

# Search and Rescue in the Mediterranean Sea: Negotiating Political Differences

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## ABSTRACT

This article explores the debates that unfolded within Médecins Sans Frontières (MSF) around the decision to launch search and rescue operations in the Mediterranean in 2015. It examines how, beyond the unifying imperative to help, there remained very different political interpretations within the organisation about the proper role of humanitarian actors in tackling this visible and tragic situation. The points of contention included categorisation, feasibility, medical impact, and politics, raising the following central questions: should categories matter, and is it relevant whether a needy person is classed as a camp-dwelling refugee or an irregular migrant at sea? Are the needs in the Mediterranean more serious than those in disasters elsewhere? Would search and rescue operations end up placing publicity and politics over impartiality and neutrality? Looking at how MSF resolved these and other issues can help illustrate the challenges aid agencies face in a world where deaths from large-scale migration are becoming a more common feature of the humanitarian landscape.

**KEYWORDS:** search and rescue, humanitarian principles, advocacy, medical care

## 1. INTRODUCTION

After several years of intense internal discussion, in early May 2015 Médecins Sans Frontières (MSF) launched search and rescue operations for asylum-seekers and migrants attempting to cross the Mediterranean Sea. It has been an unusual move by the organisation, propelled both by humanitarian and political considerations. From a purely humanitarian perspective, many in the organisation were compelled by the scope and urgency of the tragedy unfolding at sea and the belief that such intervention could reduce mortality by drowning. Numbers had been increasing over the years and *Mare Nostrum*, the search and rescue operation by the Italian Navy, had been discontinued at the end of 2014 due to lack of political support and funding. Given the intensity of both push and pull factors driving people to risk their lives trying to cross in rickety boats from Libya to Sicily, forecasts indicated that immediate action by MSF in the Central Mediterranean could prevent a significant loss of life.

But beyond this immediate goal, the organisation was acutely aware of the wider implications of search and rescue, which lies at the heart of the divisive political

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debate in Europe on immigration and asylum policies. As such, the decision to intervene was not easy. A similar proposal to deploy a boat to search and rescue vessels in distress in the Mediterranean had been tabled, discussed, but finally turned down within the Dutch operational centre of MSF back in 2011. Internal debates were intense, and a review of these debates can shed light on the kind of issues that are likely to emerge with increasingly regularity as humanitarian agencies grapple with highly politicised migration crises. The different positions held within MSF reveal that beyond the unifying commitment to humanitarian ideals that propels MSF into action, there are significantly different interpretations amongst individuals about the organisation's role, and specifically about the limits and purpose of its engagement with the politics and the "migration" debate in Europe.

There were important developments since the first proposal for a boat operation was turned down in 2011. The protracted conflicts in places like Syria, Somalia, or Libya continued to subject millions of human beings to violence and unspeakable suffering, and in the same period, MSF's ability to access and provide assistance inside those countries had become increasingly limited due to security threats. MSF had been forced to close its projects in Somalia in 2013 in the aftermath of several incidents targeting its staff, and a significant reduction of the programs inside Syria followed in early 2014 for the same reasons. In the aftermath of the fall of the Gaddafi regime, lawlessness and instability in Libya had been a serious challenge to various attempts to set up operations. In some ways, focusing on refugees fleeing those places became more relevant for MSF given its inability to provide assistance at the root of these crises.

With the extension of the Syrian conflict into Iraq, the number of refugees worldwide had reached its highest peak since the Second World War. The difficulties providing meaningful assistance inside these war-torn countries were coupled with large numbers of people fleeing those conflicts and an international response that suffered from a very limited political will from affluent States to host and assist people in flight. Critical questions were raised within parts of the organisation about MSF's role providing assistance only to Syrian refugees hosted regionally in Lebanon, Turkey, Jordan, or Somalis in refugee camps in Dadaab (Kenya) or Liben (Ethiopia). With people moving further away from their countries of origin along smuggling routes, the inconsistency of European policies towards those affected by these conflicts had become evident over the past decade. While providing funding to assist and keep refugees elsewhere was politically acceptable, European Union (EU) countries continued to invest in sealing their borders and setting legal, administrative, and practical obstacles for asylum-seekers who were trying to reach safety in Europe itself. The idea that aid was becoming a form of containment was familiar to MSF, based on extensive historical experiences; it had also been expressed by academics in relation to specific contexts such as Iraq or the former Yugoslavia.<sup>1</sup> More recently, others had criticised the contemporary role of aid as containment in a context of massive global inequality.<sup>2</sup> In relation to the current crisis, then, were aid

1 D. Keen, *Complex Emergencies*, London, Polity, 2008, 119.

2 M. Duffield, "Global Civil War: The Non-Insured, International Containment and Post-Interventionary Society", *Journal of Refugee Studies*, 21(2), 2008, 146.

organisations becoming the unwilling executors of a policy of regional containment funded by EU States?

The question demanded reflection. MSF had been aiding refugees regionally for years in many different conflicts. It was no secret that state funded aid to assist refugees “in the region” was not just a humanitarian endeavour, but was also offered as a way to prevent migration towards Europe. Whereas the organisation had routinely refused to take funding from States involved in conflicts such as Syria or Somalia, it was still providing a significant amount of aid for refugees in neighbouring countries funded by private donations. The dilemma for MSF was not so much about the impact of its aid provision regionally and the potential for abetting a policy of containment; for MSF, aid was clearly needed and justified as an end in itself, and the organisation is well accustomed to dealing with the way aid is utilised by States to serve geopolitical interests.<sup>3</sup> The real question was about how to position the organisation towards the broader phenomenon of people – asylum-seekers, migrants – travelling along well-known “migration” routes, often illegally and marginalised by state policy, and inevitably falling prey to a growing smuggling business that exploited their desperation and the lack of safe and legal alternatives. In other words, what should MSF’s role be on providing assistance to those considered “illegal”, marginalised, and left behind by state policy?<sup>4</sup>

It took MSF four years to mature a decision on this question and turn it into action at sea. The aim of this article is to elucidate the lines of debate around this contentious intervention and illustrate some of the challenges posed by the so-called “migration crisis” for humanitarian agencies more generally. The author was directly involved in the debates, and the descriptions and analysis in this article provide insights primarily into the discussions held within the MSF’s operational centre in Amsterdam. This was the first of MSF’s five operational centres that made a decision to launch search and rescue operations in the Mediterranean; shortly after, the MSF operational centre in Brussels and then Barcelona also launched operations at sea. The discussions across different sections of the MSF movement mirrored and replicated most of the points raised in this article. This article is structured by considering, in turn, the six main points of contention in the MSF debate, before concluding with the implications of these discussions for humanitarian action more broadly.

