
A CORDIAL APPROACH TO THE DUTY OF RESCUE. THE CASE OF EU STATES' MORAL OBLIGATIONS IN THE MEDITERRANEAN CRISIS OF 2014-2016

Bosco Corrales Trillo

Abstract: In 2014, the EU States decided not to support Italy's Mare Nostrum search and rescue operation and neither replace it with an equivalent mission nor take any other effective action to prevent a massive loss of lives in the Mediterranean Sea in 2015. From the perspective of a standard account of the duty of rescue and a conservative notion of humanitarian duties, the EU states did not have a moral obligation to engage in such actions. The reasons for such a lack of obligation would mainly be three: first, the potential rescuers did not physically know nor were they in close vicinity of the victims; secondly, the obligation -if any- would have been a collective one, so no individual actor had a specific obligation to search and rescue; thirdly, the cost of the operation was too high. My argument is that, based on Adela Cortina's notion of cordial reason, which hinges on a compassionate recognition of human dignity, the EU States had a moral obligation to support the Mare Nostrum operation or at least to effectively prevent a more than likely massive loss of lives in the Mediterranean. Cordial reason allows us to respond to the above mentioned three reasons. Firstly, although the potential rescuers did not physically know the victims, they had the ability and the skills to save

them if they had wanted to do so; secondly, the collective obligation is not primary, but a result of the obligation that any human being owes to another fellow human being; and thirdly, the duty of rescue -understood in the light of cordial reason- is not subject to cost limitations.

Keywords: *refugees, migration, cordial ethics, duty of rescue, humanitarian duties*

In this paper, I shall first briefly sketch Adela Cortina's proposal of cordial ethics; secondly, I shall offer a summary account of some of the relevant EU Member States' actions with regard to saving lives at sea during the Mediterranean crisis of 2014-2016; thirdly, I shall explain the reasons why, according to a standard account of the duty of rescue and a conservative notion of humanitarian duties (Gibney, 2004, 2018; Miller 2016, 2019, 2020), the EU states did not have a moral obligation to make greater efforts in trying to save lives; fourthly, I shall answer to each of those reasons explaining why, from a cordial-ethics perspective, they did have such an obligation and failed to comply with it.

1. MORAL OBLIGATION IN ADELA CORTINA'S ETHICS OF CORDIAL REASON

On March 10, 2016, amidst one of the worst refugee crises in European history, Spanish philosopher Adela Cortina wrote: "The situation is inadmissible. An enormous amount of lives has been lost (...). The first principle of action should be to save lives, as many as possible" (Cortina and Torreblanca, 2016). That had certainly not been the first principle of action of the EU States. In fact, most EU States had repeatedly refused to engage in search and rescue (SAR) operations while thousands of migrants continued to die trying to cross the Mediterranean: 3,320 in 2014, 4,054 in 2015, and 5,143 in 2016 (Missing Migrants, n.d.).

Strictly speaking, they seemed to be under no legal obligation to engage in saving lives more actively than they did. However, Cortina implied that they had a moral obligation to do so. Why? What is her rationale for moral obligation?

In her book on the ethics of cordial reason, Adela Cortina (2007) considers human rights not to be mere legal standards, but fundamentally moral rights, which are not granted but recognized and which implicate moral obligations (Cortina, 2007: 135-136). She asks what the basis for such moral obligation might be and searches for answers in different traditions of moral philosophy.

Cortina agrees with David Hume and other philosophers of the Scottish enlightenment, that human beings are morally tied to each other through emotions -most specifically, compassion- (Cortina 2007: 81-99). Human beings are naturally empathetic and feel for those who are in need or in pain. When we see someone in distress, we are moved by their sorrow and tend to help them. Thanks to the human ability to feel compassion, we can perceive the suffering of others. Thus, social emotions are key to morality, because they bind us to each other -even to complete strangers- and that bond compels us to act in favor of those in desperate need of help.

This, obviously, also applies to the tragic condition of refugees and other migrants trying to cross the Mediterranean in search of a safe haven in Europe. During the years 2014-2016, European citizens saw, horrified, the images of millions of people fleeing Syria, Iraq, Afghanistan, etc., trying to make it to Europe, thinking that they would find a safe haven and have an opportunity to start a new life in peace. We have seen them in the news, floating on overcrowded boats in the Mediterranean and often even drowning, or waiting behind wired fences, being refused entry, detained, left out in the cold, shot at with pressured water, and even sprayed with tear gas.

The more the media showed the refugees' situation to European citizens, the more that people donated to NGOs and tried to help in different ways. To cite but one example, many aid organizations declared that donations had spiked after the horrifying image of Syrian toddler Aylan Kurdi was shown in the news ("Aid groups see 'dramatic' increase in donations", 2015) ("Refugee donations surge", n. d.). As painful as it is to remember the picture, it helps us see how most people are naturally compassionate and feel the urgency to help those in serious danger.

However, emotions are not the only source of moral obligation. It would be, obviously, too fickle of a rationale, if an EU government official argued that she did not feel moved by the missing migrants and, therefore, did not feel compelled to invest her government's resources in a search and rescue operation. In fact, many people criticized NGOs -like

Proactiva Open Arms- for rescuing drowning migrants. Not only did they not feel compelled to help, but they felt that helping was wrong. Would we say that, when the feeling is not there, there is no obligation either? It would certainly be a weak rationale for moral obligations.

Cortina then turns to other philosophers for inspiration; she finds her next key in Kant's moral philosophy (Cortina 2007: 101-127). Kant bases his argument on human autonomy, on our ability to self-legislate. We know right and wrong and we can decide when the maxim for our actions should become a universal norm. Whenever we realize that everyone should act in a certain way, we must recognize that we have come upon a binding moral norm. If I truly think that everyone should, for instance, help a drowning person if at all possible, I cannot think at the same time that such a norm does not apply to me. Autonomy, therefore, binds me to others, because it obligates me to act towards all people and in the way that all of humanity should act. Kant showed us that, by virtue of our moral autonomy, we are morally bound to each other, that is, we have moral obligations towards each other.

