

Dear Readers – I look forward to your thoughts on this book chapter! This is the first draft of a book chapter that I’ve been asked to write on the international legal concept of solidarity from a migration perspective. The chapter has a 10,000 word limit, but I plan to write additional works on solidarity and migration, so I’d welcome your thoughts on what should stay in this chapter and what should be moved to a separate paper. Likewise, while I don’t have much space to expand this chapter, I’d welcome your thoughts on areas of the paper that would benefit from further excavation. Thank you for reading the draft chapter, and I look forward to engaging with you!

FORGING SOLIDARITY

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[word limit: 10,000]

What is international solidarity and how do we achieve it? International solidarity is a principle and a right, a duty and a mind-set.² This chapter grapples with the concept of solidarity, which is a broad and contestable term subject to many meanings and interpretations. Indeed, it is the very malleability of the concept that makes it fertile ground for both this edited volume and a broader conversation among international law’s communities of scholars and policy-makers. Among other possibilities, international solidarity as a principle and a right has the potential to address structural inequalities and asymmetries in the international arena. This edited volume has the potential to begin to solidify and concretize the concept of solidarity. To that end, this chapter aims to expand our understanding of who solidarity actors are in the migration context and to demonstrate the

¹ Associate Dean for Research and I. Herman Stern Research Professor, Temple Law School. Many thanks to Amy Chin-Arroyo for outstanding research assistance in the midst of a global pandemic and to Sophia for sharing her mom to work on this project; to Cecilia Marcela Bailliet and the contributors to this edited volume [list names] for their helpful feedback on an early version of this chapter; to Obi Okafor for his work as the Independent Expert on human rights and international solidarity and especially for helpful conversations around solidarity and migration; and to the other members of the Expert Advisory Group to the UN Independent Expert on International Solidarity, Cecilia Bailliet (Chair), Obijafor Aginam, Mihir Kanade, and Vesselin Popovski, whose deep knowledge and thoughtful insights on the Draft Declaration have informed many of the ideas in this chapter. I should note that the contents of this chapter should be attributed to me alone in my capacity as an academic and should not be taken as a statement of the views of the Independent Expert or the Expert Advisory Group. Thanks also to Violeta Moreno-Lax for her excellent work on the concept of solidarity as it relates to migrants in the EU, which has been invaluable in the drafting of this article.

² U.N.G.A., *Report of the Independent Expert on human rights and international solidarity*, Obiora Chinedu Okafor, A/73/206 at Para. 50 (July 20, 2018).

value of the solidarity method of ensuring meaningful participation in decision-making by those impacted by decisions.³

The context of global migration demonstrates particularly clearly the contestation around the content of international solidarity as a concept.⁴ In this sphere, there is a stark contrast between positive solidarity that enhances the welfare of migrants and negative solidarity that seeks to exclude migrants, exacerbating their vulnerability to a range of forms of violence.⁵ The chapter argues that positive solidarity depends on a culture of solidarity to sustain it in the face of negative solidarity and anti-solidarity measures, and considers the role of international law in building institutions that support that culture. Drawing from the stories of several Central American migrants transiting through Mexico and their Mexican facilitators, it examines the invocation of solidarity as a concept by migrants and their facilitators in the Global South, assessing the ways in which international solidarity as a principle, a duty, and a right might enable and nourish a culture of solidarity.

This chapter begins from a recognition of the limitations of international human rights law in protecting migrants in vulnerable situations. The law on paper lacks the full range of rights that migrants need to safeguard their interests; in practice, even these inadequate protections are not effectively enforced.⁶ The work of solidarity is performed through its ability to shift mind-sets from a focus on individual rights enforceable against or by a state to an emphasis on the obligations that we owe to each other as human beings. In other words, rather than asking how individual migrants on precarious journeys can access and enforce the right to life, a solidarity approach would emphasize the duty of transit states to enable migrants' right to life as well as the obligations of substate and nonstate actors they encounter on their journey to provide life-sustaining support.⁷ A solidarity approach is particularly important for irregular migrants, who are unable to exercise political rights in countries of transit and destination and, due to their precarious status, often

³ U.N. Human Rights Council, *Draft declaration on the right to international solidarity*, A/HRC/35/35 Annex (25 Apr. 2017).

⁴ Violeta Moreno-Lax, *Solidarity's reach: Meaning, dimensions and implications for EU (external) asylum policy*, 24(5) MAASTRICHT J. EUR'N AND COMP. L. 740, 741 (2017).

⁵ U.N.G.A., *Report of the Independent Expert on human rights and international solidarity*, Obiora Chinedu Okafor, A/73/206 at Paras. 6-9 (July 20, 2018).

⁶ Jaya Ramji-Nogales, *Undocumented Migrants and the Failures of Universal Individualism*, 47 VAND. J. TRANSNAT'L L. 699 (2014).

⁷ U.N.G.A., *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnes Callamard: Unlawful death of refugees and migrants*, A/72/335 (Aug. 15, 2017).

unable to access and enforce civil rights, let alone social and economic rights.⁸ In other words, law alone is inadequate to protect migrants, though law and legal mechanisms may be put to work to enable a culture of solidarity that may be more effective at instituting those protections. This chapter seeks to understand how international law might forge solidarity, recognizing that when it comes to migrants, the political must precede or at least accompany the legal.

What is international solidarity?

The concept of solidarity as an international legal right has been discussed and debated for at least four decades, and of course the idea of solidarity has a far longer history and broader contemporary meaning beyond the law.⁹ To take just one example, in the context of irregular migration, anthropologist Catherine Panter-Brick defines “combative solidarity” as collective efforts to fight criminalization and incarceration of migrants; “nationalistic solidarity” as the shared goal of protecting the frontier through policing; and “faith-based solidarity” as common physical, emotional, and spiritual journeys.¹⁰ Both beyond and within the law, the meaning of solidarity is heavily contested.¹¹

To define international solidarity as a legal concept, this chapter begins from the Draft Declaration on the right to international solidarity and statements of the Independent Experts on human rights and international solidarity.¹² The Draft Declaration is derived from three main international legal sources: the U.N. Charter, the Universal Declaration of Human Rights, and international human rights treaties.¹³ In international law, solidarity has been conceptualized as a principle, a right, and a duty. The current Independent Expert, Obiora Okafor, contributes solidarity as a mind-set to the definition. The concept of solidarity is also invoked in regional organizations such as the African

⁸ Special Rapporteur on the Human Rights of Migrants, *Right to freedom of association of migrants and their defenders*, Para. 25, UN Doc No. A/HRC/44/42 (May 13, 2020).

⁹ The concept of solidarity as an international legal right is often credited to Karel Vasak, who discussed the idea in his publication, *A 30-Year Struggle*, THE UNESCO COURIER 29 (1977). The idea of solidarity is often linked to the concept of *fraternité* which was part of a famous motto first proposed during the French revolution.