## 2. WOULD SEARCH AND RESCUE BE FEASIBLE?

The first point of contention was a practical one. MSF had not conducted this type of operation before, so it lacked both the practical skills and the knowledge of the context in which the operation had to take place. The practical skill in conducting

3 F. Weissman, V. Homolka, R. Leverdier & F. Terry (eds.), *In the Shadow of ‘Just’ Wars: Violence, Politics and Humanitarian Action*, London, C. Hurst, 2004; C. Magone, M. Neuman & F. Weissman (eds.), *Humanitarian Negotiations Revealed: The MSF Experience*, London, Hurst, 2011.

4 A second avenue of reflection that converged in this operation was the questioning of the camp paradigm as a method of choice for providing assistance to refugees. These downsides of encampment were known to MSF, and had been raised before both by practitioners and academics – loss of livelihoods, dependence on aid, limited options for local integration and self-reliance, and so on – especially as conflicts become protracted and standard solutions of the United Nations (UN) High Commissioner for Refugees did not appear as politically feasible. For more on some of these debates see in this special issue, H. Chkham, “Aid and the Perpetuation of Refugee Camps: The Case of Dadaab in Kenya 1991–2011”.

search and rescue at sea was something that could be acquired or developed, but a bigger issue was whether the operation was legally and politically feasible. Would MSF be able to negotiate the necessary space to rescue and disembark people?

Back in 2011, MSF considered the legal implications of the operation. Under maritime law, the shipmaster has an obligation to render assistance to those in distress at sea without regard to their nationality, status, or the circumstances in which they are found. This is a long-standing maritime tradition as well as an obligation enshrined in international law. So, in terms of rescue, the situation seemed clear. But the bigger question was whether States would allow an MSF boat to disembark people rescued onto their shores. There was a risk that MSF would end up with a boat full of people in international waters, or that the organisation would be left fighting a costly legal battle, accused of people smuggling when they reached their point of arrival.

The case of Cap Anamur a few years earlier hung over these discussions.<sup>5</sup> In 2006, the president of this German humanitarian non-governmental organisation (NGO), along with the captain and first officer on the ship bearing the same name, had been brought to trial in Agrigento, Sicily. The charges they faced were aiding and abetting illegal immigration by rescuing 37 African shipwrecked victims between Libya and Lampedusa back in June 2004, and transporting them into Italian territorial waters. The captain and first officer finally landed in Italy after spending two weeks at sea awaiting permission to disembark their passengers. They had been arrested on arrival, and Cap Anamur faced a crippling legal battle that lasted several years. They were eventually acquitted, but the lesson for MSF was a worrying one: the law was ambiguous enough to be a serious risk for those who rescued at sea. The duty of rescue at sea might be clear in maritime law, but there was also immigration law to consider, which punishes the conduct of facilitating illegal entry into a State's territory. The Italian authorities had proven adamant to use prosecution as deterrence in this case. So while the rescuing act itself did not seem to be a legal problem at all, entering a port with passengers who did not have the correct paperwork certainly presented a challenge.

The Cap Anamur case was by no means the only case in which solidarity had been criminalised.<sup>6</sup> There were other cases in which fishermen and private vessels had faced judicial proceedings for aiding illegal immigration. In 2007, a group of Tunisian fishermen rescued 44 migrants at sea and brought them to Lampedusa: they were charged with aiding illegal immigration and prosecuted by an Italian court.<sup>7</sup> They were acquitted from all charges after a four-year battle, but since their fishing boats and fishing licenses had been confiscated during the process, their livelihoods had been ruined. Other vessels that happened to meet and assist migrants in distress had been forced to wait in international waters for several days before the

5 M. Schmitt & L. Arimatsu, *Yearbook of International Humanitarian Law*, The Hague, T.M.C. Asser Press, 2010, 544–545; T. Basaran, “The Saved and the Drowned: Governing Indifference in the Name of Security”, *Security Dialogue*, 46(3), 2015, 205–220; T. Basaran, “Saving Lives at Sea: Security, Law and Adverse Effects”, *European Journal of Migration and Law*, 16(3), 2014, 365–387.

6 L. Fekete, “Europe: Crimes of Solidarity”, *Race & Class*, 50(4), 2009, 83–97.

7 *Ibid.*, 94.

flag States decided what was to be done with the migrants.<sup>8</sup> The fear of being prosecuted or ending up at sea with a boat full of people, unable to disembark, had functioned as a disincentive for non-state actors to rescue at sea. It had also kept the stakes high for those attempting the crossing: reports from survivors of tragedies at sea had consistently revealed that private vessels did not stop to assist them.<sup>9</sup>

Despite all this, being sued was not MSF's main concern: the organisation's calculation was that the authorities would refrain from getting into a potentially embarrassing public battle against MSF. Still, the prospect of being refused landing permission and being stranded for days at sea with hundreds of people on board remained a concern. The uncertainty about this was one of the factors that played against the proposal being approved when it was first tabled in 2011.

The situation changed, however, in October 2013, when a wooden boat carrying migrants from Libya to Italy capsized off the coast of the Italian island of Lampedusa. More than 360 lives were lost, and media attention was huge. The Pope and several EU leaders issued calls to stop tragedies at sea; the Italian Navy launched Operation Mare Nostrum a few weeks later, deploying vessels to search and rescue at sea. In June 2014, a small privately funded initiative, the Migrant Offshore Aid Station (MOAS) was able to deploy a small boat, the Phoenix, which conducted search and rescue operations in cooperation with the Maritime Rescue Coordination Centre (MRCC) in Rome. As Mare Nostrum was discontinued at the end of 2014, MSF saw an opportunity to step up and fill the gap.

### 3. WAS THE OPERATION “MEDICALLY RELEVANT”?

The second point of contention when the operation was first proposed was its medical relevance. Whilst it seemed clear that search and rescue had the potential to save lives, was there really a medical justification for MSF to intervene in the Mediterranean? Were there “medical needs” of sufficient weight as to prioritise resources for this intervention over others in Africa or elsewhere?