In addition to human ability for empathy and autonomy, Cortina's cordial ethics draws on value theories, like Scheler's and Ortega y Gasset's, among others (Cortina 2007: 131-153). These authors point out the importance of our ability to appreciate value. Human beings are able to appreciate aesthetic and moral values, and when they do, these values bind them and move them to action. Allow me to illustrate this notion with an example. For instance, someone who is not an expert in Chinese art may not be able to tell the difference between an authentic vase of the Ming dynasty and a cheap vase at a local pound shop. If those two vases were standing next to each other, unattended, in a public area, the non-expert person would pay no particular attention to the authentic one, because she is not able to appreciate its value. On the contrary, if an expert were to walk by, she would recognize the enormous artistic value of the Ming vase and automatically feel drawn to it and compelled to protect it. She would feel the need to point out its value to others and to make sure that the vase was handled carefully and put in a safe place. This is just a brief analogy that shows us how value imposes itself on us, if we are able to recognize it, and how it demands from us a certain behavior: admiration, respect, protection, etc. If we apply this analogy to human dignity -the highest kind of value-, it becomes obvious that we must respect and protect human beings. If we are not able to recognize this value, we should obviously be educated about human dignity and we should train our

sensitivity to be able to recognize it wherever we encounter other people. Because of our appreciative ability, we are morally bound to each other by way of recognition and respect for human dignity.

Last, but not least -in fact these philosophers have the greatest influence in Cortina's ethical proposal- she relies on Apel's and Habermas' discourse ethics (Cortina 2007: 159-183). We are defined by our communicative competence, most specifically by the fact that we can discuss the validity of norms. Whenever we debate about the justice of a law or a policy, we are showing that we take the other debaters as valid interlocutors and that we take justice seriously. If we discuss the validity of a norm with others -that is, the justice or injustice of it-, it means that we are recognizing them as being competent in terms of communication, that we believe they can understand our arguments and that they can formulate their own arguments. In other words, when the discussion is taken seriously and honestly (when there is no intent to lie or manipulate), the speakers offer their rationale because they really think that the listeners are rational beings, who should not be forced or manipulated into doing something, but convinced by the force of the best argument. The very praxis of human language attests to the fact that we recognize each other as communication-competent beings and therefore entitled to speak our minds and to be involved in the decision-making processes that affect us. This implies that we are obliged to include in this process all the people who will be affected by the norm. Because they can and do care about justice, every person deserves our moral respect and we are all obliged to each other in terms of justice.

However, all those ways to be tied to each other point at a previous and more fundamental bond amongst human beings. We can feel compassion for others, realize that they are morally autonomous, appreciate their dignity, or recognize them as potential interlocutors because we are already fundamentally tied to each other with what Cortina calls a «cordial bond» (Cortina, 2007: 189-216) (Cortina and Conill, 2016: 57-59). The fact that we can communicate with others and that we care to do so presupposes that we are already connected to each other in some way, that there is a certain link among us. "We are not individuals who decide whether to bond with others or not, but *we are already* in that dialogical bond with others" (Cortina, 2007: 194).¹

¹ The book has not been translated into English; therefore, in this and all further quotes from this book the translation shall be mine.

We do not recognize human dignity primarily in a purely rational way, but in a «cordial» (heartfelt) way. Cortina uses this term in reference to its etymology: *ethica cordis*, Latin for “ethics of the heart” or “from the heart”. This ethical proposal, although grounded on discourse ethics, wishes to explore the potentialities of a cordial reason, a rationality grounded on the heart, on the communicative bond with others that plunges its roots in compassion. If anybody really wants to seriously and honestly debate about the justice of norms and policies, it is not just out of an intellectual desire to discover or establish justice, but it is because he or she cares for justice. If we did not care for it, we would not seek it through discourse. Thus, the communicative bond is not just intellectual, but also cordial. It is this heartfelt recognition of others that demands from us that we respect them and protect their dignity, that is, that we do justice to them. Because we are always in that cordial bond with others, “*to withdraw from the obligations that follow from that bond is to act, to carry out an action of rejection, and not a simple omission, a simple not doing*” (Cortina, 2007: 194).

Thus, «cordial recognition» demands «cordial justice».² The fundamental «cordial» or «compassionate» bond and its corresponding «cordial recognition» is, according to Cortina, the very source of any moral obligation (Cortina, 2007: 214-215). Cordial recognition demands that both citizens and States help people that are in danger of death or serious injury; it is not charity, but a demand of justice. The moral obligation founded on the cordial bond -that is, on the recognition of human dignity- is the source of the duty to uphold fundamental rights.

We feel and know at a profound level, by virtue of the cordial bond, that we should help a person when he/she is in distress. In fact, the Universal Declaration of Human Rights and the laws that sanction the duty to rescue attest to the fact that there is an intuitively, emotionally felt and rationally known bond amongst human beings and that such bond is a source of moral obligations by individuals and States, which imposes on them the duty to rescue people when they are in grave danger. Thousands of people attempting to cross the Mediterranean Sea and arrive in Europe during the 2014-2016 crisis, were obviously in danger of dying or suffering serious harm. Did the EU States not have a moral obligation to engage more proactively in saving lives?

² For an extensive explanation of this concept and its implications see Adela Cortina (2010).

Before I attempt to answer this question, I shall offer a summary account of the EU States' involvement in saving lives in the Mediterranean.

2. THE EU STATES' ACTIONS IN TERMS OF SAVING LIVES AT SEA IN THE MEDITERRANEAN REFUGEE CRISIS OF 2014-2016

Thousands of migrants have died trying to cross the Mediterranean to reach Europe. According to Gabriele Del Grande's records, over 19,000 migrants died from 1988 until December 31, 2013 (Del Grande, n.d.).³ For decades, people have continued to die without any EU institution or Member State undertaking any major search and rescue operation, nor did the EU have a search and rescue agency. More than 1,500 people died in 2011 alone, the deadliest year until then (Mediterranean takes record, 2012), but the EU and its Member States' efforts to prevent such tragedies did not increase until 2013. It was only after the outrageous accident on October 3, 2013, when nearly 400 migrants died as their boat capsized off the island of Lampedusa, that an EU country organized a major operation for the first time. The Italian government launched «Mare Nostrum», a massive operation deploying up to 1,000 personnel, using several vessels, aircraft support, and other resources, with a twofold objective: «safeguarding human life at sea, and bringing to justice human traffickers and migrant smugglers» (Mare Nostrum Operation, n.d.). It cost the Italian government 9 million euros per month (Davies and Neslen, 2014) or a total of 114 million euros, according to the then deputy prime minister and home minister Angelino Alfano (Ide, 2014). They did not manage to prevent all deaths in the Mediterranean, but they were able to save more than 150,000 lives in ten months (IOM Applauds Italy's, 2014).

