of people who died. (Interview 4).

In other words, communication with the 'other side' does not transform the moment of emergency into one of 'transfer'. The emergency is always already constituted the very moment there is a migrant boat at sea, and the humanitarian emergency justifies both communication and action. This can be paraphrased as saying that communication is not enough to become a morally tainted link in the 'chain': by merely communicating with persons

in need of rescue in order to help rescue them, one does not become implicated in all the upstream exploitation and violence that brought the person to the sea in the first place.

A thicker link in the chain may be constituted when there is a physical encounter with presumed smugglers. In these cases, a reaction by the rescuers is often unavoidable. These encounters place rescuers in a very difficult situation. Policies among SAR NGOs often counsel a polite greeting but not more (Interview 7); here, the purpose is (also) often to avoid unnecessary legal risks. But there are also moments in which, due to circumstances that implicate an experience of urgency, there is no ethical option but to respond to their actions. In such instances, the moral imperative to act in response to the emergency trumps any other consideration:

The question of communication is a very complicated one because of how things work at sea. If you are at sea and somebody talks to you, you respond. If someone approaches you and says 'there is a boat', what do you do? This is exactly the situation that the authorities criminalize, but what should you do? Do you not go there? Or if someone comes to you and says, 'there are people dehydrating over there, give us water', you give water. What else should you do? Once they came to us with a pregnant woman and a two-year-old child and asked us to transfer them to our boat. This is exactly the situation that European states criminalize because it is a transfer at sea, but what should you do, should you tell them, 'no we don't take this screaming women and child, go back to the boat and we will come in one hour.' What about your criminal responsibility if something happens to that child and to that woman? So, yes, there was communication, but did we proactively seek to find them? No. (Interview 4)

Even regarding these cases, some rescuers seem to gravitate towards 'willful ignorance' or a kind of methodological presumption of innocence. In earlier years, for example, it was common that unidentified men in fast wooden boats would come to the rescue scene, or be there waiting from the onset, in order to take the engine of the flimsy migrant boat with them. In the media, these were often presumed to be smugglers. Images of such bystanders detachedly observing a rescue have been widely used to delegitimize the work of SAR NGOs, and as purportedly incriminating material in criminal proceedings for collusion with smugglers. But some rescuers prefer to call these men 'engine fishers', a terminology that intentionally suspends judgement on the role of these individuals in the chain of exploitation. As our interviewees explained, for them it is very difficult to assess what is the true role of these people. Are they part of a criminal smuggling network? Are they fishermen looking for a source of extra income (e.g. by selling engines, as has apparently been the case in Greece)? Have they been forced by smugglers to perform this task of collecting engines, and are therefore themselves in an exploited position? Any of these scenarios could be true and rescuers are not able to find out. They therefore call them by a term that simply describes what they do: they pull engines from the water, hence they are 'engine fishers' (Interviews 4 and 7).

Gradually moving to more robust links to the chain that may tie the rescue vessel to questionable practice, let us next consider that some rescuees have been trafficked for the purpose of sexual exploitation. If this is the case, the links on the victim's way from their domicile in a country of origin to a European city may largely be made of instances of rape, torture, and embezzlement (Al-Dayel, et al. 2021). Rescuers are typically aware of this reality. Indeed, it becomes seemingly observable, e.g. in instances when a man says that he is married to a certain woman but when asked the woman denies such a relationship (Interviews 1, 2, 4, 7, 8, 9 and 11). In terms of the analysis of links in a chain, this may mean that one problematic link – the man – is present on board. He may be on board for a fee; interviewees also suggested that he may be playing this role in return for a free journey in earlier legs of the trail, where smugglers charge migrants for their services. The fact that he is momentarily serving as part of a trafficking network does not in itself mean that he is not legitimately seeking asylum.

One technique rescuers apply in order to confront such exploitative dynamics is to physically separate women from men. Such separation is part of a larger imagination according to which the rescue vessel is constructed as a kind of isolatable entity in which all kinds of abuse are suspended (see Part 4).

