Criminalisation of Solidarity, Humanitarianism, and Help for irregular Migrants Globally: A Literature Review

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Note: This is a work in progress document undertaken at the start of a programme of research on the criminalisation of helping irregular migrants. It has been published online as it may be useful for other researchers but has not been peer reviewed. Parts of it are likely to appear in future peer reviewed publications by the author. To communicate factual errors, or to make comments or suggestions please email l.mayblin@sheffield.ac.uk

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1. Introduction

This literature review focuses on English language academic literature, political (e.g. parliamentary), International NGO (non-governmental organisation), and national NGO reports discussing the *criminalisation* of people who help irregular migrants, including people who are seeking asylum. There is a significant body of evidence suggesting that there has been a proliferation of such criminalisation in Europe in recent years. This review in part explores this body of work, but also goes beyond recent events in Europe to explore the research on the criminalisation of solidarity, humanitarianism, or simply 'help' globally and across time. I do not explore in this review how we might philosophically categorise different actions from different perspectives as 'solidarity', 'humanitarianism', 'charity' etc. Nor do I make assessments in relation to whether an act is 'real' solidarity, whether humanitarianism is good or bad, or whether the motivations to help are worthy or not. This is because my focus is on a range of *actions* which various authorities seem very keen on stopping, irrespective of the motivations of the actors.

I am approaching 'help' expansively. It includes acting in solidarity with irregular migrants, and providing what might be conceptualised as 'humanitarian support' to irregular migrants (professionalised or otherwise), but it also includes acts of helping that might not meet the threshold for 'solidarity' or 'humanitarianism', be understood in those terms by the actors involved, or where we simply do not know the motivations of those who are criminalised (this might include fuzzy cases, for example irregular migrants steering a boat with other irregular migrants on board). I understand solidarity as something undertaken by people who see themselves as part of the same group as those they are acting with or for, and in that sense there may be an assumption of reciprocity, of mutual responsibility to help each other. The in-group group might be as broad as humanity, or it might be much narrower - Iranians, or Christians for example. But when acting in solidarity, people are not acting out of sympathy for a perceived out-group, out of altruism or charity. Of course, that might also mean that some people are excluded from the scope of solidaristic action, because they are not seen as part of the same community, perhaps because of their national origins, the language(s) that they speak, their religion, the colour of their skin or their political views. The key thing for me, however, is not the *feeling* of solidarity, but *acting* in solidarity (a feeling cannot be criminalised).

Humanitarianism broadly encompasses actions aimed at helping others who are not *necessarily* thought of as members of a common community, they may well be 'others'. Humanitarianism is underpinned by some sense of commonality -as members of humanity perhaps- but there is no assumption of mutuality, the humanitarian has power and helps those who are disempowered. The recipients of humanitarian support have no obligation to help the humanitarian in return. There are actions where the motivation or relationship to the people who are helped is unclear but which states nevertheless are going to the effort to not only stop, but criminalise. These, of course, are also of interest, making 'help' my umbrella term, and solidarity and humanitarianism categories within that. Three things are key in understanding the difference between solidarity, humanitarianism, and the looser category of 'help': identity, motivation, and power. These things impact the ways in which states punish helpers (through fines, imprisonment, deportation, or otherwise), but the identity and motivation particularly do not really matter at the point of arrest. It is in many

cases the act of helping that leads to criminalisation, not the motivations or identity held by those who help, power is of course more complex.

The scope of activities covered under 'help' are, therefore, purposefully broad for the purposes of this review because different authors and protagonists use different words to describe the actions that led to criminalisation. For example, some might refer to 'policing humanitarianism', some to 'criminalisation of solidarity', others (for example researchers discussing underground support for North Korean defectors in China) do not use these phrases and yet they refer to very similar phenomena. 'Irregular migrants' here refers to people who enter or are present in a territory without the permission of the governing authority. Because the provisions of the Refugee Convention are not consistently applied, this group include people who are seeking asylum. I discuss how researchers conceptualise criminalisation later in this document.

The geographical scope of the review is global, but resource constraints introduce language limitations -only English publications have been reviewed. There are no temporal limitations on either the date of publication or the period of time covered within a publication. In other words, historical cases are included, though keywords for historical cases of crimes of helping irregular migrants globally are sometimes hard to identify and this, in part, is why this document is a work in progress. 'Crimes of solidarity' is a phrase coined by contemporary French activists and is therefore quite specific in its application and take-up. These limitations notwithstanding, the aim is to review the English language literature on this subject as exhaustively as possible, and in doing so to both survey the literature, and identify gaps for further exploration. This is part of the early scoping work for a broader research project on the criminalisation of those who help irregular migrants.

This literature review includes three books, 34 academic journal articles, 20 reports of various kinds (including policy briefings or commentaries for national and international institutions such as the UN and EU), 6 book chapters, and 4 working papers. I also refer in this document to eight additional texts such as contextual books on a related topic, or NGO webpages. Literature on this topic tends to often cite online news articles as evidence for a particular case or phenomenon. These media texts have not been included here as the core focus is on research publications.

Literature was gathered beteen September 2021 and January 2022 using a four-part approach. This was exploratory rather than strictly systematic:

1. Keyword searches of GoogleScholar: "crimes of solidarity"; "criminalisation + solidarity"; "criminalisation + assistance"; "criminalisation + humanitar*" which garnered an initial list of 26 publications
2. A Google search for reports using the same keywords.
3. Snowball identification of literature from within the reference lists of those publications already reviewed.
4. A specific regional search for literature on the Asian context following a lead in a UN document, which led me to a small literature on large scale illegal support for North Korean refugees in China (which does lead to arrests and imprisonment of humanitarians), but which does not use the concept 'criminalisation'.

The most extensively researched phenomenon is the criminalisation of solidarity and humanitarian actions across the EU but especially in France, Spain, Italy and Greece, and with a particularly notable focus on NGO search and rescue operations in the Mediterranean Sea since around 2014. There are a small number of historical examples of the criminalisation of solidarity which appear in the literature. Those involved with the Underground Railroad (enabling the mobility of people who had escaped enslavement) in the US in the 1800s who were breaking the law and were criminalised for their work, and those facilitating the cross-border escape of Jewish people in the 1930s and 40s were also criminalised. These historical cases are mentioned occasionally in the introductions to contemporary research. The criminalisation of members of the Sanctuary Movement in the southern United States in the 1980s is the earliest example of the kinds of criminalisation of migrant solidarity actions that we see ongoing today, as far as the existing literature indicates. It was 10-20 years later that the EU introduced a very broad agenda on facilitation (smuggling) which would allow for member state criminalisation of humanitarian or familial smugglers in 2002, and various other nation states (especially in Europe) started to transpose this into national law.

The review is structured as follows. The first substantive section addresses crimes and criminalisation, asking 'what kinds of actions are criminalised?' and 'What is criminalisation in this context'? I discuss the legal context internationally and regionally and then offer two sets of country case studies, first within Europe and then beyond. The next section discusses the conceptualisation of smuggling specifically in this context, and section five explores what the literature says about the consequences of criminalising help for irregular migrants. Section six discusses the various ways in which this phenomenon is theorised in the literature and section seven describes histories of the criminalisation of solidarity which are referred to in the literature. In the final section before the conclusion I identify some gaps in the literature which might fruitfully be explored in the coming years.

2. Crimes and 'criminalisation'

This section will discuss the kinds of actions that are criminalised according to the literature, the legal frameworks shaping this criminalisation, and will offer some case studies of the main countries which are focussed on in the literature.

What kinds of actions are criminalised?

A wide range of activities are reported in the literature as having been the subject of new laws and legal action. Specific examples in context are discussed in the country case studies subsections below. All of the criminalised activities are oriented towards helping and supporting migrants who have entered a country without the authorisation of the host state government. The perpetrators can be of varying statuses: citizens of the state where they are criminalised, authorised migrants within the state where they are criminalised (ranging from tourists to migrant workers to recognised refugees), irregular migrants, and people seeking asylum. They are also highly diverse by occupation -doctors, academics, students, social workers, farmers, journalists, business people, religious leaders, retirees- and by age (see Tazzioli 2021 on diversity of people involved in solidarity in the France/Italy borderzone; see also Fekete 2017).

The criminalised activities include:

- Helping someone cross a border;
- Formalised search and rescue operations in seas, deserts, or mountains;
- More informal ad hoc or one-off rescue efforts in seas and mountains;
- Providing people with food or water, even if this provision is indirect (e.g. leaving water in the desert for people to happen upon);
- Providing people with shelter in domestic homes or designated shelters;
- Driving or steering a boat with people onboard who have the intention of crossing a maritime border and seeking asylum (either as an asylum seeker yourself or as a secure citizen of a country);
- Offering or providing people with washing facilities such as showers;
- Objecting to, and/or disrupting deportation flights either in an organised or spontaneous fashion;
- Offering or providing legal or safe travel advice to people who intend to cross a border irregularly;
- Providing medical support or driving an irregular migrant to a medical facility for treatment;
- Taking part in pro-migrant activist groups, particularly public demonstrations;
- Taking photographs of people crossing a dangerous border (e.g. scaling a fence) with the intention of using it for journalistic or advocacy purposes;
- Entering certain spaces, towns, territories, or zones where irregular migrants can be found in need, but where unauthorised humanitarian work has been prohibited.
- Helping people to leave a country and go elsewhere in order to seek refuge.

Of course, some activities are more likely to be criminalised in some places. Within the EU, for example, Carrera et. al (2019) argue that there are three types of civil society actors who are the most heavily policed: non-governmental search and rescue operations in the Mediterranean, civil society actors helping people access basic services and resources across Europe, and those holding states to account in relation to migrants' human rights, also across Europe. In China, it is underground Christian church groups who support North Korean defectors. In the US it is often those helping or transporting irregular migrants within the country. In most contexts there are two main 'crimes': facilitation of movement in, across or out of a country, and facilitation of stay within a foreign country.

As noted above, people of all immigration and citizenship statuses have been subject to these measures. However, the academic literature (and media coverage) does tend to focus more on citizens and people who are not irregular migrants who are criminalised for helping them, though it seems likely that there is widespread criminalisation of irregular migrants who act in support of other irregular migrants. Carrera et al (2019:59) explain that their fieldwork interviews with national judicial authorities in Italy 'confirmed that the majority of people charged with the crime of smuggling have actually themselves been migrants who were steering and holding the compass in the boat carrying irregular migrants to Europe'. Patane et al (2020) count 1300 such cases 2015-2018. Often Gambian, Malian and Senegalese migrants are the ones given this task in return for free passage. Sometimes very vulnerable people are pushed to steer just before the boat is rescued and then become the ones who are arrested for smuggling. In other words, irregular migrants are being held criminally accountable for smuggling themselves, and for acting in solidarity with other migrants in a similar situation, often in desperate and dangerous circumstances (Patane,

Bolhuis et al. 2020). The relative scale of these phenomena (criminalisation of irregular migrants vs. those of secure status) beyond Italy is not known and more work would need to be done to explore the complexities of help, migration status, and criminalisation.

What is 'criminalisation'?

The literature suggests that we can think of criminalisation narrowly or expansively, and doing so implies different research methods. There are laws and legal action (a narrow conceptualisation of criminalisation) which are recorded, can be researched retrospectively and can be quantified, but there are also phenomena such as police harassment, threats of arrest, detention, interrogation, and searches of property, which then comes to nothing so does not 'count' as criminalisation (Fekete, Webber et al. 2017). This type of activity has been dubbed 'bureau repression' in Spain (Olmo and Urda Lozano 2015) and requires qualitative face to face research to uncover.

On formal criminalisation, a range of laws are deployed to criminalise solidarity and humanitarian activities. These include laws against facilitating entry (smuggling) and stay, but also anti-terror, anti-organised crime, and anti-protest legislation, anti-NGO legislation, holding dangerous weapons, endangering maritime and airport security, espionage, criminal association and membership of a criminal network or gang (Fekete, Webber et al. 2019). In other words, laws designed to combat terrorism, organised crime and other very serious crimes are being 'applied to organisations and individuals who assist refugees and migrants, who in some cases have also had phones tapped and bank accounts frozen' (Fekete, Webber et al. 2019:34). While this is the case, some laws are applied more often than others, as Allsopp et al (2021:69) explain:

> A statistical overview conducted by the European network ReSOMA shows that criminal investigations and prosecutions in this area were made mainly on the grounds of facilitation of entry, transit and residence and often accompanied with aggravating circumstances, such as 'membership in organised criminal groups' and 'financial gain' or 'fraud''

Irrespective of the charges brought, in Europe most criminal cases end with acquittals (Ferstman 2019, Allsopp, Vosyliūtė et al. 2021) and yet this fact has not led prosecutors to stop brining such cases to the courts. Fekete et al (2019:24) write that 'where cases have come to court, the conflict faced by judges, between upholding national law and recognising its injustice in penalising decency, is palpable'.