Legally speaking, Italy was not obliged to carry out such an operation, even less singlehandedly as it did. Under international maritime law, vessels only have a duty to rescue when they encounter persons in danger or when informed that there are people in need of assistance and it can be reasonably expected of them to proceed to their rescue (United Nations Convention of the Law of the Sea, paragraph 98; International

³ This blog offers a very well documented list of all the accidents reported by international newspapers since 1988, indicating the number of victims in each case.

Convention for the Safety of Life at Sea, V-33). Similarly, coast guard agents only have a duty to rescue either when they encounter a vessel in distress or when they are alerted that there is a vessel in distress within their jurisdiction (United Nations Convention of the Law of the Sea, paragraph 98; International Convention for the Safety of Life at Sea, V-33). There is no legal duty to proactively search for people to rescue at sea, and much less in international waters. Yet, the Italian government decided to engage in a formidable search and rescue operation at a very high economic and political cost, even beyond their territorial waters.

However, since they were doing it practically alone, they could not continue with such an effort indefinitely. Mare Nostrum operated concurrently with two smaller Frontex' border control operations and it obtained 1.8 million euros in funding from the European Commission (European Commission, 2014), but that was virtually all the help they were receiving for an operation that was costing, as aforementioned, 9 million euros per month. Throughout the duration of the operation, the Italian authorities repeatedly called for help from other Member States and for greater cooperation from the EU, but other Member States refused to help Mare Nostrum and the EU had very serious difficulties in getting them to assume their responsibilities and comply with their moral obligations.

In a statement on August 27, 2014, EU Home Affairs Commissioner Cecilia Malmström reminded the Member States that Mare Nostrum was an operation that Italy could not carry out alone, that the humanitarian emergency in the Mediterranean was a European issue and not just an Italian one, and that the Commission would do its utmost to make sure that all Member States contributed as much as possible with their resources. She also urged the Member states to pass from verbal solidarity to real actions (Malmström, 2014).

The response to the commissioner's appeal was rather scarce: the EU and its Member States launched Triton, a Frontex border control operation with a third of Mare Nostrum's budget.⁴ Also, it was set to operate only within 30 miles from the Italian coast, while the boats under Mare

⁴ 2.9 million per month. See European Commission (2014). It is true that Triton was officially not meant to replace Mare Nostrum, according to the EU, but to assist Italy's efforts. However, it was de facto replacing Mare Nostrum, which ended on October 31, 2014, purposely coinciding with the beginning of Triton on November 1.

Nostrum used to patrol also very close to the Libyan coast. By doing so, the EU and the Member States deliberately reduced their range of action, although the experience of the previous months and the steadily growing flow of migrants clearly indicated that many lives would be lost.

Furthermore, Triton was explicitly declared not to be a search and rescue (SAR) operation. Frontex never had the objective to carry out SAR missions until its renewal in September 2016, when the European Parliament and the Council expanded its mission to include it. Since its creation in 2004 and until 2016, Frontex' task was to coordinate border surveillance, to monitor and control activities and to carry out return operations. There is no mention of rescue in the whole regulation establishing the agency (Council Regulation (EC) No 2007/2004). While Mare Nostrum officially also had a humanitarian objective, Triton was merely a border control operation. Neither Frontex nor its Triton Operation had the aim of saving lives, as both the European Commission and Frontex Executive Director made very clear.⁵

As it was to be expected, the number of deaths at sea increased dramatically. The ratio of dead/missing persons per 1000 attempted sea crossings went from 19 during the January-October 2014 period (with Mare Nostrum), to 39 in the November 2014-April 2015 period (in the first part of Triton Operation) (Arsenijevic et al., 2017: Figure 3.1). During the first months of 2015, the death toll was almost eighteen times higher than in the same period in 2014, going from 96 in the previous year, to 1,800 in 2015 (Missing migrants, n.d.: figure "Fatalities by month").

Knowing that Mare Nostrum had saved over 150,000 lives in a year; knowing that over 40,000 additional people had to be rescued by commercial vessels in that same year (Italian Coast Guard, p. 4);⁶ knowing that all those efforts had still not been able to avoid 3,320 deaths; having well-founded reasons to expect that the migration flow was going to

⁵ In the very document launching Triton (see European Commission, 2014) the Commission emphasizes that «Frontex is neither a search and rescue body nor does it take up the functions of a Rescue Coordination Centre». In November 2014, Gil-Arias, Frontex' executive director at the time, said: «Triton is not a search and rescue operation, but a border control operation. But of course, saving the lives of migrants is a priority, if they are in danger» (Martin, 2014).

⁶ For a deeper analysis of this issues see Aarstad, Åsne Kalland (2015). The Duty to Assist and Its Disincentives: The Shipping Industry and the Mediterranean Migration Crisis. *Mediterranean Politics*, 20(3), 413-419.

continue or even increase in 2015, the EU and its Member States reduced their efforts to a minimum. Italy considered its duty discharged and shut down Mare Nostrum in October 2014. The EU and the rest of the Member States did not want to replace it with an equivalent operation. They reduced the budget to one third, limited the search range to 30 miles off the coast, and focused on border control rather than on saving lives.⁷ If they had put agreements in place with Turkey, Libya, and other countries along the Mediterranean, to effectively fight the smuggling mafias and impede the perilous boat trips before retreating from the SAR operations, it would have been ethically acceptable, perhaps, at least in terms of non-ideal theory. Instead, the EU states deliberately refused to engage in saving thousands of lives. Was that unethical? It depends on the standards we use to assess it. Based on a conservative notion of humanitarianism (Gibney 2004, 2018; Miller 2019) or on a standard account of the duty to rescue (Miller 2020), such a refusal may be considered ethically defensible, as we shall later see.