Interviewees have hesitated on whether it is appropriate to actively seek to understand what is going on in such misrepresentations of relationship. Some rescuers are adamant not to prejudge anyone, and not to slip into the role of law enforcement (which would make them links in 'Chain 2'). As they explained, they are not responsible and not trained for that, and they want to avoid at all costs becoming imbricated in security. Their concern is safety, not security (Interviews 1, 2, 4, 7, 8, 9 and 11). If somebody asks them for help, many will seek to help, otherwise choosing willful ignorance. These rescuers feel like they must demarcate the boundaries of their responsibility. Note in this context the role played by the distinction between land and sea. European soil is imagined as the territory of anti-exploitation policy and indeed of law enforcement. The sea, perhaps because it is at least partly beyond state jurisdiction, is imagined as an area where such policy questions and specifically law enforcement need to be suspended:

We are not responsible for knowing whether people were trafficked or not. If somebody tells us that they have been trafficked or tortured, we can make a proper referral. But the limits of what we can do is a referral. We are not on land. There are other organizations who can help. We need to hand people over to the next leg of the journey. There needs to be trust. There needs to be a limit, or a boundary, and you need to set your remit as an NGO. (Interview 1)

We always separate men from women and children. No man is allowed in the safe place. But there can always be the case that someone accuses someone else of being a trafficker. We are not police enforcement and will not do the enforcement part. We will ask the accuser what we can do in terms of safety. We can refer them to protection and potentially help them disembark separately. But to do more on board is impossible. We are not really trained for that. (Interview 8)

In all these instances, opening the isolated space of the ship to the far-reaching chain means a risk of inadvertently becoming part of a vicious scheme. There seems however to be a lack of agreement, or perhaps a lack of openness, on the extent to which such complicity is a real possibility. Some rescuers deny it altogether, saying that it is 'a constructed dilemma' (Interview 2) or 'no dilemma at all' (Interviews 1, 5 and 6). According to this view, it is clear that just by being at sea and helping somebody in emergency, one is not complicit with that person's exploitation. In this context we heard comparisons to other scenarios. An ambulance or person providing care to the victim of a car accident is not responsible for another's negligent driving (Interviews 6, 11). Moreover, when it comes to allegations of constituting a 'pull factor', rescuers pointed out that this is a narrative strategy that purposefully obscures the real drivers of migration, which are systemic in nature. As one interviewee said: 'It is not a couple of ships that are going to change migration flows from Africa to Europe. The answer to this question is not to be found at sea, unfortunately' (Interview 6). Another interviewee explained that scholarship has disproved, time and time again, the narrative about 'pull factors' (Interview 15).

Yet other rescuers acknowledge the existence of a potential connection between the command and the chain in one way or another. They believe that smugglers react to their presence by adapting their strategies. In the words of one interviewee: 'We need to live with that. We are part of a chain. The trafficker, smugglers, flight helpers – whatever you want to call them – they know about our existence and they are not stupid. It is a pervert system' (Interview 4). One interviewee mentioned rumors that smugglers charge higher prices when there are SAR ships at sea, but added: 'they also charge more when there is good weather' (Interview 5). In other words, while realizing that their actions influence smugglers' immediate strategies, the rescuers we spoke with were conscious of the fact that any effects their

presence might have on migration flows are only circumstantial. 'People move anyway. During Corona there were more autonomous arrivals than NGO rescues. People continue to come. All states know that' (Interview 4). And because people move anyway, the rescuer's task is to make the journey as safe as possible. One interviewee compared the rescuers' role with that of drug substitution policy, which do not combat the addiction, but manage to do away with the violence and criminality associated with drug consumption (Interview 5).

b. Chain 2: connecting to a port of safety

The ethical dilemmas of chain 1 – especially the risk of colluding with smugglers and traffickers – are somewhat more familiar, though perhaps in caricatured form, to European publics. They have been fueled by anti-migrant sentiments and by media hungry for headlines, as part of a 'border spectacle' (De Genova 2013). The ethical dilemmas of Chain 2, which are much more salient to many of the rescuers we spoke to, are perhaps less familiar.

