

The 2011 ‘Left-to-Die Boat’ Incident: Reflections on Normative International Relations Theory

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Abstract : On March 2011, A boat-carrying 72 migrants- was heading to Italy. Two weeks after leaving the Libyan shores, 62 of the boat’s passengers lost their lives in the Mediterranean before reaching their destination. Deep investigations of the incident, the boat’s route, and the reactions of the actors involved raise many ethical questions pertaining to issues of international responsibility, and moral obligations. With reflections on normative theory in international relations, the present paper aims to shed light on some of these ethical dimensions. The paper argues that the states involved in this incident failed to take the ethical decision needed to save the lives of the passengers which was demonstrated in firstly, their failure to abide by the settled human rights norms, and secondly, their violation of the cosmopolitan perspective– expected to be observed in this incident. Following the analytical logic and the division that Toni Erskine’s adopted when analyzing the case of ‘civilians killed at a checkpoint in Iraq 2003’, the paper is divided into three sections: the first section highlights how coastal states involved in this incident–namely Italy and Malta– although did not violate their legal obligations under the Law of the sea– failed to take an ethical decision of rescuing the migrants and failed to abide by settled human rights norms. The second section draws on the theory’s moral categories: cosmopolitanism and communitarianism as useful analytical categories in understanding the inaction of the states involved and their scope of obligation. The third section concludes by examining the question of ‘who is responsible’, placing moral responsibility on nearly all actors/moral agents involved in this incident.

Keywords: Migrants, Normative IR theory, EU, Human Rights.

1 Introduction

On March 2011, a boat carrying 72 passengers: 50 men, 20 women and two babies, was heading to the Italian Island of Lampedusa seeking asylum after escaping the situations in Tripoli. After two weeks, the boat was washed up to the Libyan shores, carrying only 10 survivors.¹ Testimonies of the survivors indicated that although the boat sent many distress calls, the passengers were left to die for 15 days at the high sea, without any effective action taken from the actors informed of their plight.²

Accordingly, the Council of Europe’s committee of migration, refugees and population (PACE) assigned the Dutch senator Ms. Tineke Strik, the task of investigating the case and issuing a report. Out of the survivors’ testimonies as well as other sources, the report indicated the following: The migrants were boarded by smugglers who, for the aim of getting as much people on the boat, reduced the amount

1 Papastavridis, E. The ‘Left-to-Die Boat’ incident of March 2011: Questions of International Responsibility arising from the Failure to Save Refugees at Sea. 2013, working paper no.10, p.3.

2 Heller, C.& Pezzani, L. Report on the ‘left-to-die boat’. Center for research architecture, 2014.

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of food and water on the boat.³ The boat fell short of petrol after 18 hours which led the captain to send a distress alert by calling a priest living in the Italian territories. The Italian Maritime Rescue coordination Centre (MRCC) was then informed by the priest of the catastrophic situation of the boat. And after few hours, an Italian military helicopter flew over the boat and provided the passengers with water and biscuits. Yet it flew away and did not return back.⁴ After 15 days at sea the boat was washed up back to the Libyan shores with 10 survivors who were arrested by the Libyan authorities. One of them died after poor medical treatment, and the nine remaining survivors were released later on.⁵

The aforementioned incident raises many ethical questions pertaining to issues of international responsibility, and moral obligations. Many news reports condemned the behavior of the actors involved. Actors involved in this incident were moral agents that were expected to take ethical decisions. An analysis of the ethical considerations pertaining to this incident matches normative international relations theory's focus on moral norms and responsibilities.

With reference to Normative theory in international relations, the present paper aims to shed light on some of these ethical considerations. The paper argues that the states involved in this incident failed to make an ethical decision for the reasons of: firstly, the failure to abide by the settled human rights norms. Secondly, the violation of the cosmopolitan perspective expected to be observed in such incidents. Accordingly, the paper is classified into three sections: the first section highlights how coastal states involved in this incident (Italy, Malta)—although did not violate their legal obligations under the Law of the sea (since the boat at the time of the distress was located in the Libyan SAR zones)—failed to take an ethical decision of rescuing the migrants and failed to abide by the settled human rights norms. The second section draws on the theory's moral categories of cosmopolitanism and communitarianism as useful analytical categories in understanding the inaction of the states involved. The third section concludes by examining the question of 'who is responsible', placing moral responsibility on nearly all actors/moral agents involved in this incident⁶.