However, the toll their decision -amongst other factors- took on human lives, was unacceptable by any standards. On April 20, 2015, over 800 migrants died in a shipwreck 70 miles off the coast of Libya (Mediterranean boat capsizing, 2015). The EU governments could no longer follow cost-based arguments or abide by restrictive notions of the duty to rescue, but the dreadful magnitude of the disaster obliged them to take the loss of human lives very seriously. Only after that outrageous tragedy, EU and Member States authorities realized their terrible negligence and tried to rectify. Jean-Claude Juncker, President of the European Commission, recognized that their response to the tragedy in the Mediterranean had been “inadequate” and admitted that “it was a serious mistake to bring the Mare Nostrum operation to an end. It cost human lives” (Juncker, 2015). We can say that he was implicitly acknowledging that the value of human lives was superior to other considerations, such as economic cost or perhaps political backlash. The European Commission then tripled the budget of the operation in order to bring it up to the level of the canceled Mare Nostrum one (European Commission, 2015). However, they did not extend its operational area beyond the 30 miles

⁷ For a clearer insight into the effects of this decision, see Pezzani, Lorenzo and Heller, Charles (n.d.). *Death by Rescue*. The lethal effects of the EU’s policies of non-assistance at sea. Forensic Architecture, Goldsmiths, University of London. Retrieved from: <https://deathbyrescue.org/> [June 14, 2018].

off the European coast, which was the area where most deaths were occurring (Europe's response, 2014). This limit was not consistent with the goal of saving lives in the Mediterranean, but it was with Frontex' mission: 30 miles is enough for border control — 4,054 migrants died in the Mediterranean in 2015 and 5,143 in 2016.

In September 2016, Frontex was renamed «European Border and Coast Guard Agency» and given a new regulation, which included SAR activities among its tasks. But even then, the agency was not meant to lead SAR operations, but only to provide assistance in support of other institutions' SAR operations that may arise during border surveillance operations at sea (Regulation (EU) 2016/1624). Its assistance was very valuable, of course, contributing to the rescue of 48,800 people in 2016 (Focus, 2016) and of more than 38,000 in 2017 (The Role of Frontex, 2018). Nonetheless, they could have saved many more, if that had been their aim -let's bear in mind that Italy rescued 150,000 in a year all by itself-. Conversely, their principal activity consisted in ensuring effective border control and not in rescuing migrants at sea.⁸ This meant that, instead of running ongoing patrolling operations in order to prevent migrant drownings, vessels working under Triton operation only went to the rescue of migrants when they received a distress call (Tazzioli, 2016, p. 2 and note 5) (Search and Rescue, n.d.). Commercial vessels as well as any other vessels also answer distress calls, though, since they are all bound by international law to render assistance to any persons found in distress. Strictly speaking then, there are or have been no EU-led SAR operations as such, contrary to what some have understood.⁹ In fact, in 2016, Frontex vessels rescued less people than merchant ships did.¹⁰ They only assisted Member States. The EU seemed to consider that it simply had a subsidiary duty when it came to SAR, while it seemed to assume border control as its primary duty. Most EU Member States seemed to think the same way.

⁸ European Council President Donald Tusk, at the very renaming ceremony of Frontex in Bulgaria, said: "To save Schengen, we must regain control of our borders. A new European Border and Coast Guard Agency is being created". See video on the following webpage: "European Border Coast Guard: Final Approval," European Council, last reviewed January 2, 2018, <http://www.consilium.europa.eu/en/press/press-releases/2016/09/14/european-border-coast-guard>.

⁹ Barbulescu (2016: 3) speaks of «EU-led search and rescue operations».

¹⁰ Merchant ships rescued 13,888 people and Frontex rescued 13,616 (Arsenijevic et al., 2017: 14).

That is why less-able and less-obliged actors had to step up and go to the rescue. Since the beginning of the humanitarian crisis in 2015, NGOs, commercial vessels, fisher boats, etc., had to rescue tens of thousands of migrants in the Mediterranean Sea every year.¹¹ In 2016, 46,806 people were rescued by humanitarian vessels. NGOs were the principal SAR actor, making up for 26% of rescues in 2016, followed by the Italian Navy (21%), Italian Coast Guard (20%), EUNAFOR MED (17%) and last as well as least, Frontex (8%) (Arsenijevic et al., 2017, p. 14).¹² This means that EU States other than Italy contributed only with 25% of the 178,049 rescues in 2016. Was that their fair share? Should they have contributed more and helped prevent the almost ten thousand migrants' deaths in 2015 and 2016?

As I mentioned before, legally speaking, the EU States had no duty to do more than they did. However, I shall argue that, based on cordial reason, Adela Cortina was right to stipulate that "the first principle of action should be to save lives, as many as possible" (Cortina and Torreblanca, 2016). In my view, this principle implies that EU States had a moral obligation to save as many migrants as possible from drowning in the Mediterranean. EU commissioner Junker said that it had been a mistake to shut down *Mare Nostrum*, because it cost human lives; I believe it was worse than a mistake: it was a failure to comply with a stringent moral duty. The EU States should have supported "*Mare Nostrum*" or an equivalent operation until the smuggling mafias had been kept in check, the migrants' flow had been controlled, and an acceptable emergency solution had been found for the millions of refugees and other migrants heading for Europe.

If we understand human beings primarily and fundamentally as independent individuals who optionally decide whether to tie themselves to others or not, or if we look at national States fundamentally as isolated islands that optionally may or may not decide to build relations with other states, we could tend to look at duties from a minimizing perspective, that is, pointing out all the possible limits that may restrict our ob-

¹¹ The Spanish NGO Proactiva Open Arms, for instance, rescued 59,247 people from September 2015 to May 2018 (Our Missions, n.d.).

¹² Although assets deployed by Frontex to Joint Operation Triton were involved in the rescue of 48,800 people (Focus, 2016), most of those rescues were conducted by the Italian Navy, Coastguard, and other actors. According to Arsenijevic et al. (2017), the actual number of people rescued directly by Frontex was 13,616 out of a total of 178,049.

ligations toward others. Inversely, if we consider human beings -like Cortina does- as fundamentally tied to each other by an already existing bond of interdependence, or if we understand States as human communities that are inherently bound to other human communities, we may find solidarity ties that imply responsibility for others even when we have not freely chosen to establish those bonds. I shall now discuss the three reasons why, according to the first perspective -the restrictive conception of the duty to rescue-, the EU States had no obligation to do more than they did. After explaining each reason, I shall offer a rebuttal from the perspective of cordial reason.

3. ARGUMENTS AGAINST THE EU STATES' MORAL OBLIGATION AND RESPONSES FROM A CORDIAL PERSPECTIVE

As we saw before, the Maritime Law stipulates that there is a duty to rescue. Such a duty is not only valid at sea, but there is an analogous general duty to rescue, that many countries contemplate in their legislations. Most EU Member States include in their criminal codes a «duty to help», «duty to provide assistance», «duty to rescue», and others similar to these.¹³ A general duty to help means that anybody and everybody is obliged by law to assist a person who is helpless and manifestly in danger, if they can do so without putting themselves or other people in harm's way. Also, although there is not an EU Criminal Code, the EU legislation on sharing criminal records contemplates a «failure to offer aid or assistance» as a subcategory of «crimes against the persons» (Council Decision 2009/316/JHA).