*Prima facie*, the answer seemed to be no. People on board of vessels in distress needed to be rescued, but it was not immediately clear if their medical condition would require the care and expertise of MSF doctors. The prediction was that, aside from very few real medical emergencies, most of the medical care required on board would be for cases of dehydration, sunburn, mild skin diseases, and respiratory tract infections. In other words, the anticipated need for MSF services seemed small when compared to the thousands of cases of malnutrition, infectious diseases (Ebola, HIV, tuberculosis, measles), and violent trauma that MSF cares for in other programmes all over the world. Many argued that MSF's medical expertise could be put to better use elsewhere rather than on board of a search and rescue ship. Deaths in the Mediterranean Sea were certainly a humanitarian crisis, but responding to this was

8 This was the case of the Spanish trawler *Francisco y Catalina* in 2006, the Turkish cargo *Pinar* in 2009, the Spanish NATO warship *Almirante Juan de Borbón* in 2011 and the Greek-Liberian tanker *Salamis* in 2013, amongst others.

9 For further details, see P. Cuttitta “From the Cap Anamur to Mare Nostrum. Humanitarianism and Migration Controls at the EU's Maritime Borders”, in C. Mattera & A. Taylor (eds.), *The Common European Asylum System and Human Rights: Enhancing Protection in Times of Emergencies*, The Hague, Asser Institute, 2014, 21–37.

not MSF's core task. These doubts about its medical relevance were perhaps the key factor, which led the management team of the MSF operational centre in Amsterdam to turn down the initial proposal in 2011.

Those who disagreed with this decision argued that trying to forecast the value of the operation based solely on medical indicators was missing the point. Such a technical calculation was the wrong approach for judging the potential impact of a search and rescue operation at sea. This operation, they argued, was relevant on purely humanitarian grounds: people were suffering and the organisation was able to help. Others went further, arguing that MSF could use its credibility and resources to take a political stance on EU restrictive immigration and asylum policies, leading to an even greater impact. These policies were leading people to risk their lives on rickety boats, while at the same time Europe had withdrawn some of its rescue capacity (after the closure of Mare Nostrum). MSF, by combining search and rescue operations with advocacy, could put pressure on EU Governments, seizing the opportunity to speak out against some of the root causes that were fuelling this man-made disaster taking place at sea.

The discussion raised a central tension within MSF: its position as both a medical humanitarian organisation concerned with the principle of impartiality, and an organisation with a vibrant tradition of activism and advocacy concerned with *témoignage* (witnessing). These two notions have long been in tension, as the work of Peter Redfield demonstrates.<sup>10</sup> Impartiality is one of the core principles of humanitarian action as understood by MSF. It means that assistance should be distributed solely on the basis of need and not determined by other considerations related to the recipient (ethnicity, gender, political affiliation), or tainted by political considerations, interests, or convictions of the agent providing relief. For some in the organisation, the arguments for search and rescue in the Mediterranean betrayed a kind of ideological conviction that was at odds with the principle of impartiality – especially given the concern about real medical needs. The commitment to *témoignage*, however, is another central part of MSF's mission. It means a willingness to speak out on behalf of people who are suffering. The idea is that MSF uses its direct knowledge of the situation in order to raise awareness of an issue, to bring abuses to light, with the longer-term goal of alleviating human suffering and protecting life and health. With this commitment in the foreground, there would be an important case for taking a firm stance on the unacceptability of deaths at sea, especially when caused by EU policies.

#### 4. ARE LEGAL CATEGORIES RELEVANT FOR HUMANITARIAN ACTION?

A potential intervention in the Mediterranean would inevitably be seen as an act with political ramifications, so it was very important for MSF, internally, to agree how to frame this intervention. A single, unified, consistent line of thinking rarely exists in an organisation the size of MSF, but a shared understanding of the logic

10 P. Redfield, *Life in Crisis: The Ethical Journey of Doctors without Borders*, London, University of California Press, 2013; P. Redfield, "Sacrifice, Triage, and Global Humanitarianism", in M. Barnett & T.G. Weiss (eds.), *Humanitarianism in Question: Politics, Power, Ethics*, Ithaca, Cornell University Press, 2008, 196–214.

behind the operation was still needed to mobilise action. Equally importantly, this narrative was essential to explain the operation to the wider public.

Providing assistance to victims of war – including refugees – has always been at the core of MSF's operations. Since its creation in the aftermath of the Biafran War, MSF had always been active in armed conflicts, from Afghanistan to Angola, Somalia to Sudan. The basic principles of the 1951 Refugee Convention<sup>11</sup> have long provided a set of widely accepted rules for this work: people fleeing a “well-founded fear of persecution” are entitled to protection and assistance as they arrive in the territory of other States, and they should not be detained or sent back. Even if the application of the Refugee Convention is in practice always influenced by political agendas, this widely accepted set of principles has long constituted solid grounds for MSF not only to provide assistance, but also to put pressure on States to fulfil their international obligations.

In the case of the Mediterranean Sea, however, the framework provided by the Refugee Convention did not apply to everyone. The rights and entitlements of those fleeing a well-founded fear of persecution were well established, but the boats crossing the sea included some escaping poverty and lack of opportunity, who did not necessarily meet the criteria set by the Refugee Convention. Media and politicians often described these people as “economic migrants”, and a simplistic division between “deserving refugees” fleeing war or persecution, and “undeserving migrants” fleeing poverty had become common. Although “economic migrants” had the potential for protection under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which came into force in 2003, this treaty had only been signed and ratified by countries of origin of migrants; not a single migrant-receiving State in Western Europe had ratified it, nor had other important receiving States such as the United States (US), Australia, South Africa, or Arab States in the Persian Gulf. Similarly, everyone trying to reach Europe, regardless of status, was entitled to dignified treatment in line with basic human rights standards, but in practice government policies remained firmly rooted in legal categorisations that created differential treatment for refugees and other migrants.