¹⁰ Catherine Panter-Brick, *Solidarity, Social Justice, and Faith: Humanitarian Action on the U.S.-Mexico Border*, 34(4) J. REFUGEE STUDIES 3689, 3696 (2021).

¹¹ Human rights and international solidarity, Working paper submitted by Rui Baltazar Dos Santos Alves, E/CN.4/Sub.2/2004/43, 15 June 2004.

¹² U.N. Human Rights Council, *Draft declaration on the right to international solidarity*, A/HRC/35/35 Annex (25 Apr. 2017).

¹³ U.N.G.A., *Report of the Independent Expert on human rights and international solidarity, Virginia Dandan: Human Rights and International Solidarity*, A/72/171 at ¶¶ 22-23 (July 19, 2017). SEE ALSO A/70/316 and A/71/280

Union, the European Union, and the Organization of American States.¹⁴ This chapter examines the use of solidarity laid out in Treaty on the Functioning of the European Union as an example of negative solidarity that undermines international protection of migrants.¹⁵

International solidarity can be understood as a foundational principle of international law that, while according primacy to human rights, extends to all aspects of international law and cooperation.¹⁶ In terms of actors, solidarity is an unusual creature in international law as its subject is not only states but also peoples, “communities, groups and individuals,” “civil society [and] global social movements” as well as international organizations.¹⁷ The principle of solidarity has been defined as “the expression of a spirit of unity” and “a communion of responsibilities and interest” among these various actors, “encompassing the union of interests, purposes and actions and the recognition of different needs and rights to achieve common goals.”¹⁸ Those common goals include the elimination of inequity across and inside states; the promotion of peace and security, development, and human rights by states and non-state actors; and the realization of “all human rights and fundamental freedoms.”¹⁹

In order to operationalize this principle, international solidarity has also been defined as a human right. The original understanding of solidarity set out by Karel Vasak was as a set of “third-generation human rights” that incorporated the right to development, the right to a healthy environment, the right to peace, and the right to ownership of the common heritage of

¹⁴ Cite EAG report here?

¹⁵ TFEU Art. 67, The European Union “shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals.” https://eur-lex.europa.eu/resource.html?uri=cellar:9e8d52e1-2c70-11e6-b497-01aa75ed71a1.0006.01/DOC_3&format=PDF

¹⁶ U.N.G.A., *Report of the Independent Expert on human rights and international solidarity, Virginia Dandan: Human Rights and International Solidarity*, A/72/171 at ¶¶ 22-23 (July 19, 2017).

¹⁷ Report of the Independent Expert on human rights and international solidarity, Obiora Chinedu Okafor, A/73/206 at Para. 6 (July 20, 2018). International solidarity “refers to both solidarity between and among States and solidarity across borders between and among communities, groups and individuals.” Draft declaration on the right to international solidarity, A/HRC/35/35, Annex at Art. 1(1) (Apr. 25, 2017). Resolution adopted by the Human Rights Council 15/13, Human rights and international solidarity, A/HRC/RES/15/13 (Oct. 6, 2010) (32 votes in favor, 14 votes against: Belgium, France, Hungary, Japan, Norway, Poland, Republic of Korea, Republic of Moldova, Slovakia, Spain, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America)

¹⁸ Draft declaration on the right to international solidarity, A/HRC/35/35, Annex (Apr. 25, 2017); Human rights and international solidarity, Working paper submitted by Rui Baltazar Dos Santos Alves, E/CN.4/Sub.2/2004/43, at para. 22, 15 June 2004.

¹⁹ Draft declaration on the right to international solidarity, A/HRC/35/35, Annex at Art. 3 (Apr. 25, 2017). *See also* Report of the independent expert on human rights and international solidarity, Rudi Muhammad Rizki, A/HRC/15/32 (July 5, 2010), noting that solidarity has many meanings, including international solidarity in international forums to promote humanitarian assistance in natural disasters, poverty alleviation, and the right to development.

humankind.”²⁰ Philip Alston critiqued this narrow approach to the right of solidarity as potentially devaluing existing rights and obfuscating rather than clarifying the availability of certain rights.²¹ Contemporary legal instruments have set aside this “third-generation of human rights” approach, offering a broader and clearer definition of the international right to solidarity. Even so, the contents of the solidarity right and particularly its enforcement remain slippery and challenging to articulate given the broad range of actors implicated and the nature of the right.

International solidarity is by design distinctive from the contemporary approach to international human rights as enforceable claims by or on behalf of individuals against states. International solidarity implicates deep internalization of obligations that we owe each other by virtue of being human.²² The challenge of traversing the chasm between these two positions is clear. It is highly unlikely that individual enforcement can lead to robust internalization; there is a profound methodological mismatch. Solidarity depends on human connection and motivation; looking to humanity, vulnerability, autonomy, and emancipation, it resets the framework through which individuals understand the obligations they owe each other. Mapping individual enforcement and accountability onto that structure is at best challenging and at worst impossible. This chapter aims to chart a path through which international law’s rights-based approach can support and sustain a culture of solidarity, which may be the closest one can come to traversing the chasm.

From that starting point, several provisions of the Draft Declaration can be useful in nurturing a culture of solidarity. The general definition of the right to solidarity offers an emancipatory framing, describing it as “a human right by which individuals and peoples are entitled, on the basis of equality and non-discrimination, to participate meaningfully in, contribute to and enjoy a social and international order in which all human rights and fundamental freedoms can be fully realized.”²³ This participatory method is particularly useful in connecting the concept of solidarity with the structure of rights. It is further expounded as a duty of states to “ensure the meaningful participation of individuals and peoples in decision-making processes at the national, bilateral,

²⁰ Karel Vasak, *A 30-Year Struggle*, THE UNESCO COURIER 29 (1977). See also Human rights and international solidarity, Working paper submitted by Rui Baltazar Dos Santos Alves, E/CN.4/Sub.2/2004/43, 15 June 2004 (describing solidarity rights as including the right to a healthy environment, peace, food security, ownership of the common heritage of humankind, and the right to communication.)

²¹ Philip Alston, *A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights Law?*, 29(3) NETHERLANDS INT’L L. REV. 307 (1982).

²² Discuss Jinks and Goodman, *Socializing States?* Tom Tyler?

²³ Draft declaration on the right to international solidarity, A/HRC/35/35, Annex (Apr. 25, 2017). Art 4(1).

regional, and international levels on matters that affect their lives.”²⁴ As I have argued elsewhere, in the context of global migration, in order to theorize, prioritize, and operationalize human rights, drafters must learn from migrants themselves as well as their facilitators on the Global South, which is where most migrant journeys occur.²⁵ This approach can be conceptualized as an epistemology of solidarity that requires interrogation and expansion/redistribution of the sites of knowledge production.