Studies in both Europe and the United States indicate that there is no typical profile of an offender in these formal criminal procedures (Fekete, Webber et al. 2017). The only pattern seems to be that those who are most heavily policed are unpaid volunteers or spontaneous helpers. There is wide geographical spread but bottlenecks where migrants gather, particularly at borders (for example Ventimiglia at the Italian border with France, Calais at the French border with the UK, Arizona at the US border with Mexico) tend then to necessitate more humanitarian work and volunteers, and they are also in turn places where both migrants and humanitarians (which are of course overlapping categories) are more heavily policed (Fekete, Webber et al. 2017). Dadusc and Mudu (2020) explain this in terms of a distinction between 'autonomous solidarity' and 'humanitarianism' where the former is increasingly criminalised and the latter is not (see also Escarcena and Pablo 2021). The price

paid (by often international NGOs such as the Red Cross) for not being criminalised is, however, complicity with the harms of the border regime.

Informal criminalisation is much harder to research as records are often not kept of such phenomena and as such it is most often discussed within in-depth localised case studies. It can involve, as shown in some of the country case studies below, police harassment and intimidation, raids, lengthy inspection of vessels, ID checks, stop and search tactics. In fact, several authors argue that formal criminalisation is just one aspect of the broader phenomenon of the criminalisation of help. As Carla Ferstman (2019:36) has pointed out, writing in a thematic study for the Council of Europe's Expert Council on NGO Law, 'the boundaries between criminal and administrative sanctions are not always clear or consistent'. While administrative sanctions may sometimes lead to criminal proceedings, in other cases criminal proceedings may give rise to a range of follow-up informal actions. She explains that 'the force of the regulations [in many countries] lies in their potential to be used at any time and the threat of sanction brandished like a 'whip' by authorities' (ibid).

Academics have sought to analytically distinguish the different practices and, to a lesser extent, to understand their relationships. López-Sala and Barbero (2021:688) writing on the Spanish context have, for example, identified four distinct but interlinked types of criminalisation:

1. **Informal dissuasion practices**: 'Increased police presence at protests, questioning and verbal threats, prohibiting access to areas such as border fences, raids of immigrant detention centres, verbal threats of sanction, coercion to delete pictures or videos, or dereliction in police duties (when activists are physically attacked, for instance by other citizens). These are very subtle actions or inactions by the police that hardly leave any trace, unless they are reported by the activists or recorded on video. In any case, it is difficult to report or legally sanction them because they are done covertly, with no formal record.' (p.688)
2. **Formal dissuasion tactics: '**Asking for identification, confiscating personal property or political material (protest signs or fliers), bringing charges (despite not initiating sanction proceedings), detaining activists on the street or taking them into custody at the police station… In this case, the tactics have some formal elements that can be examined and quantified. However, the limited legal recourse for complaints in these situations discourages activists from carrying out legal actions'. (p.689)
3. **Bureau-repression:** Where 'administrative sanction proceedings are formalized' but no criminal charges brought (p.689).
4. **Criminal prosecution.**

In a similar approach, Carrera et al (2018) approach the issue using the concept of policing, rather than criminalisation. They understand the policing (of humanitarianism specifically) as including three different modalities or 'faces': suspicion/intimidation; disciplining; and criminalisation. This allows for a more expansive understanding beyond crininalisation, though López-Sala and Barbero's (2021) typology does also allow for an expansive view within the category 'criminalisation'. Several authors suggest that these various kinds of policing can also lead to blurred and confused lines between what is illegal and legal when helping irregular migrants, and thus to self-policing 'just in case' a crime is inadvertently

being committed. This would then involve the withdrawing of support to people in need and is discussed in the 'consequences' section below.

The legal context

The legal framework which establishes actions as criminal is important in understanding how hostility to help is formalised. This is discussed in the literature at three levels: the level of international law, the level of regional law, and the level of national law. One tension between the international and national levels is that between vagueness and certainty. Some aspects of international law, particularly governing smuggling, are constantly accused of being too vague in the literature. Even national laws, however, tend to be open to contestation with prosecutors repeatedly bringing the same kinds of cases (accusing humanitarians of smuggling), and the courts often (but not always) ultimately finding in favour of defendants, but sometimes after very lengthy rounds of trials, appeals, and retrials. Landry (2016) discusses the concept of 'maximum certainty' as a principle of international law which is about aiming for clearly distinguished differences between legal and illegal acts. There has been much debate about vagueness/certainty in the discipline of Law, but Landry argues that the idea of 'maximum certainty' acknowledges that 'some vagueness is inevitable' but that in the case of humanitarian smuggling, much greater certainty could easily be achieved (p.7). Neither the EU nor many nation states seem interested in introducing a much more certain humanitarian exemption in smuggling laws, even after significant critique from the UN, European Parliament, INGOs and other monitoring bodies. Why this is the case is a question that I return to later.

The International level

In international law, the literature is clear that there is no legal basis for criminalising humanitarian or solidaristic actions (see particularly Okafor 2020), that smuggled migrants should not themselves be criminalised for smuggling, and that refugees should not be penalised on their journeys to safety (Patane, Bolhuis et al. 2020). There are specific conventions which make saving lives at sea a universal responsibility (1982 UN Convention on the Law of the Sea; 1980 International Convention on the Safety of Lives at Sea), refugee rights (most notably the 1951 UN Convention on the Status of Refugees and the 1967 Protocol), and universal human rights more broadly (including the right to food, shelter, and family life, for example, the International Covenant on Economic, Social and Cultural Rights; The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; The Convention on the Rights of the Child; and the European Convention on Human Rights).

In 2000 UN member states signed the Convention against Transnational Organized Crime, which was supplemented by the UN Protocol Against the Smuggling of Migrants by Land Sea and Air. As the convention title indicates, these are agreements which focus on tackling transnational organised crime, and consequently smuggling is defined in the Protocol as a criminal offence 'when done intentionally and in order to obtain, directly or indirectly, a financial or material benefit' (cited in Fekete, Webber et al. 2017:8; though many authors note the 'material benefit' proviso in the UN Protocol when discussing the criminalisation of humanitarian smuggling). It also contains clear expressions that the rights of smuggled migrants must be protected (Patane, Bolhuis et al. 2020, Van Liempt 2021).

The regional level

It is at the regional and national levels where the criminalisation of help is made possible. All of the academic literature that I have been able to identify which discusses the regional level focuses on the EU. However, the UN Independent Expert on Human Rights and International Solidarity does foreground some regional agreements in Asia which require further investigation.

In 1990 EU member states signed the Schengen agreement which created an internal space of free movement across borders. This included provisions relating to smuggling but defined smuggling as something which was done for material gain (Fekete 2009, Fekete, Webber et al. 2017). In 2002 the member states agreed to the 'Facilitators Package' which comprised a Directive 'defining the facilitation of unauthorised entry, transit and residence' and a Council Framework Decision. The Directive 'requires member states, through their national law, to criminalise the intentional assistance of illegal entry or transit through a member state, and the intentional assistance for material gain of illegal stay' (Fekete, Webber et al. 2017:8). Note that only the assistance of illegal stay, not entry, implicitly excludes humanitarian support from criminalisation. And even then, states can still *choose* to prosecute on the grounds of facilitating illegal stay for humanitarian reasons. This fuzziness 'effectively annuls the distinction between commercial and humanitarian motives' and can easily undermine humanitarian acts (Basaran 2014:55). In other words, smuggling, here, constitutes facilitating entry for any reason, the definition blurred rather than clarified by the legal framework (Fekete 2009, Gkliati 2014, Landry 2016, Remáč and Malmersjo 2016, Bellezza 2018, Maccanico, Hayes et al. 2018, Tazzioli 2018, Mitsilegas 2019). The Framework Decision sets out minimum sentences and penalties for smuggling for profit.

Initially, the 2002 Facilitation Directive was focussed on criminalising the assistance of entry into the EU, because the Schengen space was supposed to be borderless. However, Fekete et. al (2017) point out that in 2014 the EU's internal borders started to be policed with a view to curtailing the movement of refugees between member states, thus intensifying prosecutions for facilitating movement between them. In harmony with this approach, the EU Action Plan on Migrant Smuggling (2015–2020) 'proposed measures that have had the effect of suppressing humanitarian assistance to asylum-seekers' according to a UN Independent Expert on Human Rights and International Solidarity (Okafor 2020:105).

The academic literature is highly critical of the failure of the EU to explicitly exempt humanitarian activities (facilitation of entry or stay) from prosecution (Fekete 2009, Landry 2016, Fekete, Webber et al. 2017, Heller 2017, Tazzioli 2018, Mitsilegas 2019, Vosyliūtė and Conte 2019, Duarte 2020). International actors, including the European Parliament and UN special rapporteurs (Gkliati 2014, Carrera, Vosyliute et al. 2018, Ferstman 2019, Okafor 2020), international NGOs (Bellezza 2018, Amnesty International 2020) and others (UK House of Lords European Union Committee 2016, Maccanico, Hayes et al. 2018) have also been critical. Collectively, these authors have identified that the vague and flexible definition of smuggling (formerly 'facilitation') and lack of clarity around whether supporting people to stay in a member state should be illegal or not, means that humanitarian, solidarity, or familial actors are increasingly the victims of unjust criminalisation in Europe.

There is a significant gap between criminal prosecutions started against people (numerous) and actual convictions (very low), and repeated violations of fair trial guarantees, which Vosyliūtė (2019:34) has argued 'should be regarded as a strong indicator, that such investigations were not embedded in the criminal justice framework and that they constitute judicial harassment of human rights defenders'. The European Commission has, nevertheless, declined calls to decriminalise humanitarian smuggling based on the clearly unfounded assertation that there is little evidence that citizens or family members have been prosecuted for human smuggling (see Mitsilegas 2019).

There are a number of studies within EU member states which explore the criminalisation of solidaristic and humanitarian activities within specific countries, and reports which offer an overview of the situation across the EU (see Fekete 2009 for overviews of the situation across the EU, including example cases, Gkliati 2014, Van Liempt 2016, Fekete, Webber et al. 2017, Bellezza 2018, Carrera, Vosyliute et al. 2018, Maccanico, Hayes et al. 2018, Fekete 2019, Vosyliūtė and Conte 2019, Amnesty International 2020). Of particular note is the work of Sergio Carrera, Valsamis Mitsilegas, Jennifer Allsopp, and Lina Vosyliute, who undertook research (funded by the UK's ESRC) in Italy, Greece, Hungary and the UK 2015-2017. They produced a range of publications, including a very comprehensive book sharing their findings in 2019 (Allsopp 2017, Carrera, Vosyliute et al. 2018, Carrera and Cortinovis 2019, Allsopp, Vosyliūtė et al. 2021). While Allsopp had identified the issue of crimes of solidarity earlier (see Allsopp 2012), they see the 2015 'refugee crisis' in Europe as a key moment in both the expansion of solidarity actions, because of necessity, and in the backlash from states keen to maintain closed, exclusionary borders (Allsopp 2017, Carrera and Cortinovis 2019). The authors regard NGOs and solidarity activists as 'first responders' to the 2015 'crisis' (see also Agustín and Jørgensen 2018, Tazzioli and Walters 2019) but also point out that national authorities, in turn, responded by labelling NGOs either as criminal smugglers, or as the creators of pull factors for potential future migrants (Allsopp 2017, Pusterla 2020, Van Liempt 2021). Allsopp and colleagues explain that 'EU member state authorities and EU Justice and Home Affairs (JHA) agencies, such as Frontex, started to criticise the work of civil society actors in the Central Mediterranean and Aegean in 2016' (see also Allsopp 2017, Carrera, Vosyliute et al. 2018, Carrera and Cortinovis 2019, Allsopp, Vosyliūtė et al. 2021:73). It should be noted that Cusumano and Villa (2019) have analysed data on migratory flows between Italy and Libya and found no evidence to support the pull factor argument (see also Bellezza and Calandrino 2018).

The research demonstrates the diversity of phenomena occurring even within the EU. Some member states criminalise humanitarian facilitation of entry, some also criminalise some forms of in-country help. Some have a humanitarian exemption clause and yet arrests of humanitarian, solidarity or familial actors have still occurred. A small number of countries come up again and again as hotspots of repression: France, Italy, Greece and Spain, though there are certainly others (for example Hungary) where the criminalisation of solidarity has occurred but less has been written in the English language literature on them (though see Carrera, Mitsilegas et al. 2019 on Hungary). Temporally, the post 2015 'refugee crisis' is repeatedly identified in the literature as the period in which the criminalisation of solidarity intensified, as part of broader moves to close Europe's borders to irregular migrants (see for example Carrera, Mitsilegas et al. 2019, Tazzioli and Walters 2019).

