

# The Ethics of Migration Policy Dilemmas

## Human rights politics at sea: in defence of sanctuary

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What, if any, can be the adverse byproducts of rescuing life at sea? In our essay ([Mann and Mourao Permoser 2022](#)), we have sought to provide an answer by outlining the ethical dilemmas faced by rescuers at sea. Following a phenomenological approach, we have conducted interviews with rescuers, asking them about their experiences at sea and what meaning they attach to these experiences. The stories they told us provided the basis for our own narrative about what is going on at sea. We argued that the main substance of the dilemma lies between the humanitarian command to rescue on the one hand and the fact that, by engaging in rescue operations, rescuers risk becoming part of a ‘chain’ of violence and exploitation towards migrants on the other hand – be it the chain that links them to the abusive business model of smugglers, or be it the chain that links them to violent border control practices of states. As a response to this dilemma, we argued, rescue organisations have developed codes of conduct and operational procedures that seek to isolate the moment of rescue as much as possible from the two chains. By doing so, they seek to avoid acquiring knowledge that might put them or the rescued at risk and create links to the chains. They address vulnerabilities from a humanitarian (rather than legal) perspective and they seek to transform the boat into a ‘floating sanctuary’ where human rights apply but migration laws are temporarily held at bay. We thank the fantastic line-up of scholars who took time to engage with our work, and appreciate deeply this opportunity to respond. All contributions contain important insights that we think will be extremely valuable for us in thinking through these issues further. Many of the contributions contained similar themes, and it is to the task of responding to these common themes that we turn now.

### 1. Chains of Solidarity

One of the common threads that runs through several responses is the idea that, in order to

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properly address the dilemma, and in a way overcome it, rescuers would need to engage in the creation of ‘chains of solidarity.’ This argument is put forward most forcefully by Jacqueline Bhabha (2022), who suggests that the process of SAR resistance should include the creation of chains between a multiplicity of actors, including non-exploitative people smugglers as well as “magistrates, prosecutors and other state actors” intent on giving primacy to human rights, and “journalists and artists committed to bringing the harsh reality of contemporary forced migration to a large public” (p. 2). We understand Bhabha to be calling upon us to engage more centrally with activities that go beyond rescuing and consider organising, broadly construed. Only this kind of broad political organising, she seems to imply, would be an adequate response to the current state of violence and disregard for human rights that prevails today at sea.

Indeed, such a chain exists and is constantly being reconstructed. Whether on the more humanitarian or political side of the spectrum (more on this below), all SAR organisations are embedded in larger networks of solidarity and activism. In fact, the Search and Rescue movement as a whole can be seen as being part of a larger movement of solidarity with migrants in Europe, which brings together a very heterogeneous group of allies, including all those mentioned by Bhabha and many others. One expression of this is the initiative ‘Seebrücke’, which links SAR organisations with local-level administrations committed to welcoming migrants and asylum seekers. Another is the one created by the organisation ‘united4rescue’, a faith-based initiative initiated by the protestant church of Germany which raises funds (and awareness) for Search and Rescue among faith-based communities and currently sponsors three big ships – Sea-Eye 4, the Sea-Watch 5 and the Humanity 1 – as well as other projects.

However, the existence of these chains of solidarity does not provide an answer to the dilemmas faced by rescuers at sea. As long as the concerted action within these solidaristic chains does not succeed in changing violent European border policies and in putting an end to exploitative smuggling, the dilemma between the command to act in the face of a humanitarian emergency and the risk of becoming complicit in injustice will remain. And as long as at least some people opt to not just stand-by and watch as others die at sea, but to become actively engaged in Search and Rescue, they will have to provide some kind of operative answer to the dilemmas that they experience.

## 2. Critique of Sanctuary

This brings us to the next major thread running through several of the contributions to this debate, namely, the critique of sanctuary. One of the authors that put forward this critique is Leti Volpp. Volpp (2022) points out that “the Sea is a deeply political space” (p. 2), and that when conceiving of SAR NGOs’ actions as a strategy of “counter-externalisation,” we signal our agreement with this particular form of politics. In other words, Volpp is pointing out that we, the authors, had an implied normative agenda. This agenda is in essence a defence of SAR NGOs strategies of building sanctuaries as a form of political action that seeks to counter state violence by suspending migration law enforcement in the name of human rights. Volpp counters this latent programmatic aspect of the paper with an explicit critique. Sanctuary, she argues, is limited in too many ways. It is bounded “temporally, spatially, and in its challenge to power” (p. 4). Only if “conjoined with an abolitionist perspective” (p. 3)

could it achieve a broader emancipatory potential.

The same critique is also present in Zsolt Kapelner's and Cloe Haralambous' contributions. Kapelner (2022) points out that in isolating the space of the ship to create a sanctuary, SAR activists "do not so much transform extraterritorial zones as they insulate themselves from inhumane practices" (p. 4). In the same vein, Haralambous (2022) argues that the "turn to defensive spaces as final bastions of opposition" (p. 4) is a reflection of radical political movements not living up to their original commitments. As a "negative space," she claims, "the sanctuary is a space of omission and withdrawal" (p. 4). The rescuers' refusal to address the categories that shape the survivors' political futures, she adds, is a "battening down of the hatches against a hostile order more than it is an effort to engage with and transform it" (p. 4).