For many of our interviewees, complicity with exploitative practices by smugglers was secondary to concerns about assisting European states in upholding an unjust and inhuman border regime. This concern presents itself in many ways. One is a direct mirror image of the notion that only by their presence NGOs might be fueling or facilitating the migrant smuggling business. With regards to abusive state practices, some members of rescue NGOs have the feeling that their mere presence might be indirectly benefiting European states to maintain an abusive system. Some interviewees expressed concerns that the presence of NGOs actually releases states of their obligations: 'Even if they are fighting us they still rely on us. The NGOs provide the veneer that at least something is being done' (Interview 4). Others have gone further:

But then, the next question was: to which extent are we reinforcing the right-wing discourse? Our actions were used to give them something to say. Because in 2018 the whole political discourse in Italy turned on migration, to the detriment of the real problems in the country. And it played an important role for the government to have a ship at sea in order to enforce the policy of closed ports, for example. So we also asked ourselves whether we are reinforcing the propaganda. (Interview 6)

Another way in which this link to the second part of the chain appears is when SAR NGOs have to comply with regulations they disagree with. To be able to continue operating at sea, and to gain permission to disembark rescued migrants, SAR NGOs must comply with a number of rules established by European states. Some of the most controversial rules were established when, in 2017, Italy drafted an EU-sponsored SAR 'code of conduct'. The document made permission for NGO vessels to disembark migrants in Italian ports conditional on collaborating in the fight against smugglers and accepting the presence of law enforcement personnel on board (Cusumano 2019). Most NGOs active in the Central Mediterranean signed the code. But many resented what they saw as an effort to enlist them into becoming an extended arm of the authorities. Among the most controversial provisions were having to accept armed officials on board; and having to flag the presence of suspected smugglers and to destroy or burn the boats used by smugglers and take the engines so that they cannot be re-used.

While none of our interviewees saw the latter as a problem in and of itself, they did feel like they were being used to enforce security policy, sometimes even at the risk of their own safety. After all, 'it is actually not so easy to burn a boat or destroy it with an axe. We would only do it because we thought these boats were all unseaworthy and should not be used again, but we didn't see it as our role to be doing this' (Interview 4).

Rescuers also expressed ethical concerns about enforcing policies of migrant selection based on criteria that they do not share (Interviews 1 and 9). Many rescuers are motivated not only by humanitarian but also by political ideals. Activists for open borders are critical of

migration control policies that impose strict criteria on who can move (for example by differentiating between political refugees and people fleeing destitution or natural disasters) (Jones 2016). And yet, when they are negotiating with European authorities to be able to disembark people in a port of safety, states will ask them to provide information. Rescuers are asked about the gender, age, and nationality of those on board; the number of unaccompanied minors; and sometimes also about how many are likely to be asylum seekers. This information is then used in negotiations for authorization to disembark. The information SAR NGOs give the authorities will thus likely impact the chances of those rescued to be granted permission to stay. This is one way the ship is clearly tied to the chain of what happens after disembarkation. One interviewee told us: 'They'll ask you how many asylum seekers there are, etc. but I don't agree with these categories. So we try to find out as little as possible. We only ask the people what we need to know in order to tell the authorities. Otherwise, what they want to tell you, they tell you. You don't ask questions' (Interview 1).

Rescuers are also aware that even the mere fact of having been rescued by a SAR NGO is likely to impact the fate of the rescuees. In a context of extreme politicization of the work of SAR NGOs, having been rescued by an NGO ship can be a reason why migrants receive differential treatment after disembarkation (Bellezza, et al. 2021). One interviewee reported that in the case of the particularly politicized and mediatized rescue operation conducted by Sea Watch captain Carola Rackete, once the migrants were finally disembarked in Italy, they were kept separate from other migrants in the hot spot and were called 'the Sea Watch Group' (Interview 1). Due to the media attention given to that rescue all over Europe, mayors of several European cities offered to take the migrants and foreign authorities came to interview migrants and conduct resettlement negotiations, which is not happening for other arrivals. All of this brings home to rescuers the fact that their actions have clear implications for what happens to the migrants further down the chain that symbolizes all steps of their journeys.

The ethical questions discussed so far refer to indirect effects of rescuers' actions in terms of becoming 'extended arms' of the authorities – through NGO's unintended role in upholding policies of border securitization, migrant selectivity, and differential treatment. There are, however, certain instances, where NGOs feel that they are not only being abused but being complicit with abusive state practices. Thus, interviewees told us about cases where they had been witnesses to state authorities using violence against migrants, or to military ships denying rescue to migrants in distress – but felt compelled to remain silent (Interviews 3 and 5). They did so for fear of sanctions, or to buy themselves more leverage in terms of being allowed to carry out their activities.