The European Commission and agencies such as Frontex, Europol and Eurojust seem to support the criminalisation of anyone supporting the entry or stay of irregular migrants, irrespective of motivation. Smuggling is a key priority for Europol, who have a dedicated European Migrant Smuggling Centre to co-ordinate policing efforts. While these efforts were originally framed around combatting organised crime, Carrera et. al (2019) point out that rather than 'following the money' to find organised criminals (a common approach), the approach seems now to be to 'follow the migrants', thus implicating anyone who helps them in organised criminal smuggling. Tackling migrant smuggling of all kinds, humanitarian or not, is therefore fully institutionalised across many EU institutions. The European Parliament has, however, been more critical. In June 2018, they passed a resolution on 'guidelines' to prevent humanitarian assistance from being criminalised in member states (Fekete 2019). The Council of Europe Human Rights Commissioner has also expressed concern at the 'the judicial and administrative harassment of NGOs rescuing migrants is still ongoing, even though they often fill the void left by European states' disengagement' (Mijatović 2020). Such concerns about the criminalisation of what are often referred to as 'human rights defenders' is echoed by UN representatives (Okafor 2020).

In Asia, a UN Independent Expert on Human Rights and International Solidarity discusses the 1999 Bangkok Declaration on Irregular Migration, which 'encourages participating Asia-Pacific states to criminalize both irregular migration and human smuggling, and to sanction the latter in this way, whether it was undertaken for financial gain, or not' (Okafor 2020:105). However, the declaration itself does focus on 'activities of transitional organized criminal groups and others that *profit* from smuggling of and trafficking in human beings' (Article 7, emphasis added). Article 8 then states that

> participating countries and region should be encouraged to pass legislation to criminalize smuggling of and trafficking in human beings, especially women and children, in all its forms and purposes, including as sources of cheap labour, and to cooperate as necessary in the prosecution and penalization of all offenders, especially international organized criminal groups

This leaves room for a broad interpretation, including humanitarian smuggling, but the central focus is on organised crime, and the literature on irregular migration in Asia tends to focus on this as a phenomenon in which money is exchanged and does not mention humanitarian smuggling (Kneebone 2014). It should be noted also that the Bangkok Declaration does not refer to refugees or human rights, only irregular migration, smuggling and trafficking. Participating states to the Bangkok Declaration are: Australia, Bangladesh, Brunei Darussalam, Cambodia, China, Indonesia, Japan, Republic of Korea, Lao PDR, Malaysia, Myanmar, New Zealand, Papua New Guinea, the Philippines, Singapore, Sri Lanka, Thailand, Vietnam and Hong Kong.

The 2015 Kuala Lumpur Declaration on Irregular Movement of Persons in South East Asia was adopted by the Association of South East Asian Nations (ASEAN) which includes Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam. In this Declaration trafficking and smuggling are conflated and are both equally associated with transnational organised crime. The Special Rapporteur (Okafor, 2020:105) notes that this 'also supports the trend toward the criminalization of human smuggling' and 'does not make any clear distinction between smuggling for financial gain and the rendering

of humanitarian assistance to asylum-seekers to enter or remain in a given country'. The Rapporteur did not identify any cases where these agreements had impacted on solidarity or humanitarian activities, but this is something that is worth exploring further.

Country case examples 1: EU

The majority of the literature on the criminalisation of help focuses on EU member states. In this section I discuss the four countries which have been the focus of the most research identified in the course of this literature review. Here I focus on France, Italy, Spain and Greece, which are covered most extensively in the literature. For in depth analysis of the situation in Hungary and UK 2015-2017 I strongly recommend the work of Carrera and colleagues (most notably Carrera, Mitsilegas et al. 2019).

France

France began criminalising solidarity actions in 2007 but it was around a decade later that arrests started to increase significantly. Abigail Taylor's work (Taylor 2018, Taylor 2020) is particularly in depth on the French case as 'délinquants solidaires' (solidarity delinquents or rebels), as they have been named in France, were the focus of her doctoral thesis and several subsequent publications. Jennifer Allsopp has also published extensively -alone and with colleagues- on this topic (for example, Allsopp 2012, Carrera, Vosyliute et al. 2018, Allsopp, Vosyliūtė et al. 2021). In France, the range of convictions are diverse but they all centre around facilitating illegal entry or stay in the country, in accordance with the broadest interpretation of the 2002 Facilitation Directive.

While France has had laws on the entry of foreigners since 1938 (then precipitated by anti-semitism and xenophobia, see Allsopp 2012, Taylor 2018), these had been changed many times in the years since and the legal code had become complex. In 2004 the Code of Entry and Residence of Foreigners and of the Right to Asylum (CESEDA) was proposed -and implemented in 2005- with, in part, the aim of simplifying law in this area. The CESEDA, then, is a set of laws and regulations relating to the rights of foreigners in France. Facilitating entry is illegal, whether it is for humanitarian reasons or not. Facilitating stay is only illegal if some financial gain or compensation is received. The punishment is a five year prison sentence and a €30,000 fine at the time of writing.

There have been many arrests and court cases in relation to 'délinquants solidaires' in France over the past five years. The phrase 'crimes of solidarity' in fact originated in France with the 'delinquents solidaires' movement which has grown as the criminal sanctions draw attention to their activities (Allsopp 2012, Taylor 2018, see also Tazzioli and Walters 2019 on the growth of citizen solidarity with refugees in the EU more widely). This proliferation of cases has meant that case law is changing how the CESEDA laws and regulations are interpreted. For example, Cédric Herrou, a farmer in the Roya Valley at the border with Italy, was arrested in 2017 for assisting 200 irregular migrants to enter, stay in, and transit France. Over the years he has been taken into custody 11 times following raids on his house. He was initially found guilty and sentenced, and then that sentence was increased after an appeal by the public prosecutor. In 2018 his sentence was deemed unconstitutional in the Constitutional Court and the Court of Cassation quashed the conviction. In 2020 the Court of Cassation further held that solidarity acts were not in violation of French law and so another conviction of Herroux was quashed by the Court of appeal. He has become famous

in France and his is a high profile case, but there are many such cases where Police interpret the CESEDA very narrowly, and a court later, often after several years of trials and appeals, finds the defendant not guilty based on a humanitarian defence. For example, Pierre-Alain Mannoni, a 45-year-old geographer at Nice University, was arrested in 2016 for driving some injured Eritrean girls to a medical facility. He was acquitted on humanitarian grounds in 2020 after a protracted legal back and forth between the defendant and the prosecutor. Escarcena and Pablo (2021) argue that while costly, these cases are pursued to create a spectacle effect and produce a politics of exhaustion as techniques of governance. I discuss this further in section the 'why criminalise non-governmental assistance'?

I tallied 23 cases of legal action being taken in France against people helping migrants in 2015 alone. Cases range from students to mountaineers, to farmers, academics, priests and activists. There is no single type of person, and while helping people safely cross the mountainous borderzone with Italy, or supporting them after they have crossed, is one particular hotspot (see Tazzioli 2021 on this location), a wide range of activities across the country have been criminalised over recent years, including providing people with food, lifts, showers, a bed for the night, or allowing your spouse to stay overnight (Carrera, Vosyliute et al. 2018, Taylor 2020). France seems overall to have the broadest scope of activities criminalised of the countries covered in the literature.

But, as noted above, this criminalisation has been coupled by a flourishing resistance movement. In April 2009 there were nationwide demonstrations demanding an end to the provisions within the CESEDA that criminalise solidarity (L.622-1). This did precipitate a conversation about the policy and led to some changes to the part of the code which disciplined the disinterested assistance of irregular immigrants, but only in relation to facilitating stay (see Allsopp 2012, Taylor 2018). In July 2018 the Constitutional Court asserted the constitutional value of the principle of fraternity, irrespective of immigration status, and called upon parliament to change the law (Fekete, Webber et al. 2017). While support for this change was expressed by politicians, including the mayor of Paris, facilitating entry remains a legal red line. In 2018 a group of humanitarians known as the 'Briançon Seven' were convicted by the Gap Court of facilitating illegal entry, though they later won a 2021 appeal.

Italy

Italy and Greece often appear in conjunction with each other in the research, because they are both Southern EU maritime border countries. Indeed, there is a significant body of work exploring the criminalisation of humanitarian and solidarity activities in Italy, and particularly search and rescue activities (often referred to as 'SARs' in the literature) at its maritime borders. In Italy humanitarians are formally exempted from prosecution for helping irregular migrants *on Italian territory* under Article 12, paragraph 2 of the 1998 Migration Law. The Law states 'withstanding what is provided for by article 54 of the code of criminal procedure, aid and humanitarian assistance carried out in Italy toward aliens in a state of need, however present on the State's territory, do not constitute crime'. This law does not specify a humanitarian (or indeed family) exemption in relation to facilitating *irregular entry* but according to Allsopp et. al (2021) Italian judges have tended to uphold a humanitarian exemption in such cases, with reference to Article 12 mentioned above, as well as international commitments in relation to saving lives at sea. Nevertheless, Italy is a

hotspot for the criminalisation of humanitarians or others acting to help migrants (Allsopp 2017, Carrera, Vosyliute et al. 2018, Carrera and Cortinovis 2019, Pusterla 2020, Allsopp, Vosyliūtė et al. 2021, Escarcena and Pablo 2021).

Since 2015 most people charged with the crime of smuggling have been migrants themselves who are steering boats and therefore helping fellow passengers, as noted above (Carrera, Mitsilegas et al. 2019, Patane, Bolhuis et al. 2020). They are not professional smugglers and are arrested, according to Patane et. al (2020) because the Italian Constitution states that criminal proceedings must be initiated if a crime is reported; therefore if the arrival of a smuggling boat is reported, clandestine entry has been facilitated and someone must be arrested. Once in the Italian legal system, however, they are treated as a serious threat, as organised crime offenders. Patane et. al (2020) explain that some are opportunistic (steering the boat in return for free passage), while some are forced (under duress at the point of departure, or out of necessity while at sea). Whether the actions of, 'forced *scafisti*' (boat drivers) constitute solidarity is debatable, but it is certainly true that these individuals do indeed help their fellow passengers by driving or steering boats. Lines here are blurred between migrant and migrant smuggler, between helper and helped, solidarity and self-interested strategy, forced and voluntary action. Most public attention seems to nonetheless fall on NGO search and rescue efforts as potential clandestine smuggling operations.

The literature reports on police intimidation of NGO workers and volunteers, and disciplining short of judicial criminalisation such as raiding NGO run migrant centres, visible police presence and stop and search policing around migrant support operations. These tactics are reported in greater number than outright criminalisation (Carrera, Vosyliute et al. 2018), though there have been some high profile cases of criminalisation reported. Disciplinary measures at sea have included the introduction of new regulations which hinder search and rescue operations (see Moreno-Lax, Ghezelbash et al. 2019 for a good legal analysis of this), submitting vessels 'to unreasonably long inspections and imposed administrative penalties such as withdrawal of the boat's flag, fines and vessel confiscation' (Allsopp, Vosyliūtė et al. 2021:74). In 2018 the Italian Home Office introduced a 'Code of Conduct' for SAR NGOs, which must be signed before SAR could continue (see Carrera, Mitsilegas et al. 2019 for a thorough discussion). This Code of Conduct included an obligation to have armed judicial police on board vessels. Some NGOs objected so strongly that they refused to sign and faced measures such as refusals on requests to dock (Tazzioli 2018, Carrera and Cortinovis 2019). While some of these actions may seem trivial, in 'multiple instances, humanitarian actors [in Italy] were explicitly blocked from conducting life-saving work at a time of acute need' (Allsopp, Vosyliūtė et al. 2021:74).

Criminal charges against search and rescue NGOs have centred on migrant smuggling but have also included a rage of other charges such as 'Illegal Waste Management', 'Disobedience to the Interior Minister', 'Weapons Ownership' and disembarking passengers without permission (often after protracted and dangerous waits for post rescue disembarkation) (Allsopp, Vosyliūtė et al. 2021) which give the impression that the central aim is to criminalise SAR NGOs by any means, rather than halt smuggling operations per se (Carrera and Cortinovis 2019). Alongside these tactics, claims in 2017 by Catania prosecutor Carmelo Zuccaro that search and rescue NGOs were under suspicion of colluding with

criminal smuggling organisations precipitated a social and media context in which civil society organisations are constantly having to prove that they are not smugglers. Other high profile and widely respected figures, including former Interior Minister Matteo Salvini, have contributed to this trial by public opinion (Office of the United Nations Human Rights Commissioner 2018, Allsopp, Vosyliūtė et al. 2021). This has led to refusals of disembarkation for search and rescue ships (effectively closed ports) which some argue is 'unsustainable under international law' (Moreno-Lax, Ghezelbash et al. 2019:731). Political criminalisation in many ways therefore laid the groundwork for legal criminalisation (Pusterla 2020). Undercover agents have been placed on search and rescue boats and in 2019 three million Euros were allocated to such operations by the Italian Prime Minister (Allsopp, Vosyliūtė et al. 2021).