The concept of international solidarity maps perhaps most closely onto the right of association, which is laid out in international human rights instruments.²⁶ The Draft Declaration emphasizes the associational and transnational nature of the right to solidarity as well as its specific applicability to migrants.²⁷ The Special Rapporteur on the Human Rights of Migrants emphasizes the importance of these associational rights for migrants, explaining that,

[a]llowing migrants to organize empowers migrant communities to care for their own needs directly rather than relying on the advocacy and support of others. As migrants have better access to their peers and understanding of the challenges they face, their collective response to problems is often more effective than that of others.²⁸

In other words, the protection of migrants’ associational rights is key to enabling a culture of solidarity which can in turn generate more meaningful responses to obstacles faced by migrants.

The duty of international solidarity is perhaps a more apt match for the concept of solidarity than the right itself. The Draft Declaration accords to states the duty to realize the right to international solidarity and also extends the duty to respect the right to international organizations and non-state

²⁴ Draft declaration on the right to international solidarity, A/HRC/35/35, Annex (Apr. 25, 2017). Art 7(5).

²⁵ Jaya Ramji-Nogales, *Undocumented Migrants and the Failures of Universal Individualism*, 47 VAND. J. TRANSNAT’L L. 699 (2014). Cite Gabriella Sanchez on facilitators.

²⁶ International Covenant on Civil and Political Rights at Art 22(1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. ADD IN REFUGEE CONVENTION, OTHER SOURCES – ILO?

²⁷ Draft declaration on the right to international solidarity, A/HRC/35/35, Annex (Apr. 25, 2017). Art(5): Individuals and peoples, regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status, have the right, individually and in association with others, within or beyond their territories and national boundaries, to claim the right to international solidarity, with particular reference to indigenous peoples, minorities, migrants, refugees and other groups, such as civil society groups and other organizations.

²⁸ Special Rapporteur on the Human Rights of Migrants, *Right to freedom of association of migrants and their defenders*, Para. 34, UN Doc No. A/HRC/44/42 (May 13, 2020).

actors.²⁹ This expansion of responsible actors is important both in addressing the realities of the contemporary world and also in shifting away from an individual accountability model towards an internalization frame. That said, the responsibility still falls to states to implement the right to international solidarity through a legal framework, reverting to the individual accountability model.³⁰ A true shift to a solidarity model would require further rethinking of the locus of responsibility and how to effectuate solidarity in non-state actors in particular. Again, the enforcement of the right to solidarity might play a role in encouraging and supporting solidarity, but the central move must be cultural, enabling a shift in mind-set.

Migration Law: Negative Solidarity and Anti-Solidarity

The malleability of the concept of solidarity holds both promise and peril. This section explores the downsides of legal solidarity in the migration context, discussing a problematic type of solidarity, namely negative legal solidarity, and a harmful response to solidarity, namely anti-solidarity law and policy. Negative forms of solidarity surface in the migration sphere in the form of cooperation towards nationalistic and xenophobic ends – keeping migrants out even at the cost of their lives. To understand negative solidarity as a legal concept, this chapter examines the common external border policies of the European Union, which are identified in regional law as a component of European solidarity.³¹ The plasticity of the term solidarity has enabled European actors to invoke solidarity within the EU in support of legal and policy actions that are harmful to migrants, undermining external solidarity. While many migrant destination countries have draconian border enforcement regimes, the European Union is unique in linking its border enforcement regime to the concept of solidarity. Separate from negative solidarity, anti-solidarity law seeks to punish individuals and organizations that facilitate the movement of migrants, including entry, transportation, and “the provision of basic necessities of life, such as food, water

²⁹ Draft declaration on the right to international solidarity, A/HRC/35/35, Annex (Apr. 25, 2017). Art(6)

³⁰ Draft declaration on the right to international solidarity, A/HRC/35/35, Annex (Apr. 25, 2017). Art 8(1): States shall establish an appropriate institutional framework and adopt domestic measures, legislative or otherwise, to give effect to the right to international solidarity and to ensure that actions and omissions by States and non-State actors do not adversely affect the exercise and full enjoyment of human rights.

³¹ TFEU Art. 67. *See also* TFEU Art. 80, stating that shared policies on border checks, asylum, and immigration “shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.” The TFEU provisions relating to such shared policies are laid out in Arts. 77-79. https://eur-lex.europa.eu/resource.html?uri=cellar:9e8d52e1-2c70-11e6-b497-01aa75ed71a1.0006.01/DOC_3&format=PDF

and shelter, to such migrants.”³² These punitive measures taken may take the form of criminal sanctions under domestic law, and also include a broad range of state actions to discourage humanitarian solidarity with migrants. Though transnational criminal law on migrant smuggling limits its penalties to individuals who facilitate migration for financial or material gain, laws implementing its carceral approach have enabled the use of anti-solidarity law and policy against humanitarian actors assisting migrants.

Solidarity in furtherance of shared goals depends on identification and affinity with others; the risk of course is that the formation of a solidarity community may be a line-drawing exercise that depends on the construction of out-groups who are the subject of negative solidarity.³³ The Treaty on the Functioning of the European Union (TFEU), for example, places common external border policies squarely within the frame of EU solidarity. The language of the TFEU implies that the free movement area within the EU depends on the enforcement of shared external border controls.³⁴ Solidarity “is primarily understood as responsibility sharing between [Member States], rather than vis-à-vis non-State humanitarian actors,” let alone migrants themselves.³⁵ The broad and vague language denoting border control as solidarity permits and perhaps encourages national border enforcement laws and policies that are harmful to asylum seekers.³⁶

Solidarity is also invoked in EU law around refugee responsibility sharing, particularly the Dublin Regulation and the New Pact on Migration and Asylum.³⁷ In 2016, the Commission assessed the Dublin Regulation, which requires asylum seekers to file their claim in the first EU country they

³² Report of the Independent Expert on human rights and international solidarity, Obiora Chinedu Okafor, A/73/206 at Para. 9 (July 20, 2018).

³³ Moreno-Lax, *supra* n. 4 at 744-45.

³⁴ TFEU Art. 67, The European Union “shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals.” https://eur-lex.europa.eu/resource.html?uri=cellar:9e8d52e1-2c70-11e6-b497-01aa75ed71a1.0006.01/DOC_3&format=PDF

³⁵ Violeta Moreno-Lax et al., *The EU Approach on Migration in the Mediterranean*, Study Requested by the Committee on Civil Liberties, Justice and Home Affairs, commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs, Directorate-General for Internal Policies, at 99 (June 2021).

³⁶ Violeta Moreno-Lax et al., *The EU Approach on Migration in the Mediterranean*, Study Requested by the Committee on Civil Liberties, Justice and Home Affairs, commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs, Directorate-General for Internal Policies, at 99 (June 2021).