All these decisions are extremely controversial inside NGOs and accompanied by difficult considerations. They generate 'deep disagreements' within the NGO community and trigger discussions about the ultimate goals of the movement and 'the kind of politics that SAR NGOs ought to be pursuing' (Interview 14). One interviewee said: 'We had a very strong debate internally on whether we should report on violence and try to keep authorities accountable. Being a witness to these things without reporting means being a part of them. We considered developing an evidence gathering protocol. But then we consulted a criminal lawyer and he said that if we did that we could be accused of conspiracy' (Interview 3). Another interviewee reported having similar doubts: 'Are we part of the state system or not? That is the ethical question. But we are not doing this to help the state. We are helping the people. If we are not there no one will be there. At the end our answer is always the same: we need to comply in order to be able to keep on doing this [humanitarian SAR operations]' (Interview 5).

c. The Command

If rescuers do not act upon the humanitarian imperative to save lives in the face of the emergency, they act against their principles. But if they do act, they may end up implicated in wrongs committed by exploitative migration networks, or by states.

How do SAR NGOs respond to this dilemma? Through standard operating procedures and internal codes of conduct reflecting a deep-seated set of cultural norms, they turn the rescue vessel into a space experienced as detached and isolated from what happens both before rescue and after disembarkation: a space where difficult negotiations are held at bay. Instead, the rescue staff acts out of pure moral urgency that gives whoever feels it no other choice but to respond. In the latter context, we do not mean 'moral' as opposed to 'legal'. To some extent, international law is experienced as a 'higher law' which the rescue vessel upholds despite and against states (Mégret 2021). As we show below, this constitutes the rescue vessel as floating as well as fleeting utopia.

Perhaps the most straightforward way to see the work of insulation from politics is in its 'negative' embodiments, i.e., in rescuers' attempts to actively push the intervention of the state out of their way. Under the law of the sea the vessel is a highly regulated environment. Generating an ethically isolatable environment does not mean eschewing such regulation. Rescue teams are aware that states attempt to intervene and eliminate their autonomy by reference to maritime safety regulations and may therefore be very cognizant of them. But they may still try to stay rather autonomous, sometimes by use of 'flags of convenience'; and in other times by choices of where and how to register – whether as recreational vessel or otherwise (see e.g. Schatz and Endemann 2019).

Contrary to what the use of such flags may suggest, this negative removal from the state's reach is not merely a matter of 'convenience'. It is also an ethical matter. Thus, for example, rescuers may be very strict in not letting armed agents of the state board their ship, even if they otherwise agree to an inspection (Interview 5). The weapon symbolizes a possibility of violent disembarkation of rescuees and may suggest to them the potential of state violence. Carving out spaces free of armed state agents of course has a long history within universities, hospitals and other institutions that may be compared to the rescue vessel.

Beyond such negative or protective measures directed at the state, there are also positive aspects to how the experience of command is constructed. Some are discursive. One that lies between the negative and the positive is the practice of some NGOs of calling rescued migrants 'guests'. On its negative side, this label seeks to shake away categories of immigration law. 'In this space', told us one interviewee, 'we do not have asylum seekers or refugees, because that would also mean that we would have people who are not in that group, and we also do not have migrants. We never call them anything but people or guests' (Interview 1). The term guest suggests a kind of hospitality that implies that certain questions not be asked, but also that we give them a shelter and nourishment (Derrida and Dufourmantelle 2000; Levinas and Lingis 1969).

The term 'guests' also implies a symbolic reversal of the societal hierarchy of power between the predominantly European, white, middle-class rescuers and the racialized and stigmatized migrants. Indeed, for some of our interviewees it was extremely important to emphasize the lack of hierarchies between the crew and those who have been rescued in all aspects of life in the ship. This egalitarian imagination of the rescue ship affects how food that is served and distributed, the places where people sleep, activities undertaken on board, and so on (Interviews 2, 9 and 11). Several interviewees expressed significant discomfort with how responding to emergencies at sea requires a measure of hierarchy: rescue crew need to quickly instruct the rescued how to behave, sometimes by giving orders or even shouting. A situation that reinscribes into the moment of rescue the very power asymmetries that rescuers

are politically committed to erasing (Interviews 7 and 11). Taking these accounts together, it appears that the ship is imagined as a utopian micro-society.