Away from the coast, civil society groups engaging in migrant support activities have also faced similar tactics of harassment, intimidation, surveillance, evictions, and administrative investigations (Zamponi 2018, Carrera, Mitsilegas et al. 2019, Allsopp, Vosyliūtė et al. 2021). This occurs across the country but is particularly notable in Ventimiglia at the French border. Police and army forces have been deployed at the French border under the guise of anti-terrorism but with a de-facto focus on migrant arrests and pushbacks (Escarcena and Pablo 2021).

Greece

Many studies also discuss the criminalisation of solidarity and humanitarianism in Greece as it is on the front line of Mediterranean irregular boat arrivals at the EU's southern border. Greece has interpreted the 2002 Facilitation Directive very strictly, imposing greater penalties for smuggling and a broad interpretation of involvement in smuggling. The state has exempted humanitarian actors from prosecution for facilitation of entry or stay but NGOs particularly are subject to criminalisation by the accusation that they are working with people smugglers and are not therefore acting with purely humanitarian motives (Aksel, Dimitriadi et al. 2016, Carrera, Vosyliute et al. 2018). Search and rescue activities were also represented as a pull factor for migrants (Allsopp 2017, Carrera, Vosyliute et al. 2018). The criminalisation of civil society search and rescue operations in Greece has also involved accusations by powerful actors of involvement in smuggling. This has notably involved the EUs border agency, FRONTEX, accusing search and rescue NGOs of colluding with people smugglers (Allsopp 2017, Carrera, Vosyliute et al. 2018). This is contained in the annual risk analysis reports (for example, the 2017 report suggests that search and rescue NGOs are involved with people smugglers), and in FRONTEX briefings to journalists (Financial Times 2016). The spreading of this idea that many NGO workers are in fact colluding in people smuggling is part of the broader strategy of discrediting their activities and decreasing their support base in Greece, as in Italy.

In October 2015, the EU-Turkey Joint Action Plan was established in order to stop refugees leaving Turkey and therefore prevent them from arriving in Greece. This plan also involved the enhancement of police and military involvement in search and rescue, alongside a decline in NGO involvement. Greek and Turkish police force ships, and FRONTEX and NATO military ships were deployed in the Aegean Sea under FRONTEX's 'Joint Operation Poseidon', alongside NATOs Standing Maritime Group 2. Escarcena and Pablo (2021:5251) explain:

> the States and supranational authorities demanded exclusivity in their exercise of humanitarian work in the Aegean Sea, maintaining a double discourse as responsible actors, capable of facing the humanitarian consequences of the shipwrecks and at the same time addressing the security challenges that migratory movements imply, due to their potential links with criminal networks.

These activities did not, however, lead to the voluntary withdrawal of NGO and other civil society organizations in the Greek islands and surrounding sea, and this was when the criminalisation of humanitarian activities intensified in Greece. In January 2016, three members of PROEM-AID, a volunteer group of Spanish fire fighters who had saved hundreds of people the previous year, where arrested for 'attempted human trafficking' and possession of weapons. The weapons in question were wire cutters. While they were eventually acquitted after a lengthy legal process, there were many such cases of criminalisation of NGO and civil society search and rescue operations. In a particularly high-profile case three people involved with Emergency Response Centre International (ERCI) in Lesvos were arrested in 2018. They were charged with people smuggling, espionage, forgery, money laundering and membership of a criminal organisation (see Fekete, Webber et al. 2019). While the volunteers were not in Greece on many of the dates that they are alleged to have engaged in people smuggling and, as noted above, helping asylum seekers is excluded from grounds for prosecution of people smuggling in Greece, the implication that the humanitarian organisation was a 'front' for criminal smuggling has been used to criminalise these individuals. The trial is ongoing at the time of writing. On the Greek Island of Lesvos, NGOs have been required to register with authorities or face investigation for a range of crimes including money laundering.

Spain

While Spain has certainly seen a growing number of cases of the criminalisation of people who help migrants in recent years, this is less well documented in the English language academic literature in comparison to Greece, Italy and France. In Spain, Law 10/1995 'introduced sanctions into the criminal code for promoting or favouring irregular immigration, including what has been referred to as "crimes of solidarity"' (López-Sala and Barbero 2021:682). These contain a humanitarian exemption (Carrera, Vosyliute et al. 2018) and yet criminalisation in Spain does occur. López-Sala and Barbero (2021) explain how the criminalisation of solidarity with immigrants in Spain has intensified over the past 10 years, and how this has become bound up with austerity politics and anti-protest laws. They explain that an economic crisis that unfolded following the global financial crisis of 2008 was responded to by the government with austerity policies, which were met by widespread protest. This protest was in turn met by 'the criminalisation of dissent… using a wide range of intertwined tactics that include police control of protests' (p.681). This, combined with the criminalisation of mobility (Pickering, Bosworth et al. 2015), means that Spanish authorities have had a range of tools to draw upon.

According to López-Sala and Barbero (2021) Spain started policing immigration within its territories with street racial profiling, ID checks, and raids on migrant support organisations to identify illegal immigrants around the beginning of 2009. This included direct criminalisation, but also administrative approaches which have been referred to as 'bureau repression' (Olmo and Urda Lozano 2015). In response, a neighbourhood human rights watch in Madrid -the Brigadas Vecinales de Observación de Derechos Humanos (BVODH)-

was created, with the objective 'of observing, documenting and reporting immigration raids based on racial profiling' (López-Sala and Barbero 2021:686). Their work 'quickly became the target of wide-ranging police and administrative repression'(ibid) and members of this group began to be targeted by the police, detained, and given administrative sanctions based on anti-protest laws. Other laws ostensibly designed to tackle other things (e.g. disturbing the peace, laws against people smuggling, and laws against protest) are often used to arrest or fine people in Spain who are protesting, undertaking a direct action, observing police activity (such as stop and search), documenting human rights abuses, or undertaking journalism (especially photo journalism). There are many cases discussed in their article of police harassment such as individuals or organisations being threatened with legal action or arrested or even taken to court, that ultimately fail or are dismissed. This is similar to other contexts and in spite of the low prosecution rate, the costs (financial and emotional) can be considerable (Escarcena and Pablo 2021). Escarcena and Pablo (2021) call this approach the politics of exhaustion, as noted earlier. The consequences are most acute for migrants and there are cases of punishments, sometimes deportations, of migrants who engage in activism or protest, especially in detention centres documented by López-Sala and Barbero (2021).

In the north African Spanish territory of Melilla there have also been repressive activities. Immigrant rights organisation PRODEIN (amongst others) has been a vocal critic of the situation of unaccompanied Moroccan minors in Melilla, documenting police violence against migrants at the border between Spain and Morocco and illegal deportations. The NGOs involved in solidarity activities have been challenged by the police and face criminalisaiton for their activities (López-Sala and Barbero 2021). For example, in 2015 they faced a €1500 fine for organising a demonstration without a permit after the death of a minor in detention in Melilla.

Country case examples 2: beyond the EU

Outside of the EU, the reviewed literature focuses primarily on the USA, Canada and a small literature on Australia. This may be a function of the language limitation in the literature search and requires more investigation but it should be noted that UN Special Rapporteurs only identify EU and US *cases* (though regional agreements in Asia are mentioned) in their official reports on the global context (Office of the United Nations Human Rights Commissioner 2018, Ferstman 2019, Okafor 2020). With this in mind, I have also undertaken an additional non-systematic search for literature on the Asian context, and have identified a body of work looking at the underground Church solidarity movement supporting North Korean defectors. While this movement spans several countries (most notably China, the US and Korea), it is clear that it is in China where solidarity activates are criminalised. I have therefore included China in this case study section.

The USA

Like in Europe, in the US, the key issues are facilitating entry (i.e. human smuggling) and facilitating stay. The 1952 Immigration and Nationality Act is the legal basis for criminalising acts of helping as it provides for criminal penalties to be imposed for bringing 'unauthorised aliens' into the United States, encouraging them to enter, transporting them within the US, harbouring them, or conspiring to commit these offences (Campbell 2012). The US State Department has stated that 'financial gain is not a necessary element of the crime' of

smuggling, since smuggling may also be intended to achieve other goals such as family reunification (US State Department 2006, cited in Watson, 2015:45). In other words, there is no humanitarian exemption from prosecution for smuggling, transporting or harbouring irregular migrants.

As far as the literature indicates, it was thirty years before this law was deployed as a means of controlling humanitarian and solidaristic activities. Criminalisation of help given to irregular migrants in the US can thus be divided into two main waves (though there are also historical precedents in the Underground Railroad -see section on historicising crimes of solidarity below). The first wave was the criminalisation of activists involved in the church led Sanctuary Movement in Arizona and beyond (but mainly in the southern states bordering Mexico) in the 1980s. Then, from around 2000 onwards there was the start of a second wave of the criminalisation of humanitarian and solidarity work in the southern United States. All studies identified through this review look specifically at the Sanctuary movement, or more recent (post 2000) arrests. The former might be mentioned briefly in relation to the latter but I did not find any studies which look systematically across the two waves. The methods across this literature are ethnographic research with grass roots humanitarian aid groups (Cook 2011), and some legal case analysis (Colbert 1986). Douglas Colbert (1986) offers a very detailed and informative analysis of the 1980s Sanctuary trials which is drawn on heavily in the paragraphs below.

In the early 1980s Salvadorans and Guatemalans began entering US cities close to the Mexican border, and Christian congregations began offering them humanitarian assistance, as well as support in applying for asylum in the US. They also raised funds to bail these asylum seekers out of detention. This was well organised across Tucson and Phoenix with around sixty churches involved. Over time, however, it because clear that virtually none of the asylum applications submitted by Salvadorans and Guatemalans were successful. Colbert (1986:37) explains that ‘The Tucson religious community learned the limitations of the administrative remedy, calling it "an exercise in futility"' which "actually accomplished the more rapid return to El Salvador and Guatemala of those whose lives they sought to save."' Having recognised a moral and legal injustice occurring, one and then many churches declared themselves ‘sanctuaries’ at a press conferences in 1982.

Initially, the authorities decided not to bring any prosecutions because they did not want to ‘end up looking ridiculous’ (Chief of Tucson Border Patrol cited in Colbert, 1986:43). The turning point was 1984. Over 100 churches and synagogues had declared themselves sanctuaries for people fleeing El Salvador and Guatemala and the police decided to install paid informants in the movement. The first arrest came that month when a nun and a parishioner were arrested for transporting a Salvadoran couple and their baby within the United States. More arrests followed, a mix of reverends, nuns and parishioners. Some were convicted, some acquitted. By 1985 180 churches and synagogues had declared themselves sanctuaries and the government responded with the indictment of 16 sanctuary workers, 49 Central Americans named as ‘illegal aliens unindicted co-conspirators’, and 25 ‘unindicted co-conspirator US citizens’ (Colbert 1986, see also Campbell 2012). Only eleven defendants went to trial, a mix of Americans, Guatemalans and Mexicans, including reverends and nuns, and 6 were found guilty.

Things seem, as far as the literature indicates, to have died down in the late 1980s and 1990s, until humanitarian solidarity work again came to be seen as a problem to be solved with criminal sanctions in the 2000s. Brigden (2019:33) explains that on the US side of the US/Mexico border 'the legal distinction between humanitarian aid, family support and smuggling remains contested'. This can involve using older laws to arrest people, and to crack down on actions which previously were tolerated. For example, the Immigration and Nationality Act 1952 provides for criminal penalties for transporting illegal aliens into the US, within the US, harbouring them in the territory, or conspiring to commit these violations. This law was drawn upon in the 1980s Sanctuary movement period, and in the recent crackdowns around the southern border but less so in the intervening years. Several states, which in the US federal system have the power to pass their own laws, have also made helping or transporting irregular migrants illegal in reaction to a perception that the federal government was doing too little to tackle undocumented migration. The state legislatures of Oklahoma (law passed in 2007), Arizona (2010), Georgia (2011), South Carolina (2011), Indiana (2011), Utah (2011, mainly rescinded 2014), and Alabama (2011) have all passed similar laws with this aim.

A key feature of the US context is that religion, and particularly Christianity, is central to these movements, and faith therefore features heavily in debates around what moral action looks like (Campbell 2012). Cook (2011) undertook an ethnographic study of the activities and attempted criminalisation by the authorities of three grass roots humanitarian aid groups in Arizona 2000-2010. She shows how claims to legality and the law were mobilised by both activists and authorities in this context, making the law a resource the authorities can draw upon in achieving their aim of stopping immigration but also activists in resisting them (see also Campbell 2012 who writes 'civil disobedience in the face of unjust and inhumane law is a central precept of many faiths, including Christianity', p.76). Similarly, when Elvira Arellano was given sanctuary in the Adalberto United Methodist Church in Humboldt Park, Illinois for one year 2006-2007 to avoid deportation to Mexico (and consequently her separation from her son, a US citizen), this followed a longstanding pattern in the US of invoking Christian morality as a challenge to federal and state legal authority (Campbell 2012). Unfortunately these challenges are often lost eventually, and indeed Ms. Arellano was deported.