The question MSF faced was whether these categorisations should be in any way relevant for a humanitarian intervention. It was also understood from the outset that the motivations of people trying to cross the Mediterranean were varied and often mixed, and these motivations – as well as the legal categorisations that derived from them – did not matter when it came to rescuing people at sea. From a purely operational perspective, everyone in the MSF discussions agreed that the imperative when encountering a boat in distress at sea was to save human lives. Making any distinctions based on legal categorisations would not only be impractical, but fundamentally unethical and contrary to MSF's mandate to assist impartially and solely based on need. In other words, whether people in peril were “migrants”, “asylum-seekers”, or “refugees” did not make any difference to MSF. The ability to reduce the phenomenon to “human beings in need of help” allowed MSF to effectively

11 Convention relating to the Status of Refugees, 189 UNTS 137, 28 Jul. 1951 (entry into force: 22 Apr. 1954).

disentangle the matter from some of the legal and political debates that often hinder the response from States and mandated UN agencies.

It should be clear that MSF rejection of legal labelling when contemplating operations was not just pragmatic or opportunistic. It was rather the logical consequence of a humanitarian ideology, which embraces human beings with a universal outlook and an inclusive aspiration, and rejects categorisations when used to justify exclusion or neglect. In that sense, the decision to act or refrain from acting for MSF remained grounded on a humanitarian ethos rather than on legal considerations.<sup>12</sup> Yet, by rejecting these categories there was the implication that MSF was also challenging the cornerstone of the international refugee regime as it stands today. Moreover, the organisation could also appear to be challenging the very basis of state sovereignty and the existence of border controls.

Making a case for a Europe “sans frontières”, however, was never considered a serious option in the debates over rescue at sea. Throughout the discussions it was clear that MSF’s intervention aimed neither at questioning the existence of borders as a matter of principle, nor was it going to advocate for the free movement of people. Even if many individuals within the organisation would sympathise with the open borders argument, making it an organisational position was never really considered. The majority of those making the decision regarded this position as a non-starter both for ideological and pragmatic reasons, for example, it was hard to imagine coming to a consensus on this point with the organisations’ donors and supporters. It was one thing to question immigration policies that contributed to marginalisation and suffering, but arguing for the demise of the Westphalian world order altogether was a step too far. The doctors “without borders”, it seemed, were not so borderless after all.

As a result, a moderate line was pursued. Having an inclusive “humanitarian” outlook on who to rescue and rejecting legal categorisations when engaging in search and rescue were advantages operationally, but completely stripping the politics and implications of legal categorisations from the analysis was neither desirable nor really possible, when it came to speaking out publicly about the operation and the plight of the people rescued. Even though many in MSF rejected the notion of dividing people into the categories of “migrants” and “refugees”, the way States and mandated UN agencies chose to categorise people remained extremely relevant in shaping a response. The way media portrayed the people arriving was also essential in influencing public opinion towards not only the MSF operation, but also the response offered by politicians. In this sense, the inconsistency in the treatment of Syrians was paradigmatic: since the outbreak of the conflict in 2011, each State along the migration route had chosen to treat Syrians in a different way; a Syrian fleeing war could, as they passed from Turkey through the Balkans and up to Germany, find themselves characterised as an asylum-seeker, a *prima facie* refugee, or an “illegal immigrant” depending on what country they found themselves in.

Some in MSF argued that when speaking out publicly MSF should emphasise the plight of those fleeing conflict and persecution, drawing on MSF’s legitimacy as a

12 For a critique of this “ideology of humanitarianism”, see B.S. Chimni, “Globalization, Humanitarianism, and the Erosion of Refugee Protection”, *Journal of Refugee Studies*, 13(3), 2000, 243–263.

direct witness of the devastation in places like Syria, Afghanistan, Somalia, or Iraq. It was of course tempting and expedient to narrow the focus on EU responsibilities towards refugees and asylum-seekers under international law, but this could not be done at the expense of reinforcing the logic that leads “undeserving migrants” from other countries to fall through the cracks. The MSF intervention as a result had to accept and embrace the difference in motivations between those needing asylum and those who do not, but at the same time raise questions about the adequacy of these clear-cut categorisations in defining a humane response to people on the move. The binary representation of “deserving refugee” versus “undeserving migrant” had to be rejected. It simply did not do justice to the complexity of the stories and mixed motivations of human beings risking their lives at sea. More importantly, these categories were being manipulated to represent the situation to audiences who had the power to approve or disapprove what their governments were offering those who arrived, making it even more important that such distinctions were questioned.

The dilemmas raised by the dichotomy refugee-migrant still linger inside MSF, and it should not be surprising that a unified organisational position remains elusive. To the question of whether these legal categories are relevant or not, perhaps the simple answer is “depending for what” and “depending for whom”. These categories illuminate the relationship between the subjects and the objects of power and they can be helpful or harmful, depending on how they are used. From the perspective of state authorities these categories have a clear rationale when it comes to defining who has access to state protection and rights. They are used to determine those who are prioritised, those who deserve, those who are welcome, and those who are not, and these decisions have an enormous impact on the lives of hundreds of thousands of human beings. MSF objected to the human costs that result from this process of triage – the people who are left by the side of the road. More fundamentally, MSF reflected on the criteria used to fit people into categories, and the political motivations this process served. From the perspective of a humanitarian agency, the use of these labels as a method of exclusion had to be challenged. The response of States and aid agencies, MSF argued, should take the needs and interests of human beings concerned as the primary consideration.

##### 5. HOW TO AVOID CO-OPTION INTO STATES’ AGENDAS?

The next issue was whether MSF might become part of the problem rather than part of the solution: co-opted into filling in for States that would now have fewer incentives to take up their responsibilities. The concern was that the work of NGOs reducing mortality in the Mediterranean might help “calm the waters” and preserve the *status quo* of restrictive asylum and migration policies – policies that were, in MSF’s own analysis, one of the root causes of the problem.

This was a critical concern, especially as the intervention was to be done in coordination with the Italian authorities through the MRCC in Rome. In practical terms, coordination with the MRCC was necessary both to locate boats in distress and to secure authorisation to disembark people rescued in Italian ports. In light of this, MSF was ready to accept the need for cooperation with Italy and other States, with the objective to save lives at sea. MSF was not, however, ready to let its operation

become the patch up solution which would help consolidate the situation and obscure the responsibility of politicians in the EU.