2 Responsibility and Human rights: A Moral Failure

The fact that the boat people were left to drift in the sea for 15 days without any effective action or rescue operation despite that distress calls were sent, raises questions regarding the moral obligations and international responsibility of the states involved in this incident. The coastal states (Italy and Malta), were aware of the situation of the migrants, however refrained from taking the necessary actions needed to save their lives.⁷

3 PACE. "Lives Lost in the Mediterranean Sea: Who Is Responsible?" Report of the Committee on Migration, Refugees and Displaced Persons, 2012, P.2

4 Hertog, L. Two Boats in the Mediterranean and their Unfortunate Encounters with Europe's Policies towards People on the Move. (working paper No.48), 2012, p.2

5 Papastavridis, 2013 p.3

6 This division follows the division of Toni Erskine in his case study found in chapter 2 titled 'Normative International Relations Theory' in Smith, S. M., Dunne, T., & Kurki, M. International Relations Theories: discipline and diversity, 2013. Erskin ended his chapter with a case study of "civilians being shot at a checkpoint at the start of the 2003 war in Iraq", and analyzed it by reflecting on Normative IR theory, and its moral categories. The division of the paper follows the division and the logic Erskin used in analyzing his case study.

7 Follis, K. Responsibility, Emergency, Blame: Reporting on Migrant Deaths on the Mediterranean in the Council of Europe. Journal of Human Rights, 2015.

To start with, providing assistance to persons in distress at sea is a long-established norm embedded in customary international law.⁸ It is specified in article 98 (2) of the law of the sea that coastal states have the reasonability of “ensuring the establishment of an adequate and effective search and rescue service of persons in distress around their coast” (UNCLOS, 1982, p.60). In this incident, the search and rescue (SAR) responsibility, in the area of the Sicily Channel, is divided between Malta, Italy, and Libya.⁹ The main aim of establishing SAR zones is that states share responsibility in assisting ships in danger at sea. Italy is a signatory of the SAR and SOLAS convention which states that “the migrants should be disembarked on the territory of the state within which’s SAR zone its vessel is identified”. Additionally, Malta, although is a signatory of a different version of the convention, abides by the interpretation that obliges countries to rescue migrants “at the nearest safe port”.¹⁰

In the ‘left to die’ boat incident, it is notable that the Italian Maritime Rescue coordination Centre (MRCC) was the first informed of the situation of the boat by the Italian priest who received the call from the boat’s captain.¹¹ Furthermore, after conducting further investigations, Senator Ms. Strik highlighted that the Italian MRCC informed via phone the Maltese MRCC of the situation of the boat given that the boat might be drifted to the Maltese SAR zone.¹² Evidences then showed that both the Italian and Maltese rescue coordination centers were aware of the distress of the boat passengers. However, given the fact that the boat was located in the high seas within the Libyan SAR zone at the time the distress alarm was first sent, the Italian and Maltese authorities argued that rescuing those migrants was not within their jurisdiction.¹³ The boat was then kept drifting in a ‘responsibility vacuum’.¹⁴

Italy’s and Malta’s justifications are morally refuted on many grounds. According to senator Strik, despite the fact that the Libyan SAR zone at that time was a ‘failing SAR zone’ because of NATO’s intervention, and although the existing legal framework fell short of identifying who would be responsible in cases of failing zones, she insisted that “not being responsible on the basis of SAR zones, does not relieve another state which is informed about an incident of its responsibility to ensure rescue protection”.¹⁵

Moreover, Efthymios Papastavridis—to prove the moral responsibility of the coastal states involved—argued that the responsibility of states towards distress migrants at sea is not only deduced from the Laws of the sea, rather states in this incident are legally and morally obliged to abide by settled human rights laws. Of relevance in this context is the right to life.¹⁶ Additionally, evidences reveal that migrants had been initially assisted by an Italian military helicopter that provided them with water bottles and biscuits.¹⁷ With reference to state responsibility, the initial assistance provided by Italy—arguably—led these migrants to be under its defacto control. According to Efthymios Papastavridis “the omission to

8 Papastavridis, 2013, p.7

9 Heller& Pezzani, 2014, p.26

10 Heller& Pezzani, 2014, p.26

11PACE,2012, p.8

12 PACE, 2012, p.12

13Papastavridis, 2013.

14 PACE, 2012, p. 13

15 PACE, 2012, as cited in Heller and Pezzani, 2014, p.26

16 Papastavridis, 2013, p.7.

17 Pace, 2012.

provide any further assistance is a breach of Italy's positive obligations set forth by the right to life under article two of the European Convention on Human Rights (ECHR)".¹⁸

Out of these details, set of moral failures can be identified. The Italian¹⁹ and Maltese maritime rescue centers were aware of the situation and the distress of the boat, and all possessed the capabilities needed to provide assistance to the boat. However, none of these actors provided the assistance needed that would have saved the lives of 63 asylum seekers²⁰. These actors failed to abide by the international settled norms of right to life, and the moral obligations of rescuing humans in distress. As argued by Efthymios Papastavridis although states actions in that incident is not considered a violation of their obligations under the Law of the sea since the boat was located in the high sea within the Libyan SAR zone, he highlighted that there is a clear moral failure driven from states' failure to take an ethical decision and abide by settled human rights norms such as right to life.²¹