Around the southern desert borderzone, the criminalisation of humanitarian work tends to focus on stopping the provision of water and medical aid. Four US states border Mexico: Texas, New Mexico, Arizona and California, but there seem to be fewer cases of criminalistion of solidarity in the latter, as far as the literature indicates. Brigden (2019:33) reports that humanitarian volunteers providing life-saving medical treatment and leaving bottles of water in the desert had informally negotiated arrangements with US Border Patrol which allowed them to continue their work in the early 2000s. However, this was not consistently the case. In 2008 Daniel Millis was charged with "disposal of waste" (littering) for leaving water in the desert for people crossing into the US (Campbell 2012). He was eventually acquitted at appeal as a judge decided that his actions did not constitute littering, but this case does show how a wide range of legal infractions can be used to limit humanitarian activities.

For Brigden (2019), who cites a range of news reports in support of her argument, it was in 2017 that things changed fundamentally; US Border Patrol raided a medical camp, thus breaking the informal agreement they had established. In January 2018 university academic Scott Warren, a volunteer for the organisation 'No More Deaths', was arrested on charges of conspiracy to transport and harbour undocumented immigrants. He had been found in a migrant support centre with two undocumented migrants where they had been provided with clothes, food, water, and short-term accommodation. He was eventually found not guilty. Brigden (2019) has analysed the language used in arrest reports, finding that the language of organised crime (e.g. 'stash house', 'recruiter') was used in representing the activities of No More Deaths and Warren himself. Echoing the tactics used in Southern Europe, Brigden writes: 'in both Mexico and the USA, the State is pushing against the ephemeral boundary between humanitarian aid and smuggling, blurring the distinction in the name of border security and attempting to reframe would-be heroes (and mothers and fathers) into criminals.'

Canada

Canada is geographically remote from areas of conflict and high displacement globally but it does nevertheless appear in the literature on criminalising support for irregular migrants, including people who are seeking asylum (as far as this the literature identified for this review indicates). According to the small available literature, crimes of helping in Canada focus on the facilitation of crossing the US/Canadian border, particularly perpetrated by US citizens (humanitarian workers) bringing people into Canada in order for them to claim asylum. It seems that in the Canadian case there is media coverage and NGO awareness and campaigning on this issue, but a dearth of in-depth academic research on the topic.

In Canada the UN Smuggling Protocol has been incorporated into national law but the provision that smuggling should entail financial gain has been dropped. Thus, the 2001 Immigration and Refugee Act prohibits smugglers from making a refugee claim. This 'means that participation in smuggling supersedes refugee eligibility, and by implication 'it reinforces a radical distinction between those who need protection (victims) and those who help others find protection (humanitarians)' (Watson 2015:48). There is, then, no humanitarian exemption in Canadian anti-smuggling laws. People have been charged with human smuggling even when assisting recognised refugees to access protection in Canada, as noted above (Watson 2015).

The first case of a humanitarian worker being charged with people smuggling, according to the Canadian Council for Refugees, was Janet Hinshaw-Thomas, arrested at the Lacolle border point in Québec in 2007. Hinshaw-Thomas was the director of a US church-based refugee-supporting organisation and was arrested accompanying twelve Haitians who were seeking asylum in Canada. The charges were dropped two months after the arrest. Following this case there were reports of other humanitarian workers being threatened with legal action for crossing the border to facilitate people in making an asylum claim in Canada. In response, the Canadian Council for Refugees launched the 'proud to aid and abet refugees' campaign which aimed to 'end the threat of prosecutions against refugee workers' (Canadian Council for Refugees nd.).

Nevertheless, interpretation of the law, and the relationship between national and international law is key in the outcomes of actual cases brought to national courts. One particular case comes up repeatedly in the literature, that of R. v. Appulonapp, heard in the Canadian Supreme Court in 2015. Here, as Mitsilegas (2019) explains, the court interpreted domestic law in conformity with international law, in particular stressing the requirement of financial or other material benefit in criminal smuggling. In other words, the case went against the Canadian state's decision that the reasons for engaging in smuggling, and the presence or absence of financial gain were irrelevant in criminalising it. The case under examination was one of familial mutual aid for the purposes of asylum and reunification. Judge Beverley McLachlin said, disapprovingly, that under the Crown's interpretation, 'a father offering a blanket to a shivering child, or friends sharing food aboard a migrant vessel, could be subject to prosecution' (cited in Mitsilegas, 2019:71). Mitsilegas (2019) argues that 'by stressing the need for the existence of the element of financial gain for the criminal offences of human smuggling to be substantiated, the Canadian Supreme Court has placed important limits to the criminalization of smuggling'. Whether or not this case has had a broader impact is not clear from the literature reviewed, nor is the current scale and scope of the criminalisation of help for irregular migrants in Canada, even where they are seeking asylum.

Australia

Academic work addressing crimes of solidarity in Australia centre on smuggling. From the small number of texts identified, the issue in Australia appears, from the literature identified, to be less about the state seeking to supress citizen-migrant solidarity and more about stopping boat arrivals, piloted by non-Australians, into Australia. Those who are convicted for smuggling in spite of humanitarian motivations, tend to be foreign nationals from countries refugees (those smuggled) are fleeing. Federal people smuggling offences, as explained by Schloenhardt and Davies (2013), are set out in the 1958 Migration Act and the 1995 Criminal Code Act (see also Grewcock 2010). The Migration Act defined smuggling as bringing a non-citizen into Australia who has no lawful right to enter and contains no humanitarian exemption from this rule (see also Schloenhardt and Ezzy 2013). Watson (2015:45) explains that Australian courts have ruled that the UN Smuggling Protocol does not exempt humanitarians or family members from prosecution from smuggling on the basis of the Migration Act. He also explains that 'humanitarian actors have been charged with human smuggling for assisting recognized refugees to access protection' in Australia (ibid; Schloenhardt and Ezzy 2013 analyse a specific example).

There have been many boat arrivals in recent years, all intercepted, and there consequently have been many cases in the Australian courts focussed on smuggling. Similar to the situation in Europe, there is evidence of a gap between numbers of arrests and actual convictions, although this seems to be contested in the literature. For example, the Department of Immigration, Multiculturalism and Indigenous Affairs Annual Report 2004-2005 indicates that of approximately 1000 allegations, there were just 19 prosecutions and 17 convictions 2000-2005 (Grewcock 2010). But Schloenhardt and Davies (2013) imply that convistion rates were high until 2012. They explain that most cases until 2012 were:

> Indonesian men who come from very poor families, they have only limited education, they were approached by strangers who offered them about 5 million

> Indonesian rupiah ... to undertake some work on a boat, and, in most cases, the mandatory minimum sentence was imposed (p.955)

In 2012, however, the courts began to see a series of challenges and the conviction rate for smuggling dropped below 40 per cent. Schloenhardt and Davies (2013:976) find in their analysis of cases that 'one of the more common arguments presented by migrant smugglers …is the fact that the passengers they brought to Australia were, by and large, fleeing from situations of persecution and came to Australia to seek asylum and gain refugee status'. One example is that of Hadi Ahmadi, an Iranian refugee who was involved in smuggling 911 people from Indonesia to Australia but received little or no financial renumeration for this humanitarian smuggling work (Schloenhardt and Ezzy 2013). Such cases can, therefore, be understood as acts of solidarity with other refugees, and the act of smuggling can be understood as humanitarian.

China

While no literature came up in the search which specifically explores the criminalisation of migrant solidarity activities in China, in undertaking follow-on searching for such literature in the Asian context (for example on the impacts of the Bangkok Declaration), I did come across a literature on illegal support activities for North Korean refugees in China. While there are many similarities with the European cases, China is not referred to in the English language literature on the criminalisation of solidarity or humanitarianism. Indeed, 'criminalisation' (and indeed 'crimmigration') is not used in the literature on this context, though it would fit. Certainly, the case of North Korean defectors/refugees in China and the criminalisation of their supporters warrants further comparative research with other contexts.

North Korean refugees travel to China with the help, often, of underground Christian missionary organisations who arrange humanitarian smuggling operations and receive and support smuggled people (According to a report for the Australian Strategic Policy Institute, Song 2017). These networks are deeply clandestine and are international in scope. Informants to the US State Department suggested a coalition of more than 160 US based private relief, development and refugee assistance agencies in 2007 (Margesson, Chanlett-Avery et al. 2007). Indeed, being smuggled is the only means of escape for most North Korean refugees. According to the UNHCR, North Koreans in China are 'persons of concern'. If they are returned, they risk state persecution (and should not therefore be returned under international law), but they do have access to citizenship in South Korea, meaning that they are not refugees technically speaking.

China 'is a party to the UN Refugee convention, but it prioritizes its bilateral relations with the DPRK over its international commitment to refugee protection. For the Chinese, regional security and internal stability are the most important issues in dealing with the North Koreans in its territory' (Song 2013:7). China-North Korea bilateral treaties in 1960 and 1961, as well as an accord in 1986 and an ordinance in 1998, determine that North Koreans crossing the border into China can (indeed, should) be forcibly repatriated to North Korea. Thus, in China smuggling and harbouring are criminalised both in the sense that Christian churches can only operate with government authorisation and so underground evangelical church groups are automatically illegal, and in the sense that the Chinese state does not recognise North Korean irregular migrants as refugees and regularly sends them back. Those

that run underground sanctuary churches tend to be South Korean and Korean-American citizens (Han 2013).

These underground Christian humanitarians have found themselves formally criminalised following actions that they organised where North Koreans rushed in a group into diplomatic compounds and foreign schools, asking for resettlement in South Korea. There are references to these actions and crack-downs by the government in various reports, academic journal articles (for example, Song 2013, Song 2017) and media websites but no systematic academic analysis. The most comprehensive information on arrests (who, when, where, on what grounds etc) has been undertaken by NGOs. For example, a list of North Koreans and humanitarian workers supporting them –'THE LIST'- has been compiled by the Defense Forum Foundation since 2002. At a 'Congressional-executive commission on China' in the US in 2004 Suzanne Scholte, President of the Defence Forum Foundation, reported that 'China penalizes its citizens for trying to help North Korean refugees and rewards them for turning them in, a double incentive. It also works aggressively with North Korean agents to catch and jail humanitarian workers' (np).

Margesson and colleagues (2007) (for the US State Department) write:

> As a consequence of the asylum bids, reports indicated that the Chinese were arresting Korean-Chinese accused of helping North Koreans. (According to some reports, there are apparently more than 1,000 ethnic Korean-Chinese helping the North Koreans who cross over into China.) From time to time, the press mentioned arrests of NGO workers.

Song (2013:8) similarly offers a description of crack-downs and arrests, but without detail:

> These high-profile break-ins have made the fate of the remaining North Korean women volatile. After several break-in attempts, the PRC saw this matter as being against their national interests and increased the security around foreign diplomatic compounds. The state conducted random crackdowns in underground churches or private houses where North Korean women were hiding, arrested those who were helping North Koreans and tightened border controls […] Those who help illegal immigrants are prosecuted under the Chinese jurisdiction and, furthermore, from the Chinese and North Korean perspectives, NGOs are seen as political or sectarian, anti-communist, anti-DPRK and "Christian fundamentalists"

The phenomenon by which family members and churches in South Korea pay for the transportation costs of defectors out of North Korea is known as the 'Seoul Train in the Underground Railway' (Song 2013). This of course makes reference to the US Underground Railroad, an interesting correlation with other contexts. Song (2013:10) suggests that 'devoted NGO activists have helped North Koreans and have often been arrested and detained by the Chinese authorities', but again without detail.

3. Conceptualising Smuggling

A key area of work in relation to researching the criminalisation of help has been in discussing the conceptualisation of smuggling by different actors, and particularly whether smuggling is disaggregated in terms of the motives of smugglers and the needs of the smuggled. Key issues in relation to motivation are humanitarian, solidaristic or familial support motivations, versus profit driven motivations. In terms of the needs of the smuggled, their status as refugees in need versus economic migrants seeking work are also

factored into value judgements about the likely criminality of facilitators. Van Liempt (2021:304) explains that human smuggling 'has existed as long as borders have, as there have always been people who, for all sorts of reasons, were unable to travel via ordinary legal routes'. Nevertheless, she identifies Salt and Stein's 1997 article in International Migration as 'the earliest academic conceptualization of human smuggling'. Salt and Stein (1997) conceptualise human smuggling as a business, which is consistent with the UN Protocol and the Facilitation Directive, and in all of these cases it is the commodification of human beings as a profit making exercise which marks the practice as problematic and therefore necessarily illegal. And yet, to understand smuggling as *only* an exploitative profit-making business is to ignore all of the evidence that it is much more complex than that.