EU States remained responsible for defining their policy towards migration as well as for administering it in practice. MSF had been assisting those arriving in Italy and Greece since the early 2000s. More recently, it had expanded operations to the Balkans. Through those operations in mainland Europe, MSF had witnessed the development of an increasingly restrictive EU migration regime over the years and the massive growth of Frontex, none of which had any deterrent effect on people who continued to use increasingly dangerous routes. The proposed intervention at sea was bringing MSF a step further: the organisation was now going to assist people *who had not yet arrived in Europe*, namely people whom EU States were absolutely not keen on receiving in the first place. In the process of doing so, MSF would be questioning the migration and asylum policies and practices of EU States, which were dragging their feet, setting obstacles, and deliberately neglecting the issue.

This was of course a matter of debate. Some within the organisation fundamentally disagreed with MSF positioning itself towards policy choices they considered “political” issues beyond the organisation’s “humanitarian” role. In their eyes, MSF should limit its action to rescuing people at sea and bearing witness to the suffering of those rescued, without commenting on root causes or taking a position on political issues that are beyond the organisation’s medical expertise. Others in the organisation profoundly disagreed with this logic, which they considered naïve and even dangerous. They argued that the operation itself was incomplete if stripped from the context in which it was taking place. Rescuing people without pointing at the root causes of the problem would run the risk of MSF’s action being manipulated and misinterpreted.

Presenting “victims in need” within a “humanitarian crisis” was indeed problematic. While it could perhaps trigger a humanitarian response – more aid, more help, in this case increased search and rescue at sea – this could also avoid the recognition of the rights for the individuals concerned and the political responsibility of States. It is important to note that this dilemma is not unique to this intervention, but rather at the core of what Didier Fassin has termed “humanitarian reason”.<sup>13</sup> The position that prevailed in the end was that MSF had the responsibility to explain how it had become increasingly difficult for everyone – refugees, migrants, asylum-seekers – to reach Europe, and how restrictive policy choices by EU States were driving hundreds of thousands of human beings into the hands of smugglers. EU policies, MSF argued, were having the unintended effect of contributing to vulnerability and abuse, and to preventable deaths at sea. Saving lives needed to be coupled with pointing at those who had the power and responsibility to solve the problem.

MSF defined two clear advocacy objectives from the outset. Firstly, the organisation was explicit that its limited search and rescue efforts could not replace the efforts that were lacking at EU level. Resources were available to save lives at sea, and EU leaders had a responsibility to deploy them right away to prevent more drowning. Secondly, the intervention demanded policy change. Given the undeniable push and

13 D. Fassin, *Humanitarian Reason: A Moral History of the Present*, Berkeley, University of California Press, 2012.

pull factors driving people to migrate, safe and legal routes needed to be opened for those trying to reach Europe. People needed a viable alternative to the lucrative and criminal smuggling business that was taking advantage of those who lacked other options.

Ensuring public visibility of the humanitarian tragedy at sea became an important part of the strategy to mobilise empathy and support amongst public opinion. MSF was aware that while this visibility could increase the pressure on governments to act, the extent and nature of responses offered by EU States was beyond its control. In some of the early debates, some voices argued that installing the discourse of “humanitarian emergency” was also a double-edged sword. This narrative could also be co-opted and utilised by States as a justification to deploy extraordinary measures to prevent further deaths. These could range from a military deployment to “fight smugglers” and “stop the boats”, to resorting to deals with States in the periphery of Europe to create a buffer zone where offshore processing and detention could take place. These options were not new to Europe and had also been implemented in Australia, and in both cases had raised sharp criticism from human rights observers.<sup>14</sup>

## 6. HOW TO AVOID BECOMING A “PULL FACTOR” AND FACILITATING HUMAN SMUGGLING?

The key argument used by European States that opposed the continuation of the *Mare Nostrum* operation at the end of 2014 was not lack of financial resources. It was about the unintended effect of the operation itself. By deploying search and rescue capacity at sea, the argument went, EU States would be sending the wrong message to prospective migrants. The existence of search and rescue would make the sea crossing seem more practicable with less risk of drowning; it would therefore encourage more people to make the journey. It was also argued that search and rescue was favouring the booming smuggling business, facilitating the work of criminal networks, which were making millions of Euros by putting people on rickety boats. Search and rescue would make the business easier and create the incentives for an increased number of people to risk their lives on board of flimsier boats.

The notion of humanitarian aid being a pull factor for refugees had been used before when questioning interventions on land. MSF was aware of the argument, but also familiar with the way that aid can be used by political actors as an incentive to persuade refugees to stay in a camp or move elsewhere. However, the organisation had enough experience to reject the myth that aid in itself is the primary factor triggering or generating displacement, and the situation in the Mediterranean was no different. Indeed, being active in most of the countries from which people were coming, MSF was aware of the powerful push factors behind the choice to migrate from war, persecution, or crippling misery. The availability of search and rescue in the Mediterranean was by all accounts not a critical factor influencing the decision of

14 In the case of Europe, the bilateral deals between Italy and Libya under the Gaddafi regime to deter and contain migration before it could reach Europe had resulted in widespread detention, torture, extortion, and abuse of migrants in Libyan detention centres. MSF had been exposed to horrific stories of migrants who fled those detention centres into Choucha camp in Tunisia in the aftermath of the fall of Gaddafi. The criticism of the Australian offshore detention has also been consistent.

people to flee; moreover, the situation in Libya itself (violence, detention, and exploitation in a context of lawlessness) resulted in many third country nationals fleeing that country as well. There were not many options besides the sea crossing up north. With or without search and rescue capacity at sea people would continue to come in large numbers.

The argument about involuntary collusion with the objectives of smugglers was comparatively more difficult to address. The decision to act or refrain from acting is ultimately one of the core dilemmas in humanitarian action, and in this case, while it was clear that it would never be the intention of MSF to facilitate a criminal smuggling business, it was plausible that the intervention could indeed have the unintended consequence of making smuggling people in the Central Mediterranean easier by making the crossing safer. This increased safety could and probably would be used by smugglers as a selling point. As a result, MSF had to accept that it could not fully control the unintended effect of its intervention at sea and the potential that its work would become an indirect benefit for smugglers themselves. Staff in MSF were already familiar with this dilemma from other circumstances, as humanitarian aid can occasionally benefit, for instance, warring parties in conflict settings.<sup>15</sup> This knowledge has made the organisation reflect on the ethical dilemmas of providing assistance versus abstaining, as well as exercising utmost due diligence based on the notion of “do no harm”.<sup>16</sup> But it has not led the organisation to stop providing services as a matter of principle. Doing so would be against the core purpose of humanitarian action: the imperative to help. The choice in this case was to go ahead with the operation taking distance from smugglers and not having any contact, negotiation, or exchange of information with smuggling networks anywhere.