Clearly, there is a legal duty to rescue when we encounter people in distress and almost every author agrees that there is a moral obligation to

¹³ The following EU Member States contain such duty in their criminal codes: Austria (§95), Belgium (art. 422bis and 422ter), Bulgaria (art. 139), Croatia (art. 123), Czech Republic (§150), Denmark (§253), Estonia (§124), Finland, (chap. 21, §15), France (art. 223-6), Germany (§323c), Greece (art. 288), Hungary (§166-167), Italy (art. 593), Latvia (§141-142), Luxemburg (art. 410-1 and 410-2), Netherlands (§450), Poland (art. 162), Portugal (art. 200), Romania (art. 203), Slovakia (§177), Slovenia (art. 130), and Spain (art. 195). Moreover, a general duty to render aid is not exclusive to EU Member States, but it is present in many other countries with a civil law system, like in continental Europe and some parts of Africa and Latin America.

do so, as well. However, this obligation has limits which can be interpreted in different ways, thus laying the ground for diverse understandings of its moral implications in real life. A conservative conception of humanitarian duties (Gibney 2004, 2018, Miller 2016, 2019) or a standard account of the duty of rescue -as expressed by the maritime law and as presented by Miller (2020)- would suggest that the EU States had no moral obligation to support *Mare Nostrum* or any other equivalent operation. The reasons for such a lack of obligation would be mainly three: firstly, the potential rescuers did not physically encounter nor were in close vicinity of the victims (Miller 2020); secondly, the obligation -if any- would have been a collective one (Miller 2019, 2020), so no individual actor had a specific obligation to search and rescue; thirdly, the cost was too high and, since humanitarian duties are subject to limitations of cost (Gibney 2004, 2018; Miller 2016, 2019), the EU States had no obligation to engage more actively in search and rescue operations.

There are other reasons that could be provided as mitigating circumstances of the duty of rescue: the migrants were crossing borders illegally; they knowingly embarked on perilous journeys at their own risk; rescuing them would act as pull-factor for other potential migrants; it was not just about rescuing them, but also about admitting them in the country as potential asylum seekers. However, none of these arguments would be a valid reason not to rescue a person in danger of death or serious harm. If a vessel encounters people in danger at sea, they are obliged to rescue them, regardless of the above-mentioned mitigating circumstances. The other three reasons, though -no physical proximity, multiple potential rescuers, and too high a cost-, could be claimed as legitimate exemptions for the duty to rescue, as we shall see.

3.1. PHYSICAL PROXIMITY

Firstly, according to the standard account of the duty to rescue, such duty arises only when the potential rescuer physically encounters the victim or is in their close proximity. According to Miller (2016, 2020), what makes the duty to rescue especially compelling and even a duty of justice is that life and limb are at stake; the potential rescuer has the duty to prevent death or serious injury. He asserts that this is not a social-contract based duty, but “a duty that one human being owes to another regardless of any pre-existing social or political relationship” (Miller 2020,

p. 326). It is, therefore, a primary moral obligation based solely on the fact that we are fellow humans. It is a moral obligation prior and more fundamental than any legal one. We could say that, on this issue, Miller is in complete agreement with Cortina's notion of the cordial bond: when we recognize the value of the person, it imposes itself on us, peremptorily commanding us to protect it. He says: "the direct confrontation between victim and potential rescuer imposes an obligation on the latter" (Miller 2020, p. 328). Ergo, we must acknowledge that this is about a primarily moral obligation, the source of which is human dignity, or more specifically, the value of human life and physical integrity. One cannot legitimately let a person die or suffer serious harm if one can prevent it without putting oneself in serious danger. Yet, who, exactly, has the duty to save whom?

Miller (2020) explains that physical proximity is key to the moral duty of rescue because it makes the victim uniquely vulnerable to the potential rescuer. In other words, only the potential rescuer can save the victim, and that makes the former the specific duty bearer in this situation. It follows, then, that for this duty to be triggered, the potential rescuer has to be aware of the victim's plight and be able to act with sufficient speed to save them. That is why positive law only forces vessels to rescue when they encounter persons in distress or when they are alerted that there are persons in distress in the vicinity. In this sense, the EU States did what they were obliged to do: EU States' agents (Frontex, EUNAVFOR MED forces, Italian, Greek, or Spanish Coast Guard) rescued all the people that they physically encountered and went to the rescue when they were alerted within their jurisdiction. Thus, they could be said to have been discharged of all their obligations. They did not have an obligation to go and search for potential victims of which they did not know of or were not made aware of; they had no obligation to patrol preemptively the Mediterranean Sea in case they found possible victims to rescue.

Nonetheless, if we assessed the issue from the perspective of cordial ethics, we would not focus on the limits of our obligations, but on the very source of them -human dignity- and our responsibility to protect it, if at all possible. If EU government officials had based their deliberations on the recognition of human dignity, which demands that we act to protect it, they would have expressed their concern about the thousands of victims that, almost certainly, were going to be in danger of death. They did not have direct knowledge of the victim's predicament in the same way that a potential rescuer at sea does when they see or are alerted

about a victim in distress, but they knew that tens of thousands of migrants would, in all likelihood, try and cross the Mediterranean and that, without their help, thousands were going to die. We can contend that it was not necessary for them to be physically present in situ, in order to affirm that they were aware of the eventual drowning victims' plight. They must have had a very well-founded fear that between one and two hundred thousand migrants were going to attempt the crossing of the sea and that several thousands were going to drown, since in the previous ten months 150,000 had been rescued by Mare Nostrum operation, 40,000 by commercial vessels, and over 3,000 had died.

It is true that a well-founded fear is not the same as knowing about a victim's plight; however, it provides sufficient ground for both moral and legal obligations by the States. For instance, a well-founded fear is the key word in the definition of a refugee.¹⁴ A State must grant asylum to any petitioner who has a well-founded fear of being persecuted if returned to their country of origin. "Well-founded" means that it is "objectively justifiable", that is, that "the applicant has established that there is a reasonable possibility that they will actually suffer the feared persecution."¹⁵ This example shows that, when human lives are at stake, when human dignity is in serious danger of suffering severe harm, a well-founded fear of that harm is sufficient reason to give rise to a right to protection on the part of the applicant and to a duty to protect on the part of the State. In the case at hand, there was much more than a "reasonable possibility" of harm: thousands of migrants would most probably suffer death or serious injury. Consequently, we can say that a well-founded fear should have counted as sufficient awareness to give rise to a moral obligation to rescue on the part of the EU States.