³⁷ Moreno-Lax, *supra* n. 4 at 753 (critiquing the Dublin system as shifting rather than sharing responsibility for refugees, thereby undermining solidarity).

enter, and found it lacking in terms of solidarity between member states.³⁸ In the face of an influx of asylum seekers from Syria and elsewhere in 2014 and 2015, front-line states with less well-resourced asylum systems heard most claims; in short, solidarity failed. In 2020, the European Commission responded by presenting the New Pact on migration and asylum, a package of guidance, proposals, and recommendations with the central aim of forging solidarity between member states.³⁹ The New Pact has been criticized as a “bad compromise” that fails to ensure solidarity among member states in terms of refugee responsibility sharing within the EU at the same time that it fails to create protective solidarity with asylum seekers and migrants, instead acting as a containment strategy.⁴⁰ At the time of writing, the New Pact has made no progress towards becoming binding law. Though the negative solidarity arising from the Dublin Regulation could arguably be described as a failure of solidarity that contravenes European Values, the New Pact appears to be an example of negative solidarity.⁴¹ A culture of solidarity is nowhere to be found, neither between member states nor with migrants.

Turning to anti-solidarity, the criminalization of migration facilitation at a transnational level appears to have encouraged the development of laws and policies that seek to prohibit humanitarian assistance for migrants. The UN Protocol against Migrant Smuggling by Land, Sea and Air, along with its sister protocol on human trafficking, construct a carceral approach to the

³⁸ European Commission, Directorate-General of Home Affairs, *Final Implementation Report for the Evaluation of Regulation EU No 604/2013 (Dublin III)* (18 March 2016)

³⁹ New Pact on migration and asylum https://ec.europa.eu/info/publications/migration-and-asylum-package-new-pact-migration-and-asylum-documents-adopted-23-september-2020_en; Philippe de Bruycker, *The New Pact on Migration and Asylum: What it is Not and What it Could Have Been*, in REFORMING THE COMMON EUROPEAN ASYLUM SYSTEM 33, 35 (Daniel Thym, ed., 2022), <https://www.nomos-elibrary.de/10.5771/9783748931164-33/the-new-pact-on-migration-and-asylum-what-it-is-not-and-what-it-could-have-been?page=1> (explaining that, “Solidarity is . . . the most important element of the New Pact.”)

⁴⁰ Philippe de Bruycker, *The New Pact on Migration and Asylum: What it is Not and What it Could Have Been*, in REFORMING THE COMMON EUROPEAN ASYLUM SYSTEM 33, 36 (Daniel Thym, ed., 2022), <https://www.nomos-elibrary.de/10.5771/9783748931164-33/the-new-pact-on-migration-and-asylum-what-it-is-not-and-what-it-could-have-been?page=1>; Violeta Moreno-Lax, *Towards a Thousand Little Morias: The EU (Non-)Rescue Scheme - Criminalising Solidarity, Structuralising Defection*, in REFORMING THE COMMON EUROPEAN ASYLUM SYSTEM 161, 162 (Daniel Thym, ed., 2022) <https://www.nomos-elibrary.de/10.5771/9783748931164-161/towards-a-thousand-little-morias-the-eu-non-rescue-scheme-criminalising-solidarity-structuralising-defection> (explaining that, “the focus—as with much of the New Pact—is neither on the protection of seaborne migrants and refugees nor on the elimination of the structural factors that push them to take the sea to reach safety in the first place. The main concern is with managing mixed flows and countering irregular arrivals on consideration that ‘[d]angerous attempts to cross the Mediterranean continue to bring great risk and fuelling criminal networks’.”)

⁴¹ Moreno-Lax, *supra* n. 4 (arguing that argued that Dublin contravenes Arts. 3(5) and 21 of TEU and that this is a failure of solidarity rather than negative solidarity).

facilitation of human movement.⁴² The Smuggling Protocol limits its applicability to those who seek “a financial or other material benefit” from the facilitation of entry of undocumented migrants, though of course that category can be blurry.⁴³ The UN Global Compact for Safe, Orderly and Regular Migration, which seeks to reinforce the Smuggling Protocol, does so without defining transnational crime clearly.⁴⁴ Rather than focusing on large-scale smuggling operations that abuse and exploit migrants, these international documents leave open space for states to criminalize all types of migrant facilitation, even if performed for humanitarian purposes.⁴⁵

In Europe, individual member states have enforced anti-solidarity laws against those who seek to assist migrants with increasing ferocity. Humanitarian actors seeking to aid migrants in the Mediterranean have faced “policing, intimidation and establishment of administrative sanctions or criminal proceedings” against them.⁴⁶ France, Malta, Croatia, and especially Greece and Italy have increasingly instituted investigations of and criminal charges against humanitarian workers and volunteers in recent years.⁴⁷ These aid workers face a range of charges, starting with crimes of facilitation of entry, transit, and residence and extending to money laundering, membership in a criminal organization, and espionage.⁴⁸ The facilitation charges are enabled by EU law that

⁴² Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime, Jan. 28, 2004, 2241 U.N.T.S. 507

⁴³ Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime, Arts. 3, 6, Jan. 28, 2004, 2241 U.N.T.S. 507

⁴⁴ UN Global Compact for Safe, Orderly and Regular Migration, A/RES/73/195 (2019). Violeta Moreno-Lax et al., *The EU Approach on Migration in the Mediterranean*, Study Requested by the Committee on Civil Liberties, Justice and Home Affairs, commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs, Directorate-General for Internal Policies, at 100-101 (June 2021).

⁴⁵ Violeta Moreno-Lax et al., *The EU Approach on Migration in the Mediterranean*, Study Requested by the Committee on Civil Liberties, Justice and Home Affairs, commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs, Directorate-General for Internal Policies, at 101 (June 2021).

⁴⁶ Violeta Moreno-Lax et al., *The EU Approach on Migration in the Mediterranean*, Study Requested by the Committee on Civil Liberties, Justice and Home Affairs, commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs, Directorate-General for Internal Policies, at 94 (June 2021); Obiora Chinedu Okafor, *On the Legality Under International Law of the Criminalization or Suppression of the Expression of Solidarity to Refugees*, ASIL PROCEEDINGS 102, 103 (2020).