Watson (2015) points out that there is no clear distinction between bad smugglers who make money, and good smugglers who are never renumerated. People can take payment and still be participating in smuggling activities for primarily altruistic reasons. For Watson (2015), the professionalisation of humanitarianism aptly demonstrates the fact that earning money and helping people are not mutually exclusive. People become involved in smuggling for a range of reasons, from helping others in their family or community to pure profit motivation, and this has been the case across history (Zhang, Sanchez et al. 2018, Brigden 2019). Indeed, Mengiste (2018) calls smuggling 'refugee protection from below' in the Eritrean context, while Herman (2006) suggests that we conceptualise it in terms of a 'family business' in order to understand the role of personal networks in facilitating cross border travel. What this means in relation to crimes of help is that states like to cast smuggling as *not solidarity* or *not humanitarian*, when there may well be solidaristic, humanitarian or other intentions and dynamics in many cases, even where there is an exchange of money for services. Indeed, the wider literature on smuggling draws attention to the fact that smuggling is a practice that involves a whole range of people, not only highly organised transnational criminals (see Gallien and Weigand 2021 for an overview). This includes people who are co-nationals of those fleeing (for example other Eritreans and Ethiopians in Mangiste's research), family members, friends, social networks, church congregations and people who are themselves in the process of migrating. Significantly, 'migrants who have used the services of smugglers rarely view them as dangerous criminals who should be imprisoned, but often describe them as "the people who most helped them" …, as life savers, or as a necessary evil in a world with many restrictions on mobility' (Van Liempt 2021:305), a point which reoccurs in research on smuggling (see Song 2017 on the Chinese context).

These issues lead Tazzioli (2018) to ask what is smuggling, and who are the smugglers who so urgently need to be stopped in this complex picture? How can authorities in all seriousness pursue family members of refugees in the same light as organised criminal gangs, and the latter as unequivocally evil? How these complexities are dealt with in law is of course central to the criminalisation of humanitarian smuggling, and opportunities for contestation highly variable in different political regimes. One issue arising from smuggling laws is that smuggling is cross border and yet laws to prosecute for it are often limited to specific territories. Bilateral agreements facilitate crackdowns in some Asian countries (Margesson, Chanlett-Avery et al. 2007, Song 2013). The EU co-ordinates across member states and into origin countries through 'joint investigation teams' (Carrera, Mitsilegas et al. 2019). EU missions to Libya in May 2017 argued that human smuggling could be treated as a

universal crime by labelling it a crime against humanity, thus facilitating extra territorial jurisdiction over smuggling activities in Libya and beyond (Mitsilegas 2019). But this idea is disproportionate, according to Mitsilegas, 'based on discourses of smugglers as evil and posing existential threats to society' (p.74). A better approach would be to treat crimes against migrants where they are endemic (as in Libya) as crimes against humanity, as the International Criminal Court has proposed (UN Security Council 2 November 2018).

Landry (2016) has developed a framework for distinguishing blameworthy smuggling for profit from blameless humanitarian smuggling in law. She argues that 'criminal law should not criminalise ethically defensible behaviours' (p.6) and that it should be 'sufficiently clear and narrow so as to serve as a 'guide' to orientate general behaviour' (p.7). As such, she has identified three thresholds which draw the line between blameless and blameworthy smuggling, identified in terms of the degree of harm facing a smuggled individual:

1. **Fatal harm and the right to life** -in a situation where an individual's right to life is threatened, there is a duty to save, and saving cannot constitute smuggling.
2. **Severe harm and other non-derogable rights**. Smuggling where you are saving someone from impending severe and irreparable harm (e.g. deportation to a concentration camp)
3. **Other serious harm and human rights**. Helping people to cross borders to escape harms which threaten their fundamental human rights (right to family life, right to liberty and security, right to a fair trial).

In operationalising these principles Landry suggests a mandatory humanitarian exemption from prosecution and a much narrower definition of blameworthy smuggling in law which includes both financial gain and an element of harm to irregular migrants. She identifies the Canadian Supreme Court case R v Appulonappa (discussed above) as setting a legal precedent for a narrower definition of smuggling.

4. Why criminalise non-governmental assistance?

As the discussion thus far has shown, some states are keen to criminalise some kinds of help and support offered to irregular migrants, particularly help offered outside of large scale humanitarian agencies and help which could be seen to undermine exclusionary bordering practices. Since the list of criminalised activities offered in section 3 includes many lifesaving and basic survival provisions, an obvious question is why states would want to criminalise such non-governmental assistance? The consensus across the literature is that states where this practice is occurring want to control their borders, and particularly close their borders as far as possible to irregular migrants, including refugees (see for example Fekete, Webber et al. 2017, Bellezza and Calandrino 2018, Carrera and Cortinovis 2019, Mitsilegas 2019, Van Liempt 2021). When people help irregular migrants to either enter a state or to survive within one, then they are seen to undermine this overarching aim of border control. States, in turn, claim a monopoly on humanitarianism, or on authorising humanitarian actions as part of this agenda (Aalberts and Gammeltoft-Hansen 2014, Escarcena and Pablo 2021). A key tool in stopping this undermining of border controls thus becomes the illegalisation of spontaneous, or at least unauthorised, help. Border control, then, seems to supersede the right to life and other human rights in some state moral and legal agendas. Though as noted earlier, both international human rights and maritime law, and tacit moral agendas (i.e. interpretations of that law) curtail these efforts in the courts.

While there is a consensus in the literature that controlling borders is the driving motive behind criminalising support for irregular migrants, protecting migrants from harm is a motive more often articulated by liberal states (Van Liempt 2021). People who cross borders irregularly and remain within states without government authorisation of course are highly vulnerable. This is the case when crossing maritime borderzones in overloaded and unseaworthy vessels, when crossing inhospitable deserts, and when stowing away in lorries or containers where air may be limited. It is also the case when working illegally under exploitative working conditions, living in precarious circumstances, and in situations without access to basic services such as healthcare. Indeed, many people die every year while making irregular journeys or residing in states in a clandestine way. While these facts are used by various authorities in presenting smugglers as evil criminals exploiting people, and states as combatting this practice in clamping down on smugglers and others, such a perspective is contested. Critical scholars point to border controls as creating a business model for smuggling and the market for clandestine work. Either way, it does seem illogical to argue that criminalising assistance activities aiming to alleviate harm can at the same time protect migrants from harm.

In contrast to this liberal discourse, the literature on the Chinese context (while not directly answering this question) seems to imply that regional security and bilateral relations with North Korea are the driving motive behind their actions (Song 2013:7). It is interesting to note that the fact of controlling NGO and church activity is a 'given' of the Chinese authoritarian regime, while the authoritarian tendencies of European and other states in this context tend not to be addressed. In other words, in liberal democratic countries the criminalisation of humanitarians is taken as a failure, while in authoritarian countries it is taken as a given.

5. Consequences

Criminalising the giving of help to irregular migrants has a wide range of consequences, according to the literature. These include the literal curtailment of lifesaving activities; dissuading people from undertaking humanitarian activities, or conversely encouraging wider participation; creating confusion about what is legal in the humanitarian space; broken trust between citizens and law enforcers; morally just actions being wrongfully criminalised; the altering of established moral frameworks; the politicisation of the criminal justice system; obfuscation of the relationship between border controls and smuggling; and fostering mistrust of NGOs in wider society. These consequences may be intended or unintended outcomes of the criminalisation of humanitarian activities, some of which might be damaging to the states who pursue them (Duarte 2020).

The literal stopping of lifesaving activities is a central aim of the criminalisation of search and rescue in the Mediterranean, and in this regard law enforcers have been successful (Duarte 2020, Allsopp, Vosyliūtė et al. 2021). In relation to NGO led search and rescue ships, there is evidence that the politics of criminalizing such assistance has led to a decline in the number of ships operating in the Mediterranean and Aegean (Pugh 2004, Carrera and Cortinovis 2019, Duarte 2020). This is not a straightforward deterrent effect (though that occurs too). The cumulative effect of landing vessels through various means has been successful in literally reducing volunteer search and rescue presence in the sea. By contrast, I have not found any clear evidence that crackdowns on groups that support North Korean

defectors in China have led to a reduction in their activities, since they were clandestine from their inception.

The literal stopping of search and rescue activities then bleeds into dissuasion of lifesaving actions. This may be for a range of reasons. Pugh (2004:62), for example, shows how maritime authorities are 'implicated in challenging the humanitarian regime at sea' globally. Through not allowing disembarkation when rescued migrants are aboard commercial (rather than dedicated search and rescue) ships, states discourage commercial vessels from rescuing people as per international maritime law. Commercial ships are heavily monitored and must adhere to strict schedules. Seeking a port for disembarkation can cause significant delays which ships captains are professionally punished for, and may not be able to make insurance claims against.

Pugh (2004) is unusual in drawing attention to this commercial aspect of spontaneous rescue at sea. More often, researchers discuss the way in which people are disincentivised from taking part in humanitarian work for fear of criminalisation. Criminalisation is a high personal cost for volunteers and a trial can be expensive (Okafor 2020). Many people who are arrested do not return to such work after their acquittals, demonstrating the politics of exhaustion (Allsopp, Vosyliūtė et al. 2021, Escarcena and Pablo 2021). In part, dissuasion can be precipitated by confusion around what kinds of activities are legal or illegal (Carrera, Vosyliute et al. 2018, Carrera, Mitsilegas et al. 2019). Ferstman (2019:32) notes that 'Amnesty International's reporting on Calais, France, suggests such a pattern, as a way to discourage solidarity movements'. Volunteers report being afraid, particularly when given information on the legal and security context in France. The activities that are criminalised may seem surprising or to make no sense. A British interviewee in Carrera et. al's (2019) research, involved in civil society support in Calais, explained that the wider legal context in France led to confusion around what is and is not illegal. They explained: 'There's a lot of confusion over anti smuggling and how it intersects with aid and activism, people seem to think the whole facilitation of entry rule doesn't apply if there's no profit but it's all up in the air. There's a real confusion, many are over cautious'. Similar sentiments were expressed by volunteers at the Hungarian border and in Italy (Carrera, Vosyliute et al. 2018).

The literature also, however, contains examples where the opposite reaction offers, where people are in fact encouraged to join a movement as more attention is brought to what is happening. I have not found any research exploring the variables at work in these different reactions to criminalisation. In the US Sanctuary Cities legal action, after six trials in 1984 (when 100 churches were involved), Colbert (1986:46) explains that

> rather than deterring other congregations from joining or supporting the sanctuary movement, the criminal prosecutions appeared to have the opposite effect. By January 1985, the number of churches and synagogues publicly declaring sanctuary had grown to 180 and included eleven cities. The religious community openly demonstrated their support for those indicted and opposition to the government's immigration policy by organizing car caravans which carried Central Americans from one part of the country to the other

Coutin (1995:549) observes that 'particular technologies of power, such as surveillance and prosecution, facilitate resistance even as they repress… Thus, the procedures that produce

"official truth" simultaneously call this truth into question.' In a 1985 trial, supporters of the defendants created a spectacle:

> In the eight weeks between verdicts and sentencing, sanctuary supporters held a caravan to the border, an all-night vigil at the Border Patrol Headquarters in Tucson, a march for freedom, and a conference attended by five- to six-hundred people where the call and response, "If they are guilty ... SO AM I!!" rang out repeatedly... By the time defendants were sentenced, the spectacle had become carnival-like… Rather than punishing the defendants, public spectacle portrayed the defendants as heroes and the government as criminal… the number of sanctuary congregations doubled during the trial' (p.561)

This kind of civil disobedience is one outcome of a breakdown of trust in law enforcement. Here, 'the role of criminal law stops being to protect society against deviant behaviour, and becomes a tool to force people to accept a situation in which they must advance a specific political agenda with which they do not even agree' (Duarte 2020:32). While active resistance with the aim of changing the law or practices of law enforcement is one outcome of this breakdown of trust, another is a breakdown of communication between citizens and law enforcers. Allsopp et. al (2021) have found that this might mean that some crimes go unreported, undermining efforts to stop exploitative smuggling practices. This seems an obvious consequence of the politicisation of the criminal justice system which may 'undermine public faith in liberal democracy' (Allsopp et al, 2021:68).

Trust may also be broken down between society more widely and NGOs. This is an approach explicitly taken in the Italian context, where law enforcers have stoked suspicion and tarnished the reputations of NGOs involved in search and rescue. Carla Ferstman (2019:21), in a report for the expert council on NGO Law for the Council of Europe explained that

> The perceptions of NGOs causing or contributing to a "pull-factor" and colluding with smugglers are unproven but have affected the general climate of mistrust towards civil society in many CoE states. It has also put NGOs at risk of persecution by public authorities and had made them susceptible to public attacks and acts of vigilante violence.'

This type of consequence is related to another consequence: the altering established moral frameworks. Duarte (2020) argues that the legal context sets the stage for moral action, and criminalising solidarity has the potential to both cause people to act against their moral impulses, and to actually change what they see as moral action. Thus, the failure to help people in need at borders, including those who are at risk of drowning, is, for Basaran (2014) not a result of individual immoral behaviour but rather the product of collective indifference. People are encouraged, or are coerced by the law through legal penalties (Duarte, 2020) to let people die at borders by looking away.