The first requirement for EU States to have a duty to rescue, awareness, is therefore met. What about the second one, proximity? As Miller pointed out, proximity matters because it means being able to act with sufficient speed to save the victim. The victim is uniquely vulnerable to

¹⁴ 1951 UN Convention Relating to the Status of Refugees, article 1 A(2): "Any person who: owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country."

¹⁵ *Well-founded fear of persecution* | *Migration and Home Affairs*. (n.d.), from https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/well-founded-fear-persecution_en [accessed March 29, 2020].

the potential rescuer because this person is the only one aware of the victim's plight and the only one able to act in time to save them. Therefore, it is safe to say that the proximity requirement boils down to ability. We must say that the EU States were certainly able to prevent most deaths, if they wanted to. Again, Italy alone had saved 150,000 in ten months. However, is not just ability that makes any random bystander the bearer of the duty to rescue, but the fact the they alone can save the victim. Therefore, if there were more bystanders with the ability to save the victim, the duty would not be so easy to assign. This is, precisely, the second reason that could be considered a legitimate exemption of the duty to rescue by EU States: there were multiple potential rescuers.

3.2. MULTIPLE RESCUERS

According to Miller (2020), when there are several victims and multiple potential rescuers, the duty to rescue does not fall directly on any specific individual, but on all of them as a group. The duty to rescue is therefore a collective duty, not an individual one.. This collective duty imposes a primary duty to distribute the burden of the rescue fairly on the potential rescuers. Only then, a secondary individual duty would arise for each rescuer to try and save their fair share of victims. Subsequently, each potential rescuer would have a duty of justice to try and save their fair share of victims, but not the rest. However, they would probably also have a humanitarian duty (a less stringent one) to take up the slack and try and save more than their fair share.

In my view, this contradicts Miller's first statement, in which he defined the duty to rescue -in line with Cortina's cordial reason- as "a duty that one human being owes to another regardless of any pre-existing social or political relationship" (Miller 2020, p. 326). In cordial-ethics terms, there is a cordial bond that demands recognition of human dignity and imposes on the potential rescuer a duty to help. This bond manifests itself by way of moral autonomy, compassion, appreciative ability and communicative competence. Any mentally sound person would realize that there is a universal imperative to save another person from death if the rescuer can do so without putting themselves in harm's way. Most people would be emotionally moved by compassion at the sight of a fellow human in danger of dying; they would be intuitively bound to act by the value of this person, and they would realize that it is utterly unjust to

refuse to save a valid interlocutor. This seems to be the primary duty, the one that any human being owes to any other human being, when the latter is in danger of death or serious harm.

From this cordial perspective, the collective duty is a result of the duties of each human being and not the other way around. Therefore, each potential rescuer has the moral obligation to save as many victims as they can, regardless of whether there are other potential rescuers or not and also regardless of whether the others do their part or not. Of course, the others also have a duty to do as much as they can, but their refusal to do their part does not extinguish the stringent duty of the first rescuer to save as many human beings as possible. I am willing to concede that the duty to save my fair share of victims is, in general, stronger than the duty to take up the slack. However, when there is a human being in danger of dying or suffering serious injury, I cannot legitimately refuse to act based on the argument that the others did not do their part.

We may say that the duty of the compliant rescuer to take up the slack is “secondary” in relation to the duty of the non-compliant ones to do their part, but it is still a strong duty, not a soft one. Yes, within the framework of the relations of the potential rescuers to each other, the duty of the non-compliant actors to do their part is relatively “primary” and the duty of the compliant one to take up the slack is relatively “secondary”. However, both of them stem from the absolutely primary “duty that a human being owes to another human being”, that is, from the cordial recognition of others. Let’s say that there are five of us -potential rescuers- and five victims. I agree with Miller that, everything else being equal, each one has the duty to save one victim. However, Miller would certainly agree with me, that I should never, under any circumstances, stand still on the pier and watch a second victim drown just because I already saved one and the others did not. What kind of human being would I be? I could have saved a person with little risk to myself and yet I stood there and watched her drown. The other four potential rescuers who, being able to save one person, were just unwilling to get their hair wet, for instance, are clearly monsters. They may be worse monsters than myself, but if I refused to save a second victim, while being perfectly and easily able to do so, just because it was not my allocated fair share, I would be a monster too.

The point I would like to make is that, whether we label it as “secondary” in contrast to “primary” duty, or as a “humanitarian duty” as opposed to a “duty of justice”, I still have a strongly binding moral duty to

save that second victim. According to Miller (2020), I would not have a duty of justice to save that second victim, but a humanitarian duty, which is a softer kind of duty, subject to more limitations and easier to waive (Miller 2016, 2019, 2020). I believe this distinction, if not adequately qualified, jeopardizes the validity of human dignity as source of the duty, which Miller himself proposed at the beginning of his argument. One of the main limitations of humanitarian duties is the price that the potential rescuer would have to pay in order to save a life; at this point, we would have to ask how much a human life is worth. I shall return to this argument in section 4.3.

Applying the previous considerations to the Mediterranean emergency at the end of 2014, we must concede that there were other potential rescuers besides the EU States: Turkey, Libya, other Mediterranean coastal States, and possibly other actors. The other potential rescuers were unable or unwilling to help. This, however, in accordance with cordial reason and with Miller's assertion about a fundamental duty to rescue, did not take away the duty to rescue on the part of the EU States. The EU States may not have had the relatively "primary" duty to search for and rescue all the victims in the Mediterranean, but in light of cordial reason, they still had a stringent moral duty to save as many lives as they possibly could, which, based on previous experiences (Mare Nostrum Operation), were the vast majority of them.

According to Cortina (2007), when we withdraw ourselves from the obligations that follow from the cordial bond, we are not just passively omitting to act, but we are carrying out an active breach of our responsibilities towards others: we are severing the already existing, obligating bond. Most EU States decided to disregard the well-founded fear that a massive number of people would die or suffer serious injury unless they acted; they decided not to acknowledge the obligations that derive from the cordial bond to the potential victims and refused to make an extra effort and take up the slack, when other potential rescuers would not do their part. Based on Miller's argument, they could claim that they did not fail to fulfill their moral obligation. On one hand, they were under no obligation of justice to save all those potential victims. On the other hand, as Miller indicates, they may have had a humanitarian duty to do so, but again, humanitarian duties are subject to exempting limitations. As a matter of fact, humanitarian duties are subject, precisely, to limitations of cost, and Mare Nostrum was a very costly operation. This is the third and last of the reasons that could be considered as legitimate exemp-

tions of the duty of rescue on the part of the EU States, although, from the perspective of cordial reason, it is not, as I shall discuss in the following section.