⁴⁷ Alessandro Reggio and Michelle Mittelstadt, *Pushback to the Resistance: Criminalization of Humanitarian Actors Aiding Migrants Rises*, MIGRATION INFORMATION SOURCE (Dec. 2018), <https://www.migrationpolicy.org/article/top-10-2018-issue-5-pushback-resistance-criminalization-humanitarian-actors-aiding>

⁴⁸ Violeta Moreno-Lax et al., *The EU Approach on Migration in the Mediterranean*, Study Requested by the Committee on Civil Liberties, Justice and Home Affairs, commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs, Directorate-General for Internal Policies, at 95 (June 2021). Alex W. Palmer, *They Came to Help Migrants. Now, Europe Has Turned on Them*, N.Y. TIMES MAGAZINE (Mar. 2, 2022).

broadly criminalizes facilitation of migration, even when not for profit.⁴⁹ Humanitarian workers in the Mediterranean region have also been subject to police investigations and detentions, seizure of aid vessels, confiscation of medical supplies, and appropriation of humanitarian provisions including basic food preparation and housing equipment.⁵⁰ The COVID-19 pandemic has enabled a new set of administrative sanctions around public health and safety.⁵¹

Anti-solidarity law and policy in the form of criminalization of humanitarian actors in the migration sphere has also been on the upswing in the United States in recent years.⁵² One prominent example was the prosecution of Scott Warren, a geography teacher in Tucson, Arizona, whose organization, No More Deaths, provides water and first aid supplies to migrants walking through treacherous portions of the desert.⁵³ Warren was prosecuted for providing food, water, clean clothing, and a place to rest to two Central American men who had recently crossed the border.⁵⁴ The Trump administration charged him with two felonies: harboring and conspiring to transport undocumented immigrants.⁵⁵ Though Warren was ultimately acquitted, his well-publicized experience was just part of a broader “campaign of intimidation, threats, harassment, and criminal investigations against people who defend the human rights of migrants, refugees and asylum seekers on the US–Mexico border.”⁵⁶ In addition to prosecutions, humanitarian actors and

⁴⁹ Violeta Moreno-Lax et al., *The EU Approach on Migration in the Mediterranean*, Study Requested by the Committee on Civil Liberties, Justice and Home Affairs, commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs, Directorate-General for Internal Policies, at 96-97 (June 2021); Obiora Chinedu Okafor, *On the Legality Under International Law of the Criminalization or Suppression of the Expression of Solidarity to Refugees*, ASIL PROCEEDINGS 102, 104-05 (2020).

⁵⁰ Violeta Moreno-Lax et al., *The EU Approach on Migration in the Mediterranean*, Study Requested by the Committee on Civil Liberties, Justice and Home Affairs, commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs, Directorate-General for Internal Policies, at 105 (June 2021).

⁵¹ Violeta Moreno-Lax et al., *The EU Approach on Migration in the Mediterranean*, Study Requested by the Committee on Civil Liberties, Justice and Home Affairs, commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs, Directorate-General for Internal Policies, at 105 (June 2021).

⁵² Tania Karas, *Crimes of compassion: US follows Europe's lead in prosecuting those who help migrants* (June 2019), <https://theworld.org/stories/2019-06-06/crimes-compassion-us-follows-europes-lead-prosecuting-those-who-help-migrants>

⁵³ <https://www.washingtonpost.com/nation/2019/11/21/arizona-activist-scott-warren-acquitted-charges-helping-migrants-cross-border/>

⁵⁴ <https://www.washingtonpost.com/nation/2019/11/21/arizona-activist-scott-warren-acquitted-charges-helping-migrants-cross-border/>

⁵⁵ <https://www.washingtonpost.com/nation/2019/11/21/arizona-activist-scott-warren-acquitted-charges-helping-migrants-cross-border/>

⁵⁶ <https://www.amnesty.org/es/documents/amr51/0583/2019/en/>

lawyers working in solidarity with migrants have been subject to surveillance, warrantless searches of their smartphones and computers, interrogations, detention, threats, and travel restrictions.⁵⁷

Though the challenges facing solidarity actors working with migrants in the Global North have been well documented and publicized, the obstacles encountered by migrant facilitators working in the Global South are seldom discussed in the popular media or the legal literature. The voices of migrants themselves and the solidarity work they do for each other are even more invisible. This chapter aims to foreground some of that work and some of those challenges, though much more remains to be done to effectively shift the sites of solidarity knowledge production into locations in the Global South where the majority of migrants are located.

Forging Solidarity

In the face of negative solidarity and anti-solidarity, this chapter seeks to identify how a culture of solidarity can be forged. Stepping away from examples from the Global North, which are the most common focus of the academic literature on solidarity and migration, this chapter turns to the Global South to locate lessons on how to build solidarity from the ground up. It aims to develop an epistemology of solidarity, which can perhaps be understood using solidarity as method. This chapter starts from the spaces where migrants' journeys occur – transit countries in the Global South – and from the individuals who facilitate that travel at great cost to themselves. It focuses on actors that are often overlooked in narratives on solidarity about migrants – the working poor in the Global South and migrants themselves. The chapter argues that an effective approach to solidarity must start by engaging migrants and their stories; those most impacted by laws and policies on migration are the best placed to craft a political solution.

Migrants and their facilitators in the Global South depend on solidarity to enable migrant journeys. This chapter seeks to learn what solidarity means to these actors, and which aspects of solidarity are most important to their movement and facilitation, in order to understand how a culture of solidarity can be forged and what role law might play. Starting with migrants, they need solidarity because they cannot exercise political rights in countries of transit and destination.⁵⁸ Though civil

⁵⁷ <https://www.amnesty.org/es/documents/amr51/0583/2019/en/>; <https://www.propublica.org/article/documents-show-trump-officials-used-secret-terrorism-unit-to-question-lawyers-at-the-border>; ADD IACHR AND OTHER INFORMATION

⁵⁸ Add cite to Spec. Rap on HR of Migrants.

rights attach to undocumented migrants under international human rights law,⁵⁹ the threat of deportation is often an insurmountable obstacle to the availability of those rights. Migrants themselves, then, might seek solidarity in terms of the right to organize and craft collective responses to increase their political power. They might also seek solidarity in terms of support from those who do have political rights. Of course, even with those forms of solidarity, individual actors from the Global South will not be able to dismantle the global structures of inequality that push individuals to migrate; that task requires the participation of governments and corporations in the Global North that have created and perpetuate those structures.

In order to understand how to forge a culture of solidarity, this chapter presents several narratives of Central Americans in transit through Mexico and Mexicans who offer humanitarian aid to those migrants. It seeks to learn how the migrants themselves have forged solidarity and how Mexicans have offered solidarity even at great personal risk, identifying the solidarity supports that enable humanitarian actors to continue their solidarity work with migrants. [ADD MORE ROADMAP HERE]

Central Americans have been journeying through Mexico to reach the United States for decades. This journey has become increasingly filled with danger, violence, and uncertainty, especially since the Mexican government began Programa Frontera Sur in 2014. The onset of the COVID-19 pandemic since March 2020 has only made the journey more dangerous, as numerous shelters and services previously available to migrants have scaled back or shut down and the Mexican government diverts its attention and resources to combatting COVID-19. Even so, migration north appears to be increasing since President Biden took office.⁶⁰

On the journey north, migrants routinely face extortion, harassment, and violence from police, security forces, and gangs. Additional risks include being detained, deported, robbed, beaten, raped, trafficked, and killed.⁶¹ Those riding the trains northward risk losing limbs, and even death, if they fall and are run over by the train. In addition to safety concerns, finding adequate food,

⁵⁹ Obiora Chinedu Okafor, *On the Legality Under International Law of the Criminalization or Suppression of the Expression of Solidarity to Refugees*, ASIL PROCEEDINGS 102, 108-12 (2020).