Are our critics right? Is sanctuary an expression of giving in to a hostile political order rather than trying to transform it? We think not. Yes, sanctuary, understood as a political space or as a form of political action, is inherently limited in many ways. On its own, it cannot change policy, but suspends an undesirable state-of-affairs. It is a state of exception, a place outside the ruling order, but one which leaves this order intact. And yet, we believe, therein lies emancipatory potential. As Kapelner himself points out, the emancipatory potential lies precisely in the sanctuary's prefigurative character. The floating sanctuary is nothing less than a space where migrants are treated humanely, where people are brought safely to European shores, and where human rights take precedence over border-security concerns. It is a space inhabited by humanitarian rules and concerns in an environment otherwise inhabited by state-led violence against migrants and disregard for human rights. In such a context, humanitarianism and political opposition collapse into one. Defending the human rights of migrants becomes an expression of political opposition, and indeed a form of direct action, and the sanctuary acquires the character of an embodied political ideal.

### 3. Structural Injustice and the Limits of Humanitarianism

But is an embodied political ideal enough? That depends on how one defines the dilemma. Zsolt Kapelner urges us to think from the perspective of structural injustice. Rather than discarding the worry about shared responsibility for wrongs committed by others in the chain, Kapelner argues that SAR NGOs may share responsibility for these wrongs on two levels. First, because everyone who lives in a society that perpetuates structural injustice shares responsibility for this injustice. Second, because, through their actions (by which they inevitably become part of the vicious chains) they "acquire a special kind of responsibility to act against and dismantle these unjust social structures" (p. 3).

He thus argues that, "from the perspective of structural injustice there is not one, but two commands SAR organisations need to respond to: the urgent ethical command of rescue, and the command of dismantling the unjust structure within which they operate" (p. 3). These two goals may conflict with one another. It may be that SAR NGOs can only fulfill their political mission "if they disregard the urgent ethical command of rescue" (p. 4).

This possible contradiction between the political and the humanitarian aims of SAR is a very important point, which is also picked up by Chloe Haralambous in her contribution. She argues that the ethical dilemmas at stake in the SAR zone can be framed around a central tension: between humanitarianism and politics, or, as she seems to indicate, between

humanitarianism and freedom of movement. People on the move are not only interested in being alive, she says, they are interested in living well. In fact, as Haralambous points out, it is possible to rescue someone against their will. The desire to reach European shores can be larger than the fear of losing one's life. And in this case, how is the politically-minded rescuer to act? Is giving priority to life a betrayal of broader political goals? Have politically-minded NGOs 'sold out' by adopting the logic and rhetoric of humanitarianism?

Structural injustice can and does take many forms: colonialism, racism, sexism, ecological depredation, and many others. Undoubtedly, one of the faces that structural injustice takes in today's world is through the disregard of migrants' human rights or, more precisely, through the disregard and denial of migrants' humanity. It is not the existence of borders that constitutes the injustice. It is the violence that goes along with it. Not all borders are violent and unjust, and they certainly aren't equally so for everyone. The pursuit of humanitarianism in the Mediterranean Sea is not a betrayal of political goals; it is a particular kind of politics. Letting migrants die for the sake of an open borders policy would be the moral equivalent of letting migrants die for the sake of a closed borders policy.

#### 4. Politicise!

Thus, we have come full circle. The tension between politics and humanitarianism is the major underlying thread that unites all the responses we received. To varying degrees, all respondents express some measure of unease with the way our piece regards (or disregards) the apparent bifurcation among Search and Rescue (SAR) initiatives in the Mediterranean between humanitarian and political actors. It also appears that according to (almost all) responders, there is a general suggestion that SAR organisations that align more with the 'political' side of the spectrum are somehow preferable.

To recapitulate, Zsolt Kapelner's response urges us to think not only about personal responsibility among rescuers, but also about structural injustice. A turn to the structural would presumably provide a yardstick in distinctions between humanitarian and political activities: the more an organisation takes into account 'structural' aspects of its own activity, the more political it becomes. Kapelner's preference leans toward the latter. The same holds true for the question Jacqueline Bhabha poses: why not focus more on 'chains' among rescue activists? Leti Volpp encourages a critique of humanitarianism as well as of sanctuary, an institution that is clearly "constrained, given the failure of the sanctuary movement to question liberal frameworks that affirm the legitimacy of broader injustice" (p. 3). Chloe Haralambous speaks from the lived experience of a SAR activist. Frustrated by the humanitarian rhetoric that has taken hold even in activism that originally grew out of 1990s anti-globalisation and anarchist struggles, she calls for a manifest political commitment to free movement. Through each of these responses runs the same imperative: 'politicise!'