3.3. HIGH COST

While most authors agree that everyone has a duty to save a fellow human being from death or serious harm when they can reasonably be expected to do so, in the case of States with regard to non-citizens, some would argue that such a duty is only binding when the cost is low (Gibney 2004, 2018; Miller 2016, 2019).

Mare Nostrum was not at all a low-cost operation; it cost Italy 9 million euros per month, summing up to a total of 114 million for the whole ten-month period that it lasted. One could say that it had an extremely high cost. In addition, European governments would have had to figure out what to do with all those people after they were rescued (approximately 200,000 a year). They would have had to take care of the cost of asylum eligibility procedures, housing, food, health care, etc. Moreover, engaging in such a costly operation for the safety of foreigners could plausibly lead to political backlash in the home country, social polarization, loss of voters, etc. Economically, politically (electorally), and socially (increasing hostility to immigrants), the EU governments would have paid a potentially high price for saving lives. Thus, they could be considered to have acted in accordance with a cost-sensitive or conservative notion of humanitarian duties (Gibney 2004, 2018; Miller 2016, 2019) and therefore, to not have acted unethically. In fact, in such a view, there was never a duty on the part of Italy or any other EU State to embark in a SAR operation like Mare Nostrum in the first place, because it was very costly and humanitarian obligations are subject to limitations of cost.

Contrariwise, from the perspective of cordial reason, we must say that one cannot possibly put a price to the value of a human life. In this, we must follow Kant's distinction between means and ends: in the kingdom of ends there is value, but not price (*Groundwork of the Metaphysics of morals*, cit. in Cortina 2007, p. 114). How much money is a human life worth? Is 114 million euros (total cost of Mare Nostrum) too costly a price for saving 150,000 people (that is 760 euros per life)? In the context of a philosophy that hinges on the cordial recognition of human dignity,

the question is out of place. It is an absurd question, because it does not make sense to measure human lives in monetary terms. The duty to rescue is not limited by the rescuer's economic loss, but by their physical integrity: the duty applies as long as the potential rescuers can fulfill it without putting themselves in harm's way. For instance, the captain of a commercial vessel cannot legitimately decline to rescue people in distress by arguing that the company would lose money if they did so. In that instance, maritime law obliges the captain to go to the rescue and any State that respected the rule of law would condemn him if he did not.

Of course, the States should look for the best option and possibly the least expensive one. They can legitimately weigh different alternatives to save those people or have them saved by someone else, but they cannot decide to simply ignore their plea. In the case of the Mediterranean crisis of 2014-2016, the EU States did not need to support the continuation of *Mare Nostrum* operation indefinitely or as a long-term plan. Cordial recognition would only demand that they did so until they found an alternative solution, like an ethically acceptable agreement with Turkey and with other southern Mediterranean coastal States, for instance. Instead, the EU States decided to shut down the operation without providing an alternative solution; a mistake, in the words of Commissioner Junker; an immorality, in terms of cordial reason.

In any case, although in the frame of cordial reason we cannot put a price to a human life, in the real world insurance companies, national laws, courts of law, etc., appraise the monetary value of human lives all the time. So, let's try and answer the previous question for the sake of the argument and for the sake of making realistic demands for real-world governments. Was *Mare Nostrum*'s cost too high? 760 euros does not seem too high a price to pay for saving a life. If Italy was able to do it single-handedly for 10 months, would the entire EU not have been able to maintain it for a few more months? In fact, the EU-Turkey deal was much more expensive: the EU committed to disbursing 6 billion euros in order to stem the migrant flow and to secure the protection of human lives (European Council, 2016). In this case, though, one could argue that they were spending money in securing their borders by outsourcing border control to Turkey and consequently they were protecting the interests of their own citizens, rather than the lives of foreigners. In fact, one could contend that the demand of saving non-citizen lives at a high cost is not a realistic prescription for actual governments; governments cannot take ideal theory and implement it as such in their real policies.

However, cordial reason is not just an ideal theoretical approach, but it was the approach of the government of Italy for ten months. After the shipwreck in Lampedusa in 2013, they decided that such a tragedy could not be allowed to happen ever again, cost what may. Moreover, it was not an ideal theorist who urged EU governments to act in accordance to cordial reason and support Mare Nostrum, but the EU Home Affairs Commissioner, Cecilia Malmström (2014). Again, it was not a moral philosopher, but EU Commissioner Junker (2015) who considered that ending Mare Nostrum had been a serious mistake because it had cost lives. Even the EU itself adopted such a cordial-reason approach, when they decided to triple Triton's budget (European Commission, 2015), after the horrifying wreck in April 2015 (Mediterranean boat capsizing, 2015). Thus, it seems safe to contend that the decision not to support the continuation of Mare Nostrum operation cannot be morally legitimized on the grounds of its high economic cost; not only according to cordial reason, but also according to real-world political criteria as well.

What about other kinds of cost? Maintaining Mare Nostrum would have made the EU governments responsible for potentially 200,000 rescued migrants in a year, who would have had to be taken into protection, brought to EU countries, processed, etc. In such a scenario, the EU States had solid reasons to fear important political backlash and social polarization; also, the prospect of losing public support and voters was a more than likely one. Still, again, political and social costs of that sort could not be legitimately offered as a valid reason to let thousands of people drown. Not if the human dignity of the potential drowning victims was considered. Once again, this is not just a demand of cordial reason, but is also consistent with real life policy. For example, the principle of non-refoulement is precisely an instance of how recognition of human dignity imposes a duty of justice on the States, regardless of the cost. "Non-refoulement" means that, whenever an alien reaches a State's border and asks for asylum, they have the right to be heard, preliminarily admitted, and provided with due process to determine whether they are eligible for asylum or not. No matter how many people apply for asylum at the border and no matter what the economic, social, or political cost may be, the States are bound to respect the non-refoulement principle. This is not just a moral duty of justice, but also a legally established rule that all States must respect, under penalty of being sanctioned by the UN and the EU. This shows that, when human lives are at stake, the cost is a secondary concern and saving lives is a State's *prima facie* duty.