⁶⁰ <https://www.jornada.com.mx/notas/2021/03/01/estados/se-triplica-la-llegada-de-migrantes-al-refugio-la-72-en-tabasco/>; <https://catholicphilly.com/2021/04/news/world-news/migrants-face-hazards-smugglers-extortion-on-road-to-u-s/>.

⁶¹<https://www.latimes.com/espanol/mexico/articulo/2021-04-05/en-tres-anos-van-2-mil-823-asesinatos-de-migrantes-en-estados-del-sur-de-mexico>.

clothing, transportation, and shelter throughout the journey is an ongoing struggle. While those with sufficient funds are able to pay a *coyote* to arrange travel and accommodation through Mexico or pay for food and lodging at hostels, hotels, and restaurants, the poorest Central American migrants must fend for themselves and improvise their way northward—walking, riding the rails, hitching rides; sleeping on the street or in shelters and safehouses; begging for food or money or hunting for odd jobs to pay for food and shelter.

Migrant shelters—the majority of which are affiliated with the Catholic Church or other Christian denominations—have sprung up along common migrant routes throughout Mexico. Shelters are much-needed oases of safety and support, providing a welcome respite from the dangers of migration.⁶² Since Programa Frontera Sur’s implementation, Mexico has seen a dramatic increase in migrant shelters. In 2017, “the International Organization for Migration reported a total of 78 houses and shelters for migrants in Mexico[,]”⁶³ a 44% increase from the approximately 54 migrant shelters that existed five years prior.⁶⁴ Since the onset of the COVID-19 pandemic, the majority of Mexico’s migrant shelters have closed due to health laws.⁶⁵ As political scientist Noelle Brigden has noted, it is difficult to precisely ascertain the exact number of migrant shelters in Mexico because shelters open and close⁶⁶ in response to changing circumstances.⁶⁷

Although the Mexican Supreme Court decriminalized humanitarian aid to migrants in 2008⁶⁸ and “[t]he Migration Law in Mexico outlines an ‘unrestricted respect for the human rights of ...

⁶² Noelle Brigden discusses the shelter as an oasis in her work; Casa 72 in Tenosique calls itself an oasis in its slogan. Even so, no shelter is completely danger-free (there have been attacks on shelters; enganchadores posing as fellow migrants go to shelters to find people to defraud or lure into their smuggling/trafficking enterprises).

⁶³ Nelson Arteaga-Botello, “Solidary Cuisine: *Las Patronas* Facing the Central American Migratory Flow”, *The Courage for Civil Repair*, https://doi.org/10.1007/978-3-030-44590-4_7 (2020), p. 523.

⁶⁴ Noelle Kateri Brigden, *The Migrant Passage: Clandestine Journeys From Central America*, 2018, p. 172.

⁶⁵ <https://www.nbcnews.com/news/latino/mexico-closes-migrant-shelters-due-coronavirus-those-seeking-refuge-face-n1252733>; Eichler Interview, 4/6/21.

⁶⁶ Brigden 172.

⁶⁷ See, e.g., PBI Mexico, “Ch. 2 Migrants in transit through Mexico: Human rights inside the borders”, *A Panorama of the Defense of Human Rights in Mexico*, p. 29, https://pbi-mexico.org/fileadmin/user_files/projects/mexico/files/PBI_Publications/A_Panorama_of_the_Defense_of_Human_Rights_in_Mexico__April_2013.pdf (“The context of insecurity has resulted in the closure of four shelters, in different states of the Republic (Chiapas, San Luis Potosi, Tamaulipas and the State of Mexico)”); Carrie Harris, “Fellowship Southwest partner Lorenzo Ortiz stays behind closed border”, CBF Blog, Mar. 23, 2020, <https://cbfblog.com/2020/03/23/fellowship-southwest-partner-lorenzo-ortiz-stays-behind-closed-border/> (“Ortiz has set up three shelters—essentially safe houses—in Nuevo Laredo, where he welcomes refugees when he rescues them from the streets.”).

⁶⁸ Brigden 172.

migrants,”⁶⁹ providing aid to migrants can still be a dangerous undertaking.⁷⁰ Mexicans who provide aid and shelter to migrants have been criminalized by the police and the state.⁷¹ Local communities have also ostracized those who persist in providing aid to migrants.⁷² In spite of the steep costs and increased and ongoing challenges, many migrant rights defenders have persisted in their solidarity efforts. What motivates them to do so despite the ongoing challenges and very real risks to their lives and safety? What supports enable them to continue?

While the motivations for engaging in migrant solidarity work for Mexican migrant rights defenders were many and varied in the limited sources reviewed,⁷³ several common themes emerged: religious/moral conviction, compassion/empathy, belief in human rights and the dignity of all human beings, personal identification with refugees and their families, and pleasure/joy/happiness. While actors often primarily identified with one or two of these motivations (usually religious/moral conviction and belief in human rights), it appears that actors identified with nearly all of these motivations at one point or another. Motivations also overlapped.⁷⁴

Beginning with religious and moral conviction, facilitators identified God’s will and/or Christian values as the rationale for their work. One group of shelter workers expressed a belief that God had placed them in the path of these migrants in order to help them.⁷⁵ They also described

⁶⁹ PBI Mexico 26.

⁷⁰ See, e.g., Emily Green, *A Pastor Did a Deal With the Devil to Save Migrant Lives*, VICE (Apr. 27, 2021) <https://www.vice.com/en/article/k78abz/biden-is-still-sending-thousands-of-migrants-back-to-dangerous-border-cities-and-kidnappers> (describing call from cartel leader that Pastor Lorenzo Ortiz received in 2019); Mary Louisa Cappelli, *Digital Mobilization and Politicization of El Caminata del Migrante*, SOCIAL NETWORKING, v. 9, 11, 26 n.2 (2020) (“While working at Al Otro Lado, ...we received daily threats to our safety as volunteers. These threats escalated to death threats from criminal organizations...”); *CSW calls for renewed investigations on first anniversary of pastor and co-worker’s abduction*, Aug. 3, 2020, <https://www.csw.org.uk/2020/08/03/press/4751/article.htm> (describing kidnapping and disappearance of Pastor Aarón Méndez Ruiz and co-worker Alfredo Castillo Luna after blocking cartel attempt to kidnap Cuban asylum seekers from their shelter); Judy Jackson, *Walk With Us* (2019 documentary) (Ignacio Martinez, founder of ABBA safehouse in Celaya, Guanajuato describes receiving death threats).