Albert Kraler's (2022) response is admittedly different. He offers a vision of the codification of rescue activity to articulate clear and transparent procedures within SAR operations. (According to our interviews, this bureaucratisation of rescue has indeed been underway for a number of years). Nevertheless, one might claim that his proposal too amounts to a certain form of politicisation, in the sense of inserting SAR into a statist institutional structure. For him, the fact that the SAR movement is governed by different logics than the actions

of state agencies is merely the natural outcome of an administrative division of labour: “A certain degree of policy incoherence” which is “a normal and inevitable feature (...) of any pluralistic, democratic and rule of law based system of government” (p. 5). In other words, Kraler does not want us to call for politicised SAR that is oppositional to state action. He wants SAR to reunite with the political agendas of states. This may seem like proposing a move toward the ‘humanitarian,’ rather than the ‘political.’ But Kraler’s emphasis is not on rescuing lives per se. It is about rule-of-law values, and working in a way that is consonant with European state politics.

Thus, we believe that the imperative to politicise exists, in different ways, in each of the responses we received. At the risk of over-generalising, the common denominator among the responses is something like this: ‘please distinguish more clearly between political and humanitarian organisations, and when you do, please acknowledge that the only way to go is toward an explicitly political standpoint.’

This imperative is central to a significant body of social science work on humanitarianism (part of which is cited by the responders, see e.g. [Fassin and Gomme 2012](#), [Ticktin 2017](#), and others). As we embarked on this project, we were aware of this body of work and its important message. And yet we consciously made the choice to resist the pull of the political imperative. Instead of “going all the way” towards politicisation and a solution to the dilemmas we identified, we sought in our work (1) to bracket the distinction between the political and the humanitarian; and (2) to suggest that they are mutually constitutive and complementary.

## 5. Maintaining the Dilemma

What would be a ‘fully political’ SAR project? Except for the more control-oriented approach Kraler outlines, it seems that such a project must rest on a certain vision of global justice. It is not enough to say that in a state of utopia the world would have open borders or no borders. An emancipatory political vision along these lines must go even further, and have an elaborated view of how open borders or no borders would help in generating a globally just distribution of resources; how they would allow (or render unnecessary) collective self-determination for peoples, and how they would facilitate a participatory form of government.

It seems that many in the SAR movement do actually have sophisticated views on all of these rather difficult questions. But if the imperative to politicise tout court turns out to require activists to have established views on all these questions (i.e. on structural injustice), this imperative must be rejected. It is fully coherent and justifiable, we believe, to act in the context of Search and Rescue without having worked out all these economic, political, cultural, and security issues. Doing so often means however that one is responding to an experience of ethical ‘command.’ One feels they must act, despite being agnostic on some of these questions, perhaps even on the question what kind of borders, if any, the goal of global justice allows for.

One relatively straightforward way to reject the imperative to politicise is to say that such an imperative is, in reality, counter-productive. Inasmuch as our interviewees expressed the will to stay away from politics, this was often the reason for that. According to such a view, when an organisation embraces directly political motivations, it risks scaring away

public support as well as funding that it could otherwise attract. In truth, however, we observed that members of the organisations that are traditionally thought of as having a more humanitarian mandate in fact spoke in political terms. And the reverse was also true. Members of expressly 'political' organisations often spoke in a humanitarian key. This led us to believe that something more fundamental is at issue. Indeed, it is possible that the widely discussed divergence between these two types of organisations is less significant than previously assumed.

We therefore tried to paint portraits of activists whose subject-position is always constantly oscillating between these poles; a community that, despite being diverse, shares a commitment to both 'humanitarian' and 'political' ideals, whose members typically have one foot firmly situated in each.

Truly politicising an issue, any issue, requires us to potentially go down a rabbit hole of policy questions. In this field, Search and Rescue of asylum seekers at sea, the set of issues may be particularly large and potentially endless. Reasons for displacement include economic, environmental, and political issues on a global scale. Putting together a program on how to solve them all is, necessarily, putting off the question of how to help those who suffer from them right now. Paradoxically, heeding the call to 'politicise!' may thus be a quick invitation out of the realm of action (and into the realm of discourse). Such may be the fate of SAR activists who choose to heed Kapelner's call and try to offset structural injustice as they perform their humanitarian tasks. They will ultimately find themselves out of the rescue vessel and in the media or the parliament (or, worse yet, in the seminar room). But the subject-position of SAR activists is one that resists sacrificing action on the altar of debate.

This does not of course mean that 'humanitarianism' is possible on its own. There are numerous political decisions that are a necessary part of SAR organising. Indeed, some of these decisions are closely related to the advice that our respondents also give. To go back to Bhabha, we have seen very clearly how SAR activists develop chains among themselves. Like in any political or humanitarian mission, they often compete; at the same time, they truly try to support each other as well as other classes of pro-migration actors along the migration route.

Ultimately, carving out an undecided position between humanitarianism and politics is itself a kind of politics. We may provisionally call this a 'human rights politics.' For better or worse, this kind of political agenda often does not spell out a cogent vision of utopia that may fix the world. It takes as a *fait accompli* that we are living in a broken one, and considers what is important to do right now, within the ruins.



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### **About the “Dilemmas” project**

This commentary contributes to the [‘Dilemmas’ project](#) at the EUI’s Migration Policy Centre. Dilemmas analyses and debates fundamental ethical dilemmas in policy-making on migration and refugee protection.

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