4. CONCLUSION AND FURTHER LINES OF INQUIRY

In conclusion, according to cordial reason, the EU States had a moral duty to search and rescue migrants at sea or to provide an alternative solution for the potential massive loss of human lives and they failed to comply with it. Admittedly, one could justifiably ask whether cordial reason is a sort of rationality adequate for State action. Can States realistically be expected to operate and to make policies based on cordial reason? This paper has given an affirmative answer to this question. It should not sound surprising, since the very values on which the EU itself is founded are perfectly in line with cordial reason.¹⁶ It could be objected that foundational values are more of a source of inspiration rather than actual directives for State action. However, even if it is true that States cannot act based solely on cordial reason, it would not be ethical for them to act in contradiction with their own self-given guidelines.

Italy's effort to launch and maintain Mare Nostrum for ten months, most States' respect for the non-refoulement principle, Commissioner Malmström's plea with EU Member States for them to get invested in Mare Nostrum, or Commissioner Junker's acknowledgment that shutting down Mare Nostrum was a mistake because it cost human lives, are all clear examples of how it is not only reasonable, but the right thing to do, for States to use cordial reason in their deliberations about humanitarian action and policy.

However, I would like to finish this paper by acknowledging that the application of cordial ethics to national States' SAR duties raises several

¹⁶ An ethos is proposed as the very foundation of the EU in article 2 of the Treaty on the European Union: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail". The TEU itself declares that one of the Union's central aims is to promote these values both at home and in «its relations with the wider world» by contributing to «peace, security», and other social goods, including «solidarity and mutual respect among peoples» (art. 3.5). In addition, the Tampere European Council (October 15-16, 1999) recognized that «it would be in contradiction with Europe's traditions to deny such freedom to those whose circumstances lead them justifiably to seek access to our territory». In fact, the EU is often defined and it has often defined itself as a normative or ethical actor (Bulley, 2017: 53).

important questions. Here, I shall briefly address two of the most pressing ones.

Firstly, a question of a rather theoretical nature: should the States invest as much in the safety of non-citizens as they do with citizens? Launching SAR operations to save lives outside its territorial waters is what a State would do for its own citizens, but not for unrelated aliens. Could a State have a duty to do that for complete strangers? A strictly cosmopolitan ethics would probably answer “yes”.

Inversely, partialist moral and political philosophers would argue the opposite. Communitarians such as MacIntyre (1984), Sandel (1982), and with some qualification, Walzer (1983), or conservatives such as Scruton (1990), would make compelling cases for a negative answer to that question. While not all of these authors discuss the question of a duty of rescue toward migrants directly, their views on the moral priority of citizens constitute a reasonable and solid challenge to Adela Cortina’s stance on migrants rights.

Walzer’s notion of different *Spheres of Justice* (1983) would be an interesting debate partner for Cortina’s cordial justice regarding rescue duties. Walzer, one of the most open communitarians when it comes to migrants’ rights, concedes that States have a special responsibility towards asylum seekers: he argues that fending them off would mean using force against ‘helpless and desperate people’ (1983, p. 22–3), and that is obviously morally wrong. In our case, however, shutting down Mare Nostrum did not exactly involve using force against anyone, but merely refraining from going to their rescue, which is different. How to reconcile a State’s duty to protect human dignity in general with the idea that it only has a lesser degree of duties to non-citizens, remains an open question.

In addition, Walzer argues that states are constrained by the universal demands of the principle of mutual aid in their dealings with migrants in need of international protection (1983, p. 48–51). This would mean that, although the European States had obligations toward the migrants in peril in the Mediterranean Sea, other States had a joint obligation too and they should have done their part. How to balance the States’ obligation to uphold human rights and the need to allocate fair shares of responsibility amongst States, is an open question as well.

Even J. Rawls, whose liberal and progressive views in *A theory of justice*, (1971) would seem to make him prone to assume a cosmopolitan stance, in which States had strong duties of justice to non-citizens, admits that his theory of fairness does not work beyond the borders of the State

(Rawls, 1999). One of the most prominent authors in the field of migration ethics, Joseph Carens (1987) tried to apply Rawls' original position -the veil of ignorance- to the issue of justice for migrants in a global context, but Rawls himself rejected that possibility and adopted a very limited view on States' obligations of justice to non-citizens. His argument could be summarized as follows: while in an already established people -a national State-, the citizens are bound to foster laws that will favor equality and the wellbeing of the less fortunate, in the international arena the actors are not citizens but peoples -or States, we could say- (Rawls, 1999, p. 42-45). States have obligations to their citizens that other States do not have and, consequently, they do not have those obligations to other States' citizens either. Thus, in a global context, the official actors, that is, the States, have obligations toward other States; it is unclear, however, what obligations the States would have to individual persons who are not their citizens.

These are some of the theoretical challenges that an ethics of cordial justice would have to face and work with in the contemporary moral philosophical and political debate.

On a more practical perspective, our proposal raises the question of what to do with the rescued persons. If *Mare Nostrum* had been kept in place for another year, many thousands of migrants would have been rescued and brought to EU territory. How should the EU and the national governments have handled that?

In this matter, we must say that, although cordial reason urged the EU States to save the lives of as many people as possible, it did not necessarily require them to host these people in EU countries. The authorities would have had to make a clear distinction between the first, immediate response to imperiled migrants, aimed at protecting them from physical harm, and the long-term protection or asylum granted in a second instance. In this sense, breaking the link between rescue and costly or long-lasting consequences for the country who rescues could have been a solution (Carens, 2013, p. 213, 216-217). The EU countries could have made the effort to save the lives of as many migrants as possible without having to grant them asylum. Not rescuing them would contradict the most basic respect for human dignity, but rescuing them and bringing them, for instance, to processing sites in willing states outside the EU would not.

To be consistent with cordial justice, these processing camps outside the EU would have to guarantee that asylum seekers were protected from persecution, their basic needs covered, and they could undergo an effective

and expedite eligibility process. In addition, they could only be understood as a short-term device; only full integration into a working State would be an acceptable definitive solution (Corrales 2020). Many authors consider that processing asylum applications and securing refugee protection in a third country would be an ethically acceptable substitute for hosting and integrating within rich Western countries (Betts and Collier, 2017; Gibney, 2004; Miller, 2016 and 2019; Wellman, 2016). While cordial ethics clearly imposes on State actors a duty to rescue, how to handle the practical implications of that duty is still a vast field for further research.

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Bosco Corrales Trillo
Universidad Católica de Valencia “San Vicente Mártir”
bosco.corrales@ucv.es

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