⁷¹ <https://cejil.org/comunicado-de-prensa/mexico-inacceptable-acoso-a-defensores-de-migrantes-por-parte-de-guardia-nacional/>; <https://www.animalpolitico.com/2019/06/por-que-detuvieron-defensores-migrantes/>.

⁷² See Arteaga-Botello 192-94.

⁷³ LIST AND DESCRIBE SOURCES

⁷⁴ See *id* at 191: “we are all children of God” – says one of the Patronas. This statement reflects both religious motivation and identification with the migrants.

⁷⁵ Arteaga-Botello, p. 185-86 (“Norma Romero, the spokesperson for the group, a former member of the church choir and a catechist in the town’s parish, insistently reminds that the vocation of the group came into focus when, on the occasion of the arrival of the train to the community, a group of migrants brought down from the train a black man who was very ill. To lower him, his friends grabbed him by the arms to slide him down to the ground and others pulled his feet down. In that position, Norma remarked, the man looked like a crucified Christ and resembled

Christian values as “service to the needy regardless of their origin or social condition.”⁷⁶ One facilitator described God as love *and* justice, seeing God in his work.⁷⁷ Religion also provided facilitators with strength in the face of challenges, relying on the idea that Jesus was also ignored and mistreated.⁷⁸

Mexicans facilitating the migrant journey also expressed personal identification and human empathy as reasons for engaging in this work despite the challenges. Some invoked family members who had migrated, empathizing with the harms they had suffered on the journey.⁷⁹ Others shared the experience of personal precarity and/or poverty with migrants, which inspired the compassion that motivates their work.⁸⁰ Others emphasized the migrants’ humanity, and the need to help them simply because they are human.⁸¹ Some facilitators noted commonalities between Mexican and Central American societies and cultures as motivating their assistance.⁸²

the Black Christ of Honduras. To them, that migrant reflected the image of Christ in need of help.”); Pombo 569 (quoting one of the shelter workers, “I think God put me on that path to help our brothers who come without food, without water.”); Pastor Ignacio Martinez, Founder of ABBA safehouse in Celaya, Guanajuato, Documentary: Walk With Us, (“As a Christian pastor, I realized from the Bible that God cares a lot for immigrants. . . . God talks a lot about migrants. . . .Israel was a nation of migrants who had been refugees. And many of the scriptures feature migration. I felt this calling me. A call to help our fellow migrants).

⁷⁶ Arteaga-Botello, p. 185-86

⁷⁷ I realized that God is a God of Justice. We know the God of love. We know the God of mercy and forgiveness. But I don’t think people know the God of justice. And justice asks us to treat people equally.” (Pastor Ignacio Martinez, Founder of ABBA safehouse in Celaya, Guanajuato, Documentary: Walk With Us)

⁷⁸ Arteaga-Botello 188 (“If even our Lord, Jesus Christ, was ignored when spreading his word, and he continued with his evangelizing work,” they remarked, “we must learn, as indigenous, poor women, to withstand any harm being done to us.”)

⁷⁹ Pastor Ignacio Martinez (Walk With Us) (“I had a brother who migrated and was kidnapped. I can’t remember the amount of the ransom. A person in the US paid the ransom...he did arrive...but I know what it is to see a mother beside herself with anxiety.”)

⁸⁰ Pombo 569; Solidarity Table p. 66, (“Doña Conchis liked to . . . “give them the little she has.” . . . Doña Conchis and the migrants are equally poor, although in different situations. Scarcity is not only an availability of goods; it is also a way of reading the world and one's own lives. Being both human and poor: this is what the donor and the recipients share.”)

⁸¹ Pastor Ignacio Martinez (Walk With Us) (“What do migrants want? They want exactly what we want, a good family, a good home, a good job, that their children can go to school and university...”); Amnesty International Video (volunteer feeding caravan): (“I’m José Domingo Hernández Armengol. I’m from Acapetagua; but today we are united here as brothers and sisters with all the people from this town called Escuintla, a town which all those travelling to Mexico City or to the north of our country pass through. We are all gathered here today with one clear aim: to help the Honduran caravan which is arriving and really needs help. Today we are not people from any place in particular; we are simply people of the world. The aim is to help those who need it the most with the firm belief that there should be no boundaries when it comes to humanity. We are all human.”); Solidarity Table p. 66 (“Doña Conchis justified her help in a radical similarity with respect to these people: “they are human beings like us.”);

⁸² Hernandez Lopez & Porraz Gomez 17: In the south, people used to say “We are like pupusas, valiadadas, and quesadillas,” we have something in common...

Finally, human rights and human dignity were a primary motivation for many younger people (college students, shelter psychologists, activists, and many legal aid attorneys). For older generations, this seemed to be a secondary motivation or a motivation that developed as they became politicized in their solidarity work.⁸³

Though the case study is anecdotal given the limited number of sources, these different motivations appear likely to inspire a range of individuals facilitating migrant journeys. A culture of solidarity can help to inspire and sustain this type of internal purpose. However, solidarity workers will likely need networks of support beyond their respective communities to sustain their work. Many also have supportive families (in many cases, the solidarity work is a family-run endeavor). Many of those who offer shelter and services to migrants rely on financial support from outside sources.⁸⁴ Several of these operations/people have won international human rights awards, been featured in documentaries, and awarded precautionary measures by the Inter-American Commission on Human Rights.⁸⁵ Facilitators viewed these external measures of support as further justification of their work, proof that they are doing the right thing.⁸⁶ Though they might not provide full protection, the knowledge that the world is watching provided comfort and some measure of insulation.⁸⁷

Migrants also engaged in acts of solidarity with each other during their journeys. “Through . . . small exchanges of food, or objects (like Bibles, combs, or clothing), members of the transient community create a community where people can often find what they need to survive another day

⁸³ Patronas added human rights discourse after attending trainings and increased contact with students and international volunteers; Pastor Ignacio Martinez is now studying to be a lawyer to help migrants after running shelter and providing food for several years

⁸⁴ Casa ABBA receives financial help from mostly American ex-pats living in San Miguel de Allende and outfits amputees with prostheses from the Red Cross. The ex-pats formed a non-profit to fundraise for them, paid rent on the place and bills, and eventually bought the property

⁸⁵ <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/decisions/mc/about-precautionary.asp#:~:text=A%20precautionary%20measure%20is%20a,situation%20from%20suffering%20irreparable%20harm>. While the effectiveness of those measures is questionable, the steady media attention and international presence appear to provide some measure of protection.