Internal policies forbid crew members to inquire into the personal life histories of rescuees or to take pictures (Interviews 1 and 4). They also establish procedures to deal with specific vulnerabilities if these are pointed out by the migrants themselves (Interview 1). Vulnerabilities are thus experienced as generating obligations to those who suffer from them. At the same time, there is a real hesitation about framing these obligations in the bureaucratized language of criminal or asylum law, in which they immediately also become instruments of potential exclusion. The adamant refusal to become involved in ‘anything that has to do with security’ reflects yet again the aspiration to isolate the space of the ship, legally and materially. The rescue ship is conceived of as a ‘human rights ex-territory’, a space where only the humanitarian imperative rules, where human rights laws apply but without state jurisdiction and absent sovereignty altogether.

d. The birds’-eye view

The structure of the chain and the command assumes a certain spatial division between land and sea that does not characterize the vantage points of all SAR activists. It presupposes location on water where it is possible to move and look around at a limited radius delimited by the horizon (Jones 2016). From this vantage point, rescuers do not necessarily know what is happening beyond the horizon, and before a moment of contact or encounter with a vessel in distress.

Two aspects of the SAR activity do not share such conditions. One is airborne surveillance, which in recent years has become an important part of SAR in the Mediterranean. Another is communication by satellite phone. Think of these two aspects as ‘the birds’ eye view’. Whether by use of planes or satellite phones, these aspects of SAR flutter above the schematic reconstruction of experience in Figure I. From this position certain epistemic limitations are no longer in place. It is easier to know more. At the same time, the possibilities for independent action are severely limited. Rescue can only be pursued by relaying information onward – to states, merchant vessels, or (preferably) NGO vessels.

When a ‘spotter’ hovers above the Mediterranean Sea, for example, she or he have longer temporal access to the journey and can potentially observe a vessel long before it is accessed by any other vessel capable to assist (Interviews 7 and 9). When and whether to trigger rescue may thus become a planned decision, rather than an ethical imperative of here and now. Similarly, when an NGO operates an emergency number for migrants in distress to dial to, the call can be received at different stages of the journey. It may or may not be interpreted as an immediate distress case, which will impact the response by the NGO. At stake is not only the protection of life, but also access to sought-after migration destinations and opportunities for dignified livelihoods (Interview 15). Particularly for organizations on the more ‘solidaristic’ side, the relevant judgment call is particularly complex. It must weigh the probability of gaining access to a safe port against the probability of drowning or *refoulement*.

On a more general level, from the birds’ eye view it appears nearly impossible to insulate the chain from the command. From this position activists therefore experience something much more resemblant of an unabated chain. Ethical quandaries that activists located at sea aim to avoid are consequently uploaded to the flying shoulders of those providing surveillance or communication. But the latter are more amenable to becoming the long arms of states. When they share information with states, their point of view can end up facilitating preemptory rescue operations by Libyan or other non-European forces, which ends up returning migrants to where they came from, blocking access to asylum, and possibly risking ill-treatment there. Such ‘pullbacks’ are one especially problematic aspect of the externalization of border control, which

scholars have called ‘contactless control’ or ‘refoulement by proxy’ (Giuffré and Moreno-Lax 2019; Heller and Pezzani 2016; Moreno-Lax 2018; Pijnenburg 2020).

At the center of the dilemma faced by airborne and telephone operations is a double bind that is a quintessential experience of SAR activity from the birds’-eye view. Because they are critical for saving lives and granting access to asylum and opportunities, members of NGOs performing these functions are often accused of complicity with the ‘business model of smugglers.’ This is particularly true of those actors engaging in communication by phone with non-state actors outside of Europe. Yet, because they have full knowledge and can alert the authorities, the birds’-eye infrastructure has also been enabled pullbacks, possibly contributing to violations of the principle of non-refoulement.

In both cases, the issue of communication is key. Communication with migrant networks allows rescuers to join the migrant ‘underground railroad’ (Heller, et al. 2019; Stierl 2020): networks that migrants have established for their own empowerment and liberation. Communication with the authorities is a necessary condition for rescuers to be able to fulfill their humanitarian mission of saving lives.