One consequence of criminalising humanitarian activity according to some authors is that the 'wrong' things start to be policed, as moral frameworks are skewed towards the imperative of border security. Resources channelled into investigating civil society actors 'funnel away resources from the focus on high-profile criminality' (Allsopp et al, 2021:68). This is dependent on the obfuscation of the relationship between border controls and smuggling, and the blurring of lines between organised crime and smuggling (Watson 2015). In their research in Europe Carrera et. al (2019:38) found that 'the majority of suspects are

refugees or migrants themselves, of very 'low' rank, easily replaceable, therefore their prosecution would not bring the desirable social impact of stopping migrant smugglers'. Law enforcement agencies are aware of this but continue to arrest such migrants for smuggling (Patane, Bolhuis et al. 2020).

Duarte (2020) suggests that criminalising solidarity actions within the EU has unintended consequences for the Union and member states. Using criminal law to decrease levels of immigration through criminalising solidarity has unintended consequences in relation to power legitimacy, democracy, rule of law, fundamental rights and social trust (Provera 2015, Carrera, Vosyliute et al. 2018, Carrera, Mitsilegas et al. 2019). She argues that solidarity is grounded in people's commitment to human sociality, even in the absence of state support to it. It is, then, 'precisely this sense of solidarity that is put under pressure when states illegitimately use their power to rule over a sphere that should be out of their scope' (p.32). The state has no legitimate power to interfere in solidarity or sociality, she argues, meaning that 'when the role of criminal law stops being to protect society against deviant behaviour, and becomes a tool to force people to accept a situation in which they must advance a specific political agenda with which they do not even agree', democracy and the rule of law itself is threatened.

6. Theorising the criminalisation of solidarity

Theorising the criminalisation of this range of 'help' given to irregular migrants is central in developing a broader understanding of the phenomenon beyond individual case studies. The literature on this topic primarily relies on mid-level theories. That is, theories which emerge from empirical data, that do not try to understand the whole social system, but which seek to understand a specific social or legal phenomenon in and across particular contexts. The exception is (in my reading) that literature which discusses 'legal truths', which I understand to be a micro level theory of people's attitudes and behaviours. The most common conceptual tool used in the literature to theorise the criminalisation of solidarity is 'crimmigration'. Others draw on related theories around governance of the humanitarian space in particular, including 'policing the mobility society' and the concept of 'legal truths'. In a different vein, the 'neocolonial sea' is also used as a mid-level theory for understanding some of the same issues -the policing of humanitarian activity, and the contestation over legal truths that arises from this. Finally, 'domopolitics' has been used in theorising the particular context of France to good effect, again with a focus on language and representational conflict and meaning making.

Work which draws on the concept of 'crimmigration' understands the criminalisation of helping activities as an expansion of crimmigration (Provera 2015, Watson 2015, Dadusc and Mudu 2020, Escarcena and Pablo 2021, López-Sala and Barbero 2021). That is, the '"fusion" of the legal systems concerning immigration and criminal law' (Escarcena and Pablo 2021:5245). Adherents of crimmigration argue that for a long time immigration law was separate to civil law. If someone entered a territory without authorisation by the authorities of that state they could be found in violation of immigration law and would be expelled. Meanwhile, if a citizen or other authorised resident violated a law of that state they would go through a criminal legal process involving arrest, legal process, perhaps sentencing and imprisonment or other punishments. It is the observation of criminologists that many states have started to use some the tools of criminal law (such as detention) but without the

protections (such as the right to due process and end dates on detention) afforded to criminals. This process of 'fusion' (or more accurately, overlap) as a phenomenon has thus been conceptualised as 'crimmigration'. Since the laws that are used to stop citizens and other residents from helping irregular migrants are sometimes civil (littering, civil disobedience etc), they are also often derived from immigration law, making 'crimmigration' a useful overarching theory for thinking through what is happening in legal terms in these cases.

Dadusc and Mudu (2020) understand crimmigration as part of a 'war on migration'. They explain:

> The war on migration has the following characteristics: (1) discourses of 'crisis' and 'emergency' related to an invasion that need to be stopped with any means; (2) construction of migrants as public enemies; (3) suspension of human rights under 'organised crime' as well as 'anti-terrorism' legislations; (4) criminalisation of those who support the alleged public enemy (np).

They argue that in this war a key a role is played by what they conceptualise as a disciplined humanitarian industrial complex' which is placed at odds with spontaneous or grassroots solidarity movements. This is, then, a critique of the kind of pragmatic compromise large humanitarian organisations make in staying 'apolitical' and maintaining positive relations with states. These large humanitarian organisations thus support agendas which seek to criminalise migration in return for access to spaces of need, according to Dadusc and Mudu (2020) . While the metaphor of 'war' arguably muddies the focus of crimmigration in terms of the distinct spheres of immigration law and criminal law becoming blurred, it does also draw attention to the sense that crimmigration arises from 'exceptional' circumstances to which exceptional legal responses are supposedly necessary.

We can take Dadusc and Mudu (2020) to mean that autonomous solidarity is policed so extremely because it directly challenges state practice, foregrounds injustices, and names the hypocrisies of states' claims to respect human rights and the rule of law:

> the struggle is not just about ameliorating the conditions or obtaining citizenship, but the configuration of new social and political relations beyond and outside the spaces of citizenship. In these spaces, self-organisation, mutual aid and cooperation subvert the vertical racialised relations that enforce differentiation between givers and receivers. Here, migrants are valued as political subjects whose voices are not only listened but actively embraced. Rather than acting and speaking on behalf of migrants, the aim is to create alliances and coalitions with migrants, with an understanding that the fight against border regimes is a common struggle of citizens and non-citizens' (np)

Escarcena and Pablo (2021) hypothesise a political strategy from empirical phenomena in arguing that the criminalisation of grass roots humanitarian activities in Europe is in part the making of spectacular relatively small infringements. This political strategy of 'spectactularisation' can be conceptualised in terms of a 'politics of exhaustion'. Large international NGOs like the Red Cross, meanwhile, are never criminalised, they point out, instead they legitimate claims by European states to be acting with humanitarian aims. Escarcena and Pablo argue 'the criminalisation of Mediterranean rescue NGOs through the "solidarity crime" has been a spectacular expulsion' (p.5253). Often the judicial process

ends with an acquittal. But this does not matter, 'the spectacle of the judicial prosecution can be considered in itself a political objective and a technique of governance… the stigma of criminality has served to question and interrupt their work' (ibid). Thus, they hypothesise that the spectacle of criminalisation is a symbolic technique of government.

Carrera and colleagues conceptualise their extensive empirical data from the European context in terms of 'policing' (rather than criminalisation), and in relation to what they conceptualise as 'the mobility society' (Carrera, Vosyliute et al. 2018, Carrera, Mitsilegas et al. 2019). What this means essentially, is that they have a broader scope of activity beyond the judicial system, in a wider set of social and political contexts, which they are conceptualising in terms of 'policing'. The 'mobility society' connotes those who are subject to such policing. This includes people who move across borders and people who 'mobilise a rights-claiming capacity on behalf of and within immigrants and asylum seekers' (Carrera, Mitsilegas et al. 2019:4), or in other words, migrants and those who act solidaristically in their support. By focussing on *policing* humanitarianism, they are able to incorporate phenomena including intimidation and harassment. This helps 'to explain how criminal justice tools and, in particular, preventive policing methods, are routinely misused to track and infringe upon free civil society space' (Allsopp, Vosyliūtė et al. 2021).

A number of researchers working in different contexts (for example Coutin 1995 writing on the 1980s US sanctuary movement, and Taylor 2020 writing on contemporary French Delinquants Solidaritaires) draw attention to the fact that in criminalising support actions, states are opening up disputes over legal truth in the public sphere. Theoretically, the lens here is primarily at the micro level, seeking to understand different actors' language, understandings, and behaviours. Those who seek to support migrants with food, transport, shelter etc interpret the law as determining that they have a duty to protect and support these people, often under International Refugee Law. The state, meanwhile, views these activities as violating national anti-smuggling or harbouring laws. Therefore, the criminalisation of solidarity actions can be viewed in terms of (power laden) contestations over legal truth. Cook (2011) uses legal mobilisation theory which sees the law as a strategic resource for social struggles. Groups whose actions are seen as against the law by the state here mobilise the law in their favour (Carrera, Vosyliute et al. 2018). After all, a significant part of the legal system depends on interpretation of laws. Tuscon activists involved with the 1980s Sanctuary movement in the US conceptualised their activities as 'civil initiative' rather than 'civil disobedience, and grass roots humanitarians in the US still use this language today (Coutin 1995, Cook 2011, Campbell 2012). Civil initiative is where people carry out just laws in the absence of government action. In other words, it is where citizens uphold their interpretation of law, not where they violate the law. In the Mediterranean 'NGOs are a constant reminder of the international laws that govern this space and thus a challenge to the social construction of the Mediterranean as mare nullius' (Mainwaring and DeBono 2021:104, discussed further below). This isn't legal mobilisation, but it does come within the sphere of contestations over legal truths.

Mainwaring and DeBono (2021) do not use theories of legal truth, however, they theorise the criminalisation of NGO activity at sea (in the Mediterranean context) through the lens of 'the neocolonial sea'. This is notable in that other researchers on this topic tend not to theorise the criminalisation of humanitarian and solidarity actions in terms of histories of

colonialism, and this lens also allows them to extend into an understanding of the operation of political and legal power at sea. However, it is similar to some other theoretical approaches in that Mainwaring and DeBono are deploying middle range theory for understanding a particular social phenomenon in a particular context, and their use of theory is oriented to understanding the governance of humanitarian activity in a given space. They suggest that the criminalisation of search and rescue missions are made possible 'through an oscillating neo-colonial imagination of the sea as mare nostrum and mare nullius, our sea and nobody's sea, respectively… a neo-colonial sea, which is alternately imagined as empty and 'European'' (p.1032). They point out that the sea is a socially constructed space, which has been thought of as variously as an extension of land and territory, as an unpossessable common space, or as an empty non-territory. But it has also become legally constructed. Territorial waters, search and rescue zones, fishing zones, and a suite of rights and duties at sea such as the legal duty to rescue those found in distress at sea, all produce the sea as a governed space. And yet, the authors point out that the expansion of international law at sea has not led to increased protection for migrants but rather clashing assertions of authority over maritime spaces which are variously claimed by states and governed by international laws (see also Pugh 2004, Aalberts and Gammeltoft-Hansen 2014).

Mainwaring and DeBono (2021) develop this by situating the contemporary moment in colonial histories, as noted above. Linking historic claims over the sea, colonial logics, and the contemporary production of racialised death and violence in the Mediterranean, there is the sense of a more far-reaching theory of power (social, political, legal, cultural) underpinning their article. They see contemporary social constructions of the sea as vast and ungovernable as 'reinscribing the Mediterranean Sea as the limit between 'European civilization' and its 'others'' (p.1032). NGO activity disrupts this, showing Europe's complicity in border deaths and contesting claims that bordering is necessary in order to protect European civilisation from a barbaric outside. They explain that 'the criminalization of NGO activity thus exposes the limits of Europe's humanitarianism and illustrates the persistence of neo-colonial imaginations of the Mediterranean as mare nostrum' (ibid). The Mediterranean, in other words, is represented as 'an empty space where states hold little responsibility and migrants only contend with the physical elements of the sea, their own physical bodies, and smugglers' (p.1040). The voices of NGOs contest this representation and bear witness to action and inaction by the EU and member states in their southern maritime neighbourhood. And yet, they argue, amidst the contestations between NGOs and states, the figures of the migrant and refugee disappear. The criminalisation of NGOs feeds in to the narrative that those who may need rescue are economic migrants rather than refugees (see also Tazzioli 2018).

There is a large body of work theorising the governance of what is often called 'the humanitarian space' (i.e. things that humanitarian organisations do -who they help, in what ways, and where), or situating that governance in a broader theoretical framework (most notably Agier 2010, Fassin 2011). This work is, of course, highly pertinent to the criminalisation of solidarity activities since criminalisation is a way of governing the humanitarian space. Basaran (2015:51), drawing on both Agier and (especially) Fassin explains that 'governing the humanitarian space is of the utmost importance in liberal democracies; in fact it is a fundamental component of governing security'. In defining the

boundaries of the humanitarian space some activities by some organisations or individuals are defined as humanitarian, while others are not. This has been influentially termed 'humanitarian reason' by Fassin (2011). A number of researchers use this theory of 'humanitarian reason' and 'the humanitarian space' and it's control and 'shrinking' by states in order to understand how it can be that states which are putatively positive about humanitarianism come to criminalise humanitarians (Basaran 2014, Basaran 2015, Williams 2015, Dadusc and Mudu 2020, Escarcena and Pablo 2021).