⁸⁶ (Arteaga-Botello 195-96). “Las Patronas interpret the visits from foreigners and from people from other parts of Mexico as proof that they are doing the right thing while carrying out the task that God and the Virgin of Guadalupe entrusted to the group, namely, helping the hungry and those who suffer the hardships of migration.”

⁸⁷ Father Solalinde’s shelter in Ixtepec, Oaxaca is internationally renowned. La 72 in Tenosique, Tabasco is similarly internationally renowned and routinely in the news as a barometer for how things are going in terms of migration trends (esp. in Mexican news media)

and to keep going.”⁸⁸ Reviewing accounts of the migrant caravans from Honduras, we learned that solidarity among migrants is motivated out of compassion, identification, safety, and the need to survive. Migrants encouraged each other at key moments and solidarity (offering food when someone looked like they were about to faint, providing key information) was crucial to making it through the journey.

Similar to facilitators, empathy and identification with other migrants played an important role in forging solidarity. Some migrants, remembering their own experience with hunger, share food with migrants who are on the verge of fainting – even if they do not trust them and without expectation that they will reciprocate – because they see themselves in the migrants.⁸⁹ Through the caravan, migrants experienced the power of solidarity, or strength in numbers. They supported each other by sharing strategic information, such as techniques to climb aboard a train and maps of migrant shelters.⁹⁰ Social media is key to this information sharing. Migrants explained that the caravan itself provided strength, power in numbers against death, rape, and discrimination.⁹¹ Most LGBT+ people who joined the caravans formed internal groups to protect themselves from the discrimination experienced within the caravan and without.⁹² And migrants shared resources, offering food and water at key moments.⁹³ External actors also played a role in increasing safety;

⁸⁸ De León (2020) at 11

⁸⁹ De León (2020) at 12 “Sebas remembers how hungry he had been and consequently tries to share his food with those who look as if they are about to faint. He remembers to be cautious but, “even if I don’t trust them or if they look dodgy, if I see the hunger in their eyes, I cannot control myself. I was them before and I understand...”;

⁹⁰ De León (2020) at 12 “Ronaldo (47 years old from Guatemala), a seven-time migrant who I met in Saltillo, told me: “I show the new migrants how to behave and how to get on the train and how to treat the people from the migrant house. They are so young, they do not know. I can tell them.” Some people also told me how experienced migrants had drawn a map for them and told them about the migrant houses while they waited for a train or a bus.”

⁹¹ Ortiz Cadena et al 81

⁹² (Online forum: “Central American Caravans: Inside LGBTQ Testimonies of Contention, Survival and Resilience”, May 28, 2020)

⁹³ De León (2020) at 11: “I hadn’t eaten in two days. I had drunk water, but it was dirty water, from puddles and faucets. I had been paying attention, but I couldn’t even find an apple on the ground. I thought I might have to steal some food or hunt an algarrobo [a lizard]. I had begged but no one had helped me. I was alone. I have a sister in the United States but, how will she help me? Anyway... I arrived at the train tracks; you know. In Pakal-Na [Palenque] and then I saw like 30 migrants like me on the tracks and in the shade waiting for the train. And I was still shy but hungry so I sat next to a group and would you believe that they 12 offered me a taco? It was the most delicious taco I’ve ever had. And they didn’t really talk a lot but one of them told me, “you look hungry, I bet el camino has been rough to you,” before he fed me.” *see also* De León (2021) 8: “when we were sitting down and the sun was hitting us on the back, very, very strong, and we were hot and thirsty, this man I didn’t know offered me a sip of his water. He had very little and he shared it. I don’t know, that’s when I knew he was OK,” Nahu told me, describing how he knew Juanjo was a person he could trust. They eventually became so close that they travelled north together.

Central American caravans were accompanied by a parallel caravan of journalists, photographers, and human rights observers emphasized that the eyes of the world were watching.

The caravans also demonstrate that solidarity has its limits. The large migrant caravans in 2018 and 2019 offered hope to those fleeing Honduras who saw no other way of journeying north in safety. Because it was such a bold and unprecedented phenomenon (previous caravans were smaller and aimed to draw attention to the plight of migrants rather than to actually travel to the southern US border), the element of novelty attracted a huge media contingent and generated a substantial amount of compassion and sympathy. That initial favorable attitude quickly dissipated with subsequent caravans that wore out their welcome by leaving behind trash that they were unable to carry with them, and were met with increasing hostility. Subsequent caravans have been broken up and stopped. The state has adapted to ensure that caravans cannot become a more regular mode of migrant travel. Many cargo trains have stopped running. There are posts blocking migrants from boarding. Migrants must now walk or hitch rides. Many shelters are closed. Given these increased difficulties, solidarity among migrants is now more crucial than ever. Migrants and ad hoc aid from ordinary Mexican citizens are increasingly filling gaps but are of course unable to fill all gaps.

Of course, the only real solution to the dangers of these migrant journeys is to end border externalization and create pathways for regular migration.⁹⁴ Short of that, it is helpful to understand how to forge solidarity for and among migrants by foregrounding human connection and identification. Though Mexican law and international law provide some safety measures, enforcement is extremely limited. Anti-migrant forces are entrenched not only in law and its application but also in popular perception and culture. Migrants, solidarity workers, and allies need to develop strategies to forge a culture of solidarity. Churches and universities are seen as the institutions least affected by corruption by the general public and can be influential in crafting and supporting a culture of solidarity with migrants.⁹⁵ Human connection and identification are central to the culture; migrants must identify with each other, and ordinary citizens must see themselves in migrants and their stories. Social media is essential to this effort. Law may also

⁹⁴ Report of the Independent Expert on human rights and international solidarity, Obiora Chinedu Okafor, A/73/206 at Para. 49 (July 20, 2018).

⁹⁵ Brigden.

have a role to play in creating conditions that will enable a sustainable culture of solidarity can thrive.

Conclusion

This chapter sought to explore the international legal concept of solidarity and in particular to examine how it can be operationalized in the context of migration. Understanding that solidarity is a broad and malleable concept, the chapter sketches the components of an international legal principle, right, and duty of solidarity. In the migration realm, in addition to positive solidarity that enhances and expands the rights of migrants, the manipulability of the concept enables negative solidarity. Moreover, transnational criminal law's carceral approach has enabled anti-solidarity in domestic law and policy in the form of criminalization of humanitarian actors who seek to aid migrants. This chapter turns to solidarity actors in the Global South whose work with migrants is less well publicized, exploring stories of migrant facilitators and migrants in Mexico. These stories illustrate the relative irrelevance of law in protecting migrants, and the importance of a culture of solidarity in encouraging local actors to engage in humanitarian assistance. Solidarity between migrants is a key factor in enabling the journey northward. International law's role may be most valuable in enabling a culture of solidarity between migrants and on the part of local actors, in part through law's expressive function and in part through legal actions that enable human connection and identification.