The birds’-eye view is highly contested both outside and within the SAR community (Interviews 9, 12, 15). Here, the command is closest to entirely collapsing into an unhindered chain. All that remains is a political struggle for freedom of movement and against it, with little room for good Samaritanism. For some, this amounts to a betrayal of the key principles of humanitarianism that places the legitimacy of the whole SAR movement at risk. As one interviewee put it, by making the whole enterprise about freedom of movement rather than saving lives, political NGOs are ‘de-urgentifying’ the narrative. In his view, they are also undermining the normative justification for their actions before public opinion and distancing themselves from the legal basis that enables a claim to disembarkation (Interview 12). Yet, the conditions at sea in which the disconnect between chain and command becomes possible arguably *depend* on the entirely different conditions in which the birds’-eye activists work. Without the plane and especially the phone, the impact of SAR activities would be much more limited. This dependence remains only partially acknowledged and is shrouded with secrecy.

4. Sanctuary at sea

Over the last three decades or so, a vast literature on ‘externalization’ has documented and analyzed the ways in which states have established extraterritorial border controls (Frelick, et al. 2016; Gammeltoft-Hansen 2011; Ghezelbash 2020; Spijkerboer 2018). As early as 2006, Gibney identified the creation of ‘a thousand little Guantanamos’, spaces where states act free from the constraints imposed on them by courts, international and domestic law, human rights groups, and the public at large (Gibney 2006). The process has been pervasive along the fault lines between ‘developed’ and ‘developing’ countries. Mediterranean migration routes specifically have been major sites of externalization efforts for the EU and its member states, creating ‘maritime legal black holes’ (Mann 2018).

Adding to these earlier analyses, Benhabib (2020) highlights the apparent paradox that deterritorialization actually serves as a means to preserve and reinvent territorial sovereignty. Because externalization strategies help states to evade the internationalization of human rights, they generate ‘a dual movement of deterritorialization and territorialization’ that threatens the applicability of the 1951 Convention. In a recent essay, Shachar (2020, 73-96) suggests two strategies to counter the threat posed by this dual movement. First, extending jurisdiction to where control is exercised by making human rights and constitutional provisions apply irrespective of the location of border control activities. Second, relaxing the connection

between accessing territory and seeking asylum so that protection can be sought and granted extraterritorially.

What SAR NGOs are doing amounts to a third normative response to the threats posed by state-led deterritorialization tactics. In this reading, the rescue ship represents a different kind of deterritorialization, one that serves the goal of creating a space of resistance against state sovereignty. The rescue ship functions as a deterritorialized space where there is seemingly no state jurisdiction, and therefore there can be no criminalization of any sort. This is of course not the case as a matter of law. From a legal perspective, the ship remains under the jurisdiction of its flag state (and sometimes under other overlapping state jurisdictions). But as an account of the experience of rescuers, the rescue ship becomes a human rights ex-territory. By suspending the applicability of criminal laws and migration laws – indeed of any laws except general principles of human rights – the ship functions as a floating sanctuary.

To function as a sanctuary, rescue vessels must be able to shield themselves from responsibility for enforcing any state's laws. The way to do so is through the technique of willful ignorance – akin to the enactment of internal 'firewall policies' (Carens 2013) – aimed at ensuring that only those vulnerabilities are known that can be addressed from a humanitarian (not criminal) perspective. It is an exceptional space, but unlike Agamben's (1998) spaces of exception like the camp or the *zone d'attentes*, it is generated by civil society actors rather than by sovereign decree (compare: Azoulay 2012). To be sure, the utopian enclave rescuers establish on ships is not that of true anarchy. Rather, it is a highly regulated environment. But it is exceptional in that national immigration and criminal laws are seen as not applying. Instead, rescuers claim to be enforcing the 'higher law' – international law – where states fail to uphold it (Mégret 2021).

Rescue ships function in a similar way as sanctuary in that they constitute themselves as spaces where migration categories do not apply and where, for a limited period of time, every 'guest' is entitled to stay and be treated as an equal. The rescue ship may represent an even more radical enactment of the idea of sanctuary than the sanctuary city in that it is not only migration-related offenses that do not get prosecuted but indeed any misdeed or crime (see: Lasch, et al. 2018). In that sense, the rescue ship approximates much more the ancient and medieval notions of sanctuary than both of its other two modern incarnations, namely church and city sanctuaries (see e.g. Marfleet 2011; Mourão Permoser 2021; Mourão Permoser forthcoming).