3 Scope of Obligation: Cosmopolitanism Vs Communitarianism:

The second ethical question deduced from this incident, is 'who counts?'²². In other words, does the boat carrying sub-Saharan African illegal migrants be granted the same moral weight as other identities/ethnicities? In this regard, Normative IR theorists employ two distinctive moral categories: cosmopolitanism and communitarianism that provide different understandings of the moral significance of 'others', these concepts, employed by the theory, help in understanding how actors behave in relation to other identities, when confronted with moral and ethical dilemmas.²³ Ethical Cosmopolitanism advocates "a global sphere of moral standing".²⁴ According to this moral category, all human beings have the same moral weight. Fellow citizens do not morally count more than others. According to this perspective, everyone has duties towards all other citizens without distinction based on race, gender or nationality. Communitarianism, on the other hand, argue that actors' actions and behaviors cannot be separable from their identities and affiliations. According to this perspective, 'others' might have "a reduced moral standing".²⁵

These moral categories are useful analytical tools in understanding how states involved in the left-to die boat incident behaved and what was their scope of obligation towards outsiders, in that case 'illegal migrants'. In fact, the inaction approach pursued by both Italy and Malta, and the reluctance to provide assistance to passengers dying in the middle of the sea reflect that migrants were not granted the same moral weight as others. Many questioned the behavior of Italy and Malta arguing that this would not have been the same course of action pursued if these passengers were Europeans or Americans. Karolina Follis referred to the principle of 'equality of survival' arguing that "the principle of equality of survival

18 Papastavridis, 2013, p.13.

19 Italy, being the first to receive the distress call, had more responsibility to make sure the boat is rescued.

20 Heller& Pezzani, 2014. Heller and Pezzani stated in this regard that the Coastal states have been reluctant to rescue migrants at sea, because rescuing them entails taking responsibility of them and their asylum requests.

21 Papastavridis, 2013, p.22.

22 Erskine, T. Normative International Relations theory. In Smith, S. M., Dunne, T., & Kurki, M. (2013). *International Relations Theories: discipline and diversity*. (36-58). Oxford: Oxford University Press.

Erskine tackled this question in his explanation of the normative theory. He stated "The question of 'who counts?' when we think about international politics is an extremely important one" (p.47).

23 Erskine, 2013

24 Erskine, 2013,p.42

25 Erskine, 2013, p.43.

is implicit in the obligation to provide rescue at sea that remains in force regardless of the legal status of the victim".²⁶ According to Mervyn Frost Migrants should not be treated as perfect strangers or outsiders, rather, they are co-participants in the global civil society.²⁷

By deviating from ethical cosmopolitanism expected to be observed in that case, actors also violated the settled norm of the 'universality of human rights'. Marie-Benedicte Dembour, Tobias Kelly argue that the widely agreed principle of universal human rights seem to break down whenever it comes to the protection of illegal migrants²⁸. Article two of the universal declaration of human rights (UDHR) states that "everyone is entitled to all the rights and freedoms set forth in this declaration without distinction of any kind such as race, color, religion or national origin". In that incident, passengers' 'right to life' ought to be observed by that actors informed about their distress, regardless of their identity or legal status.²⁹ Actors in this case deviates from ethical universalism and were more in line with communitarianism. However, communitarianism as a moral category, although advocate for more inclination towards fellow community members, does not justify Italy's and Malta's inaction towards the boat passengers, since rescuing actions to save 'outsiders' in that case does not entail sacrificing any of the interests of their community members.

4 Conclusion: Who is Responsible?

Normative IR theory understand actors on the world stage as being 'moral agents' that are expected to behave in accordance with 'settled moral norms', and are than obliged to observe their 'moral responsibilities'.³⁰ Normative IR theorists would be concerned with examining who is responsible? In this incident, who had the duty to ensure that these migrants were not dead in the middle of the sea? In this regard several moral agents are to be blamed. Starting with the smugglers who sacrificed the safety of migrants at the expense of getting as much money as possible by overloading the boat³¹. Or, as many argued, it is more generally the EU policies exemplified in the hard access to visa , and frontiers on EU borders that lead asylum seekers to resort to illegal means and dangerous routes to enter the EU³². Moreover, as argued in this paper, coastal states are to be morally blamed, since they refrained from taking the necessary ethical decision needed to save the lives of the migrants, despite being informed of their plight.

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26 Follis, 2015, p.56.

27 Frost, M. (2008). *Global ethics: anarchy, freedom and international relations*. Routledge, p.114.

28 Dembour, M., & Kelly, T. (2011). *Are Human Rights for Migrants?: Critical Reflections on the Status of Irregular Migrants in Europe and the United States* (1st ed.). Routledge.

29 Follis, 2015, p.43.

30 Erskine, 2013, p.53

31 Follis, 2015, p.42

32 Heller& Pezzani, 2014. Heller and Pezzani, (2014) argued in this regard that the surveillance means employed by the European countries as well as the introduction of Frontex (the European border Agency) have turned the Mediterranean into a frontier zone, these lead migrants to resort to dangerous routes to enter the EU.

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