## 7. THE SPECTRE OF THE ÎLE DE LUMIÈRE: PROVIDING ASSISTANCE OR MEDDLING WITH POLITICS?

More than 40 years after its birth in France in 1971, MSF can legitimately claim to have a global scope. Currently operating in over seventy countries, on five different continents, the organisation has shown resilience and inventiveness to set up operations in some of the most difficult places around the world. Both on the executive and associative level, the organisation has made conscious efforts to expand its base of legitimacy, diversify its staff base and decentralise its structures. The evolution towards a more diverse organisation has been significant over the past decades. In terms of nationality, MSF staff comes from all corners of the globe. Nevertheless, the overall direction of MSF global operations – the heart of the organisation – remains based in Europe: MSF’s five operational centres are in Paris, Brussels, Amsterdam, Geneva, and Barcelona. A large percentage of MSF’s top level leadership is still of European origin. With recruitment and fundraising offices in almost every European

15 F. Terry, *Condemned to Repeat? The Paradox of Humanitarian Action*, London, Cornell University Press, 2002; D. Keen, *The Benefits of Famine: A Political Economy of Famine and Relief in Southwestern Sudan, 1983–1989*, Princeton, Princeton University Press, 1994.

16 M. Anderson, *Do No Harm: How Aid Can Support Peace – Or War*, London, Lynne Rienner Publishers, 1999.

capital and regular visibility in European media the organisation's roots in Europe remain core to its functioning and identity.

For this reason, the proposed search and rescue operation in the Mediterranean was different from other MSF interventions. Due to its proximity and connection to politics in MSF's home base the operation gave rise to some unusual discussions. Even if it was not the first time MSF operated in Europe, many within the organisation remained deeply sceptical about the need to intervene in what was defined as "MSF's home societies".<sup>17</sup> Medical needs in the form of disease outbreaks, widespread deprivation, or neglect in health care are simply not comparable to other continents, and States in Europe have a much more developed infrastructure, capacity, and resources to respond to crises. Consequently, some were quick to dismiss any intervention in the Mediterranean as a political statement triggered by ideological convictions. They argued that as a humanitarian organisation MSF should remain neutral and impartial, and refrain from jumping to intervene and meddle in a "very political issue".

On the other side of the spectrum, many correctly pointed out that the provision of humanitarian assistance is by definition political in any setting. If, where, how, and to whom provide assistance is a choice that is not solely based on objective medical indicators, but also informed by a reading of political dynamics. MSF's choice for the "most vulnerable", or those "neglected" implied by definition a political reading. There was no reason to shy away from it in this case. In fact, many felt that MSF had a special responsibility to focus on this case given the credibility of the organisation in Europe, the weight of its reputation and support base in EU countries, and Europe's own recent history of war, mass persecution, and refugees. Others went further, arguing that confining humanitarian assistance to faraway people and places was a symptom of the colonial origin of western humanitarianism. In light of this heritage, preventing death and suffering on the shores of Europe itself had for them an even greater symbolic importance.

Beyond this rather theoretical debate, there was one pressing practical question: how would MSF constituencies in Europe react to a highly visible search and rescue operation? Individual donors are a massive source of private funding and public support for the organisation, and knowing how divisive the issue of asylum-seekers and migrants was in Europe, there was a concern that the organisation may be pulled into a difficult debate and ultimately lose credibility and support. There was something ironic in the financial concern: MSF prides itself on being financially independent from institutional funding by States and major donors. The organisation has invested decades in building a support base of individual donors worldwide, which represents roughly 90 per cent of its 1 billion Euro funding each year. It is precisely this independence that allows MSF to operate with fewer constraints and make the kind of political stands under discussion in this article. Yet, because the asylum and

17 MSF programmes in Europe are always target of this scepticism, and assessments to intervene in European countries have historically led to very limited interventions. Similar sceptical voices were raised when MSF USA offered some limited assistance to those affected by Hurricanes Katrina (2005) and Sandy (2012) in the US. Once the search and rescue operations had started at sea, the influx of (mainly) Syrian, Afghan, and Iraqi refugees in eastern Europe late in the summer of 2015 led MSF to further scale up assessments and engagement in the European mainland (Balkans, Hungary, Austria).

migration issue is so contentious, these political stands could possibly jeopardise that very independence by upsetting MSF's donor base. Though MSF could be certain that a great many of its donors in Europe would understand and support this operation, there was still the possibility of negative reactions and withdrawal of support from others. The potential loss of funding was flagged by fundraising staff, but fundraising directors in MSF neither have a formal role nor do they have a significant weight when it comes to decision-making on operations. The concerns about potential loss of funding were therefore quickly dismissed. MSF was ready to accept losing some donors over this operation, and this is indeed what happened. As the news of the search and rescue operation became public, a number of donors contacted MSF fundraising departments in different EU cities to withdraw their support expressing disagreement with MSF's involvement. Other people who had never supported MSF before, however, also called to offer donations. Overall, the fear of a significant loss of support proved unfounded.

Beyond funding, there were also related concerns about MSF's public image and reputation. Would MSF be accused of organising a publicity stunt without real merit? In that sense, the spectre of *L'Île de Lumière* was still alive in the organisation's subconscious. In late 1978, Malaysia denied entry to a boatload of Vietnamese refugees in an action that commanded significant media attention. The image of thousands of suffering people on board the Hai Hong triggered strong public displays of solidarity, and inspired an initiative called "A boat for Vietnam", which involved sending a boat from Europe to support the refugees. The initiative was particularly popular in France, where highly regarded intellectuals like Jean Paul Sartre, Raymond Aron, Simone de Beauvoir, Michel Foucault, and Roland Barthes supported the boat. Some in MSF, led by Bernard Kouchner, proposed to place a medical team on board to provide services. MSF was, however, deeply divided: Claude Malhuret, then President of MSF, led the opposition to the idea, arguing it would be a publicity stunt to serve ideological convictions, but without any value in terms of assistance. The tensions grew and ultimately Kouchner and his supporters sailed on the boat, aptly named *L'Île de Lumière*, but without MSF support. This ultimately split the organisation in 1979 as Kouchner and his supporters walked out to found Médecins du Monde in 1980.<sup>18</sup>