What role does the birds'-eye view serve in this construction of floating sanctuaries? As explained above, from this perspective the phenomenology of the chain and the command no longer holds. There is a continuous chain of political and economic power, as well as physical violence. The question where this chain stops, for the sake of the moral imperative to rescue, becomes subject to temporal and spatial manipulation – now decoupled from the ability to act or intervene directly. This perspective is crucial for such floating sanctuaries to be effective.

This vantage point offers an insight for scholars aiming to understand sanctuaries beyond the specific context of maritime space. All sanctuaries exist only in the context of a complicated environment of larger political and economic power. Some are welcomed by sovereign political power, and indeed serve their end. The paradigm here is the Old Testament: sanctuary is a substitute for punishment and is very close to the notion of exile. On the other hand, contemporary sanctuary movements often establish spaces of resistance. The birds'-eye vantage point in the context of sanctuaries at sea requires close attention to the technologies and form of civil society and state engagements in the larger environments that make specific sanctuary arrangements possible. It raises our attention as researchers to the fact that sanctuaries do not simply appear as self-constituting islands. If they are indeed 'islands' in

which power functions differently, that is only due to a myriad of strategies and decisions that precede them.

5. Conclusion

Researching this article, we interviewed some of the most thoughtful activists currently supporting people on the move and have learned from them a great deal. Common to all of them is some combination of a commitment to rescuing life at sea, and an urge to act against a burning transnational injustice. Through their work, they all negotiate between two poles: one in which they are a-political good Samaritans, and another in which they act as part of a collective emancipatory vision. How they do so differs. For all, the pursuit is not free of ethical dilemmas or even breakdowns; moments in which they are engaged in one or more of what Janet Halley called 'the five C's': 'collaboration, compromise, collusion, complicity, and co-optation' (Halley, et al. 2018).

The interviews allowed us, first, to offer a phenomenology of living through these ethical dilemmas. We have mapped how the sea becomes a space of an ethical command requiring a response to an urgent imperative. At the same time, we have shown how connections to other agents inevitably link the rescue vessel to considerations far beyond actions of rescue. These include strategic political questions. Rather than being matters of acting now, these require long-term considerations. The basic orientation of SAR NGOs is trying to insulate the former from the latter.

That insulation however appears to be, by necessity, at least a partial failure. The often-cited division between more 'humanitarian' NGOs and more 'solidaristic' NGOs ultimately turns on whether they are willing to slightly relax their strategies of insulation and firewalling and engage with actors on land. Some organizations are open to preserving links to European states while others adamantly reject such links to states. They do show measured openness to collaborate with non-state actors which are held as forming a railroad underground. To be sure, this division is not complete. On both sides of the Mediterranean much will depend on whether an actor is a state actor or a non-state actor.

The structure we have described as one of 'chain and command' has also allowed us to proceed to our second aim: offering a conceptual framework for what SAR NGOs are ultimately doing. The insulation of ethical imperatives from state power, and particularly from jurisdiction, is a mode of counter-externalization. States have for decades attempted to carve out spaces where violent border enforcement can be bifurcated from the human rights obligations that would otherwise come with them. SAR NGOs are making the opposite move: they try to create spaces where human rights principles apply, but without the forms of coercive authority that would ordinarily adjoin. This practice of sanctuary is always provisional and tenuous. Consider for example that if it is successful, it seeks to become as brief as can be. A state will soon open its port, and state jurisdiction will unquestionably kick in. When states become more restrictive and close their ports the journey is prolonged: exerting toil on guests and crew alike, challenging the robustness of the human rights ex-territory. SAR NGOs fight back to preserve its integrity.

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LIST OF INTERVIEWS

Nr.	Respondent	Date
Interview 1	Person A	09.04.21
Interview 2	Person B	14.04.21
Interview 3	Person C	14.04.21
Interview 4	Person D	16.04.21
Interview 5	Person E	20.04.21
Interview 6	Person F	22.04.21
Interview 7	Person G	22.04.21
Interview 8	Person D (second interview)	22.04.21
Interview 9	Person H	27.04.21
Interview 10	Person I	10.05.21
Interview 11	Person G (second interview)	10.05.21
Interview 12	Person J	14.05.21
Interview 13	Person F (second interview)	01.06.21
Interview 14	Person K	10.06.21
Interview 15	Person L	10.06.21

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