Thus, Basaran (2015:52) explains how these theories around the governance of humanitarianism can help us to understand the criminalisation of solidarity activities:

> 'Providing aid to unwanted and often securitised parts of society, such as the homeless, irregular migrants and unwanted minorities, is often rendered more difficult, and even disallowed, at specific sites or under certain circumstances. Narrowing the boundaries of the humanitarian space in the name of security allows for the transformation of ordinary humanitarian acts into security acts with the consequence that those who would usually be deemed Good Samaritans are vulnerable to being criminalised for aiding and abetting in the commission of a crime, for being accomplice to an offence perceived as harmful to society at large'

Basaran also gets at the wide range of activities beyond formal criminalisation that scholars such as Carrera and colleagues (2019) are also interested in capturing. She explains how administrative regulations and barriers, funding arrangements, and other apparently banal measures can be used to remove some actors and some activities from the humanitarian space, or at least limit their activity. She sees this as part of the illiberal activity within liberal governance.

Taylor (2020) draws on William Walters' theory of domopolitics in order to explain the criminalisation of solidarity activities in France, which itself is grounded in Foucault's conceptualisation of modern state power in terms of governmentality. Domopolitics is a theorisation of the practice where the government of a state represents the nation as a home in order to legitimate various actions. This home, of course, must be both welcoming to desired outsiders (hospitality), and secure against unwanted intruders. Taylor explains (2020:504):

> if a nation is to preserve this resource and so remain hospitable, that is, capable of hosting well and guaranteeing the societal and political 'goods' that hospitality can offer, the all-pervasive rationale grounded in such a proposition is that those seeking to benefit from it must be deserving, and they must be as few as possible.'

She argues that French délinquants solidaires are challenging the French state's interpretation of the scope of hospitality within the domopolitical space of France. They are contesting who should be offered hospitality, acting as counter-hosts to the state's interpretation of the responsible host. Hospitality, she argues, has long been important to the French republican tradition, and is of course distinct from solidarity (which is founded on an understanding of sameness, not difference). Taylor argues that the French republican tradition of active democracy, debate and dissent (from the French revolution) means that French citizens are primed to contest state actions or values (Allsopp 2012 also makes this argument). While these claims are potentially undermined, or at least complicated, by French histories of inclusion and exclusion through empire, Taylor's work in this context is the most deeply theorised contribution to the literature included in this review.

7. Historicising crimes of solidarity

In much of the literature there are mentions of historical cases of the criminalisation of solidarity or humanitarian activities, particularly in relation to the smuggling of refugees, but these tend to be brief. For example, a reminder that the facilitation of escape from the Nazis tends now to be remembered as heroic, even though it was illegal and even perhaps involved and exchange of money. Then there is a literature which looks specifically at historical cases without discussing analogous cases in the present. The history of this phenomenon is significant both in terms of theorising what is happening when 'help' is criminalised across time and space, and in assessing the extent to which recent events are new. Migrant solidarity struggles are often temporary though, and may occur below the radar. This means that they do not always leave traces and so might not be found in archives (Tazzioli, 2021). Methodological challenges aside, thinking with histories of various kinds might also aid in developing a deeper understanding of the phenomenon today. For example, Taylor's (2020) work on domopolitics in the French context, while excellent, might be deepened by an engagement with how histories of the French Empire have shaped who is included in conceptions of Frenchness -who belongs. But also who is an 'other' deserving of charitable hospitality rather than being seen as having legitimate claims to co-citizenship.

Brigden (2019) is unusual in offering a direct comparison between past and present. She compares the smuggling of migrants into the US from Mexico today, and the smuggling of enslaved people to Canada and to free states during the period of the slave economy in the US (drawing heavily on the work of Foner 2015 in this latter aspect). The 1850 Fugitive Slave Bill criminalised offering assistance to runaway slaves -transporting or harbouring them- even opening up the possibility of charges of treason for it. In this period slave owners in the southern states represented the Underground Railroad as a well organised plot by mainly white northerners. This has been found to be false in subsequent research. The facilitators of escaped slave movement were local networks which ebbed and flowed in different periods, as well as (often black) individuals acting spontaneously. Brigden (2019:38) explains that while prosecutions of white people acting as 'conductors' did occur (for example Charles Torrey died in prison after helping 400 people escape slavery) 'the most severe punishments for participating in the Underground Railroad were largely born by free blacks and captured runaways, who suffered torture, mutilation and/or death upon capture.'

Harriet Tubman was an African American smuggler who, in undertaking many missions to rescue her family from slavery, also facilitated the migration of hundreds of other escaped slaves to safety in the 1800s. She became known as the 'Moses of her people'. Yet, the Underground railroad has become a 'national identity story' in the US according to Brigden (2019). Here, migration brokers tend to be represented as mainly white Quaker men who are religiously and altruistically motivated, and who were engaged in a highly organised conspiracy (with the notable exception of Harriet Tubman). This focuses the narrative around noble white men even though 'most white Americans acquiesced to and benefited from' slavery (p.34). While the Underground Railroad certainly would have included white participants, it seems highly improbable that white people were the central instigators or agents of escape. While smugglers today are often represented as evil criminals, maybe traffickers, in particular racialised and gendered ways, there is often a much more complex

and nuanced relationship with migrants where they provide a service, often but not always for money, and are at the same time guided by moral and social codes and a sense of commitment and responsibility to their communities. She writes 'racial profiling shapes policing practices, and the criminalisation of smuggling disproportionately impacts the Latino community' (p.32). It may also be interesting to note that the kinds of criminalised solidarity that cause public outrage and are then represented as heroic or humanitarian tend to be activities undertaken by white Americans rather than the solidaristic actions of Latinos.

'Conductors' in the Underground Railroad are now seen as heroes in their stories, and contemporary smugglers as villains in theirs. But, 'both characters do normative work for the State in their respective dramas, concealing how the scene is set by the legal restriction of human liberty and mobility' (Brigden, 2019:31). Brigden suggests that state racism structures both of the stories, and also that focussing on individuals as heroic or criminal smugglers obscures three things: 'the role of the State, the diffuse spontaneity of migration brokerage, and the mixed-motives for participation in that brokerage' (p.30). There are, Brigden argues, surprising similarities in the social relations that underpin smuggling, and foregrounding those highlights the ambiguous position of smugglers as both saviours and people who place others in extreme danger, and the central role of the state in creating the circumstances in which smuggling is necessary for some people to reach safety. Brigden (2019) thus argues that we need to recentre the state in the enforced immobility of enslaved people during the 1800s, and migrants wanting to cross into the US today, when we consider smuggling. In other words, we need to decentre the smugglers, and instead ask why a need, or even a market for smuggling has arisen.

This history of the Underground Railroad in the US has been invoked by different activists over time. First, in the 1980s US Sanctuary movement, which is now a historical case study in its own right (Colbert 1986, Cook 2011), and more recently in the period of the US Trump presidency (Stierl 2019), in both cases by activists involved in supporting people crossing into the US from Mexico (Tazzioli 2021 also briefly mentions the the US Underground Railroad in her discussion of migrant solidarity movements in Europe). According to Colbert (1986) churches were important in the Underground Railroad, just as they have been central to the Sanctuary movement. The 'Seoul Train Underground Railroad' transporting North Korean defectors to South Korea also draws on this history in framing the illicit activities of humanitarians (Song 2013, Song 2017). Stierl (2019:471) observes in his comparative analysis of the response to smuggling into Europe today, and in the period of the Underground Railroad in the US, that in both cases facilitators have been blamed for prompting flight that would not otherwise occur by creating pull factors. In fact, in both instances (echoing Brigden, 2015 here), it is the autonomy of migrants and hidden support structures which facilitate their escape from violence.

8. Gaps in the literature

This review has identified a burgeoning literature on the criminalisation of solidarity, particularly in Europe. There are of course areas for future exploration in research, which this section will focus upon. This is not an exhaustive discussion.

First, there is scope for further research into the categories and boundaries of who becomes involved in helping activities, and who then becomes criminalised. Are there differences between the way people of a migrant background are criminalised and the way citizens are criminalised? Is this criminalisation racialised, gendered or classed? It seems likely that irregular migrants are more likely to be criminalised for helping others, and yet there seems more research and media focus on the criminalisation of citizens. Would it be possible to quantify the differential criminalisation rates? Might we also theorise this phenomenon and the connections between people of different statuses being criminalised?

Second, and relatedly, there is a gap in relation to theorising this phenomenon across geographies. The existing literature reports on the situation in different countries, or across a number of countries or a region but those studies which engage most deeply with theory tend to be single country case studies (Taylor, 2020 is an example). Beyond conceptualising that this phenomenon is an extension of the criminalisation of immigration (crimmigration), how can we think across both time and space, beyond the particular details of individual cases or jurisdictions, and develop understandings of the social, cultural and political convergences which facilitate or give rise to the criminalisation of help. 'Everyday bordering' is a theory which attempts to conceptualise a policy phenomenon and the shifts in society, social relations and affect that emerge from it. Perhaps this might usefully be developed in thinking through some of the consequences of the criminalisation of solidarity and humanitarianism (this connection is mentioned briefly in Carrera, Mitsilegas et al. 2019).

Third, there are many geographical gaps in the literature. Much of the literature that I was able to identify through this study focuses on the European context. While the UN has noted that the legal structures are in place for the criminalisation of solidarity in Asia, I could not find any research which has systematically explored this. Equally, I failed to find any literature on this phenomenon in Central and South America, and only one paper with an African focus (Mengiste 2018). This may be a consequence of the language limitation of this review and is certainly reason to expand the language used in literature searches. But equally, no literature from/on these continents was identified through reviewing UN statements and review documents on this topic. Since the border control activities of European states increasingly reach into Africa, and the same is true of the USA into Central and South America, it seems reasonable to assume that the criminalisation of smuggling here (at least) incorporates criminalising familial, solidarity and humanitarian actions. It may be that while literature in Europe conceptualises a phenomenon as the criminalisation of solidarity, another literature elsewhere conceptualises it in terms of smuggling. This is certainly the case in China. Equally, scholars tend to focus on a country, a number of countries, or states which are members of the European Union. This means that there must be many international contexts which are neglected, but also that links have been left unidentified between the criminalisation of solidarity in different countries beyond Europe.

Fourth, the temporal aspect of the phenomenon, and particularly histories of the criminalisation of solidarity are under-researched beyond the Underground Railroad and the Sanctuary movements in the US. Tazzioli and Walters (2019) argue that solidarity with migrants in Europe, but also more widely, is often understood in spatial terms but the temporal dimension -solidarity and memories of solidarity over time- is less well explored (Tazzioli 2021 being an exception). This could also be argued in relation to our

understanding of the criminalisation of differet types of help. The spatial aspects of this phenomenon in the very recent past tend to be the primary focus, neglecting longer time horizons. Could an analysis that explores the criminalisation of solidarity over time garner deeper insight? If we combine the temporal and the spatial to explore trends in the criminalisation of solidarity globally over time, what might we find?

Relatedly, Tazzioli and Walters (2019) argue that there are three underexplored aspects of solidarity work, one of which addresses temporality. But it seems that these three aspects might usefully be flipped in analysing the *criminalisation* of solidarity:

1. The time-space of (the criminalisation of) solidarity. What are the histories that might help us understand this phenomenon?
2. The work of (criminalising) solidarity. Not only is maintaining solidarity activities hard work, but criminalising solidarity is also a lot of work and is very expensive for states. What is the work that is required to achieve criminalisation of a non-criminal group in a given society? Why are states prepared to do this work?
3. The others of (criminalising) solidarity. Who are those who monitor and hold states to account for criminalising solidarity? Perhaps solidarity activists, academics, the UN, human rights lawyers, and a plethora of concerned citizens.

Finally, there is a growing body of work on the use of new technologies for tracking, monitoring and disciplining migrants and refugees but the use of technology in tracking and identifying people who are criminalised for helping others tends to be a peripheral aspect of the research reviewed here. Technology is known to have been used in phone tapping, in monitoring social media communications, in tracking ships at sea, and mountain rescuers in the Alps. If we systematically explored the criminalisation of solidarity from the perspective of technology and its uses and applications, what might we find?

9. Conclusion

This literature review has focused on English language academic literature, political (e.g. parliamentary), International NGO (non-governmental organisation), and national NGO reports discussing the *criminalisation* of people who help irregular migrants. Three books, 34 academic journal articles, and 20 reports of various kinds, 6 book chapters, and 4 working papers have been reviewed. The review has covered competing conceptualisations of crimes and criminalisation, and the legal context internationally and regionally. Two sets of country case studies, first within Europe and then beyond, have been discussed, recognising that research has also been undertaken in other countries. I discussed the conceptualisation of smuggling specifically in this context, and how the literature shows that a broad conceptualisation of smuggling enables states to criminalise humanitarian activities. The consequences of criminalising this kind of humanitarian activity were discussed, as was the ways in which researchers have theorised this phenomenon. Some examples of where the literature engages with history have been described, with a particular emphasis on the common invocation of the US Underground Railway. Some gaps in the literature have been identified -primarily spatial, temporal and theoretical. These might fruitfully be explored in the coming years.

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