The *Île de Lumière* intervention and the search and rescue operation in the Mediterranean are a quarter of a century apart, but they present at least two interesting parallels for reflection. The first one shows the extent to which humanitarianism, refugee assistance, and politics have always been interlinked. Both operations were contested because they were seen by some as ideologically motivated. The *Île de Lumière* was criticised as reflecting the growing anti-communism of former New Leftists such as Kouchner. Assisting and protecting refugees during the Cold War was an implicit condemnation of the societies and political systems from which these refugees originated. Thus, focusing on Vietnamese boat people was a choice that implicitly condemned Vietnamese communism, and perhaps unwittingly aligned with the interests of American imperialism. Similarly, the search and rescue operation also faced internal resistance because it was seen as ideologically motivated. In this case,

18 For more on this, see Redfield, *Life in Crisis*.

its deliberate condemnation of restrictive EU border policies was rejected by some as an easy target that did not question the politics in countries where refugees originate from (e.g. the repressive Eritrean regime), or the responsibility of the international community for fuelling the protracted multi-party conflict in Syria which is financially and military supported by members of the UN Security Council.

Opponents of search and rescue operation in 2015, however, seemed to have altogether less appetite for political positioning when compared to the discussions in MSF back in 1979. This raises a second point of reflection around the “professionalisation” of humanitarian aid, and the perennial tension between the technical medical aspects and the political aspects of MSF’s work. The *Île de Lumière* was controversial because it was seen as not providing any meaningful assistance to a relevant number of people. The same arguments were made by those initially opposed to search and rescue 35 years later, which seemed to prioritise resources towards a crisis of smaller numbers and relatively limited mortality compared with other settings. Opponents of search and rescue argued that it was necessary to delink professional criteria from political considerations. Claude Malhuret made very similar points back in 1978–1979, arguing that MSF should become less about amateur stunts and more about professionalism. The struggle between remaining heretical, nimble, and politically engaged, versus becoming a highly professional and technical medical service provider remains at the heart of the organisation.

## 8. RECENT DEVELOPMENTS

The years of internal debate ended with an approval of the intervention at sea by the Dutch section of MSF in early 2015. The public announcement was made in early April. Operations were launched on 2 May 2015 partnering with MOAS to provide medical care to migrants on board of the Phoenix. This was immediately followed by an expansion of the operation with two additional boats, the Argos and the Dignity I, run solely by MSF through its operational centres in Belgium and Spain.<sup>19</sup> The commitment to operate lasted until late November 2015, when the difficult weather conditions at sea during the European winter lead to a drastic reduction in the number of boats crossing.

In the first four months, from May to August 2015 the operation rescued and provided medical assistance to more than 15,700 people in the Central Mediterranean. All these people were disembarked in Italian ports in Sicily or Reggio Calabria acting in coordination with the MRCC in Rome. In terms of the anticipated medical impact, hindsight has proven that MSF’s assumptions were only partially correct. Most of the people rescued had been on the road for several weeks or even months, often experiencing physical violence while in Libya. Even if the project cannot be compared to other MSF projects in terms of volume and needs, medical care on board MSF boats turned out to be needed far more than the organisation had believed back in 2011. Besides providing food, water, and blankets, MSF medical teams cared for a variety of medical conditions, such as skin infections, wounds, and chronic

19 The partnership between MOAS and MSF on board of the Phoenix lasted only a few months, between May 2015 and September 2015. From that date, MOAS stopped its operation in the Mediterranean for the 2015 season and MSF continued its operations on board of the Argos and the Dignity alone.

diseases, which had gone untreated for several months. There were also cases of asphyxiation by engine fumes as people were packed under the deck of small fishing boats. Pregnant women and small children needed attention in several occasions, and MSF even assisted a delivery on board of the Dignity I. On occasion gunshot injuries, fractures, burns, or violent trauma were found, relating to detention and abuse in Libya. A few life-saving emergency evacuations by helicopter had to be coordinated throughout the operation.

The operation at sea was coupled with a very intense advocacy and public communications effort, which aimed at questioning EU policy and increasing pressure on governments to act. The objective of MSF public communications was first and foremost to make the situation tangible to European and worldwide audiences, telling human stories and showing the reality at sea. In doing so, MSF also aimed at questioning the narrative around “illegal immigrants” and “economic migrants”, drawing attention to the push factors that all people rescued mentioned as reasons for fleeing their places of origin. By allowing people to tell their own stories, MSF believed the link between the reality of war and violence, and the consequences of closing borders, would become evident. MSF was aware that engaging in the public debate would certainly attract criticism from some sectors, but it decided to tackle these objections head on. The key messages were twofold: first, that EU States had the capacity and the responsibility to deploy ships to search and rescue people in the Mediterranean, and secondly, that these States should create safe and legal routes for those trying to reach Europe. Next to its own voice, MSF also agreed to facilitate access for journalists to file their own reports. Media interest was overwhelming.

A few days after the MSF intervention was announced, a succession of tragic migrant shipwrecks in late April resulted in a very large number of casualties.<sup>20</sup> As media and public pressure mounted on EU politicians to act, an increase in search and rescue capacity happened relatively quickly. The UK, German, Irish, and Swedish Governments announced the temporary deployment of a few navy ships within the broader mandate of the Frontex-led Triton mission – a controversial measure, given that Triton’s mandate remained primarily border control. However, the funding for the mission was increased and its geographic area of operation was expanded further south, putting Frontex’s vessels closer to the Libyan coast where all the fatal incidents were taking place, and making them *de facto* responsible for rescue if they came across vessels in distress.<sup>21</sup> Such extension of Triton’s resources and scope, however, came on the back of a militaristic rhetoric by EU leaders, who announced a broader strategy. The European Council launched the EU Military Operation in the Southern Central Mediterranean (EUNAVFOR MED) in June 2015 to “prevent further loss of life at sea, tackle the root causes of the human emergency in the Mediterranean – in cooperation with the countries of origin and transit – and fight human smugglers and traffickers”.

20 Around 550 people were reported missing on a migrant shipwreck off the coast of Libya on 13 April, followed by 850 more on 19 April. Fatal incidents continued in May and later in the summer.

21 Until then, Frontex’s Triton mission had been deliberately confined to the distance of 30 nautical miles from *European* shores, which made it almost impossible in practice to come across any migrant boat in distress. This was criticised by MSF and other organisations as an indirect way to avoid rescuing migrants further down south.

The logic of EU Governments was clear: they would help increase search and rescue efforts at sea, but the primary objective was to combat smuggling and reinforce border controls. The first phase of EUNAVFOR MED would deploy intelligence to infiltrate smuggling networks in North Africa. The second phase would move into targeting smugglers and destroying smuggling vessels at sea. The third phase, which could not be agreed upon due to lack of consent by the Libyan authorities, was to extend the operation into the Libyan territory to tackle smuggler's networks on land. There was nothing in the strategy that involved consideration of what MSF saw as one of the root causes of the problem: the lack of safe and legal alternative for people trying to reach Europe. EU leaders were determined to further reinforce restrictive migration policies and seek bilateral cooperation with States in the periphery of Europe to function as a buffer and prevent the influx of people towards Europe.

MSF was critical of the EU plan, arguing that combatting smugglers could only be limited. They warned that the plan would ultimately fail, because there was no intention to address the push and pull factors that drive hundreds of thousands of people to leave their places of origin, or to revise the border restrictions people face in trying to reach Europe. By putting pressure on smuggler networks in Libya and the central Mediterranean, the EU could certainly disrupt this particular route, and people and smugglers would soon find alternatives. Later in the summer of 2015, the influx of hundreds of thousands of asylum-seekers (mainly from Syria, Afghanistan, and Iraq) via Turkey through Eastern Europe seemed to confirm that prediction. The EU countries mounted a chaotic and uncoordinated response to the increased numbers of people arriving from the East: border fences were hurriedly built, official crossings closed, military and police deployed, and at the same time, Germany suspended the application of the Dublin regulation for Syrians, a controversial move that provoked positive and negative reactions from both ends of the political spectrum in the asylum debate. Within this context, MSF expanded its existing operations in Greece and the Balkans to provide assistance in other eastern European countries, operations that remain relatively small in size and deal with the primary needs of people on the move.

Meanwhile, the MSF search and rescue operation in the Central Mediterranean continued, and the EU launched "Operation Sophia" in early October. This aimed at intercepting, seizing, and destroying smuggling vessels. Even if the mandate was not specifically search and rescue, this became the obvious prerequisite to seizing and destroying smuggling boats. MSF continued operating in that environment, although limiting its action to searching, rescuing, and transporting people to Italian ports. The cooperation with Italian authorities, however, presented two additional challenges.

First, MSF found itself immersed within a larger EU operation, in which boats linked to Frontex and EUNAVFOR also took part. Following instructions from the MRCC in Rome, MSF had no choice but to transfer certain people rescued into larger navy vessels, which would then take people to an Italian port. This unavoidable cooperation caused anxiety within some in MSF who feared being publicly associated with the objectives of Frontex or EUNAVFOR missions. However, the situation was embedded in the logic of the cooperation with the MRCC to disembark people on Italian soil, and MSF had accepted this kind of risk as unavoidable

from the start. Even if States involved ultimately had a different agenda, as long as they shared the objectives of rescue and transfer in compliance with EU human rights standards, MSF would still cooperate. While doing so, it could also continue to call on EU Member States to take up their responsibility to tackle the situation at sea and also address its root causes.

The second difficulty was for MSF to distance itself from law enforcement authorities on arrival in Italy. As the MSF boats reached port, MSF teams were initially approached by border authorities and police who were interested in gathering information to prosecute smugglers in the form of accounts from the crew, photos, or footage which could be used as evidence in Italian courts. While MSF had no intention to protect smugglers, the organisation had to go to great lengths to describe its role and explain why cooperation with law enforcement remained beyond its mandate, as well as explaining how failing to take distance from the fight against smugglers could jeopardise the safety of its teams at sea. There had been at least two separate reports of alleged smugglers opening fire on navy vessels in early 2015; even if the reports were an exception and the rule was that migrants were abandoned to their fate on the boats by the smugglers, MSF was concerned about the safety of its staff at sea. Besides a principled logic to object to cooperation with law enforcement agencies, the reality was that MSF teams could have offered very little value to any investigation, since their work was limited to rescuing, feeding, and caring for people without collecting any other information.

## 9. CONCLUSION

At the time of writing, the situation in mainland Europe and in the Mediterranean continues to evolve. The Libyan route has been partially disrupted by three key factors: the internal turmoil in Libya, the crackdown against smugglers in the Libyan port of Zuwara, and the EUNAVFOR operation at sea.<sup>22</sup> As predicted, the beginning of the winter has seen a reduction of the number of boats attempting a crossing, while the Eastern Mediterranean continues to see unusually high numbers of people crossing from Turkey into Greece, and also further up north through the Balkans. The EU has resumed bilateral talks with Turkey, seeking cooperation to reduce the numbers of people reaching Europe.

Future developments of EU policy will undoubtedly present further dilemmas for humanitarian organisations involved in providing assistance. As the EU actively seeks cooperation with third countries outside Europe to outsource the processing of asylum applications and set up a regional system for a more effective reinforcement of its border controls, questions of due process and standards of treatment are likely to be raised again. As with Australia's current practice of offshore processing and with Italy's agreements with the Gaddafi regime, these policies are bound to have an

22 The port of Zuwara had been the heart of the smuggling business on the Libyan coast for several months, and smugglers seemed to operate with total impunity running a business that indirectly benefited some local fishermen who sold their boats at soaring prices as demand for boats increased. The impact of smuggling on the local fishing industry is reported to have been devastating. Following the drowning of 183 migrants whose bodies were washed ashore on the Libyan coast, the outrage of the local population, tribal authorities, and armed local militias galvanised a crackdown on smugglers, effectively disrupting their activities in this key hub.

impact on people's ability to migrate and seek asylum. Moreover, there is a risk that such regimes have the potential to erode fundamental rights and human dignity. Humanitarian organisations, as a result, will have to continue to analyse and debate their options within these emerging spaces, and the well-being of human beings on the move will continue to be at stake.